by the committees of Congress were not only reasonable but were supported by the testimony at the hearings.[41] It is to be presumed that the Congress acted upon the basis of those hearings and committee conclusions.

Whatever may be the views of this Court as to the policy or wisdom of the legislation and as to whether legislation of the character enacted was the best means of providing for the general welfare in the emergency that faced the nation, it is submitted that, on the basis of the legislative record before Congress, the conclusions of the committees and of Congress that the legislation would provide for the general welfare were not arbitrary and are not therefore subject to redetermination by this Court.

Furthermore, this Court may take judicial notice of the fact that, whether or not attributable in part to the Agricultural Adjustment Act, the light of events shows that parity prices have been obtained for most agricultural commodities, that prices for most of these commodities are now on an equality with industrial prices, and that there has been a distinct economic improvement not only in agriculture but in business generally.

Amicus curiae rests upon the foregoing arguments its conclusion that, as a matter of law, the taxes and appropriations under the Agricultural Adjustment Act provide for the general welfare. The Government in its brief, however, (pages 179 to 227) has set forth at length the detailed objectives of the Act and economic data for the conclusion that the achievement of these objectives will promote the general welfare. With the position taken in the Government's brief, the accuracy of the facts set forth, and the conclusions drawn therefrom amicus curiae is wholly in accord.

---

[41] The hearings in question, all held in the 72nd Cong., 2nd Sess., are: Hearings before the Committee on Agriculture, House of Representatives, entitled "Agricultural Adjustment Program", December 14-20, 1932; Hearings before the Committee on Agriculture and Forestry, U. S. Senate, entitled "Agricultural Adjustment Relief Plan", January 25-February 6, 1933; Hearings before the Committee on Finance, U. S. Senate, entitled "Investigation of Economic Problems", February 13-28, 1933, pp. 108 to 162.

(5) *The appropriation and expenditure provisions are not in violation of the Tenth Amendment.*—The power of Congress in question in this litigation is the power of taxation as affected by the appropriations under the Act and the expenditures pursuant thereto by the executive. When the power exerted is solely this power to tax for the general welfare, there can be no validity to the claim by the respondents that the taxing, appropriation, and expenditure provisions constitute a violation of the powers reserved to the States by the Tenth Amendment to the Constitution. These powers are delegated to the Federal Government by the Constitution. The Tenth Amendment reserves to the States, or to the people, only those powers not delegated to the Federal Government by the Constitution. The Federal powers of taxation, appropriation, and expenditure are not so reserved.

However, the contention of respondents seems to be that the exertion of the Federal power in this instance amounts to something more than the levying of taxes and the appropriation and expenditure of moneys of the United States. They urge that, in effect, the exertion of these powers constitutes a regulation of the production of agricultural commodities and, therefore, regulation of a matter reserved to the States by the Tenth Amendment. It is submitted by amicus curiae that no such regulatory power is attempted to be exerted by Congress. The Act establishes no regulatory requirements with respect to production. The Act does not require that acreage or production be reduced or that farmers enter into an agreement with the Secretary of Agriculture to do so. The sole authority of the Secretary of Agriculture in this connection is—

> "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, * * *" [Sec. 8(1)—Italics supplied]

The House Committee on Agriculture in its report on the Act (H. Rept. 6, 73rd Cong., 1st Sess., p. 3) emphasized that such reductions in acreage or production are to be arranged for through agreements or other voluntary methods. There is no attempt at compulsion. No producer has to enter into an agreement with the Secretary. No producer has to accept any rental or benefit payment. No producer has to reduce his acreage or production for market unless he desires to do so. He may refrain from accepting any payments offered him by the Federal Government and continue to produce without regard to any Federal crop program under the Act. He may, but only if he chooses, and then only through his own voluntary act, adapt his production and marketing to such a Federal program.

The statement of Mr. Justice Sutherland with reference to the Maternity Act considered in *Massachusetts* v. *Mellon*, (1923) 262 U. S. 447, is wholly pertinent:

> "First. The state of Massachusetts in its own behalf, in effect, complains that the act in question invades the local concerns of the state, and is a usurpation of power; viz., the power of local self-government reserved to the states.
>
> "Probably it would be sufficient to point out that the powers of the state are not invaded, since the statute imposes no obligation, *but simply extends an option which the state is free to accept or reject.* * * *
>
> * * * * * * * * *
>
> "* * * Nor does the statute require the states to do or to yield anything. If Congress enacted it with the ulterior purpose of tempting them to yield, that purpose may be effectively frustrated by the simple expedient of not yielding." [Pp. 480-482—Italics supplied]

So here the individual producer is simply extended an option which he is free to accept or reject.

Not only is this voluntary character present in theory, but also it is true in practice. The original crop adjustment programs were entered into after meetings held by

farmers throughout the crop areas concerned. The programs were entered into only if such meetings indicated to the Secretary of Agriculture that a sufficient number of farmers would enter into voluntary contracts with him to assure such cooperation that the crop adjustment program might reasonably be expected to be effective in carrying out the declared policy of the Act. Referenda open to all producers of a particular commodity were held before a crop adjustment program for that commodity was continued for a second year. The results of these referenda are set forth in the following table:

Commodity program	Date of referenda	Contract-signers		Noncontract signers		Total farmers	
		Voting	Favoring continuance	Voting	Favoring continuance	Voting	Favoring continuance
Corn-hogs [a]	Oct. 15, '34	535,690	69.9%	44,026	33.1%	579,716	67.2%
Wheat [b]	May 25, '35	398,277	89.0%	68,443	72.8%	466,720	86.7%
Tobacco [c]	Je., Jy., '35	(*)	(*)	(*)	(*)	377,271	95.6%
Corn-hogs [d]	Oct. 26, '35	745,415	91.3%	195,988	67.6%	941,403	86.4%

* Separate figures not available.

