AGRICULTURAL MARKETING AND BARGAINING

(ADDITIONAL HEARINGS)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON DOMESTIC MARKETING AND CONSUMER RELATIONS

OF THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

SECOND SESSION

ON

H.R. 14987

AUGUST 16 AND 17, 1972

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AGRICULTURAL MARKETING AND BARGAINING

WEDNESDAY, AUGUST 16, 1972

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

The subcommittee met, pursuant to call, at 10:10 a.m. in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Foley, Sisk, Denholm, Link, Matsunaga, Zwach, and Findley.

Also present: Mrs. Christine S. Gallagher, chief clerk; and Lacey C. Sharp, general counsel.

Hearings on H.R. 7597,[1] a bill to create a National Agricultural Bargaining Board, to provide standards for the qualification of associations of producers, to define the mutual obligation of handlers and associations of producers to negotiate regarding agricultural products, and for other purposes, were held from September 20 to October 6, 1971. As a result of these hearings, H.R. 7597 was amended and H.R. 14987 subsequently introduced incorporating these amendments. As indicated by the Chair's opening remarks, the testimony given in the following 2 days of hearings was limited to those amendments.

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

The committee meets this morning for consideration of H.R. 14987, the National Agricultural Marketing and Bargaining Act of 1972.

The committee announcement relative to these hearings specified that witnesses would be limited to 5 minutes of oral testimony. We regret the necessity of imposing that limitation. But the pressure of time, in an attempt to conduct hearings on so important and widely interesting bill as this bill, has made this a necessity.

The Chair wishes to advise witnesses that the committee will receive any written testimony they wish to present, and that the entire statement of the witness, within reason, will be included in the record of the hearing. But I am going to have to insist on holding individual witnesses to 5 minutes.

[1] Hearing "Agricultural Marketing and Bargaining," Serial 92–M, House of Representatives, Committee on Agriculture.

The purpose of the hearings is to discuss the changes incorporated in H.R. 14987 from the earlier legislation introduced by Mr. Sisk, H.R. 7597.

We hope that witnesses will be cooperative in not repeating the extensive testimony previously given before the subcommittee for almost 3 weeks last year.

So, with those comments I will now call the first witness, Mr. Charles L. Frazier, director of the Washington staff of the National Farmers Organization.

(H.R. 14987, introduced by Mr. Sisk, and the report of the Department of Agriculture follow:)

[H.R. 14987, 92d Cong., second sess.]

A BILL To create a National Agricultural Bargaining Board, to provide standards for the qualification of associations of producers, to define the mutual obligation of handlers and associations of producers to negotiate regarding agricultural products produced or sold under contract, and for other purposes

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

TITLE I—AGRICULTURAL MARKETING AND BARGAINING—LEGISLATIVE FINDINGS AND PURPOSE

SEC. 101. Congress has already found that because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Congress hereby finds, further, that membership by a farmer in a cooperative organization can only be meaningful if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative organization as the representative of the members of such organization who have had a previous course of dealing with such handler. The purpose of this title, therefore, is to provide standards for the qualification of agricultural cooperative organizations for bargaining purposes, to define the mutual obligation of handlers and agricultural cooperative organizations to bargain with respect to the production, sale, and marketing of agricultural products and to provide for the enforcement of such obligation. No provision of this title is intended to interfere with, hinder, or prevent the free exercise by a producer of the right not to belong to an association of producers organized for any purpose set forth in this Act.

SHORT TITLE

SEC. 102. This title shall be known and may be cited as the "National Agricultural Marketing and Bargaining Act of 1972".

DEFINITIONS

SEC. 103. When used in this title—

(a) "Qualified association" means an association of producers accredited in accordance with section 105 of this title.

(b) "Association of producers" means any association of producers of agricultural products engaged in marketing, bargaining, shipping, or processing as defined in section 15(a) of the Agricultural Marketing Act of 1929, as amended (49 Stat. 317; 12 U.S.C. 1141 (a)), or in section 1 of the Act entitled "An Act to authorize association of agricultural producers" approved February 18, 1922 (42 Stat. 388; 7 U.S.C. 291).

(c) "Board" means the National Agricultural Bargaining Board provided for in this title.

(d) "Handler" means any person other than an association of producers engaged in the business or practice of (1) acquiring agricultural products from producers or associations of producers for processing or sale; (2) grading, packaging, handling, storing, or processing agricultural products received from producers or associations of producers; (3) contracting or negotiating contracts or other

arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or (4) acting as an agent or broker for a handler in the performance of any function or act specified in (1), (2), or (3) above.

(e) "Person" includes one or more individuals, partnerships, corporations, and associations.

(f) "Producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable, or nut grower, including a grower or farmer furnishing labor and facilities under contract for the growing or raising of agricultural products.

NATIONAL AGRICULTURAL BARGAINING BOARD

SEC. 104. (a) There is hereby established in the Department of Agriculture a National Agricultural Bargaining Board, which shall administer the provisions of this title.

(b) The Board shall consist of five members who shall be appointed by the President with the advice and consent of the Senate. The original Board shall be composed of two members for a one-year term, two members for a three-year term, and one member for a five-year term. The President shall indicate the length of term when making the appointment of the original Board. Thereafter, as the term of each member expires, the President shall, with the advice and consent of the Senate, appoint a successor to serve for a term of five years. Any individual chosen to fill a vacancy caused by other than expiration of the term shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall select one member of the Board to serve as Chairman. Not more than three of the members of the Board shall at any one time be of the same political party.

(c) Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office but for no other cause.

(d) A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board. Three members of the Board shall, at all times, constitute a quorum of the Board.

(3) Each member of the Board shall receive a salary of $35,000 a year and shall not engage in any other business vocation or employment. All of the expenses of the Board, including all necessary traveling and subsistence expenses incurred by the members of the Board or the employees of the Board under its orders, shall be allowed and paid in the same manner as payment of such expenses for employees of the Department of Agriculture.

(f) The Board shall have authority from time to time to adopt, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary or appropriate to carry out the provisions of this title. The Board shall appoint hearing examiners as it may from time to time find necessary for the proper performance of its duties.

QUALIFICATION OF ASSOCIATION OF PRODUCERS

SEC. 105. (a) Only those associations of producers that have been qualified in accordance with this section shall be entitled to the benefits provided by this title.

(b) An association of producers desiring qualification shall file with the Board a petition for qualification. The petition shall contain such information and be accompanied by such documents as shall be required by the regulations of the Board.

(c) The Board shall provide for a public hearing upon such petition. The Board shall qualify such association if based upon the evidence at such hearing the Board finds—

(1) that under the charter documents or the bylaws of the association, the association is directly or indirectly producer owned and controlled;

(2) the association has contracts with its members that are binding under State law;

(3) the association is financially sound and has sufficient resources and management to carry out the purposes for which it was organized;

(4) the association represents a sufficient number of producers and/or a sufficient quantity of agricultural products to make it an effective agent for producers in bargaining with handlers; and

(5) the association has as one of its functions acting as principal or agent for its producer-members in negotiations with handlers for prices and other

terms of contracts with respect to the production, sale, and marketing of their product.

(d) In the event the Board makes the necessary findings set forth in section 105(c) of this title, it shall qualify such association with respect to the agricultural commodity or commodities which that association shall represent; it shall designate the geographic area within which the association is qualified to bargain; and it shall specify a period of time in which negotiations with a handler shall be conducted. After the Board qualifies such association with respect to commodities, geographic area, and reasonable period of time for negotiations, the Board shall give notice of such qualification to all known handlers that, in the ordinary course of business, purchase the agricultural commodities that such association has been qualified to represent.

(e) A qualified association shall file an annual report with the Board in such form as shall be required by the regulations of the Board. The annual report shall contain such information as will enable the Board to determine whether the association continues to meet the standards for qualification.

(f) If a qualified association ceases to maintain the standards for qualification set forth in paragraph (c) of this section the Board shall, after notice and hearing, revoke the qualification of such association.

BARGAINING

SEC. 106. (a) As used in this title, "bargaining" is the mutual obligation of a handler and a qualified association to meet at reasonable times and for a reasonable period of time for purposes of negotiating in good faith a contract with respect to the price, terms of sale, compensation for commodities produced under contract, and other provisions for the commodities that such qualified association represents. Such obligation on the part of any handler shall extend only to a qualified association that represents a reasonable number of producers with whom such handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession. Notwithstanding any provision, this title shall not apply to bargaining of qualified associations for prices and other terms of sale of those commodities not produced or sold under contract.

(b) A handler shall be deemed to have had a prior course of dealing with a producer if such handler has purchased commodities produced by such producer at any time within the preceding two years.

(c) During the period of time for contract negotiations designated by the Board for the qualified bargaining association and while negotiating with the qualified association, it shall be unlawful for a handler to negotiate with other producers of the product for which the association has been qualified with respect to the price, terms of sale, compensation for commodities produced under contract and other contract provisions relative to such product.

(d) If a handler purchases a product from other producers under terms more favorable to such producers than those terms negotiated with a qualified bargaining association for such product, he shall offer the same terms to a qualified association.

(e) It shall be a violation of this Act for either a handler or a qualified association to refuse to bargain in good faith as defined in this section.

(f) Whenever it is charged that a qualified association or handler refuses to bargain as that term is defined in paragraph (a) of this section, the Board shall investigate such charges. If, upon such investigation, the Board considers that there is reasonable cause to believe that the person charged has refused to bargain, in violation of this Act, the Board shall issue and cause to be served a complaint upon such person. The complaint shall summon the named person to a hearing before the Board or a member thereof at the time and place therein fixed.

(g) The person complained of shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise at the hearing and give testimony. In the discretion of the Board, or its representative conducting the hearing, any person may be allowed to intervene to present testimony. Any hearing shall, insofar as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States.

(h) If, upon a preponderance of the evidence, the Board determines that the person complained of has refused to bargain, in violation of this title, it shall state its findings of fact and shall issue and cause to be served on such person an order requiring him to bargain as that term is defined in paragraph (a) of this section and shall order such further affirmative action, including an award of damages, as will effectuate the policies of this title.

(i) If, upon a preponderance of the evidence, the Board is of the opinion that the person complained of has not refused to bargain, in violation of this title, it shall make its findings of fact and issue an order dismissing the complaint.

(j) Until the record in a case has been filed in a court, as hereinafter provided in section 106, the Board may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in a whole or in part, any finding or order made or issued by it.

ENFORCEMENT OF ORDERS AND JUDICIAL REVIEW

SEC. 107. (a) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the refusal to bargain occurred or wherein the person who engaged in such refusal resides or transacts business, for the enforcement of its orders made under section 105 and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board or its representative before whom a hearing was conducted shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its representative, agent, or agency, the court may order such additional evidence to be taken before the Board, or its representative, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(b) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the refusal to bargain was alleged to have occurred or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under paragraph (a) of this section and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(c) The commencement of proceedings under paragraph (a) or (b) of this section shall not stay enforcement of the Board's decision but the Board or the reviewing court may order a stay upon such terms as it deems proper.

MISCELLANEOUS PROVISIONS

SEC. 108. The Board shall at all reasonable times have access to and the right to copy evidence relating to any person or action under investigation by it in connection with any refusal to bargain. The Board is empowered to administer oaths and to issue subpenas requiring the attendance of witnesses or the production of evidence.

SEC. 109. In case of contumacy or refusal to obey a subpena issued to any person, the district court, upon application by the Board, shall have jurisdiction to order such person to appear before the Board to produce evidence or to give testimony touching the matter under investigation, and any failure to obey such order may be punished by the court as a contempt thereof.

SEC. 110. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 111. Complaints, orders, and other processes and papers of the Board may be served personally, by registered mail, by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return of service shall be proof of such service. Witnesses summoned before the Board shall be paid the same fee and mileage allowance that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

SEC. 112. All processes of any court of which an application or petition may be made under this title may be served in the judicial district wherein the person or persons required to be served reside or may be found.

SEC. 113. The provisions of this title are severable and if any provision shall be held unconstitutional or invalid by a court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions.

SEC. 114. The activities of qualified associations and handlers in bargaining with respect to the provisions of section 106 of this Act shall be deemed not to violate any antitrust law of the United States. Nothing in this title, however, shall be construed to permit handlers to contract, combine, or conspire with one another in bargaining with qualified associations.

TITLE II—ASSIGNMENT OF ASSOCIATION FEES

SEC. 201. If any producer of a farm product voluntarily executes and causes to be delivered to a handler, either as a clause in a sales contract or other instrument in writing, a notice of assignment of dues or fees to a qualified association directly representing the specific product or service involved, by which the handler is directed to deduct a sum from the price to be paid for such product or for the services of such producer under a growing contract and to pay the same over to such association as dues or fees for the producer, then such handler shall deduct the amount authorized from the amount due for any farm product being sold by any such producer or for any services under any growing contract and pay said amount over to the qualified association as assignee.

SEC. 202. No provision which is inserted in any contract that is prepared by a handler which makes ineffective an assignment of the dues or fees described in section 201 is valid.

SEC. 203. An assignment of dues or fees as described in section 201 may not exceed 2 per centum of the total value of the product which is delivered by the producer to the handler; however, when the farmer or grower furnishes only labor and facilities, such assignment of dues or fees may not exceed 2 per centum of the total value of such services furnished by the producer to the handler.

SEC. 204. Payment need not be made under an assignment of dues or fees pursuant to section 201 until the handler has available and under its control funds owing to the producer that are sufficient in amount to make the payment of the amount involved. In the case of an annual product, such payment need not be made until the end of the product year.

TITLE III—MARKETING ORDERS

SEC. 301. The Agricultural Adjustment Act of 1933, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, and subsequent legislation, is further amended as follows:

"Section 8c(2) is amended by inserting after the third sentence ending with the words 'Southwest production area.', the following: 'Notwithstanding any of the commodity, product, area, or approval exceptions or limitations in the foregoing sentences hereof, any agricultural commodity or product (except canned or frozen products) thereof, or any regional or market classification thereof, shall be eligible for an order, exempt from any special approval required by the preceding sentences hereof, if after a referendum of the affected producers of such commodity the Secretary finds that a majority of such producers voting in such referendum favor making such commodity or product thereof, or the regional or market classification thereof specified in the referendum, eligible for an order: *Provided, however,* That such referendum shall not be required for any commodity or product for which an order otherwise is authorized under the preceding sentences of this subsection (2) and for which no special approval or area limitation is specified therein'."

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., July 24, 1972.

Hon. W. R. POAGE,
Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: In your letter of May 17, 1972, you requested the views of this Department on H.R. 14987. That measure is designed to create a National Agricultural Bargaining Board, to provide standards for the qualification of associations of producers, to define the mutual obligation of handlers and associations of producers to negotiate regarding agricultural products, and to extend the scope of the Agricultural Marketing Agreement Act.

This Department favors the strengthening of farm bargaining. We, therefore, support H.R. 14987. The impact of this legislation on the orderly marketing of agricultural commodities will vary by crop, by geographic area, and in some cases, from year to year.

The proposed legislation will allow producers to join together in an effort to achieve bargaining power more equal to that of processors, packers and chain store buyers.

H.R. 14987 is similar to an earlier measure, H.R. 7597, on which the Department has presented testimony to your Committee. H.R. 14987 has been amended to clarify many of the provisions which were subject to question during the hearings on H.R. 7597. These amendments constitute great improvements.

The Department of Agriculture objects to the provisions of Title III. The extension of marketing order authority should be done on a commodity by commodity basis. The proposed legislation is designed to increase the bargaining power of producers. There is no need to combine such increased bargaining strength with comprehensive authority which could lead to production allotments under marketing orders. Title III should be deleted.

Since agricultural cooperatives already have anti-trust exemption under the Capper Volstead Act, we do not see any need for the additional exemption contained in Section 114 of the proposed bill.

The cost of the proposed legislation will depend upon the commodities and products covered, the number of associations seeking qualification, the number of claims to be investigated, and on the administrative provisions which may be incorporated in the bill.

The Office of Management and Budget advises that from the standpoint of the President's program, there is no objection to the Department's presenting this report.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

STATEMENT OF CHARLES L. FRAZIER, DIRECTOR, WASHINGTON STAFF, NATIONAL FARMERS ORGANIZATION

Mr. FRAZIER. Good morning, sir.

We appreciate the deliberate care demonstrated by the subcommittee and the author in arranging this additional hearing to consider the far-reaching consequences of the proposed legislation. In view of the limited time I will quickly summarize our comments on the proposed amendments. However, first let me compliment Congressman Sisk on his efforts to improve the bill with the changes now under consideration. Even though the National Farmers Organization must still oppose enactment of this legislation, we recognize his sincere interest in strengthening the bargaining position of producers. We urge that sufficient time be taken to examine the probable consequences of this legislation very carefully. There are a number of unanswered questions of great importance. These should be thought through before this proposed legislation becomes law.

Turning now to the amendments in the order in which they appear in the chairman's announcement of this hearing:

Creation of a nonpartisan five-member board is commendable. In view of the tremendous responsibility contemplated for this new agency it would also be of importance to require that the members of this board be producers representing as many different types of farming as possible.

Relation of the legislation specifically to contract sales apparently is an effort to delineate the applicability of the legislation. It has been said that the authority of the board and the prescribed methods of negotiation apply only to those producers of a particular commodity who are contracting before planting or during the production cycle on livestock. It is also contemplated, I am sure, that "futures" contracts calling for delivery under the rules of the recognized exchanges are excluded from the reference "products produced and sold under contract" in the bill.

Several questions come up: The stipulation in section 106(a) that "this title shall not apply to bargaining of qualified associations * * * on commodities not produced or sold under contract" seems to leave open the applicability of the law to that part of a crop or livestock production placed under contract at harvesting or marketing time. In other words, the basic concept is that one bargaining organization is granted the authority to represent that portion of a crop in a given area that is contracted before planting and this would necessarily mean that other growers could seemingly contract through a separate bargaining process—or go their own way in selling.

It is not clear whether this second group of producers are expected or even permitted to come into the authorized bargaining group as late as harvest and marketing season or whether they are left on their own and free to bargain through some additional group.

Other language added in this same section, referring to a "reasonable number of producers" seems to imply that a number of bargaining organizations could be recognized for one product in the same area by the board, and that it is contemplated each of them would negotiate with a processor of a commodity in that given area. Taking soybeans as an example, does this mean that in each large marketing area a

separate organization would be recognized to deal with each of the large processors taking beans out of that area? Or on hogs, would the designers of this bill contemplate that a separate bargaining group be designated to represent producers who had sold, at some time in the last 2 years, to each of the packers receiving hogs from that general marketing area?

Protecting the right of a producer not to belong to an association if he so chooses. It is probably a wise addition to the bill. What precautions would be provided to assure that he would still have an opportunity to sell in his normal market if he did not join a bargaining group?

Inclusion of the independent agricultural contractors appears to be a justifiable change and should be part of the legislation if it becomes law.

Provision for definition of the commodity applicability in a specific geographic area and stipulation of a reasonable period of time during which negotiations could be conducted are worthwhile efforts to strengthen the bill. Here again, however, there is no real guidance as to the policy that would be expected once a board was appointed and granted the tremendous authority contemplated in this act. It is easy to foresee that one of the vegetable or fruit crops produced in a relatively small geographic area might be logically covered through recognition of one bargaining authority to deal with the several processors taking that commodity. We are left quite up in the air, however, when we think of broadly produced commodities such as one of the major grain crops, cotton, peanuts, tobacco, milk, cattle, hogs, or poultry. If the authority for recognition of a bargaining agency is interpreted to encompass thousands of producers of a major commodity on a regional basis, this automatically forces a very expensive and highly competitive fight for recognition among the several cooperatives and bargaining organizations striving to represent producers today. If, on the other hand, it is contemplated that several organizations may be designated within a general geographic area, each to work with a named principal buyer or processor, competition would be maintained between bargaining groups but there would in all probability be a large number of legal confrontations to resolve the question of who could represent various procuders. This would be expensive, time-consuming, and quite surely would set back for several years such bargaining progress as we have accomplished to date.

We appreciate the effort to clarify the terms of bargaining and a prior course of dealing.

Clarifying conditions under which a handler may buy products from nonmembers is a good effort but again, there may be some question as to the position of the nonmember in selling in his own customary manner.

It may be with the best of intentions that bargaining activities qualifying under this act would be exempted under the antitrust laws but does such specific action cast a legal shadow over other bargaining activities heretofore exempted from antitrust law by the Capper-Volstead Act?

We note the whole series of questions and objections set forth in the letter of July 24, 1972, to Chairman Poage from Ralph E. Erickson, Deputy Attorney General. That memorandum calls for extensive changes in the proposed legislation to guarantee continuing

competition among producers while protecting handlers, processors, and consumers with assurance of a ready supply of commodities in the marketplace. We believe the bill as proposed does not overcome these objections and that there are continuing problems in this area.

It is also noted that the bill still provides that in order for an association to become qualified its membership contract must be binding under State law. This strongly implies that all bargaining must be handled by many small, locally oriented producer groups who would be without the strength derived from a broadly based organization, or that the larger organization would have to go through the courts in each State to clear its contract. In either case, it is time consuming and expensive. The requirement seems quite unnecessary and should be stricken from the bill.

The National Farmers Organization continues to support title III of the bill.

In summary, it is recognized that the authors have conscientiously undertaken to clarify the applicability and use of this legislation. Although the National Farmers Organization is completely dedicated to the bargaining concept and expansion of this approach to pricing on the part of producers, we maintain that further progress will be made by the various organizations engaged in bargaining for their members largely by the enlistment of additional membership and coverage of a larger proportion of each of the major commodities. We are convinced that responsibility for such progress rests primarily with the producers themselves. Bargaining cannot be successfully supervised and dictated by a government agency while the participants are negotiating on a voluntary basis, and we are not yet ready to agree to a compulsory approach.

Mr. FOLEY. At this time I will ask if the committee has any questions they would like to pose to Mr. Frazier.

Mr. SISK. Mr. Chairman, I want to thank Mr. Frazier for his comments on behalf of the National Farmers Organization. I appreciate them, and I have no questions.

Mr. FOLEY. Mr. Findley?

Mr. FINDLEY. Mr. Chairman, I wonder if it would be possible to have Mr. Frazier remain here so that at the conclusion of the testimony by all the witnesses we might also have the privilege of directing a question to him at that time. Is there any objection to that?

Mr. FOLEY. If it is agreeable to Mr. Frazier, if he has the time to do that. The problem, of course, is that he may have other commitments.

Mr. FRAZIER. Mr. Chairman, I would like so much to cooperate, but I do have to catch a plane at 12:40 today to leave town on another commitment. I want to be helpful if I can answer questions now, or perhaps at your convenience later.

Mr. FINDLEY. On page 2, Mr. Frazier, you have this language.

> The basic concept is that one bargaining organization is granted the authority to represent that portion of a crop in a given area that is contracted before planting, and this would necessarily mean that other growers could seemingly contract through a separate bargaining process—or go their own way in selling.

Would you illustrate how you see this actually functioning?

Suppose you were a soybean producer out in western Illinois. Relate how this might affect your operation.

Mr. FRAZIER. Mr. Findley, my statement is based on rather informal discussions with members of the staff who have worked with this bill. And what I was really trying to do here was to raise a question, to point out that there is uncertainty in this area.

For example, I can well imagine that a number of soybean producers belonging to any one of the prominent organizations might very well make their commitments for bargaining before planting, and have a well-developed program. But suppose half or a third or two-thirds of the growers, for that matter, in five of six county heavy-producing areas, are not members of an organization. The only point I am undertaking to raise here is to point out that at least I cannot tell from the language of the bill where those producers would stand as harvest time and marketing season approaches.

Under some of our current bargaining efforts they may come in and complete what we call a bill of sale, for example, at harvest time, or after harvest time, and have their products sold pursuant to a bargaining contract that we may complete.

Mr. FINDLEY. First of all, I want to say that I think this statement is well put together. It is an excellent analysis of the problems that we confront as a subcommittee here. And I think it raises some very appropriate questions.

As you note, the bargaining board would have a very broad range of authority. Naturally the interest of the individual producer who might not be a member of the bargaining association, or in the group that is certified, could encounter problems.

Judging from your comment, I assume there is some question in your mind as to just how soon in the growing crop year the bargaining process would have to be completed. Would you assume from the language of the bill and what you know about it that this would have to be completed before the crop is planted?

Mr. FRAZIER. At least I have that impression, sir, from some members of the staff with whom I have visited about the bill, that this was the dominant concept that was contemplated.

I may be in error. I am only undertaking to raise the question here to point out that I think it could become a very difficult problem.

Mr. FINDLEY. At this point, Mr. Chairman, I have no further questions.

Mr. FOLEY. Mr. Denholm.

Mr. DENHOLM. Mr. Frazier, I am pleased that you have appeared before our committee to express your thoughts on a very difficult issue. I commend you for submitting a statement of probative and substantial value.

Mr. FRAZIER. Thank you.

Mr. ZWACH. Mr. Frazier, you raised some of the points that this subcommittee, of course, is concerned about. But just quickly overall, your organization has not found any need for the Government to enter into the bargaining process in the area of producers trying to bargain for themselves; you have not found any need for Government entrance into this field beyond Capper-Volstead?

Mr. FRAZIER. That is right, Mr. Zwach. I want to be fair about it. Certainly there is need to convince more producers and bring them into the bargaining process in order for it to be entirely successful. But we are seriously in doubt that this can be done through the super-

vision and influence of a Government agency. We believe the primary responsibility rests with producers; we believe they must make their own choices and voluntarily come into the bargaining process if it is to be successful.

Mr. ZWACH. Is your organization finding less and less resistance by processors, canners, packers; less refusal to speak to you and to deal with your organization?

Mr. FRAZIER. Yes, sir.

Mr. ZWACH. Are you finding progress in that area?

Mr. FRAZIER. Yes, we are making progress with more packers, more city dairies, more grain companies. We have much to accomplish yet, admittedly. But we are able to talk to them and to bargain with them.

Mr. ZWACH. Would there be value in forcing them by law to bargain with you?

Mr. FRAZIER. I must say that we do not think it would be the proper approach.

Mr. ZWACH. That is all, Mr. Chairman.

Mr. FOLEY. Thank you.

Are there any further questions of Mr. Frazier?

If not, Mr. Frazier, we appreciate your appearance here today on behalf of the National Farmers Organization.

Mr. LINK. Mr. Chairman, I would like to commend Mr. Frazier for his concise and objective appraisal of the matter on behalf of the National Farmers Organization, and to thank him for appearing.

Mr. FRAZIER. Thank you, Mr. Link. Thank you, Mr. Chairman.

Mr. FOLEY. The next witness will be Mr. William J. Keating, National Grain & Feed Dealers Association, Washington, D.C.; accompanied by Tom W. Hampton, attorney at law, representing the Kansas, Nebraska, and Iowa feed dealers.

STATEMENT OF WILLIAM J. KEATING, COUNSEL FOR PUBLIC AFFAIRS, NATIONAL GRAIN & FEED ASSOCIATION, ACCOMPANIED BY TOM W. HAMPTON, ATTORNEY, REPRESENTING GRAIN & FEED ASSOCIATIONS OF KANSAS, NEBRASKA, AND IOWA

Mr. KEATING. Good, morning, Mr. Chairman and members of the subcommittee. I am William J. Keating, counsel for public affairs, National Grain & Feed Association, Washington, D.C. I am accompanied by Tom W. Hampton, a lawyer from Salina, Kans., representing the grain and feed associations of Kansas, Nebraska, and Iowa. I will present the oral testimony, a brief of my statement, and Mr. Hampton will submit a statement for the record after the hearings.[1]

The National Grain & Feed Association is a voluntary nationwide trade association with 1,150 members and 51 affiliated associations representing 10,000 firms in the grain and feed industry, including processors and exporters.

