

712-8

RENOVATED BUTTER

HEARING

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON FINANCE

UNITED STATES SENATE

SEVENTY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1006

A BILL TO AUTHORIZE THE CONDEMNATION OF
MATERIALS WHICH ARE INTENDED FOR USE
IN PROCESS OR RENOVATED BUTTER AND
WHICH ARE UNFIT FOR HUMAN
CONSUMPTION, AND FOR
OTHER PURPOSES

JUNE 8, 1943

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RENOVATED BUTTER

TUESDAY, JUNE 8, 1943

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,
Washington, D. C.

The subcommittee met, pursuant to notice, at 10:30 a. m., in the committee room of the Committee on Commerce, United States Capitol, Senator Josiah W. Bailey (chairman), presiding.

Present: Senator Bailey.

Senator BAILEY. This is a hearing on S. 1006, being a bill introduced by Senator George, to authorize the condemnation of materials which are intended for use in process or renovated butter and which are unfit for human consumption, and for other purposes.

In the preceding Congress a bill of a similar character but not identical was introduced by Senator George. A hearing was had in which the representatives of the Department of Agriculture appeared, and no others. Upon the hearing the subcommittee was inclined to make a favorable report. Protests came in, and in deference to those protests and upon the suggestion of Senator George the matter was not reported to the Finance Committee. A new bill comes in, considerably revised, and this hearing is for the purpose of hearing all protestants and also proponents.

The subcommittee consists of Senator Bailey, chairman, Senator Byrd, and Senator Vandenberg.

Senator Byrd cannot be present at this hearing on account of other engagements. Senator Vandenberg is expected to appear during the morning.

I wish to know how much time you gentlemen want.

Mr. WILKINSON. Senator, I do not think we will need very much time, unless there is time needed to give the committee reasons for what will be presented.

Senator BAILEY. I have a list here of the following witnesses: Mr. Wilkinson, Mr. Harvey, Mr. Smith, Mr. Sullivan, Mr. Trimble, Mr. Kemper, and Mr. McNaught. The last three named are representatives of the departments. Now, that means that we have got three and perhaps four others. Let us find out, Mr. Wilkinson, how much time you want.

Mr. WILKINSON. Senator, as I started to say to you we are in accord on a substitute that we are going to present.

Senator BAILEY. How much time do you want?

Mr. WILKINSON. I would say 30 minutes would be sufficient.

Senator BAILEY. Thirty minutes for you?

Mr. WILKINSON. For all of us.

Senator BAILEY. That is very satisfactory. Does that include Mr. Sullivan?

Mr. McNAUGHT. Mr. Smith is herein the same capacity for the State of Virginia as Mr. Sullivan would be for the State of Maryland.

Senator BAILEY. All right. How much time do you want for yourself?

Mr. WILKINSON. I just made a 30-minute ceiling over our group.

Senator BAILEY. How much time do you want out of the 30 minutes?

Mr. WILKINSON. I would say 10 minutes.

Senator BAILEY. All right.

(S. 1006 and the substitute submitted by the industry are as follows:)

[S. 1006, 78th Cong., 1st sess.]

A BILL To authorize the condemnation of materials which are intended for use in process or renovated butter and which are unfit for human consumption, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2325 of the Internal Revenue Code, approved February 10, 1939 (53 Stat. 254), is amended to read as follows:

"SEC. 2325. INSPECTION OF PROCESS OR RENOVATED BUTTER.—For the purpose of protecting interstate and foreign commerce from process or renovated butter which is unclean, unwholesome, unhealthful, or otherwise unfit for human food:

"(a) The Secretary of Agriculture shall, through inspectors appointed by him, cause inspections to be made of all milk, butter, butter oil, and other ingredients intended for use in the manufacture of process or renovated butter. Such ingredients shall be marked 'Inspected and Passed' if found to be clean, wholesome, healthful, and otherwise fit for use in the manufacture of process or renovated butter. All ingredients found to be unclean, unwholesome, unhealthful, or otherwise unfit for use in the manufacture of process or renovated butter shall be marked 'Inspected and Condemned' and shall be destroyed or denatured for food purposes in the presence of an inspector.

"(b) The Secretary of Agriculture shall cause inspections to be made of all process or renovated butter. If such butter is found to be clean, wholesome, healthful, and otherwise fit for human food, it shall be marked 'U. S. Inspected and Passed.' Process or renovated butter that is found to be unclean, unwholesome, unhealthful, or otherwise unfit for human food shall be destroyed or denatured for food purposes in the presence of an inspector.

"(c) The Secretary of Agriculture shall cause inspections to be made of all factories wherein process or renovated butter is manufactured to determine the sanitary conditions thereof, and if it is found that the conditions existing at any such factory do not meet the standards prescribed by the Secretary in his regulations, he shall cause inspection to be withdrawn therefrom.

"(d) The Secretary of Agriculture is authorized to withdraw inspection from any factory wherein process or renovated butter is made, if the manufacturer shall fail to comply with any of the provisions of this section or with any of the rules and regulations prescribed hereunder.

"(e) The Secretary of Agriculture is authorized to make such rules and regulations as he deems necessary for the efficient administration of the provisions of this section, and all inspections hereunder shall be made in such manner as may be prescribed in such regulations.

"(f) The Secretary of Agriculture shall cause to be ascertained, and he shall report, from time to time, the quantity and quality of all process or renovated butter manufactured and the character and condition of the materials from which it is made.

"(g) No person, firm, or corporation shall forge, counterfeit, simulate, falsely represent, detach, or knowingly alter, deface, or destroy, or use without proper authority, any of the marks, stamps, labels, or tabs provided for in this section or in any regulations prescribed hereunder by the Secretary of Agriculture for use on process or renovated butter or on wrappers, packages, containers, or cases in which the product is contained, or any certificate in relation thereto.

"(h) All process or renovated butter and the packages or containers thereof shall be marked with the words 'Process Butter' or 'Renovated Butter' and by such other marks, labels, or brands, and in such manner, as may be prescribed by the Secretary of Agriculture.

"(i) No statement that is false or misleading in any particular shall be placed on or affixed to any wrapper, label, carton, or container of process or renovated butter.

"(j) No person, firm, or corporation shall transport, or offer for transportation, or sell or offer for sale, in interstate or foreign commerce, or in commerce affecting commerce among the States, any process or renovated butter that has not been inspected and passed and marked, labeled, and branded in accordance with this section and the regulations issued hereunder."

Sec. 2. Subsection (c) of section 2326 of the Internal Revenue Code (53 Stat. 255) is amended by striking out "shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment for not less than one month nor more than six months, or by both said punishments," and by inserting in lieu thereof the following: "shall be punished by a fine of not more than \$1,000 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment,".

Sec. 3. Section 2327 of the Internal Revenue Code (53 Stat. 255) is amended by striking out subsections (b) and (c) of said section.

SUBSTITUTE SUBMITTED BY THE INDUSTRY

[Omit part in black brackets, new matter in italics]

[S. 1000, 78th Cong., 1st Sess.]

A BILL To authorize the condemnation of materials which are intended for use in process or renovated butter and which are unfit for human consumption, and for other purposes

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"(a) The Secretary of Agriculture shall, through inspectors appointed by him, cause inspections to be made of all milk, butter, butter oil, and other ingredients intended for use in the manufacture of process or renovated butter. [Such ingredients shall be marked 'Inspected and Passed' if found to be clean, wholesome, healthful, and otherwise fit for use in the manufacture of process or renovated butter. All ingredients found to be unclean, unwholesome, unhealthful, or otherwise unfit for use in the manufacture of process or renovated butter shall be marked 'Inspected and Condemned' and shall be destroyed or denatured for food purposes in the presence of an inspector.] *All ingredients which are found to be putrid or decomposed or which contain organic or inorganic substances which are foreign to such ingredients when properly made, manufactured, produced, collected, stored, transported, or handled, and which organic or inorganic substances cannot be removed by processing, shall be deemed unfit for use in the manufacture of process or renovated butter, shall be marked 'U. S. Inspected and Condemned', and shall be denatured or destroyed under the supervision of the inspector. All other ingredients shall be marked 'U. S. Inspected and Passed' and shall be deemed fit for use in the manufacture of process or renovated butter.*

"(b) The Secretary of Agriculture shall cause inspections to be made of all process or renovated butter. If such butter is found to be clean, wholesome, healthful, and otherwise fit for human food, it shall be marked 'U. S. Inspected and Passed.' Process or renovated butter that is found to be unclean, unwholesome, unhealthful, or otherwise unfit for human food shall be [destroyed or denatured] *denatured or destroyed [for food purposes in the presence of an] under the supervision of the inspector.*

"(c) The Secretary of Agriculture shall cause inspections to be made of all factories wherein process or renovated butter is manufactured to determine the

sanitary conditions thereof, and if it is found that the conditions existing at any such factory do not meet the standards prescribed by the Secretary in his regulations, he shall cause inspection to be withdrawn therefrom.

"(d) The Secretary of Agriculture is authorized to withdraw inspection from any factory where a process or renovated butter is made, if the manufacturer shall fail to comply with any of the provisions of this section or with any of the rules and regulations prescribed hereunder.

"(e) The Secretary of Agriculture is authorized to make such rules and regulations as he deems necessary for the efficient administration of the provisions of this section, and all inspections hereunder shall be made in such manner as may be prescribed in such regulations. *The Secretary of Agriculture may from time to time by regulation define the foreign substances and the extent thereof that render the ingredients unfit for use in manufacturing process or renovated butter.*

"(f) The Secretary of Agriculture shall cause to be ascertained, and he shall report, from time to time, the quantity and quality of all process or renovated butter manufactured and the character and condition of the materials from which it is made.

"(g) No person, firm, or corporation shall forge, counterfeit, simulate, falsely represent, detach, or knowingly alter, deface, or destroy, or use without proper authority, any of the marks, stamps, labels, or tabs provided for in this section or in any regulations prescribed hereunder by the Secretary of Agriculture for use on process or renovated butter or on wrappers, packages, containers, or cases in which the product is contained, or any certificate in relation thereto.

"(h) All process or renovated butter and the packages or containers thereof shall be marked with the words 'Process Butter' and by such other marks, labels, or brands, and in such manner, as may be prescribed by the Secretary of Agriculture.

"(i) No statement that is false or misleading in any particular shall be placed on or affixed to any wrapper, label, carton, or container of process or renovated butter.