[a] See U. S. Dept. Agr., "Agricultural Adjustment in 1934", (1935) pp. 108-109.

[b] See U. S. Dept. Agr., Agri. Adj. Adm., "Wheat Production Adjustment", No. 20, June 25, 1935. Revised by addition of figures for Indiana.

[c] See U. S. Dept. of Agr., Agri. Adj. Adm. Press Releases 32-36 and 268-36, July 6 and August 16, 1935.

[d] Preliminary tabulation. See U. S. Dept. Agr., Agri. Adj. Adm. Press Release 749-36, Oct. 30, 1935.

The results of the referenda clearly indicate that a substantial number of farmers did not enter into voluntary agreements under the original programs and also that a substantial, although smaller, number are unlikely to enter into voluntary agreements under the continued program. Obviously, such a situation involves no coercion and no regulation. The option "to accept or reject" referred to by Mr. Justice Sutherland exists in actuality.

Further, an agreement or contract is the usual method by which the Federal Government carries out its powers

of expenditure. Most moneys appropriated are expended in fulfillment of contractual obligations entered into on the one hand by the Federal Government and on the other by individual citizens. The enforcement of the contracts under the Agricultural Adjustment Act is by ordinary judicial process. No sovereign right of the States is interfered with and the contracts are subject to the usual contract law of the State. The contracts are merely a necessary and proper method of carrying out the expenditure powers of the Federal Government.

The coercion and the mandatory rules of conduct which were present in *Hammer* v. *Dagenhart,* (1918) 247 U. S. 251, and the *Child Labor Tax Case,* (1922) 259 U. S. 20, and which the individual was not free to accept or reject, are not present in this case. When, as here, only the powers of taxation, appropriation, and expenditure are exercised and there is no attempt to regulate, then there is no invasion of the field reserved to the States by the Tenth Amendment. For example, the powers of the States, within constitutional limits, to regulate production or to exert their own taxing, appropriation, and expenditure powers with respect thereto, or to authorize cooperative associations of producers or to regulate marketing of agricultural commodities within the State, are left untouched by the Federal Act.

Nor does the Act regulate or fix the prices of agricultural commodities. Its effect thereon flows from the exercise of the Federal powers just as the effect of the protective tariff taxes upon prices of domestic commodities domestically consumed flows from the power of the Federal Government to levy protective tariff taxes. Just as the cod fishery bounties referred to above (pp. 57 to 68) and numerous other appropriations of Congress do not regulate or coerce but merely afford the individual or the State an opportunity to accept or reject, so under the Agricultural Adjustment Act there is no regulation but only an offer of benefits which the individual may, of his own volition and in ac-

cordance with his own view as to his best economic interests, voluntarily accept or reject.

In *Ellis* v. *United States*, (1907) 206 U. S. 246, this Court had before it the Act of Congress limiting the hours of daily service of laborers and mechanics employed upon public works of the United States. The limitations were pursuant to the Government's powers of appropriation and expenditure as carried out through contracts between the Government and private contractors. As this Court said—

> "It is true that it [the Congress] has not the general power of legislation possessed by the legislatures of the states, and it may be true that the object of this law is of a kind not subject to its general control. * * * however, the fact that Congress has not general control over the conditions of labor does not make unconstitutional a law otherwise valid, because the purpose of the law is to secure to it certain advantages, so far as the law goes." [P. 256]

Clearly, it would seem that the Congressional power of expenditure may, through contracts and conditions therein, affect matters that the States may regulate and that Congress may not regulate. That fact, however, does not invalidate such an exercise of the power of expenditure. Congress may attain such advantages as it deems for the general welfare, through expenditures pursuant to contracts that are made by the Government with those who voluntarily choose to enter into such contracts.

III

The Processing Tax Provisions Do Not Involve An Unconstitutional Delegation of Legislative Power

1. The contention that the processing tax provisions involve an unconstitutional delegation of legislative power is now immaterial because Congress has expressly ratified the assessment and collection of the taxes.

Amicus curiae has, in the foregoing portions of this brief, urged that the processing taxes are valid notwithstanding

the appropriation and expenditure provisions of the Act. The respondents contend, however, that the tax provisions of the Act are also invalid because of improper delegation of legislative power. (R. 28-29, Pars. 6, 7) It is the position of amicus curiae that, even assuming *arguendo* that such an improper delegation occurred, the contention has become immaterial by reason of the provisions of section 21(b) of the Agricultural Adjustment Act, added thereto by section 30 of the amendatory Act of August 24, 1935. These provisions are, in part, as follows:

> "(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective * * * 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 * * * 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. * * * 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."

The quoted provisions were enacted by Congress subsequent to the decision of the Circuit Court of Appeals in this case and prior to the grant of the writ of certiorari herein by this Court. According to the statement of the House managers the quoted provisions make the "legalization and ratification effective as if there had been in existence, immediately prior to the occurrence of the particular action ratified and legalized, an act of Congress authorizing such action." (H. Rept. 1757, 74th Cong., 1st Sess., p. 34) The committees cited the decision of this Court in *United States* v. *Heinszen & Co.*, (1907) 206 U. S. 370, as authority for the exercise of such power by Congress. (H. Rept. 1241, 74th Cong., 1st Sess., p. 21; S. Rept. 1011, 74th Cong., 1st Sess., p. 23)

Significant statutory precedents for Congressional ratification of executive action are furnished by section 1 of the Emergency Banking Act of March 9, 1933 (48 Stat. 1), and by section 13 of the Gold Reserve Act of 1934 (48 Stat. 343). The President and the Secretary of the Treasury, during the monetary and banking crisis which existed in the early days of March, 1933, had, under color of section 5(b) of the Trading with the Enemy Act, issued orders and regulations of extensive scope and effect relating to the activities of banks and dealings in gold. There was grave question whether section 5(b) of the Trading with the Enemly Act had expired. Further, an examination of that provision will disclose the striking breadth of the power there conferred and the virtual absence of legislative direction to guide executive action. Under these circumstances, the first section of the first Act of the 73rd Congress provided as follows:

> "Section 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed."

