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No. 401

In the Supreme Court of the United States

OCTOBER TERM, 1935

UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM M. BUTLER ET AL., RECEIVERS OF HOOSAC MILLS CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

APPENDIX TO THE BRIEF FOR THE UNITED STATES

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PART A

STATUTES INVOLVED

Agricultural Adjustment Act,[1] c. 25, 48 Stat. 31:

AN ACT To relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes.

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

TITLE I—AGRICULTURAL ADJUSTMENT

DECLARATION OF EMERGENCY

That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting

[1] From time to time certain of the sections set out herein have been amended. The amendments deemed material to a consideration of this case are either indicated herein by footnotes to the Act, or set forth *infra*, pp. 24–27.

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the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act. (U. S. C., Title 7, Sec. 601.)

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909–July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919–July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned

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to the farmer in the prewar period, August 1909–July 1914. (U. S. C., Title 7, Sec. 602.)

PART 1—COTTON OPTION CONTRACTS

SEC. 3. The Federal Farm Board and all departments and other agencies of the Government, not including the Federal intermediate credit banks, are hereby directed—

(a) To sell to the Secretary of Agriculture at such price as may be agreed upon, not in excess of the market price, all cotton now owned by them.

(b) To take such action and to make such settlements as are necessary in order to acquire full legal title to all cotton on which money has been loaned or advanced by any department or agency of the United States, including futures contracts for cotton or which is held as collateral for loans or advances and to make final settlement of such loans and advances as follows:

(1) In making such settlements with regard to cotton, including operations to which such cotton is related, such cotton shall be taken over by all such departments or agencies other than the Secretary of Agriculture at a price or sum equal to the amounts directly or indirectly loaned or advanced thereon and outstanding, including loans by the Government department or agency and any loans senior thereto, plus any sums required to adjust advances to growers to 90 per centum of the value of their cotton at the date of its delivery in the first instance as collateral to the department or agency involved, such sums to be computed by subtracting the total amount already advanced to growers on account of pools of which such cotton was a part, from 90 per centum of the

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value of the cotton to be taken over as of the time of such delivery as collateral, plus unpaid accrued carrying charges and operating costs on such cotton, less, however, any existing assets of the borrower derived from net income, earnings, or profits arising from such cotton, and from operations to which such cotton is related; all as determined by the department or agency making the settlement.

(2) The Secretary of Agriculture shall make settlements with respect to cotton held as collateral for loans or advances made by him on such terms as in his judgment may be deemed advisable, and to carry out the provisions of this section, is authorized to indemnify or furnish bonds to warehousemen for lost warehouse receipts and to pay the premiums on such bonds.

When full legal title to the cotton referred to in (b) has been acquired, it shall be sold to the Secretary of Agriculture for the purposes of this section, in the same manner as provided in (a).

(c) The Secretary of Agriculture is hereby authorized to purchase the cotton specified in paragraphs (a) and (b). (U. S. C., Title 7, Sec. 603.)

SEC. 4. The Secretary of Agriculture shall have authority to borrow money upon all cotton in his possession or control and deposit as collateral for such loans the warehouse receipts for such cotton. (U. S. C., Title 7, Sec. 604.)

SEC. 5. The Reconstruction Finance Corporation is hereby authorized and directed to advance money and to make loans to the Secretary of Agriculture to acquire such cotton and to pay the classing, carrying, and merchandising costs thereon, in such amounts and upon such terms as may be

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agreed upon by the Secretary and the Reconstruction Finance Corporation, with such warehouse receipts as collateral security: *Provided, however,* That in any instance where it is impossible or impracticable for the Secretary to deliver such warehouse receipts as collateral security for the advances and loans herein provided to be made, the Reconstruction Finance Corporation may accept in lieu of all or any part thereof such other security as it may consider acceptable for the purposes aforesaid, including an assignment or assignments of the equity and interest of the Secretary in warehouse receipts pledged to secure other indebtedness. The amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized and empowered to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this section. (U. S. C., Title 7, Sec. 605.)

SEC. 6. (a) The Secretary of Agriculture is hereby authorized to enter into option contracts with the producers of cotton to sell to any such producer an amount of cotton to be agreed upon not in excess of the amount of reduction in production of cotton by such producer below the amount produced by him in the preceding crop year, in all cases where such producer agrees in writing to reduce the amount of cotton produced by him in 1933, below his production in the previous year, by not less than 30 per centum, without increase in commercial fertilization per acre.

(b) To any such producer so agreeing to reduce production the Secretary of Agriculture shall deliver a nontransferable-option contract agreeing to sell to said producer an

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amount, equivalent to the amount of his agreed reduction, of the cotton in the possession and control of the Secretary.

(c) The producer is to have the option to buy said cotton at the average price paid by the Secretary for the cotton procured under section 3, and is to have the right at any time up to January 1, 1934, to exercise his option, upon proof that he has complied with his contract and with all the rules and regulations of the Secretary of Agriculture with respect thereto, by taking said cotton upon payment by him of his option price and all actual carrying charges on such cotton; or the Secretary may sell such cotton for the account of such producer, paying him the excess of the market price at the date of sale over the average price above referred to after deducting all actual and necessary carrying charges: *Provided*, That in no event shall the producer be held responsible or liable for financial loss incurred in the holding of such cotton or on account of the carrying charges therein: *Provided further*, That such agreement to curtail cotton production shall contain a further provision that such cotton producer shall not use the land taken out of cotton production for the production for sale, directly or indirectly, of any other nationally produced agricultural commodity or product.

(d) If any cotton held by the Secretary of Agriculture is not disposed of under subsection (c), the Secretary is authorized to enter into similar option contracts with respect to such cotton, conditioned upon a like reduction of production in 1934, and permitting the producer in each case to exercise his option at any time up to January 1, 1935. (U. S. C., Title 7, Sec. 606.)

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SEC. 7.[2] The Secretary shall sell the cotton held by him at his discretion, but subject to the foregoing provisions: *Provided,* That he shall dispose of all cotton held by him by March 1, 1936: *Provided further,* That the Secretary shall have authority to enter into additional option contracts for so much of such cotton as is not necessary to comply with the provisions of section 6, in combination with benefit payments as provided for in part 2 of this title. (U. S. C., Title 7, Sec. 607.)

PART 2—COMMODITY BENEFITS

GENERAL POWERS

SEC. 8. In order to effectuate[•] the declared policy, the Secretary of Agriculture shall have power—

(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair

[2] Amended by Sec. 221 of the National Industrial Recovery Act, c. 90, 48 Stat., 195, 210, U. S. C., Title 7, sec. 607, to provide that notwithstanding the provisions of Section 6, the Secretary is authorized to enter into option contracts with producers of cotton to sell to the producers such cotton held by him in amounts, at prices and on terms as he may deem advisable in combination with rental or benefit payments provided for in Part 2 of this Title. This Section was further amended by Sec. 33 of the Act approved August 24, 1935, in respects not deemed material.

[•] ~~So in original~~.

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and reasonable, to be paid out of any moneys available for such payments. Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any non-perishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing, but no deduction may be made for interest.

(2) To enter into marketing agreements with processors, associations of producers, and others engaged in the handling, in the current of interstate or foreign commerce of any agricultural commodity or product thereof, after due notice and opportunity for hearing to interested parties. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided,* That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

(3) To issue licenses permitting processors, associations of producers, and others

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to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof. The Secretary of Agriculture may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the Secretary suspending or revoking any such license shall be final if in accordance with law. Any such person engaged in such handling without a license as required by the Secretary under this section shall be subject to a fine of not more than $1,000 for each day during which the violation continues.

(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this title.

(5) No person engaged in the storage in a public warehouse of any basic agricultural commodity in the current of interstate or foreign commerce, shall deliver any such commodity upon which a warehouse receipt has been issued and is outstanding, without prior surrender and cancellation of such

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warehouse receipt. Any person violating any of the provisions of this subsection shall, upon conviction, be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both. The Secretary of Agriculture may revoke any license issued under subsection (3) of this section, if he finds, after due notice and opportunity for hearing, that the licensee has violated the provisions of this subsection. (U. S. C., Title 7, sec. 608.)

PROCESSING TAX

SEC. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (b). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary

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proclaims that rental or benefit payments are to be discontinued with respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: *Provided,* That upon any article upon which a manufacturers' sales tax is levied under the authority of the Revenue Act of 1932 and which manufacturers' sales tax is computed on the basis of weight, such manufacturers' sales tax shall be computed on the basis of the weight of said finished article less the weight of the processed cotton contained therein on which a processing tax has been paid.

(b) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that if the Secretary has reason to believe that the tax at such rate will cause such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary finds that such result will occur, then the processing tax shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm price of the commodity. In computing the current average farm price in the case of wheat, premiums paid producers for protein content shall not be taken into account.

(c) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give

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the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture.

(d) As used in part 2 of this title—

(1) In case of wheat, rice, and corn, the term "processing" means the milling or other processing (except cleaning and drying) of wheat, rice, or corn for market, including custom milling for toll as well as commercial milling, but shall not include the grinding or cracking thereof not in the form of flour for feed purposes only.

(2) In case of cotton, the term "processing" means the spinning, manufacturing, or other processing (except ginning) of cotton; and the term "cotton" shall not include cotton linters.

(3) In case of tobacco, the term "processing" means the manufacturing or other processing (except drying or converting into insecticides and fertilizers) of tobacco.

(4) In case of hogs, the term "processing" means the slaughter of hogs for market.

(5) In the case of any other commodity, the term "processing" means any manufacturing or other processing involving a change in the form of the commodity or its preparation for market, as defined by regulations of the Secretary of Agriculture; and in prescribing such regulations the Secretary shall give due weight to the customs of the industry.

(e) When any processing tax, or increase or decrease therein, takes effect in respect

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of a commodity the Secretary of Agriculture, in order to prevent pyramiding of the processing tax and profiteering in the sale of the products derived from the commodity, shall make public such information as he deems necessary regarding (1) the relationship between the processing tax and the price paid to producers of the commodity, (2) the effect of the processing tax upon prices to consumers of products of the commodity, (3) the relationship, in previous periods, between prices paid to the producers of the commodity and prices to consumers of the products thereof, and (4) the situation in foreign countries relating to prices paid to producers of the commodity and prices to consumers of the products thereof. (U. S. C., Title 7, Sec. 609.)

MISCELLANEOUS

SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations: *Provided,* That no salary in excess of $10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in

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compensation, shall not operate to require such impoundment under appropriations contained in this Act.

(b) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of rental or benefit payments.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title, including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto. Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein.

(d) The Secretary of the Treasury is authorized to make such regulations as may be necessary to carry out the powers vested in him by this title.

(e) The action of any officer, employee, or agent in determining the amount of and in making any rental or benefit payment shall not be subject to review by any officer of the Government other than the Secretary of Agriculture or Secretary of the Treasury.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam.

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(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay. (U. S. C., Title 7, sec. 610.)

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COMMODITIES

SEC. 11.[4] As used in this title, the term "basic agricultural commodity" means wheat, cotton, field corn, hogs, rice, tobacco, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this title, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this title cannot be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof. (U. S. C., Title 7, sec. 611.)

APPROPRIATION

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under part 2 of this title. Such sum shall remain available until expended.

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[4] "Sugar beets and sugarcane" were added to this list by Sec. 1 of the Jones-Costigan Sugar Act, c. 263, 48 Stat. 670 (U. S. C., Title 7, Sec. 611); "cattle" by Sec. 1, "peanuts" by Sec. 3 (b), "rye, flax, and barley" by Sec. 4, and "grain sorghums" by Sec. 5 of the Jones-Connally Cattle Act, c. 103, 48 Stat. 528 (U. S. C., Title 7, Sec. 611); "potatoes" by Sec. 61 of the Act approved August 24, 1935.

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(b) In addition to the foregoing, the proceeds derived from all taxes imposed under this title are hereby appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and the following purposes under part 2 of this title: Administrative expenses, rental and benefit payments, and refunds on taxes. The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under subsection (a), currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title. (U. S. C., Title 7, Sec. 612.)

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TERMINATION OF ACT

SEC. 13. This title shall cease to be in effect whenever the President finds and proclaims that the national economic emergency in relation to agriculture has been ended; and pending such time the President shall by proclamation terminate with respect to any basic agricultural commodity such provisions of this title as he finds are not requisite to carrying out the declared policy with respect to such commodity. The Secretary of Agriculture shall make such investigations and reports thereon to the President as may be necessary to aid him in executing this section. (U. S. C., Title 7, Sec. 613.)

SEPARABILITY OF PROVISIONS

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby. (U. S. C., Title 7, sec. 614.)

SUPPLEMENTARY REVENUE PROVISIONS

EXEMPTIONS AND COMPENSATING TAXES

SEC. 15. (a) If the Secretary of Agriculture finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that any class of products of any commodity is of such low value compared with the quantity of the commodity used for their manufacture that the imposition of the processing tax would prevent in whole or in large part the use of the

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commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary of Agriculture shall so certify to the Secretary of the Treasury, and the Secretary of the Treasury shall abate or refund any processing tax assessed or paid after the date of such certification with respect to such amount of the commodity as is used in the manufacture of such products.

(b) No tax shall be required to be paid on the processing of any commodity by or for the producer thereof for consumption by his own family, employees, or household; and the Secretary of Agriculture is authorized, by regulations, to exempt from the payment of the processing tax the processing of commodities by or for the producer thereof for sale by him where, in the judgment of the Secretary, the imposition of a processing tax with respect thereto is unnecessary to effectuate the declared policy.

(c) Any person delivering any product to any organization for charitable distribution or use shall, if such product or the commodity from which processed is under this title subject to tax, be entitled to a refund of the amount of any tax paid under this title with respect to such product so delivered.