"(j) No person, firm, or corporation shall transport, or offer for transportation, or sell or offer for sale, in interstate or foreign commerce, or in commerce affecting commerce among the States, any process or renovated butter that has not been inspected and passed and marked, labeled, and branded in accordance with this section and the regulations issued hereunder."

Sec. 2. Subsection (c) of section 2326 of the Internal Revenue Code (53 Stat. 255) is amended by striking out "shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment for not less than one month nor more than six months, or by both said punishments," and by inserting in lieu thereof the following: "shall be punished by a fine of not more than \$1,000 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment."

Sec. 3. Section 2327 of the Internal Revenue Code (53 Stat. 255) is amended by striking out subsections (b) and (c) of said section.

Sec. 4. *If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons or circumstances shall not be affected thereby.*

Senator BAILEY. You may go ahead, Mr. Wilkinson.

STATEMENT OF HORACE C. WILKINSON, ATTORNEY, BIRMINGHAM, ALA., REPRESENTING THE PROCESS AND RENOVATED BUTTER INDUSTRY

Mr. WILKINSON. Mr. Chairman, the bill as introduced has been the subject of some extended conferences between the four industries that I appear for, which are the Cloverleaf Butter Co., Birmingham, Ala.; Rosemary Creamery, Inc., Atlanta, Ga.; Southern Process Butter Co., Cullman, Ala.; and the Cherokee Creamery, Cedartown, Ga.; and the Department of Agriculture. We have between us agreed on certain modifications of the bill.

Senator BAILEY. You are not opposed to the bill?

Mr. WILKINSON. We are opposed to the bill as written.

Senator BAILEY. If modified according to your request you are not opposed to it?

Mr. WILKINSON. That is correct. The Department has the substitute bill, I think, and some of the representatives are here. That substitute we have agreed on, and the industry I represent is in thorough accord with it.

Senator BAILEY. Let us have what your substitute is. You are advocating the bill as introduced by Senator George, the new bill, with some amendments?

Mr. WILKINSON. This bill has the parts stricken out that we agreed to eliminate and the part added that we agreed to add.

Senator BAILEY. Read the sections you wish stricken out and give the reasons for it.

Mr. WILKINSON. This bill provides in section (a) that—

The Secretary of Agriculture shall, through inspectors appointed by him, cause inspections to be made of all milk, butter, butter oil, and other ingredients intended for use in the manufacture of process or renovated butter.

Senator BAILEY. You do not object to that?

Mr. WILKINSON. No, sir; we do not. As drafted, the bill provided that—

Such ingredients shall be marked "Inspected and passed" if found to be clean, wholesome, healthful, and otherwise fit for use in the manufacture of process or renovated butter. All ingredients found to be unclean, unwholesome, unhealthful, or otherwise unfit for use in the manufacture of process or renovated butter shall be marked "Inspected and condemned" and shall be destroyed or denatured for food purposes in the presence of an inspector.

We have objected to that provision and have agreed on language in lieu of it. The reason we objected was because it was too broad and impractical as applied to the industry. The language we have agreed on in lieu of that language is:

All ingredients which are found to be putrid or decomposed or which contain organic or inorganic substances which are foreign to such ingredients when properly made, manufactured, produced, collected, stored, transported, or handled, and which organic or inorganic substances cannot be removed by processing, shall be deemed unfit for use in the manufacture of process or renovated butter, shall be marked "U. S. inspected and condemned," and shall be denatured or destroyed under the supervision of the inspector. All other ingredients shall be marked "U. S. inspected and passed" and shall be deemed fit for use in the manufacture of process or renovated butter.

Senator BAILEY. You object to adding the word "unwholesome"?

Mr. WILKINSON. In the raw materials?

Senator BAILEY. Yes.

Mr. WILKINSON. Yes, sir, for the reason, Senator, that an ingredient might be technically unwholesome, and if we had a chance to work on it a little bit we could render it wholesome. We have been demonstrating over a long period of time that you can take country butter that might be unwholesome in the condition in which it is collected and make it wholesome.

Paragraph (b) as originally drafted provided that:

Process or renovated butter that is found to be unclean, unwholesome, unhealthful, or otherwise unfit for human food shall be destroyed or denatured for food purposes in the presence of an inspector.

That has been amended to read:

Process or renovated butter that is found to be unclean, unwholesome, unhealthful, or otherwise unfit for human food shall be denatured or destroyed under the supervision of the Inspector.

Senator BAILEY. That is the amendment you propose?

Mr. WILKINSON. No, sir.

Senator BAILEY. Proposed by Senator George in his bill?

Mr. WILKINSON. No, sir.

Senator BAILEY. Why do you get it in? You say it has been amended.

Mr. McNAUGHT. I would say the amendment has been suggested by the industry.

Senator BAILEY. He is representing the industry.

Mr. McNAUGHT. Yes.

Senator BAILEY. So is is an amendment proposed by the industry?

Mr. WILKINSON. Yes, sir.

Senator BAILEY. Now, let us get what it is.

Mr. WILKINSON. The substance of it is, instead of saying it should be "destroyed or denatured for food purposes" we just say "denatured or destroyed under the supervision of the inspector." We leave out the "food purposes."

The other amendment suggested by the industry is in section (e). Section (e) as originally drafted stated:

The Secretary of Agriculture is authorized to make such rules and regulations as he deems necessary for the efficient administration of the provisions of this section, and all inspections hereunder shall be made in such manner as may be prescribed in such regulations.

The industry suggests that there be added to that these words:

The Secretary of Agriculture may from time to time by regulation define the foreign substances and the extent thereof that render the ingredients unfit for use in manufacturing process or renovated butter.

In other words, that gives the Secretary of Agriculture statutory authority to define and by regulation inform the industry and the people who produce butter that certain ingredients in the butter render it unfit for use in the manufacture of process or renovated butter. One object of that is this: We are anxious to cooperate with the Department in the cleaning up of the raw material. Until we have a standard to work by that is binding on all who are engaged in this industry, it is difficult to do that. If one industry at the present time rejects butter because of its condition, the man who has that butter may go around and trade it to another industry.

If we have a uniform standard and the Secretary of Agriculture prescribes that standard and says that there are certain ingredients in this butter that make it objectionable, then he cannot dispose of that butter to anybody that is engaged in the renovated butter industry. That clause is put in there to enable us to cooperate with the Department in cleaning up the raw material.

Senator BAILEY. Do you confine the regulatory power just to definitions?

Mr. WILKINSON. No, sir. Section (a) requires the denaturing or destruction of butter that has these objectionable ingredients in it.

Senator BAILEY. You do not intend to limit the regulatory power there?

Mr. WILKINSON. No, sir. We intend to bring into play the regulatory power by specific definition of what is objectionable, so that all who deal with butter may know in advance if it contains these ingredients it cannot be used in the manufacture of butter.

The other suggested amendment is very minor. It is in paragraph (h). As originally drafted, it provided that the butter should be marked "process butter" or "renovated butter," and we suggest that it be marked "process butter," in order to have uniformity about it. In some places it is now required to mark it "process butter"; in other jurisdictions it is required to mark it "renovated butter," and in other jurisdictions we are required to mark it "butter."

Senator BAILEY. That is under State laws?

Mr. WILKINSON. Yes; State laws and regulations. We see no objection to having a uniform marking or branding of it.

Senator BAILEY. You do not want the word "renovated" used?

Mr. WILKINSON. We think "process" is a better word, because that is really what happens to it. If we can get uniform labeling, it is some help to the industry. You will not have to carry three or four different labels and have the confusion that results from having one box of butter marked "process butter" and the other "renovated butter," and still another "processed or renovated butter."

Senator BAILEY. What would the public understand from the words "process butter"?

Mr. WILKINSON. I think it would understand it is butter that has been processed.

Senator BAILEY. All butter is processed. Butter itself a product of a process.

Mr. WILKINSON. Well, it is according to the kind of process you are talking about. Some of it is processed in the churn out in the country. What we think is commonly understood as to the meaning of the term is just what is set out in the Federal statute.

Senator BAILEY. What is your objection to the word "renovated"?

Mr. WILKINSON. Well, the word "renovated" is rather misleading to some people. It conveys the impression to some minds that perhaps the butter was objectionable to a marked degree and had to have a great deal done to it; whereas, as a matter of fact, in some instances, practically the only thing that needs to be done to it is to change the moisture content in it.

Senator BAILEY. Will this bill have any effect on the raw material?

Mr. WILKINSON. Under this amended bill the standard of the raw material will be materially changed, the grade of it and quality of it. As a matter of fact, now, as I understand from the industry, the character of the raw material is materially different from what it was many years ago, when Congress gave a thorough study to the renovated butter industry.

Senator BAILEY. Did Congress give it the name of renovated butter then?

Mr. WILKINSON. They gave it one or the other. It is optional. The Federal statute defines what renovated and process butter is. It defines those terms and they are synonymous in the statute. It left it optional with the plant to call it one or the other, as I read the statute. Then comes along a State or municipal regulation, and some require one thing and some the other.

The other amendment, which I believe was suggested by the Department and probably inadvertently left off the bill as drafted, to which the industry has no objection, is as follows:

If any provision of this act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the act and of the application of such provision to other persons or circumstances shall not be affected thereby.

The industry has one further amendment that we should like to present at this time and request it be adopted, and that is the addition of a paragraph which we letter (k) in the first section of the bill, and which provides:

The administration and enforcement of the provisions of this act other than its provisions relating to revenue, but including the seizure and denaturing or destruction of ingredients used in the manufacture of process or renovated butter and the denaturing or destruction of process or renovated butter are committed exclusively to the Secretary of Agriculture.

The purpose of that is this: The administration and enforcement of the renovated butter act since 1902 has been with the Secretary of Agriculture. There is an intimation in the case recently decided by the Supreme Court that perhaps the Food and Drug Department might have something to do with this matter. The industry does not feel like it ought to be subjected to the two departments. It does not matter to us particularly which one has supervision of it, but inasmuch as the Secretary of Agriculture makes the regulations and is charged with the responsibility of enforcement and has had the matter in hand all of these years we feel like it logically falls to him, and to avoid uncertainty about the matter we suggest the incorporation in the bill of a provision that makes it clear it should be administered by that Department. Then, the other thing I would like to mention while I am on my feet, and which is a matter of a great deal of importance to us, is this: If this bill is reported out as suggested and adopted the industry will have to perhaps more than double the trucks it uses now in collecting the butter. It will have to devise a plan for furnishing the cans that will insure the cleanliness of the butter while it is being handled. We will have to get more men, which we cannot get during the wartime, and we cannot get gas and tires. Whereas, we are collecting the butter now about every 10 days or 2 weeks, however, it is going to be necessary, when this program is followed, to collect twice a week. We want to submit to the very careful consideration of the committee that practical difficulties in the way of immediately putting the provisions of the bill in operation.