We appeared before your subcommittee on September 27, 1971, and testified in strong opposition to H.R. 7597. We have carefully analyzed the changes which are reflected in H.R. 14987 and can only conclude that the changes raise more questions than they provide answers to previous questions.

[1] See p. 82.

CHANGES TO H.R. 7597 INCORPORATED IN H.R. 14987

1. Page 1, in the title above line 1, addition: "Produced or sold under contract." This appears on the surface to limit the bill to those agricultural products which are now sold under advance contracting. However, when the bill's content is considered in its entirety, it can have the effect of forcing all products to be produced under advance contracting. Furthermore, by using "or sold under contract," it includes every sale as any sale is the consummation of a contract.

2. Page 2, lines 15–18, addition: The disclaimer added appears to give the independent producer the choice of declining to join a bargaining association. On close analysis of the economic and legal aspects of other provisions of the bill, one can only conclude that the disclaimer is meaningless. Full supply contracts would be legal under the revised bill, and the independent producer in an area where such contracts were in force would either be forced to join the association, sell his products elsewhere at increased costs (transportation and handling charges), or go out of business. Furthermore, the independent producer is granted no relief when the intent of Congress is violated.

3. Page 4, lines 1–4, starting with "including," addition: The addition was made so as to include the grower of broilers under the bill. A recent Maine case held that such a grower was not an agricultural producer.

4. Pages 6–7, section 105(d), deletion—extended addition: This change clarifies the language in the bill as to the function of the Board upon qualification of a bargaining association and notification by the Board of handlers. The Board specifies the commodity or commodities involved, the geographic area involved, and an unspecified period of time in which negotiations shall be conducted.

5. Pages 7–8, section 106(a): The changes smooth up the language and add two provisions: (1) The negotiating or meeting is to be limited to "a reasonable period of time," and (2) the association must represent "a reasonable number" of producers. Both of these terms are subject to interpretation, as is the term "negotiation in good faith" which has been the subject of many court determinations during the past 37 years in cases dealing with the National Labor Relations Act.

6. Page 8, lines 9–13, addition: This disclaimer sets forth the statutory language which supports the changes in the title of the bill (item 1). The comment on item 1 is pertinent here.

7. Page 8 lines 14–17: This changes a course of dealing from "any 2 of the preceding 5 years" to "at any time within the preceding 2 years." This is a serious extension of the bill. A handler which had had a casual business deal with a producer within the 2-year period and was totally dissatisfied with the results would be bound forever to negotiate with the association which included that producer.

8. Page 8, old section 106(c), deleted: On the surface full supply contracts are no longer mentioned in the bill. This was a peculiar section to begin with since it is only one of two places where full supply contracts were mentioned—and then in a negative manner. The deletion has no effect on the bill. Full supply contracts, if in restraint of trade, have been held by the courts to violate the antitrust laws of the United States. (See the testimony of Dr. Donald F. Turner in the Senate hearings starting at page 302 for a full discussion of this

subject.) Section 114 of the bill provides for a complete exemption from the antitrust laws of the United States for the bargaining association while bargaining with one handler. The removal of section 106(c) does not affect the ability of a bargaining association to negotiate full supply contracts.

9. Page 8, new section 106(c): This is a rewrite of old section 106(d). Previously the section forbade negotiations with other producers while negotiating with a qualified bargaining association able to supply all or a substantial portion of the requirements of the handler. As rewritten, a bargaining association able to supply only a small portion of the handlers needs can tie up the handler and cause the handler to lose his entire market as his ability to negotiate with others would be lost through time for that marketing season. This change can unduly restrict the handler in obtaining his commodities.

10. Page 9, new section 106(d): This is a rewrite of section 106(e). Previously the handler could not offer producers terms more favorable than those negotiated with the bargaining association. As rewritten, if the handler purchases from others after market conditions change and the terms are more favorable than the ones in the contract he negotiated with the bargaining association he must offer to renegotiate that contract. This is a peculiar arrangement and one which the Deputy Attorney General commented on to the effect that the handler can be thrice penalized for negotiating with a bargaining association.

11. Page 9, new section 106(e): This new section makes it a violation of the act for the handler or association to refuse to bargain in good faith. This is a better way to state the violation rather than have it included as part of the definition of bargaining as was the case in the original section 106(a). However, as mentioned before, the definition of "bargain in good faith" under the National Labor Relations Act has been the subject of much litigation—and at great expense to both labor and management. In H.R. 14987 the legal costs would be borne by the producers, handlers and ultimately the consumers.

12. Section 114: Despite the deletions and additions in the complete antitrust exemption there has been no change in this most important section of the bill. It can best be called change for change sake. Since the deletions in section 114 are contained in section 106(a) and new section 114 refers back to section 106, the deletions are in section 114 by reference.

13. Pages 16–17, title II: The changes with respect to the assignment of association dues are technical in nature to reflect the changes made to include contract growers under the definition of producers.

14a. Page 4, section 104(b): Membership of the Board has been increased from three to five members; no more than three to be from the same political party.

b. Page 4, section 104(d): A quorum of the Board has been increased from two to three.

c. Page 5, section 104(e): The salary of Board members has been set at $35,000 a year.

d. Page 5, section 104(f): The Board shall appoint hearing examiners.

Increasing the membership of the Board, specifying salaries and authorizing hearing examiners does not reduce the enormous power

Congress would grant to the Board over the agricultural segment of the economy and this Nation's food supply.

The comments in a letter of July 24, 1972 to Chairman Poage from the Deputy Attorney General should be of particular concern to your subcommittee since he raises many serious anticompetitive practices which would be created by enactment of this legislation. I shall not repeat them since they are a matter of record. However, it should be emphasized that his endorsement of the bill was based on the correction of those anticompetitive practices. In my opinion meeting his objections is impossible.

In the restricted endorsement of H.R. 14987 by the Department of Agriculture and the seriously restricted endorsement of the Department of Justice, both recommended the elimination of title III (marketing orders) and section 114, the complete exemption from the antitrust laws of the United States for a bargaining association and one handler during negotiations. The Department of Justice recommended a replacement for the latter deletion by a provision which would prevent abuses by the bargaining associations.

The deletion of supply control management from a compulsory farm bargaining proposal can easily create surplus production which must be paid for by the producers, the handlers, the consumers or the Federal Government. The elimination of the antitrust exemption places in jeopardy not only the qualified bargaining association, but also the handler who is forced to negotiate with the bargaining association and by doing so the handler could be found in restraint of trade under the Sherman Act or the Clayton Act.

Mr. Chairman, we recognize that your committee has a difficult task in answering the questions raised by the Department of Justice and others. We share their great concern on the compulsory and anticompetitive aspects of this bill, and again strongly oppose enactment of H.R. 14987.

We appreciate this opportunity to present our views.

Mr. FOLEY. Thank you very much.

Are there any questions of Mr. Keating or Mr. Hampton?

Mr. FINDLEY. Mr. Keating, on page 2 of your statement under section 2, you say: "Furthermore, the independent producer is granted no relief when the intent of Congress is violated."

What relief could be granted; what are the possibilities there?

Mr. KEATING. The possibility would be that he could be protected some way through the antitrust laws. But since there is a complete antitrust exemption, he is not taken care of. We certainly wouldn't want to see the Government get into the position where they would have to provide relief for an independent producer that did not wish to join a bargaining association. I frankly don't see how any relief could be provided. I do want to point out to the subcommittee that an insertion of a statement in the purpose of the bill does not in fact help the producer.

Mr. FINDLEY. On page 3, you assert that the revised bill does not prohibit full supply contracts. Is that a fair statement?

Mr. KEATING. Yes, sir.

Mr. FINDLEY. You say the fact that the full supply contracts are no longer mentioned does not have any real effect. Can you elaborate on that?

Mr. KEATING. In the original bill there was a provision with respect to the association of producers which could supply all or nearly all of the requirements of the handler. There was some criticism of that aspect of the bill in the previous hearings last fall. That part of the bill was changed. There is no longer any further mention of full supply contracts. I am not an antitrust expert. But just from my brief knowledge of it, I have to raise certain questions about what can happen when you have a complete antitrust exemption. In this particular case, full supply contracts are generally held to be in violation of the antitrust laws. Under certain circumstances, you can have full supply contracts without violating the law; but if you have too much of the market, they are in restraint of trade. Full supply contracts are back into the bill, because section 114 grants a full exemption for the association of producers.

Mr. FINDLEY. On page 5 you refer to a restricted endorsement of the bill by USDA. Why do you describe it as a restricted endorsement?

Mr. KEATING. Well, they endorse the bill if title III, the marketing order provision, was taken out, and if section 114, the antitrust exemption, was eliminated. It is a qualified endorsement of the bill.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Denholm?

Mr. DENHOLM. Are you familiar with the past and present farm programs administered by the Federal Government?

Mr. KEATING. I have followed them in general, but I would not hold myself out to be an expert in that area either.

Mr. DENHOLM. Are you aware of the fact that there has been an attempt to influence price on commodities sold in the domestic market by regulating production?

Mr. KEATING. Yes, sir.

Mr. DENHOLM. Do you recognize any similarity in that and this proposal—and who would be in control of regulating production under the proposal now before this committee?

Mr. KEATING. Well, in this case the control, under this bill, under title III, the control would be attempted through the establishment of marketing orders.

Mr. DENHOLM. If it is controlled by processors, packers, and so-called middlemen—is it more advantageous for producers to pursue that policy than to rely on the Government to continue the present programs?

Mr. KEATING. I don't think I am really qualified to comment on that.

Tom, would you like to comment on it?

Mr. HAMPTON. I don't feel particularly qualified——

Mr. DENHOLM. Do you have an opinion on the proposition of contract control as opposed to Government controls?

Mr. HAMPTON. As I understand it, you feel that this bill would like management to be delegated to processors and handlers, and compare that to Government programs; set-asides, for example.

Mr. DENHOLM. Yes.

Mr. HAMPTON. I think that this bill recognizes the fact that this is no way to regulate supply. I think that the title III marketing order provisions are there because they recognize that if price is enhanced through negotiations, notwithstanding the demand, that it is going to create a surplus, and the marketing order provision is

there in order to provide some means of controlling production. I think it is an acknowledgement that it is not a substitute for the voluntary set-aside provisions that are presently available.

Mr. DENHOLM. Are the two programs simultaneously compatible? Can a marketing order system of price structure be administered by the Federal Government at the same time with the proposed legislation? How do you think that may affect the pricing structure of commodities?

Mr. HAMPTON. I think it is a little inconsistent, because the supply naturally is going to influence the pricing. However, there is a need for some supply control provision, which I assume title III is intended to provide, to form a framework within which presumably the bargaining for price could take place.

Mr. DENHOLM. Very well.

Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Zwach.

Mr. ZWACH. No questions.

Mr. FOLEY. Mr. Link.

Mr. LINK. No questions.

Mr. SISK. One question.

Let me ask you, Mr. Keating, are you familiar with the Mondale bill?

Mr. KEATING. Yes. I have looked at that, but I haven't given it as much study as your bill, Mr. Sisk.

Mr. SISK. Is the organization that you represent prepared to state a position, or would you support the Mondale bill?

Mr. KEATING. No, sir; we would oppose that type of legislation, because it is complete supply control management.

Mr. SISK. I am not trying to put you on the spot, but would you like to compare the Mondale bill with H.R. 14987 as to your preference. If Congress passes bargaining legislation, which approach would you prefer?

Mr. FOLEY. That is what is known as a Hobson's choice.

Mr. KEATING. Yes; I am familiar with the Hobson's choice.

Mr. HAMPTON. You get rid of a headache by hitting your finger with a hammer.

Mr. KEATING. Mr. Sisk, I think in fairness to you we would oppose any type of a bargaining bill which would be considered compulsory-type legislation. We think that the producers should be in a position to agree to join a bargaining association under the Capper-Volstead Act, but the mechanism should not be developed which would in effect force producers into a bargaining association or lose their market.

Mr. SISK. Of course, that is the basic difference between the two bills. The Mondale bill is what I refer to as a closed shop bill. This is an open shop; it does not force them in.

And I thank you, Mr. Chairman.

Mr. FINDLEY. Mr. Chairman.

Mr. FOLEY. Mr. Findley.

Mr. FINDLEY. Mr. Keating, could you give your opinion as to the probability that this legislation would lead to full supply contracts? Do you think that is almost inevitable, unlikely, or some place in between?

Mr. KEATING. I think that in due time, if the bargaining association became powerful enough, that it would eventually be able to corner

the market, so to speak, and force the independent producers that wish to be independent to join the association. And thereby the bargaining association would control the supply, and eventually the number of handlers would be reduced by the bill, because it would be more advantageous to negotiate for a larger quantity of a commodity with the one handler. The handler is granted an antitrust exemption only while he is dealing with the bargaining association. The antitrust exemption does not go to the point that the handlers can join together to decide what the terms of contract would be.

So, I foresee that if this bill is enacted by Congress, that you will get full supply contracts, and the independent producer, the independent handler, the small operating cooperative, even the large operating cooperative, would eventually be drawn into the web of the bargaining association.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. FOLEY. Thank you very much, Mr. Keating and Mr. Hampton. We appreciate your testimony very much, and your statements.

Mr. KEATING. Thank you, Mr. Chairman.

Mr. FOLEY. The next witness is Mr. William Scott, attorney at law, representing the National Broiler Council, Washington, D.C.

STATEMENT OF WILLIAM SCOTT, ATTORNEY, REPRESENTING NATIONAL BROILER COUNCIL, ACCOMPANIED BY ROBERT WUNDERLE, DIRECTOR OF ECONOMIC RESEARCH

Mr. SCOTT. Good morning, Mr. Chairman.

With me is Dr. Robert Wunderle, director of economic research for the National Broiler Council.

This statement is presented by the National Broiler Council (NBC) on the changes affected by H.R. 14987 in farm bargaining legislation which was previously considered by this subcommittee. NBC is a nonprofit trade association representing firms producing, processing, and marketing approximately 70 percent of the broilers sold in the United States.

The only question now before the subcommittee is whether the changes embodied in H.R. 14987 cause the legislation to be less susceptible to objection. It is the view of the council that these changes have produced no meaningful improvement.

The council will focus on but two general changes in the basic legislation brought about by H.R. 14987 as outlined in the subcommittee's press release dated August 9, 1972. This limitation results from the time available. A complete written statement on all relevant changes has been filed with the subcommittee.

I. CLARIFICATION OF BARGAINING TERMS INCLUDING ESTABLISHMENT OF A REASONABLE BARGAINING PERIOD

One of the principal objections voiced by NBC to the bargaining structure devised by the basic legislation was directed to the bargaining association's ability to tie-up a handler's business for an indeterminable time while negotiations were taking place. NBC pointed out that armed with the flexibility of the ambiguous language of H.R. 7597, a bargaining association could prolong negotiations interminably

even though any realistic hope of reaching an agreement had long passed.

Under the present bill, an entirely new subsection is substituted. The board's qualification of an association would specify the time period within which negotiations may take place.

Although the new section is clearly an improvement on the former section it is in effect meaningless to broiler producer processors. The bill provides that during the period of time for contract negotiations designated by the Board for the qualified bargaining association and while negotiating with the qualified association, the handler may not negotiate with other producers of the product for which the association has been qualified. No standards are set in the legislation for arriving at an appropriate time and the Board is given unbridled discretion to set the time limits for negotiations.

But even if a specific time limit were written into the bill it would have little benefit for the broiler industry. No shortening of the time period during which negotiations with other growers are embargoed would prevent the tremendous imbalance in favor of the association guaranteed by section 106(c). If a broiler integrator is precluded from negotiating with other growers for a period as short as a week the consequences could be disastrous. The average broiler integrator places approximately one-half million chicks a week with its contract growers. Broiler integrators have no facilities for holding the chicks, thus if they cannot place these chicks with growers in an orderly and continuing fashion, the cost and foregone revenue will compound and the business will soon collapse.

II. CLARIFICATION OF CONDITIONS UNDER WHICH HANDLERS CAN CONTRACT WITH NONMEMBERS

Former section 106(e) declared unlawful the purchasing of a product from other producers under terms more favorable to such producers than those terms negotiated with a qualified bargaining association for such product. Present section 106(d) provides that if a handler purchases a product from other producers under terms more favorable to such producers than those terms negotiated with a qualified bargaining association for such product, he shall offer the same terms to a qualified association.

NBC believes that the rewording of the "most favored nation" language while perhaps less onerous insofar as nonmember producers are concerned, has not eased any of the inequities produced by the original provision. Present section 106(d) ignores a variety of factors including cost differences, supply shortages, and efficiency which can cause higher price or payment levels to be realized by farmers who are not members of an association than those realized by farmers who are under association contracts.

In this regard we wish to point out that the revision of section 101 in purporting to guarantee a producer's freedom not to join an association is illusory.

First, the provision guaranteeing free exercise of choice by the producer is limited to title I of the act. It would not apply to pressures which might be brought to bear through operation of the marketing order provisions of title III. Second, the practical effect of the freedom

guaranteed under title I will prove nil. The interaction of sections 106 and 114 will insure that the associations control the market. An independent producer cannot negotiate with a handler or sell to him while the handler is engaged in negotiations with a qualified association. Moreover, the association, or groups of associations would be able to take a variety of actions, including full supply contracts, to freeze nonmember producers out of the market. And if an independent producer should be able to sell outside of an association, section 106(d) operates to insure that he can get terms no more favorable than those given to the association. Any incentive to market product independently is removed and replaced by threat of economic harm for doing so. The language of section 101 will prove entirely inadequate to safeguard the producer's freedom in the face of economic reality.

CONCLUSION

In balance, NBC sees very little, if any, improvement in the basic legislation as a result of H.R. 14987. Independent growers would continue to confront Hobson's choice of joining an association or facing the possibility of no sales. Members of our industry cannot sustain periods of suspended production and this situation is not only permitted by the legislation, it is encouraged. The tieup of a broiler contractor's business which is certain to result will produce economic ruin for the majority of our industry.

Mr. FOLEY. Thank you very much, Mr. Scott.

Are there any questions of Mr. Scott or Dr. Wunderle?

Mr. ZWACH. Mr. Chairman.

Mr. FOLEY. Mr. Zwach.

Mr. ZWACH. Mr. Scott, is there anything that you favor that would give a little strength to the little individuals that have to deal with broiler companies? Do you like the status quo just the way it is where the little fellow has no rights, you just deal with him on an individual basis; and if he doesn't cooperate, you turn him out with his 50, 60, or 70 thousand investment?

Do you like it just the way it is?

Mr. SCOTT. Mr. Zwach, we would disagree with what your description is of the basic situation. We do not believe, as your question seems to indicate, that the problem is as severe as you apparently state. We do not believe that it is——

Mr. ZWACH. We have a lot of testimony that indicates that some of your group just make chore boys out of individual producers; they have to do what you dictate, or they are out.

Now, we have considerable testimony as to that. Have any of your groups refused to bargain with voluntary producer groups?

Mr. WUNDERLE. Mr. Zwach, may I make a comment?

Mr. ZWACH. Yes, would you comment on that?

Mr. WUNDERLE. I think, as indicated in the hearings of last September, Mr. Sisk introduced a statement that indicated that some integrators have refused to bargain with associations. This has been done on the part of individual integrators. The position of the Broiler Council is that it is the individual prerogative of each member firm to bargain with the association if they so desire. It is the position that we are opposed to compulsory bargaining.

Also, it is indicated in the testimony that was given in the last set of hearings that there is a division of opinion, you heard from growers that said under present circumstances they were doing fine, they were quite pleased. You heard from other growers who indicated that they were not pleased with the situation.

The best information we have is that there are better than 30,000 growers in broiler production currently. Those 30,000 growers are concentrated in a 22-State area. In fact, 98 percent of your product is produced in 22 States, and I think 83 percent of your product is produced in a 10-State area.

In these given areas there is a tremendous amount of competition between integrators for growers. So, the situation is now that a grower can take a contract or leave it; he can go to another integrator.

As far as the financial solvency of growers, we have presented testimony from the vice president of the Bank of Wilkesboro, N.C., in 1969 that his bank had extended $25 million in loans for broiler housing alone; and to the best of his knowledge, they have never ever had to foreclose on one broiler loan.

The president of the Producers Credit Association from St. Louis, Mo., said that his organization had extended——

Mr. ZWACH. These are broiler loans to producers?

Mr. WUNDERLE. To broiler growers, right.

Mr. ZWACH. To the producers, to the growers?

Mr. WUNDERLE. Well, we consider ourselves the producers because we own the product. The farmer-grower is what I am talking about.

Mr. ZWACH. You said you had owned what?

Mr. WUNDERLE. We own the product.

Mr. ZWACH. You own the poultry?

Mr. WUNDERLE. That is correct, and the feed.

Mr. ZWACH. But you don't own the plant, the building?

Mr. WUNDERLE. We do not own the broilerhouse, that is correct, which gives us a tremendous leverage over the individual who has made the investment in that building.

Mr. ZWACH. I want to say this to you, gentlemen. I have some qualms about this bill, but I also have some serious qualms about big organizations that squeeze little individual operators and refuse to voluntarily deal with them when they come together and try to improve their bargaining. I think this has got to be stopped. And it is this type of thing that is going to bring on the type of legislation that is being discussed.

I am going to reread the testimony that we had when we had the other hearings with regard to your independent industry. But I am not satisfied with the status quo in that regard; that is, the bargaining strength of the producers, he growers. I believe that many times your association members take advantage of them, strong advantage. And I didn't want to leave you now without pointing out that I think that type of activity is what is bringing on the legislation that is before us.

Mr. WUNDERLE. If I may comment, please, Mr. Zwach.

Mr. ZWACH. Yes.

Mr. WUNDERLE. I am, of course, not prepared to comment on any circumstances which may occur among 30,000 growers. I must say that I am not aware of any broiler integrator who does not have people waiting to get broiler contracts to grow chickens who are currently not growers, people who want to get into the business.

A survey we conducted recently indicated that 90 percent of the growers, better than 90 percent, came into growing on the contract system; they were attracted into the business. The same banking gentleman from North Carolina indicated that in the past 6 months that he had deferred 50 requests from people for money for broiler growing. My point is that I think there is something attractive about the broiler industry for farmers, and they want to get into it.

Mr. ZWACH. Yes.

Mr. WUNDERLE. And with 30,000 growers, I don't think that we have pulled the wool over the growers' eyes of that many people.

Mr. ZWACH. I am going to reread the testimony in this area.

Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Denholm.

Mr. DENHOLM. I have no questions.

Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Findley.

Mr. FINDLEY. At the bottom of page 2 you refer to the most-favored-nations provision, and the revised language which requires that the same terms be offered to a qualified association if a handler purchases a product from other producers under terms more favorable than those secured in the original contract. Would you give us an example of how that provision could work to the unfair disadvantage of the industry you represent?

Mr. WUNDERLE. If I may comment on that, among broiler producers there is a tremendous difference in efficiency. We do own the chicks; we, the integrator, own the chicks, and we own the feed. Growers are paid on the basis of efficiency, how good a job they do in converting the feed into broiler meat. We have found that the difference between payment rates between your least efficient growers and the most efficient, as presented in last year's testimony, I think range in some cases up to 50 percent difference in payment.

It is entirely conceivable that—let me put it this way—it is possible, and it is conceivable, that a bargaining association could be formed with growers who are at the bottom end of your efficiency scale. Then you would automatically pay your better growers more money, because they are doing a better job for you. But under the legislation we would be then forced to go back and pay the inefficient growers to bring them up to the status of the efficient growers outside of the association.

Mr. FINDLEY. Do you interpret this language as denying you the opportunity to reward efficiency? Is it that clear?

Mr. WUNDERLE. Let me say, I think it may, I think it is certainly enabled to. I think what it tries to do is put more of a constant payment between growers which reflect less efficiency than is currently the case.

Let me put it this way. That element is certainly subject to bargaining by the association and the integrator. And as we have pointed out in here, we are basically—we feel we are basically powerless under a compulsory bargaining situation if we want to stay in business.

Mr. FINDLEY. I think it is widely recognized that the broiler industry is one of the most efficient parts of the agricultural sector.

What effect upon the efficiency of the broiler industry would be caused by this legislation? Would it have any effect on efficiency; would it raise efficiency or lower efficiency?

Mr. WUNDERLE. Frankly, I don't know what it would do to efficiency. I think one thing it would do is put specific areas of the country out of production. In some of the areas we have a cost differential of somewhere between two and four between different industries of the country for broiler integrators. The Delmarva Peninsula is one where your costs are higher because of climatic conditions. If bargaining took place over there the cost disadvantage that they have would be greater.

Let me put it this way. They are in business and they maintain themselves in business because of the transportation advantage that they have into the northeastern markets. If bargaining took place which wiped away the transportation advantage they have over some of our southeastern and southwestern States, then I think they wouldn't be able to compete, and I think they would go out of business, from the standpoint of the integrator, he could not get the money for his product, he would have to close down, and he would have broilers with no opportunity to get a contract from anyone, because the area would be out of business.

Mr. FINDLEY. Do you believe this legislation would cause a producer, or bring pressure against a producer to change his present arrangements with the growers under which efficiency is rewarded?

Mr. WUNDERLE. I think that situation is enabled by the legislation, that is correct.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. SISK. Just one question.

You mentioned financing in your comments, I believe. Is Farmers Home Administration making any loans to broiler growers?

Mr. WUNDERLE. I don't know about FHA. I do know that PCA finances a tremendous amount of broiler house investment.

As any single institution I would say that PCA probably finances the majority. FHA, I don't know.

Mr. SISK. As you know, FHA is basically the court of last resort. Sometime ago FHA went completely out of the broiler business because it was so risky, because of the deplorable situation. Presently, at least in my area, they are making no loans whatsoever, as far as I know. I have not understood that there has been any change in policy. So, I was just curious as to your comments on financing.

Mr. WUNDERLE. I do not know about FHA, I do know about PCA. But I do know very definitely about a commercial bank in one specific area. I am sure there are other commercial banks who are financing broiler growers.

Mr. FOLEY. Thank you very much, Mr. Scott and Mr. Wunderle. We appreciate your appearance this morning.

The next witness is Mr. Neal Gillen, vice president and general counsel of the American Cotton Shippers Association, Washington, D.C.

STATEMENT OF NEAL P. GILLEN, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN COTTON SHIPPERS ASSOCIATION

Mr. GILLEN. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am Neal P. Gillen, vice president and general counsel of the American Cotton Shippers Association.

The ACSA was founded in 1924 and is comprised of merchants, shippers and exporters of raw cotton, who are members of five federated associations, located in 16 States throughout the cotton belt:

Arkansas-Missouri Cotton Trade Association
Atlantic Cotton Association
Southern Cotton Association
Texas Cotton Association
Western Cotton Shippers Association

Of the total U.S. cotton crop our 447 member firms handle over 70 percent sold to domestic textile mills and export 80 percent of the crop sold in foreign markets.

I appear here today on behalf of the ACSA and its affiliated associations, in opposition to the Agricultural Marketing and Bargaining Act, H.R. 14987. In October 1971 we submitted a statement in opposition to the original proposal H.R. 7597, then pending before this subcommittee. Our statement appears on pages 569 through 579 in the printed transcript of the subcommittee hearings.

I will present our views on the more significant changes made in H.R. 7597, as they appear in H.R. 14987 under consideration today. It is our judgment that these amendments do not clarify the provisions of the bill, but serve to aggravate the concerns we communicated to the subcommittee last fall.

1. The preamble coupled with the new language in section 106(a) would have the effect of limiting the bill's coverage to agricultural products sold or purchased under forward contracts.

