REQUIREMENTS FOR IMPORTED TOMATOES

HEARING

BEFORE THE

SUBCOMMITTEE ON AGRICULTURAL PRODUCTION, MARKETING, AND STABILIZATION OF PRICES

OF THE

COMMITTEE ON AGRICULTURE AND FORESTRY

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

S. 2440

A BILL TO AMEND SECTION 8e OF THE AGRICULTURAL ADJUSTMENT ACT OF 1933, AS REENACTED AND AMENDED BY THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937, TO SUBJECT IMPORTED TOMATOES TO RESTRICTIONS COMPARABLE TO THOSE APPLICABLE TO DOMESTIC TOMATOES

JUNE 17, 1976

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REQUIREMENTS FOR IMPORTED TOMATOES

THURSDAY, JUNE 17, 1976

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL PRODUCTION,
MARKETING, AND STABILIZATION OF PRICES,
OF THE COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 324, Russell Senate Office Building, Hon. Walter D. Huddleston, (chairman of the subcommittee) presiding.

Present: Senator Huddleston.

Also present: Senator Chiles.

STATEMENT OF HON. WALTER D. HUDDLESTON, A U.S. SENATOR FROM KENTUCKY

Senator HUDDLESTON. The subcommittee will come to order.

Today the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices is meeting to hear testimony on S. 2440. This bill introduced by Senator Chiles would amend section 8e of the Agricultural Marketing Agreement Act of 1937 to require imported tomatoes to conform with pack-of-container standards imposed on domestic tomatoes under marketing orders.

Section 8e now requires only that imports of selected commodities meet the same minimum grade, size, quality, or maturity standards imposed on domestic shipments under a marketing order. S. 2440, if enacted, would require all nations exporting tomatoes to the United States to comply with the packing practices currently used in the United States which require that different grades or sizes of tomatoes be packed in separate containers.

At this point, without objection, I place in the record a copy of S. 2440, a copy of the staff explanation of the bill, and a letter from John A. Knebel, Under Secretary of Agriculture, expressing the Department's opposition to enactment of this legislation.

[The above-mentioned documents follow:]

[S. 2440, 94th Cong., 1st sess.]

A BILL To amend section 8e of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8e of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, is amended in the first sentence (1) by inserting after "eggplants" a comma and the following: "or regulating the pack of any container of tomatoes" and (2) by inserting a comma and "and in the case of tomatoes any provisions regulating the pack of any container," after "provisions" wherever it appears, and in the fourth sentence by inserting a comma and "and with respect to imported tomatoes such restrictions on the pack of any container," after "classifications".

SENATE COMMITTEE ON AGRICULTURE AND FORESTRY—STAFF EXPLANATION OF S. 2440

S. 2440 would amend section 8e of the Agricultural Marketing Agreement Act of 1937 to require imported tomatoes to conform with pack-of-container standards imposed on domestic tomatoes under marketing orders.

The effect of the bill would be to require all nations exporting tomatoes to the United States to comply with the packing practices in the United States.

Section 8e now requires only that imports of selected commodities meet the same minimum grade, size, quality, or maturity standards imposed on domestic shipments under a marketing order. S. 2440 would expand the statute's regulatory authority on imported commodities beyond quality-related factors. It would authorize requirements that different grades or sizes of tomatoes be packed in separate containers.

DEPARTMENTAL VIEWS

The Department of Agriculture opposes the enactment of S. 2440 for the following principal reasons:

(1) it is not known whether the pack-of-container regulations which may be appropriate for domestically-grown tomatoes would be suitable for all imported tomatoes;

(2) the Department does not accept the idea that imported commodities should be made to comply with United States packing requirements or other trade practices; and

(3) imposition of such restrictions on imported tomatoes would be inconsistent with this Nation's role as a free trade advocate.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., February 11, 1976.

Hon. HERMAN E. TALMADGE,
Chairman, Committee on Agriculture and Forestry,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter requesting a report on S. 2440, a bill to amend Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended. The effect of this bill would be to require imported tomatoes to conform with pack of container standards imposed on domestic tomatoes under marketing orders.

The Department recommends against enactment of this legislation. Although it might be of some value in precluding deceptive packaging, it is doubtful that that benefits would be sufficient to offset the negative aspects. The original basic concept of Section 8e was to provide for comparable quality of product from both domestic and foreign sources. United States producers argued that they were being frustrated in their attempts to improve the quality of products on the domestic market because of low quality imports.

Section 8e now requires only that imports of selected commodities meet the same grade, size, quality, or maturity standards imposed on domestic shipments under a marketing order. This proposed legislation would expand the statute's regulatory authority on imported commodities beyond quality-related factors. It would authorize requirements that different grades or sizes of tomatoes be packed in separate containers. This is not a quality regulation but rather a pack specification.

Tomatoes are imported from at least ten countries. The packing facilities and trade practices differ among countries. It is not known whether pack of container regulations which may be appropriate for domestically-grown tomatoes would be suitable for all imported tomatoes. For example, a requirement that different sizes of tomatoes be packed in separate containers might be useful for standardization purposes in the domestic industry while being impractical for foreign-grown tomatoes because of differences in mode of operation. The effect of this proposal would be to require all nations exporting tomatoes to the United States to comply with the packing practices in the U.S.

We concur with the concept of uniform treatment between domestic and imported products on the matter of minimum quality. On the other hand, we do not accept the idea that imported commodities should be made to comply with our packing requirements or other trade practices. As an exporter, the United

States would not favor the imposition of such non-tariff barriers on its products moving into foreign markets. Moverover, such an action might be considered inconsistent with the traditional U.S. role as a free trade advocate.

Additional costs to the Department resulting from the enactment of the proposed legislation would be absorbed within existing expenditures for marketing order programs.

Enactment of S. 2440 would have no impact on the environment.

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

Sincerely,

JOHN A. KNEBEL, *Under Secretary.*

Senator HUDDLESTON. Our first witness this morning will be my distinguished colleague from Florida, Senator Lawton Chiles.

STATEMENT OF HON. LAWTON CHILES, A U.S. SENATOR FROM FLORIDA

Senator CHILES. Thank you, Mr. Chairman.

I want to express my appreciation for your holding this hearing on S. 2440 to amend section 8e of the Agricultural Marketing Agreement Act of 1937. I know your subcommittee's schedule is quite busy this time of year and thus I am doubly grateful for the opportunity we have today to establish a record on the necessity of enacting this legislation.

S. 2440 seeks to clarify section 8e with respect to requirements imposed under marketing orders on the pack of the container in which tomatoes are shipped. This amendment is entirely consistent with the original intent of section 8e and is offered only to revise an interpretation of that section which the U.S. Department of Agriculture has adopted. The resolution of the current disagreement between domestic producers and the Department on this issue is important to an orderly marketing situation for tomatoes and to the ability of domestic producers to effectively compete with imports.

I think it is useful to look at the original purpose for the adoption of section 8e. This section of the act was sponsored by the late Senator Spessard L. Holland, of Florida, and was intended to require that all restrictions imposed by marketing orders on the handling of domestically grown agricultural commodities should apply equally to imported commodities. Senator Holland referred to it as the golden rule amendment. Its purpose is to insure that market regulations would have equal benefit to both domestic and foreign producers. It is in no way aimed at excluding or curtailing imports. Rather, its aim is to see that imports and domestic produce are on an equal footing with respect to marketing orders. In the case of tomatoes, the Senate report states,

> Imports of tomatoes . . . would be prohibited if they did not comply with grade, size, quality, and maturity provisions of all marketing orders applicable to the same commodities produced in the United States.

By marketing order, domestic producers of fresh tomatoes are prohibited from mixing different grades of tomatoes in a shipping container or mixing different sizes of tomatoes. Since tomatoes are sold by grade and size, this requirement is very important from the standpoint of pricing and to the orderly marketing of fresh tomatoes.

The problem that has arisen is that the USDA maintains that the prohibition against the mixing of grades or sizes within a container is a pack regulation and not a grade or size regulation. The Department

further maintains that pack regulations cannot be imposed on imports under section 8e of the Agricultural Marketing Agreement Act.

The result of this interpretation is that foreign shippers are permitted to ship different grades and sizes of tomatoes in a single container while American producers must comply with the pack regulation. Foreign-grown tomatoes constitute a substantial volume of the tomatoes sold in the United States. Consequently, the lack of pack restrictions on these tomatoes is disruptive to marketing procedures, since the buyer often doesn't know what he is getting, and also places the domestic producer at a distinct disadvantage.

Over the years there have been numerous efforts to work out a solution to this problem. I have participated in these efforts but there has been no change in the Department's position. I am assured the solution lies in a clarifying amendment to definitely spell out the application of pack regulations to imports under section 8e. Such a change will carry forward the intent of section 8e and work to the benefit of both the producer and the consumer. I urge favorable consideration of S. 2440.

Senator Stone has joined with me in supporting this legislation and I would urge the favorable consideration of S. 2440.

Senator HUDDLESTON. Senator, just to summarize, there are two objectives to your legislation that you are proposing here: No. 1 is that the American producer and the foreign producer would be under the same rules as far as packing is concerned, just as they are under quality now.

Senator CHILES. Yes, sir.

Senator HUDDLESTON. That would eliminate any advantage that foreign producers may have over domestic producers in the packing of their product?

Senator CHILES. That is correct.

Senator HUDDLESTON. And, second, the consumer then would be assured that he was receiving the same treatment, the same quality, the same packing requirements from foreign products that he is from domestic products?

Senator CHILES. That is correct. They would have the same protection.

Senator HUDDLESTON. Is there anything else you would like to add this morning?

Senator CHILES. I think that is the basis of our testimony, Mr. Chairman.

Senator HUDDLESTON. Thank you very much.

Senator CHILES. I appreciate again your giving us this hearing.