If we could get the tools with which to do the job, to borrow the expression of Mr. Churchill, we would like the bill to go into effect at the earliest possible moment, because we think, as suggested by the industry, with the agreements as to the amendments we made, it is an excellent bill. Just how we can do this, until we can get more trucks, more tires, more gasoline, more men, is a situation that is of very vital importance to us. We have not suggested any effective date of the bill, but we want to stress that matter before the committee, for the very earnest consideration of the committee, because it is a practical problem. We could not meet the requirements of the bill at this time due to the fact that we cannot get the trucks, the men, the

tires and gas, and other things necessary to collect the butter as rapidly as necessary; neither can we get the cans to insure the cleanliness of the product at the present time. I think that about covers the bill, as amended, or, rather, I would say it covers the amendments which we suggest, which I understand are not opposed by the department.

Senator BAILEY. All right, sir.

Mr. HARVEY, the president of the Rosemary Creamery, Atlanta, Ga. Is he here?

Mr. HARVEY. Yes, sir.

Senator BAILEY. All right, Mr. Harvey, we will be glad to hear you.

STATEMENT OF JAMES J. HARVEY, PRESIDENT, THE ROSEMARY CREAMERY, INC., ATLANTA, GA.

Mr. HARVEY. Well, Mr. Chairman, I haven't anything to offer beyond what has been explained by our attorney. It happens that my experience in the business runs back over a period of more than 35 years.

Senator BAILEY. Then you can tell us something about the extent of the business. I think it would be valuable. You can tell us how many pounds of butter are produced, whether the industry has grown, and what sort of success you have had.

Mr. HARVEY. At the present time there are around 5,000,000 pounds of butter, farm butter, available for processing.

Mr. WILKINSON. Mr. Harvey, would you be good enough to explain to the committee the territory in which the renovated-butter industry operates and why it is in that territory?

Mr. HARVEY. Starting in Virginia and extending southwesterly to the mountain areas of the Appalachian Mountain system is where the farm butter mostly is produced. As you get farther south cotton is the main crop. Cotton is still the main crop in the level areas, and in those areas they are not doing much dairy work, excepting around the larger cities, to take care of the milk situation there, but the fellows back up in the mountain system have got to have something to take care of the grocery bill.

Senator BAILEY. The 5,000,000 pounds is what proportion of the total butter produced in America? What is the total amount of the butter produced?

Mr. HARVEY. I could not give you that, but it runs up into the millions and millions of pounds.

Senator BAILEY. So it is a very small portion of the total?

Mr. TRIMBLE. 1,600,000,000 pounds of creamery butter and 400,000,000 pounds of farm butter.

Senator BAILEY. That is farm butter as a whole. I am speaking now of what we call—and I say it by courtesy—the process butter. That includes your definition of “renovated” also?

Mr. HARVEY. Yes.

Senator BAILEY. You say the total output of your process butter is 5,000,000 pounds?

Mr. HARVEY. That is the amount of farm butter produced that is bought. Of course, the finished process butter is about 25 percent less than that amount.

Senator BAILEY. I got the impression that there is a great deal more butter produced on the farms and sold in the towns than 5,000,000 pounds.

Mr. TRIMBLE. That figure for 1942 was 60,650,000 pounds sold off the farm, not made on the farm, but sold off of the farm in the United States as a whole.

Mr. HARVEY. The process does this: It starts with a finished product, farm butter, reduces it to its base, which is the oil, and that oil is properly filtered and clarified, then mixed with skim milk or whole milk, whichever is obtained, and emulsified back into cream like it was when it was first churned, and then from that cream butter is produced just like it is in a creamery butter plant.

Senator BAILEY. What you do is you get the cultured butter.

Mr. HARVEY. That is right.

Senator BAILEY. You do not get the refuse butter from hotel tables?

Mr. HARVEY. No, no. This bill is going to make it possible to secure cleaner farm butter in which the industry is very much interested.

Senator BAILEY. It is farm butter that is processed.

Mr. HARVEY. That is right, reduced to an oil and then put back into cream and churned.

Speaking of the quantity of farm butter that was announced back here, that means all the farm butter that is produced, not that which is going on the market alone, because the farmer produces his own butter and consumes it. Whether he makes a report on what he has produced or not, I do not know, but the part that is not consumed while it is fresh, there are only two outlets for it: One is to a process plant, or to be denatured, the oil taken out, or for soap making, and most of all at the present time for glycerine.

Senator BAILEY. That is not where you get all your glycerine from, is it?

Mr. HARVEY. Not all, but it is one of the sources. It comes from oil. I might make this statement, that ought to be interesting to you: Down in your State, Mr. Thompson is a large handler of farm butter. The cow population in the areas we buy from has increased in the past 10 years about threefold, for the reason that they have a market now at reasonable prices. When the Rosemary Creamery started in Atlanta, Ga., you could buy farm butter at 6 cents, and they bought it and shipped it to New York and Baltimore.

Senator BAILEY. I think it is going to very greatly increase in North Carolina. I think North Carolina is rapidly becoming a dairy State.

Mr. HARVEY. They certainly are. All that change has come about, with more cows, more butter, because there is a market at a better price, and we are interested in the farmer getting as large a price as possible so he will increase his herd, and one of these times you will find that the South will be making its own creamery butter. I have seen in my time, from a boy up, when the Central States made lots of process butter. It was not called "process," it was called "renovated," because the oil was not extracted and put into cream; it was simply put into galvanized tanks, washed, warm water run through it, stirring it up, then let run off, and then some more water run through it, and then put into cracked ice to chill it to where it could be compressed. That is the original renovated butter.

Senator BAILEY. It is just the same as the fresh creamery butter. It has just gone through this process for the purpose of purification?

Mr. HARVEY. That is right, Senator.

Senator BAILEY. It is just as good to eat?

Mr. HARVEY. Yes. It will always contain a great deal more moisture. White butter is due to the temperature at which it was churned. In farm butter there is 5 percent casein.

Senator BAILEY. We grew up thinking that the butter was yellow because it came from Jersey cows.

Mr. HARVEY. No; there is a natural color in it due to the green grass that the cow eats, and that reaches its top in June. So we speak of the colored butter as being June butter. In other seasons, when there is no green grass for the cow to eat it gets a paler color, and then you permit them to use enough color to get it back to the June color to have it run the year round about the same color.

Senator BAILEY. Nobody runs a dairy on grass-fed cows.

Mr. HARVEY. No; but the more grass they eat the better is the color, so it is only to imitate the June color that coloring is used. Since it is a certified color, you can drink a pint of it and it will not hurt you.

Mr. WILKINSON. What is your output of butter a year?

Mr. HARVEY. About a million pounds in Atlanta.

Mr. WILKINSON. Will you explain to the Senator why the industry thinks the word "process" is preferable to "renovated" under existing conditions?

Mr. HARVEY. From the word "renovated," I think most people would arrive at the conclusion that it is pretty rotten stuff; that it was renovated so it could be used.

Senator BAILEY. They have the same psychological prejudice that I would have if you called it firkin butter.

Mr. HARVEY. When you use the word "process" it means the actual process it is put through. When it is finished, it is exactly the same as all creamery butter, 80 percent fat, 16 percent moisture, and 4 percent salt, it comes under the same law as creamery butter.

Senator BAILEY. Tell me something on this point: We have always had more or less controversy as to the comparative value of cottonseed. Maybe I would not call it butter.

Mr. HARVEY. Oleomargarine.

Senator BAILEY. Oleomargarine, a substitute for butter.

Mr. HARVEY. That is right.

Senator BAILEY. How does that product compare with this process butter?

Mr. HARVEY. Of course, in ours we have 80 percent butterfat. Oleomargarine must have vitamin A, and therefore if your fat from the cottonseed is to be used as the fat in oleomargarine, they would churn it perhaps in whole milk or add some butter to it and it will have vitamin A in it. After all, it is the vitamins that we must have. Fats, of course, are one of the four chief elements of food. You can get your fat in various ways, but the one that has the natural vitamin A is found mostly in butter. Nature did not make any mistake in planning all those things for the infant. The same thing holds through life. We older people, as we get older, must not drop away from it. Vitamin A is very essential.

I do not know that I know anything particularly other than that. There is the whole story in my experience, that happened to cover it all. I made a study of it, and since we are all 100 percent in accord with the Department, it is therefore a better raw material, and good-

ness knows we are all for that. It hurts my pride, when I used to make lots of creamery butter, to go on to another butter where the raw material is not as clean as is the raw material that makes the creamery butter. So I would like to see the farm butter stepped up in quality. The industry is willing to pay a price. Of course we want the farmer to have more cows, we do not want a single heifer sold from the farm, we want it turned into a cow more and more.

Senator BAILEY. Tell me how many plants there are in the industry.

Mr. HARVEY. Four.

Senator BAILEY. Where are they located?

Mr. HARVEY. The oldest one is the Cloverleaf plant in Birmingham, which is about 20 years old. The Rosemary at Atlanta is 8 years old, or 9 years now, and the Southern Process, at Cullman, Ala., is a year and a half old, and the one at Cedartown, Ga., is about the same age.

Senator BAILEY. How about the one in Wilkes County, N. C.?

Mr. HARVEY. There is no creamery butter plant up there. We have a plant there which is a melting plant only. We do not make butter.

Senator BAILEY. And you make the butterfat there and you ship it to your plants?

Mr. HARVEY. Yes.

Mr. TRIMBLE. I might add, Senator, that there is one other qualified factory at Baltimore, Md. There are five qualified factories.

Senator BAILEY. It is a new industry?

Mr. TRIMBLE. No; it is an old industry.

Senator BAILEY. It is new in the sense of size? It is something that might be very greatly expanded?

Mr. HARVEY. In the early days, in my youth, there was lots of renovated butter being made by different processes than it is now being made. We have a modern process, modern equipment.

Senator BAILEY. To what extent do you think your process butter business might expand? That is, how much raw material that needs to be processed is available?

Mr. HARVEY. I think if it is to be protected it will go on up to 6, 8, or 10 million. That is when it goes up to there, that is when you say to the farmer, "We are paying you now for the fat in your cream."