Forward contracting on a significant scale is a relatively new concept in marketing cotton. In recent crop years, shortages due to bad weather resulted in insufficient supplies to meet domestic and export requirements. In the 1971–72 crop year, 43 percent of the crop was sold under forward contracts as compared to 12 percent in 1970–71. In the current crop year the USDA estimates that the figure will run about 40 percent. If present crop prospects remain constant, the anticipated 13.3 million bale crop announced in the August 10 report will replenish carryover stocks. Accordingly, forward contracting for the 1973–74 season would most likely decrease substantially below current levels and return to levels more in line with normal supply years.

To continue to include cotton in the framework of this legislative proposal and then to attempt to limit the coverage of the bill only to that cotton sold under contract, will deter the use of selling cotton through the marketing tool of forward contracting.

2. Title I contains new language in the form of a disclaimer which on its face appears to give the independent producer the right not to join a collective bargaining association. This language is meaningless since,

(a) The disclaimer is specifically limited in application solely to title I. Thus, pressures which would not be legally sanctioned in title I would be permissible for marketing orders covered by title III;

(b) The independent producer is afforded no provision for the redress of his rights and/or the recouping of economic loss if his rights are infringed;

(c) The full thrust of the bill, through the interaction of sections 106 and 114, envisions full supply contracts, thereby pre-

cluding indpendent producers access to local markets and affording him the choice of either joining the collective bargaining association, marketing his product at a more distant market at greater risk and increased expense (due to transportation and handling cost), or discontinuing farming altogether.

3. Section 105(d) seeks to clarify the authority of the National Agricultural Bargaining Board. The establishing of geographic perimeters within which a collective bargaining association is authorized to operate will serve to restrict competition for the producers' cotton by the various buying agents, could likely result in reduction of crop quality and the establishment of prices too high for a competitive market to accommodate.

The specification of a definite bargaining period will serve to tie down the smaller cotton merchants and mill buyers in the detailed process of bargaining. This will provide the larger established firms and textile mills with even greater economic advantages in buying the available cotton.

An amendment not included in this section stands out by its absence—the lack of authority in the Board to discipline associations if they are found to have committed conduct towards a member or nonmember which imperils his economic interest.

4. Section 106(b) holds that a relationship of "prior dealing" exists if a purchase was made within the preceding 2 years. Earlier I referred to the great fluctuation in the percentage of the crop sold under forward contracts in the last few crop years. Many cotton merchants purchased cotton under forward contracts this year at prices averaging well above what the market will bring when the crop is harvested. The opposite was true last year, and in both years, some producers and merchants were on the reverse side of the market swing.

The recent experience involving forward contracting in the cotton industry has mixed blessings. Those who had such contractural relationships in the past two crop seasons see no certain or predictable benefit to the cotton producer by compelling cotton merchants to renegotiate forward contracts in perpetuity.

5. Section 106(c) differs from the original bill in that the language permitting full supply contracts has been deleted. The absence of this language is an empty gesture which does not camouflage the reality that the bill as rewritten still permits full supply contracts. Section 114 cloaks whatever is achieved by an association through the collective bargaining provisions of section 106, with a blanket antitrust exemption.

Perhaps more objectionable is the fact that an association only able to supply a small portion of the handlers needs could tie up the handler for a period long enough for him to lose an opportunity to go elsewhere for his cotton requirements.

This danger is most evident in the cotton industry. The major cotton marketing cooperatives are the most likely candidates to form collective bargaining associations. This legislation specifically excludes the cooperatives from its' coverage. This provides the cooperatives with the opportunity to be bargainer, purchaser and seller. This discriminatory feature would permit a cotton cooperative to tie up a cotton merchant or merchants in the collective bargaining process when at the same time they are both competing to buy the same

cotton from individual producers and competing to sell to similar markets in the United States and in foreign consuming countries. What relief has the independent merchant in such a situation?

6. Section 106(d) provides a "most favored nation" clause. Such a provision would bring economic chaos to the cotton industry. The cotton market is not constant. The crop is harvested from August through January, quality differentials vary from region to region, transportation, warehouse and insurance costs differ, weather variables are unpredictable, competing supplies of synthetic fibers vary in price, and foreign cotton crops have different growing seasons that constantly assure price fluctuations. The past two seasons are a prime example of how wide the prices may vary.

A contract negotiated in good faith based on all of the available market data at the time would have to be renegotiated at a later date if market conditions changed and a purchase was negotiated with a different supplier at a higher price. On what principle of equity is this provision based?

The results of such a policy are quite obvious. Cotton merchants would be unable to compete; they would be forced out of business; the cooperatives (exempt from the coverage of the bill) would replace them in the market place, and the cotton producer would no longer have his freedom to choose to sell his crop to the various buyers normally competing to purchase his cotton.

In conclusion Mr. Chairman, the problems that this bill seeks to remedy are minimal in comparison to the unsoluble problems to which it gives life. Many of the legal objections raised today cannot be legislatively cured. Our free cotton marketing system will be destroyed if we compel processors to bargain and resultingly coerce farmers into joining collective bargaining associations. I appreciate the opportunity to appear before the subcommittee today, and I will attempt to answer any questions you might have.

Amendments to H.R. 7597 Contained in H.R. 14987

PREAMBLE

The following language is added:

"No Provisions of this title is intended to interfere with, hinder, or prevent the free exercise by a producer of the right not to belong to an association of producers organized for any purpose set forth in this Act."

SECTION 103—DEFINITIONS

In 103(f) in the definition of "Producer" the following language is added:

"* * * including a grower or farmer furnishing labor or facilities under contract for the growing or raising of agricultural products."

SECTION 105—QUALIFICATIONS OF PRODUCERS

In 105(d) the language in parentheses was stricken and the language in quotes was substituted.

(After the Board qualifies such association, it shall give notice of such qualification to all known handlers that, in the ordinary course of business, purchase agricultural commodities that such association represents.)

"(d) In the event the Board makes the necessary findings set forth in Section 105(c) of this title, it shall qualify such association with respect to the agricultural commodity or commodities which that association shall represent; it shall designate the geographic area within which the association is qualified to bargain, and it shall specify a period of time in which negotiations with a handler shall

be conducted. After the Board qualifies such association with respect to commodities, geographic area and reasonable period of time for negotiations, the Board shall give notice of such qualification to all known handlers that, in the ordinary course of business, purchase the agricultural commodities that such association has been qualified to represent."

Section 106—Bargaining

In 106(a) language is substituted clarifying the term bargaining to be "* * * the mutual obligation of a handler and a qualified association to meet at reasonable times and for a reasonable period of time for purposes of negotiating in good faith a contract. * * *"

In 106(a) language is also added stating that the obligation to bargain "on the part of any handler shall extend only to a qualified association that represents a reasonable number of producers with whom such handler has had a prior course of dealing."

In 106(a) the following language is added: "Notwithstanding any provision, this Title shall not apply to bargaining of qualified associations for prices and other terms of sale of these commodities not produced or sold under contract."

In 106(b) prior course of dealing by a handler with a producer is clarified with language specifying that such a relationship exists if a purchase was made "within the preceding two years."

In 106(c) the language in parentheses was stricken and the language in quotes was substituted.

(Nothing in this Act shall be deemed to prohibit a qualified bargaining association from entering into contracts with handlers to supply the full agricultural production requirements of such handlers.)

"(c) During the period of time for contract negotiations designated by the Board for the qualified bargaining association and while negotiating with the qualified association, it shall be unlawful for a handler to negotiate with other producers of the product for which the association has been qualified with respect to the price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to such product."

In 106(d) the language in parentheses was stricken and the language in quotes was substituted.

(It shall be unlawful for a handler to negotiate with other producers of a product with respect to the price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to such product while negotiating with a qualified bargaining association able to supply all of a substantial portion of the requirements of such handler for such product.)

"(d) If a handler purchases a product from other producers under terms more favorable to such producer than those terms negotiated with a qualified bargaining association for such product he shall offer the same terms to a qualified association."

In 106(e) the language in parentheses was stricken and the language in quotes was substituted.

(It shall be unlawful for a handler to purchase a product from other producers under terms more favorable to such producers than those terms negotiated with a qualified bargaining association for such product.)

"(e) It shall be a violation of this Act for either a handler or a qualified association to refuse to bargain in good faith as defined in this Section."

SECTION 114—ANTITRUST EXEMPTION

The language in parentheses was stricken and the language in quotes was substituted.

(Section 114. The activities of qualified associations and handlers in bargaining with respect to the price, terms of sale, compensation for commodities produced under contract, or other contract terms relative to agricultural commodities produced by the members of such qualified associations shall be deemed not to violate any antitrust law of the United States. Nothing in this title, however, shall be construed to permit handlers to contract, combine, or conspire with one another in bargaining with qualified associations.)

"Section 114. The activities of qualified associations and handlers in bargaining with respect to the provisions of Section 106 of this act shall be deemed not to violate any antitrust law of the United States. Nothing in this title, however, shall be construed to permit handlers to contract, combine, or conspire with one another in bargaining with qualified associations."

TITLE II—ASSIGNMENT OF ASSOCIATION FEES

Section 201 includes an agricultural "service" rendered under a growing contract and specifies that the dues to be paid for growing under contract would be based on "the amount due for any farm product being sold by any producer or for any services under any growing contract * * *."

Section 203 provides new language specifying that in instances where the grower furnishes only labor or facilities that the amount of dues to be assigned "may not exceed 2 per centum of the total value of such services furnished by the producer to the handler."

Mr. FOLEY. Thank you very much, Mr. Gillen.

Are there any questions of Mr. Gillen?

Mr. Sisk?

Mr. SISK. Mr. Gillen, do you know of any bargaining associations on cotton in existence at the present time?

Mr. GILLEN. No, Mr. Sisk. But in the past two crop seasons one of our member firms has handled the cotton of the National Farmers Organization. This is the only situation with which I am familiar wherein we have had some contract with an organization which actually bargains on behalf of farmers.

Mr. SISK. Would you anticipate that there would be substantial grower groups who would seek to organize bargaining associations in connection with the sale of their cotton?

Mr. GILLEN. Mr. Sisk, I do. At the present time, as you know, the five major marketing cooperatives have formed an organization known as AMCOT for the specific purpose of marketing cotton in export markets. This represents about 25 percent of the cotton crop. I think if this bill were to pass it would not be long before the major cooperatives would organize—CALCOT which controls about 50 percent of the cotton marketed in California, Arizona, and Nevada; the Plain Cotton Cooperative, which controls 10 percent of the cotton produced in Texas and Oklahoma, and which I think can equal close to 10 percent of the cotton marketed in the United States; and the other major cooperative in the delta.

When we submitted our statement last year we mentioned the fact that we could foresee the major marketing cooperatives dominating the market. Most of them are located in the most productive areas of the Cotton Belt. We feel that the cotton farmers in the Carolinas and the more inefficient areas of the Southeast, and little pockets in Texas and Alabama, and other States, would suffer great detriment, or would be forced into the production of other crops. And I do say that this is conjecture, but it is conjecture based upon careful discussion, a lot of intensive research, and listening to testimony on this measure.

Mr. SISK. In other words, you are saying that if this legislation, or a similar piece of legislation, such as the Mondale bill, should become law, there probably would be formed organizations of bargaining associations for cotton?

Mr. GILLEN. I can't answer that question, Congressman. But I think down the road there will be at a point certain in time. I think this is a major policy question which the Congress should consider on a separate basis, and not in this type of legislation. At the present time I do not foresee this happening because we have a cotton program. The cotton farmer has a number of markets to which he can sell his cotton. He can put into the CCC loan, he can sell it through a coop-

erative, he can sell it to a ginner, an f.o.b. merchant, a cotton shipper, or a textile mill buyer. These people are out in the field right now in the Rio Grande Valley buying cotton. It is very competitive. The farmer does have a viable market.

However, in the situation of other crops, many of those particularly peculiar to your area, perishable commodities, some farmers do not have the advantage of multiple markets to which they can sell their crops. I think we are talking about—excuse the expression—apples and oranges, two completely different commodities. The marketing systems are different, the problems the producers have are different, and the agricultural programs under which they are operating are different.

Mr. SISK. To approach it in a little different way, you represent the American Cotton Shippers here. Based on your statement, you do not feel there is any need for this legislation, and therefore your organization opposes it; isn't that correct; isn't that your position?

Mr. GILLEN. That is our position, Congressman. But to be perfectly frank——

Mr. SISK. The point I am trying to get at, Neal, if you take the position that there is no need for the legislation, I am curious to know why you would anticipate that there would be any likelihood that there would be bargaining associations for cotton formed in the future. As far as I know there are no bargaining associations in existence today. You know there are many bargaining associations today of farmers who are bargaining on behalf of their commodity with groups, and it is working very well. There are other areas—for example, as illustrated by the witness who just preceded you—that have so far refused to bargain. But with cotton, I know of no bargaining association at present today.

If, in fact, the marketing situation is such that there is no need, I am curious to know why you would assume that there might be a time when there would be. And if there is a need, then I question, of course, the position of your organization, unless it is a selfish position. As you know, I have been fairly interested in the cotton industry, and I have never felt——

Mr. GILLEN. You have been a great friend of ours.

Mr. SISK. I have never felt that my friends in the cotton industry were particularly selfish, but I do recognize it gets back to the old idea of management and labor. And in that sense we are taking a leaf out of labor's book in connection with the bargaining procedure here.

There is either a need for thisl egislation or there isn't. I had never anticipated that there really was a need for it in the cotton industry.

However, basically, my policy—and that of many supporters of the legislation—is when the time comes that there is a need, the farmers should have the right to organize such an association.

This is the point I am trying to get at. Do you see, down the road, any real need for it?

Mr. GILLEN. Mr. Sisk, we are dealing with a problem here which I think is one of the most important questions to come before American agriculture in the past three or four decades. We are talking about a dramatic turnabout in overall policy.

At the present time the basic price supported commodities operate under programs which are funded by the Federal Government. These

programs are under attack. This committee faces the problem next year of restudying the present Agricultural Act, and then attempting to sell it to a Congress which of recent date has been somewhat hostile to the need of the farmer.

Mr. SISK. That is exactly the reason I am discussing this with you now. There is going to have to be a change in the cotton program, isn't there?

Mr. GILLEN. Well, I am not going to concede that at the present time. I think we still have enough time to educate your colleagues on settling the problems of the American farmer, and this is something which will have to be done.

But getting back to the basic premises we are dealing with today, Congressman, you mentioned the analogy of labor and agriculture. I come from a family which has been very active in the organized labor movement in New York State. I myself have belonged to a labor union and have benefited from it. But we are dealing with two different concepts. Labor has an inelastic demand, so to speak. There are only so many workers in a bargaining unit who can go to work in a particular factory or at a particular construction site. When you are dealing with farmers in a bargaining situation, their capability to produce is very difficult to control.

We have found that out in various farm programs which we have brought before the Congress. We have tried to minimize surpluses, and sometimes we could. And we have tried to maximize production, and we have come up with corn blight and other bad situations. We are dealing with a situation that is hard to control. And the production of agricultural commodities is very elastic. And, therefore, I think that in my own mind, and in the minds of the people who I represent, we are confronted with something which is almost impossible to cope with and to attempt to legislate a cure for.

Getting back to my own industry, we do not see any need for it. On the other hand, if legislation was passed authorizing the formation of collective bargaining associations, I foresee at a rapid rate, the larger cooperative marketing organizations moving quickly to tie up and control the cotton market.

In the last basic farm legislation, there was a provision that our organization was against, and that was the controversial anniversary loan program. It was an effort on the part of producer organizations to keep control of the cotton for a period running up to 22 months, as opposed to, in the previous programs, about 8 or 9 or 10 months, when the Government would take over the cotton, and CCC would put it in the catalog.

Now, this is the first year under which the annivarsary loan has operated. And what happened? We had a situation where we had a price fluctuation. A big crop is coming in, and there are 200,000 bales now under loan. Some producers held on to it too long, they cannot sell it at the prices at which they could have sold it a few months back, when they could have made a considerable profit. Now they must sell it at current market prices, and it looks like they will be lucky if they recap their production costs.

This was a provision inserted by the Senate, but it was presented as something which was going to be an end-all for the cotton farmer, it was going to help him. Well, it hasn't hleped him. These things tend to fluctuate.

I think that when we talk about giving a board, a five-man board, the prerogatives which this committee usually assumes the Congress usually has, to draft legislation, and try to control the problems of agriculture, and help the farmer, we are going far afield. Maybe this is the way we should be going. At this particular point in time the people I represent don't feel with certainty that is the way for cotton and other commodities to go. It is a very vexing problem. It is a matter of public policy which I think deserves further consideration.

We don't believe, with all due respect, Mr. Sisk, we don't think your measure is going to accomplish that. We think it poses more problems than it seeks to cure.

Mr. SISK. Neal, I don't want to take more time. I think you give those of us who represent the cotton industry credit for a lot more sales ability than I am afraid we have. I think we all recognize that we are approaching the end of the present kind of a subsidized cotton program. And, of course, we have supports for only a few of the basic commodities. Cotton is probably the prime target of the opposition. I am sure my colleagues here who are from other areas recognize that.

My good friend, Mr. Findley, from time to time gives me a little problem. I am going to be faced with it next year when we extend or try to extend the cotton program. I am a practical enough politician to know that we aren't going to continue to get the kind of a ride that we have been getting. And, therefore, there has to be or there is of necessity going to be a different way. Maybe the way is simply to pull the rug out and eliminate the present program. I doubt seriously if your organization would support that.

In other words, take the Federal Government completely out of the picture and eliminate the present cotton program. I don't think you would support that.

Mr. GILLEN. I don't think the American cotton farmers would support such a position.

Mr. SISK. I am very sure they wouldn't support it. And what we are seeking here—and I agree with you that this is probably no panacea for all the ills and problems—desperately is for some answers. And unfortunately people haven't come forward with very good alternatives, really. And I am here trying to find mutually beneficial solutions because we have a common desire and a common goal.

The point I was trying to make in my analogy with labor is that bargaining power is necessary for survival. I appreciate your comments on labor, because I, too, have had some experience with labor. I happen to believe in their right to collective bargaining, because they are bargaining for the only commodity that they have to sell. Basically all I am seeking here on behalf of the farmer is to give him the same right to bargain over the only thing in the world that insures his survival, and that is the commodity that he has put his blood and sweat into. I think he should have some kind of bargaining right in selling it.

Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Zwach.

Mr. ZWACH. No questions.

Mr. FOLEY. Mr. Findley?

Mr. FINDLEY. No questions.

Mr. FOLEY. Thank you very much, Mr. Gillen. We appreciate your statement very much.

The next witness will be Mr. Reuben Johnson, the legislative representative of the National Farmers Union, Washington, D.C.

STATEMENT OF REUBEN L. JOHNSON, DIRECTOR OF LEGISLATIVE SERVICES, NATIONAL FARMERS UNION

Mr. JOHNSON. Mr. Chairman and members of the subcommittee, neither H.R. 14987, as revised, nor S. 1775 are acceptable to the Farmers Union. The full board of directors of the Farmers Union has reviewed the provisions of the bill and found that it does not provide farmers with the tools needed for effective bargaining.

The chief criticism of the bill is that it fulfills the perennial bureaucratic goal of perpetuating the status quo of fragmented producer effort to strengthen market power.

Assessment of producer fees is symptomatic of its bureaucratic birth. Under its provision there could be literally thousands of approved or so-called qualified associations perpetuated by a checkoff fee system. For example, in as small a radius as 100 miles it would be possible to develop a whole series of bargaining associations competing with one another for market outlets. This could lead to handler domination of bargaining processes and so-called company unions. This is in direct conflict with the need to bring producers together on a national, regional, or commodity basis to ask greater equity in the marketplace.

There is no provision for any supply management under H.R. 14987 in contrast to both of the bargaining bills introduced by Congressman Bob Bergland, H.R. 8886 and H.R. 8887. I can't make this point too strongly. At the very core of effective administration of any program, including that program we have for corn that is so fouled up currently, is the need for effective supply management. If you don't have effective supply management, the producer has no hope of winning any kind of price or parity equity in the marketplace, much less having any kind of bargaining power with the people to whom he must sell.

Congress must not reverse the gains made to get greater understanding of the need of producers to view their marketing problems in a broader content. Wheat producers, for example, could have never strengthened market power except through a national program.

The fragmentation of producer effort to bargain under H.R. 14987 could result in competition between small groups of producers that would not only defeat the goal of greater market power for farmers, but actually worsen an already deplorable situation.

There is no provision for any expression of views of consumers under H.R. 14987, in contrast to both Bergland bills.

There is no provision for any agreement to be reached under H.R. 14987, in contrast to bills H.R. 8886 and H.R. 8887. Merely good faith bargaining, we are convinced, is not sufficient to do the job that farmers need. What would happen, for example, if a handler that producers sought to put in a bargaining situation, said "No!"

I will be very glad to respond to questions of members of the subcommittee concerning revisions in the bill before the subcommittee,

and to further explain why they do not strengthen the bill to meet the needs of farmers for an adequate bargaining procedure.

Perhaps it would serve to further explain and to clarify the position of Farmers Union if I set out at this point in my testimony what we consider to be essential features of any bargaining bill:

(1) Producers should be permitted to make the decision as to when prices are too low and when bargaining action is needed.

(2) Producers should decide, through a referendum, whom they want to represent them in any bargaining situation.

(3) Producers should be given the opportunity to decide by referendum vote whether supply management is a needed element in making bargaining and bargaining agreements workable and effective. In this connection, it is absolutely essential that recognition be given in any bargaining legislation to the need for supply control. This is an essential element without which no bargaining legislation can succeed; there can be no effective bargaining for farm prices without supply control.

(4) The failure or refusal of buyer or handler representatives to negotiate in good faith must not be allowed to prevent the establishment of a fair price.

(5) There must be access to the Federal courts for sanctions to prevent violations of pricing and other provisions of agreements reached under the provisions of law prescribed by the Congress.

The policy statement of delegates to the 70th Annual Convention of Farmers Union at Houston, Tex., is attached to this statement as exhibit A. I request your permission to include the exhibit in the record of hearings.

So that the record will clearly show differences between the various bills currently before the House, I request permission to include also in the record a complete comparative summary of farm bargaining bills currently before this committee and the House of Representatives (exhibit B).[1] This summary compares H.R. 8886, H.R. 8887, H.R. 14987, and H.R. 10770, the Dairymen's Bargaining Act.

I also request permission to include in the record flowsheets, together with accompanying narratives which explain in detail the bargaining procedures under H.R. 8886 and H.R. 8887 (exhibit C).[1]

The Farmers Union has actively sought congressional approval of bargaining legislation since 1968 when Senator Walter Mondale first introduced a bargaining bill. This bill has been before the Congress since that time. As originally introduced, Senator Mondale's bill contained two titles, one of which established a bargaining procedure under a National Agricultural Relations Board, and one which amended the Agricultural Marketing Agreement Act of 1937 to expand market order protection and to add a bargaining procedure under this act for producers to permit them the opportunity to seek to increase their marketing power by this additional route.

In the 92d Congress, these titles have been split between two bills: S. 726–H.R. 8886 and S. 727–H.R. 8887.

The House bills, as I mentioned earlier, were introduced by Congressman Bob Bergland and 10 cosponsors. Senator Walter Mondale was joined by 12 cosponsors on the Senate side. These

[1] Exhibits B and C may be found in the files of the committee.

bills, as I have indicated, are summarized in exhibit C attached to this statement.

It is not accidential that the bargaining procedures under the two Mondale-Bergland bills vastly differ. The intent was to present to the Congress a legislative approach to strengthen farmers' marketing and bargaining power that encompassed the various alternatives of how this could be accomplished.

For example, S. 726–H.R. 8826 establishes a National Agricultural Relations Board and sets forth bargaining procedures apart from USDA. It is referred to as the National Agricultural Bargaining Act. S. 727–H.R. 8887 amends the National Agricultural Marketing Act of 1937 and provides for a bargaining procedure within the framework of the USDA's administration. It is referred to as the National Agricultural Marketing Act.

Under the marketing agreement approach, H.R. 8887, the order would be developed after public hearings by the Secretary of Agriculture, and enforced in the same manner in which milk market orders are currently enforced. The object of the hearing is to get decisions made on what provisions would be included in a particular order. Provisions could relate to price, quality, supply management, bargaining agreements, classified pricing, and other terms of sale.

The Secretary would hold public hearings only after producers affected had indicated by majority vote they wanted to proceed to develop an order.

Public hearings are open to witnesses from the handlers' and producers' sides; also, and a very important feature, from consumers. The provisions of the order would then be drafted by the Department of Agriculture and submitted to the producers in referendum. If two-thirds of them supported the provisions in the order, the Secretary of Agriculture administers the order. Already established procedures under the Marketing Agreement Act for market orders negate the need for any further amending of the antitrust statutes.

In closing, let me make it clear that we do not view bargaining legislation as a substitute for existing agricultural statutes concerning commodity, credit, conservation, extension, research, and other programs essential and fundamental to the economic welfare of farmers and the Nation.

These programs, as we view them, are simply a foundation from which to move to further improve the economic tools of farmers as we seek greater equity in marketing. We look upon bargaining legislation as a supplementary procedure such as that provided workers under the Wagner Act which extended them the right of collective bargaining.

We believe that you share our concern that the producers not be denied any longer a workable and effective bargaining bill. Our organization has led in the effort to bring producers understanding of effective bargaining and its essential features. We know that H.R. 8886 and H.R. 8887 have these features essential to effective bargaining.

We hope that the subcommittee agrees and that when a bill is drafted it will be one that Farmers Union can support.

1972 Policy of National Farmers Union

ADOPTED BY DELEGATES TO 70TH ANNIVERSARY CONVENTION, RICE HOTEL, HOUSTON, TEXAS, FEBRUARY 28–MARCH 2, 1972

1. Improved marketing mechanisms

National Farmers Union calls upon the Congress in 1972 to strengthen the Marketing Agreements Act of 1937 to extend marketing order authority to all commodities and to further amend the Act to: (1) Provide for bargaining between elected producer committees and handlers for adequate prices as well as other terms of sale; (2) authorize the Secretary of Agriculture to administer market supply control programs, where necessary, subject to approval by a majority of the producers concerned; (3) authorize pooling of sale proceeds where the commodity is sold on use-classification basis.

Market orders have proven their worth in milk, fruit, vegetables, and tree nuts. Placing market order authority with these improvements within reach of all producers is an urgently needed first step toward greater producer marketing power.

National Farmers Union also reaffirms its support for enabling legislation to establish a National Agricultural Relations Board with authority to bring farmers together with processors for the purpose of bargaining over prices received by farmers for their produce. Farmers need and are entitled to a firm legal procedure which will enable them to manage the production and marketing of their products. Such legislation should protect farmers from antitrust action.

We further recommend that federally authorized research and promotion programs financed by a uniform collection of funds from farmers provide for periodic review referendums to assure their responsiveness to the commodity producers that finance them.

Mr. Foley. Thank you very much, Mr. Johnson.

Are there any questions of Mr. Johnson?

Mr. Sisk. Not a question, but I would like to say to Mr. Johnson that the objectives and goals of his organization outlined on the bottom of page 2 and the top of page 3 are identical to my goals. These are the goals we are seeking to reach with the existing legislation. I also would have a problem supporting the bill you are supporting, the so-called Mondale or Bergland bill. I guess in being a political realist I recognize the impossibility of getting everything that we would like to have at the first step. Otherwise I agree basically with everything you have in your present statement, outside of your opposition to the present bill. I think your opposition is shortsighted in that area. I recognize the right of disagreement.

Mr. Johnson. I think you agree that the position of the Farmers Union is certainly not opposed to bargaining for farmers. And unlike some other groups that favor bargaining, we feel that we do need additional legislation to give farmers an effective bargaining base. And we have sought to put some kind of rationale into all of the talk about bargaining, in the putting together of two bills that provide for two basically different approaches.