(d) The Secretary of Agriculture shall ascertain from time to time whether the payment of the processing tax upon any basic agricultural commodity is causing or will cause to the processors thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such commodities or products thereof. If the Secretary of Agri-

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culture finds, after investigation and due notice and opportunity for hearing to interested parties, that such disadvantages in competition exist, or will exist, he shall proclaim such finding. The Secretary shall specify in this proclamation the competing commodity and the compensating rate of tax on the processing thereof necessary to prevent such disadvantages in competition. Thereafter there shall be levied, assessed, and collected upon the first domestic processing of such competing commodity a tax, to be paid by the processor, at the rate specified, until such rate is altered pursuant to a further finding under this section, or the tax or rate thereof on the basic agricultural commodity is altered or terminated. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary, upon the basic agricultural commodity.

(e) During any period for which a processing tax is in effect with respect to any commodity there shall be levied, assessed, collected, and paid upon any article processed or manufactured wholly or in chief value from such commodity and imported into the United States or any possession thereof to which this title applies, from any foreign country or from any possession of the United States to which this title does not apply, a compensating tax equal to the amount of the processing tax in effect with respect to domestic processing at the time of importation: *Provided.* That all taxes collected under this subsection upon articles coming from the possessions of the United States to which this title does not apply shall not be covered into the general fund of the Treasury of the United States but shall be

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held as a separate fund and paid into the Treasury of the said possessions, respectively, to be used and expended by the governments thereof for the benefit of agriculture. Such tax shall be paid prior to the release of the article from customs custody or control. (U. S. C., Title 7, sec. 615.)

FLOOR STOCKS

SEC. 16. (a) Upon the sale or other disposition of any article processed wholly or in chief value from any commodity with respect to which a processing tax is to be levied, that on the date the tax first takes effect or wholly terminates with respect to the commodity, is held for sale or other disposition (including articles in transit) by any person, there shall be made a tax adjustment as follows:

(1) Whenever the processing tax first takes effect, there shall be levied, assessed, and collected a tax to be paid by such person equivalent to the amount of the processing tax which would be payable with respect to the commodity from which processed if the processing had occurred on such date.

(2) Whenever the processing tax is wholly terminated, there shall be refunded to such person a sum (or if it has not been paid, the tax shall be abated) in an amount equivalent to the processing tax with respect to the commodity from which processed.

(b) The tax imposed by subsection (a) shall not apply to the retail stocks of persons engaged in retail trade, held at the date the processing tax first takes effect; but such retail stocks shall not be deemed to include stocks held in a warehouse on such date, or such portion of other stocks held on such date as are not sold or otherwise disposed

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of within thirty days thereafter. The tax refund or abatement provided in subsection (a) shall not apply to the retail stocks of persons engaged in retail trade, held on the date the processing tax is wholly terminated. (U. S. C., Title 7, Sec. 616.)

EXPORTATIONS

SEC. 17. (a) Upon the exportation to any foreign country (including the Philippine Islands, the Virgin Islands, American Samoa, and the island of Guam) of any product with respect to which a tax has been paid under this title, or of any product processed wholly or in chief value from a commodity with respect to which a tax has been paid under this title the exporter thereof shall be entitled at the time of exportation to a refund of the amount of such tax.

(b) Upon the giving of bond satisfactory to the Secretary of the Treasury for the faithful observance of the provisions of this title requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any commodity with respect to which a tax is imposed by this title, or to hold for such exportation any article processed wholly or in chief value therefrom. (U. S. C., Title 7, sec. 617.)

EXISTING CONTRACTS

SEC. 18. (a) If (1) any processor, jobber, or wholesaler has, prior to the date a tax with respect to any commodity is first imposed under this title, made a bona fide contract of sale for delivery on or after such date, of any article processed wholly or in chief value from such commodity, and if (2)

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such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price.

(b) Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be collected and paid to the United States by the vendor in the same manner as other taxes under this title. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner of Internal Revenue who shall cause collections of such taxes to be made from the vendee (U. S. C., Title 7, sec. 618).

COLLECTION OF TAXES

SEC. 19. (a) The taxes provided in this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury. Such taxes shall be paid into the Treasury of the United States.

(b) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 600 of the Revenue Act of 1926, and the provisions of section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: *Provided,* That the Secretary of the Treasury is authorized to permit postponement, for a period not exceeding ninety days, of the payment of taxes covered by any return under this title.

(c) In order that the payment of taxes under this title may not impose any immediate undue financial burden upon processors

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or distributors, any processor or distributor subject to such taxes shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act (U. S. C., Title 7, sec. 619).

AMENDMENTS TO THE AGRICULTURAL ADJUSTMENT ACT BY AN ACT OF CONGRESS APPROVED AUGUST 24, 1935 (PUBLIC NO. 320, 74TH CONG., 1ST SESS.)

SEC. 3. The first sentence of subsection (b) of section 12 of the Agricultural Adjustment Act, as amended, is amended to read as follows: "In addition to the foregoing, for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from all taxes imposed under this title is hereby appropriated to be available to the Secretary of Agriculture for (1) the acquisition of any agricultural commodity pledged as security for any loan made by any Federal agency, which loan was conditioned upon the borrower agreeing or having agreed to cooperate with a program of production adjustment or marketing adjustment adopted under the authority of this title, and (2) the following purposes under part 2 of this title: Administrative expenses, payments authorized to be made under section 8, and refunds on taxes."

SEC. 30. The Agricultural Adjustment Act, as amended, is amended by adding after section 20 the following new section:

"SEC. 21. * * *

"(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the Presi-

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dent prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

"(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of

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all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress."

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PART B

Discussion of the Welfare Clause in the Ratifying Conventions and Other Contemporaneous Exposition

1. *In the Ratifying Conventions*

A study of the debates in the Ratifying Conventions shows that those opposing the Constitution did so, among other reasons, because unlimited taxing power was given to the proposed central government. Those advocating adoption argued that this was necessary and pointed out that accountability to the people was a sufficient check. It clearly appears (1) that the Constitution was not adopted under any belief that the welfare clause was limited by the enumerated powers and (2) that it was understood that Congress should be the final arbiter of what was for the general welfare. Excerpts from these debates follow:

VIRGINIA

Mr. Nicholas:

> It provides "that Congress shall have the power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare, of the United States." The debts of the Union ought to be paid. Ought not the common defence to be provided for? Is

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it not necessary to provide for the general welfare? It has been fully proved that this power could not be given to another body. The amounts to be raised are confined to these purposes solely. Will oppressive burdens be warranted by this clause? They are not to raise money for any other purpose. It is a power which is drawn from his favorite Confederation, the 8th article of which provides "that all charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all lands, within each state, granted to or surveyed for any person, as such land, and the building and improvement thereon, shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint.

"The taxes for paying that proportion shall be laid and levied, by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States, in Congress assembled." Now, sir, by a comparison of this article with the clause in the Constitution, we shall find them to be nearly the same. The common defence and general welfare are the objects expressly mentioned to be provided for, in both systems. The power in the Confederation to secure and provide for those objects was constitutionally unlimited. The requisitions of Congress are binding on the states, though, from the imbecility of their nature, they cannot be enforced. The same power is intended by the Constitution. The only difference between them is, that Congress is, by this plan, to impose the taxes on the people,

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whereas, by the Confederation, they are laid by the states. The amount to be raised, and the power given to raise it, is the same in principle. The mode of raising only is different, and this difference is founded on the necessity of giving the government that energy without which it cannot exist. * * * (III Elliott's Debates, 2d ed., pp 244–245.)

Mr. Randolph:

But the rhetoric of the gentleman has highly colored the dangers of giving the general government an indefinite power of providing for the general welfare. I contend that no such power is given. They have power "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." Is this an independent, separate, substantive power, to provide for the general welfare of the United States? No, sir. They can lay and collect taxes, &c. For what? To pay the debts and provide for the general welfare. Were not this the case, the following part of the clause would be absurd. It would have been treason against common language. Take it altogether, and let me ask if the plain interpretation be not this—a power to lay and collect taxes, &c., in order to provide for the general welfare and pay debts. (III Elliott's Debates, 2d ed., p. 466.)

Mr. Lee:

The purse of the people of Virginia is not given up by that paper: they can take no more of our money than is necessary to pay our share of the public debts, and provide for the general welfare. Were it otherwise, no man would be louder against it than my-

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self. (III Elliott's Debates, 2d ed., p. 181.)

See also III Elliott, 2d ed., pp. 441–443. P. 226 et seq.

MASSACHUSETTS

Mr. King:

> It is an objection in some gentlemen's minds, that Congress should possess the power of the *purse* and the *sword*. But, sir, I would ask, whether any government can exist, or give security to the people, which is not possessed of this power. The first revenue will be raised from the impost, to which there is no objection, the next from the excise; and if these are not sufficient, direct taxes must be laid. To conclude, sir, if we mean to support an efficient federal government, which, under the old Confederation, can never be the case, the proposed Constitution is, in my opinion, the only one that can be substituted. (II Elliott's Debates, 2d ed., p. 57.)

Mr. Bodman:

> The power given to Congress, to lay and collect duties, taxes, &c., as contained in the section under consideration, was certainly unlimited, and therefore dangerous; * * * (id., p. 60).

Mr. Sedgwick, in answer to the gentleman last speaking:

> If he believed the adoption of the proposed Constitution would interfere with the state legislatures, he would be the last to vote for it; but he thought all the sources of revenue ought to be put into the hands of government, who were to protect and secure us; and powers to effect this had always been necessarily unlimited. Congress would necessarily take that which was easiest to the people; * * * (id., p. 60).

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Mr. Singletary:

> No more power could be given to a despot, than to give up the purse strings of the people. (II id., p. 61.)

Judge Sumner:

> The powers proposed to be delegated in this section are very important, as they will, in effect, place the purse-strings of the citizens in the hands of Congress for certain purposes. In order to know whether such powers are necessary, we ought, sir, to inquire what the design of uniting under one government is. It is that the national dignity may be supported, its safety preserved, and necessary debts paid. Is it not necessary, then, to afford the means by which alone those objects can be attained? Much better, it appears to me, would it be for the states not to unite under one government, which will be attended with some expense, than to unite, and at the same time withhold the powers necessary to accomplish the design of the union. Gentlemen say, *the power to raise money* may be abused. I grant it; and the same may be said of any other delegated power. Our General Court have the same power; but did they ever dare abuse it? Instead of voting themselves 6s. 8d., they might vote themselves £12 a day; but there never was a complaint of their voting themselves more than what was reasonable. If they should make an undue use of their power, they know a loss of confidence in the people would be the consequence, and they would not be reelected; and this is one security in the hands of the people. Another is, that all *money bills* are to originate with the House of Representatives. And can we suppose the representatives of Georgia, or any other state, more

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disposed to burden their constituents with taxes, than the representatives of Massachusetts? It is not to be supposed; for, whatever is the interest of one state, in this particular, will be the interest of all the states, and no doubt attended to by the House of Representatives. * * * (II Elliott's Debates, 2d ed., p. 63.)

Mr. Gore:

Some gentlemen suppose it is unsafe and unnecessary to vest the proposed government with authority to "lay and collect taxes, duties, imposts, and excises." Let us strip the subject of everything that is foreign, and refrain from likening it with governments, which, in their nature and administration, have no affinity; and we shall soon see that it is not only safe, but indispensably necessary to our peace and dignity, to vest the Congress with the powers described in this section. To determine the necessity of investing that body with the authority alluded to, let us inquire what duties are incumbent on them. To pay the debts, and provide for the common defence and general welfare of the United States; to declare war, &c; to raise and support armies; to provide and maintain a navy;—these are authorities and duties incident to every government. No one has, or, I presume, will deny, that whatever government may be established over America ought to perform such duties. The expense attending these duties is not within the power of calculation; the exigencies of government are in their nature illimitable; so, then, must be the authority which can meet these exigencies. Where we demand an object, we must afford the means necessary to its attainment. Whenever it can be clearly ascertained what will be the future exigencies of

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> government, the expense attending them, and the product of any particular tax, duty, or impost, then, and not before, can the people of America limit their government to amount and fund. * * * (II Elliott's Debates, 2d ed., p. 66.)

Hon. Mr. Phillips (of Boston):

> * * * this power is absolutely necessary. There seems to be a suspicion that this power will be abused; but is not all delegation of power equally dangerous? * * * The more I peruse and study this article, the more convinced am I of the necessity of such a power being vested in Congress. * * * (II Elliott's Debates, 2d ed., pp. 67–68).

Mr. Symmes:

> Here, sir, (however kindly Congress may be pleased to deal with us,) is a very good and valid conveyance of all the property in the United States,—to certain uses indeed, but those uses capable of any construction the trustees may think proper to make. This body is not amenable to any tribunal, and therefore this Congress can do no wrong. It will not be denied that they may tax us to any extent; but some gentlemen are fond of arguing that this body never will do anything but what is for the common good. Let us consider that matter.
>
> * * * * *
>
> When Congress have the purse, they are not confined to rigid economy; and the word *debts,* here, is not confined to debts already contracted; or, indeed, if it were, the term "general welfare" might be applied to any expenditure whatever. Or, if it could not, who shall dare to gainsay the proceedings of this body at a future day, when, according to the course of nature, it shall be too firmly

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> fixed in the saddle to be overthrown by anything but a general insurrection? * * * (II Elliott's Debates, 2d ed., pp. 71, 74.)

Mr. Jones (of Boston) enlarged on the various checks which the Constitution provides—

> * * * and which * * * formed a security for liberty, and prevention against power being abused; the frequency of elections of the democratic branch; representation apportioned to numbers; the publication of the journals of Congress, &c. * * * (II Elliott's Debates, 2d ed., p. 75.)

Mr. Choate:

> This clause gives power to Congress to levy duties, excises, imposts, &c., considering the trust delegated to Congress, that they are to "provide for the common defence, promote the general welfare", &c. If this is to be the object of their delegation, the next question is, whether they shall not be vested with powers to prosecute it. And this can be no other than an unlimited power of taxation, if that defence requires it. Mr. C. contended that it was the power of the people concentred to a point; that, as all power is lodged in them, this power ought to be supreme. * * * (II Elliott's Debates, 2d ed., p. 79.)