The Chicago market pays for the butter 45 $\frac{3}{4}$ cents.

Senator BAILEY. I did not get that.

Mr. HARVEY. I had better explain that. The difference in the two is this: In the creamery butter business that a man brings in a can of cream and there is 100 pounds net in it. The creamery receiving station takes a sample of that and passes it through the Babcock test and it determines the amount of fat in the 100 pounds. There is 100 pounds of cream, which contains moisture, curd, and so on, but there is 80 pounds of fat in it, and then he is paid for the 80 pounds of fat at the Chicago price. When he manufactures that into creamery butter he has the other 16 percent of moisture and 4 percent salt, but 80 percent of fat it must have. It must have 80 percent of fat and not over 16 percent moisture. When he manufactures that into creamery butter he has the other 16 percent moisture and the other 4 percent salt, but 80 percent fat it must have. It must never have less than 80 percent fat and not over 16 percent moisture, and 4 percent salt. That balances 100 percent.

In the process business we buy butter. It may have 25 or 27 per cent moisture in it. Why? Because it was churned when it was warm, and the law of contraction and expansion operates in the butter business. For instance, you take a rail on the tracks of the railroads, in the cold winter that shrinks, does it not, and the ends of the rails will not quite meet. If you lay them in the cold time of the year and make them meet, when hot weather comes in the summer, and they expand, you will have buckling. Butter works like this on the same basis.

There is no guesswork in making butter. Every step is laboratory controlled. It has to be churned at a certain temperature. If it is churned at too hot a temperature it will collect more moisture. In many farms, in the old days, the churn was set next to the fireplace, to get it hot on the outside. My mother would scold me for trying to get it done too fast. There were two of us, and we would count the strokes. The hotter we would have it, the fewer strokes it would take. It used to take 75 to 80 strikes. It would butter quickly. Our surplus was sold to a man that used to come around to pick up the butter. It is the agitation that causes the butter particles and the little round globules to form larger and larger.

Senator BAILEY. I have had a little experience in churning butter but I never thought about the processed butter.

I want to get this further from you. Mr. Wilkinson stated further about the difficulties they have now. The shortage of men, the shortage of transportation, and the shortage of gasoline. Of course, we all know that there is a shortage.

Mr. HARVEY. Yes, sir.

Senator BAILEY. How about hauling; how much hauling and gathering do you have to do, anyhow, to collect this butter; how is it done?

Mr. HARVEY. Our trucks go to North Carolina. That trip is about 330 miles one way. We gather it up and bring it into our station near there.

Senator BAILEY. You go all through the countryside from house to house?

Mr. HARVEY. We stop at places where they buy it originally.

Senator BAILEY. You stop at country stores?

Mr. HARVEY. That is right. We cannot go to the farmer and pick it up.

Senator BAILEY. How is it kept in those stores?

Mr. HARVEY. That is one of the things that we want a good stiff regulation on. We want a change there, and I am sure the Department over here wants a change too. I think they want a better product. They do not want it any worse than we do. That is why we want to cooperate in every way.

Senator BAILEY. How do you protect it when you haul it? The system that you have got opens it to a great deal of abuse.

Mr. HARVEY. It is that abuse that we are trying to correct.

Mr. WILKINSON. What part do the rolling stores play in the collection of the butter, that is the stores built on trucks, that go out and pick up the butter?

Mr. HARVEY. It leaves the farm in two ways. The farmer will take it into the small cross-roads country store. It is handled on a

barter system. He gets his coffee, sugar, flour, and other things for it. The other way is the rolling store. You probably know what they are in your State. He carries everything in that store. It is a great covered truck. He takes it out to the farm and stops and buys a man's chickens, eggs, butter, and gives him goods in exchange. We take it from him or we go to the grocery store.

There is another middleman that we would like to eliminate, I think we may say that he does nothing except he handles so many pounds of butter and he gets 2 cents a pound for handling it. We would like to eliminate him.

Senator BAILEY. What do you do to protect the butter when you haul it?

Mr. HARVEY. We furnish cans with tight-fitting covers. The fly, like in other instances of food-stuff production gets there. The fly enters not for the butter but for the casein. That is the part that sours. You take farm butter and you keep it a little longer and you can smell it. It smells sour. That is the casein that has gone bad, and not the butter oil.

Senator BAILEY. That is what makes it rancid?

Mr. HARVEY. That is the casein. The creamery butter has a minimum amount of casein in it.

Senator BAILEY. Is that casein eliminated by machinery?

Mr. HARVEY. Yes; largely eliminated. Your butter gets rancid much quicker, that is if you have casein in it.

Senator BAILEY. You do not have refrigeration in transportation?

Mr. HARVEY. No, sir; that is not needed at the present time. All we need is to get it out of the hot weather as soon as possible. We do have a plant in northern Alabama that has refrigerating storage. When there is a load of it ready, it is trucked to Atlanta. That is not necessary everywhere. It probably would help to have refrigerated transportation. The industry will do whatever is necessary to protect the quality of the butter. When we get back to the point you have just raised, the industry I am sure, and I know the other plants that make table butter, they would like to see the thing go into effect at once, because we want the improvement now. We do not want to put it off. But we cannot get the cans that are of the type that are flyproof.

Right now we are trying to buy an added truck but cannot get it under any circumstances. Therefore, anything that could be done that would make it possible to get these materials, we are ready right now to put everything into operation.

Senator BAILEY. What do you get for your butter?

Mr. HARVEY. The butter is listed by the Department, or the O. P. A., as no-grade butter, which would mean about 88 score. I think Mr. Trimble can tell you our processed butter scores are higher than that. Some processed butter scores at 90. The farm butter in Georgia is scoring about 85.

Senator BAILEY. What is the price?

Mr. HARVEY. We sell ours on the price set by the O. P. A. We get 2 cents for packaging it. Then the freight comes in on it. We are allowed to add to that the carload freight from Chicago to the point where we ship, say into Miami, so we add that price to it and then

deliver it to them. All the things we do to it puts ours below 40 cents.

Senator BAILEY. What is the creamery selling at now?

Mr. HARVEY. The selling price is 57 cents but they are selling it at lower than that. The processed butter is lower generally. Before this came in, we used to have 5 cents under 90 score at Chicago as standard butter.

Senator BAILEY. What do you pay the farmer?

Mr. HARVEY. On account of what Baltimore is doing we have to pay more.

Senator BAILEY. How much?

Mr. HARVEY. It went up as high as 32 cents, 34 cents.

Senator BAILEY. That is the top.

Mr. HARVEY. Yes. We pay 27 cents up there. Down in the other areas we pay 23 or 25 cents. We pay 23 cents where we pick it up and where the other fellow picks it up we pay 25 cents.

Senator BAILEY. Are they O. P. A. prices?

Mr. HARVEY. Yes, sir; they control those prices. We are here to get some directions on that, not from this committee, but we must see the O. P. A. and tell them we are closing down. Eventually we are going to have to quit buying butter. We cannot stand so much investment in raw materials. We have stored the oil but we cannot store on and on into the thousands of pounds under present conditions when it does not sell on the points. We are to bring it to the O. P. A. in a way they will see it. We can bring it to them but whether they see it or not is the point.

Senator BAILEY. I think I will comfort you a little. Those people are well disposed. They are just like I am, they are ignorant of this thing, but they are capable of learning.

Mr. HARVEY. Well, they ought to be. One can never get too old to learn.

Senator BAILEY. You have got to have something like that. I do not know whether the average man realizes what we are doing. We are trying to arrest inflation.

Mr. HARVEY. We understand that.

Senator BAILEY. That is just as important as the Russian Army having to stop Mr. Hitler this summer, just as important. If we do not arrest inflation we are going to lose the country.

What I am getting at is the whole picture. I do not think that the O. P. A. is acting accurately, but I do think they are acting in good faith. It is not possible for a crowd of people to be brought up here and comprehend every detail of the situation. It must make a lot of mistakes. I know Mr. Brown quite well. He sat there in the Senate with me for years. He is as honest and straight-lined and has much good will toward public servants as any man in the United States. As I said last night, if you get rid of him I would guarantee that you would get a worse one.

Mr. HARVEY. That is a little off the topic. The trouble has been in putting him in O. P. A. for a certain duty, having no knowledge of that particular thing. If they would call somebody in there who has the inside information we would get along very nicely.

On the ration points, we find in Atlanta, the regional office in the South, as the director there understands it, he says there shall

be no points on the farm butter that you pick up, and yet they say in Washington there must be. He said to us, and I passed the word on to the other plants, "No points." He said, "I am going to fight it out with them, because I am right." We want fighters just like we do in this war.

Was there any other point that you had in mind there?

Senator BAILEY. I think you were given a little point by me on politics and public servants. Well, we find anything can be done in the way of government. We need just two qualities, one is intelligence and the other is character.

Mr. HARVEY. You are right.

Senator BAILEY. Any man who has intelligence and character will make a good public servant, and anybody else is not worth the killing. That is a very simple proposition. Your point here, I think, is largely one of finding the men of intelligence, and if you find that they do not have the intelligence then you must supply it by reasonable information and argument.

Mr. HARVEY. That is the object we have in the meeting tomorrow with them. I will tell you this, that we are going to stay with them until they see it. We are here and are going to stay because we know it is wrong.

Mr. WILKINSON. Mr. Harvey, did you make it clear that much of the casein is eliminated by the processing operation on this butter?

Mr. HARVEY. We practically remove it all. In other words, processed butter at a certain score held in the same temperature will stay fresh longer than will creamery butter. Some of us have eliminated all of the butyric acid, one of the things found in butter, and that is one of the things that has helped it stay a little better. We are getting away with that part of it that is injurious to quality.

I think Mr. Trimble is the man that is in charge of the inspections of these plants themselves. He is an old butter man and he understands the situation. We can follow his ideas and we seem to be in perfect accord and we look for a much brighter future for the industry. One of these days when there is enough cream produced there will be no processed butter any more. We hope that will come soon, but it will not come right away, and then we can produce all the creamery butter you need. You can get it from a farmer who produces it.

I think Judge Wilkinson has out on his farm some butter that comes to him that is his own farm butter, and he likes it very much. I like it too if it is fresh.

Mr. WILKINSON. The change over from the present situation as to creamery butter depends on the increase of the herds.

Mr. HARVEY. Altogether.

Mr. WILKINSON. On the average farm down there.

Mr. HARVEY. Altogether.