I don't think I would quite agree with you, Mr. Sisk. But we sincerely believe that amending the Marketing Agreements Act would be a much more practical and realistic tactical maneuver than writing a whole new bargaining bill, especially if you have got to write in there, as you have in this bill, a provision that provides the antitrust exemption for farmers.

Mr. Sisk. I agree with you 100 percent. You know what a strong supporter I am of marketing orders. I probably have more marketing orders operating in my district than any district in the United States.

And I agree that a further extension of them would be a very excellent idea.

Mr. JOHNSON. Mr. Sisk, you are an able representative for those producer interests that you represent, and everyone in this committee recognizes that. We certainly do. We know you to be a most competent legislator. We have our differences in terms of this legislation. But we are hoping that if this legislation falters, that as we come back to look at this again we can begin to think in terms of putting in some of the features that we believe are absolutely basic.

One of the difficulties I think we have—perhaps you are viewing legislation more to fit the vegetable and the fruit commodity interests. What we are looking at—and this relates to a comment you made earlier—is a procedure that we could fall back on and use in wheat.

Now, very frankly, I don't think this bill before this committee fits wheat very well. And I don't think it fits cotton. And I don't think it really fits commodities that are grown on a national basis. And what we have been trying to do in the legislation that we have put together is to try to put together a bargaining procedure that will fit all commodities. You could have a marketing order for wheat if you were denied every other program, and you could have a cotton marketing order. And if you will look at our marketing order bill, the second bill, 8887, I think you will have to agree with me that it is designed to fit every commodity, in the event the producers decide they want to go that route.

Mr. SISK. I agree completely with you, Reuben. I have made quite a study of that, because the basic principle I started out on was using the marketing order. And, of course, that is the reason I take the tack, despite a good deal of pressure from various sources, not to exempt anybody. Because we have the group in here from the grain people, and the cotton people, and various people, wanting to be exempt. And I maintain that if we ever do anything in this bargaining area that we exempt nobody, because to me that would be the unfairest of all things, to say to a farmer that because you happen to be growing a given commodity, you are not going to be able to take advantage of this legislation, if that legislation would be favorable to you. And I appreciate it.

Thank you, Mr. Chairman.

Mr. FOLEY. Are there any questions?

Mr. ZWACH. Mr. Chairman, I would just like to commend Mr. Johnson for what I think is his comprehensive presentation.

I also introduced these bills. But what I like about your position is that it covers all commodities. I have made that point consistently, that if we write chapter 2 of Capper-Volstead, let's make it chapter 2, and let's make the next step, but make it comprehensive and usable across the board. We need it in the Midwest just as well as you need it in California. And there is a lot of virtue in that. And I think it is a very challenging input that you have put on us here today. That is all.

Mr. JOHNSON. Mr. Chairman, I am guilty of an oversight. I intended to mention that Congressman Zwach is a sponsor of these bills.

And I might also refer to the fact that Congressman Link is also a sponsor of these bills that we have before this committee.

Mr. FOLEY. Mr. Findley, any questions?

Mr. FINDLEY. Mr. Johnson, judging by your comment on the first page of your statement in which you see it as perpetuating the status

quo of fragmented producer effort, I assume that you don't anticipate that this would lead to full supply contracts, am I correct?

Mr. JOHNSON. I also indicated down here that in certain situations it might wind up in a company union. And I could well envision a situation where you had a full supply contract which did in effect become a company union operation.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. FOLEY. Thank you, Mr. Johnson. We appreciate your statement very much.

The next witness will be Mr. George Tenney, president of the Southeastern Poultry & Egg Association; also representing the Poultry & Egg Institute of America, the Mountaire Corp., Little Rock, Ark.

STATEMENT OF GEORGE TENNEY, PRESIDENT, MOUNTAIRE CORP. AND SOUTHEASTERN POULTRY & EGG ASSOCIATION, AND REPRESENTING POULTRY & EGG INSTITUTE OF AMERICA, ACCOMPANIED BY LEE CAMPBELL, VICE PRESIDENT, POULTRY & EGG INSTITUTE OF AMERICA, AND HAROLD FORD, EXECUTIVE SECRETARY, SOUTHEASTERN POULTRY & EGG ASSOCIATION

Mr. FOLEY. Will you introduce those who are accompanying you?

Mr. TENNEY. Thank you.

Mr. Chairman, I am George Tenney, president of Mountaire Corp. of North Little Rock, Ark.

And with me on my right is Mr. Lee Campbell, vice president of the Poultry & Egg Institute of America, and on his right is Mr. Harold Ford, executive secretary of the Southeastern Poultry & Egg Association.

Mountaire Corp. produces and processes poultry. I serve as president of Southeastern Poultry & Egg Association and am here today representing both Southeastern and the Poultry & Egg Institute of America.

The Poultry & Egg Institute is the only national trade association representing all segments of the poultry and egg industry. Its membership consists of persons, corporations and cooperatives engaged in the breeding, hatching, producing, processing and marketing of chickens, turkeys, ducks, eggs, and poultry and egg products. Seventy-five members of the industry make up the board of directors. They come from 36 States. Poultry and eggs represent the third largest income from agriculture in the Nation, and members produce and process the bulk of this crop.

Southeastern Poultry & Egg Association, a regional association, represents all segments of the poultry and egg industry including on-farm producers of broilers, turkeys and eggs. Membership in Southeastern, like in the institute, is voluntary and members are mostly in the 12 Southeastern States. The members produce and market 80 percent of the Nation's broiler production, about 25 percent of the turkeys and about 35 percent of the table eggs.

We appreciate the opportunity to express our views on H.R. 14987, which reflects certain changes in the proposed legislation originally introduced (H.R. 7597). Mr. Chairman our opposition to H.R. 14987 is just as strong.

Now, the legislation specifically relates to contract sales and this removes any doubt that the poultry and egg industry would be seriously affected. Virtually all of our broilers are produced under contract and so are many turkeys and eggs.

Likewise, this proposal has been strengthened to make it absolutely clear that it is a violation of the act for producers and handlers not to bargain in good faith (sec. 106(e)). We continue to believe, Mr. Chairman, that this proposal fails to recognize the historic and fundamental right of buyers and producers to select their suppliers and their customers.

The compulsory bargaining requirement in this poposal is inconsistent with our free enterprise system. It is destructive of our marketing system. It would tend to lessen rather than promote competition.

While H.R. 14987 now includes language that the bill is not intended to interfere with a producer's right to belong or not belong to a bargaining association, we believe that the practical effect of the legislation would be to make it necessary for a producer to join an association.

A provision contained in the previous bill which would not prohibit an association from contracting for a handler's full requirements has been removed. Nevertheless, the term "bargaining" still permits bargaining for terms of sale and other provisions. It is assumed that a bargaining negotiation could include a provision for supplying full requirements and there is nothing to prevent it.

Now, the proposal would give preference to a bargaining association which has been the source of a handler's need in only 2 preceding years over other associations or producers who have supplied the handler over past years or an even longer period of time, or a producer who may have supplied a greater proportion of the handler's requirements in the same or longer period.

In this area several questions concern us:

(1) If there is more than one bargaining association qualified and desiring to bargain with a handler, with whom does the handler bargain? Can he establish a priority?

(2) If more than one association were seeking to bargain, would a handler have to negotiate with all of them before reaching an agreement, or if he reaches agreement with one would the same terms then apply to all associations without further bargaining?

The present bill does provide that the board shall specify a period of time in which negotiations shall be conducted, however, there still are no standards of reasonableness nor does the act define "good faith."

Apparently it was the intent to provide through one change in section 114 that the antitrust exemption be limited specifically to bargaining under the act. But, Mr. Chairman, the discrimination still exists. Bargaining associations are exempt. Handlers are not.

The Justice Department, in commenting upon this, listed several ways in which a bargaining association would be permitted to engage in many activities with immunity from the antitrust laws. In each example given we see that the bargaining association could be preventing a handler, or restraining new entry of producers, or combining to limit production.

Mr. Chairman, producers already have a unique and special status under the Capper-Volstead Act and the antitrust laws. They have

the right by combination or agreement to market their production on a collective basis or through a common marketing agent and to establish their selling prices by joint agreement. This provided ample means for producers to effectuate economic bargaining.

We believe that the anticompetitive aspects of this bill are clear. The changes made have done little, in our opinion, to help maintain the impact of competitive forces. The union-labor type compulsory bargaining procedures authorized would in the long run be detrimental to producers * * * to handlers * * * and to consumers. The costs, burdens, delays and interruptions in the marketing of agricultural products could be extremely harmful.

Once again, Mr. Chairman, we urge the committee not to report this bill favorably.

Mr. FOLEY. Thank you very much, Mr. Tenney.

Mr. TENNEY. Thank you, sir.

Mr. FOLEY. Are there any questions of Mr. Tenney, Mr. Campbell, or Mr. Ford?

Mr. FINDLEY. Mr. Tenney, I assume that we still have some considerable foreign market for poultry. Can you see any effect this legislation might have on such markets?

Mr. TENNEY. No, sir; I can't.

Mr. FORD. I don't believe it would have, because once the product is produced and packaged, it would be removed out from under this program. It would be the initiative of the packer to maintain his foreign outlets of the markets. Possibly a plant that is involved in exporting under this program could be closed down for a period of time because of lack of supply during a negotiation period, thus losing foreign markets, his customers.

Mr. FINDLEY. Would it have any effect on the competitive position of poultry in world markets?

Mr. FORD. Yes; between areas of production.

Mr. FINDLEY. I think the witness has raised some excellent questions at the bottom of page 3. And I appreciate their taking the trouble to prepare the statement.

Mr. FOLEY. Mr. DENHOLM.

Mr. DENHOLM. No questions, Mr. Chairman.

Mr. FOLEY. Mr. Matsunaga.

Mr. MATSUNAGA. No questions.

Mr. FOLEY. Gentlemen, we appreciate your appearance today. And the statement which you have provided the subcommittee we will find useful in our consideration of this legislation.

I want to thank you all very much for your appearance.

Mr. TENNEY. Thank you.

Mr. FOLEY. The final witness today will be Mr. H. Edward Dunkelberger, representing the National Canners Association, Washington, D.C.

STATEMENT OF H. EDWARD DUNKELBERGER, REPRESENTING NATIONAL CANNERS ASSOCIATION

Mr. DUNKELBERGER. My name is Edward Dunkelberger; I am a member of the firm of Covington & Burling, which is counsel for the National Canners Association, a nonprofit trade association of about 550 members with canning operations in 44 States and the territories.

Members of the association pack approximately 85 to 90 percent of the entire national production of canned fruits, vegetables, juices, specialties, meat, and fish.

We very much appreciate this opportunity to appear before the subcommittee today to present the views of the canning industry on H.R. 14987 and on the changes that bill would make in the legislation originally introduced by Congressman Sisk in April of last year. Although we will not attempt to review the basis for the canning industry's fundamental opposition to compulsory bargaining legislation, as set forth in our testimony before the subcommittee on September 22, 1971, we do urge upon each member of the subcommittee, as well as the members of the full committee, that attention to the changes that have been made in the legislation should not obscure the basic objections to federally imposed and enforced compulsory bargaining between handlers and growers of agricultural commodities.

In our view, consideration of the changes made in the original bill only serves to highlight some of the inherent defects in the legislation. We will not take the time to comment on each of the changes, but instead will attempt to make clear why some of the more substantive revisions fall far short of making this an acceptable bill.

One of the "principal changes" highlighted in the committee's press release of August 9 relates to revisions "protecting the right of a producer not to belong to an association if he so chooses." We assume that this is intended to refer to the sentence added to section 101 of the bill, setting forth the legislative findings and congressional purpose, which reads:

> No provision of this title is intended to interfere with, hinder or prevent the free exercise by a producer of the right not to belong to an association of producers organized for any purpose set forth in this Act.

The difficulty, however, is that this statement of purpose is in no way implemented by the operative provisions of the bill. None of the proposed revisions in the bill minimize the impact of section 106(c), which explicitly provides that it shall be unlawful for a handler to negotiate with other producers once a demand for compulsory bargaining has been made by a qualified association representing a reasonable number of producers who have dealt with the handler in the past 2 years.

The independent producer must thus sit on his hands for the period of the negotiations, with no idea how long they will last or whether the association will insist on supplying all of the handler's requirements. Clearly the practical effect of this provision is to compel producers to join a qualified association if they wish to have an outlet for their production.

In short, none of the proposed revisions, including those proposed by the Department of Justice and the Department of Agriculture, would significantly alter the anticompetitive effects of the bill—which are spelled out in the letter of July 24, 1972, from the Justice Department to Chairman Poage.

Another of the proposed changes would provide that compulsory bargaining would be applicable only between a handler and a qualified association representing a "reasonable number" of producers from

whom the handler has purchased the commodity in the past 2 years. Here again the change is one of form rather than substance. There is no suggestion as to what would be regarded as a reasonable number. One might well expect that the handler and the association could differ in this regard, and yet neither would know whether his view would prevail before the board or a court. And regardless of what was determined to be a reasonable number for this purpose, the nonmember growers would be frozen out of the negotiations, and perhaps out of their markets.

Yet another change would revise the language of section 106(d) with the result that if a handler, after negotiating with a qualified association, subsequently purchased products from other producers under terms more favorable than those negotiated with the association, he must offer the same, more favorable terms to the qualified association. Once again the Justice Department's letter points up the gross inequity and anticompetitive effects of this provision, and calls attention to the serious adverse effect it would have on handlers forced to deal with a qualified association. There might well be differences in costs, timing, or location that would clearly justify the payment of a higher price to other producers, and yet the association would enjoy a windfall for which it had not bargained and which was not justified on the facts.

Yet the revision in the bill—perhaps the most illusory—is the proposed change in the wording of section 114 relating to the antitrust exemption. The committee's release suggests that this change provides "that the antitrust exemption would be limited specifically to those activities specified in the bill." Originally the antitrust exemption extended to the activities of a qualified association and handlers in bargaining with respect to the price, terms of sale, or other contract terms. Under H.R. 14987, the reference to "price, terms of sale," and so forth, would be stricken and in its place a reference added to the provisions of section 106 of this Act." Nowhere is it noted that the very language stricken in section 114 is contained in section 106. The effect was and still is that the antitrust exemption extends to any activities of the association and handlers relating to bargaining for price and other contract terms.

Both the Justice Department and the Department of Agriculture have called for the elimination of this exemption. Although the basic objections to the bill for the most part do not turn upon the presence or absence of the exemption, there can be no doubt that its retention is acutely sought by bargaining association representatives. We can only assume that they see a need for bargaining associations to use the unprecedented power they would be granted in such a way as to violate established priciples of antitrust law.

The net effect of the changes contained in H.R. 14987 is that a one-sided, anticompetitive, inflationary bill has been made no less so. We urge that this subcommittee recommend against its enactment.

Mr. FOLEY. Thank you, Mr. Dunkelberger.

Are there any questions of Mr. Dunkelberger?

Mr. Findley.

Mr. FINDLEY. Mr. Dunkelberger, I wasn't on the subcommittee when hearings were held last fall. And it may well be that you appeared here, or certainly your association was represented. But

the experience I have had since becoming a member of the subcommittee has convinced me that policies attributed at least to certain canners are the main reason that this proposal is before the committee.

I have talked with producers that have felt they were unable to get attention to their grievances and problems in bringing their produce to market. They have cited the fact that they had, for all practical purposes, one or at the most two outlets for their products because of economic circumstances. It was to provide them with a means to bring their complaints to justice, so to speak, that this bill was first introduced.

Now, no one can really say how far this legislation is going to move this year. But I would say it is improbable that it is going to become law this year. I hope that the members of your association will take what has happened in the past year as constructive criticism of some of the policies of canners and other industries and do the best you can to figure out a way to accommodate the legitimate complaints and problems of the producers.

That is not exactly a question, it is a comment.

Mr. DUNKELBERGER. I would like to comment, if I might, Mr. Findley. I think that the record on S. 109 in previous hearings before this subcommittee on previous legislation has suggested occasionally that there may have been instances in which canners and other processors did not treat fairly producers who wished to deal with them.

The National Canners Association was not aware of the circumstances where that could be shown to exist. Indeed, in the hearing on S. 109, every actual complaint that was brought to light was investigated, and we are satisfied that there was no basis for the complaints. Nevertheless, we supported the enactment of S. 109 in the form that it was approved by this subcommittee and the full committee against the possibility that there might arise circumstances under which canners or other handlers might in fact discriminate unfairly against members of a bargaining association.

We believe that the protection provided by S. 109 would provide important protection to producers should the attitude that you describe exist on the part of any individual canner.

So, we believe that if such unfair activities occur in the future, S. 109 is more than adequate to take care of them, to say nothing of the antitrust laws.

Secondly, I would like to say that if the one thing that is worrying producers is the relative lack of outlets for their production, for canning crops, I can think of no legislation that would be better designed to reduce the number of canners than this. It is clear to my mind that if the bill hasn't the anticompetitive effect that we predict it does, that the first canners to go by the wayside will be the small and medium-sized canners who are, therefore, threatened from a number of competitive forces, and that if the squeeze is put on them by this kind of legislation, whereby the small canner finds himself faced with a massive cooperative and no other way to obtain supplies, that that canner, like many other canners before him, may go out of business, with the result that indeed you will have four outlets, and perhaps, I think, regrettably virtually destroyed competition in some areas in the production and sale of canning crops.

It is the National Canners Association position that competition in the production and sale of canning crops is desirable. We believe in competition. We regret any retrench from it. And we believe that the producers right now, with Capper-Volstead, S. 109, and the antitrust laws, have more than adequate protection if they decide they want to get together and work collectively. We think the present system is working and can work.

Thank you.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. FOLEY. Are there any questions of Mr. Dunkelberger?

Mr. Matsunaga?

Mr. MATSUNAGA. One question.

Your primary objection is to the elimination of the antitrust provisions, you say?

Mr. DUNKELBERGER. Mr. Matsunaga, our primary objection is really to the basic principle of the legislation; that is federally imposed compulsory bargaining. We think that the antitrust compensation plays an important role in the legislation in assuring the right of bargaining associations in fact to violate the antitrust laws. Accordingly, we believe that the antitrust exemption is one of the most objectionable provisions in the bill. We would just like to point out, however, that even if the Justice Department and the Department of Agriculture recommendations are taken, so that the antitrust exemption is eliminated, we would still be opposed to the principle of compulsory bargaining which this bill puts forth.

Mr. MATSUNAGA. So that regardless of any amendments which may be offered to the bill—and, of course, as you know, the original bill has been considerably amended—the canners' position would still be one of opposition to the bill?

Mr. DUNKELBERGER. The position of the canning industry is opposition to compulsory federally imposed bargaining. As long as that principle is contained in the bill, then the association and the industry would be opposed to its enactment; yes, sir.

Mr. MATSUNAGA. That is all.

Mr. FOLEY. Mr. Sisk?

Mr. SISK. Mr. Chairman, I had not intended to ask any questions of Mr. Dunkelberger, but it seemed to me he made an implication to a response to my good friend from Illinois, Mr. Findley, that I cannot let pass.

You are not saying here that there have not been instances, in fact many instances, of canners absolutely refusing to bargain with grower associations, are you?

Mr. DUNKELBERGER. No, sir; we have never so testified. We have testified that indeed that is a question, as is the case with other associations that have testified, that that is a question that is up to the individual company to decide to do. What I did say was that——

Mr. SISK. So that in fact S. 109 was no answer to the problem of the canning company which flatly refused to bargain. In other words, they simply posted their price, that this year peaches are $50 a ton, take it or leave it, and tomatoes are $20 a ton, or whatever the figure may be. You know, Mr. Dunkelberger, of my respect for you and my respect for the canning industry, and on other occasions I have worked to try to be helpful to the canning industry.

Mr. DUNKELBERGER. We are certainly aware of that, Mr. Sisk.

Mr. SISK. I think it is a very important industry in the country.

But the purpose of this bill is to meet the failure that is evident and has been proven to exist even after the passage of S. 109. And I would not want the record to show otherwise in connection with that.

I appreciate the gentleman's position on behalf of the National Canners. But the refusal to bargain is the very issue we are seeking to get at. And, of course, that is the very principle which you people oppose.

Mr. DUNKELBERGER. Yes, sir.

Mr. SISK. So we are irrevocably and without doubt on opposite sides of that particular area.

Mr. DUNKELBERGER. I want to make one point clear. The fact that we do not believe that government should not force bargaining, does not mean that we are opposed to bargaining. Many canners do bargain for tomatoes and peaches as you mentioned. Many canners have decided that it is to their interest to bargain with existing bargaining associations. And I think, candidly, one of the factors playing a major role in that decision is the fact that the bargaining associations in some instances have been able to persuade a sufficient number of producers that it is to their interest to join together. And indeed when producers themselves are persuaded to the advantages of the collective bargaining, the laws are there for them to do it. And once the producers are agreed that it is to their advantage to do it, then it is hard for me to see how any canner can avoid the practicalities of bargaining.

Our point is that this bill would seem to say that decisions of the producers notwithstanding, even though many producers do not regard it to their interest to join a bargaining association, we are going to compel bargaining with a bargaining association. And that is really the nut of the principle, I guess, that we differ on.

Mr. SISK. Having observed some bargaining associations which unfortunately are no longer in existence because of the fact that they were beaten through the old sweetheart contract which goes back to the labor days, of course, is the reason I am supporting this bill. And I recognize the right of your position, Mr. Dunkelberger; that is, the right of you to support that position. I just want to make it clear that there are many cases where unfortunately it hasn't worked perfectly. If, in fact, the canners and the other processing industries were ready and willing across the board to sit down and bargain with these associations, then we wouldn't be here today, and we wouldn't have spent all these many hours and weeks worrying with this kind of legislation. There is a need; whether this is the proper vehicle for it, there is no question in the minds of the growers of America that there is a need. I think you have heard a lot of testimony on that.

Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Denholm.

Mr. DENHOLM. Mr. Chairman, I did not intend to inquire of this witness, but I do want to commend him for appearing here and submitting a rather comprehensive statement on the need for changes in

the proposed legislation. If a representative of the National Canning Industry is opposed to this legislation—I wonder who is for it?

Mr. DUNKELBERGER. That question has been raised many times right in this room. The canning industry is for a system of contract farming by which individual growers are able to decide well in advance of the season whether they want to grow canning crops or not. And our feeling is that under that system, against the competition of price-supported agricultural commodities, grower after grower after grower has decided it was to his advantage to grow a commodity that was totally unregulated by the Federal Government. We believe that that system of contract farming, together with Capper-Volstead antitrust laws and S. 109, provides a workable system within which the canning industry can continue to prosper. We are not right now for more Federal legislation. And we submit that Federal legislation is not necessarily needed in every area of the economy. There may indeed be people who are not satisfied with the status quo. We don't like the status quo in the sense that there may be some difficulties. But we think the framework for a satisfactory production and marketing of canning commodities now exists, and we do not favor any Federal legislation to add to that framework at this time.

Mr. DENHOLM. Thank you very much.

Mr. FOLEY. Mr. Link, any questions?

Mr. LINK. No.

Mr. FOLEY. Mr. Findley?

Mr. FINDLEY. Do the canners have any multiyear contracts with producers, or contracts which give producers the assurance of an extension of the contract to a second or third year providing they live up to certain performance standards?

Mr. DUNKELBERGER. I am not aware of such contracts, Mr. Findley, but that does not mean that there are no such contracts. The association does not become involved in individual contract matters between the canners and growers. It certainly is not a widely recognized pattern in the industry at this time. It is generally from year to year. But the opportunity for the grower to decide whether he will contract with the canner the next year is made well in advance of the time when the grower must make a commitment for his land.

Mr. FINDLEY. Thank you.

Mr. FOLEY. If there are no further questions, Mr. Dunkelberger, we appreciate your testimony this morning.

Mr. DUNKELBERGER. Thank you, Mr. Chairman.

Mr. FOLEY. The Chair wishes to thank all the witnesses for their excellent presentations and cooperation and also the members of the subcommittee for their cooperation, which made it possible for us to conclude this first morning hearing within a few minutes of the time alloted.

The hearing will continue tomorrow, with additional witnesses, and will conclude with those witnesses.

But the Chair again advises that statements will be permitted for the record for a reasonable period following the conclusion of the hearing.

At this time, without objection, the Chair will submit for the record the statement by Mr. Lynn Stalbaum for the Central America Cooperative Federation, Inc.

(The statement of Mr. Stalbaum follows:)

STATEMENT OF LYNN STALBAUM, CENTRAL AMERICA COOPERATIVE FEDERATION, INC.

Central America Cooperative Federation, Inc., for whom this statement is submitted is a federation of three of the largest dairy cooperatives in the United States. They are: Associated Milk Producers, Inc., San Antonio, Texas; Mid-America Dairymen, Inc., Springfield, Missouri; and Dairymen Inc. of Louisville, Kentucky. Membership is composed of over 70,000 dairy farmers producing between 20% and 25% of the Nation's milk supply.

After reviewing H.R. 14987 I wrote to Mr. Hyde Murray of your staff on June 14, raising some questions as to the impact of this bill on dairy bargaining.

This was deemed necessary because, while the bill was not basically intended to cover dairy bargaining, there is a possibility that it will do so. The last sentence of Sec. 106(a) states that this bill is applicable only to those commodities produced or sold under contract.

Of late there has been some tendency to establish a contractual relationship with processors in the sale of milk by dairy cooperatives. To that extent we believe that H.R. 14987 would apply.

Following is the letter sent to Mr. Murray:

CENTRAL AMERICA COOPERATIVE FEDERATION, INC.,
Louisville, Ky., June 14, 1972.

Mr. HYDE MURRAY,
House Committee on Agriculture,
Longworth Office Building, Washington, D.C.

DEAR HYDE: Per our discussion yesterday there are a couple of points I would like to raise about H.R. 14987, which I ask you to check out when the Committee again takes up this legislation.

In Section 103 "association of producers" is defined. In some of our markets we have a federation of dairy co-operatives, each of which meets the definition in Section 103(b). We want to be sure that the language of the bill permits this type of federation.

Section 114 precludes handlers from combining in bargaining with qualified associations. In some milk markets there is a milk dealers association which does much of the basic work for the handlers. I do not know if they are empowered to make a final agreement for each of their handler members or not, but they do perform a service in the negotiation effort. We do not want to see language in H.R. 14987 which would prohibit such activity or meeting.

You indicated yesterday that Title III is intended to permit new commodities to get market orders and will have no effect on the milk market order program. I raised this point to be sure that this is the case.

We are interested in H.R. 14987 because we are now finding some bargaining being done in dairy pricing by written contract. Under such circumstances we would seem to be covered by the bill.

While we are still desirous of having a dairy bargaining act passed we want to be sure that nothing in other bargaining legislation would be detrimental to our bargaining effort. For this reason we raise these points on H.R. 14987.

Sincerely,

LYNN STALBAUM.

Permit me very briefly to expand on the points raised in my letter and which are the only ones which are being raised at this time as your committee renews its deliberations on farm bargaining.

Section 103(b) defines an "association of producers". We want to be sure that this definition is written as to include federations of such associations.

A case in point is the bargaining procedure in the Chicago regional milk market order area. Representing milk producers in that order area is the Central Milk Producers Cooperative. Though organized as a cooperative itself it is actually a federation of 16 different dairy cooperatives, each of which has its own member-

ship. It is my belief that each of the 16 member organizations meets the definition of "association of producers" in Sec. 103(b).

We want to be sure that the definition's language is such that qualified associations are not precluded from joining together for their common interest.

The last sentence in Sec. 114 forbids handlers from contracting, combining or conspiring with one another in bargaining. While I can fully sympathize with the intent of the committee in including such language it may create problems in certain milk market order areas.