CONNECTICUT

Oliver Elsworth:

> The clause is general; it gives the general legislature "power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." There are three objections against this clause—first, that it is too extensive, as it extends to all the

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objects of taxation; secondly, that it is partial; thirdly, that Congress ought not to have power to lay taxes at all.

* * * * *

It is necessary that the power of the general legislature should extend to all the objects of taxation, that government should be able to command all the resources of the country; because no man can tell what our exigencies may be. * * *

* * * * *

Says the objector, Congress ought not to have power to raise any money at all. Why? Because they have the power of the sword; and if we give them the power of the purse, they are despotic. But I ask, sir, if ever there were a government without the power of the sword and the purse? * * *

* * * * *

This Constitution defines the extent of the powers of the general government. If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the Constitution does not authorize, it is void; and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the states go beyond their limits, if they make a law which is a usurpation upon the general government, the law is void; and upright, independent judges will declare it to be so. * * * (II Elliott's Debates, 2d ed., pp. 190, 191, 195, 196.)

NEW YORK

The Hon. Mr. Williams:

In the preamble, the intent of the Constitution, among other things, is declared to be,

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"to provide for the common defense, and promote the general welfare"; and in the clause under consideration, the power is in express words given to Congress "to provide for the common defence and general welfare." And in the last paragraph of the same section, there is an express authority to make all laws which shall be necessary and proper for the carrying into execution this power. It is therefore evident that the legislature, under this Constitution, may pass any law which they may think proper. It is true, the 9th section restrains their power with respect to certain objects. But these restrictions are very limited, some of them improper, some unimportant, and others not easily understood. Sir, Congress have authority to lay and collect taxes, duties, imposts, and excises, and to pass all laws which shall be necessary and proper for carrying this power into execution; and what limitation, if any, is set to the exercise of this power by the Constitution? (II Elliott's Debates, 2d ed., p. 330.)

The Hon. Mr. Smith:

The idea that Congress ought to have *unlimited powers* is entirely novel. I never heard it till the meeting of this Convention. The general government once called on the states to invest them with the command of funds adequate to the exigencies of the Union; but they did not ask to command all the resources of the states. They did not wish to have a control over all the property of the people. If we now give them this control, we may as well give up the state governments with it. * * * (II Elliott's Debates, 2d ed., p. 337.)

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Mr. Williams:

> Sir, I yesterday expressed my fears that this clause would tend to annihilate the state governments. I also observed, that the powers granted by it were indefinite, since the Congress are authorized to provide for the common defence and general welfare, and to pass all laws necessary for the attainment of those important objects. The legislature is the highest power in a government. Whatever they judge necessary for the proper administration of the powers lodged in them, they may execute without any check or impediment. Now, if the Congress should judge it a proper provision, for the common defence and general welfare, that the state governments should be essentially destroyed, what, in the name of common sense, will prevent them? Are they not constitutionally authorized to pass such laws? Are not the terms, *common defence and general welfare,* indefinite, undefinable terms? What checks have the state governments against such encroachments? (II Elliott's Debates, 2d ed., p. 338.)

The Hon. Mr. Hamilton:

> Every one knows that the objects of the general government are numerous, extensive, and important. Every one must acknowledge the necessity of giving powers, in all respects, and in every degree, equal to these objects. * * *
>
> * * * * *
>
> A constitution cannot set bounds to a nation's wants; it ought not, therefore, to set bounds to its resources. Unexpected invasions, long and ruinous wars, may demand all the possible abilities of the country. Shall not your government have power to

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call these abilities into action? The contingencies of society are not reducible to calculations. They cannot be fixed or bounded, even in imagination. * * * (II Elliott's Debates, 2d ed., pp. 350, 351.)

PENNSYLVANIA

Mr. Wilson:

Certainly, Congress should possess the power of raising revenue from their constituents, for the purpose mentioned in the 8th section of the 1st article; that is, "to pay the debts and provide for the common defence and general welfare of the United States." * * * (II Elliott's Debates, 2d ed., p. 467.)

* * * * *

I stated, on a former occasion, one important advantage; by adopting this system, we become a *nation;* at present, we are not one. Can we perform a single national act? Can we do anything to procure us dignity, or to preserve peace and tranquillity? Can we relieve the distress of our citizens? Can we provide for their welfare or happiness? The powers of our government are mere sound. * * *

Can we expect to make internal improvement, or accomplish any of those great national objects which I formerly alluded to, when we cannot find money to remove a single rock out of a river?

This system, sir, will at least make us a nation, and put it in the power of the Union to act as such * * *. (II Elliott's Debates, 2d ed., pp. 526, 527.)

Mr. M'Kean:

It is said, "that the powers of Congress, under this Constitution, are too large, particularly in laying internal taxes and excises,

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because they *may* lay excessive taxes, and leave nothing for the support of the state governments." Sir, no doubt but you will discover, on consideration, the necessity of extending these powers to the government of the Union. * * * there is perfect security on this head, because the regulation must equally affect every state, and the law must originate with the immediate representatives of the people, subject to the investigation of the state representatives. But is the abuse an argument against the use of power? I think it is not; * * * I am satisfied that it is not only proper, but that our political salvation may depend upon the exercise of it. (II Elliott's Debates, 2d ed., pp. 535–536.)

NORTH CAROLINA

Mr. Spencer:

Mr. Chairman, I conceive this power to be too extensive, as it embraces all possible powers of taxation, * * * Every power is given over our money to those over whom we have no immediate control. (IV Elliott's Debates, 2d ed., p. 75.)

Mr. Whitmill Hill:

The object of all government is the protection, security, and happiness of the people. To produce this end, government must be possessed of the necessary means. (IV Elliott's Debates, 2d ed., p. 83.)

Gov. Johnston:

Taxes are necessary for every government. Can there be any danger when these taxes are laid by the representatives of the people? If there be, where can political safety be found? * * * (IV Elliott's Debates, 2d ed., p. 89.)

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Mr. Goudy:

> The subject of our consideration therefore is, whether it be proper to give any man, or set of men, an unlimited power over our purse, without any kind of control. The purse-strings are given up by this clause. * * * (IV Elliott's Debates, 2d ed., p. 93.)

2. *Other contemporaneous exposition of the meaning of the welfare clause.*

Mr. Hamilton in his Report on Manufactures, December 5, 1791, explained his views as follows (III Hamilton's Works (Hamilton Ed.), pp. 192, 249–251):

> The National Legislature has express authority "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare," with no other qualifications than that "all duties, imposts and excises, shall be uniform throughout the United States; and that no capitation or other direct tax shall be laid, unless in proportion to numbers, ascertained by a census or enumeration, taken on the principles prescribed in the constitution," and that "no tax or duty shall be laid on articles exported from any State."
>
> These three qualifications excepted, the power to raise money is plenary and indefinite, and the objects to which it may be appropriated, are no less comprehensive than the payment of the public debts, and the providing for the common defence and general welfare. The terms "general welfare" were doubtless intended to signify more than was expressed or imported in those which preceded; otherwise, numerous exigencies incident to the affairs of a nation

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would have been left without a provision. The phrase is as comprehensive as any that could have been used; because it was not fit that the constitutional authority of the Union to appropriate its revenues should have been restricted within narrower limits than the "general welfare;" and because this necessarily embraces a vast variety of particulars, which are susceptible neither of specification nor of definition.

It is, therefore, of necessity, left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt, that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, as far as regards an application of money.

The only qualification of the generality of the phrase in question, which seems to be admissible, is this: That the object, to which an appropriation of money is to be made, be general, and not local; its operation extending, in fact, or by possibility, throughout the Union, and not being confined to a particular spot.

No objection ought to arise to this construction, from a supposition that it would imply a power to do whatever else should appear to Congress conducive to the general welfare. A power to appropriate money with this latitude, which is granted, too, in express terms, would not carry a power to do any other thing not authorized in the constitution, either expressly or by fair implication.

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President Washington took the same view. (Story on the Constitution, Sec. 978, Note.) In his First Message to Congress, he said:

> The advancement of agriculture, commerce, and manufactures by all proper means will not, I trust, need recommendation; * * *
>
> Nor am I less persuaded that you will agree with me in opinion that there is nothing which can better deserve your patronage than the promotion of science and literature. * * * (I Richardson's Messages and Papers of the Presidents, p. 66.)

Both houses of this first Congress agreed with this view. The Senate said:

> Literature and science are essential to the preservation of a free constitution; the measures of Government should therefore be calculated to strengthen the confidence that is due to that important truth. Agriculture, commerce, and manufactures, forming the basis of the wealth and strength of our confederated Republic, must be the frequent subject of our deliberation, and shall be advanced by all proper means in our power. * * * (I Richardson's Messages and Papers of the Presidents, p. 68.)

The House of Representatives said:

> We concur with you in the sentiment that agriculture, commerce, and manufactures are entitled to legislative protection, and that the promotion of science and literature will contribute to the security of a free Government; in the progress of our deliberations we shall not lose sight of objects so worthy of our regard. (I Richardson's Messages and Papers of the Presidents, p. 69.)

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In his Eighth Annual Message to Congress, Washington referred to the peculiar claim of agriculture to assistance by the expenditure of Federal funds:

> *It will not be doubted that with reference either to individual or national welfare agriculture is of primary importance.* In proportion as nations advance in population and other circumstances of maturity this truth becomes more apparent, and renders the cultivation of the soil more and more an object of public patronage. *Institutions for promoting it grow up, supported by the public purse; and to what object can it be dedicated with greater propriety?* Among the means which have been employed to this end none have been attended with greater success than the establishment of boards (composed of proper characters) charged with collecting and diffusing information, and enabled by premiums and small *pecuniary aids* to encourage and assist a spirit of discovery and improvement. This species of establishment contributes doubly to the increase of improvement by stimulating to enterprise and experiment, and by drawing to a common center the results everywhere of individual skill and observation, and spreading them thence over the whole nation. Experience accordingly has shewn that they are very cheap instruments of immense national benefits. (I Richardson's Messages and Papers of the President, p. 202.) (Italics supplied.)

President Monroe, in vetoing the Cumberland Road Bill, May 4, 1822, said (II Richardson's Messages and Papers of the Presidents, pp. 142, 165, 166, 167, 173):

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If we look to the second branch of this power, that which authorizes the appropriation of the money thus raised, we find that it is not less general and unqualified than the power to raise it. More comprehensive terms than to "pay the debts and provide for the common defense and general welfare" could not have been used. * * * the limitation would have had the like effect on the other. * * * Had it been intended that Congress should be restricted in the appropriation of the public money to such expenditures as were authorized by a rigid construction of the other specific grants, how easy would it have been to have provided for it by a declaration to that effect. The omission of such declaration is therefore an additional proof that it was not intended that the grant should be so construed.

It was evidently impossible to have subjected this grant in either branch to such restriction without exposing the Government to very serious embarrassment. * * * *Had the Supreme Court been authorized, or should any other tribunal distinct from the Government be authorized, to impose its veto,* and to say that more money had been raised under either branch of this power—that is, by taxes, duties, imposts, or excises—than was necessary, that such a tax or duty was useless, *that the appropriation to this or that purpose was unconstitutional, the movement might have been suspended and the whole system disorganized.* It was impossible to have created a power within the Government or any other power distinct from Congress and the Executive which should control the movement of the Government in this respect and not destroy it. * * *

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> If, then, the right to raise and appropriate the public money is not restricted to the expenditures under the other specific grants according to a strict construction of their powers, respectively, is there no limitation to it? Have Congress a right to raise and appropriate the money to any and to every purpose according to their will and pleasure? They certainly have not. The Government of the United States is a limited Government, instituted for great national purposes, and for those only. Other interests are committed to the States, whose duty it is to provide for them. Each government should look to the great and essential purposes for which it was instituted and confine itself to those purposes. * * *
>
> * * * * *
>
> My idea is that Congress have an unlimited power to raise money, and that in its appropriation they have a discretionary power, restricted only by the duty to appropriate it to purposes of common defense and of general, not local, national, not State, benefit.

Chief Justice Marshall and other members of the Supreme Court gave their unofficial, but unqualified approval of the above views of Monroe, as evidenced by the following letter from Judge Johnson (2 Warren, The Supreme Court in United States History, pp. 56–57):

> Judge Johnson has had the Honour to submit the President's argument on the subject of internal improvement to his Brother Judges and is instructed to make the following Report. The Judges are deeply sensible of the mark of confidence bestowed on them in this instance and should be unworthy of that confidence did they attempt to conceal

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> their real opinion. Indeed, to conceal or disavow it would be now impossible as they are all of opinion that the decision on the Bank question completely commits them on the subject of internal improvement, as applied to Postroads and Military Roads. On the other points, it is impossible to resist the lucid and conclusive reasoning contained in the argument. The principle assumed in the case of the Bank is that the granting of the principal power carries with it the grant of all adequate and appropriate means of executing it. That the selection of these means must rest with the General Government, and as to that power and those means the Constitution makes the Government of the U. S. supreme. Judge Johnson would take the liberty of suggesting to the President that it would not be unproductive of good, if the Secretary of State were to have the opinion of this Court on the Bank question, printed and dispersed through the Union.