Sections 43 and 45 of Public No. 10, 73rd Congress, (48 Stat. 51-54) (the so-called "Thomas Amendment") conferred on the President various powers in connection with the monetary system of the country. These included the power to enter into agreements with Federal reserve banks, to conduct open market operations, to issue United States notes, to fix the weight of the gold dollar, to accept silver in payment of foreign debts, and to issue silver certificates. Section 13 of the Gold Reserve Act of 1934 not only "approved, ratified, and confirmed" actions, regulations, etc., taken or issued under those sections but also actions, regulations, etc., taken or issued under the Emergency Banking Act of March 9, 1933. That section reads as follows:

> "Sec. 13. All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made or issued by the President of the United States or the Secretary of the Treasury, under the Act of March 9, 1933, or under section 43 or section 45 of title III of the Act of May 12, 1933, are hereby approved, ratified, and confirmed."

It is certainly reasonable to suppose that such recent and important examples of Congressional ratification of actions of the executive may well have been the models that served as a basis for the legalization and ratification provisions of the amended Agricultural Adjustment Act.

It is submitted that this case is to be decided by this Court in accordance with the law as in effect at the time of the decision by this Court, irrespective of the law at the time the case arose. (Cooley, "Constitutional Limitations", 8th ed. pp. 788-790) In *Rafferty* v. *Smith, Bell, & Co., Ltd.*, (1921) 257 U. S. 226, this Court reversed judgments requiring refunds of certain taxes, on the sole ground that the taxes were validated by a ratifying Act passed after those judgments but prior to the granting of a writ of certiorari by this Court.

The argument has been made, however, that Congress can not ratify that which it could not originally have authorized; that it could not originally have authorized an unconstitutional delegation of legislative power; and that, therefore, it can not ratify the taxes in question. It is the position of amicus curiae that (leaving aside the question of delegation of legislative power) the processing taxes are valid. Congress could have originally authorized the processing taxes. It could, therefore, validate such taxes if, as originally enacted, they were invalid by reason of some defect as to the form in which they were authorized. That this defect is a constitutional defect is immaterial. The legalization and ratification by Congress is not of the unconstitutional delegation of legislative authority but of the assessment and collection of taxes on the processing of certain agricultural

commodities at rates fixed by the Secretary of Agriculture. Whether or not the acts of the Secretary of Agriculture in fixing the particular rates of tax were valid and whether or not the acts of the Secretary of the Treasury and his subordinates in assessing and collecting the taxes at those rates were valid, when originally taken, is immaterial, for it is those acts that are now legalized and ratified.

Congress may legalize and ratify taxes, illegal when assessed and collected but assesed and collected under color of authority, if it could have imposed such taxes in the first instance and if at the time of legalization and ratification it still had the power to impose such taxes. (*United States* v. *Heinszen & Co.*, (1907) 206 U. S. 370; *Rafferty* v. *Smith, Bell, & Co., Ltd.*, (1921) 257 U. S. 226; *Hamilton* v. *Dillin*, (1875) 21 Wall. 73; *Mattingly* v. *District of Columbia*, (1878) 97 U. S. 687; *Tiaco* v. *Forbes*, (1913) 228 U. S. 549; *Charlotte Harbor & Northern Rwy.* v. *Wells*, (1922) 260 U. S. 8; *Hodges* v. *Snyder*, (1923) 261 U. S. 600; *Mascot Oil Co.* v. *United States*, (1931) 282 U. S. 434; *Boardman v. Beckwith*, (1865) 18 Iowa 292)

Taxes on the processing of cotton, at the rate of 4.2 cents per pound, were assessed and collected by the Secretary of the Treasury under color of authority. Congress could have, by express legislative provision, imposed such a tax in the first instance. Congress may, therefore, under the decisions cited, legalize and ratify a tax assessed and collected at such rate. By so doing it does not legalize or ratify its own action in unconstitutionally delegating legislative authority but legalizes and ratifies the actions of other Government officers, namely, the Secretary of the Treasury and the Secretary of Agriculture. The case of *Read* v. *City of Plattsmouth*, (1883) 107 U. S. 568, is in point. In that case the legislature of Nebraska ratified and validated certain bonds issued by the City of Plattsmouth and also ratified and validated taxes which had been imposed by the city to pay for the bonds. It was objected that the rati-

fication was not good on the ground that it violated the State constitutional provision forbidding the granting of corporate power by special Act of the legislature. This Court held that this objection was not well taken for the reason that corporate power was not granted by this ratification. The ratification did not give the city power to issue the bonds and levy the taxes but simply operated on the bonds and taxes themselves directly. This Court said—

> "Here the power of the legislative department of the State is directly exercised upon the transaction itself, and upon a matter clearly within the scope of its authority. * * *" [P. 576]

The fact that the original defect assumed for purposes of this argument flows from an unconstitutional delegation of legislative power does not prevent the exercise by a legislature of its power of legalization and ratification. As above stated, the legalization and ratification is not of the unconstitutional delegation of power but of the acts of the administrative officers taken under color of the delegated authority. While no decisions of this Court involving the precise situation have been found,[41a] recent decisions of the New York Court of Appeals do involve this situation.