Again a case in point is the Chicago area. In that market there is an organization known as Associated Milk Dealers, which represents some (but not all) of the Chicago dealers. Certain basic features of market-wide programs are worked in meetings between this group and the producer group. Advertising programs and the handling of excess milk are cited as types of things which are jointly developed. Because they involved producer-handler relationships (and in some instances the use of funds) they seem clearly to meet the definition of "bargaining" in Sec. 106(a).

Our Chicago people indicate that this arrangement has been mutually beneficial. We would not want to see it become a violation of a bargaining law.

If this is not applicable to other commodities we would hope it could be permitted in Federal milk market order areas.

The last point we raised in our letter to Mr. Murray pertained to Title III Because he has assured us that as written it does not apply to dairying no further comment will be made on it here..

As you prepare a final draft of H.R. 14987 it is our hope that you will keep the two points raised here in mind. They are very important in existing bargaining practices for milk, particularly in Federal milk market order areas.

Mr. FOLEY. The subcommittee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 12:10 p.m., the subcommittee adjourned to reconvene at 10 a.m., Thursday, August 17, 1972)

AGRICULTURAL MARKETING AND BARGAINING

THURSDAY, AUGUST 17, 1972

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

The subcommittee met, pursuant to call, at 10:05 a.m., in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Foley, Sisk, Denholm, Link, Zwach and Findley.

Also present: Mrs. Christine S. Gallagher, chief clerk; and Lacey C. Sharp, general counsel.

Mr. FOLEY. The Subcommittee on Domestic Marketing and Consumer Relations will come to order. The subcommittee meets today for further consideration of H.R. 14987, the National Agricultural Marketing and Bargaining Act of 1972.

The first witness shceduled for today's hearing is Mr. Allen Lauterbach, general counsel of the American Farm Bureau Federation, Washington, D.C., accompanied by Mr. John C. Datt, assistant director of the Washington office.

STATEMENT OF JOHN C. DATT, ASSISTANT DIRECTOR, AMERICAN FARM BUREAU FEDERATION, WASHINGTON, D.C., ACCOMPANIED BY ALLAN LAUTERBACH, GENERAL COUNSEL

Mr. DATT. Thank you very much, Mr. Chairman. I have with me Mr. Allen Lauterbach, who is the general counsel of the American Farm Bureau Federation. Mr. William Kuhfuss, president of the American Farm Bureau Federation, would have been here today but a prior commitment kept him from presenting the Farm Bureau statement.

If it is agreeable with you, I will read our statement, because it is very brief; then Mr. Lauterbach and I will be pleased to respond to any questions the Subcommittee may have.

Mr. FOLEY. Thank you.

Mr. DATT. The American Farm Bureau Federation wishes to express appreciation for the opportunity to appear before this subcommittee in support of the National Agricultural Marketing and Bargaining Act of 1972—H.R. 14987.

The new House bill—H.R. 14987—incorporates a number of amendments designed to clarify certain provisions of H.R. 7597

without changing the bill's fundamental purpose—namely to strengthen farmers' bargaining power in negotiating for contract terms.

The amendments clarify the following points:

1. Relate the legislation specifically to contract sales of agricultural products. The title of the bill has been amended, page 1, to make this clear.

2. Protect the right of a producer not to belong to an association if he so chooses. This language is contained at the end of section 101 on page 2.

3. Provide that independent agricultural contractors are covered by the legislation. This is done by clarifying the definition of "producer" on the top of page 4.

4. Increase the size of the National Agricultural Bargaining Board from three to five members. Language is added to provide that not more than three of the members of the Board shall at any one time be of the same political party. Provision is made to pay each of the Board members $35,000 a year. Also, the Board is given authority to use hearing examiners in conducting its duties. These amendments are contained in section 104 on pages 4 and 5.

5. Provide that the Board shall have authority to qualify an association of producers with respect to the commodities it represents, designate the geographic area applicable and specify a reasonable period of time during which negotiations shall be conducted. This clarification is on pages 6 and 7, section (d).

6. Clarify terms of bargaining. The new language reflects the proposals made by Assistant Secretary of Agriculture Lyng in connection with his testimony before the Senate Committee on Agriculture on November 16, 1971. This clarification is on pages 7 and 8, section 106(a).

7. Reduce the period for determining "a prior course of dealing" by a handler with a producer from any two of the preceding 5 years to within the preceding 2 years. This is done on page 8, section (b).

8. Clarify conditions under which a handler may buy products from nonmembers. This language is found on pages 8 and 9, sections (c) and (d).

9. Provide that the antitrust exemption would be limited specifically to those activities specified in the bill. This clarification is found on page 15, section 114.

10. Clarify title II dealing with assignment of association fees to include independent agricultural contractors. These clarifications are found on pages 16 and 17.

Farm Bureau believes there is a need to improve the legal foundation upon which farmers can build their own effective marketing and bargaining programs. H.R. 14987, which is a clarified and improved version of H.R. 7597, provides such a foundation, and we urge that the subcommittee favorably report this bill without further delay.

Thank you very much.

Mr. FOLEY. Thank you, Mr. Datt.

Are there any questions of Mr. Datt?

Mr. SISK. Mr. Chairman, first, let me express my appreciation to Mr. Datt and Mr. Lauterbach for being here. I am sorry that Mr. Kuhfuss could not make it.

I would like to ask a few questions, Mr. Chairman, to clarify what seems to have been one of the issues zeroed in on yesterday. I believe that you gentelmen—I know you were here, John, to hear the testimoney yesterday.

Mr. DATT. Yes.

Mr. SISK. It has to do with what seems to be an implication or interpretation that we are vastly broadening antiturst exemptions with this legislation. Now, I personally do not believe that to be true. I do not so interpret in either the language of the original bill, or the language of the present bill. In fact, I question whether we are broadening anything.

Mr. Lauterbach I know to be an excellent attorney. I would like his comments on that particular part.

Now, on the ninth item that Mr. Datt has just read in connection with the changes made in the new bill to limit antitrust exemptions, specifically the provision in this bill, would you comment on your interpretations of what this new provision tends to do to restrict antitrust exemptions?

Mr. LAUTERBACH. Well, Mr. Chairman and other members of the Committee, as I read the bill as it is presently drafted, your antitrust provisions are limited to section 106. As you indicated, Mr. Sisk, the bill has been amended and if any interpretations now are involved that would relate to section 106, I personally do not believe that there is any major extension of the antitrust exemptions under the Capper-Volstead Act as it was enacted about 50 years ago this year, I guess, in 1922, and as interpreted by the Supreme Court. The Court in the case of the Maryland and Virginia Milk Producers Association stated, when they were referring to the House report on the Capper-Volstead Act, that "this indicates a purpose to make it possible for farmer producers to organize together, set association policy, fix prices at which their cooperative will sell their produce, and otherwise carry on like a business corporation without thereby violating antitrust laws." So under the Capper-Volstead Act, cooperatives have had a rather extensive protection from antitrust.

Now, this bill is a very modified extension of this. Personally, I know the Justice Department has been corresponding with the Committee and their position is a historical one, where they had not been in favor of granting to farmer cooperatives any extension of rights that they feel may reduce the competitive forces.

Mr. SISK. If I can interrupt you right there. Over the years, certainly for the past 18 years, in my contacts with the Department of Justice through conferences and many exchanges of letters under various administrations—in fact, this is the fourth administration in which I have had some experience with Justice—I have found that Justice has not changed their traditional position on farm legislation. Is this position representative of any change?

Mr. LAUTERBACH. I do not believe so. I was on the staff of the Department of Agriculture for a number of years and traditionally, it was always the same problem of trying to clear something with Justice. This is the position they have maintained. I do not know why they have this concern about the anti-competitive aspects in this field or in this bill. They want to maintain the beneficial impact of competitive forces; this is the purpose of this bill, to increase the

competitive forces in agriculture field. It gives the producer some means by which he can stand up to the corporate giants that we have in the food industry. I might just ask where the Justice Department was when the integrators took over the broiler industry. Unless this bill or similar legislation is enacted, I think we can expect other segments of agriculture to go a similar route. We see it in the Green Giant operations, Mr. Zwach, getting more into the bailment type of contract.

So my question is why it's legal to permit financial conglomerates to gain control over businesses and limit competition by their reducing numbers, and at the same time, they come before the committee here and are real concerned about a very modified bill to grant farmers the right to bargain in good faith.

I think that unless Congress enacts some legislation to strengthen the bargaining position of farmers, we are going to find more and more the trend toward a few corporate giants that are going to control the food industry. We do not want to see it go the route that the auto industry has, where a few people, a few corporations, control the industry and their product output. This could be a trend we see coming down the pike and I don't know whether we are ready for it. I know in the Farm Bureau, we are going to oppose it with all the force we can.

I believe the consumers ought to be interested in seeing that a few corporate giants do not control the food industry while the family-type farmer is tended to be forced out of business.

You can recall a car. I have had mine recalled twice in the last year. But when you are dealing with the food industry, it is pretty hard to "recall" food. I think consumers ought to support this type of legislation. Farmers have produced high quality food over the years.

Mr. SISK. I appreciate your comments. I refer to the marketing orders which have been in existence for a number of years. I know going back 16 or 17 years, when there were some discussions with the Department of Justice, there was a segment even in those days in the Department which raised questions about marketing orders, and the question of their constitutionality, and their concern about antitrust exemptions.

I agree with you. My own feelings are that to a large extent, what they have said in the past few days is nothing new. It is what they always have been saying, certainly throughout my experience, in connection with farm legislation. I know it was true when we attempted to extend marketing orders.

So I very much appreciate your comments on the so-called charge that we are vastly broadening antitrust exemptions. It simply is not true, as I interpret it, and as attorneys who have worked with us have interpreted it. As I understand your position, is that correct?

Mr. LAUTERBACH. That is right.

Mr. SISK. That is all, Mr. Chairman.

Mr. FOLEY. Mr. Zwach?

Mr. ZWACH. Thank you, Mr. Chairman.

I am very happy to welcome you gentlemen here this morning. You know, our subcommittee has given this matter a great deal of consideration since you were last here. The attendance here has been tremendous, the interest has been tremendous. But you know, there came to my farm a few days ago this Farm Bureau News. I was very

intrigued by the discussion of the AAMA. I want to read a little section of it and then I would like to refer to it with some questions. It says:

> After 12 years, AAMA—that, of course, is the American Agricultural Marketing Association—"has outstanding accomplishments in terms of improved contracts, better producer prices, experience gained in bargaining, increased membership, expanded programs, and a better operational understanding of marketing. The accomplishment of the American Agricultural Marketing Association in its 12 years of operation, has been outstanding.

This was the assessment made at the 12th annual AAMA managers' conference held at O'Hara Inn, Des Plaines, Ill.

When the first managers' conference was held in 1961, there were 10 State members. Today, AAMA has 40 State marketing asociation members and is serving an additional six. Twenty-five States were represented at the sessions. William J. Kuhfuss, president, addressed the session and said, "The know-how in marketing represented here is the greatest that can be found anywhere in the world. We have learned what works and what won't work in marketing and bargaining. Our job ahead is to develop new marketing patterns to meet every changing need of our members and the market."

Then he also warned that Farm Bureau marketing efforts must encompass the whole broad scope of the market.

Now, nowhere in this article did it mention the need for governmental interference in marketing. It would appear that real progress is being made. I would like to know in what areas do you find that we need governmental input into this, where we need this bill? Because from this report, it seems that things are really moving and it does not say where we need this legislation. Would you be prepared to address yourself—the areas and groups having the fundamental problems that this bill would address itself to?

Mr. LAUTERBACH. Well, Mr. Zwach, when the American Agricultural Marketing Association was organized in 1960, we started from scratch without a single marketing association, with very little know-how among staff that we could acquire.

We have gone through a period of 10 years of developing staff. This is one of the things that Mr. Kuhfuss was discussing. Again, put yourself in the framework of a meeting with managers, where you are not going to play anything down, you are going to play it up. It is a meeting to encourage the managers to go on and do even better jobs. They are not going to put in a newsletter that goes out to a lot of people on the problems of the organization. And we have some, believe me.

In the broiler industry——

Mr. ZWACH. You would not mind disclosing them to this committee in response to my question so that we can understand?

Mr. LAUTERBACH. Well, quite frankly, in the broiler industry, this was one of the first that went the integration route, where instead of the producer owning the birds and having something to sell, he no longer is in a position of marketing a bird. He is in a position now of selling his services and facilities.

Then we tried to negotiate in this area. We had a very good signup at first. And here again, I am a little reluctant to disclose some of our problems, because we have our opposition listening in and I do not think any organization should do this. But we have had extreme

opposition from the so-called integrators, to the point where this program is in difficulty.

We have several States that are very effective in it. We have a case in Maine where the poultry companies, with outstanding legal counsel, are trying to challenge the act. Wherever we have tried to negotiate, we run into a blank wall.

Now, we have helped improve the contract that the broiler grower receives. There is no inaccuracy on this point. But we have been unable to get into that door and negotiate with the processor. We will meet in a very, very informal way. He will not really negotiate.

In the case of some of the groups in the processing vegetable area, they will still not recognize our association. And we will not carry on violence, and this is one thing that differentiates our type of bargaining from others and why we think it ought to be done in an orderly, businesslike way. Now, if the other party on the other side of the table does not want to meet and discuss in an orderly way, some people resort to violence and other activities and supposedly say they do not need Federal legislation because they can bring other forces to bear on the processor. We have determined not to go this route.

So all we are asking for is a very simple statement of Congress to the effect that it is an unlawful practice for a handler to refuse to negotiate in good faith. It does not say he has to come to a conclusion or reach any conclusion, but he does have to at least let the association in the front door and sit down and negotiate in good faith.

Now, it is the fruit and vegetable area where we have made most of our efforts to organize, plus broilers. We are moving into the livestock field in a very limited way. It is a different kind of negotiation there. It is more of an auction type program where you try to get buyers and sellers together by use of Teletype. We are not involved at the moment in trying to negotiate to the same extent that we are with, say, apples, tomatoes, and asparagus. So roughly, if you want more details on it, I would be glad to visit with you and furnish a statement.

Mr. ZWACH. Mr. Kuhfuss, the president, I think, spelled them out in some detail at our last hearings in this area.

Have you found processors, canners, packers changing attitude somewhat and bargaining more? Is there an improvement compared to the beginning? Is there real improvement?

Mr. LAUTERBACH. I think the committee has performed a real service in holding hearings and exposing some of the problems that farmers have. I am sure while these hearings are going on, you are not going to find many of the processors openly committing acts that would give us opportunity to come in and testify about them. There were some things that went on in the past which we have commented about.

But it is a problem of trying to get the recognition of the handler and at this stage, I would say we have not had adequate recognition. What Mr. Kuhfuss was saying there is accurate.

Mr. ZWACH. Yes; I would admit that you would not be laying out the other. But from just reading it and all the new associations, the State ones, it would just look like you have made tremendous progress.

Mr. LAUTERBACH. Yes.

Mr. ZWACH. Yes; you would like for me to believe.

Mr. LAUTERBACH. We would like you to.

Mr. DATT. Mr. Zwach, I was going to comment that while I think we have made tremendous progress and we feel that we have made tremendous progress, we still feel that there is the need for this type of legislation, because we still have major problems in the area of recognition of our marketing associations.

In other words, we can go out and do the best organization job that is possible in terms of trying to have farmers make a decision to voluntarily join a marketing association and once they have done that, if they do not obtain the recognition or handlers refuse to deal with them, in a relatively short period of time, that association will disintegrate.

Mr. ZWACH. You still agree, do you not, that if we write legislation adding to Capper-Volstead—your president referred to it specifically at our last hearing—that it ought to apply to all agricultural products?

Mr. DATT. Yes; the Farm Bureau basically still feels that the H.R. 14987 ought to apply to all agricultural commodities because we do not want to be in a position of having denied some group of agricultural producers the right to use this legislation somewhere down the road. Let me give you a specific example.

Three or 4 years ago, there was very little cotton, as was indicated yesterday, that was grown under contract. Today we have at least 40 percent of the cotton that is grown under contract. Somewhere along the line, the cotton producers, a group of them, might decide that they wanted to join a marketing association and bargaining association. If they were excluded from the bill, they would not have the opportunities or the protection. So this is why we feel very strongly that the bill ought to apply to all agricultural commodities.

And I would add one thing further: that while a lot of the opposition has talked about the bargaining side and all this, there is one fundamental thing in the bill. That is that nothing will happen until a group of agricultural producers decides that they want something to happen.

Mr. ZWACH. Yes.

Mr. DATT. And the farmers have got to make a basic decision that they want to form an association. Until they do that, nothing happens. So you are not going to have any massive program happening overnight. When the farmers themselves make a decision that they want to do something in this field, they have the opportunity and the law that will provide them the legal framework. I think this is a point that we want to make. Nothing will happen under this bill until farmers themselves make a decision that they want to have a marketing association. But having made that decision, we think we ought to have the right in this day and age of at least the opportunity of sitting down and negotiating in good faith with the handlers for their contract terms.

Mr. ZWACH. Do you not believe that in this revised bill, we are compromising this position that it should apply to all across the board?

Mr. DATT. No, sir.

Mr. ZWACH. You do not think we do?

Mr. DATT. No, sir, because all we are doing in the revised bill is attempting to make it clear as to what was the original intention

and that is to say that we want it to apply specifically to contract sales of agricultural products. Where you have a market where there is, you know, the day-to-day sales of a commodity, this bill would not come into play. It would only come into play where there is a contract, an advanced contract sale of a commodity involved. The bill has tried to spell that out and make it more clear. So we do not feel that we are narrowing in any way the legislation so far as coverage of agricultural products is concerned.

Mr. ZWACH. Mr. Chairman, that is all for now.

Mr. FOLEY. Mr. Denholm?

Mr. DENHOLM. Thank you.

First of all, I am not convinced that this is a producer's bill. This is a processor's bill. It represents the agribusiness sector of the economy as opposed to the farmer's interest. The president of your organization has just said that nothing will happen until the farmers want it to happen. I submit the farmers can do nothing pursuant to the terms of this proposal unless the processors agree therein. It will drive the processors together and the processors will assume the role that the Government has attempted to assume for more than three decades. I have read the Farm Bureau's philosophy for years, three decades of the Farm Bureau. I cannot understand, gentlemen, what has happened to the Farm Bureau and the philosophy of the members of the Farm Bureau and their ideas about a free market system.

Now, my question is who, Mr. Counsel, does this bill provide for a contract between? Who are the parties to the contract contemplated pursuant to the legislation before us?

Mr. LAUTERBACH. This would enable an association of producers, a qualified association, to negotiate on behalf of its farmer members.

Mr. DENHOLM. With whom?

Mr. LAUTERBACH. The contract could go two or more routes. It could be where you are negotiating for an approved contract like they do in the tomato program, where you negotiate for acreage and price, and the contract there would be between the grower and the processor.

Now, in some other instances, you might have it where the cooperative would be negotiating with the handler on its own behalf where the cooperative itself has title to the product.

But basically, it is the farmers speaking through the cooperative association to the processor. It is our intention, sir, that this would be in the interest of the farmer member. Historically, the Farm Bureau was for the Capper-Volstead Act in 1922. If you go back and read the records, you will find that Farm Bureau was very active in that.

Mr. DENHOLM. When the Capper-Volstead Act was written did the sense and will of the Congress contemplate collective and compulsory bargaining——

Mr. LAUTERBACH. Then we kind of got involved in Government programs. I think that farmers and their leaders feel that by strengthening the capacity of the farmers to negotiate, there will be less dependence upon Government programs

Mr. DENHOLM. Now, assuming that everything happened exactly as you have said it would happen and all the farmers would ultimately be in a strong position of bargaining with the contractors and processors—who is the privity of contract between?

Mr. LAUTERBACH. Well, as I say, in some instances, the contract would be between the producer and the processor.

Mr. DENHOLM. Who else—anybody?

Mr. LAUTERBACH. As I interpret the bill, it permits the association to stand at the side of the farmer in negotiating and it puts several farmers together where they can stand together and negotiate. So you have to come back to the authority that the producer has granted to the association, and whatever authority the producer has granted to the association, this is what the association can negotiate from.

Mr. DENHOLM. You make repeated reference to an association. Could that be General Motors and the Chicago Grain Exchange and the New York Mercantile?

Mr. LAUTERBACH. No; under this bill here, the definition of a qualified association of producers relates back to the type of association we think of as the Capper-Volstead type, owned and controlled directly or indirectly by farmers. It has to meet some rigidities as far as its capacity to negotiate, that it represents growers in the contracts. On page 6 of the bill here, it sets forth in some detail what the association has to be.

I am not sure that some of our associations could qualify at the moment.

Mr. DENHOLM. Does it exclude any associations, corporations, or firms?

Mr. LAUTERBACH. No; there are associations——

Mr. DENHOLM. It does not have to be a producer's cooperative?

Mr. LAUTERBACH. It has to be an association of producers that qualifies under the Capper-Volstead law or the cooperative laws. You see, the Capper-Volstead Act itself does not refer to the term "cooperative". It refers to the term "association" or "producers". In many instances, producers do organize under cooperative law for protection of antitrust laws within the State. In some instances, they organize under a not-for-profit law. But generally, it is a cooperative law that they organize under.

Mr. DENHOLM. Of course, you can have a cooperative that runs itself in such a way that it is only a cooperative of corporations, too, can you not?

Mr. LAUTERBACH. This is true if the members do not exercise control over it.

Mr. DENHOLM. Well, I happen to know of some self-styled cooperatives that are associated together for the purpose of excluding producers. They, of course, are qualified to participate as a bargaining member pursuant to the provisions of the proposed legislation before the committee. Now, if you had a situation where there were so few processors left in the business and so few producers and they were bargaining through their associations, then you would have a reasonably qualified position for bargaining. The processors would tend to move together and the producers would associate themselves for a stronger collective bargaining position. A contract may ultimately be executed. That contract would not be workable unless it had supply management provisions in it—would it?

Mr. LAUTERBACH. When you talk of supply management, you can think in terms of Government supply management or management where producers themselves, through the competitive forces on the market, are going to decide how much they are going to produce for a given year.

Mr. DENHOLM. Let's take care of that issue right now. If this proposed legislation was public law there would not be an outside market. There would be no "public central markets," would there? If so, how would they operate?

Mr. LAUTERBACH. It is difficult for me to visualize the Department of Justice or the Government itself permitting a cooperative to ever get this kind of control.

Mr. DENHOLM. I didn't suggest the cooperatives were——

Mr. LAUTERBACH. In the first place, the Capper-Volstead Act provides that any cooperative that unduly enhances the price, the Secretary of Agriculture is supposed to step in and get the Department of Justice to bring action in those instances. Agriculture is such a minority of the population at the present time that it is hard to visualize that this segment is ever going to be able to carry on activities which are not in the public interest.

Mr. DENHOLM. I submit that your answer is not truly responsive, counsel. I said that if this proposed legislation was public law there would be no central public market left for quotations. If any other group organized into a cooperative, they could operate as an association for the purpose of bargaining under the law. Is that not correct?

Mr. LAUTERBACH. John, do you want to respond to this? I am not sure I am on the right track.

Mr. DATT. If you are suggesting that as a result of this, there would be an increased amount of advanced contracting and as a result of that that some of the terminal markets and some of these markets that we have known might not exist, I would submit that that situation has been going on for some time and will continue to go on whether this bill passes or not.

Mr. DENHOLM. You mean there are no central public markets now?

Mr. DATT. I say there is a decline, there has been a continuous decline, in the so-called central public markets.

Mr. DENHOLM. The competitive marketing system does exist——

Mr. DATT. Oh, yes, certainly. You would still have competitive marketing under this legislation.

Mr. DENHOLM. Will you explain that, please?

Mr. DATT. Because you would still have associations of producers who would be seeking if they were so qualified——

Mr. DENHOLM. To do what and market where?

Mr. DATT. They would have to be qualified by the board as provided here in the bill in order to obtain the protections and the provisions of the bill.

Mr. DENHOLM. Where would they find their competitive market under the provisions of this bill?

Mr. DATT. What I am saying is that even though there is a marketing association out here, there are always producers who would not choose to belong.

Mr. DENHOLM. You are talking about national legislation that eliminates all other systems of marketing.

Mr. DATT. Yes.

Mr. DENHOLM. And you have said that you want it to cover everything. It is clear that under such a system a producer could not find a market anyplace else except through the association or through his bargaining system enacted by such a Federal law.

Mr. DATT. You would have made a decision as to whether you wanted to be a part of that organization.

Mr. DENHOLM. What choice and what alternative would the producer have to market elsewhere? I want to know.

Mr. DATT. You have the same choice then as you have today. That is as a farmer to decide whether you want to join the association or not. You have that choice today.

Mr. DENHOLM. I don't object to it as long as I have that voluntary right. That is what the NFO witness said yesterday morning. That is what farmers have said for years. They want the voluntary right to bargain, You are asking for a compulsory bargaining act. A national law that will destroy the marketing structure and——

Mr. DATT. No, no.

Mr. DENHOLM, You are not asking for that?

Mr. DATT, We are not asking for a compulsory national law—I would not agree it is a compulsory national law.

Mr. DENHOLM. You said you wanted it to cover everything—all commodities.

Mr. DATT, Well, to make it eligible, so that every commodity would be eligible under it.

Mr. DENHOLM. I do not want to argue with you but I really have reservations about your entire testimony and I am left in doubt as to the best interest of the producers. I think it is a processors bill. What do you say to that?

Mr. DATT. Let me just respond that if it is a processors bill, we have a lot of producers in the Farm Bureau and outside of the Farm Bureau who would not agree with that based on their knowledge of the situation. We have a number of them who testified here at the hearings last fall. If this were a processor bill, Mr. Denholm, I can assure you that the group who was in here yesterday and today would not be in here with all 21 guns teeing off on the bill if this were a processor bill.

Mr. DENHOLM. I asked the gentleman who testified as a representative of the national canners yesterday that if he was opposed to this bill, who in the world was for it?

Mr. DATT. I heard the question.

Mr. DENHOLM. Do you know what his reply was to that question?

Mr. DATT. Yes; I heard the testimony.

Mr. DENHOLM. I am absolutely appalled by your testimony in support of a bargaining act. I cannot ascertain from your legal counsel or from you, Mr. President, what has happened to the philosophy of the National Farm Bureau.

Mr. LAUTERBACH. The philosophy is still there, sir. We are for the economic forces at work in market. We have had the benefit of the Federal Government helping to a certain degree. We are asking that the farmers be given further opportunity to form associations where they can go in and negotiate and strengthen their position instead of permitting Campbell Soup to gradually take up more and more processors within their scope, where we have no opportunity to sit down, really, and negotiate with them because they do not want to recognize the farmer. Some of these groups will indicate to us that they had costs fixed, as far as their interests, their management costs, their labor costs, every cost is fixed except the farmer's production.

Mr. DENHOLM. Excuse me. I do not want to interrupt you, but I know and understand the concept of the cost of production. I am a farmer.

Mr. LAUTERBACH. This is what surprises me, sir, that as a farmer, you would not be in favor of allowing farmers to get together to negotiate.

Mr. DENHOLM. I don't object to that at all. They can do so without Government legislation. The NFO has proven that it can be done. You are at cross-purposes with your own testimony.

Let me make this point to you, counsel. The privity of contract in this bill lies between the processor and the producer and no one else. The consumer is not a party to that agreement. I submit that if the processors can control production, they can also fix the price and if there is no privity of contract between the processor and the consumers, they can mark up the price to the consumers whenever they want to. The cost of living will increase and the consumers must then press for higher wages which will be reflected in an increased cost of all consumer goods and services.

What do you say about that? Do you follow my reasoning? Are consumers a party to the contract?

Mr. LAUTERBACH. No; they are not a party to the contract, sir; but they are the ones who are going to determine whether this product is going to be sold or some other substitutes are going to be offered in their place.