John Quincy Adams concurred with Mr. Hamilton in his construction of the Constitution as appears by a letter addressed by him to Mr. Stevenson, July 11, 1832, and published in the National Intelligencer on July 12, in which he says:

> But there are two things which give to the same words in the constitution of the U. S. a significancy far otherwise energetic, than that which they possess in the articles of confederation. The first is their annexation to the expressly granted Power to lay and collect taxes, duties, imposts and excises; and the second, is the introduction in the same connection of those most emphatic words *to provide for*. In the articles of confederation, the bearing of the words common defence or general welfare is *retrospective,*

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having reference to the allowance of charges and epenses *incurred.* In the Constitution, they are *prospective,* coupled first with the command of the purse, the power to levy taxes, duties, imposts, and excises; and secondly with a great and solemn *duty* to be performed, to *provide* for the common defence and general welfare. * * * I do not hold the words common defence and general welfare in the Constitution to contain a grant of substantive and indefinite power, or indeed of any power at all—but as expositors of the purpose for which Congress are expressly enjoined *to provide,* and for enabling them to provide for which they are armed with the power of taxation in almost all its forms: and so understanding them, I believe it would be very imperfectly descriptive of their character to denominate them harmless words, and a very inadequate estimate of their import to consider them as merely auxiliary to other *enumerated* powers.

* * * The substantive and definite power granted, is the power to levy taxes, duties, imposts, and excises.

The duty enjoined upon Congress for the performance and fulfilment of which they are authorized to exercise this power, is to provide for the common defence and general welfare. Far from being a grant of indefinite power, these are themselves defining words; they *limit* the *exercise* of the powers of taxation in this respect to the object of providing for the common defence and general welfare, but they extend the lawful exercise of the power to all objects fairly and reasonably coming under the denomination, adapted to the *common defence and general welfare* * * *.

In the Constitution it is a power to tax the People, granted to Congress, with the

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> injunction to provide for the common defence and welfare, by the expenditure of the proceeds of taxation. It is as specific and definite as the other injunction, to pay the debts of the Union with the proceeds of the same taxation. It is a grant of power to Congress, like the other general grants to the same body, and is not one of those requiring more than a majority of the two Houses, with the sanction of the Executive, for its exercise.

This letter was reproduced in the speech of Mr. La Follette, printed in the Congressional Record, 49th Cong., 1st Sess., Vol. 17, Part 8, Appendix, pp. 226 to 229.

John C. Calhoun, the great advocate of strict construction, was emphatically of the same opinion. On February 4, 1817, in the course o fa speech on the floor of the House of Representatives, Calhoun said (30 Annals of Congress, 14th Cong., 2nd Sess., p. 855):

> It was mainly urged that the Congress can only apply the public money in execution of the enumerated powers. He was no advocate for refined arguments on the Constitution. The instrument was not intended as a thesis for the logician to exercise his ingenuity on. It ought to be construed with plain, good sense; and what can be more express than the Constitution on this very point? The first power delegated to Congress is comprised in these words: "To lay and collect taxes, duties, imposts, and excises: to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States." First—the power is given to lay taxes; next, the objects are enumer-

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ated to which the money accruing from the exercise of this power may be applied; to pay the debts, provide for the common defence, and promote the general welfare; and last, the rule for laying the taxes is prescribed—that all duties, imposts, and excises shall be uniform. *If the framers had intended to limit the use of the money to the powers afterwards enumerated and defined, nothing could be more easy than to have expressed it plainly.* He knew it was the opinion of some, that the words "to pay the debts, and provide for the common defence and general welfare," which he had just cited, were not intended to be referred to the power of laying taxes, contained in the first part of the section, but that they are to be understood as distinct and independent powers, granted in general terms; and are gratified by a more detailed enumeration of powers in the subsequent part of the Constitution. If such were in fact the meaning, surely nothing can be conceived more bungling and awkward than the manner in which the framers have communicated their intention. If it were their intention to make a summary of the powers of Congress in general terms, which were afterwards to be particularly defined and enumerated, they should have told us so plainly and distinctly; and if the words "to pay the debts, and provide for the common defence and general welfare," were intended for this summary, they should have headed the list of our powers, and it should have been stated, that to effect these general objects, the following specific powers were granted. * * * But suppose the Constitution to be silent, said Mr. C., why should we be confined in the application of money to the enumerated powers? There is nothing in the reason of

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> the thing, that he could perceive, why it should be so restricted; and the habitual and uniform practice of the Government coincided with his opinion. Our laws are full of instances of money appropriated without any reference to the enumerated powers. We granted, by an unanimous vote, or nearly so, fifty thousand dollars to the distressed inhabitants of Caraccas, and a very large sum, at two different times, to the Saint Domingo refugees. If we are restricted in the use of our money to the enumerated powers, on what principle, said he, can the purchase of Louisiana be justified? To pass over many other instances, the identical power which is now the subject of discussion, has, in several instances, been exercised. To look no further back, at the last session a considerable sum was granted to complete the Cumberland road. In reply to this uniform course of legislation, Mr. C. expected it would be said, that our Constitution was founded on positive and written principles, and not on precedents. He did not deny the position; but he introduced these instances to prove the uniform sense of Congress, and the country (for they had not been objected to), as to our powers; and surely, said he, they furnish better evidence of the true interpretation of the Constitution than the most refined and subtle arguments.

Henry St. George Tucker:

These views were adopted in the report submitted to the House of Representatives by a special committee on roads and canals on December 15, 1817. The report was presented by Henry St. George Tucker, of Virginia, wherein he made the following comments (31

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Annals of Congress, December 1817, pp. 451, 458–459):

> There is perhaps no part of the Constitution more unlimited than that which relates to the application of the revenues which are to be raised under its authority. The power is given "to lay and collect taxes to pay the debts and provide for the common defence and general welfare of the United States;" and though it be readily admitted, that, as this clause is only intended to designate the objects for which revenue is to be raised, it cannot be construed to extend the specified powers of Congress, yet it would be difficult to reconcile either the generality of the expression or the course of administration under it, with the idea that Congress has not a discretionary power over its expenditures, limited by their application "to the common defence and general welfare."
>
> A few of the very great variety of instances, in which the revenues of the United States have been applied to objects not falling within the specified powers of Congress, or those which may be regarded as incidental to them, will best illustrate this remark.
>
> Thus, it can scarcely be conceived, that, if construed with rigor, the Constitution has conferred the power to purchase a Library, either specifically or as a "necessary" incident to legislation. Still less, perhaps, can the pious services of a Chaplain, or the purchase of expensive paintings for ornamenting the Hall of session, or various other expenditures of similar character, be considered as "necessary" incidents to the power of making laws. Yet, to these and to similar objects have the funds of the United States been freely applied, at every succes-

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sive session of Congress, without a question as to the constitutionality of the application.

It would be yet more difficult to reduce, under the specific or accessory powers of Congress, the liberal donation to the wretched sufferers of Venezuela, or the employment of our revenues in the useful and interesting enterprise to the Pacific.

The bounties allowed for the encouragement of the fisheries form another expenditure that does not fall under any of the powers granted by the Constitution; nor could it fairly be considered as inferrible from the powers granted, upon the strict principles sometimes contended for. The same objections would apply to actual bounties paid to manufacturers for their encouragement, and to the indirect encouragement given to them, and which operates as a bounty to one class of the community and as a tax upon the rest. These and a variety of other appropriations can only be justified upon the principle that the general clause in question has vested in Congress a discretionary power to use for the "general welfare" the funds which they are authorized to raise.

Nor is there any danger that such a power will be abused, while the vigor of representative responsibility remains unimpaired. It is on this principle that the framers of the Constitution mainly relied for the protection of the public purse. It was a safe reliance. It was manifest that there was no other subject on which representative responsibility would be so great. On the other hand, while this principle was calculated to prevent abuses in the appropriations of public money, it was equally necessary to give an extensive discretion to the legislative body in the disposition of the revenues; since no human foresight could discern, nor

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human industry enumerate, the infinite variety of purposes to which the public money might advantageously and legitimately be applied. The attempt would have been to *legislate,* not to frame a *Constitution;* to foresee and provide specifically for the wants of future generations, not to frame a rule of conduct for the legislative body. Hence proceeds the use of this general phrase in relation to the purposes to which the revenues may be applied, while the framers of the instrument, in the clause which concludes the enumeration of powers, scrupulously avoid the use of so comprehensive an expression, and confine themselves to the grant of such incidental power as might be both "necessary and proper" to the exercise of the specified powers.

Nor is it conceived that this construction of the Constitution is calculated to give that unlimited extent to the powers of the Federal Government which by some seems to have been apprehended. There is a distinction between the power to appropriate money for a purpose, and the power to do the act for which it is appropriated; and if so, the power to appropriate money "for the general welfare" does not by fair construction extend the specified or incidental powers of Government. Thus, in the case under consideration, if the power to make a road or dig a canal is not given, the power of appropriating money cannot confer it, however generally it may be expressed. If there were no other limitation, the rights of the respective States over their soil and territory would operate as a restriction.

Whilst this appears to be a safe as well as fair construction of the Constitution, it is also that which has been practically given to it since the origin of the Government. Of

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this, the instances already mentioned furnish some evidence; and it is apprehended, that, upon the rigid principles of construction asserted both in regard to the enumeration of powers and the appropriation of revenue, the acts of the Federal Government, including all its branches, will exhibit a continued series of violations of the Constitution, from the first session after its adoption, to the present day.

Mr. Webster said in the Senate, in 1830 (Webster's Great Speeches, p. 243):

> * * * I thought it necessary to settle, at least for myself, some definite notions with respect to the powers of the government in regard to internal affairs. It may not savor too much of self-commendation to remark that, with this object, I considered the Constitution, its judicial construction, its contemporaneous exposition, and the whole history of the legislation of Congress under it; and I arrived at the conclusion, that government had power to accomplish sundry objects, or aid in their accomplishment, which are now commonly spoken of as *Internal Improvements.*

In his opinion on the Bank, Jefferson made the following statement, which some say committed him to the Madisonian view, some say to the more liberal view. In view of his stand on internal improvements it would seem that he leaned more toward the more liberal view (IV Elliott's Debates, 2d ed., p. 610):

> 1. "To lay taxes to provide for the general welfare of the United States;" that is to say, "to lay taxes *for the purpose* of providing for the general welfare;" for the laying of taxes is the *power,* and the general welfare the *purpose* for which the power is to be exercised. Congress are not to lay taxes *ad*

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libitum, for any purpose they please; but only to *pay the debts, or provide for the welfare, of the Union.* In like manner, they are not *to do anything they please,* to provide for the general welfare, but only *to lay taxes* for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole instrument to a single phrase—that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they pleased. It is an established rule of construction, where a phrase will bear either of two meanings, to give it that which will allow some meaning to the other parts of the instrument, and not that which will render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. It is known that the very power now proposed *as a means,* was rejected *as an end by the Convention which formed the Constitution.* A proposition was made to them, to authorize Congress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected; and one of the reasons of objection urged in debate was, that they then would have a power to erect a bank, which would render great cities, where there were prejudices and jealousies on that subject, adverse to the reception of the Constitution.

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In his veto of the Bonus Bill, Madison said (IV Elliott's Debates, 2d ed., p. 469):

> To refer the power in question to the clause "to provide for the common defence and general welfare," would be contrary to the established and consistent rules of interpretation, as rendering the special and careful enumeration of powers which follow the clause nugatory and improper. Such a view of the Constitution would have the effect of giving to Congress a general power or legislation, instead of the defined and limited one hitherto understood to belong to them—*the terms, "the common defence and general welfare," embracing every object and act within the purview of the legislative trust.* It would have the effect of subjecting both the Constitution and laws of the several states, in all cases not specifically exempted, to be superseded by laws of Congress; it being expressly declared, "that the Constitution of the United States, and laws made in pursuance thereof, shall be the supreme law of the land; and the judges of every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding." Such a view of the Constitution, finally, would have the effect of excluding the judicial authority of the United States from its participation in guarding the boundary between the legislative powers of the general and the state governments; inasmuch as *questions relating to the general welfare, being questions of policy and expediency, are unsusceptible of judicial cognizance and decision.*
>
> *A restriction of the power "to provide for the common defence and general welfare" to cases which are to be provided for by the expenditure of money, would still leave within the legislative power of Congress all*

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the great and most important measures of government; money being the ordinary and necessary means of carrying them into execution. (Italics supplied.)

President Jackson interpreted this as a holding by Madison that monies could be appropriated to objects beyond the enumerated powers. In his veto of the Maysville Road Bill in 1830, he said (IV Elliott's Debates, 2d ed., pp. 526–527):

> * * * every subsequent administration of the government, embracing a period of thirty out of the forty-two years of its existence, has adopted a more enlarged construction of the power.
>
> In the administration of Mr. Jefferson, we have two examples of the exercise of the right of appropriation, which, in the consideration that led to their adoption, and in their effects upon the public mind, have had a greater agency in marking the character of the power, than any subsequent events. I allude to the payment of fifteen millions of dollars for the purchase of Louisiana, and to the original appropriation for the construction of the Cumberland Road; the latter act deriving much weight from the acquiescence and approbation of three of the most powerful of the original members of the confederacy, expressed through their respective legislatures. Although the circumstances of the latter case may be such as to deprive so much of it as relates to the actual construction of the road of the force of an obligatory exposition of the Constitution, it must, nevertheless, be admitted that, so far as the mere appropriation of money is concerned, they present the principle in its most imposing aspect. No less than twenty-three different laws have been passed through all the forms

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of the Constitution, appropriating upwards of two millions of dollars out of the national treasury in support of that improvement, with the approbation of every President of the United States, including my predecessor, since its commencement.

Independently of the sanction given to appropriations for the Cumberland and other roads and objects, under this power, the administration of Mr. Madison was characterized by an act which furnishes the strongest evidence of his opinion extant. A bill was passed through both houses of Congress, and presented for his approval, "setting apart and pledging certain funds for constructing roads and canals, and improving the navigation of water-courses, in order to facilitate, promote, and give security to internal commerce among the several states; and to render more easy, and less expensive, the means and provision for the common defence." Regarding the bill as asserting a power in the federal government to construct roads and canals within the limits of the states in which they were made, he objected to its passage, on the ground of its unconstitutionality, declaring that the assent of the respective states, in the mode provided by the bill, could not confer the powers in question; that the only cases in which the consent and cession of particular states can extend the power of Congress are those specified and provided for in the Constitution; and *superadding to this avowal his opinion, that "a restriction of the power 'to provide for the common defence and general welfare,' to cases which are to be provided for by the expenditure of money, would still leave within the legislative power of Congress all the great and most important measures of government, money being the ordinary and necessary means of carrying*

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them into execution." I have not been able to consider these declarations in any other point of view than as a concession that the right of appropriation is not limited by the power to carry into effect the measure for which the money is asked, as was formerly contended. (Italics supplied.)