Senator HUDDLESTON. Mr. Floyd Hedlund, Department of Agriculture, Director of Fruit and Vegetable Division of the Agricultural Marketing Service.

STATEMENT OF FLOYD F. HEDLUND, DIRECTOR, FRUIT AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. HEDLUND. Thank you, Mr. Chairman.

Just to repeat, my name is Floyd F. Hedlund, and I am Director of the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture.

We appreciate the opportunity of appearing here today to consider the bill S. 2440 which would amend section 8e of the Agricultural Marketing Agreement Act so that imported tomatoes could be required to conform with pack of container standards imposed on U.S. tomatoes marketed under marketing orders.

The Department recommends against the enactment of S. 2440.

While we concur with the concept of uniform treatment between domestic and imported products on the matter of minimum quality, we do not accept the idea that imported commodities should be made to comply with our packing requirements or other trade practices. As an exporter, the United States would not favor the imposition of such nontariff barriers on its products moving into foreign markets. Moreover, such an action might be considered inconsistent with the traditional U.S. role as a free trade advocate.

At the present time there are tomato marketing orders in Texas and Florida. The Texas program is currently inactive.

Under the Florida program, regulations generally are in effect from November through the following mid-June. Marketing order regulations in Florida have required all fresh tomato shipments to meet minimum grade and size standards. Only designated containers could be used and their contents had to meet specified net weights. In addition, the smaller sizes of tomatoes could not be commingled in individual containers.

The effect of the proposed bill, on the basis of typical regulations imposed in Florida, would be to require all countries exporting tomatoes to the United States to comply with the packing practices in Florida and not commingle small tomatoes.

We recognize that this legislation might be helpful in reducing differences in the packages of tomatoes marketed in the United States. In the total picture, however, any benefits of this nature would not offset the unfavorable aspects.

Tomatoes are imported from at least 10 countries although most come from Mexico. During the 1974–75 marketing season, we imported a total of 565 million pounds of fresh tomatoes, of which Mexico furnished about 557 million. Packing facilities and trade practices may differ among countries. Requirements which may be appropriate for industry practices in one country may not be suitable for another.

The United States is a net exporter of agricultural commodities. In 1975 total agricultural exports had a value of about $22 billion and accounted for our favorable balance of trade. For fresh fruits and vegetables, we exported 4.6 billion pounds, with an export value of $560 million, to at least two dozen foreign countries.

To sustain and expand this foreign trade which is so important to American farmers, we devote substantial resources to eliminating barriers to our commodities. It would be inappropriate to take any action inconsistent with our overall policy.

Certainly our foreign customers would consider import regulations which would be triggered by this legislation to be trade barriers. This would invite retaliation. The ultimate result could very well be increased restraints on our exports and consequent economic losses. Under the circumstances, we believe this proposal is not in the best interest of the U.S. agricultural economy.

Mr. Chairman, this concludes my statement. Thank you.

Senator HUDDLESTON. Thank you very much, Mr. Hedlund.

Why is it that we have packing requirements for domestic production?

Mr. HEDLUND. The reason we have them in Florida, and that is the only place that we have them, is because Florida operates under a tomato marketing order and the Florida tomato growers, packers, have a committee that administers this order locally and they advise the Department of those regulations that they recommend be imposed on Florida tomatoes.

Senator HUDDLESTON. Then the purpose is, at least supposedly, to benefit producers and perhaps the consumers, too?

Mr. HEDLUND. Yes, I think that is a fair statement.

Senator HUDDLESTON. Why wouldn't it be reasonable to expect that the producers and the consumers should enjoy the same benefits from domestically produced products as those produced in another country?

Mr. HEDLUND. Well, that is really the issue, Mr. Chairman, but practices differ throughout the world and we do not believe that it is appropriate to say that every country that sells in our market must comply with our own industry practices and the main reason is we don't want other countries to require us to comply with their practices. We have had examples of this in the past and we have worked very earnestly to get those kinds of things resolved.

Senator HUDDLESTON. But there seems to be more and more concern in this country that consumers be protected and that certain standards be adhered to.

We have many, many agencies of Government that are imposing standards on our own producers of all types of products. I think there is a real concern throughout the entire spectrum of commerce that we are not imposing the same standards on products that come in from a foreign country.

I think there is a good deal of concern about this in many areas other than just the fruit, vegetable, and farm products.

Mr. HEDLUND. I suspect that is true, Mr. Chairman, but we are not really talking about quality here now. We have said and we have supported section 8e insofar as quality is concerned. We are talking here about how you pack them, whether you can mix two sizes of tomatoes together in the same container.

Now, we have had for a number of years quality regulations on imports of tomatoes. They must meet a specified quality level and a specified minimum size, the same that the Florida growers must meet. We have no disagreement on that score, but we are not talking about quality; we are talking about the method of packing.

Senator HUDDLESTON. I think it has been established that the packing, in not only this field but many others, is a legitimate concern. A lot of standards apply to packaging of all types of products so it is not a new field for us to be concerned with.

Senator Chiles, I would be glad to have you join the subcommittee today and make any comments you wish.

Senator CHILES. I just thought it was interesting that the Department does support section 8e as far as it pertains to quality and the Department has always interpreted 8e as if that is what it pertains to. I think if you look at the legislative record and history as

it passed, this section goes beyond that interpretation. The Department has never recognized that. That is why we have to try to put this amendment on because the Department only wants to support that part of it that they happen to think is good, rather than follow the law.

Mr. HEDLUND. Well, I think, Senator, that we are following what our general counsel says the law is, and that is that section 8e uses the words "grade, size, quality and maturity," and we do follow those. As I say, our general counsel has advised us that it does not include the so-called pack regulations.

Senator HUDDLESTON. That is where the rub is, of course, and it is not unusual that different people interpret laws different ways.

Do you have any other questions, Senator?

Senator CHILES. Only, Mr. Chairman, to observe that we do have to comply with marketing regulations of many countries that we ship our farm products into and I think certainly it would be nice if we could have a barrier-free market into every country we ship in. We are shipping grapefruit into Japan from Florida and we are constantly having to comply with what they come up with in regard to what they say are marketing requirements or other requirements. It is not very free and when we look at certain countries that ship a majority of the tomatoes into this country, they have a variety of taxes and other barriers upon us trying to ship produce into those countries.

We can't sell any tomatoes in Mexico, we can't sell any strawberries in Mexico and yet we are talking about we don't want to do anything at all that might give them any problems in shipping produce back into this country.

Well, it just seems like somehow there has to be a quid pro quo or there has to be equal treatment and if there is, then I think it is a very legitimate argument of the Department, but if there isn't that kind of free trade going back and forth, then I think the USDA, is really not protecting our farmers, and that is their overall purpose.

Senator HUDDLESTON. Mr. Hedlund, do you have a written opinion from your counsel on the interpretation of 8e or could you have one prepared by him and send it to the subcommittee?

Mr. HEDLUND. Very well, I will have that done.

[The following material was subsequently submitted by Mr. Hedlund:]

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., January 15, 1957.

SYLLABUS

1. Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended by the Agricultural Act of 1954, making applicable to imports of specified commodities the grade, size, quality, or maturity terms or conditions of marketing orders applicable to such commodities produced in the United States does not encompass pack regulations issued under Section 8c(6)(H) of the Act so amended.

2. The regulations (21 FR 8534) currently effective under Order No. 45 (Florida Tomatoes, 7 CFR Part 945) impose no quantitative limitations such as would be the case in size regulations under Section 8c(6)(A) but rather provide that specified tomatoes, as defined therein, shall be packed in accordance with stated specifications and sizing arrangements. These regulations are, therefore, pack regulations under Section 8c(6)(H) and are not applicable to imports under Section 8e of the Act.

OPINION FOR ROY W. LENNARTSON, DEPUTY ADMINISTRATOR, AGRICULTURAL MARKETING SERVICE

Subject: Opinion concerning Florida tomato regulation and applicability thereto of certain sections of the Agricultural Marketing Agreement Act of 1937, as amended, relating to imports of tomatoes.

DEAR MR. LENNARTSON: This is in reply to your request dated January 7, 1957, for an opinion as to whether the regulation (21 FR 8534) currently effective under Order No. 45 (Florida Tomatoes, 7 CFR Part 945) constitutes a "pack" regulation as distinguished from a "size" regulation and whether such regulation is applicable to imports under Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended by the Agricultural Act of 1954, herein referred to as the "Act".

The regulation here in question was issued on November 2, 1956, as Section 945.302 (21 FR 8534). It reads in pertinent part as follows: [Emphasis supplied.]

"(b) *Order.*—During the period from November 12, 1956 through June 30, 1957, the following regulations shall be effective with respect to tomatoes grown in the production area defined in § 945.4 of Order No. 45:

"(1) No person shall handle for shipment outside the production area any mature green tomatoes 1⅞ inches diameter or larger:

"(i) Unless they are packed within one of the following ranges of diameter (expressed in terms of minimum and maximum):

Size arrangements and diameter in inches:

7×8—1⅞ to 2⅛, inclusive.

7×7—over 2⅛ to 2$^{9}/_{32}$, inclusive.

6×7—over 2$^{9}/_{32}$ to 2$^{17}/_{32}$, inclusive.

"(ii) Such mature green tomatoes shall be packed separately for each size range;

"(iii) To allow for variations incident to proper sizing not more than a total of ten (10) percent, by count, of the mature green tomatoes in any lot may be smaller than the specified minimum diameter or larger than the specified maximum diameter;

"(iv) Tomatoes smaller than 1⅞ inches diameter and larger than 2$^{17}/_{32}$ inches diameter may be shipped without regard to the aforesaid pack requirements;" [1]

In analyzing the questions presented by you we will first consider the underlying statutory provisions and then the application thereof to the particular regulation here in question.