Mr. WILKINSON. His herd is not large enough at present to produce cream in paying quantities.

Mr. HARVEY. A cream station could not get enough to justify the expense of operating. I know in Indiana towns of six or seven thousand with five cream receiving stations in them.

Senator BAILEY. I understand from what you said there is a decided limitation on this industry.

Mr. HARVEY. Yes, sir; but it will keep growing.

Senator BAILEY. If you get fine herds and fine dairies, the processed butter passes out?

Mr. HARVEY. It will pass out of the picture, and then the farmer gets more for his product.

Senator BAILEY. We have at Raleigh a pretty big institution, that is the Pine State Creamery, and they do not have anything to sell to the processed butter people. Could not they collect the milk from the farmers?

Mr. HARVEY. If it is past the state of being edible or suitable for use the dairy would likely be sending their surplus to Baltimore. There is one plant up there that buys and sells it. It is packed in tubs and sold to bakers.

Senator BAILEY. But it is not what you would call processed butter?

Mr. HARVEY. Yes; it is processed butter all right, but not of the type of these four plants farther south. Mr. Trimble makes those inspections and knows more about that than I do.

Senator BAILEY. We are very glad to have heard you. We feel you know something about it. We will profit by what you have said.

Mr. HARVEY. I have had enough experience to be able to say something about the industry.

Mr. TRIMBLE. I might amplify on the amount of butter that is sold in the South that is potential material for the processor. Out of the 60,656,000 pounds of farm butter sold off the farm, the 7 States, North and South Carolina, Virginia, Tennessee, Mississippi, Alabama, and Georgia, produced 22,600,000 pounds. If you consider the stuff as a whole, about 35,000,000 of this 60,000,000, over half of the country butter, farm-made butter, produced in the United States is made in the South, and in the 7 States that would be 22,000,000 in relation to 60,000,000 or about one-third. The rest of the 44,000,000 is presumably consumed on the farm. This is sold off the farm as farm-made butter.

Mr. WILKINSON. If I got that information correctly, there is about 400 000 000 produced.

Mr. TRIMBLE. On the farms.

Mr. WILKINSON. Of that 400,000,000 produced there are 60,000,000 pounds sold from the farm.

Mr. TRIMBLE. That is right.

Senator BAILEY. Of that 60,000,000 there are 35,000,000 pounds produced in the South and in the 7 Southern States there are 22,000,000. You mean that all the balance of the country other than the South sells 50 percent, approximately?

Mr. TRIMBLE. It is almost half and half.

Senator BAILEY. That means that people all over the country generally do not sell any butter but use it themselves; that is, the farmers.

Mr. TRIMBLE. You just think of 60,000,000 in comparison with 400,000,000.

Senator BAILEY. The whole output of butter, taking the total volume into consideration, is a creamery proposition?

Mr. TRIMBLE. Yes, sir.

Senator BAILEY. All right. We will hear from Mr. Smith, director of the food and dairy division, State department of agriculture, Richmond, Va.

STATEMENT OF S. S. SMITH, DIRECTOR OF DAIRY AND FOOD DIVISION, STATE DEPARTMENT OF AGRICULTURE, RICHMOND, VA.

Mr. SMITH. Mr. Chairman, I am here to represent the Association of Food and Drug Officials of the United States. I just want to express before the committee the approval of the proposed legislation in handling the processed or renovated butter.

Right here I would like to ask one question, if you please. The gentleman over there has said the words "processed" and "renovated" were used synonymously, I believe, and I would like to know if there is a difference in the two processes.

Mr. WILKINSON. My understanding is that there is not.

Mr. TRIMBLE. I can answer that. There is "processed" and "renovated" which are synonymous terms in the original law of 1902. Up until 1907 the then Secretary of Agriculture, which was James Wilson, insisted that the product be labeled "renovated butter." With the first revision of regulations, jointly signed by the Secretary of Agriculture and the Secretary of the Treasury, the optional term was provided for in the regulations. Now "processed" butter, being a softer and milder term, the industry from 1907 on designated it as "processed butter" and "renovated butter." Insofar as the consumer is concerned it has always been marked "processed butter," but they are one and the same product.

Mr. SMITH. I believe Mr. Harvey referred to a different manner of washing it.

Mr. TRIMBLE. That would be more the lard butter than it would be processed butter, but insofar as the manufacturing methods are concerned, they are synonymous.

Mr. SMITH. This bill will bring all this butter which is processed under the same supervision; it will all be done alike; is that true?

Mr. TRIMBLE. That is correct.

Mr. SMITH. It will either be renovated or it will be processed; it will just be one standard?

Mr. TRIMBLE. That is right.

Mr. HARVEY. In other words, half of it will be renovated and half processed.

Senator BAILEY. The question in my mind is what is the difference. It would either be renovated or processed?

Mr. SMITH. I think it ought to be one or the other, and everybody do it alike.

Senator BAILEY. Well, what is it? What do you do when you renovate it?

Mr. WILKINSON. When you process it, you renovate it, but when you renovate it you process it.

Mr. SMITH. Mr. Chairman, just one other thing, referring to your dislike of butter.

Mr. TRIMBLE. The actual mechanics that it goes through in the plant are somewhat different, but it reaches the same end in that it is melted, clarified, or refined. I have the Federal definition on what constitutes processed or renovated butter. It does not mean practically what is the same method, but they are reaching the same, to clarify and refine their end material.

Mr. McNAUGHT. I would like to read the definition. In title 26, United States Code, section 2320 (C) it states:

Processed butter or renovated butter is defined to mean butter which has been subjected to any process by which it is melted, clarified, or refined or made to resemble genuine butter, always excepting adulterated butter as defined by subsection (b).

Senator BAILEY. That is a very bad definition, butter made to resemble or look like butter.

Mr. SMITH. I just want to say this in conclusion. Your reference to eating country butter in your youth—

Senator BAILEY (interrupting). It was not country butter; it was firkin butter shipped in from the north, the Yankees. I think it came from the wrong part of the world. It tastes bad, looks bad, and smells bad.

Mr. SMITH. In my experience in working with Federal people, in cleaning up packing stock butter years back I doubt if you would eat any kind of butter now. I believe there has been a good bit of progress made on cleaning up the butter. There is room for more and in hearing this bill read I saw the possibility where you can accomplish a good deal under the the provisions of that bill in cleaning up the butter and God knows it needs it.

Senator BAILEY. Mr. Sullivan is next. He is the State food and drug commissioner, State board of health, Baltimore, Md.

Mr. TRIMBLE. Mr. Sullivan called up and said he could not be here.

Senator BAILEY. Mr. Trimble is next then. He is the chief of Dairy Products Inspection, Bureau of Dairy Industry, Department of Agriculture.

STATEMENT OF CHARLES S. TRIMBLE, IN CHARGE, DAIRY PRODUCTS INSPECTION, BUREAU OF DAIRY INDUSTRY, UNITED STATES DEPARTMENT OF AGRICULTURE

Mr. TRIMBLE. I have a prepared statement which I would like to put in the record.

Senator BAILEY. All right.

(The statement referred to is as follows:)

STATEMENT ON BILL S. 1006 BY C. S. TRIMBLE, IN CHARGE, DAIRY PRODUCTS INSPECTION, BUREAU OF DAIRY INDUSTRY, UNITED STATES DEPARTMENT OF AGRICULTURE

The proposed bill S. 1006, with the inclusion of three amendments suggested and approved at a hearing July 2, 1942, before a subcommittee of the Committee on Finance, United States Senate, on bill S. 2079, is otherwise identical in language with that bill. Since S. 2079 was not enacted into law, the reasons and explanations given at the previous hearing would naturally still apply. The statement made in favor of the present bill will therefore largely be a recapitulation of the statements previously made.

S. 1006 is a "bill to authorize the condemnation of materials which are intended for use in process or renovated butter and which are unfit for human consumption, and for other purposes." To provide for such condemnation the bill proposes to amend section 2325 of the Internal Revenue Code (53 Stat. 254), the pertinent existing legislation which does not give the Secretary of Agriculture authority to condemn or prohibit the use of such raw materials as might be deemed unfit if subjected to such inspection as is proposed in S. 1006. Lacking such authority under existing law the Secretary of Agriculture, through his delegated administrative agency, is therefore unable to protect the finished product. Under existing

conditions the finished product does on occasion contain soluble or partially soluble constituents of animal or insect origin such as flies, larvae of flies, other insects, and rodent or poultry excreta. Present manufacturing methods will and do remove practically all insoluble constituents of such origin, but no known methods of processing or renovation will, or can be expected to, remove the soluble constituents of such contaminants. Inspection records of the Bureau of Dairy Industry, the delegated administrative agency for enforcing the existing law, reveal that such contaminants are on occasion present, and particularly in the summer months, in farm-made or packing-stock butter. Similar records of the Food and Drug Administration and State regulatory agencies substantiate the records of the Bureau of Dairy Industry.

Since the manufacture of process or renovated butter is provided for by act of Congress (May 9, 1902, 32 Stat. 193), it is, therefore, a legitimate product of commerce, and, as the Secretary of Agriculture stated in his letter of November 12, 1941, transmitting S. 2079 to the Senate, "the Department has no desire to legislate renovated butter out of existence." Process or renovated butter is, however, in effect, a salvage product, for, by utilizing, as the factories do, farm-made butter no two lots of which are seldom alike in color, taste, or composition, and which is made, collected, stored, transported, and handled under a variety of conditions, the processor must of necessity "melt or clarify or refine" these miscellaneous lots of farm-made butter to produce a uniform finished product. Since the inception of the process or renovated butter industry in the eighties this situation has prevailed. As a result, in the collection, storage, transportation, and handling of farm-made butter from thousands of farms, and hundreds of country and rolling stores and produce dealers, such farm-made butter is frequently subject to careless and unsanitary treatment whereby it becomes contaminated with such substances of animal or insect origin as have been enumerated. There is no thought of prohibiting or preventing the use of farm-made butter which through age or incorrect manufacturing methods on the farm has deteriorated in quality or even that butter which may have become slightly moldy and contain bits of wood, paper, straw, or other inert material. Butter as originally made on the farm is intended for use as food on the farm or for sale as a food product. Only when it has lost some of its original goodness does it become a product for the qualified process or renovated butter manufacturer to utilize and salvage. Such manufacturers thus render a service in reclaiming for food purposes a valuable food fat and in the South particularly afford a market for the product of the cow and a market which, but for their presence in the field, might otherwise not be available. It is the thought and purpose of this proposed bill to give the Secretary of Agriculture, through his delegated agency, authority to prevent any butter, farm-made or otherwise, which through gross carelessness in storage, collection, or handling contains animal or insect infestation within and throughout the mass of such butter from being subjected to processing or renovation preliminary to its manufacture into a finished product intended for human consumption and for commerce among the States. With such a thought and purpose there would seem to be no valid or justifiable exception if the health of the consumer is to be safeguarded.