[41a] A somewhat analogous situation was presented in *Burnet* v. *Aluminum Goods Mfg. Co.*, (1932) 287 U. S. 544. The Revenue Act of 1917 did not provide for consolidated returns by corporations. Nevertheless, regulations were issued under the Act by the Treasury Department (Regulations 41, Article 77) authorizing such returns. These consolidated return regulations were validated by section 1331 of the Revenue Act of 1921 (42 Stat. 227, 319) which provided that for the purpose of determining excess profits taxes the Revenue Act of 1917 "shall be construed to impose the taxes therein mentioned upon the consolidated returns of net income and invested capital in the case of domestic corporations and domestic partnerships that were affiliated during the calendar year 1917." In the case above cited this Court apparently assumed the validity of section 1331 and regarded the regulations in question as having been ratified or validated. In *Trustees for Ohio & Big Sandy Coal Co.* v. *Commissioner*, (1930) 43 F. (2d) 782 (C. C. A. 4th), section 1331 was specifically held constitutional.

The New York State emergency banking law (Laws of New York, 1933, c. 41, sec. 2) authorized the banking board to suspend any provision of the banking law in whole or in part and—

> "to adopt, rescind, alter and amend rules and regulations inconsistent with and in contravention of any law: (1) To safeguard the interests of depositors and stockholders in corporations and depositors with persons subject to the supervision of the banking department; (2) To prescribe and regulate methods of conducting business by such persons or corporation; (3) To prescribe what is for such persons and corporations a safe or unsafe condition for transacting business"

The legislature further provided, in section 3, that any "rule, or regulation of the banking board adopted or made pursuant to the * * * act shall supersede any provision of law inconsistent therewith". In *Moses* v. *Guaranteed Mortgage Company of New York*, (1934) 239 App. Div. 703, the Appellate Division held invalid, as an unconstitutional delegation of legislative power, the provisions of the Act of 1933 on which the banking board relied for authority to make the rules and regulations involved in the case. An appeal was taken from the decision of the Appellate Division to the Court of Appeals. However, prior to the decision of the Court of Appeals, the New York State legislature passed chapter 11 of the Laws of New York, 1934, which made more definite the authority devolved upon the banking board (section 2) and in section 4 provided—

> "All actions and/or omissions, prior to the passage of this act, taken or omitted to be taken in accordance with the suspensions, resolutions, rules and regulations of the banking board [superintendent of insurance] pursuant to the provisions of the chapter [i.e., the 1933 Act] amended by this act are hereby approved and confirmed, but only to the extent that such actions and/or

omissions have been in accordance with such suspensions, resolutions, rules and regulations."

On appeal, the Court of Appeals reversed the judgment of the Appellate Division. (*Moses* v. *Guaranteed Mortgage Company of New York,* (1934) 264 N. Y. 476) The Court of Appeals rendered a per curiam opinion resting its decision on the authority of *Matter of People* (*Title & Mortgage Guarantee Company of Buffalo*), (1934) 264 N. Y. 69, decided by the court the same day.

The case referred to by the Court of Appeals in the per curiam opinion involved a proceeding by the State superintendent of insurance under Laws of New York, 1933, chapter 40, granting him a broad power to make rules and regulations which should supersede existing law inconsistent therewith—a power similar in its breadth to the one held invalid in the case of the banking board. The State legislature, however, had amended the 1933 insurance law so as to make more definite the authority devolved upon the superintendent of insurance and in section 6 of the amendatory Act (Laws of New York, 1934, c. 10) enacted ratifying provisions identical with those above quoted in the case of the banking board, except that the words "superintendent of insurance" were substituted for "banking board". Thereafter, the Court of Appeals, in the case referred to, sustained the validity of action taken pursuant to the authority granted the superintendent of insurance in the 1933 Act and stated that the 1934 amendments were such "as to remove possible attack on such ground", i. e., on the ground of improper delegation of legislative power.

The decisions of the Court of Appeals of New York State in the two cases seem authority for the following propositions: First, acts of administrative officers pursuant to color of authority of an Act involving an unconstitutional delegation of legislative power may be ratified by the legislature; second, such ratification is valid even if it occurs after the decision of a lower court holding the original stat-

ute invalid as an unconstitutional delegation of legislative power and the acts thereunder illegal, but prior to decision by a higher court on appeal; and, third, the case is to be decided in accordance with the law in force at the time of the appeal.

Furthermore, even though the legalizing and ratifying Act here in question were construed as a retroactive imposition of a tax on the processing of cotton at the rate of 4.2 cents per pound it would still be valid. A tax is not necessarily invalid because retroactively applied. (*Stockdale* v. *Atlantic Insurance Company of New Orleans,* (1874) 20 Wall. 323; *Billings* v. *United States,* (1914) 232 U. S. 261; *Brushaber* v. *Union Pacific R. R. Co.,* (1916) 240 U. S. 1; *Lynch* v. *Hornby,* (1918) 247 U. S. 339; *Hecht* v. *Malley,* (1924) 265 U. S. 144; *Milliken* v. *United States,* (1931) 283 U. S. 15) This is particularly true where the retroactive tax does not impose, as was said by this Court in *Lewellyn* v. *Frick,* (1925) 268 U. S. 238, 252, "an unexpected liability that, if known, might have induced those concerned to avoid it, and to use their money in other ways". The respondents conducted their business of manufacturing cotton knowing that a processing tax was imposed and being assessed and collected at least under color of authority of an Act of Congress.