PROVISIONS OF THE ACT

Section 8c(6) of the Act specifies the special provisions which may be included in fruit and vegetable orders for domestic production areas.[2] The introductory sentence thereof provides generally that for particular commodities,[3] including certain fruits and vegetables,[4] such order "shall contain one or more of the following provisions and (except as provided in subsection (7) of this section) no others:". Prior to the 1954 amendments, there followed seven paragraphs denominated "(A)" through "(G)" which specified the "optional" order provisions thus authorized.[5] Paragraph "(A)" thereof reads as follows:[6]

"(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as indirectly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof." [Emphasis supplied.]

Section 8c(6)(A) authorizes the limitation of the "total quantity" ot a regulated commodity (including tomatoes) "or of any . . . size . . . thereof" which may be marketed. Its authority is quantitative in nature. As stated in your memorandum

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[1] Subparagraphs (v) through (viii) define "mature green tomatoes".

[2] Section 8c(7) deals with other terms which may be included in orders for all commodities subject to the Act, including fruits and vegetables. They are not of importance to the questions here presented.

[3] Such specifications were set forth in the text of §§ 8c(2) and (6) prior to 1954, but were amplified in § 8c(2) by the amendments of 1954 and incorporated in § 8c(6) by reference.

[4] This includes tomatoes.

[5] As shown post, paragraphs "(A)" through "(G)" were not changed by the 1954 amendments, but two additional paragraphs, "(H)" and "(I)" were added, granting additional optional authorities.

[6] Paragraphs "(B)" through "(G)" are not relevant to the questions here before us. Paragraphs "(B)" and "(C)" authorize allotments among handlers of the amounts which they may handle in specified situations not here presented; paragraphs "(D)" and "(E)" cover the handling of surpluses and the pooling thereof; paragraph "(F)" authorizes inspection requirements; and paragraph "(G)" relates exclusively to hops and their products.

of January 7, 1957, the Department has always interpreted the "size" authority in "(A)" to be limited to prescribing limitations on the total quantity of any specified size which may be marketed and we concur in that interpretation. This "size" authority usually has been employed to prohibit marketing or withhold from market the total quantity of specified sizes [7] expressed in terms of minimums or maximums.

Conversely, Section 8c(6)(A) does not appear to authorize certain collateral types of regulation. These include inter alia, regulation of the "pack" of the commodity; i.e., the arrangement or assembly by size, grade, or other description of the units in containers or lots. Such "pack" specifications do not relate to a "total quantity" which may be marketed. They pertain, instead, to the manner of marketing the commodity in lots or containers. The consistent position of the Department has been that they are not authorized by Section 8c(6)(A).

The President's message to Congress (H. Doc. 292, 83rd Congress) recognized this basic distinction between the then authorized "size" regulation and the then unauthorized "pack" regulation by expressly recommending that the Act be amended to:

"(d) enlarge and clarify the authorization for the use of marketing orders to promote marketing efficiency, including the regulation of containers and types of pack for fresh fruits and vegetables."

The Congress adopted this Presidential recommendation in the 1954 amendments to the Act. Significantly, it did not change the existing authorities contained in paragraphs "(A)" through "(G)" of Section 8c(6). Instead, it added a new paragraph "(H)" to the "optional" authorities previously provided, separately authorizing container and pack regulations, as distinguished from the grade and size regulations authorized by "(A)".

This new paragraph "(H)" reads as follows:

"(H) providing a method for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging, transportation, sale, shipment, or handling of any fresh or dried fruits, vegetables, or tree nuts: . . .".

This distinction between "size" and "pack" regulations is also reflected in the legislative history of the 1954 amendments. Thus, both the Senate and House Reports made it clear that paragraph "(H)" was being added to provide new and separate authority to include "pack" regulations in marketing orders. [8]

It is therefore clear that as used in the Act, as so amended, the terms "size" and "pack" have distinctly different regulatory meanings and represent distinctly different regulatory authorizations.

The 1954 amendments to the Act also added a new Section 8e, dealing with the regulation of imports. It provides, in pertinent part, as follows:

"8e. Notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 8c of this Act contains any terms or conditions regulating the grade, size, quality, or maturity of tomatoes . . . produced in the United States the importation into the United States of any such commodity . . . shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder: . . . ".

The import coverage of Section 8e clearly is confined by its own terms to the grade, size, quality, and maturity provisions of domestic regulatory orders. No other regulatory provisions of domestic orders are made applicable to imports. Section 8e does not mention "pack" regulations. As previously shown, Congress by the very same legislation considered and treated "pack" regulation as a completely different kind of regulation from "grade" or "size" regulation. As to domestic orders, it carefully separated the newly granted "pack" authority from the previously existing "grade" and "size" authority by adding the completely new paragraph "(H)" to Section 8c of the Act. In these circumstances, it would appear that the omission of "pack" authority in Section 8e was not inadvertent, and that the term "size" in Section 8e was not intended to include "pack".

The legislative history of Section 8e confirms this conclusion. References therein are in terms of grade, size, quality, and maturity, and we have been unable to find any reference to "pack," the emphasis being on the limiting of the quantity and quality shipped rather than the manner of marketing by lots or containers.

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[7] The same has been true of the "grade" authority in § 8c(6)(A).

[8] Senate Report No. 1810, p. 8, and House Report No. 1927, p. 29 (83rd Cong., 2d Sess.).

In summary, it is our opinion that the text, history, and background of these provisions of the Act demonstrate that "size" and "pack" regulations are distinctly different and distinguishable and that Section 8e of the Act encompasses "size", but not "pack" regulations. It is, therefore, necessary to consider the nature of the regulation now in effect.

NATURE OF THE CURRENT REGULATION

The test of the current Florida tomato regulation is heretofore set forth in paragraph 2 hereof and it will be noted that subparagraph (iv) of the regulation itself specifically characterizes the requirements thereof as "pack requirements". The underscored portions thereof also deal in terms of "pack".

The Florida Tomato Committee, appointed by the Secretary from nominees of the industry in the various districts of the production area regulated to administer the marketing order, recommended the promulgation of the regulation in question using in its recommendation language comparable to that which appeared in the promulgated regulation. In 1955 and 1956 the Florida tomato regulations [9] contained similar "pack requirements" but also included a minimum size regulation precluding the marketing of all tomatoes under the specified diameter, as well as a minimum grade regulation precluding the marketing of all tomatoes under the specified grade. On the recommendation of the Florida Tomato Committee such minimum size and grade limitations were not included in the current regulations. It is significant that the import regulation [10] issued pursuant to Section 8e of the Act for the 1955–1956 season was limited to last year's minimum size and grade requirements although "pack requirements" similar to those in the current regulations were in the 1955–1956 Florida regulation at the time.

The Florida Tomato Committee issues official bulletins addressed to "All Handlers of Tomatoes" advising them of recommendations made by the Florida Tomato Committee to the Secretary for regulations, notices of rule making with respect thereto by the Department, and the issuance of regulations as a result thereof. In these official bulletins the Committee designated their recommendation for the regulations in question as "recommendations for pack regulations" and the regulations promulgated as a result thereof were designated as "pack regulations"; [11] whereas, the 1955–1956 minimum size and grade limitations were referred to as "size" and "grade" regulations.[12]

Although it is recognized that the designation of a requirement as a "pack regulation" is not determinative as to the nature of the requirement, it is an indication by the officials of the Department issuing the regulation and the Florida Tomato Committee that they purported to exercise the pack regulation authority under Section 8c(6)(H) and they as administrators of the order considered the requirement in question a pack regulation.

In this instance the substantive provisions of the regulation do not prescribe the quantity of tomatoes or of any size thereof which may be marketed. In fact, it imposes no quantitative limitations such as would be the case in size regulations under Section 8c(6)(A). It does, on the other hand, provide that specified tomatoes, as defined therein, shall be *packed* in accordance with stated specifications and sizing arrangements as would be expected in pack regulation under Section 8c(6)(H). The use of sizing arrangements in specifying the pack of containers or lots does not convert a pack regulation to a size regulation. It constitutes a convenient and customary means of describing the pack of containers or lots.

On the basis of the foregoing we see no reason as a matter of law to question your conclusion and that of the Florida Tomato Committee that the current Florida tomato regulation in question is a "pack" regulation. As a pack regulation it is not applicable to imports under Section 8e of the Act.

Sincerely yours,

R. L. FARRINGTON, *General Counsel.*

Mr. HEDLUND. I would like to say I think the Senator makes a very good statement. As far as I know now, we are not required to comply with any pack or container requirements in shipping our products to

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[9] Section 945.301; 21 FR 2408.

[10] 21 FR 2509.

[11] For example, In Bulletin No. 2, November 5, 1956, the present regulation was designated as "(Pack Regulation No. 1)".

[12] For example, Bulletin No. 27, May 22, 1956, "Subject: Amendment to Pack Regulation" dealt with the deletion of the requirement of sizing tomatoes within given diameter ranges and packing them separately and at the same time gave notice to the handlers that "The size (1⅞" minimum diameter or larger) and Grade (U.S. No. 2 or better grade, as modified) . . . regulations remain in effect, . . .".

foreign countries. Now we are required to comply with quality requirements, not only into the EEC, but also Canada requires minimum quality requirements on just about everything we send them, and we do comply with those. Of course, we have problems with fungicides and other things which have been a very serious problem, but not in the area of pack or containers.

Senator HUDDLESTON. Thank you very much. We appreciate your testimony today.

Mr. Wayne Hawkins.

Good morning, Mr. Hawkins. Would you identify yourself and your association for the record and proceed with your statement.

STATEMENT OF WAYNE HAWKINS, EXECUTIVE VICE PRESIDENT, FLORIDA TOMATO EXCHANGE, ORLANDO, FLA.

Mr. HAWKINS. My name is Wayne Hawkins. I am executive vice president of the Florida Tomato Exchange, a nonprofit cooperative agricultural association whose members represent more than 80 percent of the volume of fresh tomatoes shipped from the production area as defined in Federal marketing order No. 966, regulating the handling of tomatoes grown in Florida. I am also manager of the Florida Tomato Committee which is the administrative committee for marketing order No. 966.