A final reason for the enactment into Federal law of this proposed legislation is that on February 2, 1942, the Supreme Court of the United States in the case entitled *Cloverleaf Butter Co. vs. Patterson* (315 U. S. 148) "held, in effect, that the Federal law and regulations of this Department issued thereunder occupied the field with respect to the preparation of and interstate commerce in, process or renovated butter, and that the States were without authority to condemn any filthy material in the factory prior to its conversion into the finished product." (Secretary Wickard's letter of February 23, 1942.)

Long before this opinion was rendered, Mr. O. E. Reed, Chief of the Bureau of Dairy Industry, had directed that an exhaustive study and survey of all legislation pertaining to process or renovated butter be made. As a result of this study a proposed amendment to existing law prepared in cooperation with the Solicitor's Office and with full departmental approval was submitted to Congress for consideration. That bill, S. 2079, is substantially the same as this bill, S. 1006, which is today being considered. It is patterned after the Meat Inspection Act, whereby inspectors would be stationed at all qualified process or renovated butter factories in the United States—there are now five such factories—and would examine and inspect all butter intended for use in the manufacture of this product with authority to pass and so mark all butter deemed fit, by standards issued by authority of the Secretary of Agriculture, and to condemn all butter and so mark all butter deemed unfit to use as a food product. In addition, the finished product

would bear an official label, "U. S. inspected and passed." Such a label would not only insure a much safer food product to that class of the consuming public which for economic reasons still buys this grade of butter but would also be of value to the manufacturers of this product in their sale of a food product which is primarily and basically a salvage product. Such control as is aimed at in this bill is only to remedy a long-existent weakness in the law and to bring the manufacturer of process or renovated butter into conformity with similar laws as applied to many other food products. Particularly would it be comparable with section 402 (a) (4) of the Federal Food, Drug, and Cosmetic Act of 1938, which needs no explanation to the chairman.

A study of the Supreme Court opinion, both majority and dissenting opinions will attest, by inference at least, the need of such amended legislation, as the Bureau of Dairy Industry proposes, and all furnish supporting evidence of this need, since all three opinions, either by direct statement or by inference, state the position of the Bureau of Dairy Industry in administering existing law, namely, that the United States Department of Agriculture is without authority to condemn or confiscate the raw materials or packing-stock butter, but can confiscate the finished product, provided it can be objectively determined to be deleterious to health or unwholesome. Under present manufacturing methods such determination is difficult if not impossible. The Bureau of Dairy Industry has cooperated with State, local, and other Federal regulatory agencies to control the manufacture of process or renovated butter. However, from the standpoint of more effectively correcting existing conditions, it would seem most desirable for the United States Department of Agriculture, through the Bureau of Dairy Industry, to inaugurate continuous and uniform inspection of all qualified process or renovated butter factories under this proposed law rather than to rely on the aid and assistance of State and local regulatory agencies with divergent and possibly less stringent standards than that desired or as contained in this law. With the enactment of this law it would then not be necessary upon occasion to invoke the provisions of the Federal Food, Drug, and Cosmetic Act.

The enactment of this law would, indeed, relieve the Food and Drug Administration of being called upon to invoke that law so far as process or renovated butter factories are concerned; it would provide uniform inspection and jurisdiction over qualified factories in all States; it would enhance the value of the finished product; it would protect the consumer of this product; and it would strengthen the enforcement work of the United States Department of Agriculture.

Since the previous hearing the Association of Food and Drug Officials of the United States at their annual conference held at Denver, Colo., May 28, 1943, have reendorsed their action of June 5, 1942, and passed a resolution favoring this proposed legislation. The International Association of Milk Sanitarians, at their last annual meeting held at St. Louis, Mo., October 30 and 31, 1942, passed a resolution endorsing this proposed legislation. The executive committee of the National Cooperative Milk Producers Federation is also on record in favor of this proposed legislation. In addition, editorial endorsement in the Dairy Trade Press has been received.

Mr. TRIMBLE. In brief recapitulation, the previous bill, S. 2079, was substantially the same as the bill we are considering today.

Senator BAILEY. Now, Mr. Trimble, you were the chief proponent of the bill that we had at the former hearing?

Mr. TRIMBLE. That is right.

Senator BAILEY. Do you have any objection to these amendments?

Mr. TRIMBLE. I was going to come to that.

Senator BAILEY. You said they were substantially alike.

Mr. TRIMBLE. The bills as originally introduced, S. 1006, and S. 2079 are substantially alike.

Senator BAILEY. This bill is substantially like the one we had a hearing on previously?

Mr. TRIMBLE. That is right.

Senator BAILEY. What about the amendments?

Mr. TRIMBLE. At this point, if I might preface my remarks, the process or renovated butter industry were on record at the previous hearing as being in favor of this legislation. Subsequently they did

express opposition and with the reintroduction of this bill; mainly to the language in subsection (a), and they asked for a conference with the Department of Agriculture. That conference has been held, and contingent upon the final approval of the Budget Bureau and of the Secretary's office, and of this committee, the Department is in accord on suggested amendment.

I want to stress that the last amendments suggested by Mr. Wilkinson were not the department's but his own amendments, as the first three as he read them in this revised bill and we are in accord with them.

Senator BAILEY. You have no objection to amending the bill, Mr. Trimble, as suggested in the three amendments, the first three.

Mr. TRIMBLE. That is right, sir.

Senator BAILEY. Let us point those out so we can have it definite? What is the page and the line of the amendments? The first amendment that I see here is the line beginning "Such ingredients," which is stricken out.

Mr. TRIMBLE. That is right.

Senator BAILEY. Now you follow the line stricken all the way down to the third line on page 2 ending with the words "inspector." You agree to that, do you?

Mr. TRIMBLE. Yes, sir.

Senator BAILEY. All right. Now here is a substitute. I guess that is underlined.

Mr. TRIMBLE. That is right.

Senator BAILEY. You agree to that do you?

Mr. TRIMBLE. Yes.

Senator BAILEY. All right. Now we have down here under (b) on the same page, we come to the words "destroyed or denatured"; we strike those out and we substitute "under the supervision of the" and the word "inspector" stays in. Do you agree to that?

Mr. TRIMBLE. That is correct.

Senator BAILEY. All right. Now we come on this page 3 to the underlined lines in the second paragraph:

The Secretary of Agriculture may from time to time by regulation define the foreign substances and the extent thereof that can render the ingredients unfit for use in manufacturing processed or renovated butter.

Mr. TRIMBLE. That is correct.

Senator BAILEY. That is all right, is it?

Mr. TRIMBLE. Yes.

Senator BAILEY. That is the third. That is good and very satisfactory. Then there are some on page 4, section 4.

Mr. TRIMBLE. At the top there, Senator, the words "renovated butter."

Senator BAILEY. You agree to that, Mr. Trimble, that is as far as the marking is concerned.

Mr. TRIMBLE. That is the way it has been marked since 1907. We see no specific objection to that. The words "renovated butter" have not been deleted in describing the product in the rest of the act, but insofar as it is marked, we do agree.

Senator BAILEY. Why not delete the word "processed"—that appears to be an adjective. You would have a participle there, wouldn't you, in the word "processed"?

Mr. TRIMBLE. We would go back to the original law, which is "process" instead of "processed."

Senator BAILEY. I am not going to split hairs about it. You prefer "process" to "processed"? Is that agreeable?

Mr. TRIMBLE. Yes, sir.

Senator BAILEY. All right. My idea now is to recommend these amendments to the main committee and to the Senate, and of course to Senator George. He is the author of the bill, and he will agree to that.

Now section 4:

If there is any provision of this Act or the application thereof to any person or circumstance, the validity of the remainder of the Act and of the application of such provision to other persons or circumstances shall not be affected thereby.

Mr. TRIMBLE. That section, Senator, was suggested at the previous hearing, but as the bill was submitted was not included. That has been transmitted under the signature of the Secretary of Agriculture, by the Bureau, to Senator George as having been omitted from the bill itself.

Senator BAILEY. So you agree to that too?

Mr. TRIMBLE. Yes, sir.

Senator BAILEY. That is all of it, isn't it?

Mr. TRIMBLE. That is all I have.

Senator BAILEY. Does anybody else want to be heard?

Mr. WILKINSON. That is all except this provision.

Mr. TRIMBLE. That is insofar as the Department is concerned and there are two other amendments.

Senator BAILEY. Let us get the two other amendments. Do you object to those?

Mr. KEMPER. Mr. Lepper, of the Food and Drug Administration is here and would perhaps wish to be heard.

STATEMENT OF HENRY A. LEPPER, UNITED STATES FOOD AND DRUG ADMINISTRATION, FEDERAL SECURITY AGENCY

Mr. LEPPER. My name is Henry A. Lepper. I am with the United States Food and Drug Administration, Federal Security Agency.

Senator BAILEY. You are going to state the objections to the two amendments proposed by the industry?

Mr. LEPPER. I do not know the tenor of the two amendments, that is the second amendment. I am addressing my remarks to the amendment that the action under the law against processed butter be restricted—

Senator BAILEY (interposing). Will you let me interrupt you for one purpose. I want to read into the record the amendment that you are discussing, and to it you have filed an objection. The amendment is as follows:

Amend the substitute for S. 1006 by adding paragraph (k) immediately after paragraph (g) and immediately before section 2 in said substitute, to read as follows:

"Paragraph (k). The administration and enforcement of the provisions of this Act other than its provisions relating to revenue, but including the seizure and denaturing or destruction of ingredients used in the manufacture of processed or renovated butter and the denaturing or destruction of processed or renovated butter, are committed exclusively to the Secretary of Agriculture."

You are objecting to that.

Mr. LEPPER. Yes, sir.

Senator BAILEY. All right. State your objections.

Mr. LEPPER. In the first place, the amendment accomplishes the setting aside of the Food and Drugs Act of 1938, which was a new law that succeeded the Federal Food and Drugs Act of 1906.

Senator BAILEY. Where is the food and drug activity located now?

Mr. LEPPER. On processed butter?