Later in a letter to Martin Van Buren, dated June 3, 1830 (4 Madison's Letters & Writings, p. 88), Madison stated that Jackson had misinterpreted his veto message. But later still, in a letter to Reynolds Chapman, dated January 6, 1831, he wrote as follows (4 Madison's Letters & Writings, pp. 146–147):

> For my general opinion on the question of internal improvements I may refer to the veto message against the "Bonus Bill," at the close of the session of Congress in March, 1817. The message denies the constitutionality as well of the appropriating as of the executing and jurisdictional branches of the power. And my opinion remains the same, subject, *as heretofore, to the exception of particular cases, where a reading of the Constitution different from mine may have derived from a continued course of practical sanctions an authority sufficient to overrule individual constructions.*
>
> It is not to be wondered that doubts and difficulties should occur in expounding the Constitution of the United States. Hitherto the aim, in well-organized Governments, has been to discriminate and distribute the legislative, executive, and judiciary powers; and these sometimes touch so closely, or, rather, run the one so much into the other, as to make the task difficult and leave the lines of division obscure. *A settled practice, enlightened by occurring cases, and obviously*

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conformable to the public good, can alone remove the obscurity. The case is parallel in new statutes on complex subjects.

In the Constitution of the United States, where each of these powers is divided, and portions allotted to different governments, and where a language technically appropriate may be deficient, the wonder would be far greater if different rules of exposition were not applied to the text by different commentators.

Thus it is found that, in the case of the legislative department particularly, where a division and definition of the powers according to their specific objects is most difficult, the instrument is read by some as if it were a Constitution for a single Government, with powers coextensive with the general welfare, and by others interpreted as if it were an ordinary statute, and with the strictness almost of a penal one.

Between these adverse constructions an intermediate course must be the true one; and it is hoped that it will finally, if not otherwise settled, be prescribed by an amendment of the Constitution. In no case is a satisfactory one more desirable than in that of internal improvements, embracing roads, canals, lighthouses, harbours, rivers, and other lesser objects. (Italics supplied.)

Later still Madison wrote (4 Madison's Letters & Writings, p. 249):

If an acknowledged, a uniform, and a long-continued practice under written constitutions and laws cannot settle their meaning, the preposterous result woud be, that the longer the period of practice the greater would be the liability to new constructions of them, from the effect of time in changing the meaning of words and phrases.

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PART C

Congressional Appropriation Acts Justifiable Only by Virtue of a Broad Construction of the "General Welfare" Clause of the United States Constitution

1. APPROPRIATIONS FOR RELIEF OF DISTRESS DUE TO CATASTROPHIES

Earthquakes.—Venezuela, 1812 (c. 79, 2 Stat. 730); New Madrid, Missouri, 1815 (c. 45, 3 Stat. 211); Italy (c. 7, 35 Stat. 584); and Japan, 1925, (c. 297, 43 Stat. 963–964).

Indian Depredations.—Florida, 1836 (Public Resolution No. 1, 5 Stat. 131), and Minnesota, 1863 (c. 37, 12 Stat. 652).

Fires.—New York City, 1836 (c. 42, 5 Stat. 6); Alexandria, Virginia, 1827 (c. 3, 6 Stat. 356); Portland, Maine, 1866 (Public Resolution No. 69, 14 Stat. 364); San Francisco, 1906 (Public Resolutions Nos. 16 and 19, 34 Stat. 827, 828); and Salem, Massachusetts, 1914 (c. 223, 38 Stat. 609, 681).

Wars or Famines.—Ireland in 1880 (Public Resolution No. 16, 21 Stat. 303); the Southern States in 1867 (Public Resolution No. 28, 15 Stat. 28); American citizens in Cuba in 1897 (Public Resolution No. 11, 30 Stat. 220); India in 1897 (Public Resolutions Nos. 8 and 12, 30 Stat. 219, 220); Alaskan natives of the St. Paul and St. George Islands in 1897 (c. 2, 30 Stat. 11, 29; c. 2, 30 Stat. 226; c. 546, 30 Stat. 597, 616); French West

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Indies in 1902 (c. 787, 32 Stat. 198); Europe in 1919 (c. 38, 40 Stat. 1161); and Russia in 1921 (c. 15, 42 Stat. 351).

Tornadoes or Cyclones.—Mississippi in 1880 and 1913 (Public Resolution No. 30, 21 Stat. 306; and the Southern States generally in 1908 (Public Resolution No. 20, 35 Stat. 572).

Yellow Fever.—1879 (c. 1, 21 Stat. 1); 1888 (Public Resolutions Nos. 44, 48, 25 Stat. 630, 631).

Grasshopper Scourges.—1875 (c. 25, 18 Stat. 303; c. 40, 18 Stat. 314); 1877 (c. 106, 19 Stat. 363, 374); and 1878 (c. 191, 20 Stat. 115, 127).

Floods.—Mississippi River, 1874 (c. 125, 18 Stat. 34; c. 170, 18 Stat. 45; c. 455, 18 Stat. 230); 1882 (c. 77, 22 Stat. 44; Joint Resolutions Nos. 6, 9, 12, 16, 22 Stat. 378, 379); 1884 (Public Resolutions Nos. 18, 32, 23 Stat. 269, 273); 1890 (c. 58, 26 Stat. 33; Joint Resolution No. 16, 6 Stat. 671); 1897 (Public Resolutions Nos. 3, 9; 30 Stat. 216, 219); 1912 (Public Resolution No. 19; 37 Stat. 633); and 1913 (c. 32, 38 Stat. 208, 211, 215, 216). The Southern States generally in 1916 (c. 267, 39 Stat. 434) and in 1928 (c. 11, 45 Stat. 53; c. 572, 45 Stat. 539, 543). The Ohio River in 1884 (Public Resolutions Nos. 9, 12; 23 Stat. 267, 268). The Rio Grande River in 1897 (Public Resolution No. 14; 30 Stat. 221).

2. APPROPRIATIONS IN AID OF PUBLIC HEALTH

Act of March 3, 1871, c. 114, 16 Stat. 495, 506, established the Freedmen's Hospital in Washington. Annual appropriations are made therefor. It appears from the 1934 data that a large number of those receiving treatment are not residents of the

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District of Columbia (Annual Report, Secretary of Interior, 1934, p. 405).

Act of June 20, 1878, c. 359, 20 Stat. 206, 240, provided for the investigation of animal diseases.

Act of March 3, 1879, c. 202, 20 Stat. 484, established the National Board of Health.

Act of April 18, 1879, c. 1, 21 Stat. 1, provided for a refrigerating ship to aid in combatting yellow fever.

Public Resolutions Nos. 44, 48, of September 26, 1888, 25 Stat. 630, 631, provided for the aid of sufferers from yellow fever.

Act of August 8, 1894, c. 238, 28 Stat. 264, 271, provided for a study of nutrition.

Act of February 3, 1917, c. 26, 39 Stat. 872, provided for the establishment of a leprosy hospital.

Act of October 1, 1918, c. 179, 40 Stat. 1008, provided $1,000,000 to suppress the 1918 influenza epidemic.

Act of November 23, 1921, c. 135, 42 Stat. 224, is the Sheppard-Towner maternity health Act, considered by this Court in *Massachusetts* v. *Mellon,* 262 U. S. 447.

3. APPROPRIATIONS IN AID OF EDUCATION

(A) FINANCIAL SUPPORT OF AGRICULTURAL AND MECHANICAL COLLEGES

Act of May 17, 1900, c. 479, 31 Stat. 179, and Act of March 4, 1907, c. 2907, 34 Stat. 1256, 1281, appropriated money from the ordinary Treasury funds in support of the agricultural and mechanical colleges created under the First and Second Morrill Acts (c. 130, 12 Stat. 503; c. 841, 26 Stat. 417). Since that time there have been annual appropriations in support of these colleges.

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(B) EXPERIMENTAL STATIONS

From 1887 these colleges have by specific authority of Congress conducted agricultural experiment stations "to aid in acquiring and diffusing among the people of the United States useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and applications of agricultural science" (c. 314, 24 Stat. 440). Since 1930, $90,000 annually has been appropriated to each State for these stations (c. 951, 34 Stat. 63; c. 308, 43 Stat. 970; U. S. C., Title 7, Secs. 369, 370), the result of increases from time to time since the original authorization of 1887.

(C) EXTENSION WORK

Beginning in 1914 Congress provided annual appropriations for colleges of agricultural and mechanical arts, authorizing them to give instruction in agriculture and home economics by means of publications, demonstrations, and the like, to those who did not actually attend the colleges (c. 79, 38 Stat. 372).

(D) SALARIES OF TEACHERS, ETC.

The Act of February 23, 1917, c. 114, 39 Stat. 929–931, provided annual appropriations gradually rising, by 1926, to the sums hereafter stated to be distributed among the States, according to their rural population: $3,000,000 to pay salaries of teachers, supervisors, or directors of agricultural subjects; $3,000,000 to pay salaries of teachers of trade, home economics, and industrial subjects; and $1,000,000 to prepare teachers for these subjects.

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During 1933 and 1934 these appropriations were reduced under the Economy Act of 1932. See Annual Report of the Secretary of the Interior, 1934, p. 298. From 1930–1934, additional appropriations ranging from $500,000 to $2,500,000 were authorized by the Act of February 5, 1929, c. 153, 45 Stat. 1151, and by the Act of May 21, 1934, additional appropriations of $3,000,000 were authorized for each of the years 1935–1937 (c. 324, 48 Stat. 792).

(E) EDUCATION OF THE BLIND

Act of March 3, 1879, c. 186, 20 Stat. 467, 468, created a trust fund for aiding the education of the blind. This was supplemented by annual appropriations, increased to $50,000 in 1919 (c. 3536, 34 Stat. 460; c. 31, 41 Stat. 272).

(F) HOWARD UNIVERSITY

Act of March 3, 1879, c. 182, 20 Stat. 377, 404, was the earliest of continuous appropriations for Howard University. The generality of the purposes of Howard University appears from its charter (c. 162, 14 Stat. 438) and from the national distribution of its student body. See Annual Report, Secretary of Interior (1934), p. 383.

(G) SMITHSONIAN INSTITUTION

Act of July 1, 1836, c. 252, 5 Stat. 64, was an appropriation of $10,000 to cover expenses incident to prosecuting the claim of the United States in British Courts for the bequest founding the Smithsonian Institution. Appropriations made from time to time supplementing the original bequest

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can only have been "for the increase and diffusion of knowledge among men." See *Russell* v. *Allen,* 107 U. S. 163, 172. In 1934, the regular Congressional appropriation for the Smithsonian Institution and its allied agencies was $874,024 (c. 102, 48 Stat. 509, 516–517).

4. APPROPRIATIONS IN AID OF INDUSTRY

Typical appropriations for Federal activity and participation in expositions and world fairs are: Public Resolution No. 66, 14 Stat. 362; Public Resolution No. 14, 25 Stat. 620 at Paris; c. 259, 17 Stat. 203, c. 10, 19 Stat. 3, c. 482, 43 Stat. 1253 at Philadelphia; Public Resolution No. 12, 25 Stat. 620 at Barcelona; c. 381, 27 Stat. 389 at Chicago; c. 864, 31 Stat. 1440 at St. Louis; c. 3, 38 Stat. 4, 76 at San Francisco; c. 3, 39 Stat. 2 at San Diego; c. 485, 43 Stat. 1256 at Seville.

5. APPROPRIATIONS IN AID OF AGRICULTURE

Following the 1839 appropriation of $1,000 for "the collection of agricultural statistics and for other agricultural purposes", (c. 88, 5 Stat. 353, 354), appropriations of varying amounts for purposes substantially like those of the 1839 Act were made in 1842 (c. 202, 5 Stat. 523, 533); 1843 (c. 100, 5 Stat. 630, 642); 1844 (c. 105, 5 Stat. 681, 687); 1845 (c. 71, 5 Stat. 752, 757); 1847 (c. 47, 9 Stat. 155, 160); 1848 (c. 166, 9 Stat. 284, 285); 1849 (c. 100, 9 Stat. 354, 364); 1850 (c. 90, 9 Stat. 523, 541); 1851 (c. 32, 9 Stat. 598, 615); 1852 (c. 108, 10 Stat. 76, 95); 1853 (c. 97, 10 Stat. 189, 208); 1854 (c. 60, 10 Stat. 290, 292 and c. 242, 10 Stat. 546, 567); 1855 (c. 175, 10 Stat. 643, 664).

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In 1856, the appropriation was made expressly for "investigations for promoting agriculture and rural economy" as well as for the familiar collection of statistics and collection and distribution of cuttings and seeds (c. 29, 11 Stat. 10, 14; and c. 129, 10 Stat. 81, 89). Similar appropriations were made in 1857 (c. 108, 11 Stat. 221, 226); 1858 (c. 154, 11 Stat. 319, 321); 1859 (c. 82, 11 Stat. 425, 427). In 1860 this form was varied by the addition of a proviso that in the expenditure of the appropriation made in that year "due regard shall be had to the purposes of general cultivation, and the encouragement of the agricultural and rural interests of all parts of the United States" (c. 211, 12 Stat. 104, 108–9). This occurred again in the 1861 appropriation (c. 84, 12 Stat. 214, 217) and in that for 1862 (c. 34, 12 Stat. 348, 350).