I would like to thank this committee for giving me the opportunity to come before you today and testify in behalf of the Florida tomato industry which strongly supports S. 2440 which would provide for a perfecting amendment to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, by including regulations which would apply to the contents of imported containers in the same manner that they presently apply to domestic commodities under a Federal marketing order.

Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, was enacted on August 28, 1954, and was introduced by the late Senator Spessard L. Holland. It was originally written to cover only tomatoes, avocados, limes, and grapefruit. Irish potatoes were added on the floor of the Senate. In conference with the House on their bill which had already passed, green peppers, cucumbers, and eggplants were added. The other commodities covered under section 8e were added at later dates.

For several years prior to the enactment of section 8e, the Florida fruit and vegetable industry had been studying marketing orders seeking ways to improve marketing conditions. Various commodity groups had not been able to determine how they could make use of the marketing order machinery; because throughout their shipping season, their products were subject to severe competition from neighboring nations, primarily Mexico and Cuba, particularly with respect to tomatoes.

The following quote is from a letter to Mr. J. S. Peters, former manager of the Florida Tomato Committee, from Senator Spessard L. Holland, dated June 3, 1969, and was included in the 1968–69 Annual Report of the Florida Tomato Committee. Senator Holland was discussing some ideas concerning commodities now covered under

section 8e, and I quote, "The provision is manifestly fair and is sometimes referred to as the golden rule amendment. It imposes no requirement on the imported commodity that is not also imposed on the domestic commodity. It provides for adequate notice so that foreign producers and importers will have ample opportunity to adjust their operation. It does not seek to exclude imports, but rather to make possible market regulations of equal benefit to domestic and foreign producers. Generally, the forces of competition compel producers to harvest and market everything that will sell for enough to cover harvesting costs, plus something in addition, no matter how little. By excluding the less desirable grades and sizes, a marketing order makes it possible for the producers, both foreign and domestic, to obtain better prices and a better total return." A copy of the entire letter is attached to this statement as exhibit No. 1.*

A controversy between the USDA and the Florida tomato industry concerning the applicability of grade, size, quality and maturity regulations to imports has existed for many years. A letter from Washington, D.C. attorney, Joseph O. Parker, who is now a member of the International Trade Commission, to Mr. Joffre C. David, general manager of the Florida Fruit and Vegetable Association, dated June 15, 1957, clearly points out the areas of disagreement. A copy of this letter is attached to this statement as exhibit No. 2.**

I would like to quote:

> In the hearings on this amendment before the Senate Committee on Agriculture and Forestry the principal point made by the proponents of the legislation in demonstrating the need for, and the objective sought to be achieved by this legislation was the fact that Florida growers could not benefit from the Agricultural Marketing Agreement Act because imports from Mexico could not under existing law be subjected to like regulations.
>
> From this legislative history and the express language of the statute there can be no doubt but that it was the intent of Congress to require imports to comply with any term or condition of a marketing order regulating grade, size, quality or maturity.
>
> The contention has been made that the regulation is not applicable to imports because it is a "pack regulation" and, therefore, not a size regulation. Such a contention appears to us to be merely an exercise in semantics. It is not what a regulation may be called that is the determining factor. It is what the regulation does. The question at issue is whether the order contains any terms or conditions regulating size. It is obvious that it does. In our opinion, it is immaterial whether the regulation is described or called a "pack regulation" or by any other name or under what section of the statute it may have been promulgated, since the order manifestly regulates size and the regulation of size is necessary to the application of the order to Florida growers. Under such circumstances, Section 8e makes those provisions applicable to imports.
>
> Any attempt to construe the order as not relating to size and thereby avoiding its application to imports under Section 8e would give a result contrary to the intent of the Congress and would be in derogation of the fundamental objective of the statute. The provisions of the law which were added by the Agricultural Act of 1954 were for the purpose of strengthening and making more effective to farmers the provisions of the Agricultural Marketing Agreement as a means of assisting them in establishing and maintaining orderly marketing conditions in an effort to avoid unreasonable fluctuations in supplies and prices. Although the Agricultural Marketing Agreement Act was first enacted over twenty years ago, its provisions, as was shown in the hearings on the bill, have not been of substantial benefit to Florida fruit and vegetable growers because marketing regulations imposed upon themselves in an effort to establish orderly marketing procedures could have no applicability to competitive imports. It was not until the adoption by the Congress of Section 8e, thereby making applicable to imports any term or

*See p. 23.
**See p. 24.

condition of a marketing order regulating grade, size, quality or maturity, that the growers of Florida could successfully utilize the provisions of the Act. The failure to follow the clear intent of Congress and the plain language of the statute on the part of the administrator would not only defeat the intent of Congress in enacting Section 8e, but it would destroy the usefulness of the entire Agricultural Marketing Agreement Act to Florida growers and prevent the fundamental objective and purpose of the statute from being achieved. It is an elemental rule of construction that a statute should be construed so as to carry out the Congressional intent and purpose and to make the statute effective. To this end the statute should be given a construction which will best effect its purpose, rather than one which would defeat it.

Accordingly, it is our view that Section 8e of the Agricultural Marketing Agreement Act requires that the provisions of the marketing order referred to above be made applicable to imports.

Mr. HAWKINS. Regulations imposed on Florida handlers of fresh tomatoes under marketing order No. 966 prevent them from commingling different grades of tomatoes in a shipping container and also from commingling different sizes of tomatoes within a shipping container except for the sizes of large and larger. Both of these regulations are important and are designed to create orderly marketing of fresh tomatoes. Different sizes of tomatoes, such as small, medium, or large, sell for different prices and generally vary from $1 to $2 per carton between each size. The same is true with different grades of tomatoes, such as U.S. No. 1, 2, or 3.

Because of these variations in price for different grades and sizes, regulations are imposed on Florida handlers requiring them to pack tomato cartons with only one grade in the container and only one size in the container except for large and larger. This is also where the controversy has been between the USDA and the Florida tomato industry. The USDA contends that prohibiting the commingling of grades or sizes within a shipping container constitutes a pack regulation and not a grade or size regulation.

Due to this interpretation, imports from Mexico are only inspected to see if they meet the minimum U.S. No. 3 grade and are larger than $2\frac{13}{32}$ inches in diameter, the minimum size that can be offered for sale under the marketing order. Mexico is the main competition for Florida tomatoes, supplying from 40 to 60 percent of the tomatoes consumed in the United States during the months of December-June each year. They commingle size and grade in the containers they export to the United States which seriously disrupts the orderly marketing process since tomatoes are sold by grade and size.

Mexican imports usually sell for less money per package than comparable tomatoes from Florida. During periods of heavy supply, Mexican imports are frequently consigned to handlers throughout the United States, which again creates havoc with the orderly marketing process.

Due to the abundance of cheap labor, the Mexican producer can continue to flood the U.S. market with tomatoes at prices that won't even return the costs of production in Florida. It is not uncommon to have Mexican tomatoes offered for sale in Florida during our peak season at prices cheaper than Florida tomatoes.

Numerous meetings have been held with representatives from the USDA over the past 20 years in an effort to require Mexican imports to be packed like Florida tomatoes without the commingling of sizes and grades. They continually respond by saying this constitutes pack regulations and not grade and size regulations and furthermore state

that pack regulations cannot be imposed under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

The most recent meeting of this subject was held in Senator Lawton Chiles' Office in Washington, D.C., on January 22, 1974. Representatives from the Secretary of Agriculture's office, the USDA–AMS, the Federal-State Inspection Service, the Florida Department of Agriculture and Consumer Services, the Florida Tomato Committee, the Florida Fruit and Vegetable Association, and the chairman of the tomato committee of the United Fresh Fruit and Vegetable Association discussed the problem with Senator Chiles.

The USDA stated that there were only two ways to solve the problem. The first solution was for a representative group of Florida tomato shippers to enter suit against the Secretary of Agriculture of the United States and let the courts decide if commingling of sizes and grades in a container is covered under section 8e as a grade and size regulation or if commingling of grades and sizes in a container constitutes a pack regulation that is not covered under section 8e.

The other alternative solution offered was for the Florida tomato industry to seek an amendment to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, to include pack regulations. A meeting of the Florida tomato industry was held in Belle Glade, Fla., on February 20, 1974, and the two alternative solutions to the problem were discussed at length. Although it was generally agreed that the suit could be won, it was unanimously agreed that efforts should be made to amend section 8e to include pack regulations for tomatoes. This simple amendment would solve the problem once and for all and bring about orderly marketing for the tomato industry.

The USDA assisted the Florida tomato industry in drafting an amendment that would solve the problem. This amendment was introduced by Senator Chiles as S. 3824 on July 29, 1974. Subsequently, it was again introduced by Senator Chiles as S. 2440 on October 1, 1975.

I was somewhat shocked to find out that the Under Secretary of Agriculture had written a letter to Senator Herman E. Talmadge, chairman of the Committee on Agriculture and Forestry of the U.S. Senate on February 11, 1976, opposing this amendment.

I have attached a copy of this as exhibit No. 3.*

Since representatives from the USDA drafted the amendment for the Florida tomato industry and told us it would solve the problem and then opposed the amendment, it is obvious that they are not interested in solving the problem.

The Under Secretary stated in his letter:

> Section 8e now requires only that imports of selected commodities meet the same minimum grade, size, quality, or maturity standards imposed on domestic shipments under a marketing order.

I don't know where he gets the word "minimum" and frankly, this is what has caused all the problems for the past 20 years. The actual wording of section 8e says:

> Notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 608c of this title contains any terms or conditions regulating the grade, size, quality, or maturity of tomatoes,

*A copy of this letter was introduced into the record by Senator Huddleston. See. p. 2.

raisins, olives, other than Spanish-style green olives, cucumbers, oranges, onions, walnuts, dates, or eggplants produced in the United States the importation into the United States of any such commodity, other than dates for processing, during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder.

