When, in the Economic Stabilization Act of 1970, Congress authorized the President "to issue such orders and regulations as he may deem appropriate to stabilize prices, rents, wages, and salaries," and the President responded by imposing broad national controls, the lower court decision sustaining the action was not even appealed to the Supreme Court.[123] Explicit standards are not even required in all situations, the Court having found standards reasonably implicit in a delegation to the Federal Home Loan Bank Board to regulate banking associations.[124] Even in "sweeping regulatory schemes" that affect the entire economy, the Court has "never demanded . . . that statutes provide a 'determinate criterion' for saying 'how much [of the regulated harm] is too much.' "[125] Thus Congress need not quantify how "imminent" is too imminent, how "necessary" is necessary enough, how "hazardous" is too hazardous, or how much profit is "excess." Rather, discretion to make such determinations may be conferred on administrative agencies.[126]

For a time, the Court appeared to have approved a bootstrap theory under which administrative implementation of a congressional enactment could provide the intelligible standard necessary to uphold a delegation. The Court's decision in *Lichter v. United States*[127] relied on an administrative interpretation of the term "excessive profits" as applied to the performance of certain wartime government contracts, and was applied to profits earned prior to Congress' incorporation into the statute of the administrative interpretation.[128] The Court, however, subsequently rejected the idea in *Whitman v. American Trucking Associations*.[129] In *Whitman*, the Court asserted that *Lichter* mentioned agency regulations only "because a subsequent Congress had incorporated the regulations into a revised version of the statute."[130] "We have never suggested that an

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[123] Amalgamated Meat Cutters & Butcher Workmen v. Connally, 337 F. Supp. 737 (D.D.C. 1971). The three-judge court relied principally on *Yakus*.

[124] Fahey v. Mallonee, 332 U.S. 245, 250 (1947) (the Court explained that both the problems of the banking industry and the authorized remedies were well known).

[125] Whitman v. American Trucking Ass'ns, 531 U.S. 457, 475 (2001).

[126] *Whitman*, 531 U.S. at 475–76.

[127] 334 U.S. 742 (1948).

[128] In upholding the delegation as applied to the pre-incorporation administrative definition, the Court explained that "[t]he statutory term 'excessive profits,' in its context, was a sufficient expression of legislative policy and standards to render it constitutional." 334 U.S. at 783. The "excessive profits" standard, prior to definition, was contained in Title 8 of the Act of October 21, 1942, 56 Stat. 798, 982. The administrative definition was added by Title 7 of the Act of February 25, 1944, 58 Stat. 21, 78.

[129] 531 U.S. 547 (2001).

[130] 531 U.S. at 472.