Senator BAILEY. No; the whole thing. It is the Pure Food and Drug Administration, isn't it?

Mr. LEPPER. Yes, sir. It is in the Federal Security Agency.

Senator BAILEY. That is at present?

Mr. LEPPER. Yes, sir. It has been there for 3 years, I believe. The whole enforcement of the Food and Drugs Act is no longer in the Department of Agriculture.

Senator BAILEY. I would just like to stop you there a minute. This matter of butter is an agricultural matter, that is clear. It relates to the quality and source of the raw material. It relates also to the consumer, of course, and that is very important. There is some relation to revenue, but it is very incidental. That is why the matter is in the Finance Committee or Agricultural or Commerce Committee. What has this Federal Security Agency got to do with this act?

Mr. LEPPER. Just why the Federal Food and Drugs Act is in the Federal Security Agency for its enforcement is something I do not understand, but the Food and Drugs Act was passed by Congress and superseded the original Food and Drug Act which was in the Agriculture Department, that was Dr. Wiley's act as they called it, and that dealt with all food commodities, manufactured foods, farm products, and foods of all kinds. It makes no exceptions to the foods which it covers, whether in interstate commerce or whether imported or exported. The situation with respect to processed butter is not greatly unlike that which concerns meat and meat food products. Congress has passed a law for the inspection of meat and meat food products.

Senator BAILEY. Is that under the Federal Security Agency?

Mr. LEPPER. That is under the Department of Agriculture. This law is a law of the same scope and general purpose, to assure the wholesomeness and the purity of raw materials, that is as to the wholesomeness, healthfulness, and thereby assure the wholesomeness and edibility of the finished product. The Congress, in their passing the Food and Drug and Cosmetic Act realized that there was an act covering meat inspection, and exempted meat food products and meats from the operations from the Food, Drug, and Cosmetic Act insofar as they were covered by the Meat Inspection Act, but did not exempt those foods from the operation of the Food, Drug, and Cosmetic Act.

Senator BAILEY. This means the ingredients in contemplation of processing?

Mr. LEPPER. That was the other point I had there. I thought it might be clarified to obviate any future conflict as to the general packing stock butter that is available to the country. A great deal of it is not going as packing stock, to the renovating plant. We have had occasion to seize under the Food and Drug Act large quantities of that inedible packing stock butter going to candy manufacturers, bakers, and places of that kind.

Mr. WILKINSON. That only applies to this act which deals with renovated butter plants.

Senator BAILEY. All right. Mr. Kemper is next, is he not?

Mr. KEMPER. I do not believe, Senator, that I have anything particularly to say to the committee. I was sitting here in an advisory capacity.

Senator BAILEY. Well, if you should have any comments to make, any brief to file, you may do so.

Mr. KEMPER. I shall let you have them if they occur to me.

Here is Mr. McNaught, Office of the Solicitor, Department of Agriculture.

STATEMENT OF ARCHIBALD McNAUGHT, OFFICE OF THE SOLICITOR, DEPARTMENT OF AGRICULTURE

Mr. McNAUGHT. I had not intended to make any statement one way or the other respecting the bill.

In connection with this amendment we have just been talking about, it strikes me, however, that the words "other than its provisions relating to revenue" might well come out, because this particular act has nothing to do with revenue.

Senator BAILEY. They do not have to be in, but I suppose they are put in because it hedges against possible criticism. Probably it makes it a little bit safer on the other side.

Mr. McNAUGHT. That is a good point.

Senator BAILEY. My mind is a little confused by this amendment and the objections to it. My whole inclination is to keep this thing in the Department of Agriculture. I get the point on the canned goods. After all, that may be derived from the farm or come from an industry. However, the Department of Agriculture is the guardian of the farm interests and logically, to my mind, at any rate, this Pure Food and Drug Act was always in the Department of Agriculture. So far as I know there was not any time when it was not, until the President made the transfer. Well, there is a permanence about the Department of Agriculture. I do not know what this security business is yet, I do not know that anybody knows, and we do not know how long it will last. It is an activity the President set up under the power of Congress. The word "security" takes in everything on God's earth that I know of except my security, and my inclination would be to follow the amendment, but I am not going to follow the amendment if it is going to emasculate the bill or weaken it in any way, or put it in hands that have no power. But the remedy there would be to give them power, and it would be very simple.

Mr. TRIMBLE. Mr. Lepper has raised the point and the industry has said that it had no objection whatsoever to the Food and Drug Administration taking action once it has gone into interstate commerce, but if I can construe this, if the Secretary of Agriculture is given the sole power to denature or destroy the process or renovated butter—and I am talking about the finished product—then in the case that Mr. Lepper cited, in the case of a flood at the factory, or if there had been marked, one or two things would have taken place at the factory, it would either have been destroyed or it would be boxed "U. S. Inspected and Passed." Assuming it was marked "U. S. In-

spected and Passed," and was a perfectly good product after it left the qualified factory, if the Secretary of Agriculture is the only one that can destroy or denature process or renovated butter, unless we carry it through on food control work that is normally done, there would be no other authority anywhere.

Mr. WILKINSON. The bill specifically provides that the finished product must be destroyed or denatured if it does not meet the standards set by the Department of Agriculture.

Mr. LEPPER. I am speaking of the removal from trade of processed products contaminated after they are manufactured. There is no machinery that would enable the Secretary to take action against it, to file a libel against it, or proceed against it if, for example, it should be contaminated with flood water or things of that kind or be contaminated with poisoning ingredients. In the course of commerce, there are insecticides shipped along with foods and sometimes food becomes contaminated with insecticide.

Senator BAILEY. Is that an objection to the bill itself?

Mr. LEPPER. It is an objection to the amendment.

Senator BAILEY. If you do not put in this amendment, you mean to say there will be power to seize and condemn that exists in the Federal Security Agency?

Mr. LEPPER. I think this amendment may be interpreted to stop any action by the Food, Drug, and Cosmetics Act.

Senator BAILEY. I think it would, but your point is all you have to do to transfer it is to give the Department of Agriculture the same power with respect to the products that it has with respect to others. I take it it has got the power to seize it. Of, if you do not wish to do that, you can give it the same power that now exists under the Pure Food and Drug Act wherever it may be established.

Mr. KIDD. As to the finished products.

Senator BAILEY. What as to the finished product? Not in any operation of manufacture, but only as to the finished product, that is as it goes on the market.

Mr. KIDD. Yes.

Senator BAILEY. Let us have that out right here. Suppose we do find there is something bad about it in the processing itself, does the Government have no remedy right then and there?

Mr. KIDD. Yes; we are under the inspection of the Department of Agriculture, the most rigid and close inspection. He has authority to inspect the raw material.

Senator BAILEY. Would he have the power if it is manufactured?

Mr. KIDD. He has plenary power to everything at all that is put out onto the market, that becomes a finished product.

Senator BAILEY. You would have to extend this power to the manufactured product?

Mr. KIDD. Certainly. We have no objection to the Food and Drug Department seizing any finished product after it goes onto the market, if they think there is anything wrong about it, although the bill says it must be "U. S. Inspected and Passed." But it could deteriorate. There is no objection to seizing the finished product after it leaves the doors of our factory.

Mr. WILKINSON. The various States and municipalities have that power now.

Mr. KIDD. Certainly The various States and municipalities have that power now.

Mr. LEPPER. My point is that this amendment may remove the power that this gentleman says they are perfectly willing to have exist in the Department after it is manufactured.

Senator BAILEY. In that it takes the operation from one department that power and puts it into the department which does not have it. That is your point, isn't it?

Mr. LEPPER. Yes, sir. There is one other point about the amendment that to me is not quite clear. I do not propose to be a legal man, but it says here "the seizure and denature or destruction of ingredients used in the manufacture of process or renovated butter." To me that can be read as applying to any packing stock butter, whether it is going to a renovating plant or not. It says "ingredients used." It is not definite to my mind there that they are those ingredients that are in the possession of the renovator, or actually the ingredients to be manufactured. Packing stock butter is potentially an ingredient to be used in renovated butter. It can be so used.

Senator BAILEY. This means the ingredients in contemplation in the processing, but did not exempt those foods from the operation of the Food, Drug, and Cosmetics Act after they became articles of commerce. That is, they are not exempted and there is no power in that act to operate for their removal from the market and for their handling in such cases where they become unfit, contaminated, or otherwise objectionable after they reach the processing plant. One of the features in this amendment is that there is no provision set up in this law for activity on the part of the Secretary of Agriculture to actually seize processed butter if it becomes unfit for consumption or is otherwise objectionable after it has left the processing plant. Naturally, we know that some things can happen to that butter.

Senator BAILEY. Your point is that if it is assigned to the Federal Security Agency that they haven't the machinery?

Mr. LEPPER. Yes, sir; they have no machinery, and I am confident there will be no more conflict in the Federal Security Agency and the Agricultural Department under this process butter law than there is between the Federal Security Agency, or the Food and Drug Administration and the Meat Inspection Division of the Department of Agriculture.

Senator BAILEY. The Pure Food Agency is an independent agency, isn't it?

Mr. LEPPER. Yes, sir.

Senator BAILEY. The Department of Agriculture is a department of the Government. There is your difference. The Department of Agriculture is supposed to have charge of everything relating to the farm, isn't it?

Mr. LEPPER. Well, I feel that processed butter is no more a farm product than is a can of tomatoes. After it is manufactured into finished butter, it is no more a farm product than the other materials that come from the farm and are manufactured or processed in some way or another and become articles of food.

**STATEMENT OF JAMES M. KIDD, CLOVERLEAF DAIRY CO.,
BIRMINGHAM, ALA.**

Mr. KIDD. We have no objection to the Food and Drug seizing the finished butter after it goes into interstate commerce from any process factory. We feel that one administration is desirable, because we cannot serve two masters. We want to know who is our boss. I do not see the point.

**STATEMENT OF HENRY W. HOWLE, SOUTHERN PROCESS BUTTER
CO., CULLMAN, ALA.**

Mr. HOWLE. In this bill it provides for an inspector to be provided at each plant by the Department of Agriculture, to inspect each can of raw butter that comes into the plant, and all the butter that is used by the plant must be inspected by the inspector.

Mr. WILKINSON. Also the finished product must be inspected.

Mr. HOWLE. Yes, sir; the finished product must be inspected, that man being in our plant, just like the meat inspector, the Department of Agriculture we think should have jurisdiction over the inspection and the raw matériel. After that product is renovated and goes on to the trade, we have no objection at all to what you do after that.