Prior to 1924 the forest fire prevention activities of the Federal Government had been limited to the forested watersheds of navigable streams, but in that year Congress authorized appropriations to the States for the protection from fire of all forest lands, private or Government owned, within or without watersheds (c. 348, 43 Stat. 653). Thirty-three states have accepted Federal benefits under this law, and by 1927 the appropriation for this purpose was $700,000. (MacDonald, Federal Aid (1928), pp. 31, 42.)

6. TYPICAL APPROPRIATIONS FOR THE GENERAL WELFARE

The Federal Government's activity in fields beyond the enumerated powers but in behalf of the general welfare is fully demonstrated by the fol-

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lowing appropriations of the 73rd Congress, 2nd Session, 1934 (48 Stat.), which are typical of similar action taken by earlier Congresses:

To carry out the purposes of the Federal Emergency Relief Act of 1933 (c. 13, p. 351).

For the Commission of Fine Arts, Mount Rushmore National Memorial Commission, George Rogers Clark Sesquicentennial Commission (c. 38, p. 364).

For cooperative and general investigations necessary to determine the economic conditions and financial feasibility of projects relating to the reorganization and settlement of lands (p. 381).

For giving information in aid of settlers on reclamation projects (p. 381).

For geologic surveys, volcanologic surveys (p. 383).

For vocational education, Cooperative Vocational Rehabilitation of Persons Disabled in Industry (pp. 389, 390).

For Saint Elizabeths Hospital (p. 393).

For Columbia Institution for the Deaf, Howard University (p. 394).

For Freedmen's Hospital, the care and transportation of shipwrecked seamen (p. 395).

For the payment of the personnel in the Public Health Service, and maintaining the National Institute of Healh (c. 70, p. 434).

For the prevention of epidemics, field investigation of human diseases (p. 435).

For rural sanitation, public health educational exhibits (p. 436).

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For the Department of Agriculture, including appropriations for salaries, materials, miscellaneous expenses, experiment stations, extension service, Bureaus of Animal Industry, Dairy Industry, and Plant Industry, Forest Service, Forest Research, Forest Fire Cooperation, Bureaus of Chemistry and Soils, Entomology and Plant Quarantine, Biological Survey, Agricultural Engineering, Agricultural Economics, Home Economics, and other miscellaneous appropriations (c. 89, pp. 467–500).

For Smithsonian Institution (c. 102, p. 516).

For the Federal Employment Stabilization Board (c. 104, p. 547).

For the Bureau of Foreign and Domestic Commerce (p. 548).

For the Bureau of Standards, Bureau of Fisheries, Bureau of Mines (pp. 552, 560, 562).

For the Bureau of Labor Statistics (c. 104, p. 569).

For the Children's Bureau, Women's Bureau, United States Employment Service (p. 570).

For Vocational Education (c. 324, p. 792).

For the Board of Public Welfare of the District of Columbia, whose activities benefit nonresidents (c. 389, p. 867).

For chinch-bug control (c. 427, p. 926).

To pay membership dues in the International Council of Scientific Unions (c. 555, p. 976).

For the International Celebration at Fort Niagara, New York (c. 609, p. 1019).

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PART D

Statements by Secretaries of Agriculture Concerning the Problem of Agricultural Surpluses

1922 REPORT OF SECRETARY HENRY C. WALLACE

* * * There has been some increase in prices of farm products, but there has not been much improvement in the general relationship between the prices of the things the farmer produces and of the things he buys (p. 2).

* * * The fact is that for three years in succession the farmers of the United States have produced more of some crops than could be sold at prices high enough to cover production costs. * * * (p. 3).

* * * Both the farmers and the consuming public would be benefited through more stable production and therefore more stable prices (pp. 3–4).

1923 REPORT OF SECRETARY HENRY C. WALLACE

The discouraging wheat situation is due in part to increased acreage in response to patriotic appeals and the extraordinary demands for wheat by the war administration. * * * (p. 4).

* * * Unfavorable exchange rates with European countries, together with financial difficulties in those countries which need our surplus, make it more difficult for them to buy, and our export outlet for farm commodities is narrowing. Aside

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from this difficulty, it is to be expected that as the countries of Europe get on their feet, they will strive to produce more of the things they need and buy less from us, and this must be considered in planning our own production * * * (p. 6).

* * * The farmers' troubles are due primarily to the low prices of their farm products and the high prices for the services and articles they must buy (p. 7).

All the administrative agencies of the Government have been at work with vigor and good judgment to help overcome the farm troubles, through enlarging consumption at home, extending abroad the markets for the farm surplus, promoting the readjustment of production so far as practicable, gathering and making known information concerning world consumption and production, and in innumerable other ways which it is not necessary to set forth here but which will be dealt with later in this report (p. 13).

If farmers could control their production as does organized industry, or if they could exact a price for their labor as does organized labor, unusual action by Government might not be demanded so urgently. It is just as well to keep in mind that both industry and labor are beneficiaries of Government action and that such action during the war and the two years following has added not a little to the farmer's difficulties (p. 19).

1924 REPORT OF ACTING SECRETARY HOWARD M. GORE

The overproduction which brought about the collapse in farm prices resulted largely from the stimulus of advancing prices and from the response

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made by the farmer to patriotic appeals for increased production during the war. * * * (p. 21).

In the slow and painful process of recovery from this situation perhaps the greatest single helpful influence has been the way farmers themselves have readjusted their production to correct the unbalanced position left by the expansion of the war period. * * * (p. 21).

1925 REPORT OF SECRETARY WILLIAM JARDINE

What can be done toward handling unavoidable surpluses, which are so disastrous to a stabilized agriculture, when they occur unavoidably? This is one of the major economic problems of the Nation. It is well known that small surpluses exercise a depressing effect on prices altogether disproportionate to their amount. Measures to regulate the movement of surpluses into consumption so that unnecessary price fluctuations can be avoided and speculative hazards lessened are urgently needed (p. 14).

1926 REPORT OF SECRETARY W. M. JARDINE

The situation continues to present problems of heavy production and some lingering disparity between the prices of farm products and the prices of industrial goods and services (pp. 1–2).

* * * Much recent discussion has emphasized the surplus problem as the root of the farmers' difficulties. Surpluses of various crops unquestionably exercise an influence on prices entirely disproportionate to their amount. Moreover, difficulty in the disposal of surpluses is not confined to any one section of the country or to any particular

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class of farm enterprises. It is a difficulty that dairymen, fruit growers, livestock raisers, cotton growers, grain growers, tobacco growers, and producers of nearly every staple farm product have to grapple with from time to time. * * * (p. 4).

1927 REPORT OF SECRETARY W. M. JARDINE

* * * The commercialization of agriculture and the relatively inelastic demand for some major farm products, together with the necessity which many farmers are under to sell their crops immediately after harvest, have made the question of surpluses increasingly important (p. 19).

1928 REPORT OF SECRETARY W. M. JARDINE

* * * When production outruns consumption the producer suffers materially, but it does not follow that the consumer benefits. Studies made by the department show that overproduction results in ruinously low returns to growers without necessarily affecting retail prices proportionately. Consumers as well as producers would benefit from a better adjustment of supply to demand based on statistical interpretation of market tendencies (p. 27).

The surplus problem is of vital importance not only to agriculture but to the Nation as a whole. It is therefore proper to make the solution of it in some measure a governmental responsibility. This need not involve going further than the Government has gone in aid of other economic interests, although legislation dealing with the agricultural surplus necessarily must be sufficiently different from other legislation to meet the peculiarities of

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the problem. No law dealing with this question would be entirely adequate at first. Changes in a surplus-control program probably would be necessary in the light of experience. As an initial step it should suffice to create a Federal Farm board with adequate authority to finance the handling of surpluses through central stabilization corporations, for which purpose a revolving fund should be provided. Advisory councils responsible to the farmers should be created to assist the board. In this way the surplus problem would, I am convinced, be brought nearer to a solution (p. 28).

1929 REPORT OF SECRETARY ARTHUR M. HYDE

Outstanding among the events of 1929 was the passage of the agricultural marketing act. This measure, the result of eight years of discussion in the press, in agricultural circles, and in Congress, is essentially intended to enable agriculture to effect a better adjustment of production to demand and a more efficient system of marketing. Its adoption closed a period of debate and opened one of action. Though opinion was sharply divided during the preparation of the law, its enactment was hailed with general approval and satisfaction * * * (p. 19).

1930 REPORT OF SECRETARY ARTHUR M. HYDE

Developments in the cotton market continue to emphasize the importance of adjusting as far as possible the production of each quality of cotton to market requirements * * * (p. 11).

One aspect of the farm problem overshadows all others. Production in a number of important lines is out of balance with the market, and sur-

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pluses pile up continuously. Barring such temporary fall in demand as we experienced in the past year due to world-wide business depression, our difficulty is not a sudden emergency, but a cumulative overproduction. Farm production, already above normal requirements, became disastrously excessive when the depression curtailed purchasing power. Exceptional weakness on the demand side was added to the trouble on the supply side. I want to emphasize the need for equitable, intelligent, systematic, and collective action to bring supply into better relationship with demand (p. 25).

Mainly, readjustments in acreage are necessary as a corrective of low prices. It is elementary that prices can never rise in an overstocked market * * * (p. 28).

* * * Our numerous farm operators have the same reason for not systematically oversupplying the market as an individual owner would have. At present they are engaged in destructive competition, each, by surplus production, beating down the price of the commodity for all. This is illogical and destructive * * * (p. 29).

* * * At present, the price factor is predominant. Production in many lines is excessive, demand has shrunk somewhat, and farm commodity prices are at a heavy disparity with the prices of other goods. That is why I emphasize the supreme importance of production adjustments as a means of affecting profits favorably (p. 30).

1931 REPORT OF SECRETARY ARTHUR M. HYDE

* * * It is difficult to measure the relative influence of the monetary and the nonmonetary factors in the present crisis. Both, however, are important. Agriculture's attention is properly

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centered upon the latter because they are measurably within its control. Unless production is adjusted, low agricultural prices will continue after Europe's money troubles are remedied.

The part played by general deflation in the agricultural depression has caused some persons to declare that underconsumption rather than overproduction is the main trouble. This is a distinction merely of words. The surplus is the important thing. Whether created by overproduction or enhanced by underconsumption, the supply controls (p. 6).

* * * When agricultural prices fall more than other prices, the fact shows, among other things, that agriculture is having more difficulty than other industries in readjusting its production (p. 10).

Extensive crop shifts have been made by the farmers of the United States in recent years. Unfortunately these shifts have not gone far as yet toward adjusting production to consumer demand. Contraction in some regions has been offset by expansion in others, particularly in wheat and cotton. On the whole, expansion has exceeded contraction. This is so plainly against the interests of the farmers that careful study of the question is necessary to indicate how crop adjustments may be better engineered * * * (p. 13).

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PART E

Annual Average Indexes of "Real" Pay Rolls in Specified Industries in Relation to 1929

(ACTUAL PAY ROLLS DIVIDED BY COST OF LIVING INDEX [1])

Percent of 1929

	1929	1932	1933	1934
Moderately Affected:	%	%	%	%
Telephone and Telegraph	100	101	88	87
Power, Light, and Mfd Gas	100	99	93	95
Laundries	100	87	77	79
Petroleum Refining [4]	100	82	83	87
Food and Kindred Products	100	81	86	94
Hotels	100	80	70	79
Slaughter & Meat Packing [2]	100	80	86	108
Wholesale Trade	100	80	73	77
Retail Trade	100	78	71	74
Paper and Printing	100	78	75	81
Seriously Affected:				
Leather	100	73	82	91
Knit Goods [3]	100	72	81	92
Chemicals and Allied Products	100	72	79	90
Dyeing and Finishing [3]	100	72	76	82
Tobacco	100	72	67	70
Dyeing and Cleaning	100	71	64	68
Mfg —Non-Durable	100	70	76	85
Anthracite Mining	100	67	59	68
Railroads—Class I	100	65	62	63
Textiles	100	63	75	82
Cotton Goods [3]	100	61	89	98
Fertilizer	100	57	66	89
Crude Petroleum Production	100	55	57	69

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	1929	1932	1933	1934
Acutely Affected:	%	%	%	%
Rubber	100	48	56	67
Automobiles	100	47	49	83
Bituminous Mining	100	44	49	66
Non-Ferrous Metals	100	42	46	58
Mfg —Durable Goods	100	39	42	56
Stone, Clay and Glass	100	39	38	46
Quarrying and Non-Metallic Mining	100	36	32	36
Iron and Steel Products	100	34	43	55
Machinery—General	100	33	36	52
Lumber	100	32	35	41
Metalliferous Mining	100	27	27	32
Agricultural Implements [5]	100	25	30	59

[1] Computation of actual pay rolls divided by National Industrial Conference Board Cost of Living Index (1923=100):

1929	1932	1933	1934
96.2	77.7	74.8	79.6
100	80.6	77 7	82.4

Source: Bureau of Labor Statistics.

[2] Included in Food and Kindred Products.

[3] Included in Textiles.

[4] Included in Chemicals and Allied Products.

[5] Included in Machinery—General.

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PART F

1. Foreign Laws Limiting Production of Agricultural Commodities

GREAT BRITAIN

(British Colonies follow below)

The Agricultural Marketing Act, 1933,[1] 23 and 24 George V, c. 31; Halsbury's Statutes of England, Vol. 26, 1933, p. 7, Secs. 2, 3:

> Authorizes the making of orders by the Minister of Agriculture and Fisheries and the Secretaries of State of Scotland and Northern Ireland, regulating the quantity of any agricultural product, or any description thereof, which may be sold by the persons producing it or by boards administering agricultural marketing schemes.
>
> Authorizes the appointment of a Market Supply Committee whose duty it is to make recommendations as to steps to be taken for regulating the supply of agricultural products.