Mr. DENHOLM. The packing plants in Sioux Falls, S. Dak., closed 2 weeks ago because they allegedly could not buy cattle and sell meat products at the price margins received. Do you intend to negotiate the price received by farmers and ranchers down and up?

Mr. DATT. Mr. Denholm, having had some experience in terms of bargaining associations, I know of no bargaining association in existence today that over any period of time in their bargaining process obtained a higher price in excess of what the market would be and stayed in existence.

Mr. DENHOLM. I say to you that I am opposed to the proposed legislation and I am hopeful that it will not have the approval of the members of this committee. It is not in the best interest of farmers and ranchers.

Mr. LAUTERBACH. I would admit that there are many farmers who may have the same point of view, especially if they are large enough where they feel they do not have the need to join with their neighbors and strengthen their bargaining position.

Mr. DENHOLM. I do not agree with you at all. In fact, it is only the large producers that can afford the risk of possible legislation like this—small farmers and farmer-owned cooperatives would have no alternative. I saw it operating in California, some small farmers found it very difficult to compete with large corporate interests. They sold their soul the day they signed the contract with the processor.

Mr. LAUTERBACH. Let me say again, sir, the opportunity of the small farmers to get together and negotiate will put them in a stronger position, at least, than they are today. When you look around at the economy that we are operating in, where every segment is organized, where Justice Department does not come in and protect the rights of farmers and secondary boycotts are closing them out of the market at

times—nobody gets concerned when the farmer gets caught in the squeeze. So he needs some bargaining strength here.

Mr. DENHOLM. That is political campaign talk, but we are talking about enacting national law now We are all guilty of political rhetoric. It started under Freeman. Somebody wrote a speech for him one time, if I understand it correctly, and he began to believe it. People stand and cheer that kind of talk. But we are talking about enacting a national law as permanent marketing policy and that is serious business that demands the best of us all.

Mr. FOLEY. If the Chair could interrupt here, I would like to conclude the questioning of Mr. Lauterbach and Mr. Datt around 11 o'clock or 11:05.

Mr. DENHOLM. I will yield, Mr. Chairman. Thank you very much.

Mr. FOLEY. Do you have any questions?

Mr. FINDLEY. I will just ask one question.

Mr. Lauterbach, several of the witnesses yesterday testified that despite changes in the bill, the revised language does permit full supply contracts. What is your opinion?

Mr. LAUTERBACH. As you know, the section that pertained to full supply was eliminated. The full supply contract is permitted under present law. It all depends on how you set up your contracts whether you are in violation of antitrust. But it has been recognized for years that a cooperative can enter into a contract with a handler to provide full supply of that particular handler. This has been true in the dairy industry. I think by the change that was made in the bill, that should remove this argument.

Mr. FINDLEY. I am afraid I do not follow that last comment. The way things stand now, a full supply contract would be possible if this is enacted. Is that correct?

Mr. LAUTERBACH. I think full supply contract is possible under this bill and it is possible without the bill. The law is clear that full supply contract is legal at the present time. Again, it is a matter of how you do it. And we have them, as John is pointing out, in the dairy field.

So this was a move to satisfy this particular complaint of the Justice Department, as I understand it.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Link?

Mr. LINK. Mr. Chairman, I have but one question to ask of the witnesses. I appreciate their coming here and presenting the views of the organization that they represent.

Referring specifically to the No. 1 point, where you say in your testimony, "Relate the legislation specifically to contract sales of agricultural products" and then refer to the bill where this is specifically indicated, what do you foresee as agricultural products produced or sold under contract that would be included, assuming this bill was passed and its provisions implemented by interested organizations or groups of farmers?

Mr. DATT. I would answer that, Mr. Link, by indicating that when you talk about agricultural products produced or sold under contract today we have in the fruit and vegetable field, fruit and vegetables for processing, a number of commodities that are grown under advance contract, where a farmer agrees in advance—it may

be 6 months in advance, may be even a shorter period of time in advance, it may be a written contract or an oral contract, but where he has in effect given a commitment that he is going to deliver a commodity to a given handler for a given price. We have this in the livestock area, we have it in the broiler area.

For instance, yesterday afternoon, we had a meeting in our office about popcorn. We have a large amount of popcorn in this country grown under advance contract, where I agree in April or May to deliver so much popcorn to you. A lot of our seed corn is grown under contract.

Cotton, as I said, 3 or 4 years ago was not grown under advance contract. It was grown under advance contract where I as a cotton producer agreed some months in advance of the time of harvest that I am going to deliver my cotton to you for such and such a price under such and such a term.

It is this type of marketing that we are talking about versus where I as a producer go out here and raise a crop of tomatoes and simply bring them to you at the time of harvest and say, look, I have a hundred acres of tomatoes out here, what will you give me for them? In other words, there is no advance arrangement. Or I take my wheat in and deliver it on a day-to-day basis and you pay me on a day-to-day basis.

There is a distinction between these two types of marketing and we are trying to—the language here tries to make it clear that this bill deals with or is confined to those agricultural commodities that are produced or sold under some form of contract.

Mr. LINK. Just one further question in relation to this. Do you foresee enactment of this legislation as furthering contract producing in other products that are not now sold under contract? Would it expand the business?

Mr. DATT. It could conceivably happen, but here again, the question of whether there are going to be contracts or not would depend on the market and the market situation. I must suggest that if anybody would have told me 5 years ago that now we would have 40 percent of our cotton being grown under advance contract, I would have suggested that that just was not possible. But in a relatively short period—and the reason for it is very simple. That is that the people in the cotton business and those who want the cotton, in order to get it, had to go out and get a producer to agree in advance that they were going to deliver it to him.

We are having a widespread development now in hogs, where they are being grown under contract, where I as a hog producer agree with you as a packer that I am going to deliver you so many hogs per day per week. Now, it works to your advantage, it works to my advantage.

Whether this bill is passed or not, Mr. Link, there is going to be more advance contracting, because I as an agricultural producer want to have some assurance or want to have some way to take some of the risk out of my production. If I can make an advance arrangement whereby I can deliver you my product under certain terms and conditions, I am going to do it. So it is going to happen whether the Sisk bill is passed or not. We are simply saying where there is advance

contracting that the producers of that commodity ought to have the right if they decide to get together to have adequate bargaining power.

Mr. LINK. Thank you, Mr. Chairman.

Mr. FOLEY. Thank you, Mr. Link.

Thank you, Mr. Datt and Mr. Lauterbach.

The Chair just wishes to say to the other witness that although Mr. Datt and Mr. Lauterbach were limited, as others were, to the 5-minute rule on presentation, the reason the Chair has felt it appropriate that there be extended questioning of these witnesses is that they do represent the proponents of the legislation appearing in these 2 days of hearings. The Chair may have to exercise a little caution as far as the remaining time is concerned, but it seemed to me that with Mr. Lauterbach and Mr. Datt representing the proponents, the committee members should have and it was appropriate to have more extended questioning of them than perhaps would be possible with other witnesses.

Mr. DENHOLM. Mr. Chairman, will time permit one last question?

Mr. FOLEY. Yes.

Mr. DENHOLM. Thank you very much. I notice the chamber of commerce is opposed to the bill. What do you say to your members who belong to the chamber of commerce?

Mr. DATT. We simply suggest that they go out and change the chamber of commerce's position.

Mr. DENHOLM. Thank you.

Mr. DATT. May I make one final comment?

Mr. FOLEY. Yes.

Mr. DATT. That on behalf of Mr. Lauterbach and the Farm Bureau, we appreciate the opportunity to appear here this morning. We have devoted, as you know, considerable time and effort in terms of this legislation. We are sincere in our attempt to try to get legislation that we feel will improve the bargaining power of farmers. And we appreciate the time and effort that the committee has put into trying to develop adequate legislation and we are still very hopeful that there will be some action taken before this session is over.

Mr. FOLEY. I know all the members of the subcommittee understand and appreciate the tremendous interest and effort that has gone into the support of this legislation and the efforts to perfect it by the American Farm Bureau Federation. We in turn appreciate your constant effort to cooperate with the subcommittee and the effort to make a determination on the bills before us.

Again, the Chair regrets that it is necessary to impose certain time limitations because of the limited characteristic of these hearings and all the witnesses and the members have been extremely cooperative in that. The Chair wishes to express his appreciation.

The House is going into session at this moment for the purpose of receiving the U.S. Olympic Team. The Chair is going to forego that pleasure himself and we will conclude the hearings as scheduled.

The next witness will be Mr. E. Linwood Tipton, representing the Milk Industry Foundation, the International Association of Ice Cream Manufacturers, and the Evaporated Milk Association, all of Washington, D.C.

Mr. Tipton, we are very happy to see you once more.

STATEMENT OF E. LINWOOD TIPTON, REPRESENTING MILK INDUSTRY FOUNDATION, INTERNATIONAL ASSOCIATION OF ICE CREAM MANUFACTURERS, AND EVAPORATED MILK ASSOCIATION

Mr. TIPTON. Thank you, Mr. Chairman, members of the committee. My name is E. Linwood Tipton. I am appearing on behalf of the Milk Industry Foundation, the International Association of Ice Cream Manufacturers, and the Evaporated Milk Association. These are three separate trade associations representing fluid milk processors and distributors and manufacturers of frozen desserts and evaporated milk.

We previously testified in opposition to H.R. 7597 and continue to oppose H.R. 14987 as it has been revised. The subcommittee revisions do not really correct the major difficiencies. In fact, we do not believe the bill can be perfected because it is conceptually wrong.

The amendments in no way meet the arguments against giving one sector of the economy, farmers, monopoly control of supplies, thereby enabling them to set their own prices virtually free from antitrust restraints and with the sanction of the Congress. This in our opinion is is not in the public interest.

Secondly, the amended bill will still not solve the problem, which is increasingly identifiable as the lack of an adequate income to the smaller farmers—say those who have sales of less than $10,000 per farm. Over 60 percent of the total number of farms are in this category but as a group they would receive only about 10 percent of the additional money generated by higher prices. Large commercial farmers will receive by far the greatest benefits of higher prices. Twenty percent of the farms produce nearly 75 percent of the cash farm sales.

The proposed addition at the end of section 101 is an empty gesture in view of the other provisions which from a real and practical standpoint limit a handler's ability to do business except with a qualified bargain association selected from historical suppliers. What are the rights of independent producers? How are they protected? The amended bill gives no assurance that a handler will be permitted to continue to bargain with independent producers and purchase products from them.

The proposed new paragraph (d) of section 105, would create substantial difficulties in the procurement of milk supplies. Frequently, milk supplies surplus to one area move to markets throughout the United States.

Since milk is highly perishable, it is impossible to store significant supplies for future processing or for manufacturing of ice cream or evaporated milk. Therefore, supplies must be available daily. If a bargaining unit is precluded from selling milk in a geographical area where it has not previously sold not only does the amendment impose another anticompetitive feature but could cause serious shortages in some markets.

The amendments to section 106(a) are also inadequate. "Good faith" bargaining is not yet defined, nor is the additional requirement of bargaining for a "reasonable period" of time defined. There are also no provisions to compel delivery of supplies during a period of

"good faith" bargaining. It would also be necessary to require delivery of supplies for a reasonable period after negotiations which did not result in an agreement are completed to allow the handler to negotiate with others. Otherwise, a handler who was precluded from negotiating with others while bargaining with his historical supplier could be without a supply of milk until negotiations could be completed with another supplier. With a commodity such as milk which is not storable, a break of 1 day in the continuity of delivery can be disastrous.

The amendment limiting the application of the bill to only those products sold under contract would in fact impose very little if any restraint on its coverage. Virtually all milk is sold by some form of contract.

In fact our counsel informs me that a sale is a contract by definition. Often milk cooperatives notify milk processors of the price to be charged after a specified date. The notification usually states that acceptance of milk after the date indicated constitutes agreement to the new terms. The obvious and important question is "What is meant by sales under contract?"

The new section 106(c) is still quite unworkable. Frequently, a handler may purchase supplies from several groups of producers. However, section 106(c) appears to limit the handler to negotiating with only one. How that one is to be determined is not specified.

None of the amendments include a definition of a handler. Is each plant of a company to be treated as a spearate handler? What if a company with three plants obtained supplies at two of its plants from cooperative A and at one plant from cooperative B and both receive certification as qualified bargaining associations? Must it bargain with A at the plants previously supplied by A and with B at the plant serviced by B? What if cooperative A stands ready to supply all of the handler's needs at all plants but B cannot? What if both A and B can supply all needs at all locations—can the handler bargain with both? What if the handler received half of his supplies from independent producers? It seems clear that the proposed amendments are not adequate to distinguish who may bargain with whom and when.

The new amendment to section 106(d) is also unworkable in the case of milk. Evaporated milk and ice cream plants frequently purchase milk which is surplus to a market's bottling milk requirements. Sometimes, this purchase of the additional fluctuating amounts is over and above a rather fixed or regular supply, the price of which could be set by a bargaining association under the terms of H.R. 14987. These surplus supplies may be available during certain times of the year and not at others. They may be available on certain days and not on others. The plants serve to balance daily milk production and demand. The prices paid for such milk depend on a multitude of variants. Often the handling of such milk is a convenience to the producer cooperative, saving them the necessity of the added capital investment in facilities.

Depending on the market factors involved, the prices paid for such milk may exceed or be below a price set by a bargaining unit. It appears that section 106(d) ignores the practical everyday marketing factors which may affect prices. This would create insurmountable problems.

Frequently, fluid milk processors are forced to buy "spot milk" to fill out their requirements. This is often priced higher than a regular or continuous supply. However, section 106(d) could be interpreted to mean that if a handler purchased even a tank load of such milk at a higher price, he would have to raise the price on all other milk purchased from the bargaining association.

The bargaining power in the milk industry is now clearly in the hands of very large producer cooperatives, many of which in the past few years have demanded prices for their milk without bargaining. There are currently pending several legal suits alleging various violations of the antitrust laws. We strongly feel there should be no further exemptions afforded cooperatives unilaterally without the same immunity offered corporations not organized under the cooperative laws. Therefore, we believe section 114 should have been deleted in its entirety. In fact, if there is any need for bargaining legislation in the dairy industry, it is to restore a reasonable balance to milk processors and manufacturers. In order to effectively bargain, they would have to join together. Therefore, the last sentence in section 114 should specifically provide such an opportunity free from the sanctions of antitrust laws instead of prohibit it.

In summary, we do not regard the amendments as substantially altering the bill, and we remain opposed to it in its entirety.

Mr. FOLEY. Thank you, Mr. Tipton.

Any questions of Mr. Tipton?

Mr. SISK. No questions.

Mr. FINDLEY. No questions, thank you.

Mr. FOLEY. Mr. Tipton, before you leave, the situation in the milk industry is, it seems to me, different from other areas of agricultural marketing because of the existence of rather highly developed Federal Milk Marketing Areas under the Milk Marketing Acts. I take it that your association is testifying here against the enactment of this bill in any form. If the committee were to go forward with some features of the bill, some form of it, would the industry favor just a wholesale exemption?

Mr. TIPTON. I am sure that this would be preferred to the bill, yes.

Mr. FOLEY. Do you see any particular complications in the implementation of this bill as presently considered, H.R. 14987, in areas where milk marketing acts are implemented?

Mr. TIPTON. Yes; I see substantial problems, substantial conflicts.

Mr. FOLEY. We also, as you know, have specific milk marketing and bargaining amendments before the committee and we limited our testimony in these 2 days to the questions involved in Mr. Sisk's two bills. But you are on the record, I recall, on the so-called Dairymans Bargaining Act from the last Congress?

Mr. TIPTON. Yes; we were opposed to that bill also.

Mr. FOLEY. And your position has not changed?

Mr. TIPTON. No; it has not.

Mr. FOLEY. Thank you, Mr. Tipton.

Mr. TIPTON. Thank you.

Mr. FOLEY. The next witness will be Mr. Oakley M. Ray, president of the American Feed Manufacturers Association, Arlington, Va.

STATEMENT OF OAKLEY M. RAY, PRESIDENT, AMERICAN FEED MANUFACTURERS ASSOCIATION, ARLINGTON, VA.

Mr. RAY. Thank you very much, Mr. Chairman, members of the committee.

My name is Oakley M. Ray. I am president of the American Feed Manufacturers Association located at 1701 North Fort Myer Drive, Arlington, Va. Members of the association produce more than 70 percent of the feed which is sold by primary feed manufacturers.

Many agricultural producers are caught in a difficult cost-price squeeze, and we feel strongly that efficient producers are entitled to a reasonable profit. Certainly, feed manufacturing cannot be profitable if our customers' feeding operations are not profitable.

In your earlier hearings we testified in strong opposition to H.R. 7597. We spelled out in considerable detail the reasons the proposed legislation would be a giant step in the wrong direction for producers, consumers, and processors. As you requested, today's statement will consider changes which have been made in the bill.

The title of the revised bill and section 106(a) would confine the application of the bargaining requirements of the legislation to agricultural commodities produced or sold under contract. In the case of products where the vast majority of the industry's output is produced or sold under contract, H.R. 14987 would provide authority to permit producers to join together into a monopoly which could control nearly 100 percent of the Nation's supply of those products. Then they would be permitted to force individual marketing and processing firms (who would not be permitted to join together) to bargain concerning price and other contract terms.

For many years the Capper-Volstead Act has permitted producers to join together to process and market their products, establish their selling prices, and otherwise regulate the marketing of their products without being in violation of the antitrust laws. In view of this preferential position which producers have available but have not seen fit to exercise in many cases, we believe that it is not in the public interest to pass legislation which would compel handlers to deal with bargaining associations which would not need such power but for their inability to command sufficient support from producers.

Section 101 states that the legislation is not intended "to interfere with, hinder, or prevent the free exercise by a producer of the right not to belong to an association of producers organized for any purpose set forth in this Act." The revised bill would still have the potential of forcing producers to join bargaining associations in order to be able to stay in business. If processors in a given community signed full supply agreements with one or more bargaining associations under H.R. 14987, local producers who wanted to remain independent would be forced to join a bargaining association to have a market for their products.

If a handler has been doing business with a producer for a number of years and both the handler and the producer wish to continue to do business together, they should be permitted to do so. No legislation should be passed which would force a handler to bargain whether he wants to or not and would force him in effect to "lock

out" customers who want to do business with him while he is compelled to bargain with an association. Many agricultural products are highly perishable, and the year's output is marketed in a very short period of time. Thus, if it so desired, a bargaining association under this legislation could bring extreme pressure to bear on both a processor and his independent customers by forcing the processor to bargain at harvest time.

Section 106(d) provides that if a handler purchases a product from other producers under terms more favorable to such producers than those terms negotiated with a qualified bargaining association for such product, he shall offer the same terms to a qualified bargaining association. This provision appears to be completely impractical. It gives no consideration to many factors affecting prices including when and where the transactions take place. As an example, if a handler who contracted for broilers in both the west coast States and the Southeast were forced to pay as much in the Southeast as would be required on the west coast, the profit margin for southeastern producers would be so wide that they would soon want to multiply their output. Consumers would buy a smaller quantity at the higher price and major surpluses would occur.

If section 106(d) required a handler to pay a qualified association the highest price paid any producer during an entire season, costs to handlers and to consumers would be sharply increased. Market prices often change substantially during the year with changes in supply and demand. If the producer of apples for example who sold during the peak harvest season had to be paid as much per bushel as the producer who stored and sold during the "off-season," consumer prices would be sharply higher during the harvest season and consumption of apples would decrease. Section 106(d) would appear to be unworkable due to its lack of recognition of legitimate price differences which occur regularly due to many different factors.

As you know, both the Department of Agriculture and the Department of Justice have notified Chairman Poage of major changes which they feel should be made in H.R. 14987. The recommendations of the Department of Justice are lengthy and complex, and we respectfully suggest that it would be desirable to ask a representative of Justice to testify before the subcommittee in a public hearing to discuss the views of the Department in detail.

The revised bill appears to have made no progress over and above H.R. 7597 in solving the following which we believe would be four major developments if this legislation should pass.

1. PRODUCTION AND/OR MARKETING CONTROLS

Compulsory bargaining associations would have to establish prices above normal market levels to be considered successful by their members. Consumers would buy less of a given product when the price increased. The price increase would encourage additional production not justified by market demand. Production and/or marketing controls would be essential. Do most producers recognize that strict production or marketing controls would be necessary to achieve and maintain higher prices through bargaining?

2. MAJOR EXPORT-IMPORT PROBLEMS

Compulsory bargaining associations would have to establish prices higher than world levels to be considered successful by their members. Our customers abroad will not pay more for U.S. products than for the same products produced in other countries. Wouldn't this result in a sharp cutback in our agricultural exports which last year totaled about $8 billion and utilized the production of almost one of every four harvested acres?

Wouldn't higher prices for products which we export stimulate production in other parts of the world?

Wouldn't higher U.S. food and fiber prices cause imports to flow in and take part of our domestic market?

3. MAJORITY OF "BENEFITS" TO ONLY 8 PERCENT OF FARMERS

Only 8 percent of U.S. farmers had annual sales of $40,000 and up in 1970, but they accounted for 53 percent of the cash receipts of all farmers, according to the USDA. Sixty-two percent of the farmers had annual sales of less than $10,000 and accounted for only 10 percent of all cash receipts. If compulsory bargaining did accomplish its objective of forcing agricultural prices to artifically high levels, more than half of the "benefits" would go to the 8 percent of farmers who probably need the help the least. Only 10 percent of the "benefits" would go to the 62 percent who are at the bottom of the income ladder.

4. COOPERATIVES AND BARGAINING

This legislation would grant marketing and processing cooperatives a major economic advantage by providing an exemption so that they could continue to deal directly and individually with producers, while their competitors in the same industry would be forced to bargain with a third party representing producers.

Despite this exemption, many marketing and processing cooperatives likely would eventually be by-passed if Agriculture shifted to a bargining method of doing business. If the bargaining association(s) certified by the proposed Bargaining Board gained control of most of the supply of a commodity in a given area and demanded artificially high prices, members of existing co-ops would want to sell through the bargaining association. Both cooperatives and private processors would be at the mercy of the association.

Also, if the bargaining association(s) gained control of most of the supply, there is a strong possiblitity that its members eventually would decide to do their own processing.

CONCLUDING COMMENTS

We believe that the basic objections to H.R. 7597 have not been answered by H.R. 14987.

We believe that every producer should have the right to join a bargaining association if he so desires. We also believe that an agricultural handler should have the right to do business with bargaining associations of producers if he so desires. Some handlers have conducted business in this manner for many years. However, we feel

strongly that this should be a voluntary process. No handler should be forced to do business with a given supplier if he does not wish to do so, and no producer should be denied the right to deal individually at any time with any handler he chooses.

Therefore, we urge you to reject this proposed legislation which we feel would be contrary to the best interest of producers over the long run, as well as opposed to the best interest of consumers and processing firms.

Thank you for the opportunity to present this statement.

Mr. SISK (presiding). Thank you very much, Mr. Ray.

The next witness will be Mr. Edward Williams, counsel to the American Frozen Food Institute.

STATEMENT OF EDWARD WILLIAMS, COUNSEL, AMERICAN FROZEN FOOD INSTITUTE

Mr. WILLIAMS. Mr. Chairman, my name is Edward Brown Williams. I appear on behalf of the American Frozen Food Institute. The members of the institute freeze 85 percent or more of the fruits and vegetables marketed in the United States and a substantial proportion of other frozen foods. In our testimony last September on H.R. 7547 we tried to make it clear that our basic opposition to such legislation is its coercive character, which would extend both to producers and processors, and would result in monopolistic control by bargaining associations over the marketing of farm produce. This control would be achieved by forcing producers to join bargaining associations whether they want to join or not. The Farm Bureau, as we have seen here today, refuses to recognize this, despite the plain content and effect of the bill.

This effect of H.R. 7597 has not been materially changed in the revised bill, 14987.

The processor would still be obligated by section 106, as revised, to bargain with any association qualified by the Bargaining Board. He would still be prohibited from negotiating with other producers while negotiating with the qualified association; and he would still be unable to purchase product from others on terms more favorable than those offered the association, regardless of the reason. Insofar as full supply contracts are concerned, Mr. Lauterbach stated that it depends on how they were done. Well, when I see the combination of the exemptions in section 114 and the provisions relating to bargaining in section 106, it seems to me that they could be done in any way under this bill.

The prohibition against negotiating with other producers while dealing with a qualified association tends, not only to monopolize the relevant market, but to restrain trade, by restricting the processor's freedom to bargain with other producers. New section 106(d) would require that, when a handler purchases from others upon terms more favorable than those negotiated with the association he must offer the same terms to the association. This provision is anticompetitive, would probably cause increased prices and it takes no account of the circumstances or the reason for the more favorable terms offered to others.

Under such conditions the economic coercion of producers to join the association seems evident, despite the disclaimer in section 101.

We note also that under new subsection (c) of section 106, the prohibition against negotiating with other producers is not, as it was under H.R. 7597, restricted to situations where the qualified association is able to supply a substantial portion of the processor's requirements. The revision increases the likelihood that the processor may never be able to negotiate with nonmembers, who would, therefore, be compelled to join a qualified association as a matter of economic survival.

The revised bill contains no prohibition against negotiation by a qualified association with more than one processor at the same time. Yet, if the association is able to supply only sufficient produce to meet the needs of one processor it is not apparent how it could bargain in good faith with more than one of them. This illustrates the essential unfairness of the proposal.

We emphasized, in our testimony on H.R. 7597, that, although the crop may be seasonal, the process of negotiating a contract and preparing for the next season's planting, is virtually a year-round process. The revision of section 106(a) to define "bargaining" in terms of negotiating for a "reasonable period of time" is not very meaningful in such a context. Processors must be permitted to do their fall and winter planning with customers of their own choosing. The injection of the concept of a "reasonable time" for negotiations is largely irrelevant.

Without such planning, processors will have no way to estimate the the tonnage they may be called upon to produce, the planting schedules they will follow, the assistance they can expect from handlers or, indeed, for which handler or handlers, if any, they will be producing; for until bargaining has been completed as required by the bill, it is evident that planning cannot be seriously undertaken.

Under the bill as revised, handlers will still have no assurance of performance by the anonymous pool of member producers, except the fact that the Bargaining Board has qualified the association. We could not derive any security from such a qualification because it is obvious that no Board will be competent to determine whether any particular group of producers will be able to meet the differing standards of processors for grower performance in the vital matters of quantity and quality of crop supply. This amounts, indirectly, to a forced selection of the processor's customers by a government agency, the Bargaining Board, and the association.

Collective bargaining between labor unions and industry is aimed at the establishment of agreed terms and conditions of work. The bargaining which would be forced by H.R. 14987 is aimed at the establishment of agreed terms and conditions of sale of commodities produced by farmers who are members of associations deemed qualified by the Bargaining Board under the very loose standards set forth in section 105 of the bill. To require, in effect, by statute that a handler deal with the agents of certain would-be sellers is, indeed, a novel concept of marketing and scarcely resembles a requirement that an industrial firm deal with the agent of an employee whom the firm itself has hired.

Today the vast majority of producers are not members of bargaining associations and the associations have been unable to persuade them to join on a voluntary basis. It can be seen, therefore, that instead of being a bill designed to benefit or protect the majority of farmers, H.R. 14987, as revised, in fact would discriminate against that majority in favor of a minority who are members of such associations. It would present the majority with the choice of risking serious danger of great economic damage or of joining a bargaining association. This then, is not a bill for farmers.

Finally, the great majority of produce for freezing is grown under contract with processors. The rest, or virtually all of it, is very likely sold under contract. Consequently, the provision of section 106(a) that the bill applies only to bargaining relating to commodities produced or sold under contract is not very meaningful to freezers.