The limitation upon delegation of authority to administrative officers is that Congress may not abdicate the essential legislative functions with which it is vested and permit others to determine matters of policy which it should itself determine. (*Panama Refining Co.* v. *Ryan,* (1935) 293 U. S. 388) The administrative officer may not be granted power to exercise unfettered discretion to make whatever laws he thinks may be needed. (*Schechter Poultry Corp.* v. *United States,* (1935) 295 U. S. 495) But where by legalization and ratification Congress adopts those acts as its own there is no abdication of essential legislative functions. By the legalizing and ratifying Act Congress resumes the exercise of its essential legislative

functions and no longer abdicates them. It exercises a curative authority that every legislature must possess if the functions of Government are not to be defeated through technical imperfections that occur from time to time in legislative action.

Up to September 30, 1935, the total tax proceeds pursuant to the provisions of the original Agricultural Adjustment Act amounted to $993,825,150.03. (See page 19, above) The amounts heretofore distributed as rental and benefit payments and the outstanding future commitments to make such payments, for the fiscal years 1934 to 1938, inclusive, totalled as of September 13, 1935, $1,376,017,274.[42] These tax proceeds have already been expended to reimburse the general funds of the Treasury for advances for rental and benefit payments. Additional tax collections will be necessary to meet the existing commitments for distribution of rental and benefit payments. The loss of the processing taxes as a source of receipts, through failure to recognize in Congress a power to legalize and ratify action taken under the law originally imposing those taxes, would mean a burden upon the Treasury to the extent that the taxes collected are refunded and to the extent that taxes due remain uncollected. The obligation of obtaining revenue for the refunds and for the existing commitments for distribution of rental and benefit payments not yet met, constitute moral obligations which Congress should meet and, under *United States* v. *Realty Co.*, (1896) 163 U. S. 427, would have power to meet. Such obligations could only be met by providing additional sources of revenue. The power of legalization and ratification by a legislature prevents the occurrence of such a situation and avoids the imposition of new tax burdens.

---

[42] Publication of the Budget Section, Finance Division, Agricultural Adjustment Administration, entitled "Estimated Distribution of Rental and Benefit Payments by Months (Fiscal Years 1935 and 1936)", issued September 13, 1935.

2. Irrespective of the legalization and ratification provisions, there is no unlawful delegation of legislative power to determine the rate of tax or the time when the tax becomes effective or terminates.

For the purposes of the foregoing argument with respect to the provisions for the legalization and ratification of the processing taxes, it was assumed *arguendo* that the processing tax provisions involved an unlawful delegation of legislative power. The position of amicus curiae is that, on the contrary, the provisions involve no such delegation.

Congress gave extensive consideration to the question of delegation of legislative power with respect to the financing provisions of the various surplus control bills. This is quite evident in the committee reports with regard to those surplus control measures that provided for the equalization fee, the forerunner of the present processing tax.[43] With respect to the Agricultural Adjustment Act itself Congress obviously had in mind the decision of this Court in the Flexible Tariff Case (*J. W. Hampton, Jr. & Co.* v. *United States*, (1928) 276 U. S. 394) when the House Committee on Agriculture in its report stated that "In their legal aspects these flexible tax provisions are similar to the provisions of the tariff act of 1930 providing for the flexible tariff". (H. Rept. 6, 73rd Cong., 1st Sess., p. 5)

(a) RATE OF TAX.

Section 9 of the Agricultural Adjustment Act provides as follows:

> "(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; * * *

---

[43] See H. Rept. 631, 68th Cong., 1st Sess., pp. 89-92; H. Rept. 1790, 69th Cong., 2nd Sess., pp. 28-29; H. Rept. 1141, 70th Cong., 1st Sess., p. 37; H. Rept. 1273, 70th Cong., 1st Sess., p. 37; S. Rept. 1304, 69th Cong., 2nd Sess., pp. 28-30; S. Rept. 500, 70th Cong., 1st Sess., p. 21.

> "(c) * * * the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2 [i.e., in case of cotton, the pre-war period, August 1909-July 1914]; 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."

The available statistics referred to were well known to Congress. Thus, the House Committee on Agriculture in its report on the National Emergency Bill, the immediate forerunner of the Agricultural Adjustment Act and the bill from which the processing tax provisions were taken, stated—

> "The pre-war purchasing power or fair exchange value of the commodity will be determined and proclaimed by the Secretary of Agriculture in accordance with index figures which he now maintains and publishes from time to time." [H. Rept. 1816, 72nd Cong., 2nd Sess., p. 5]

and the same committee in its report upon the Agricultural Adjustment Act stated that—

> "If the basic agricultural commodities were now at price levels which would give them at farm prices, a value equivalent to their pre-war purchasing power, the prices therefor would be approximately as set out in the following tables:" [H. Rept. 6, 73rd Cong., 1st Sess., p. 2]

The committee then set forth tables showing the average price of farm products received by producers on February 15, 1933, and the "parity price" (the popular name for the fair exchange value) for the same products as of the same date, computed on the basis of the index figures. (H. Rept. 6, 73rd Cong., 1st Sess., p. 2) Again, for instance, in the

hearings upon the National Emergency Bill before both the House and Senate committees there were set forth the index figures as to prices paid by the farmers for the commodities bought by them and the current average farm price for wheat, hogs, cotton, rice, tobacco, butter fat, and peanuts produced by them, and the "ratio price" (another popular name for the fair exchange value) for the same commodities.[44]