The Agricultural Marketing Act, 1931,[1] 21 and 22 George V, c. 42; Halsbury's Statutes of England, Vol. 24, 1931, p. 11:

[1] For a general discussion of the powers and actions taken, with respect to agricultural production, imports and marketings under these acts, see Agricultural Register, Agricultural Economics, Research Institute, Oxford University, 1933 and 1934.

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Hops.—Hops Marketing Board authorized by paragraph 36 of Hops Marketing Scheme of July 7, 1932 (Halsbury's Statutes of England, Vol. 25, 1932, p. 33), made under Section 1 (8) of the Agricultural Marketing Act, 1931, to destroy or render unfit for brewing hops accepted by it from a registered producer, which cannot be sold within a reasonable time.

QUEENSLAND

Act of November 23, 1933, Acts of Queensland, Vol. 17, Part 2, p. 14548, Sec. 10, 24 George V, No. 14, 1933:

Dairy Products.—Dairy Products Stabilization Board authorized to fix the proportion of dairy products manufactured by a manufacturer within the State, that such manufacturer is permitted to sell in the course of his intrastate trade. Five hundred pounds penalty for making sales of products in excess of quota fixed.

Act of November 12, 1923, Acts of Queensland, Vol. 12, Part 2, p. 10494, Sec. 9(1), 14 George V, No. 28, 1923:

Cotton.—Authorizes Minister to make advances to cotton growers provided no such advance shall be made in respect to cotton grown on any area exceeding fifty acres. The growing of ratoon cotton plants is prohibited.

TASMANIA

Act of December 13, 1934, Vol. 33, Part 1, Acts of Parliament of Tasmania, 25 George V, 1934, No. 79, p. 519:

Dairy Products.—Minister authorized to determine quota of milk products which may be produced. Sale of product in excess of

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quota established prohibited and penalty of five hundred pounds prescribed for violation.

UNION OF SOUTH AFRICA

Act No. 49 of 1934, p. 498, Statutes of the Union of South Africa, 1934, Sec. 18:

Cattle, Sheep, Hogs.—Governor General may give Board power to fix number of cattle, sheep, or pigs, or products thereof, that may be brought into any area; and to determine number of cattle, sheep, or pigs that may be sold or offered for sale on any day or during any stated period, for slaughter. Violations punishable by fine.

VICTORIA

Act of December 29, 1933, Acts of Parliament of Victoria, 1933, 24 George V, No. 4204, p. 466, secs. 7 and 8:

Dairy Products.—Minister authorized to fix quota of dairy products that may be produced. Penalty of five hundred pounds for selling products in excess of quota established.

BRAZIL

Decree No. 22, 152, Nov. 28, 1932:

Sugar.—Commission of Defense of Sugar authorized to limit production of sugar based on the average production during the previous five years. Sugar produced over and above the limits established is confiscated.

Decree No. 22, 121, Nov. 22, 1932:

Coffee.—Planting of coffee fields or the replacing of abandoned fields prohibited for periods of three years, under pain of fine of five milreis per tree.

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DENMARK

Law No. 52, Feb. 21, 1933; Orders, Nov. 10, 1934, Jan. 15, 1935. (Source: Dansk Lovtidende, pp. 185, 1186, 4):

Hogs.—Minister of Agriculture authorized to regulate size of hog slaughter and to limit hog production by fixing a lower price rate for larger numbers of hogs sold; by requiring hogs for slaughter, except sows and boars, to be over a fixed weight; by requiring a fee for each hog slaughtered of 2 kr.; by issuing a limited number of "hog cards" to farmers, allotted according to the ground value of farm, and in the absence of said "hog cards" requiring a fee for hogs over 70 kg. based on weight.

Law enforced by penalties and fines.

Law No. 55, Feb. 24, 1933; Order, Feb. 28, 1933. (Source: Ibid, pp. 193, 213):

Cattle and Meat.—Minister of Agriculture authorized to set up special provisions to encourage a decrease in the supply of cattle and beef, including the destruction of cows of inferior quality.

A tax of 10 kr. for each beef animal slaughtered, with provision for refunding if meat is exported.

Law No. 136, Apr. 12, 1935, sec. 3. (Source: Ibid., p. 551):

Sugar.—The Minister of Agriculture is authorized to reduce the acreage for sugar beets culture which the beet growers and the factories have previously agreed upon. Enforced by penalties and fines.

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FRANCE

Law July 4, 1931, am. by law July 8, 1933, arts. 1, 3, 7, 10. (Source: Bulletin Annoté 1931, p. 1931, p. 95; ib. 1933, p. 226):

> *Wine.*—Tax on yield above a fixed average per acre; tax on large crops; tax on new acreage of 50 fr. per hectoliter when the production exceeds 500 hectoliters; prohibition on planting new areas, by anyone, containing 10 hectores of vines or harvesting 500 hectoliters; replacing of plantings permitted only under license; provisional suspension for five years of plantings in excess of those needed for upkeep of vineyard; and restrictions on shipping productions over a fixed amount. Compulsory distillation is provided for when vine grower's crop is over a certain amount per hectare and does not show a decrease of over 50% in the average crop of the three preceding years. The alcohol is to be delivered to the State.

Decree July 30, 1935, arts. 26, 28. (Source: Bulletin Legislatif, Dalloz, p· 524):

> *Wine.*—Exemptions from shipping restrictions and compulsory distillation requirements for vine growers who destroy all or a part of the vines, but reserve their right to replant after five years.
>
> In addition, indemnities are provided for those who agree not to replant for thirty years, and promise also not to use the land for tobacco, flax, or sugar beets.

Decree, Mar. 17, 1935, Art. 3. (Source: Bulletin Legislatif, Dalloz, p. 169):

> *Wheat.*—Prohibition against sowing more land to wheat than is customary under local crop rotation practice; against sowing on

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land used for wheat the preceding year, except in certain regions; and against increasing the tilling of wheat areas over the average of the three preceding years. Every infraction is punishable with a fine of 1000 francs. Delinquents will also be deprived of the benefits of the law.

Decree, Mar. 17, 1935, Art. 24. (Source: Bulletin Legislatif, Dalloz, p. 169):

Wheat.—A tax of 4 fr. per quintal is levied on wheat growers, based on the quantity of wheat milled for human consumption. This is lowered when insufficiency of national crop entails reduction of the minimum percentage of domestic flour to be ground by the millers.

NORWAY

Law No. 15, June 29, 1934, am. by Law No. 9, June 21, 1935, c. 2, secs. 6, 7.) (Source: Norsk Lovtidende, p. 659):

(Source: Norsk Lovtidende, p. 659):

Milk and Milk Products and Pork.—The King may limit the amount of milk and milk products and pork that shall be marketed, whenever conditions require it. Such fees as may be imposed shall be used in the enforcement of the regulations.

Royal Order, Apr. 28, 1933. (Source: Ibid., p. 157):

Tobacco.—Up to June 30, 1934, growers of tobacco were requiredq to pay a fee of 10 öre per square meter, but in any event not less than 20 kr. This fee to be returned, if the tobacco was exported.

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SWEDEN

Decree No. 30, Feb. 22, 1932; Decree No. 51, Feb. 24, 1933; Decree No. 33, Feb. 26, 1935. (Source: Svenck Författmingssamling):

> *Sugar.*—The Sugar Manufacturing Company is required under its contract with the State to take up beet crops of not over 38,000 hectares, during the years 1933–1936.

Decree No. 259, June 7, 1935; Decree No. 388, June 28, 1935. (Source: Svenck Författmingssamling):

> *Margarine.*—An excise of 30 öre per kg. is imposed upon the manufacture of margarine vegetable oils and other products. Penalties are provided for failure to observe regulations of the control system.

2. Foreign Laws Affecting Agricultural Prices or Acquisition of Agricultural Commodities

(British Colonies listed first)

BECHUANALAND PROTECTORATE

Amendment to Law relating to Dairies and Dairy Produce;

Proclamation and Government Notice, Vol. XIV, 1929, promulgated Jan. 11, 1929:

> *Dairy Products.*—Provides that the resident Commissioner may prescribe prices to be paid for dairy products.

Orders in Council and Proclamation, June 30, 1890, to Dec. 31, 1929, No. 1 of 1929, Dairies and Dairy Products:

> *Dairy Products.*—Prescribes prices to be paid for dairy products.

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JAMAICA

A law to control sugar industry; Dec. 21, 1933; Laws of Jamaica, 1933, No. 31.

Sugar.—Governor authorized to fix maximum retail prices for sugar. Any person selling sugar in excess of such price liable to fine and in default of payment, to imprisonment.

The Sugar Industry Aid Law, 1931, Laws of Jamaica, 1931, No. 13.

Sugar.—Governor may fix by published order the maximum retail prices for various grades of sugar.

Statutes of New South Wales, Vol. 10, 1933, Act. No. 10, 1931, as amended by Act No. 50, 1931, Act No. 70, 1931, and Act No. 44, 1932.

Flour.—Authorizes the compulsory acquisition on behalf of King of all flour, in excess of one ton quantity held by any person. Compensation to be paid for such flour shall be "the fair and reasonable price of flour" as fixed by a Committee, or the balance of proceeds of sale after expenses are paid, whichever is the lesser amount.

Governor may declare the maximum price at which any commodity may be sold in New South Wales.

QUEENSLAND

Acts of Parliament of Queensland, Vol. 8, 1915, p. 7042, 5 and 6 George V, No. 5.

Sugar Cane.—Authorizes the fixing of prices to be paid for sugar cane.

Acts of Parliament of Queensland, Vol. 11, Part 2, 1920, p. 9513, 11 George V, No. 4.

Wheat.—State Wheat Board authorized to acquire, under compulsion of a penalty,

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the wheat crop. Proceeds from the sale thereof to be pooled and the net, after deduction of expenses, to be divided among all growers in proportion to amount each delivered to Board.

Acts of Nov. 12, 1923; Acts of Parliament of Queensland, Vol. 12, Part 2, 1923, p. 10494, Sec. 6; 14 George V, No. 28.

Cotton.—Order in Council divests title of owners of cotton and vests it in Crown free from any lien. Prices therefor are to be fixed by the Governor in Council. Proceeds of sale of cotton by Minister, over advances and expenses, to be paid to grower.

SOUTH WEST AFRICA

Ordinance No. 16 of 1931, Laws of South West Africa, 1931, p. 384, Sec. 8(4):

Dairy Products.—Dairy Industry Control Board authorized to fix a minimum price to be paid for cream and milk by creameries, cheese factories, and condensed milk factories, for cream and milk used therein.

UNION OF SOUTH AFRICA

Act of June 9, 1926; Statutes of the Union of South Africa, 1926 (Act No. 47 of 1926, p. 780):

Sugar.—Governor General authorized to prescribe maximum retail price at which refined and mill white sugars may be sold or disposed of for consumption in the Union.

Act No. 35 of 1930, p. 384, Statutes of the Union of South Africa, 1930, Sec. 13(4).

Dairy Products.—Dairy Industry Control Board authorized to fix a minimum price to be paid for cream and milk by creameries,

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cheese factories, and condensed milk factories, for cream and milk used therein.

BELGIUM

Law, July 31, 1934. (Source: Pasinomie Belge, p. 302.)

Articles of Prime Necessity.—To relieve the economic and financial situation, King given power to take every measure for adapting the price of products of prime necessity to actual conditions.

BRAZIL

Decree of June 1, 1933.

Sugar.—The Sugar and Alcohol Institute created to maintain stable prices by purchasing sugar in times of excessive production.

CHILE

Law 5, 394—Feb. 1, 1934. (Source: Diario Official, 1934, p. 398.)

Wheat.—Authorizes the Association for Agricultural Export to buy up wheat and its derivatives, directly from producers or their associations, for foreign export. Also fixes maximum price of common bread.

DENMARK

Law No. 136, April 12, 1935. (Source: Dansk Lovtidende, p. 551):

Sugar.—Fixes price to be paid by factories to the beet grower for delivered double hundred weight of beets at 190 öre. The Minister will fix the retail price of sugar.

FRANCE

Decree, Mar. 17, 1935, Art. 8. (Source: Bulletin Législatif, Dalloz, 1935, p. 169):

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Wheat.—Minister of Agriculture is authorized to absorb the wheat surplus by means of direct purchase, by denaturation and by export.

Decrees of June 29, 1935, and July 13, 1935. (Source: Bulletin Législatif, Dalloz, No. 12, p. 408, and No. 13, p. 440, Respectively):

Wheat.—Price of 1933 and 1934 crops taken under storage contracts is fixed at 88 fr. per quintal.

NORWAY

Law No. 27, June 22, 1928, am. by Order of Oct. 27, 1933. (Source: Norsk Lootidende, pp. 337, 579):

Wheat.—The State has a monopoly on the import of wheat, rye, barley, and oats, and all milled products thereof, enforced by fines and imprisonment. The State Grain Trade will buy all Norwegian grain offered to it, and is required to set up conditions for sales and for reaching *one* price.

SWEDEN

Decree No. 120, May 29, 1931. (Source: Svenck Författmingssamling, p. 266):

Wheat and Rye.—Swedish Grain Association required to purchase at fixed prices all domestic wheat and rye offered it between certain dates by Swedish farmers.

Decree No. 30, Feb. 22, 1932. (Source: Ibid.):

Sugar.—Swedish Sugar Manufacturing Company required to purchase sugar beets of certain sugar content at not less than 2 kr. 25 öre per 100 kg. Act sets a minimum price for prepared (granulated) sugar.

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URUGUAY

Law No. 9127, Nov. 14, 1933; Law No. 9149, Nov. 30, 1933; Law No. 9449, Dec. 18, 1934. (Source: Registro Nacional de Leyes (annual), pp. 940, 995, 1545:

> *Wheat.*—Authorizes Bank of the Republic to act as Governmental agent to purchase the wheat crop of the coming harvest and to regulate the price thereof.