Thank you, Mr. Chairman.

Mr. SISK. Thank you, Mr. Williams.

I might say to the gentleman from Illinois, this is Mr. Edward Williams of the American Frozen Food Institute. We did not have copies of any statements that he had.

Does the gentleman have any questions?

Mr. FINDLEY. I do not, thank you.

Mr. SISK. Thank you, Mr. Williams.

The next witness is Mr. E. Clinton Stokes of the U.S. Chamber of Commerce, here in Washington.

STATEMENT OF E. CLINTON STOKES FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. STOKES. I am E. Clinton Stokes, senior associate, Agribusiness and Rural Affairs, Community and Regional Development Group, Chamber of Commerce of the United States. My work area includes the multiple industry of agriculture and the related field of rural and regional development. In this capacity, I serve as committee executive of the Agribusiness and Rural Affairs Committee of the National Chamber.

We appreciate, Mr. Chairman, your decision to schedule additional hearings on H.R. 14987 before attempting to recommend a position on a bill which would chart a new and highly controversial course for domestic trade negotiations. H.R. 14987 incorporates a number of amendments to the original bill, H.R. 7597. Since these amendments are intended to be in response to the many strong objections raised to the original bill, the revised bill deserves thorough study by both industry and governmental bodies before Congress is asked to act on such a revolutionary proposal.

The National Chamber opposed the passage of H.R. 7597 because it would:

1. Require handlers (including processors) to negotiate with "qualified" producer bargaining associations;
2. Prohibit handlers from negotiating with other producers while negotiating with a bargaining association;
3. Prohibit handlers from buying products from other producers under more favorable terms than negotiated with bargaining associations;

4. Provide further exemptions for producer bargaining associations under the anti-trust laws;

5. Establish a National Agricultural Bargaining Board with extensive powers;

6. Expand marketing order authority to permit development of supply controls for any raw agricultural commodity.

H.R. 14987 retains each of these objectionable provisions. Although modified in some respects, they remain unacceptable to the National Chamber. I will not reiterate the details of our previous objections. My comments are directed to the amendments in H.R. 14987, which are ostensibly intended to overcome some of these objections.

1. REQUIRE HANDLERS TO NEGOTIATE WITH QUALIFIED ASSOCIATIONS OF PRODUCERS

The amendment makes this provision even stronger by virtue of the new section 106(e), which specifies that a failure to bargain in good faith constitutes a "violation of this act." The end result is compulsory negotiations in the marketing of farm products. This is contrary to the competitive marketing system which contributed to the phenomenal growth and strength of American agriculture.

The preamble and section 106(a) were amended to make the compulsory bargaining features applicable only to commodities "produced or sold under contract." This amendment will insure the inclusion of broilers under the provisions of title I. The intent may also be to exclude some commodities. It is not clear as to what farm products are not produced or sold without some kind of a contractual arrangement.

2. PROHIBIT HANDLER NEGOTIATIONS WITH OTHER PRODUCERS DURING NEGOTIATIONS WITH QUALIFIED BARGAINING ASSOCIATIONS

Section 106(c) of H.R. 14987 contains revised language, but provides essentially the same prohibition as under section 106(d) of the original bill with minor exception. The provision limiting its applications to associations which are able to "supply all or a substantial portion" of the handler's requirements has been removed. This would do little, if anything, to lessen the handler's dependence on bargaining associations which are in a position to supply a maximum of the handler's requirements. This is because the other restrictions limit the alternative sources of supplies for the handler.

3. PROHIBIT HANDLERS FROM BUYING FROM OTHER PRODUCERS UNDER MORE FAVORABLE TERMS

Whereas H.R. 7597 would prohibit handlers from buying from other producers under terms more favorable to the producer than those terms negotiated with the bargaining associations, section 106(d) of H.R. 14987 would permit the handlers to do this—with a countervailing proviso. The handlers must, in turn, offer the same terms to the bargaining associations. This is without regard to the differences in time of negotiations or changing conditions with respect to supply, product quality, etc. The effect of this provision would be to dis-

courage handlers from negotiating with other than the qualified bargaining associations, and to encourage contracting for a maximum of the handler's supply requirements during the period of negotiations determined by the Bargaining Board.

The other effect of this provision would be to negate the amendment to section 101, which purports to protect the right of a producer not to belong to a bargaining association. If one provision discourages the handlers from negotiating with independent producers, then these producers are, in reality, not free to exercise the right not to join an association.

4. PROVIDES FURTHER EXEMPTIONS FOR PRODUCER BARGAINING ASSOCIATIONS UNDER THE ANTITRUST LAWS

H.R. 14987 would enable producer-owned cooperative bargaining associations to engage in many activities with immunity from the antitrust laws. According to the Justice Department, they could:

Prevent a handler from negotiating with independent producers while negotiating with an association;

Prevent a handler from negotiating with associations which have not "qualified" while the handler is negotiating with a "qualified" association;

Prevent a handler from negotiating with an association with which he has not done business in the 2 preceding years, while the handler is negotiating with an association which which he has done business in the same period;

Prevent a handler from obtaining the benefits of price competition by requiring him to offer a "qualified" association the same prices as the handler pays other producers regardless of market conditions or other circumstances;

Restrain new entry into various farm product lines by producers by means of the requirement for compulsory bargaining with those already producing that product; and

Combine through vastly expanded "marketing order" authority to limit the production of agriculture commodities.

5. ESTABLISHES A NATIONAL AGRICULTURAL BARGAINING BOARD WITH EXTENSIVE POWERS

H.R. 14987 does nothing to diminish the broad power to control the marketing of agricultural products. It only increases the number of board members from three to five. Our objections to this concentration of power were stated during hearings on H.R. 7597 before this committee.

6. EXPAND MARKET ORDER AUTHORITY TO PERMIT DEVELOPMENT OF SUPPLY CONTROLS FOR ANY RAW AGRICULTURAL COMMODITY (TITLE III)

H.R. 14987 does not amend this title. The chamber is opposed to nationwide marketing orders which could be approved by a mere majority of producers without representation by handlers or approval by Congress. It constitutes another exemption under the antitrust

laws. The legislation would permit restraints on production and marketing and thus, interfere with competitive market forces.

The real issue, it seems to me, is not whether farmers should be free to organize and market or purchase their products collectively without further violation under the antitrust laws. They have had and have used this authority for many years. Witness the phenomenal growth of farmer cooperatives. Many of these producer associations already serve effectively as bargaining agents for their members in contracting with processors and other handlers. Others have integrated marketing operations including the processing and distributing functions. Individual producers are free to deal directly with the handlers, or market through their cooperative associations. Likewise, handlers are free to contract directly with individual producers, or negotiate with cooperative bargaining associations. Many handlers use both methods.

Voluntary negotiations between handlers and producer bargaining associations will increase to the extent that such associations can provide advantages to both their members and to the handlers. The determining factor is mutual interest. If they can meet all of the food processor's product and delivery specifications, and agree on more favorable price terms than the processor could realize in dealing directly with each individual producer, the processor will find it advantageous to negotiate with them. Unless the associations can provide these services better and/or more economically, they offer no advantage to their members of the consumers under our competitive market system.

There may be opportunities for encouraging greater understanding of marketing practices and product specification through group communications. But this can be accomplished far more successfully without legislation. H.R. 14987 would single out one marketing practice, mandate its use and, in effect, eliminate alternative marketing practices which have been proven under highly competitive market conditions. Such legal actions would more likely retard the achievement of the full potential of voluntary bargaining with producer associations which exist because these associations provide a needed service better or more economically than otherwise available.

For these reasons, the National Chamber urges this committee to oppose further consideration of H.R. 14987.

Mr. FOLEY (presiding). Thank you very much, Mr. Stokes. We are very happy to have the further statement of the U.S. Chamber of Commerce on this legislation.

Any questions of Mr. Stokes?

Mr. SISK. I have nothing.

Mr. FOLEY. Mr. Findley?

Mr. FINDLEY. Mr. Stokes, on page 3, you cite your concern about the provision against handlers buying from other producers under more favorable terms. You point out that this would tend to discourage handlers from negotiating with other than the qualified bargaining associations. That, I imagine, would probably be true. But what about the standpoint of the firm? The handler, who negotiates an agreement with a qualified bargaining association may later, because of marketing forces, have a need for products that the association was not able to supply. He then makes a more favorable

agreement for additional supply. Can you indicate how this might create problems for the handler?

Mr. STOKES. In the first place, I think he would run a risk as to whether there would be any more supplies available at a later date since he could not contract with other sources during the primary season for contracting.

In the second place, if there were supplies available at the later date and he found an individual producer, for example, that he could contract with, he probably would not be the only one in this predicament. He would therefore have to offer the producer a better price in order to get the commodity.

Furthermore, he may find that the individual producer had better quality product which would command a better price. But by paying the producer a higher price, he would then, under the provisions of this bill, have to go back and pay the amount of the increase to the bargaining association with which he had previously contracted.

Mr. FINDLEY. Even though the product that he had purchased through the bargaining association might well have been disposed of, sold to another firm, and the transaction been completed?

Mr. STOKES. That is right.

Mr. FINDLEY. Is that a reasonable prospect? Could it happen, do you think?

Mr. STOKES. Oh, I would think very much that this could happen because of the, as mentioned by the previous witness here, the shortness of the season and the rather relatively rapid changes in prices and the perishability of the commodities involved.

Mr. FINDLEY. Also on page 3—and this is the only other question I have, Mr. Chairman—you mention it would prevent a handler from negotiating with associations which have not qualified while the handler is negotiating with a qualified association. If, for example, a handler were in the process of negotiating with a nonqualified group and a qualified association informed him of its desire to negotiate, under the terms of this bill, would the handler, by necessity, have to cut off negotiations with a nonqualified association in order to take up the question with the qualified association?

Mr. STOKES. As I interpret the language of the bill, it would, because one of the provisions that makes the association qualified is having a prior course of dealings. In the event that he was already dealing with an association that was not qualified, he could not continue to deal with that association because of his obligation to give priority to negotiating in "good faith" with the qualified bargaining association.

Mr. FINDLEY. Congressmen get a lot of mail about legislation. I have been surprised that there really has not been much mail on this particular bill. If you feel free to disclose your mail, I would be curious to know what the Chamber of Commerce has heard about the bill, pro and con. Do you have any summation you can give us?

Mr. STOKES. We have not had a lot of mail on this issue. Our processor and handler members inquire frequently about the status of this legislation. Of course, they feel very strongly opposed to it. We have heard from a very few of our producer members, some in favor and some opposed to the bill. We have some producers on our Agribusiness and Rural Affairs Committee, which strongly recommended our policy position on this issue. In fact, a staff member of one of the State

Farm Bureaus is on our committee, where this subject is discussed very frankly and openly.

One of our previous testimony witnesses was from Montana and his entire customer relations is with producers, particularly in the wheat country. He said that there was not one producer known to him that was for this legislation.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. FOLEY. If there are no further questions of Mr. Stokes, thank you very much, sir.

Mr. STOKES. Thank you, sir.

Mr. FOLEY. The final witness scheduled for appearance before the subcommittee is Mr. William F. Brooks, president and general counsel of the National Grain Trade Council, in behalf of the council.

STATEMENT OF WILLIAM F. BROOKS, PRESIDENT AND GENERAL COUNSEL, NATIONAL GRAIN TRADE COUNCIL, WASHINGTON, D.C.

Mr. BROOKS. Thank you, Mr. Chairman. I think my statement is less than 5 minutes, so I will read it if I may.

We appreciate this opportunity to submit our views on H.R. 14987. We understand that the subcommittee is considering this bill in lieu of H.R. 7597 and related bills on which you held hearings during September and October of last year.

We recorded our position on these proposals during that time. They are set out commencing at page 393 of the printed hearing record and continue through page 395.

Because our views on H.R. 14987 square with our views and positions submitted to the subcommittee last fall and to save your time, we refer you to our statement of record and request that you study that statement as you deliberate on H.R. 14987.

The council opposes the enactment of H.R. 14987 for the same reasons we opposed the enactment of H.R. 348, H.R. 7597, and related bills.

We believe that H.R. 14987 does not eliminate the defects of H.R. 7597. It is true that H.R. 14987 differs from its predecessor. We believe that these differences are not substantial; that these differences do not eliminate the vices we believe were contained in H.R. 7597, and that on balance, H.R. 14987, unless substantially amended, should not be approved by your subcommittee.

Since your hearings last fall, the world's demand for our nationally produced grains and oil seeds has increased dramatically. New foreign buyers have bought and continue to buy these storeable, nonperishable crops whose prices could not be realistically established by U.S. producers and handlers alone. These commodities are actively traded every day at cash grain markets throughout the United States and many of them are actively traded as regulated commodities at regulated future contract markets.

Not until April or May of this year was there any general awareness that Russia and other countries were interested in purchasing U.S. produced grains and oil seeds. Not until July was there any solid information on the scope of foreign demands for these commodities. In response to these demands, the market prices for these commodities

have risen sharply. Hopefully, farmers who raise these commodities will benefit from these increases. Actually, many handlers of these commodities, in purchasing and assembling them, have probably had dealings with producers with whom they have had no prior course of dealing. And this purchasing flexibility is essential if the Nation's production of grains and oil seeds is to be moved from the area of production to consumption here and abroad.

H.R. 14987, particularly section 106, would eliminate this essential flexibility needed by both sellers and buyers to move nationally produced commodities from all producing areas into consumption or for assembly for export. To respond to the recent unanticipated export demands, a response that is all to the benefit of this Nation's agriculture and the Nation's economy, will be difficult under optimum conditions. To respond, were H.R. 14987 in effect and some few or many or all grain handlers operating under negotiated sale contracts, as provided in H.R. 14987, would in our judgment be impossible.

Thank you, Mr. Chairman.

Mr. FOLEY. Thank you, Mr. Brooks.

Questions of Mr. Brooks?

Mr. SISK. No questions.

Mr. FOLEY. Mr. Findley?

Mr. FINDLEY. Mr. Brooks, would you elaborate a little bit on that last sentence? I too have been gratified as well as astonished at the increase in grain sales to the Soviet Union. I hope this trend will continue. There are some pretty good signs that it will. You say that if grain handlers operated under negotiated sales contracts, this would make it difficult for American agriculture to respond adequately to the unexpected future in foreign sales.

Mr. BROOKS. Yes, sir.

Mr. FINDLEY. Is that a fair summary of your position?

Mr. BROOKS. That is correct.

Mr. FINDLEY. Can you elaborate on that and explain why you feel that would be the case?

Mr. BROOKS. Well, the business of assembling grain for even domestic use is quite difficult. You do not buy grain and handle it as if it were a piece of furniture. This is particularly difficult when you are trying to assemble grain for cargo movement. You get an unforeseen demand coming into the market and you have to go to places where perhaps you had not gone before—areas or dealers or in areas where you were not operating. Now, if you have a contract, we will say, with a group of Illinois wheat producers under which you are buying your supplies and all of a sudden find that you are going to have to go outside of the State of Illinois and the market has risen, you have hedged what you would anticipate to be your needs, but this additional need comes in; you have to go out and pay farmers, we will say, in Nebraska a price over and above the contract price for Illinois farmers.

This, then, as I read the statute or the proposed statute would require you to go back to your Illinois farmers and revise your sales contract or your purchase contract to make it all equal. The opportunity to submit bids to foreign buyers would be lost because you would not know actually what the cost of acquisition would be, since

you would have to figure into that cost the added cost for commodities already purchased earlier under contract.

Mr. FINDLEY. This year would be a good case history of that situation, would it not?

Mr. BROOKS. In my judgment, sir, it would be.

Mr. FINDLEY. Certainly as it applies to wheat, because the harvest is pretty well finished now and yet the price of wheat is rising rather substantially.

Mr. BROOKS. Yes, sir.

Mr. FINDLEY. So this would make it difficult for the merchants that are dealing with the Soviet Union to get supplies.

Mr. BROOKS. It will make it difficult, also, for the merchants that are accumulating stocks back in the country for these export outfits, which do not have too many country establishments—establishments located in the country.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. FOLEY. Thank you very much, Mr. Brooks. We are happy to have you testify.

Mr. BROOKS. In connection with that Russian sale, I understand the first salesman to approach the Government was Mr. Findley, some year and a half ago.

Mr. FINDLEY. Thanks for the credit.

Mr. FOLEY. Mr. Findley is always in the forefront of every good event.

Mr. FINDLEY. I am glad that is in the record.

Mr. FOLEY. The Chair again wishes to thank all the witnesses for their consideration and cooperation in these final hearings on H.R. 14987.

Without objection, the Chair would ask the approval of the subcommittee for inclusion in the record of several communications made to the Chair with reference to the pending legislation.

Without objection, it is so ordered.

(The communications referred to above follow:)

The following State and local Farm Bureaus have submitted telegrams and letters to the subcommittee urging passage of the Sisk bill, H.R. 14987:

TELEGRAMS

Lloyd Sommerville, president, Colorado Farm Bureau.
Elton R. Smith, president, Michigan Farm Bureau.
J. D. Hayes, president, Alabama Farm Bureau Federation.
C. C. Harris, president, DeKalb County Farm Bureau (Ala.).
Melford Warren, vice president, DeKalb County Farm Bureau (Ala.).
L. O. Bishop, president, Colbert County Farm Bureau (Ala.).
Walt Reese, executive secretary, Washington State Farm Bureau.
Bernard J. Harkness, president, Montana Farm Bureau Federation.
Board of Directors (38 members) Montgomery County Farm Bureau (Ala.).
George Doup, president, Indiana Farm Bureau Inc.
Harry S. Bell, president, South Carolina Farm Bureau.
Morris Bowman, president, Arkansas Farm Bureau Federation.
David Mann, president, Massachusetts Farm Bureau Federation.
Robert Lauderdale, president, Limestone County Farm Bureau (Ala.).
E. B. White, president, Morgan County Farm Bureau (Ala.).
Paul Nay, president, West Virginia Farm Bureau.
Walker County Farm Bureau (Ala.).
Allan Grant, president, California Farm Bureau Federation.
Ralph Robinson, president, Oregon Farm Bureau Federation.
C. Wm. Swank, executive vice president, Ohio Farm Bureau Federation.

John C. Lynn, executive vice president, Florida Farm Bureau Federation.
Arthur H. West, president, New Jersey Farm Bureau.
Carroll G. Wilson, president, Minnesota Farm Bureau Federation.
Oscar Olson, president, Charles Mix County Farm Bureau (S. Dak.).
E. E. Hardin, president, Pike County Farm Bureau (Ala.).
Benjamin Blackmore, president, Maine Farm Bureau Association.
B. C. Mangum, president, North Carolina Farm Bureau.
Robert B. Delano, president, Virginia Farm Bureau Federation.
Herbert F. Manig, executive vice president, Wyoming Farm Bureau Federation.
James D. Graugnard, president, Louisiana Farm Bureau Federation.
G. Willard Oakley, president, Maryland Farm Bureau.
O. Joseph Penuel, president, Delaware Farm Bureau.
Tuscaloosa County Farm Bureau (Ala.).
A. W. Langennegger, president, New Mexico Farm and Livestock Bureau.
Theron S. Merritt, Tripp County Farm Bureau (S. Dak.).

LETTERS

Walt Reese, executive secretary, Washington State Farm Bureau.
Donald Haldeman, president, Wisconsin Farm Bureau Federation.
John Junior Armstrong, president, Kansas Farm Bureau.
Mrs. Warren Scott, chairman, Kansas Farm Bureau Women.
Roland G. Nelson, president, Nebraska Farm Bureau Federation.
Louis F. Ison, president, Kentucky Farm Bureau Federation.
Richard Ekstrum, president, Brule County Farm Bureau (S. Dak.).

STATEMENT OF HON. TENO RONCALIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mr. Chairman, I appreciate the opportunity afforded me to appear today in order that I might express my support for increased bargaining power for the farmers of America.

It is an unmistakable fact of life today that the nation's farmers need more muscle in the market place, and I want to commend this Subcommittee, our colleague Congressman Sisk, and others who have engendered this serious consideration and debate. The efforts spent have been great, I know. While aware of the differences of opinion over specifics involved in this proposed legislation, I want to express my strong support for the principle involved. It is necessary to establish by Federal law a system to fill the gap now adversely affecting producers' power to organize and bargain, just as it is necessary to insure that handlers and processors will, in fact, bargain in good faith.

We are all, unfortunately, made aware daily of the continuing increase in food costs for the consumers. What far too many people fail to realize is that the family farmer has not shared to any extent in this increase. He needs real market influence if he is to survive.

Were I to add a caution on the measure before the Subcommittee, it would be simply to point out what I think is an important need—that is, to insure that farmers' efforts will not be hampered unduly by the creation of too many weak associations that might compete with each other.

There has been a great deal of talk, debate and consideration for this proposal and others akin to it, Mr. Chairman. Virtually everyone acquainted with the problems faced by our producers of food and fiber are of the opinion that something is sorely needed in order to give farmers a voice in the price-setting procedures which affect their livelihood. It is time to get down to specifics and provide the machinery by which farmers may yet have the chance to stay in business and gain a fairer share of our national income, rather than remain at the bottom of the economic heap, where they are constantly pictured as subsidy-takers when the facts are that the American farmer subsidizes others continually by boosting his own productivity without getting adequate return.

Bargaining under this Act would not, of course, supplant existing farm programs—at least not until there was considerable experience under the procedures. But it would go a long way, Mr. Chairman, toward putting producers on a more equal footing with those they must sell to. I know that the farmers in my own State of Wyoming need this leverage. Many of them have told me so. Today, their control over their own business is severely limited. Such factors as the weather

probably will always be beyond their power to influence. The farmer needs, at the least, the power to bargain effectively. Without it, his income is bound to lag behind our economy in general and more family farmers will pack up and leave the country, creating for this nation an even greater proliferation of problems.

STATEMENT OF MILLERS' NATIONAL FEDERATION

As requested by the Subcommittee, we will attempt to limit our comments to the changes made in H.R. 7579 and now reflected in H.R. 14987.

Our position can be summarized very simply by stating that none of the amendments minimizes our fundamental objections to the bill as outlined in our testimony on H.R. 7579. We said at that time that the bill "could make it virtually impossible for our industry to readily secure, on a competitive basis, its raw materials of the quality and quantity when needed." We referred to "the elimination of thousands of small, independent grain dealers" upon whom we rely. Our statement indicated that the bill would result in a "rigid, closed market system" for grains which would be as disadvantageous for producers as for handlers and consumers in the long run. Those comments are equally applicable to H.R. 14987.

With respect to the antitrust aspects of the bill, the Department of Justice, in its report of July 24, listed a number of "anticompetitive aspects of the bill" which, unless amended, would make the bill objectionable to the Department. The relatively minor changes made in the earlier version do not in any way lessen the dangerous effects of the antitrust exemption.

Most of the other changes in the bill are equally meaningless. We will comment on a few.

The title and section 106(a) refer to production or sales "under contract". Presumably, this was intended to be a limiting feature, but it is difficult to think of any commodity which is not sold under contract. Thus, virtually all commodities and transactions would be covered. If the intent was to cover commodities sold under advance contract only, the bill provides the triggering mechanism whereby all commodities will be sold under advance contract in the future.

The change in section 106(b) with regard to the time span to establish a prior course of dealing has no effect whatsoever on a very serious defect in that section. The words "produced by" create an impossible situation for millers and the National Agricultural Bargaining Board.

Most wheat is purchased by millers from major terminal elevators. Terminal operators assemble wheat from innumerable country elevators in all parts of the country or at least broad regions. It is the country elevator operator who generally buys from the grower.

Section 106(b) imposes on the Board the impossible task of determining whether some or all of the wheat purchased by a miller, possibly several months after harvest, had been produced by a reasonable number of producers in a bargaining association. Except in those instances in which a miller has purchased directly from a grower, it would be a futile exercise to attempt to trace a specific lot of wheat once it has been commingled at the country level.

On the other hand, we are concerned that in the absence of more precise language, the Board might conclude that there is a reasonable chance that over a two year span a particular miller may have bought some wheat produced by some members of a bargaining group. Further, should the Board certify one or only a few wheat bargaining groups, the question of prior dealing may become academic.

Section 106(c) [formerly 106(d)], aside from its inherent anticompetitive feature, would permit a bargaining association to tie up a handler in negotiations even though the association might be able to supply only a small fraction of the handler's requirements. The compulsion on the handler to reach agreement in such a situation would be overwhelming.

Section 106(d) would require a handler to offer new terms to an association if he purchases a product at more favorable terms from other producers. The best we can say for the change is that it would not totally freeze markets as the earlier language would have. On the other hand, if we assume wheat markets will continue to be subject to daily and hourly change, each time purchases are made above negotiated prices, all such prices will be subject to retroactive change. The situation becomes ludicrous when one considers the thousands of separate wheat transactions made daily in the United States and the number of prior negotiated sales each would affect.

These are but a few of our specific objections to the revised provisions in H.R. 14987.

As we stated in our earlier testimony, "the U.S. grain marketing system is generally acknowledged by producers and handlers to be highly responsive to the many day-to-day factors which influence commodity values". That the market adjusts between regions, among commodities, and to international developments was impressively demonstrated during recent weeks following the announcement of large grain sales to Russia. We believe the benefits of our free market grain system would be severely limited or even destroyed by H.R. 14987.

STATEMENT OF TOM W. HAMPTON ON BEHALF OF THE IOWA GRAIN & FEED ASSOCIATION, THE KANSAS GRAIN & FEED DEALERS ASSOCIATION, AND THE NEBRASKA GRAIN & FEED DEALERS ASSOCIATION

This statement is submitted on behalf of The Iowa Grain & Feed Association, The Kansas Grain & Feed Dealers Association and The Nebraska Grain & Feed Dealers Association concerning H.R. 14987 which supersedes H.R. 7597.This statement will be limited to the substantive changes reflected in H.R. 14987.

1. Contract Sales of Agricultural Products: Section 106(a) and the title provide that the present bill would be applicable only to those commodities "produced or sold under contract". Some commodities are produced under contracts entered into prior to planting but all commodities are sold under contracts entered into either before or concurrently with the delivery of the commodity to the buyer. It is submitted that the use of the disjunctive in the term "produced or sold" as set forth in the last sentence of Section 106(a) does not in any manner restrict, alter or change the intent, purpose or effect of the bill.

2. Right of Producer Not to Belong to an Association: An additional sentence was added to the end of Section 101 to protect the right of the producer not to belong to an association. It is submitted that this additional sentence does not cure the defects in the prior bill because the economic sanctions for compulsory producer membership in an association remain present, and accordingly a producer would be compelled to become a member of an association in order to market his commodities. The economic sanctions which lead to compulsory membership in an association would continue to include the following:

(*a*) The independent producer could not sell his products to a handler while the handler is negotiating with an association [Section 106(c)].

(*b*) The independent producer could not obtain a more favorable price for his products than would be available to an association [Section 106(d)].

(*c*) The independent producer could not market his products if the association and the handler have negotiated a "full supply" or "requirements" contract [Section 114].

(*d*) To the extent the central public markets for farm commodities would be eliminated under this bill, a producer would have to be a member of an association in order to market his commodities.

It would obviously be in the best interests of an association to exercise its bargaining power with the handler in such a manner as to bring the full weight of these economic sanctions to bear on the independent producers in order to compel them to become members of the association.