Since January, 1908, the Department of Agriculture has collected at monthly intervals the current average farm price of various farm commodities, including cotton, and published them monthly since March, 1908 (R., Addendum 16); and the Department of Agriculture has also collected information on the prices of articles farmers buy for the period since 1909 and, since August, 1928, has published at quarterly intervals an index of prices based on this information (R., Addendum 18). These statistics have been collected and compiled according to a regularly established and unvarying procedure. This work is now done by the Bureau of Agricultural Economics of the Department. There is no possibility of confusion as to the statistics referred to by Congress for they are the official statistics used by the Department in its various activities. The statistics and the method of their collection and compilation did not originate with the Agricultural Adjustment Act but were in effect long prior thereto and are collected and compiled wholly independently of that Act. (R., Addendum 16-20) The record in this case shows that the statistics were collected and compiled in accordance with the established practice. (R., 11-12, Pars. 9, 12) The care with which the statistics are actually gathered and compiled is well set forth in the testimony of Nils Olsen, Chief of the

[44] Hearings before the Committee on Agriculture, House of Representatives, 72nd Cong., 2nd Sess., entitled "Agricultural Adjustment Program", December 14-20, 1932, pp. 27-29; Hearings before the Committee on Agriculture and Forestry, U. S. Senate, 72nd Cong., 2nd Sess., January 25-February 6, 1933, entitled "Agricultural Adjustment Relief Plan", pp. 101-106.

Bureau of Agricultural Economics, Department of Agriculture, in the addendum to the record in this case, pages 16-20.

In the provisions of section 9(b) and (c), quoted above, Congress required only a simple mathematical computation for ascertaining the fair exchange value of a commodity such as cotton. The processing tax rate becomes a mere matter of subtraction of the current average farm price for the commodity from the figure for its fair exchange value. There is no contention that the processing tax rate for cotton was not in accordance with the Act, and an allegation to the effect that it was not was stricken from the receivers' report upon the receivers' own motion. (R. 8-9)

The computation of the fair exchange value for cotton, for instance, is made as follows: The current average farm price for cotton during the period August, 1909-July, 1914, is multiplied by the current index of the prices farmers pay for commodities bought by them. Thus, as stated by the Secretary of Agriculture in testifying before the Senate Committee on Agriculture and Forestry—

> "The price of things which farmers are buying today costs them about 104 percent of that basic period. [i. e., 1909 to 1914] The price of wheat in the basic period was, we will say, 90 cents; 104 percent of 90 cents would be, roughly, 94 cents. That is the way in which we ascertain it [i. e., the fair exchange value]."[45]

The processing tax rate is therefore the difference between the two figures, fair exchange value and current average farm price; and these figures are obtained not through estimates or predictions but through careful ascertainment of past facts in accordance with a regularly established and unvarying procedure. The past facts are capable of accurate ascertainment far more so, for instance,

[45] Hearings before the Committee on Agriculture and Forestry, U. S. Senate, 73rd Cong., 1st Sess., March 17-28, 1933, entitled "Agricultural Emergency Act to Increase Farm Purchasing Power", p. 25.

than such factors as "market value" and "cost of production" which are necessary to the computation of many income taxes and tariff rates under existing law. Such factors as cost of production are admittedly incapable of precise ascertainment. (*Hampton, Jr., & Co.* v. *United States,* (1927) 14 Ct. Cust. Appls. 350)

Adjustments in the tax rate.—Section 9(a) of the Act provides that the rate for processing taxes shall be determined by the Secretary of Agriculture as of the date the tax first takes effect and that the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him in conformity with the formula laid down in section 9(b) and (c). This adjustment would take account of any change in the farm price of cotton and in the price paid by farmers for articles bought by them. Section 9(b) also directs that, if the Secretary has reason to believe that the tax at the rate computed in accordance with the formula will cause such reduction in the quantity of the commodity or products thereof domestically produced as to result in the accumulation of surplus stocks thereof or in the depression of farm price of the commodity, then he shall, if after investigation and hearing he finds such result will occur, reduce the rate to such rate as will prevent the accumulation of surplus stocks and depression of the farm price of the commodity.

The Secretary of Agriculture has not, under either of the foregoing provisions, taken any action to adjust the rate of the processing tax on cotton. The question of the validity of these provisions is not here strictly involved. The provisions for determining the rate of tax are wholly separable from the remaining provisions of the Act and without them the Act would be effective to accomplish the Congressional objectives, as is demonstrated by the failure to date to act under them. Furthermore, the taxes involved in the present case would not be affected by any such adjustment if hereafter made by the Secretary of Agriculture

and, in the case of an adjustment hereafter made under section 9(b) to prevent accumulation of surplus stocks or depression of the farm price, the adjustment would have to be made in accordance with the new provisions of that section as amended which have now superseded the provisions of the original section. (See section 12 of the amendatory Act of August 24, 1935)

In any event, however, it is submitted that these provisions for the adjustment of the processing tax rate are fully within the decisions of this Court in *J. W. Hampton, Jr. & Co.* v. *United States,* (1928) 276 U. S. 394, and *Marshall Field & Co.* v. *Clark,* (1892) 143 U. S. 649, in which cases far broader delegations of power, in fact, than those involved here were sustained by this Court in connection with tax rates.

(b) THE TIME THE TAX BECOMES EFFECTIVE.

(*1*) *The marketing year.*—Section 9(a) provides that processing taxes shall be in effect with respect to the commodity from the beginning of the marketing year and that—

> "The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture."

