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May 2, 1980

MEMORANDUM ON FTC AUTHORIZATION BILL

As you may know, on April 16th the Senate members of the Conference Committee on the FTC bill approved a substitute for Section 8 of S.1991 which was in the original Senate bill. The language they approved was very bad, and would encourage the FTC to move ahead with the rulemaking without the safeguards in the present proceeding under Section 18 (Magnuson-Moss Act). It would have specifically permitted FTC to proceed under Section 6(g).

ANSI staff and special counsel immediately went into action working with our members, to attempt to restore the Section 8 language which would stop both Section 18 and Section 6(g). Meetings were held with all the Senators and Congressmen or members of their staff. In addition, a special meeting was held at the White House with Mr. Stuart Eizenstat, Assistant to the President for Domestic Affairs & Policy.

It soon became apparant that it would be impossible to restore the Section 8 language due to pressure from the White House motivated by the FTC.

The House members of the Conference Committee met on April 24th, and changed the Senate language, eliminating the reference to Section 6(g). A last minute attempt was made to insert a provision in the bill suspending any action by the FTC for three years, pending the studies required under OMB Circular A-119. The most effective argument for delay was that the FTC regulations would duplicate and conflict with the OMB Circular. This attempt failed by one vote.

The Conference Committee held its final meeting yesterday, April 30. They voted to retain the House language as follows:

"The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated under this Act to develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to section 18 of the Federal Trade Commission Act (15 U.S.C. 57A)"

Following the Conference Committee action on April 30th there was an attempt by some of the Congressional staff members to insert language in the Conference Report which would specifically give the FTC authority to promulgate a standards regulation under Section 6(g). ANSI was able to eliminate this language as shown on the attached copy of the report which appeared in the May 2 Congressional Record. The FTC, however, may have authority to promulgate a rule covering "unfair methods of competition" although the Conferees do not take a position at this time.

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CONFERENCE REPORT ON H.R. 2313, FEDERAL TRADE COMMISSION AMENDMENTS

Section 7

Section 18(a)(1)(B) of The Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(b)) is amended by inserting after "Section 5(a)(1)" the following:

" , except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section".

Standards and Certification Rulemaking

House Bill - The House Bill contained no provision.

Senate Amendment - The Senate Amendment removed any authority of the Federal Trade Commission to promulgate a trade regulation rule concerning the development and utilization of private standards and certification activities.

Conference Substitute - The Conference Substitute adopts the Senate provision with an amendment specifically removing the Commission's authority to issue a trade regulation rule with respect to "unfair or deceptive acts or practices" under Section 18 of the Federal Trade Commission Act. The Substitute leaves unaffected whatever authority the Commission might have under any other provision of the FTC Act to issue rules with respect to "unfair methods of competition" relating to standards and certification activities. However, the Conferees believe the Commission should explore the possibility of issuing voluntary rules and guidelines in this area. The Conferees note that the Office of Management and Budget have now issued OMB Circular A-119 which among other things sets out procedures for the development of standards applying to products purchased by the Federal Government. The Conferees hope the Commission will closely follow the activities of other interested Federal agencies and, the spirit of Executive Order 12044, will avoid inconsistent or duplicative activity in this area.

In the 1975 Magnuson-Moss Warranty Federal Trade Commission Improvement Act, the Congress specifically addressed the Commission's rulemaking authority over "unfair or deceptive acts or practices." With respect to "unfair methods of competition", Section 18(a)(2)(15 U.S.C. 57a(2)) stated as follows:

"The Commission shall have no authority under this Act, other than its authority under this section, to prescribe any rule with respect to unfair or deceptive acts or practices in or affecting Commerce (within the meaning of Section 5(a)(1))."

The preceding sentence shall not affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or affecting Commerce.

The Conferees do not take any position with respect to whether the Commission has authority to promulgate trade regulation rules under any other section of the FTC Act.