3. Duration of "Bargaining": Section 106(a) defines bargaining as the mutual obligation of a handler and an association to meet "at reasonable times" and for "a reasonable period of time" for purposes of negotiating a contract. Apparently the "reasonable period of time" is to be determined by the Board under the provisions of Section 105(d) at the time it qualifies the association. The "reasonable period of time" designated by the Board would no doubt have a significant effect on the negotiations. Neither the Board, the producer, the association, the handler or the consumer is given any guidelines as to what is intended by the phrase "a reasonable period of time". The price of wheat and feed grains may vary dramatically between the dates of planting and ultimate sale because of unforeseen and fortuitous factors, such as drought, blight, threats of drought or blight, growing conditions, exports and other variable factors. If the "reasonable period of time" would have occurred prior to the elimination of the corn blight threat in 1971, or before the recently negotiated sale of wheat and feed grains to Russia, it is apparent that wholly different economic conditions would be applicable in the performance of the contract than would have been applicable at the time the contract was negotiated.

The handler would have a critical interest in the determination of the "reasonable time for bargaining" by the Board under the provisions of Section 105(d). Although the hearing on the petition for the qualification of an association is a public hearing, the handlers with whom the association might deal do not receive actual notice of the hearing until *after* the Board has made a determination with respect to the period of time for negotiations. In the absence of receiving actual notice of any such hearing, and a reasonable opportunity to participate in the critical determinations that must be made at such hearing, it is submitted that the Board might not be in a position to make a proper determination of these matters because of the *ex parte* nature of the hearing.

Section 105(d) also authorizes the Board to determine the geographical areas within which an association is qualified to bargain. It is not clear whether the Board could qualify two or more associations for the same products in any particular geographical area; and it is not clear whether the geographical area could be nationwide or a smaller geographical area. The Board is not provided with any guidelines in this regard and it would no doubt be of utmost importance to everyone involved, including the producers, the associations, the handlers and the consumers. It is submitted that this is a critical determination which should be specified in the bill rather than left to the determination of the Board.

4. Definition of "Prior Course of Dealing": Section 106(b) has been changed so that a handler shall be deemed to have had a prior course of dealing with a producer if the handler has purchased commodities produced by such producer at any time within the preceding two years. This is a significant extension of the comparable provision in the prior bill. It apparently is contended that this extension is justified because of the change in Section 106(a) to the effect that the handler is only required to bargain with an association that represents "a reasonable number of producers with whom such handler has had a prior course of dealing". The difficulty with this change is that the term "a reasonable number of producers" is not defined in any manner nor are there any guidelines set forth to determine reasonableness. Is it a reasonable number of producers in relationship to the handler's requirements, the production in the geographical area served by the handler, the number or size of the producers or other factors?

If the handler refuses to negotiate with an association on the grounds that the association does not represent "a reasonable number of producers" with whom the handler has had a prior course of dealing, who determines the "reasonable number"? If the handler in good faith doubts that the association represents a reasonable number of producers with whom he has had a prior course of dealing, and the effect of the negotiations would be to foreclose the market to producers who are not members of the association, is the handler thereafter responsible in damages to the association if the question is subsequently determined adversely to the handler?

5. Purchase of Products from Nonmembers: Section 106(d) constitutes a revision of its counterpart in the prior bill [Section 106(e) of H.R. 7597]. Under the present bill, if a handler purchases a product from a nonmember producer under terms more favorable to such producer than the terms negotiated with an association, the handler would be required to offer the same terms to the association. It would appear that if a handler has negotiated a contract with an association, and thereafter the demand for the product increases in relationship to the supply, resulting in a price increase for the product, then the handler must pay such increased price to the association for commodities purchased and delivered prior to the occurrence of the economic forces which caused the price increase even though the association is unable or unwilling to provide commodities at the increased price. For example, assume that a handler and an association entered into a contract on June 1, 1972, for the purchase of wheat at $1.50 per bushel. Assume further that by July 1, 1972, the association has delivered 100,000 bushels of wheat to the handler at that price. On August 11, 1972, the price of wheat was $1.80 per bushel because of the exports of grain to Russia.

If the association was unwilling or unable to deliver wheat to the handler at either $1.50 or $1,80 per bushel on August 11, 1972, and the handler purchased wheat at $1.80 per bushel on August 11, 1972 from a producer who was not a member of the association, it would appear that the handler would be required to pay to the association or its members the sum of $30,000.00 (30 cents per bushel on the 100,000 bushels delivered to the handler between June 1, 1972 and July 1, 1972 at a price of $1.50 per bushel). It is apparent that this windfall for the association would be an impossible situation since the handler would no doubt have disposed of the wheat he acquired at $1.50 per bushel based upon the

normal margins applicable to such wheat, and could not recover the cost differential on the wheat purchased on August 11, 1972.

6. Anti-Trust Exemption: Although the language set forth in Section 114 of the bill is changed slightly over the comparable provisions in the prior bill, the changes were apparently intended to be editorial changes without in any manner changing the meaning of the anti-trust exemption. Section 114 of the present bill provides that the anti-trust exemption shall extend to bargaining with respect to the provisions of Section 106 [Section 106(a) deals with the price, terms of sale, compensation for commodities produced under contract, or other contract terms relative to agricultural commodities], rather than repeating the parenthetical phrase in Section 114.

In fact, the anti-trust exemption in Section 114 would be considerably broader than its counterpart in the prior bill because the exemption under the prior bill would have extended to bargaining with respect to "price, terms of sale, compensation for commodities produced under contract or other contract terms relative to agricultural commodities produced by the members of such qualified association." Under Section 114 of the present bill, the anti-trust exemption would extend to bargaining with respect to the provisions of Section 106, which includes:

(*a*) Section 106(a)—price, terms of sale, compensation for commodities produced under contract and other contract terms.

(*b*) Section 106(b)—definitions of prior course of dealing.

(*c*) Section 106(c)—foreclosure of the market to independent producers while negotiating with an association.

(*d*) Section 106(d)—price protection for an association on account of enhanced economic conditions for the product.

Since the anti-trust exemption would extend to all of these activities under the present bill, it is apparent that this constitutes a significant expansion of the anti-trust exemption.

7. Full Supply Contracts: Under the prior bill, there was an express provision to the effect that the act did not prohibit an association from entering into full supply contracts with handlers. This provision was omitted from the present bill. The omission of this provision from the present bill, however, does not in any manner restrict the ability of an association and a handler to negotiate a full supply or requirements contract in view of the anti-trust exemption which is available under Section 114.

It is submitted that this constitutes a significant extension of the anti-trust exemptions available to associations of producers under Section 6 of the Clayton Act and the Capper-Volstead Act. We would like to invite your attention to the statement of Donald F. Turner, School of Law, Harvard University, which appears in the transcript of the hearings before the Subcommittee on Agricultural Research and General Legislation of the Committee on Agriculture and Forestry of the United States Senate, in its consideration of farm bargaining bills. Mr. Turner's testimony can be summarized as follows:

(1) Without the benefit of legislative exemption, it would almost certainly be unlawful for the producers of a particular farm commodity to bargain collectively over price if they occupied a sufficiently large segment of the market to be able to raise price by withholding part of their output.

(2) Exclusive-dealing arrangements, in the form of full supply contracts or requirements contracts, are unlawful wherever they foreclose a substantial share of the relevant markets from competing sellers, and "substantial" is a relatively small percentage of the market. Exclusive dealing arrangements which would foreclose a relatively minor segment of the market over an extended period of time would be unlawful.

(3) Collective refusals to deal or to deal except on terms imposed by the group are considered *per se* violations of the anti-trust laws.

(4) Under the existing anti-trust laws and the Capper-Volstead Act, an association of producer's right to enter into exclusive dealing arrangements with handlers is no greater than the right of any business corporation.

(5) An agreement between an association and a handler to the effect that the handler could not purchase commodities from producers who are not members of the association on more favorable terms than those given the association would constitute a violation of the existing anti-trust laws including the Capper-Volstead Act.

(6) A boycott by members of an association for the purpose of coercing handlers into dealing with them only, and thus for the purpose of coercing nonmembers into joining the association, would be plainly unlawful under existing legislation, including the Capper-Volstead Act

Accordingly, the anti-trust exemption set forth in Section 114 would constitute a substantial extension of the anti-trust exemptions presently available to associations of producers. We would like to refer you to Mr. Turner's statement for citations of authorities to support his propositions.

CONCLUSION

We strongly oppose the endorsement of H.R. 14987. We appreciate this opportunity to submit this statement as an expression of our views.

STATEMENT OF SHELDON J. HAUCK, EXECUTIVE DIRECTOR, NATIONAL SOYBEAN PROCESSORS ASSOCIATION

This statement is filed on behalf of the National Soybean Processors Association and its member firms. The members of this association annually purchase more than 760 million bushels of U.S. soybeans, processing them into usable products for worldwide sales.

We have studied the changes recently made in the Farm Bargaining Bill and incorporated in the revised H.R. 14987. We regret to say that none of these changes remedy the serious faults and deficiencies which we saw in the bill as originally drawn. We continue to believe that this bill, if passed, would fundamentally undermine the critical balance and valuable functions of free-market pricing. It would weaken rather than strengthen the vital agricultural segment of the American economy; it would disrupt both domestic and foreign markets for American produce, encouraging over-production of many commodities, and costing the United States many of its principal export markets. None of the changes in the revised bill would meet these fundamental problems.

Among the changes in the revised bill are several which might appear intended to protect the right of a producer not to belong to an association. However, the legal right of a producer to remain free of a bargaining association is hollow indeed if processors of agricultural commodities are virtually required to purchase their products from a "recognized" and monopolistic bargaining association. This interpretation follows particularly from the fact that a processor would be prohibited from negotiating with other growers while negotiating with a bargaining association. In practice, therefore, a grower of soybean or other products would be under extreme compulsions to join an association—if he wished to market his product.

The other charges which have been made to clarify various provisions of H.R. 14987 do not change the basic purpose of the bill—to permit grower organizations to raise prices through a monopoly restraint of trade. We believe it would be dangerous and disruptive to permit such exemptions from existing anti-trust laws. The revised language providing that the anti-trust exemptions would be limited to those activities specified in the bill in no way removes this serious objection.

We wish to emphasize that over half of the U.S. soybean crop is marketed overseas—either as beans, as oil, or as meal. These sales returned approximately $1.6 billion toward America's balance of payments in the last crop year.

Overseas customers cannot be compelled to buy soybeans or soybean products from American producers or processors. These purchasers will not pay more for U.S. soybeans or soybean products than for substitute oilseeds or oilseed products from competing nations. If prices were established at artifically high levels by bargaining associations—as is the intent of this bill—there is little doubt that the U.S. would lose a substantial part of its overseas soybean markets. This would be a disastrous loss to U.S. agriculture.

We continue to believe that the most effective way to achieve a strong, self-sustaining balance in agriculture is through a market-oriented economy. Collective farm bargaining cannot change the need for American agricultural products to compete on a world-wide market; nor can monopoly power, granted to any segment of the American economy, serve the long-run best interests of agriculture, of industry, or of the general public.

Therefore, we respectfully urge that this legislation, despite the changes incorporated in the latest revision, be rejected.

SALYER LAND CO.
June 27, 1972.

Hon. BURT. L. TALCOTT,
House of Representatives,
Washington, D.C.

DEAR BURT: Thank you for your letter of June 5th and enclosure of the amended bill introduced by Congressman Sisk, H. R. 14987. I personally believe that this bill if passed is another great step towards completely socializing the United States and it will further put agriculture within those hands that can continue to bleed profits from the small to middle size growers who have no way of protecting themselves from various associations or cooperatives who continually bleed this group of farmers.

In running through the various sections of this bill, under Section 104(f) you will note the board has the right to set their own salaries, expenses of employees, adopt, amend and rescind such rules and regulations that may be necessary or appropriate to carry out the provisions of this title. The board may appoint hearing examiners at whatever time it is felt necessary for the performance of its duties. I don't think that there should be such boards created to harass what little left agriculture has of its freedom.

Under Section 106 (Bargaining), Section (a), Line 6, Page 8, ". . . reasonable number of producers with whom such handler has had a prior course of dealing." Here again it forces associations and handlers to negotiate in good faith with respect to price, terms of sale, etc., of commodities and also further states that you must have a reasonable number of dealers which such handler has had a prior course of dealing. It seems to me that farmers should here again be free to bargain with any one that they may desire regardless of whether they have done business with an association, handler, etc., in the past. Here again under the same section (b) it states within the preceding two years. Same section (c) "During the period of time for contract negotiations designated by the Board for the qualified bargaining association, it shall be unlawful for a handler to negotiate with other producers of the product for which the association has been qualified with respect to the price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to such product."

I find this section pretty hard to take when a farmer is forced to negotiate with a single association or handler just because they have done business with them in the two years prior to negotiations.

Same section (d) ". . . he shall offer the same terms to a qualified association." This seems rather a strange regulation. What this paragraph says in effect is that should we, as a warehouseman, contract for grain three or four months ahead of crop time and make a favorable purchase, the markets go up in the mean time and then we as the purchaser would be forced to match the same price that some cooperative would pay at harvest time irregardless of whether they were paying a price equivalent to the market. Our experience has been that all of the cooperatives and associations usually pay somewhat over the market due to the fact they are using cheap government money and have to pay no taxes, when the legitimate companies and buyers have to compete with these associations and cooperatives, pay taxes and higher rates of interest.

It seems to me that the board has very wide powers under Section 106 and is spelled out further under Section 107. It seems to me that no board should have the power to do anything more than advise and be a regulatory group. It seems to me further any problems arising should be handled in our regular courts instead of through any board. I quote under Section 108, Line 25 "The Board is empowered to administer oaths and to issue subpenas requiring the attendance of witnesses or the production of evidence." Further under Section 110 "No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, . . ."

Under Title II, Section 201, Line 7, ". . . the handler is directed to deduct a sum from the price to be paid for such product or for the services of such producer under a growing contract and to pay the same over to such association as dues or fees for the producer, then such handler shall deduct the amount authorized from the amount due for any farm product being sold by any such producer or for any services under any growing contract and pay said amount over to the qualified

association as assignee." I don't think it is proper than anyone should be forced to pay a fee on the sale of a farm product whether it is voluntary or not to any association.

Further under Section 204, "Payment need not be made under assignment of dues or fees pursuant to section 201 until the handler has available and under its control funds owing to the producer that are sufficient in amount to make the payment of the amount involved. In the case of an annual product, such payment need not be made until the end of the product year." Here again I don't think anyone should have to pay a fee for handling, etc., and in particular such as the cooperatives who use cheap government money and hold back monies up to a period of five years before paying these monies out to the growers. I do not think this proper.

I would hope that you and your other colleagues will take another hard look at H.R. 14987 before considering the passage of this bill.

Very truly yours,

C. EVERETTE SALYER,
President.

NATIONAL LIVESTOCK FEEDERS ASSOCIATION,
Omaha, Nebr., August 15, 1972.

Hon THOMAS S. FOLEY,
Chairman, Domestic Marketing and Consumer Relations Subcommittee, Committee on Agriculture, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. FOLEY: In consideration of the Subcommittee's time and in view of the detailed statement on farm bargaining legislation which this Association has already submitted to the Subcommittee, we have not requested to appear in person at the public hearings scheduled this week on the above named legislation. We do respectfully request, however, that this letter be entered in the hearing record.

The proposed amendments to H.R. 7597, now contained in H.R. 14987, do not satisfy the strong objections which NLFA previously voiced to proposed farm bargaining legislation.

In line with your instructions that testimony at this time be limited to a discussion of the amendments, the following comments bear on certain of the principal changes contained in the newer bill.

Right of a Producer not to Belong to an Association (sec. 101, pg. 3, lines 15–18):

We recognize that this addition is aimed at correcting one of NLFA's objections to the bill. However, merely inserting this language will not change what will happen in actual practice, especially in view of the addition contained in SEC. 105 (d) which calls for the designation of the geographic area in which an Association is qualified to bargain. We submit that in practice a farmer will be forced to join the bargaining association, irrespective of the language contained in SEC. 101 to the contrary.

Relating the Legislation Specifically to Contract Sales of Agricultural Products (sec. 106 (a), pg. 8, lines 9–13):

We note that the language added provided for an exclusion for open-market commodities from Title I only, not from the entire bill as per the NLFA request. This Association also strongly opposes the provisions of Title III as they could apply to livestock and meat, feed grains, and other open-market commodities. The application of the provisions to livestock and meat would give rise to serious conflicts with the Packers and Stockyards Act.

Clarifying Conditions Under Which a Handler may buy Products From Non-Members (sec. 106 (c), pg. 8, lines 18–25 and (d), pg. 9, lines 1–5):

The amended language still conflicts with Packers and Stockyards Act because it forces a buyer to close his buying channels to persons other than the bargaining association.

In closing, we again voice strong opposition to the passage of legislation such as that provided for in H.R. 14987 and related bills.

Respectfully yours,

DON F. MAGDANZ, *Executive Secretary-Treasurer.*

NATIONAL COUNCIL OF FARMER COOPERATIVES,
Washington, D.C., August 17, 1972.

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

DEAR CONGRESSMAN FOLEY: The National Council of Farmer Cooperatives wishes to reaffirm its support for the principle of increased marketing and bargaining power for farmers, and for H.R. 14987, the amended version of the Sisk bill (HR 7597) which we supported in a statement presented to your committee on September 23, 1971.

The changes made in this bill represent further strengthening of a bill intended to partially overcome farmers' economic weakness in the marketplace. We commend your committee for its thorough earlier hearings and your conscientious efforts to develop a bill which will serve its intended purpose while answering any valid objections.

The National Council believes this bill would serve a constructive purpose and would result in more competition rather than disrupt markets as some opponents have said it would. Guidelines of the Bargaining Board could deal adequately, through still further clarification, with the "same terms" provision of Title I, Section 106(d), which has caused an undue amount of misunderstanding and unwarranted apprehension during the debate on this bill.

The extravagant charges by the bill's opponents that it is a harmful extension of anti-trust exemption for farmers obscures the fact that any monopolistic tendencies in the food industry are at the handler rather than the producer level. It is understandable that handler groups are reluctant to lose any measure of their competitive advantage in buying farm produce from small, disorganized producers, but more equitable arrangements to provide farmers market power equal to those with whom they deal is desirable for the long-run interests of consumers and the nation as well as for farmers.

As we have said before, H.R. 14987 is a commendable and moderate effort to provide farmers with broader opportunities for the group action which they need. Many responsible agricultural leaders believe the only alternatives to expanded farmer cooperative efforts are further non-farmer control of farming—either by government or by large corporate interests.

Please include this letter as a part of the hearing record on H.R. 14987.

Sincerely,

ROBERT N. HAMPTON,
Director of Marketing and International Trade.

KIMBALL, S. DAK., *August 12, 1972.*

Hon. THOMAS S. FOLEY,
Chairman, Subcommittee on Domestic Marketing and Consumer Relations, House Committee on Agriculture, Longworth Building, Washington, D.C.

DEAR SIR: The Brule County, South Dakota Farm Bureau supports the H.R. 14987 bill. We request that this be made a part of the hearing record.

Yours truly,

RICHARD EKSTRUM,
President, Brule County, South Dakota Farm Bureau.

[Telegram]

GREGORY, S. DAK., *August 14, 1972.*

Hon. THOMAS S. FOLEY,
Chairman, Subcommittee on Domestic Marketing and Consumer Relations, House Committee on Agriculture, Longworth Building, Washington, D.C.

Sixty-seven farm families, members of Tripp County, S. Dak., Farm Bureau support passage of Sisk bill, H.R. 14987, now in hearing before your subcommittee and request that our support be made a part of the hearing record. Our thanks to you and committee members for favorable action and support for passage of H.R. 14987.

THERON S. MERRITT,
Director, Tripp County Farm Bureau.

KENTUCKY FARM BUREAU FEDERATION,
Louisville, Ky., August 11, 1972.

Hon. THOMAS S. FOLEY,
Chairman, Subcommittee on Domestic Marketing and Consumer Relations, House Committee on Agriculture, Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN FOLEY: The Kentucky Farm Bureau Federation strongly supports HR–14987, commonly known as the Sisk Bill.

Improved agricultural marketing has been one of the greatest needs of Kentucky farmers for many years. We strongly believe the Sisk Bill will help materially with this problem.

Please make this letter a part of the hearings your subcommittee plans to hold this month.

Sincerely,

LOUIS F. ISON. *President.*

VEGETABLE GROWERS ASSOCIATION OF AMERICA,
Washington, D.C., August 17, 1972.

Hon. THOMAS S. FOLEY,
Chairman, Subcommittee on Domestic Marketing and Consumer Relations, Committee on Agriculture, House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is to advise that the Vegetable Growers Association of America supported Mr. Sisk's original bill, H.R. 7597, to create a National Agricultural Bargaining Board, and I testified for that bill.

We wish to endorse the changes that have been made in connection with this bill, now known as H.R. 14987, creating a five-member non-partisan Board. The amended bill now protects the right of the producer not to belong to a bargaining association if he chooses. It provides for procedures for determining reasonable periods of time during which negotiations would be conducted.

The revisions clarify the terms of bargaining as well as the conditions under which a handler may buy produce from non-members.

In the amended bill the anti-trust exemption would be limited specifically to those activities specified therein. Independent agricultural contractors are now covered by the legislation.

We believe these changes will improve the original bill.

Respectfully yours,

A. E. MERCKER,
Executive Secretary.

NATIONAL GRANGE,
Washington, D.C., August 18, 1972.

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

DEAR MR. CHAIRMAN: The National Grange wishes to congratulate Rep. B. F. Sisk for the tremendous amount of effort he has put into the Agricultural Marketing and Bargaining Act of 1972. The amendments to H.R. 7597, the "National Agricultural Marketing and Bargaining Act of 1971", as contained in H.R. 14987, are strongly endorsed by the Grange.

When we testified before this subcommittee on October 5, 1971 we outlined in detail the Grange's objections to the original bill, H.R. 7597. The amendments as represented in H.R. 14987 meet most of the Grange's original objections. In fact, all but one of the amendments specifically answers serious questions that the Grange raised concerning the pending legislation. However, we do not feel at this time that H.R. 14987 meets all of the objectives of the Grange regarding bargaining legislation. We therefore cannot recommend to the subcommittee that it report out the bill for further Congressional action.

Although the amendments offered by Rep. Sisk to H.R. 7597 improve the bill, they do not remove the Grange's major objection to the bill. We still feel that the major provisions of the bill will make it extremely difficult for a new organization to be organized to perform bargaining functions for its members, especially if it represents new producers of the commodity. In addition, the economic pressure on producers set up by the legislation will, in effect, force producers to join an "accredited" association.

Please find enclosed a copy of a letter to you regarding a referendum of affected producers which we wish to make a part of the hearing record. The letter is self-explanatory and sets forth the Grange's position on referendums.

We want to thank you, Mr. Chairman, for recalling the subcommittee to hear additional testimony on the amendments to H.R. 7597. Your task ahead is extremely difficult but we have the utmost confidence in you and your subcommittee, as we know that before you report a bill to the full committee you will have investigated all the possible problem areas that the legislation may present.

In conclusion, the Grange reaffirms its strong support for additional legislation to provide increased bargaining power for farmers but only on an equal basis—legislation fair to associations already formed, new organizations, individual producers, handlers and consumers.

We respectfully request that this letter and the enclosure be a part of the hearing record. Thank you, Mr. Chairman, for this opportunity to add to the already detailed testimony presented by the Grange on the pending legislation.

Sincerely,

JOHN W. SCOTT, *Master.*

NATIONAL GRANGE,
May 22 1971.

Hon. THOMAS S. FOLEY,
Longworth House Office Building,
Washington, D.C.

DEAR CONGRESSMAN FOLEY: I have received a copy of Ralph Bunje's letter to you, regarding his and his association's views on providing in the Sisk bill for some kind of a referendum procedure whereby growers could exercise a choice of the organization that they wish to represent them in the bargaining process.

I discussed the idea of a referendum at the recent "Think Tank" on bargaining legislation in Kansas City, sponsored by the University of Missouri. I did so in the context that this is one way, and perhaps the best way, to allow new associations to be organized for the purpose of bargaining for the production of their members—without leading to fragmentation. In addition, the National Grange has long held the belief that producers should have the right to determine, through a free election of the producers, if they wish to become a part of a marketing or bargaining process.

Mr. Bunje points out in his letter that the Sisk bill contains two criteria which in his opinion provide the same objective as a referendum, namely Sec. 105(c)(2), (4), which in effect provides that the association must have contracts with its members and such contracts represent a sufficient number of producers and/or a sufficient quantity of agricultural product to make it an effective agent. This being the case, I can see no reason why he should object to a referendum.

We can see that the new amendments that provide for an association to be qualified for a certain agricultural commodity or commodities and in a certain geographic area (Sec. 105(d)) could lead to some real hard decisions by the Board. For example: you have two or more associations that can meet the qualifications spelled out in Sec. 105(c)—but the Board favors one association over the other, based on some reason that the Board determines to be valid. (I believe they have the authority under Sec. 105(b) to make such determinations). In such cases, a referendum by the producers of the commodity or commodities to determine which organization the producers want to represent them could avoid any possible "hanky panky" on the part of the Board and absolve them from any question about showing partiality toward one association.

I cannot agree with Mr. Bunje on the point he makes regarding a referendum "compromising" the Board if the election was held prior to qualification. If a group was "obviously not qualified" the Board would have every right to turn down its petition, regardless of the referendum vote.

A referendum following qualification of an association would not be a fair test of producers' preference for the association, because the fact that the association was qualified would place economic pressure on the producer to vote for the qualified association due to other provisions of the bill.

I cannot see any connection between a referendum under the Sisk bill and a referendum under existing or proposed Federal marketing orders because marketing orders do not have any provisions pertaining to a prior course of dealing with the handler or limiting who a handler can negotiate with while carrying on negotiations with another group of producers in the same Federal marketing order area.

I would be happy to have the opportunity of discussing this matter with you or your staff in further detail before any final action is taken on the Sisk bill.

Best personal regards.

Sincerely,

ROBERT M. FREDERICK,
Legislative Director.

NATIONAL TURKEY FEDERATION,
Mount Morris, Ill., August 21, 1972.

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

DEAR MR. CHAIRMAN: I have been asked by the National Turkey Federation to communicate their views concerning H.R. 14987.

The National Turkey Federation appeared before your subcommittee on September 27, 1971, in opposition to H.R. 7597 to which H.R. 14987 makes certain amendments.

As stated in our testimony on September 27, "The fundamental reason for this view is that the proposed legislation is directed at supplanting the competitive marketing system which now exists. . . ." This position would not be modified by any of the proposed amendments. Under Section 101 which makes provision for ". . . the free exercise of producers of the right not to belong. . . ." We believe that producers desiring to maintain their independent status, as many turkey producers have, would subsequently be forced to join bargaining associations in order to market their live turkeys (106(c)).

The National Turkey Federation continues to oppose H.R. 14987 notwithstanding the amendments.

It is requested this statement be made a part of the record.

Very truly yours,

HERMON I. MILLER,
Washington Representative.

CALIFORNIA GRAIN AND FEED ASSOCIATION,
August 25, 1972.

Hon. B. F. SISK,
House of Representatives,
Washington, D.C.

DEAR MR. SISK: We wish to add our voice in opposition to the Sisk Farm Bargaining Bill (H.R. 14987) which is currently being considered before the House Domestic Marketings and Consumer Relations Subcommittee.

In reviewing this proposal we feel that the same basic problems exist as were contained in the original version (H.R. 7597). We concur in the objections as expressed by the American Feed Manufacturers Association and the National Grain and Feed Association during the recent oral testimony presented before the subcommittee.

In view of the tremendous difficulties and chaos this would cause in the marketing of feedstuffs, we strongly urge that this measure be killed by the subcommittee.

Thank you for your concern and consideration of our position.

Sincerely,

LEE ADLER,
Executive Vice President.

Mr. FOLEY. I ask, if I could, the remaining members to remain if they can for just a moment.

The subcommittee will stand adjourned, to meet at the call of the Chair.

(Whereupon at 11:50 a.m., the subcommittee recessed subject to the call of the Chair.)

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