This provision merely requires the ascertainment of a well-known trade fact. The marketing year for cotton commences August 1st and the date is widely accepted. (R. 11, Par. 11; R., Addendum 21-22) The date is also recognized by Congress in the cotton statistics Act of March 3, 1927. (44 Stat. 1372)

(*2*) *The determination that rental or benefit payments are to be made.*—The particular marketing year on which a processing tax is to commence with respect to a basic agricultural commodity is the marketing year next following the date of the proclamation by the Secretary of Agriculture of his determination "that rental or benefit payments

are to be made'' with respect to such basic agricultural commodity. (Sec. 9(a))

The processing tax thus takes effect automatically upon the beginning of the marketing year next following a readily ascertainable fact, namely, the issuance of the proclamation of a prescribed character by the Secretary of Agriculture.

The reason for tying up the imposition of taxes with the making of expenditures for rental or benefit payments is obvious. The intent of Congress that the agricultural adjustment programs should be self-financing and should not be the cause of an unbalanced budget has been explained in the foregoing pages of this brief. (See pages 10 and 11) Congress was in this position: If no expenditures were to be made by way of rental or benefit payments to cotton farmers, for instance, then no taxes were necessary to produce revenue to meet these expenditures. If such expenditures were made, however, then the budget would be unbalanced and the general funds of the Treasury would be called upon to meet the expenditures unless in conjunction therewith adequate taxes came into operation. The Secretary of Agriculture was, in effect, prohibited from spending unless at the same time his program with respect to the particular commodity recognized that processing taxes would automatically come into effect upon the processing of that commodity. The tying together of the expenditure and tax provisions is therefore a limitation upon the Secretary's discretion in making expenditures. Expenditures and taxes should, in the judgment of Congress as evidenced in the Act, be required to go hand in hand. The coming into effect of the processing taxes was therefore made automatically dependent upon the coming into effect of the expenditures for rental and benefit payments.

In the view of the Circuit Court of Appeals, however, this inter-relation of expenditure and taxation constituted an invalid delegation of legislative power. The argument seems to be that, while the imposition of the taxes upon the

processing of a commodity depended automatically upon the making of expenditures with respect to that commodity, the discretion to make the expenditure was not adequately limited by Congress and was an invalid delegation of power. Therefore, the power of taxation being dependent upon an invalid delegation of legislative power to make expenditures, the taxation provisions are in consequence invalid.

This argument fails to recognize that the discretion resting in an executive officer to determine the amount, time, method, and objects of an expenditure to be made by the executive within the limits of the total amount of the appropriation and the time, method, and objects thereof as presented in the appropriation law is not a legislative, but an executive, power. The exercise of such discretion, therefore, does not constitute a delegation of power, much less an unconstitutional delegation of legislative power.

The history of the legislative power of appropriation demonstrates the executive character of the function of expenditure. In *State* v. *Moore,* (1896) 50 Neb. 88, this history is summarized—

> "The origin of legislative appropriations is so well known that it seems almost a work of supererogation to here allude to it. Legislative appropriations are the outgrowth of the long struggle in England against royal prerogative. By degrees the power of the crown to levy taxes was restrained and abolished, but it was found that, so long as the crown might at its own discretion disburse the revenue, the reservation to the people through parliament of the power to raise revenues was not a complete safeguard. Efforts to control the crown in disbursement as well as in the collection of revenues culminated with the revolution in 1688, and since then the crown may only disburse moneys in pursuance of appropriations made by act of parliament. * * * When our governments, state and federal, came to be established, the requirement of legislative appropriations was adopted from England, * * *"
> [Pp. 94-96]

The Constitution provides (Art. I, Sec. 9, Clause 7) that—

> "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; * * *"

The constitutional provision limits the executive function of expenditure by the prerequisite of Congressional action through an appropriation, including by implication such limitations as Congress may choose to place upon the appropriation as regards amount, method, objects, and time of expenditure.[46]

> "An appropriation is *per se* nothing more than the legislative authorization prescribed by the Constitution that money may be paid out at the Treasury. * * *" [*Campagna* v. *United States,* (1891) 26 C. Cls. 316, 317]

The constitutional provision limits the executive discretion with respect to expenditures as exercised by the President through those officers who have duties with respect to the custody and disbursement of the public moneys. (See page 30, above)

The fact that the Constitution vests in the Congress the duty of restricting the right of expenditure to expenditures made pursuant to an appropriation does not make the power of expenditure a legislative power. Within the limits of the appropriation as to amount, method, objects, and time of expenditure, the executive function of expenditure remains uncontrolled.

And there must necessarily be discretion in the executive with regard to expenditures if the Government is adequately to function. It is impracticable for Congress to prescribe in minute detail the time when a particular expenditure is

---

[46] Of course, irrespective of the action of Congress, no appropriation for raising and supporting armies is available for expenditure for a period of more than two years after the date of the appropriation. (Constitution, Art. I, Sec. 8, Clause 12)

to be made and the method to be employed in making the expenditure and the detailed items of the object of expenditure. The object, the method, and the time must be expressed in general terms. The constitutional requirement of appropriation is a check to be exercised by Congress in such detail as it deems necessary to prevent an otherwise uncontrolled executive power of expenditure once revenue has been provided. Supervision over the executive in his observance of such limitations on expenditure as are imposed by Congress through its appropriating function are limited by Congress to the functions vested by Act of Congress in the Comptroller General of the United States and by the rules of the respective Houses to those several committees that have jurisdiction over expenditures in the executive departments. These are the safeguards set up by Congress and they in no wise restrict the discretion of the executive within the limits of the terms of the appropriation.