I would like to emphasize that the word "minimum" does not appear. The phrase "any terms or conditions regulating the grade, size, quality, or maturity of tomatoes, etc." does appear and in the opinion of the Florida tomato industry, this could certainly be interpreted to include commingling of sizes and grades.

The Under Secretary further states that:

This proposed legislation would expand the statutes regulatory authority on imported commodities beyond quality-related factors. It would authorize requirements that different grades or sizes of tomatoes be packed in separate containers. This is not a quality regulation but rather a pack specification.

I again repeat, tomatoes are sold by size and grade. Commingling of different sizes and different grades does affect the quality of the tomatoes offered for sale, and, consequently, the price. It also creates disorderly marketing conditions since buyers do not really know what they are purchasing. It would be the same as mixing all sizes of eggs together in a single carton.

I again quote from the Under Secretary's letter:

A requirement that different sizes of tomatoes be packed in separate containers might be useful for standardization purposes in the domestic industry while being impractical for foreign-grown tomatoes because of differences in mode of operation.

Ninety-five percent of the fresh tomatoes sold in the United States from December to June each year are produced in Florida or imported from Mexico.

I personally visit the Mexican production areas at least once each season and can attest that most of the varieties produced in Mexico are the same as the ones grown in Florida, and the Mexican packing facilities are certainly as modern as those found anywhere in Florida. I cannot comprehend how standardization of the domestic industry would be useful but would be impractical for foreign-grown tomatoes when the foreign imports represent 40 to 60 percent of the total volume available during Florida's production season.

The Under Secretary further states:

We do not accept the idea that imported commodities should be made to comply with our packing requirements or other trade practices. As an exporter, the United States would not favor the imposition of such non-tariff barriers on its products moving into foreign markets.

We question that this is a nontariff barrier since both the domestic and foreign shipper would comply with these regulations.

It has always been my opinion that a nontariff barrier was something that was imposed on imports, but not required on domestic products. The Florida tomato industry is not requesting that Mexican tomatoes be placed in containers identical to ours. They can pack them in burlap bags if they want to. We are seeking to have the contents of any shipping carton packed uniformly by size and grade since these items definitely affect the price of tomatoes and commingling of sizes and grades seriously undermines the concept of orderly marketing.

Speaking of nontariff barriers, I wonder if the Under Secretary is aware of the fact that tomatoes produced in the United States cannot be shipped to Mexico under any conditions when Mexico is in production because of their restrictive procedures. In fact, their permit system practically prohibits the exportation of tomatoes produced in the United States to Mexico at any time of the year.

They are even making it tough for the American companies operating in Mexico.

I have here a copy of an article that I cut from the Orlando Sentinel on June 10, 1976, stating that Mexico has passed a new law requiring Spanish language names on all foreign products. Can you imagine what this will cost a firm like Pepsi-Cola? It will require production of new bottles with a name like Mexi-Cola on one side and Pepsi-Cola on the other side. I have attached a copy of this article to my statement as exhibit No. 4.*

The amendment to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, as contained in S. 2440 would standardize the grade and size of tomatoes offered for sale in the United States during the period of time that they are controlled by a Federal marketing order. It will not eliminate imports and will not place restrictions on imports that are more restrictive than those applied to domestic shipments.

The Florida tomato industry respectfully urges you to approve this amendment to section 8e so that the original intent of the "Golden Rule" amendment can be applied. This will provide for orderly marketing and will benefit the Florida producer, the Mexican producer, the U.S. importer, and most of all, the U.S. consumer.

Mr. Chairman, this concludes my statement. I thank you for allowing me to present it. I will be glad to try to answer any question.

Senator HUDDLESTON. Thank you, Mr. Hawkins.

You talk about the need for orderly marketing, but what specifically are the disadvantages that a producer who has to adhere to packing standards suffers against a producer who has no such standards imposed on him?

Mr. HAWKINS. Well, as I stated in my statement several times, tomatoes are sold by grade and size. When we are packing tomatoes according to grade and they are being labeled U.S. grades No. 1, No. 2, or No. 3 and every package is being inspected by the Federal-State Inspection Service, which is required by the Federal marketing order, they are sold on this basis. The USDA has taken the position that minimum requirements are all that are necessary on imports and the only thing they are inspected for at the border is to see if they meet a U.S. No. 3 grade. They can be commingled within the carton——

Senator HUDDLESTON. I understand that, but does the packing requirement add an additional expense to the producer?

Mr. HAWKINS. No, sir, I don't see that it would. They have the facilities to segregate them by grade and size now.

Senator HUDDLESTON. What advantages specifically does a consumer have in being able to rely on packing standards versus packages that don't comply to any standards?

Mr. HAWKINS. Well, I think he has the advantage of a uniform product. Naturally it affects the price at the wholesale level when you

*See p. 26.

don't know what you are talking about in the carton. If everybody knows what you are talking about, it gives you a uniform commodity, it gives you a uniform price. Supermarkets today operate on a standard markup and if they have to pay more for a commodity, the consumer is going to be affected. If it is a uniform product, then we are competing on a uniform basis. I feel in the long run then the consumer will benefit.

Senator HUDDLESTON. Senator Chiles, do you have any questions?

Senator CHILES. Right now when the Florida domestic producer is marketing his tomatoes, as you say, it is sold on the basis of the size. Much of the sales that are coming in from the foreign production are not under this, so they are sold in many instances in bulk, at a much cheaper price.

Mr. HAWKINS. This is correct. You don't know what you are buying when they are packaged. It is labeled but it is multilabeled——

Senator CHILES. The only thing you know is it is a minimum of a certain size, 2¾, or whatever; you know it is a minimum size.

Senator HUDDLESTON. They do have to meet the minimum size.

Mr. HAWKINS. Yes. To give you an example, tomatoes coming out of Florida, for instance, a 30-pound unit of small tomatoes would be labeled U.S. No. 1, small. Coming from Mexico it would be labeled small-mediun-large. You don't know what is in the package.

Senator HUDDLESTON. You don't know what is in the package?

Mr. HAWKINS. That is right, and they do label it that way: small-medium-large. It is like comparing nuts and bolts. When you are talking to a receiver in New York and trying to sell tomatoes and you quote a price to him, he says, I can buy the same thing from Nogales for x dollars, but it is not the same thing.

Senator HUDDLESTON. Any other questions?

Senator CHILES. No, sir.

Senator HUDDLESTON. Thank you very much for your testimony, Mr. Hawkins.

The record will remain open for a week for any other statements or information that might be submitted to the subcommittee.

Senator CHILES. We thank you again.

Senator HUDDLESTON. The subcommittee is glad to hold these hearings and that concludes our session.

[Whereupon, at 10:20 a.m., the subcommittee adjourned, subject to call of the Chair.]

ADDITIONAL MATERIAL RELATING TO S. 2440

STATEMENT OF PATRICK F. J. MACRORY, COUNSEL, WEST MEXICO VEGETABLE DISTRIBUTORS ASSOCIATION, NOGALES, ARIZ.

This statement contains the comments of the West Mexico Vegetable Distributors Association of Nogales, Arizona ("WMVDA"), in opposition to S. 2440, a bill that would extend the provisions of Section 8(e) of the Agricultural Marketing Agreement Act of 1937, as amended, so as to require imported tomatoes to conform with pack-of-container standards imposed by domestic marketing orders.

WMVDA consists of some forty American companies located in Nogales which are engaged in the business of importing tomatoes and other fresh fruits and vegetables from Mexico for sale to the retail and wholesale trade in the United States. Virtually all the tomatoes imported into the United States from Mexico are handled by WMVDA member companies.

WMVDA shares the view of the U.S. Department of Agriculture that enactment of this legislation would be regarded by other countries as a protectionist move, and might result in retaliation which would hamper U.S. agricultural exports.

There are further reasons for rejecting this bill, however. As we explain below, no public interest would be served by the legislation—only the special and private interests of a group of Florida growers. And the legislation would be harmful and costly to consumers.

(1) The Proposed Amendment Would Severely Reduce The Supply And Increase The Price of Consumer-Preferred Vine-Ripe Tomatoes, While Favoring Green Tomatoes That Are Gassed To Induce Red Color Artificially.

The vast majority of tomatoes imported from Mexico are "vine-ripe," that is, are left on the vine until they have begun to turn pink. By contrast, the great bulk of Florida tomatoes are picked at an earlier stage of maturity, when they are still green, are stored in refrigeration until the grower is ready to ship them, and are then artificially colored through exposure to ethylene gas just prior to shipment. Both consumers and members of the trade regard the vine-ripes as superior to the greens, as a result of the differences in flavor and texture, and are prepared to pay a higher price for them.

Because of their greater maturity, vine-ripe tomatoes must be packed much more carefully than greens. The place-packing method (described in more detail in Section 3 below), which results in a tight fit for the tomatoes, has been developed over the years as the most satisfactory means of getting vine-ripes to market without excessive damage. One size of container, known as the Los Angeles type lug, permits place-packing of all the different sizes of tomato imported from Mexico. The green tomatoes shipped by the Florida growers are, by contrast, generally loose-packed, that is, are simply dropped at random into a carton until the desired weight is reached. This loose fill system does not provide such a tight pack for the individual tomatoes as place-packing, and results in rougher treatment during transportation to the market. In addition, the tomatoes are more likely to be bruised when dropped into the boxes than when they are carefully place-packed. The loose fill method is tolerable for green tomatoes, which are relatively hard when shipped. But this method would be totally unsatisfactory for vine-ripe tomatoes from Mexico, which are softer and more easily bruised because of their greater ripeness.

