In the instant case, the authority delegated to the President, by § 3 (a) and (b) of the National Industrial Recovery Act is confined within constitutional limits. Looking to the statute to see whether Congress had declared a policy with respect to the subject, and whether it has set up a standard for the President's action, and whether Congress has required any finding by the President in the exercise of the authority, we find that § 3 (a) and (b) discloses all the requirements demanded by the principle expounded in the Panama Refining Co. case (supra). A policy is declared, standards set up, and the findings of [fol. 1662] fact required. The authorization to approve codes is dependent upon a finding that they "will tend to effectuate the policy" declared by the Act. The policy of the Act, though but broadly stated in § 1, is more specific throughout the Act. Congress desired to "reduce and relieve unemployment, to improve standards of labor", "to increase consumption * * * by increasing purchasing power." Section 4 (b) gives the President power to act where he finds "destructive wage or price cutting or other activities contrary to the policy" of the Act. Findings by the President were made a condition precedent to action by him, and specific provisions of limitation were declared. Not only were standards set up, but definite restrictions were placed upon the exercise of his delegated power. He was not himself to determine policies; there was no grant to the Executive of any roving commission to inquire into evils and then, upon discovering them, do anything he pleases.

That the standard is broad, that the limitations are not too confining, that the scope of power invested in the President is of great magnitude, is a necessary and essential factor if the results sought to be accomplished by Congress are to be attained. Congress desired that all business compete on a fair basis, and that obstructions to commerce be removed, that the productive capacity of our industries be more fully utilized, that the consumption of products be increased, and that industry be rehabilitated. The project, the complexity of conditions, presented a situation with which Congress was powerless to contend without delegating to some other department the power to attend to [fol. 1663] the innumerable details thereof.

Congress declared the emergency, declared its purpose and will, and gave to the President the power to exercise

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the means deemed necessary by it to achieve the desired end. His power to approve Codes was, however, limited to those which he found (a) admitted equitably to membership in the association all those engaged in the same trade or industry; (b) were submitted by an association truly representative of the trade or industry; (c) would not oppress or discriminate against small enterprises; (d) would not promote monopolies; (e) would give employees the right to organize and bargain collectively; (f) would insure compliance by an employer with maximum hours of labor and minimum wages; and (g) would tend to effectuate the policy of the Act.

This section was an *a*ffective means of the Congressional exercise of its Constitutional functions. It was both flexible and practicable. The President was to make detailed regulations in conformance with the general standards in order that the Congressional purpose might be realized. Thus we have a valid delegation.

Error is assigned for the refusal to sustain the demurrer to Counts 4, 5 and 60 because ordinances and regulations of the City of New York therein referred to were not pleaded. Section 22 of the Code prohibits the sale of live poultry which has not been inspected and approved in accordance with the rules, regulations or ordinances of the particular area. These Counts deal with this subject without reference to the particular provisions of the City ordinances. Judicial notice may be taken of these provisions [fol. 1664] by the court. Martin's adm. v. B. & O. R. R., 151 U. S. 673; Kaye v. May, 296 Fed. 450. The poultry code which will be judicially noticed by this court (Thornton v. United States, supra) contemplates inspection in accordance with the Sanitary Code (§ 22). Since judicial notice is taken, it was unnecessary to plead such laws. Pennington v. Gibson, 57 U. S. 81.

Appellants argue that there is no evidence to warrant the conviction for conspiracy. Upon examination of the record it will be found that Count 1 of the indictment is amply supported. It warrants the conclusion that there was a concerted and deliberate plan on the part of the appellants to engage in the practice of selling poultry unfit for human consumption—to conceal such sales from the Code Authority, and to violate the other substantive Counts of the indictment for which they have been found guilty—sales of

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unfit poultry; sales of uninspected poultry; violation of straight killing; failure to make sales reports; sales to persons not licensed.