3. Foreign Laws Imposing Taxes Upon the Processing of Agricultural Commodities to Raise Revenue for the Aid of Agriculture and other Purposes

GREAT BRITAIN

(British Colonies follow below)

Act of March 27, 1925, Halsbury's Laws of England, Vol. 16, p. 933, Sec. 4; 15 and 16 George V, c. 12:

> *Sugar Beets.*—Tax imposed on sugar and molasses manufactured in Great Britain and Northern Ireland from beets grown in those countries, equal in each case to 5/6 of the full customs duty.

Act of May 12, 1932, known as the Wheat Act, 1932—22 and 23 George V, c. 24—Halsbury's Statutes of England, Vol. 25, p. 7:

> *Wheat.*—Millers are required to make, in respect to each hundredweight of their output of flour, a payment known as a quota payment, in order to make up the difference between the average price and the standard price of wheat. Registered growers of wheat are to receive, in respect to every hundredweight sold by them not in excess of a determined quantity or supply, the differ-

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ence between the said average price and the standard price.

JAMAICA

Act of December 21, 1933, No. 31, Laws of Jamaica, 1933, Sec. 7:

Sugar.—Governor authorized to prescribe for the use of the Government a tax at a rate not exceeding seven pounds, to be paid on all sugar manufactured in the Island.

QUEENSLAND

Act of November 23, 1933—Acts of Queensland, Vol. 17, Part 2, p. 14548, Sec. 8; 24 George V, No. 14, 1933:

Dairy Products.—Dairy Products Stabilization Board authorized to levy tax on each manufacturer of dairy products to defray expense of administering act relating to stabilization of dairy produce.

SOUTH WEST AFRICA

Ordinance No. 16 of 1931, p. 384, Laws of South West Africa, 1931, Sec. 8(1) (d and e):

Dairy Products.—Tax of 1 *d.* per pound upon manufacture of butter and cheese, with an additional levy of ½ *d.,* for certain purposes. The proceeds from this levy to be used to pay premiums on exports, to encourage consumption of dairy products, and for other purposes.

UNION OF SOUTH AFRICA

Act No. 35 of 1930, p. 384, Statutes of the Union of South Africa, 1930:

Dairy Products.—Tax of 1*d.* per pound upon manufacture of butter and cheese, with an additional levy of ½*d.* for certain pur-

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poses. The proceeds from this levy to be used to pay premiums on exports to encourage consumption of dairy products and for other purposes.

Act No. 49 of 1934, p. 498, Statutes of the Union of South Africa:

Cattle, Sheep.—Tax on all cattle slaughtered, a sum not exceeding 6*d.* on animals less than six months old, and 2*s.* on those over. Sheep 6*d.* The proceeds of tax to be used to pay bounty on exports of slaughter cattle or sheep, and other purposes.

BRAZIL

Decrees of June 1, 1933, and July 25, 1933:

Sugar.—A tax of $3.00 per bag of sugar produced to provide funds for acquiring surplus stocks of that commodity.

CHILE

Law No. 43912, Dec. 18, 1930 (Sources: Boletin de Leys y Decretos del Gobierno, page 3321):

Wheat.—A tax on wheat or oats ground or rolled in mills.

Malt.—A tax on malt to be used for beer.

Cattle.—A tax on animals to be used for meat.

Wine.—A tax on the production of wine.

All of the above taxes are listed as means of raising a fund for export premiums on commodities thought by the Association of Agricultural Export to need encouragement.

CUBA

Law No. 141, May 6, 1935:

Sugar.—A tax on sugar produced during this season and subsequent seasons, the tax

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being 1 cent per bag of 325 lbs. of raw sugar or its equivalent when manufactured. Manufacturers responsible for payment.

DENMARK

Law No. 293, Oct. 31, 1934. (Source: Dansk Lovtidende, p. 1167):

Beef.—Imposing a tax up to 20 kr. on each grown animal sold to be slaughtered for the market, proceeds to be used to pay subsidy, to further the export of cattle and beef.

FRANCE

Decree Mar. 17, 1935—Art. 23. (Source: Bulletin Législatif, Dalloz, 1935, p. 169):

Wheat.—Milling tax due from every miller, calculated on the total amount of wheat used during the year by each, at the rate of 3 fr. per quintal up to 12,000, 4 fr. per quintal from 12,000 to 50,000, and 5 fr. per quintal above 50,000. Payment of the tax to be made monthly and to be used for the execution of the laws to protect the wheat market.

NORWAY

Law, June 6, 1930, as amended by No. 16, June 29, 1934, sec. 4 (Source: Norsk Lootidende, p. 356):

Pork and Mutton.—A tax is paid by one who delivers pork and mutton for official inspection, who delivers it for salting, or by one who carries on the salting. The tax is to facilitate the marketing of certain products.

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Royal Order, July 13, 1934. (Source: Ibid., p. 387):

Mutton.—The fee for mutton fixed for the period July 1934–July 1935, at. 25 kr. per carcass.

Royal Order, April 12, 1935. (Source: Ibid.):

Hogs.—The fee for marketing of hogs fixed for the period May 1, 1935, to April 30, 1936, at 1.50 kr. for whole hog, .75 kr. for half.

SWEDEN

Decree No. 427, June 30, 1934, secs. 1, 8; Decree No. 280, June 7, 1935, secs. 1, 3. (Source: Svenck Författmingssamling, p. 841):

Wheat.—A tax not in excess of 3 öre per kg. on all wheat used for flour or grits, proceeds to be used for covering expenses of aids for agricultural food products.

Decree No. 387, June 26, 1933, sec. 1; Order No. 179, May 24, 1934; Order No. 372, June 30, 1934; Decree No. 279, June 7, 1935. (Source: Ibid.):

Cattle and Hogs.—In order to improve marketing conditions, a slaughtered-products tax is imposed on any meat and pork which has passed the inspection officials, 50 öre for hogs, 1 kr. for large animals.

Decree No. 391, June 26, 1933; Decree No. 442, June 30, 1933; Decree No. 415, June 28, 1935, secs. 1, 2, 3, 8. (Source: Ibid.):

Milk.—A tax of 2 öre per kg. on milk used for butter or cheese; proceeds to be used for improving the market conditions of milk and dairy products, and to even up monthly returns to farmers.

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4. Foreign Laws Providing for Subsidies or Other Payments in Aid of Agriculture

GREAT BRITAIN

(British Colonies follow below)

Act of March 27, 1925, Halsbury's Laws of England, Vol. 16, p. 933; 15 and 16 George V, c. 12:

> *Sugar.*—Authorizes the payment of a subsidy to manufacturers of sugar and molasses in Great Britain based on weekly output.

The Cattle Industry Act of 1934, Halsbury's Laws of England, Vol. 27, 1934, p. 20, Sec. 2; 24 and and 25 George V, c. 54:

> *Cattle.*—Provides for payment of a subsidy to home producers of cattle during August 1934 to March 1935, computed on the live weight of the animal, at 5 *s.* per cwt., or on the weight of the carcass at 9 *s.* 4 *d.* per cwt. The amount required for the purpose of the Act is estimated at three million pounds.

The Milk Act, 1934, Halsbury's Laws of England, Vol. 27, 1934, p. 7; 24 and 25 George V, c. 51:

> *Milk.*—Provides for temporarily securing to producers of milk, by means of payment out of moneys provided by Parliament, a minimum return in respect of milk used in the manufacture of milk products.

CANADA

Act of Aug. 3, 1931; Statutes of Canada 1930 (2nd Sess.) 1931, Parts I and II, p. 429, Sec. 3 (b), 21 and 22 George V, c. 58:

> Governor in Council out of Consolidated Revenue Fund is authorized to assist in de-

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fraying cost of production, sale and distribution of products of field and farm.

Act of Aug. 3, 1933, Statutes of Canada, Parts I and II, p. 433, 21 and 22 George V, c. 60:

Wheat.—Governor in Council may authorize payment of 5¢ per bushel on all wheat grown in certain provinces and delivered to licensed elevators, Commission Merchants, truck buyers, or grain dealers.

TASMANIA

Act of Jan. 4, 1935, Acts of Parliament of Tasmania, Vol. 33, Part I, 1934, 25 George V, No. 88, p. 569:

Wheat.—Appropriates money to be paid to wheat growers according to regulations which the Governor may prescribe.

Act of Jan. 4, 1935, Acts of Parliament of Tasmania, 1934, Vol. 33, Part I, George V, No. 90, 1934, p. 575:

Rural Producers Rehabilitation Board established and authorized to distribute moneys provided by the Commonwealth for the Rahabilitation of Rural producers.

VICTORIA

Acts of Parliament of Victoria, 1933, 24 George V, No. 4199, p. 427:

Apples and Pears.—Provides for payment to necessitous fruit growers who prove that they have suffered losses in export of apples and pears.

Acts of Parliament of Victoria, 1934, 25 George V, No. 4267, p. 178:

Provides for benefit payments to growers of apples and pears on fruit exported or sold for export.

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Acts of Parliament of Victoria, 1933, 25 George V. No. 4200, p. 431:

> *Wheat.*—Provides for payments to those wheat growers who received no taxable income and who can prove need of assistance. Payments to be made according to 1933 wheat acreage.

Act of September 29, 1934, Acts of Parliament of Victoria, 1934, 24 and 25 George V., No. 4237, p. 73:

> Provides for allowances to be made to farmers for living expenses of self and family.

DENMARK

Law No. 293, Oct. 31, 1934. (Source: Dansk Lovtidende, p. 1167):

> *Meat.*—Minister of Agriculture authorized to pay a subsidy of 6 öre or less per kg. for animals of at least 500 kg. sold for export, to be raised through the medium of a tax up to 20 kr. on each grown animal sold to be slaughtered for market.

Law No. 359, Dec. 13, 1935. (Source: Dansk Lovtidende):

> *Dairy Products.*—Proceeds of tax on sales of butter to be divided among the farms, on the basis of the amount of fodder used.

Law No. 136, April 12, 1935. (Source: Ibid., p. 551):

> *Sugar.*—The Minister will divide three million kr. among the beet growers who during the sugar year 1934–1935 deliver beets of the 1934 crop to the factories. The sum is to be taken from the sugar fund and, if necessary, from the State.

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Law No. 222, Aug. 3, 1935. (Source: Ibid., p. 934):

> *Wheat.*—The proceeds of funds derived from fees on importations of wheat, barley, oats, rye, and maize are to be divided among farmers owning farms having a ground value of 500 kr. to 15,000 kr., and a value per hectare of less than 1,200 kr. and an area of at least ½ hectare. The fees shall be large enough to bring the price of grain at a Danish port to figures prescribed in the Act. If the funds produced by the fees fail to reach sixteen million kr. the State will bring it to that amount from an increase in income taxes.

FRANCE

Law July 4, 1931, am. by law July 8, 1933, Part II. (Source: Bulletin Annoté 1931, p. 95; Ib., 1933, p. 226):

> *Grape Vines.*—Indemnities to be paid the owners of mother stocks and the producers of plants who show that their profits have decreased more than 15% on the average of the three preceding years. One-half of the tax on yield above a fixed average per acre, the tax on large crops, and the tax on new acreage will be used for this purpose.

Law, April 14, 1933. (Source: Bulletin Annoté, Tardit, p. 119):

> *Wheat.*—Provision is made for premiums in total amount of twenty million francs to encourage use of domestic wheat for other purposes than human food or making alcohol.

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Law, July 4, 1931. (Source: Bulletin Annoté, p. 200):

Flax Straw.—Within a limit of sixty million francs annually, premiums are authorized for flax straw of French origin stripped within the national territory.

Law, March 2, 1932. (Source: Collection Completé, Duvergier, p. 81):

Hemp.—An allowance is made for premiums for tow of hemp of French origin and extraction to the extent of six million francs.

Law, April 7, 1932. (Source: Bulletin Annoté p. 123):

Olives.—Establishes premiums within the limit of fifteen million francs annually for the cultivation of olives.

Law, June 11, 1909. (Source: Bulletin Législatif, Dalloz, p. 71):

Silk.—Provision is made for a premium of sixty centimes per kilogram of fresh cocoons to be used for thread or for silk worm eggs.

Decree July 25, 1935. (Source: Bulletin Législatif, Dalloz, p. 511):

Butter.—Exporters of butter may benefit by the grant of "smart money" which shall be fixed by ministerial order.

PERU

Law, Nov. 14, 1934:

Sugar.—By this law subsidies are to be granted for sugar production.

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SWEDEN

Decree No. 415, June 28, 1935. (Source: Svenck Författmingssamling):

> *Dairy Products.*—To aid in evening up the monthly returns for milk, a price equalization is to be paid to farmers for milk on which a milk fee has been paid and which is used for making butter, cheese, or other dairy products.

Decree No. 501, Oct. 19, 1934. (Source: Ibid. p. 1017.):

> *Oats.*—State aid for easing freight costs is granted in the transportation of oats for fodder to outlying districts. This is paid usually to the recipient of the oats.

URUGUAY

Law No. 9287, Mar. 1, 1934. (Source: Registro Nacional de Leyes (annual), p. 484):

> *Cattle.*—Grants to each seller of cattle on the market in Montevideo of a premium of $3.00 for each kg. of the live animals to be paid from the receipts from import duties.

Law No. 8858, June 29, 1932. (Source: Ibid, 341):

> *Cattle, Lambs.*—Provides for the payment of premiums to every seller of cattle or lambs to be used in meat preservative factories. Premiums are to be derived from import taxes on cattle.

Law No. 9127, Nov. 14, 1933; Law No. 9, 149, Nov. 30, 1933; Law No. 9, 449, Dec. 18, 1934. (Source: Registro Nacional de Leyes (annual), pp. 940, 995, 1545):

> *Wheat.*—Authorizes Bank of the Republic as Governmental agent to grant bounties for the export of wheat, losses arising therefrom, if any, to be borne by producers.

U. S GOVERNMENT PRINTING OFFICE: 1935