However, if the pack restrictions applicable to the Florida growers are imposed upon imports, it will, for reasons explained in Section 3 below, be virtually impossible for the Mexican producers to continue to use the present form of place-packing in one size of container. In all likelihood, many growers would be forced to switch to loose packing. But in order to do this, they would have to pick their tomatoes at the "green" stage. The consumer's choice between vine ripe and green tomatoes will thus be cut down or eliminated. This change would of course serve the business interests of the Florida growers by eliminating the

competition they encounter from consumer-preferred vine-ripe tomatoes. However, consumer interests would be severely impaired by the elimination or reduction of the availability of vine-ripe tomatoes, and the rise in price of those vine-ripe tomatoes, and the rise in price of those vine-ripes that remain available.

The only alternative would be to adopt different sized boxes for different sizes of tomatoes, thus permitting tomatoes of each size category to be place-packed satisfactorily in a given box. This system would, of course, greatly increase the cost of making and inventorying boxes and box material, would require expensive changes in automatic machines used for handling boxes; and would require additional handling by warehouses, motor and rail transporters, and anyone else handling the tomatoes from time of packing until they reach the consumer. The extra cost would naturally be borne by the consumer, and consumer prices for vine-ripe tomatoes would increase accordingly.

(2) The Proposed Amendment Would Allow Florida Growers To Impose Restrictions On Competitive Imports From Mexico, Whereas Such Restrictions Would Not Apply To Tomatoes Produced In California Or Other Sectors Of The United States.

During much of the year American consumers purchase tomatoes grown outside of Florida and Mexico. Vast quantities are produced in California and shipped throughout the country. Very large amounts also emanate from a number of other states.

The proposed amendment would not establish uniform national standards for packing tomatoes. All United States tomato-producing regions outside Florida would be free to use the packing techniques they prefer—and most of them have made clear they intend to continue to use the traditional method of packing vine-ripe tomatoes in Los Angeles type lugs. (See Section 3 below.) But whenever the Florida growers—in pursuit of their own self-interest—establish packing regulations for their own products, the amendment would automatically apply these regulations to imports. Thus, while not establishing national uniformity, the amendment would vest the Florida growers with a remarkable power to regulate their foreign competitors.

(3) The Packaging System Utilized For Mexican Tomatoes Is Not Confusing To Purchasers.

Wayne Hawkins, testifying before the Subcommittee on behalf of the Florida Tomato Exchange, implied that the Mexican tomato producers commingle the size of their exports indisriminately, and that purchasers in the United States "do not really know what they are purchasing."

Contrary to Mr. Hawkins' assertion, there is simply no evidence whatever that purchasers are in any way confused by the alleged "commingling" of sizes, which has in fact resulted from a change in size nomenclature rather than a change in packaging practices. Until 1973, the size standards laid down by the U.S. Department of Agriculture, which conformed to the designations used in the trade, were derived from the practice of packing tomatoes in a wooden box approximately 13 inches wide and 16 inches long, known in the trade as the "Los Angeles type lug." This type of container is still used for most tomatoes imported from Mexico, as well as for a very large proportion of those shipped from California and other U.S. production areas. The tomatoes are place-packed in different kinds of rows, depending upon the size of the tomatoes, thus, for example, "6 by 7" tomatoes are those in a size range which permits them to be packed in a Los Angeles type lug so that there will be six tomatoes in a row running the width of the lug, and seven tomatoes in each row running the length of the lug. "6 by 6" tomatoes are slightly larger and placed in differently arranged rows so that there are six tomatoes in each direction in the same size lug. The dimensions of each size category were defined so as to give that category a slight overlap with the next size. This slight tolerance was designed to permit the careful place-packing in Los Angeles type lugs of tomatoes falling entirely into one of the long-established size categories.

The Los Angeles lug, with place-packing by numbered rows, has been used for 50 or 60 years by both California shippers and importers. It has been so long and so widely used because it permits a good tight pack for the tomatoes, thus enabling them to travel with a minimum of damage, and because this one standard size lug can ge filled with tomatoes in any one of the various size categories, thus making it unnecessary to handle different sized boxes for different sizes of tomatoes.

In 1973 USDA changed the size designations for tomatoes from the pack arrangement designations ("6 by 6", "6 by 7", etc.), to the descriptive dsignations, "extra large", "large", "medium", "small", etc. The new designations eliminated the all smoverlaps previously existing between the different categories.

Accordingly, in order to continue to pack a Los Angeles type lug in, say a "6 by 7" arrangement, it may be necessary to use tomatoes that fall into both the "medium" and "small" categories of the new standards. However, there has been no change whatever in the size or mix of the tomatoes that are so classified, and, indeed, most customers continue to use the old designation when ordering tomatoes, and will ask for so many "6 by 6" lugs, so many "6 by 7's", etc.

They thus know precisely what size of tomato they will be getting, which has remained unchanged for 50 or 60 years. Under the new USDA designations the lugs will be labeled "medium-small", "medium-large", etc. It is absurd to suggest, as Mr. Hawkins did, that the purchasers, who are sophisticated produce merchants and chain stores, will somehow be confused by these designations when they know they are getting the same 6 by 7 or 6 by 6 size they have been dealing with for years.*

The fallacy of the Florida industry's assertion that purchasers are confused by the "commingling" of sizes is demonstrated by the fact that the Florida producers are themselves permitted to commingle three sizes—large, extra large, and maximum large—under the applicable marketing order. See 7 C.F.R. § 966.314 (a) (2)(ii), 40 Fed. Reg. 54327 (Nov. 21, 1975), (copy attached). Mr. Hawkins made no attempt to explain why, in the Florida industry's view, the purchaser is only confused by the commingling of the smaller sizes, and not by the commingling of the larger categories. Indeed, while the Florida growers can commingle as many as three size categories, the tomatoes imported from Mexico are never packed in more than two contiguous categories, such as "medium-large" or "extra large-maximum large". If purchasers are confused at all by "commingling", the Florida producers would appear to be the worst offenders.

(4) The Original Statute Did Not Contemplate That Imported Fruit And Vegetables Should Be Subject To Packaging Restrictions Imposed By Marketing Orders On Domestic Products.

It has been suggested to the Committee that S. 2440 is simply a clarifying amendment that is entirely consistent with the original intent of Section 8(e). Viewed as such, the bill might have a greater chance of enactment than if it were regarded as working a substantive change in the law. However, the express language of Section 8(e), and its legislative history, makes clear that Congress did not intend to include packaging restrictions within the ambit of that provision.

The purpose of the Agricultural Adjustment Acts of 1933 and 1935 and the Agricultural Marketing Agreement Act of 1937 was to establish a rational mechanism for the orderly marketing of basic agricultural commodities, the supply of which was far in excess of demand at the time. One of the methods employed was the authorization of orderly marketing agreements, imposing on domestic producers minimum standards of grade, size, quality and maturity. However, these agreements were not applicable to imported produce, resulting in complaints from farm producers that their efforts to improve the quality of products sold under the new mechanism were being frustrated by low quality imports.

Accordingly, Congress in 1954 enacted Section 8(e), extending the grade, size, quality and maturity provisions contained in domestic marketing orders to imports. The testimony on behalf of the Florida industry in support of this legislation made clear that the sole aim of the legislation was to improve "the quality and grade of these products," ** and had nothing whatever to do with packaging. The purpose of Section 8(e)—to prevent domestic marketing orders from being frustrated by low quality imports—is clearly in no way affected by the manner in which imports are packed. Had Congress in 1954 intended that packaging restrictions be applicable to imports, it would have expressly said so.

In sum, there is no justification for the proposed amendment. The purchasers of imported tomatoes are completely accustomed to the pack arrangements of Mexican tomatoes, and, contrary to the assertions of the Florida industry, know perfectly well what they are getting. The proposed amendment will simply cut down the available choice to the consumers, and increase the cost of imported tomatoes, with no countervailing benefit. The amendment should accordingly be rejected.

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* Mr. Hawkins also suggested that confusion is created by the commingling of different grades of imported tomatoes. The fact is that the importers of Mexican tomatoes do not ship No. 2 or No. 3 Grades. Of course, as in the case of Florida tomatoes, all shipments of Grade 1 tomatoes are allowed to contain a specified percentage of lower grade tomatoes.

** Testimony of L. I. Chandler, Chairman and Director of Competitive Division, Florida Fruit and Vegetable Association, in Hearings Before the Committee on Agriculture and Forestry, United States Senate, 83d Cong., 2d Sess., on S. 3052, part 2, at 1183.

[Attachment to statement of Mr. Macrory.]

[FEDERAL REGISTER, Nov. 21, 1975]

PART 966—TOMATOES GROWN IN FLORIDA

HANDLING REGULATION

This regulation, designed to promote orderly marketing of Florida tomatoes, imposes minimum grade, size, quality and maturity standards and requires inspection of fresh shipments to keep undesirable tomatoes from being shipped to consumers.

Notice of rule making with respect to a proposed handling regulation, to be effective under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966), regulating the handling of tomatoes grown in the production area, was published in the October 30, 1975, Federal Register (40 FR 50540). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons through November 14, 1975, to file written data, views or arguments pertaining to that proposal. None was filed.

The recommendations of the committee reflect its appraisal of the composition of the 1975–76 crop of Florida tomatoes and the marketing prospects for this season. The requirements for containers, container net weights, and size classifications are intended to standardize shipments in the interest of orderly marketing and thereby improve returns to producers. The requirements with respect to special purpose shipments are designed to meet the different requirements for shipments. The requirements concerning special pack shipments are intended to help handlers in the production area compete on an equal basis with those outside the area by not requiring reinspection of previously inspected tomatoes when repacked in consumer size packages. The minimum grade and size requirements will preclude shipments to fresh market of tomatoes which usually are of negligible economic value to producers.