The majority of the court are of the opinion that Count 46—violation of the Code provisions as to wages—and Count 55—as to hours per week for slaughterhouse employees—cannot be sustained. Each of the counts of this indictment must stand upon its own footing. These provisions of the Code forbade employment for more than 48 hours per week and required a minimum wage of 50¢ per [fol. 1665] hour. These Counts are invalid because they have no direct concern with interstate commerce. They were the wages paid at the slaughterhouses to employees not directly engaged in interstate commerce, the number of hours of labor per week and the wages paid cannot be said to affect interstate commerce; they may affect intrastate commerce. Therefore the conviction on Counts 46 and 55 are reversed. The evidence fully sustained the convictions on all the other counts of the indictment.

We have considered the other errors assigned and find no justification for reversal.

Reversed in part; affirmed in part.

Judge HAND concurs in separate opinion.

Judge CHASE concurs, and concurs in Judge Hand's opinion.

[fol. 1665½] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States v. Schechter Poultry Corp. et al. (Copy.) Opinion. Manton, Circuit Judge.

[fol. 1666] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,

against

A. L. A. SCHECHTER POULTRY CORP., SCHECHTER LIVE POULTRY MARKET, Joseph Schechter, Martin Schechter, Alex Schechter, and Aaron Schechter, Appellants

L. HAND, Circuit Judge (concurring):

I am one of the majority who think that counts 46 and 55 should be reversed, and the question at stake has enough

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importance to justify a statement of my reasons. It is always a serious thing to declare any act of Congress unconstitutional, and especially in a case where it is a part of a comprehensive plan for the rehabilitation of the nation as a whole. With the wisdom of that plan we have nothing whatever to do; and were only the Fifth Amendment involved I should be prepared to read the powers of Congress in the broadest possible way. Moreover, the phrase, "fair competition", seems to me a definite enough cue or ground plan for the elaboration of a code. Federal Trade Commission v. Keppel, 291 U. S. 304; Frischer v. Elting, 60 Fed. (2) 711 (C. C. A. 2); Sears Roebuck v. Fed. Tr. Com., 258 Fed. Rep. 307 (C. C. A. 7). Assuming that the preamble of the whole statute will not serve alone (Panama Refining Co. v. Ryan, 293 U. S. 388), practices generally deemed unfair in any trade may I think be made the basis of a delegated power, which is obliged to conform to the varying needs of many industries. But the extent of the power of Congress to regulate interstate commerce [fol. 1667] is quite another matter and goes to the very root of any federal system at all. It might, or might not, be a good thing if Congress were supreme in all respects, and the states merely political divisions without more autonomy than it chose to accord them; but that is not the skeleton or basic frame-work of our system. To protect that frame-work there must be some tribunal which can authoritatively apportion the powers of government, and traditionally this is the duty of courts. It may indeed follow that the nation cannot as a unit meet any of the great crises of its existence except war, and that it must obtain the concurrence of the separate states; but that to some extent at any rate is implicit in any federation, and the resulting weaknesses have not hitherto been thought to outweigh the dangers of a completely centralized government. If the American people have come to believe otherwise, Congress is not the accredited organ to express their will to change.

In an industrial society bound together by means of transport and communication as rapid and certain as ours, it is idle to seek for any transaction, however apparently isolated, which may not have an effect elsewhere; such a society is an elastic medium which transmits all tremors throughout its territory; the only question is of their size.