Mr. WILKINSON. Mr. Chairman, may I ask the gentleman a question?

Senator BAILEY. Yes.

Mr. WILKINSON. Does not the bill under consideration prevent this butter from going into commerce until it meets the standards prescribed by the Secretary of Agriculture?

Mr. LEPPER. As I read this amendment (and I want to say for the record here that this is the first time I have seen the amendment—but as I read this amendment it says:

The administration and enforcement of the provisions of this act, other than its provisions relating to revenue, but including the seizure and denaturing or destruction of ingredients used in the manufacture of process or renovated butter, and the denature or destruction of process or renovated butter are committed exclusively to the Secretary of Agriculture.

This does not limit, in my estimation, the action to the raw material, but he goes on and talks about the processed and finished butter.

The bill specifically provides that there would not be any other authority anywhere to seize processed and renovated butter in interstate commerce, and it would seem to me to be a question of clarifying the language.

Mr. WILKINSON. Does this act apply to butter after it leaves the factory? Does not it deal with butter up to the time that it is inspected and passed at the factory?

Mr. TRIMBLE. Assuming that it has.

Mr. LEPPER. And has gotten into flood conditions or had been shipped under refrigeration and had inadvertently or otherwise spoiled while it was in interstate commerce, the Food and Drug Administration, by the language of this amendment would be prohibited from taking action against that butter.

Mr. WILKINSON. I think not, for this reason: The Food and Drug people proceed by seizure and condemnation. The Secretary of Agriculture proceeds by denaturing and destruction. Denaturing

and destruction ceases when this is inspected and passed by the Department of Agriculture. Now, if it gets out into the channels of trade and there becomes objectionable for any reason it can still be seized and condemned by the Food and Drug people, and we do not object to that.

Mr. TRIMBLE. If that is understood, why that is perfectly all right.

Senator BAILEY. How are you going to draw your distinction between intrastate and interstate with respect to the product?

Mr. KIDD. The State can proceed within the State.

Senator BAILEY. If you sell any portion of your product across State lines, does not your whole business become interstate business?

Mr. KIDD. That is the finished product, but the special act takes us out of the activity of the Food and Drug Department. We have been shot at by three or four agencies in the past. We never knew who was our boss to tell us what we could and what we could not do.

Senator BAILEY. A fellow in Georgia gets his raw material from North Carolina. Of course, he takes it down to Georgia, and that is in interstate commerce. The Supreme Court has taken the view, and so has the Congress, in a great many instances that that is subject to the commerce clause which applies to any commodity which is employed or sold in such a way to be in interstate commerce actually or to the effect. That is pretty broad, but that is a part of the basis of the cotton control, the tobacco control. It is the basis of a good deal of the labor legislation, the Wage and Hour Act. Under the Wages and Hours Act we regulate the small industries in the State on the ground that what they are doing affects the stream of commerce.

Now the Supreme Court has held the coal case, the first coal case, in 1935, the Court was divided but the majority held that the effect on commerce must be direct in order to subject it to regulation under the commerce clause. The old doctrine went further and said that any manufacture was not commerce. The modern doctrine obliterates that and says that manufacture is commerce, it affects the stream of commerce.

We used to say farming was not interstate commerce, but the Bankhead Act means that you regulate the farmer because the cotton man, whether he sells it in North Carolina, and raises it in North Carolina is another matter, but some day it affects the whole stream of interstate commerce, and that brings all agriculture under the commerce clause.

Now we come to this act and all my predilections are in the direction of State duty, State rights, and State control, but that is not the modern system, that is not our wage-and-hour system, that is not our Coal Act, that is not the Power Act, and that is not the Cotton and Tobacco Agricultural Control Act. Whether the manufacturers legalize it or not, or even whether the sale legalizes it or not, it is up to the plenary power of Congress to regulate commerce amongst the States. Is there any reason why this should be taken out of that category?

Mr. KIDD. No, sir, I do not think so.

Mr. WILKINSON. Perhaps the language of section 3 of the bill may throw some light on it. It says:

Any person, firm, or corporation that shall transport or offer for transportation, or sell or offer for sale in interstate or foreign commerce, or in commerce affecting commerce among the States—

following the language of the recent Supreme Court decision—
shall process any renovated butter that has not been inspected, passed, marked, labeled, in accordance with this section and regulations issued thereunder.

Senator BAILEY. There is no objection at all to that.

Mr. WILKINSON. No.

Senator BAILEY. The question of intrastate commerce does not arise.

Mr. KIDD. Senator, in answer to your very clear statement I think it is well that Congress does regulate this matter because it is so intertwined and interrelated between the States. We bring butter from Virginia, from Tennessee, from Mississippi and we get it in there. Well, if we cannot have uniform standards for the finished product it would make it very difficult for us to reach any standard.

Senator BAILEY. That is a part of the philosophy that accounts for the trend in this country, the desire for uniformity.

Mr. KIDD. The same way with these words "process" and "renovate." Well, if the Government has absolutely taken over the inspection, we cannot do anything unless it meets with their approval. I think that is probably necessary under our conditions.

Senator BAILEY. You would rather deal with one agency than deal with a half dozen different States?

Mr. KIDD. Yes, that is definitely true. We would rather have the one system that can lay down the rules and regulations we have got to observe and we will know then that we are under that.

Senator BAILEY. Let me call the attention of you gentlemen to something that always concerned me. When we transfer a regulation from the States to the Congress we make a very great alteration in the whole American system. The States regulate through legislatures which are elected every 2 years and which are representative of each county in any State. That fits the thing to the local situation. That is local Government, but when you come into Federal regulation then the State of Georgia concerns are submitted not to anybody in Georgia, or not to anybody that Georgia elects. You have 2 Senators and probably 10 members in the House, I do not know how many you have, so altogether you have got 12, but you have got 12 out of 535, and there you have no representation except in a very fractional way.

Well, that is true about agriculture. The cotton farmer in the South now submits his cause not to people that he elects but to people all the way from Oregon to Maine. He never has seen them, he does not know them and they do not know him. Do you get where that leads you? That is under the Wages and Hours Act. My objection to the Wages and Hours Act—I was one of the Senators that spoke against it—and it was wholly on the ground that you are taking your representative capacity that you had in the State of Georgia or in the State of North Carolina, and transferring it to a body of men whom you do not elect and who are not responsible to you. Now that is good, sound doctrine if you are going to stick to the theory of local self Government, but you do not have uniformity any more.

Mr. WILKINSON. Mr. Chairman, I would like to invite the committee's consideration to section 341 of title 20 of the United States Code Annotated.

Senator BAILEY. Read it.

Mr. WILKINSON. I think this amendment brings it into line with the handling of the situation by Congress in this legislation.

Whenever in the judgment of the administrator will promote honesty and fair dealing in the interest of the consumers, he shall promulgate regulations fixing and establishing for any food under its common or usual name, insofar as practicable a reasonable definition and standard of identity, a reasonable standard of equality, and/or reasonable standards of filler or container: *Provided*, That no definition and standard of identity and no standard of quality shall be established for fresh or dried fruits, fresh or dried vegetables or butter; except that the definitions and standards of identity shall be established for tomatoes, cantalopes, and for citrus fruits and melons.

I read that to call the committee's attention to the fact that butter is specially excepted in this pure food and drug legislation, so far as that section is applicable.

Senator BAILEY. So far as I am concerned I am not going to reach any conclusion about this amendment. I think we all practically are agreed on the bill. When it comes to the amendments, I will submit it to Senator Byrd, Senator Vandenberg, and also to Senator George. This is his bill. He is the chairman of the committee. We will be very largely governed by that. Nobody need suspect that we are going to take any step that will break down the bill. If it should tend to deprive the Government of the power to enforce it, why I would not do it for the world.

Mr. WILKINSON. We do not want to quibble on the terms. What we want is to be answerable to the Department of Agriculture or the Food and Drug, one or the other.

Mr. KIDD. I do not want to have too much to say on this thing. I am not clear on it yet. Judge Wilkinson just stated—and he is representing us here—that we are to be governed by both these agencies. I do not understand that at all.

Senator BAILEY. We will not have two agencies. I would not be for any bill that puts any matter in the hands of two agencies.

Mr. WILKINSON. You misunderstood me if you understood I said we were to be governed by both of these agencies.

Mr. KIDD. I want it clarified. If there is one thing that this industry has been perfectly torn up about, it is having everybody in the world telling us what to do and how to do it.

Senator BAILEY. We want everything to be as simple as possible.

Mr. KIDD. We want one agency over us in the manufacture. After it goes out yonder, it is all right for the Food and Drug, if they find anything wrong with it, floods or what not, to seize it, after it leaves our factory and our premises.

Senator BAILEY. We will straighten that out. These gentlemen represent the Department. I have very great respect for what these men from the Department say. We do not have to obey them, but we do cooperate with them and they have to cooperate with us.

I will submit this to the committee with this record that this gentleman is taking. I think Senator George has got a special feeling about it, an earnest purpose in it, and I should be very much inclined to defer it to his judgment. That is my honest impression. I have very great respect for him. It is his legislation, he is a very fine man, and I think 9 times out of 10 you are safe in leaving it to the man who proposes the legislation.

Mr. KIDD. I am not afraid of anybody if they understand the facts.

Mr. WILKINSON. We have no objection to giving the Secretary of Agriculture all of the authority that the Food and Drug has. We do not want both of them operating in the same field.

The Department of Agriculture understand our problems. The Food and Drug people do not. It should not be left to them, but to the Bureau of Dairying which is under the Department of Agriculture. We do not want Food and Drug to have any say as they are not as well qualified as the Department of Agriculture. After manufacture and sale and shipment it is alright for Food and Drug Department to seize process butter shipped interstate if it becomes unfit.

Senator BAILEY. We will see to that. I do not think there is any chance in it being in both. It will be one or the other.

Mr. McNAUGHT. Mr. Chairman, may I just say we are in perfect agreement with their ideas. We are perfectly satisfied to have the jurisdiction in the Department of Agriculture, exclusively, up to the point that it gets into commerce. Then, if anything happens to it after it gets into commerce, we do think that the Food and Drug folks under the Food and Drug Act should be able to act upon it.

Senator BAILEY. Well, I am glad to have heard you gentlemen. I am sorry the other two members of the committee are not here, but we have got the record, and I am glad you have come to a very considerable agreement.

(Whereupon, at 12:30 p. m. the committee adjourned without date.)