After consideration of all relevant matters presented, including the above proposal recommended by the Florida Tomato Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that the handling regulation, as hereinafter set forth will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that shipments of 1975–76 crop tomatoes grown in the production area have begun and the regulation should become effective at the time herein provided to maximize the benefits to producers. The Florida Tomato Committee held an open meeting on September 8, 1975, to consider recommendations for a handling regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; information regarding the provisions of the recommendation by the committee has been disseminated among the growers and handlers of tomatoes in the production area; and compliance with this section should not require any special preparation on the part of handlers subject thereto which cannot be completed by such effective date.

The regulation is as follows:

§ 966.314 Handling regulation

During the period November 24, 1975, through June 20, 1976, no person shall handle any lot of tomatoes for shipment outside the regulated area unless they meet the requirements of paragraph (a) or are exempted by paragraphs (b) or (d).

(a) *Grade, size, container and inspection requirements.*

(1) *Grade.*—Tomatoes shall be graded and meet the requirements specified in § 51.1855 U.S. No. 1, § 51.1856 U.S. Combination, § 51.1857 U.S. No. 2 or § 51.1858 U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes except that when not more than 15 percent of tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than one percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

(2) *Size.*—(i) Tomatoes shall be over $2\frac{4}{32}$ inches in diameter and be sized in accordance with § 51.1859 of the U.S. tomato standards.

(ii) Tomatoes of designated sizes may not be commingled unless they are over $2\frac{17}{32}$ inches in diameter and each container shall be marked to indicate the designated size.

(iii) Only the generic terms as defined in § 51.1859 may be used to indicate size designations on containers of tomatoes; except that the following abbreviations may be used—sml for small, med for medium, lg for large, ex lg for extra large, or max lg for maximum large.

(3) *Containers.*—(i) Tomatoes shall be packed in containers of 20, 30, or 40 pounds designated net weights and comply with the requirements of § 51.1863 of the U.S. tomato standards.

(ii) Each container shall be marked to indicate the designated net weight.

(iii) If the container in which the tomatoes are packed has been previously used, the lid of such container shall be marked with the words "USED BOX" in letters not less than three-fourths inch high.

(4) *Inspection.*—Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applied for inspection shall register with the committee pursuant to § 966.113. Registered handlers shall pay assessments as provided in § 966.42. Inspection certificates must accompany truck shipments.

(b) *Special purpose shipments.*—The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for canning, relief, charity or export if the handler thereof complies with the safeguard requirements of paragraph (c) of this section. Shipments for canning are also exempt from the assessment requirements of this part.

(c) *Safeguards.*—Each handler making shipments of tomatoes for canning, relief, charity or export in accordance with paragraph (b) of this section shall:

(1) Apply to the committee and obtain a Certificate of Privilege to make such shipments.

(2) Prepare on forms furnished by the committee a report in quadruplicate on such shipments authorized in paragraph (b) of this section.

(3) Bill or consign each shipment directly to the designated applicable receiver.

(4) Forward one copy of such report to the committee office and two copies to the receiver for signing and returning one copy to the committee office. Failure of the handler or receiver to report such shipments by signing and returning the applicable report to the committee office within ten days after shipment shall be cause for cancellation of such handler's certificate and or receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of any such certificate, the handler may appeal to the committee for reconsideration.

(d) *Exemption.*—(1) *For types.*—The following types of tomatoes are exempt from these regulations: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes, hydroponic tomatoes, and greenhouse tomatoes.

(2) *For minimum quantity.*—For purposes of these regulations each person subject thereto may handle up to but not to exceed 60 pounds of tomatoes per day without regard to the requirements of these regulations but this exemption shall not apply to any shipment or any portion thereof of over 60 pounds of tomatoes.

(3) *For special packed tomatoes.*—Tomatoes resorted, regraded and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from the tomato grade classifications of paragraph (a)(1) and the size classifications of paragraph (a)(2) except that tomatoes shall be over $2\frac{1}{32}$ inches in diameter; and the container weight requirements of paragraph (a)(3) if such tomatoes comply with the inspection requirements of paragraph (a)(4).

(e) *Definitions.*—"Hydroponic tomatoes" means tomatoes grown in solution without soil; "greenhouse tomatoes" means tomatoes grown indoors. A "Certified Tomato Repacker" is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, resorting, and repacking tomatoes into consumer sized packages and has been certified as such by the committee. "U.S. tomato standards" means the revised United States Standards for Grades of Fresh Tomatoes (§§ 51.1855–51.1877), effective December 1, 1973, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A–107.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated November 19, 1975. To become effective November 24, 1975.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc. 75–31633 Filed 11–20–75; 8:45 a.m.]

PART 980—VEGETABLES: IMPORT REGULATIONS: TOMATOES

PROPOSED GRADE, SIZE AND INSPECTION REQUIREMENTS

Findings.—(a) Notice of rule making regarding these requirements to be made effective under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 608e–1), was published in the October 30, 1975, Federal Register (40 FR 50541). The notice afforded interested persons an opportunity to file data, views, or arguments in regard thereto not later than November 14, 1975. None was filed.

After consideration of all relevant matters, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found that the proposal as published in the notice should be made effective, and that the minimum grade, size, quality and maturity requirements are the same as those in effect under Marketing Order No. 966, as amended (7 CFR Part 966), for shipments of tomatoes grown in the Florida production area. This regulation is subject to amendment with reasonable notice.

[The following material was submitted by Mr. Hawkins and referred to on p. 12.]

[EXHIBIT 1]

U.S. SENATE,
Washington, D.C., June 3, 1969.

Mr. J. S. PETERS,
Manager, Florida Tomato Committee,
Orlando, Fla.

DEAR MR. PETERS: This responds to your letter of May 26 suggesting that I set down some ideas concerning section 8e of the Agricultural Adjustment Act (as reenacted by the Agricultural Marketing Agreement Act of 1937) for inclusion in your Annual Report.

Section 8e is applicable to tomatoes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates (other than for processing), and eggplants. It subjects the imported commodity to the same requirements as to grade, size, quality, and maturity as the domestic commodity is subject to under a marketing order. Where the domestic commodity is subject to different marketing orders in different areas, the imported commodity must comply with the order applicable to that area with which it most directly competes. Whenever variations in characteristics between the domestic and imported commodity are such as to make it impracticable to apply the same restrictions, equivalent or comparable restrictions are imposed upon the imported commodity.

Section 8e has been very helpful in achieving its intended objective. It was enacted on August 28, 1954, to meet problems of particular importance to Florida and particularly with respect to tomatoes. In fact, when the amendment was first proposed to the Committee it was proposed by a Florida organization to apply only to tomatoes and certain other perishable commodities "produced in the State of Florida." As you point out in your letter it has been of inestimable value this year for the Florida tomato industry.

The Florida fruit and vegetable industry had been studying marketing orders for some years prior to 1954, seeking ways to improve its operations. However, it had not been able to determine how it could make use of the marketing order machinery, because throughout its shipping season its products were subject to

severe competition from neighboring nations, primarily Mexico and Cuba, particularly with respect to tomatoes. As the witness pointed out, "We have had meetings for years, talking about a marketing agreement. But when we find that we shipped eight or ten thousand cars of tomatoes and at the same time and period, day for day, Mexico shipped six, eight, or seven thousand cars of the same commodity, some days shipping even more than we do, you just cannot make a marketing agreement work in Florida."

The Committee adopted this provision on my motion and it was passed by the Senate. As reported to the Senate, it covered tomatoes, avocados, limes, and grapefruit. Irish potatoes were added on the Senate floor. The House had already passed a similar provision covering additional commodities and in conference green peppers, cucumbers, and eggplats were added. Mangoes were added as a result of my amendment to H.R. 9756 (P.L. 754, 83rd Congress) on August 31, 1954; and oranges, onions, walnuts, and dates (other than for processing) were added by the Agricultural Act of 1961. I have been seeking for some time to have the law extended to tangerines, and I have no doubt that it will be extended to other commodities from time to time.

The provision is manifestly fair and is sometimes referred to as the golden rule amendment. It imposes no requirement on the imported commodity that is not also imposed on the domestic commodity. It provides for adequate notice so that foreign producers and importers will have ample opportunity to adjust their operations. It does not seek to exclude imports, but rather to make possible market regulation of equal benefit to domestic and foreign producers. Generally, the forces of competition compel producers to harvest and market everything that will sell for enough to cover harvesting costs, plus something in addition, no matter how little. By excluding the less desirable grades and sizes, a marketing order makes it possible for the producers, both foreign and domestic, to obtain better prices and a better total return.

That the provision is not intended to exclude the foreign commodity is evidenced by the fact that tomato imports from Mexico have almost quadrupled in the last ten years. For this season 13,344 carloads of Mexican tomatoes had crossed into the United States through May 11, 1969, compared with 9,654 carloads during the previous season through May 11, 1968.

Administration of section 8e is almost automatic. It is effective whenever a domestic order is effective. It is enforced through customs, commodities being admitted only if they bear an inspection certificate showing that they meet the requirements of the order. Problems do arise with foreign producers and exporters, usually in the initial period of an order, but these are generally worked out in a satisfactory manner. Before section 8e was proposed to Congress, members of the Florida industry had discussed it with members of the Cuban industry, and from those discussions and prior discussions of marketing orders generally with members of the Mexican industry, believed that both the Cuban and Mexican growers would favor section 8e. During the past season representatives of the Departments of Agriculture and State have met with representatives of the Mexican Government and the Mexican tomato industry on several occasions. All agreed that regulation of tomato marketings was economically necessary, although there were some differences as to the form the regulation should take. Experience under the order has shown that prices of Mexican as well as Florida tomatoes have benefited.

Yours faithfully,

SPESSARD L. HOLLAND.

[The following material was referred to on p. 12.]

[EXHIBIT 2]

LAW OFFICES PACE AND PARKER,
Washington, D.C., January 15, 1957.

Mr. JOFFRE C. DAVID,
General Manager, Florida Fruit & Vegetable Association,
Orlando, Fla.