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In the case at bar such activities as inspecting the fowls after they have arrived, licensing dealers, and requiring reports, are directed at least in part to the control of their importations, and it is not necessary that they should impinge directly upon the importation itself. So much was certainly decided as to this very industry in Local 167 International Brotherhood v. U. S., 291 U. S. 293. The "straight killing" rule is of the same kind; it compels a grading of the fowls at shipment and so determines how [fol. 1668] they shall be cooped and carried. But the regulation of the hours and wages of all local employees who turn the fowls into merchantable poultry after they have become a part of the domestic stock of goods, seems to me so different in degree as to be beyond the line. No one can indeed deny the prosecution's argument that hours and wages will in fact influence the import of the fowls into the state; and there are instances in which purely intrastate activities are so enmeshed with interstate that they must be included in interstate regulation, else none at all is possible. That is the case with railway rates. Houston E. & W. T. R. R. Co. v. U. S., 234 U. S. 342; R. R. Commission of Wisconsin v. Chic. B. & Q. R. R. Co., 257 U. S. 563. Lehmke & Farmers Grain Co., 258 U. S. 50, was of the same kind. There is no such intimate connection here. Again, the hours and wages of railway workmen may be regulated. Wilson v. New, 243 U. S. 332; Baltimore & O. R. R. Co. v. Interstate Commerce Commission, 221 U. S. 612. So too the other conditions of their employment. Texas & N. O. R. R. v. Brotherhood of Railway Clerks, 281 U. S. 548. But this is limited to those actually conducting transportation, where the connection is as close as possible. The employees of these defendants were not engaged in transportation. Finally, there are decisions like Stafford v. Wallace, 258 U. S. 495 and Chicago Board of Trade v. Olsen, 262 U. S. 1, of which all that can be said is that the connection between the intrastate transactions regulated and interstate commerce was found to be close enough to serve. It would be, I think, disingenuous to pretend that the ratio decidendi of such decisions is susceptible of statement in general principles. That no doubt might give a show of necessity to the conclusion, but it would be insincere and illusory, and [fol. 1669] appears formidable only in case the conclusion

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is surreptitiously introduced during the reasoning. The truth really is that where the border shall be fixed is a question of degree, dependent upon the consequences in each case.

The only ground here for bringing hours and wages within the scope of Congress's power is because the raw material on which the men work is substantially all imported into the state; they make dressed poultry out of live fowls. If Congress can control the price of their labor, I cannot see why it may not control the rent of the buildings where the fowls are stored, the cost of the feed they eat while here, and of the knives and apparatus by which they are killed and dressed. All these are necessary factors in the product and all have as much and as little effect upon the importation of the fowls to be killed and dressed as the labor, which is indeed little more than half the cost. There comes a time when imported material, like any other goods, loses its interstate character and melts into the domestic stocks of the state which are beyond the powers of Congress. So too there must come a place where the services of those who within the state work it up into a finished product are to be regarded as domestic activities. Industrial Ass. of San Francisco v. U. S., 268 U. S. 64. Generally the two will coalesce. Work upon material become domestic, can scarcely be other than domestic work; in this it differs from inspection and its ancillary accompaniments. For although inspection is immediately concerned with goods that have arrived, they are ordinarily still in transit; and moreover even were they not, the purpose is directly to control the importation of future goods, like the purpose of the conspiracy in Bedford Cut Stone Co. v. Journeymen's Stone Cutters Association, 274 U. S. 37. But labor [fol. 1670] done to work up materials begins only after the transit is completed in law as well as in fact, and it is not directed towards the importation of future materials; it is a part of the general domestic activities of the state and is as immune as they from congressional regulation.

Judge CHASE concurs in this opinion.

[fol. 1670½] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States of America vs. Schechter et al. Concurring Opinion. L. Hand, C. J.

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[fol. 1671] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court-rooms in the Post Office building in the City of New York, on the 4th day of April, one thousand nine hundred and thirty-five.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Harrie B. Chase, Circuit Judges.

UNITED STATES, Plaintiff-Appellee,

vs.

A. L. A. SCHECHTER POULTRY CORPORATION et al., Defendants-Appellants

Appeal from the District Court of the United States for the Eastern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed on counts 46 and 55, and otherwise affirmed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 1672] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States vs. A. L. A. Schechter Poultry Corp. et al. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 4, 1935. William Parkin, Clerk.

[fol. 1673] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 1672,

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sive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States, Plaintiff-Appellee, against A. L. A. Schechter Poultry Corporation et al., Defendants-Appellants, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 4th day of April, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the said United States the one hundred and fifty-ninth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

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SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 854

ORDER ALLOWING CERTIORARI—Filed April 15, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is advanced and assigned for argument on Thursday, May 2, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 864

ORDER ALLOWING CERTIORARI—Filed April 15, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is advanced and assigned for argument on Thursday, May 2, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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