DEAR MR. DAVID: You have asked our opinion as to whether certain provisions of the regulations relating to size (section 945.302(b)(1); 21 F.R. 8534) issued under Marketing Agreement No. 125 and Order No. 45, regulating the handling of tomatoes grown in Florida, are applicable to imports. These regulations provide in part as follows:

"During the period from November 12, 1956 through June 30, 1957, the following regulations shall be effective with respect to tomatoes grown in the production area . . .:

"(1) No person shall handle for shipment outside the production area any mature green tomatoes 1⅞ inches diameter or larger:

"(i) Unless they are packed within one of the following ranges of diameter (expressed in terms of minimum and maximum):

Size arrangements in diameter (inches): 7×8, 1⅞ to 2⅛, inclusive; 7×7 over 2⅛ to 2$\frac{9}{32}$ inclusive; and 6×7, over 2$\frac{9}{32}$ to 2$\frac{17}{32}$ inclusive.

"(ii) Such mature green tomatoes shall be packed separately for each size range: (iii) To allow for variations incident to proper *sizing* not more than a total of ten (10) percent, by count, of the mature green tomatoes in any lot may be smaller than the specified minimum diameter or larger than the specified maximum diameter; and (iv) Tomatoes smaller than 1⅞ inches diameter and larger than 2$\frac{17}{32}$ inches diameter may be shipped without regard to the aforesaid pack requirements."

Section 401 of Public Law 690, 83d Congress, amended the Agricultural Marketing Agreement Act of 1937, (7 U.S.C. 601 ff.), by adding a new section 8e, the pertinent provisions of which read as follows: "Notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 8e of this Act contains any terms or conditions regulating the grade, size, quality, or maturity of tomatoes, avocados, limes, grapefruit, green peppers, Irish potatoes, cucumbers, or eggplants produced in the United States the importation into the United States of any such commodity during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder."

The marketing order set forth above clearly contains terms and conditions regulating the size of mature green tomatoes shipped from Florida. The order expressly establishes and standardizes sizes of tomatoes in terms of inches. It also establishes size tolerances. It further prohibits the mixing of sizes.

The provisions of section 8e of the Agricultural Marketing Agreement Act set forth above extend and make applicable to imports in clear and unambiguous language any term or condition of a marketing order regulating the size of tomatoes. It is a well settled rule of statutory construction that where the legislative body distinctly states its design, no place is left for construction. Here, the purpose of the statute is obvious on its face. Under such circumstances there is no need to resort to extraneous aids to construction. All that is needed to ascertain the intent of Congress in enacting section 8e is to read the statute. The statute is so clear that it is difficult to conceive how the Congress could have made it more plain.

Even though it is not necessary to make further inquiry to determine the object of the statute, we have examined the legislative history of this provision. Such history further supports the intent of Congress which is so manifest from the language of the statute itself and shows very clearly that the Congress intended to say what it said. The respective committees of the Senate and the House having jurisdiction of the legislation in explaining the amendment apparently found the language so clear that in their reports the committees simply paraphrased the language of the statute. In its report the Senate Committee on Agriculture and Forestry stated:

"Imports of tomatoes * * * would be prohibited if they did not comply with grade, size, quality and maturity provisions of all marketing orders applicable to the same commodities produced in the United States" (Senate Report No. 1810, 83d Congress, p. 8).

The Committee on Agriculture of the House stated:

"It provides that when a marketing order is in effect containing any terms regulating the grade, size, quality or maturity of the designated fresh fruits and vegetables, such fruits and vegetables imported into the United States must comply with the provisions affecting these fruits and vegetables produced under the marketing order in the United States" (House Report No. 1927, 83d Congress, p. 29).

In the hearings on this amendment before the Senate Committee on Agriculture and Forestry the principal point made by the proponents of the legislation in demonstrating the need for, and the objective sought to be achieved by this legislation was the fact that Florida growers could not benefit from the Agricultural Marketing Agreement Act because imports from Mexico could not under existing law be subjected to like regulation.

From this legislative history and the express language of the statute there can be no doubt but that it was the intent of Congress to require imports to comply with any term or condition of a marketing order regulating grade, size, quality or maturity.

The contention has been made that the regulation is not applicable to imports because it is a "pack regulation" and, therefore, not a size regulation. Such a contention appears to us to be merely an exercise in semantics. It is not what a regulation may be called that is the determining factor. It is what the regulation does. The question and only question at issue is whether the order contains any terms or conditions regulating size. It is obvious that it does. In our opinion it is immaterial whether the regulation is described or called a "pack regulation" or by any other name or under what section of the statute it may have been promulgated, since the order manifestly regulates size and the regulation of size is necessary to the application of the order to Florida growers. Under such circumstances section 8e makes those provisions applicable to imports.

Any attempt to construe the order as not relating to size and thereby avoiding its application to imports under section 8e would give a result contrary to the intent of the Congress and would be in derogation of the fundamental objective of the statute. The provisions of the law which were added by the Agricultural Act of 1954 were for the purpose of strengthening and making more effective to farmers the provisions of the Agricultural Marketing Agreement Act as a means of assisting them in establishing and maintaining orderly marketing conditions in an effort to avoid unreasonable fluctuations in supplies and prices. Although the Agricultural Marketing Agreement Act was first enacted over twenty years ago, its provisions, as was shown in the hearings on the bill, have not been of substantial benefit to Florida fruit and vegetable growers because marketing regulations imposed upon themselves in an effort to establish orderly marketing procedures could have no applicability to competitive imports. It was not until the adoption by the Congress of section 8e, thereby making applicable to imports any term or condition of a marketing order regulating grade, size, quality or maturity, that the growers of Florida could successfully utilize the provisions of the Act. The failure to follow the clear intent of Congress and the plain language of the statute on the part of the administrator would not only defeat the intent of Congress in enacting section 8e, but it would destroy the usefulness of the entire Agricultural Marketing Agreement Act to Florida growers and prevent the fundamental objective and purpose of the statute from being achieved. It is an elemental rule of construction that a statute should be construed so as to carry out the Congressional intent and purpose and to make the statute effective. To this end the statute should be given a construction which will best effect its purpose, rather than one which would defeat it.

Accordingly, it is our view that section 8e of the Agricultural Marketing Agreement Act requires that the provisions of the marketing order referred to above be made applicable to imports.

Sincerely yours,

JOSEPH O. PARKER.

[The following material was referred to on p. 16.]

[EXHIBIT 4]

[From the Sentinel-Star, June 10, 1976]

TRADE NAMES GO SPANISH IN MEXICO

MEXICO CITY.—In a few years Mexico won't look so much like the United States. Gone will be the names of Shakey's pizza parlors, Big Boy Hamburgers, Kentucky Fried Chicken, Denny's restaurants and the ubiquitous Coca-Cola that can be found in the most remote villages.

A new trademarks and patents law is requiring Spanish-language names for all foreign establishments and all foreign products, from lipsticks to electric drills.

It has been a source of comfort to many American tourists, and of irritation to some Mexicans whose national pride gets easily ruffled, to have U.S. brand names jumping out at them everywhere they go.

The new law, which became effective last Feb. 11, might not turn back the tide of popularity of U.S. products, but it will make them less visible.

The change will come in two phases. By Feb. 11, 1979, all foreign companies will be required to use a Spanish language name for their product or establishment

that is displayed with the same prominence as the non-Spanish language name.

Then, at some date yet to be determined, only Spanish language names will be permitted.

The law will be more costly to some foreign companies than to others.

Bottling companies will have to make all new bottles. Pepsi Cola, for example, would have to turn out new bottles that have the popular name on one side of the bottle and a Spanish name like Mexicola on the other side.

Ford, General Motors and Chrysler, on the other hand, will simply have to add another piece of chrome with a Spanish-language name to their cars. All three assemble automobiles in Mexico. So do France's Renault, Japan's Datsun and Germany's Volkswagen auto companies.

Foreign businessmen of some companies are more concerned about the new patent regulations.

The law strips patent protection from new products of beverages, pharmaceuticals, food, fertilizers, herbicides, pesticides and fungicides. It also allows the government to grant patents to competitors when a company is not actually producing the product in Mexico in sufficient quantity to meet domestic demand and filling export opportunities.

The law follows President Luis Echeverria's position that industrialized nations should transfer technology to, and share their wealth with, the developing nations.

Patent and trademark experts agree that the new law will give Mexico a bigger bite of the profits now reaped by multinational companies operating here.

Combined with a foreign investment law of three years ago that requires companies be at least 51 per cent owned by Mexican nationals, Mexico has adopted one of the stiffest postures in Latin America in the control or foreign companies.

Some U.S. businessmen say privately that the new law will lead to a wholesale departure of foreign business capital from Mexico. Direct U.S. business investment in Mexico is about $3 billion, which is about 75 per cent of the total foreign investment.

Other businessmen, however, emphasize that the law denies patent protection only to new products without actually invading the patent is commonplace anyway.

Moreover, they say, U.S. and other foreign companies whose new products are denied patent protection, will continue to dominate the market anyway because of their strong positions in available investment capital and superiority in production techniques, marketing and advertising.

Under the new law the government reserves the right to include new industrial areas where patents will not be issued for new products.

Companies denied patent protection for new products would not be left completely helpless in realizing profits for the idea that might be copied by someone else. They would be issued certificates of invention which would entitle them to royalties to be set by the Ministry of Trade and Commerce.

The Ministry of Industry and Commerce is reviewing all patents to see which are being sufficiently exploited to satisfy domestic demand and fulfill Mexican export needs.

Some detractors of the law point to a section of the law which says patents and trademarks can be expropriated by the federal government in cases where they are considered to be in the "public interest."

However, a Mexico City patents and trademarks attorney, Bernardo Gomez Vega, points out that the government has had that power since 1928 and has never expropriated a single patent or trademark.

Government spokesmen insist that the new law under no circumstance should be construed to mean that Mexico plans to disregard the International Patent Agreement of Paris or that there is any intention to withdraw from the International Patent Agreement.

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