Further, the discretion in the executive to make expenditures is not a private right as to the exercise of which the respondents may complain and as to which the judicial powers of courts of the United States extend under Article III of the Constitution. The executive discretion as to expenditures involves a matter of public right which Congress may or may not see fit to present in such form that the judicial power is capable of acting on it. Thus, in *Murray* v. *The Hoboken Land & Improvement Co.*, (1856) 18 How. 272, Mr. Justice Curtis said—

> "there are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper. * * *" [P. 284]

Congress has not seen fit to present public rights with regard to executive discretion in making expenditures, in

such form that the courts may take cognizance of them.

The question then arises—are taxing provisions invalid as a delegation of legislative power if the imposition of the tax is made to depend automatically upon the exercise of the executive function of expenditure? The time of imposition of a particular tax rate has heretofore been made to depend upon the exercise of executive functions. Thus, under section 3 of the Tariff Act of 1890, held valid by this Court in *Marshall Field & Co.* v. *Clark,* (1892) 143 U. S. 649, the time of imposition of a particular rate of tax depended on the President's being satisfied that the government of any country producing and exporting sugars, etc., was imposing duties or other exactions upon agricultural or other products of the United States which "he may deem to be reciprocally unequal and unreasonable". Upon the issuance by the President of a proclamation to that effect, the new tax came into operation. This Court said that the law implied that the President would examine the commercial regulations of other countries producing and exporting sugar and form a judgment as to whether they were reciprocally equal and reasonable or the contrary in their effect upon American products. This function of ascertaining the facts and forming a judgment clearly is not a legislative function. It is an executive function when performed by an executive officer. And in section 315 of the Tariff Act of 1922, held valid by this Court in *J. W. Hampton, Jr. & Co.* v. *United States,* (1928) 276 U. S. 394, the time of imposition of the flexible tariff duties depended on executive action. The Tariff Commission was required to make certain investigations, and thereafter the President fixed and established the new rate "whenever the President upon investigation" ascertained the existence of certain differences in costs of production not equalized by existing tariff duties. It was only when these two executive acts had been performed that the time for the imposition of the new duty arrived. As this Court said—

> "There was no specific provision by which action by the President might be invoked under this act, but it was presumed that the President would through this body of advisors keep himself advised of the necessity for investigation or change and then would proceed to pursue his duties under the act and reach such conclusion as he might find justified by the investigation, and proclaim the same if necessary." [P. 405]

No rule or standard at all was laid down as a guide when to exercise these preliminary executive functions under the two Tariff Acts. This was left to the discretion of the President in assisting Congress to carry out the policy of the Tariff Acts.

So, under the Agricultural Adjustment Act, it must be presumed that the Secretary of Agriculture will exercise his executive function of expenditure, within the limitations of the appropriation, as and when he is of the opinion that expenditures for rental and benefit payments are necessary in order to effectuate the declared policy of the Act. It is submitted that if new tariff duties can come into effect by reason of the exercise of an executive function which Congress may invoke, then processing taxes may come into effect upon the exercise of the executive function of expenditure which Congress has invoked.

As was said by this Court further in the *Hampton* case—

> "This is not to say that the three branches are not co-ordinate parts of one government and that each in the field of its duties may not invoke the action of the two other branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental co-ordination." [P. 406]

Congress has in the Agricultural Adjustment Act invoked the assistance of the executive in part through the

use of its function of expenditure. It invokes that assistance in order to carry out the policy of the Act. It also invokes that assistance in order to specify the time when the processing taxes shall become operative. This involves no delegation of legislative power. The processing tax is effective automatically with respect to a particular commodity whenever the Secretary of Agriculture has exercised his executive function of proclaiming that he will make expenditures for rental and benefit payments with respect to that commodity. The considerations which lead the Secretary to exercise that executive function within the limits prescribed by the Act are considerations unrelated to taxation. Even though the Act provided for no taxes or the taxes under the Act were invalid, he would continue to exercise the executive function of expenditure and make expenditures within the limit of funds made available to him.

The State statute considered by this Court in *Michigan Central R. R. Co.* v. *Powers,* (1906) 201 U. S. 245, provided that the rate of taxation on railroad property should be the average rate of taxation on all other property subject to ad valorem taxes, to be ascertained by dividing the total tax levy on all such property by the value of the property. The average rate of taxation on all other property subject to ad valorem taxes depended, in part, upon the exercise of the discretion of local assessors in making local property assessments and, in part, upon the mathematical computation of the average by the State board of assessors. This Court held the statute valid and, in discussing the objection raised of delegation of legislative functions, it said—

> "It may be laid down as a general proposition that where a legislature enacts a specific rule for fixing a rate of taxation, *by which rule the rate is mathematically deduced from facts and events occurring within the year and created without reference to the matter of that rate,* there is no abdication of the legislative function, but, on the contrary, a direct legislative determination of the rate." [P. 297—Italics supplied]

If the rate of taxation may be made to depend upon executive action taken by assessment officers of the State in another connection, it is submitted that the time when a rate of taxation becomes effective may likewise depend upon executive action. And in the *Michigan Central* case this Court also said—

> "It is true there is a possibility that some local board may be actuated by other than a sense of duty to the community for which it is acting, and have a thought of the ultimate effect [of its assessments] upon the railroad rate. There is always a possibility of misconduct on the part of officials, but legislation would be seriously hindered if it may not proceed upon the assumption of a proper discharge of their duties by the various officials. * * *" [P. 295]

It is true that the policy declared in the Act is one of the limitations imposed by Congress upon the expenditure by the Secretary of Agriculture, in the form of rental or benefit payments, of the funds appropriated by the Act. But the precision of that rule is immaterial. There is no question of delegation of legislative power but only a question of the extent to which Congress chooses to impose limitations upon the executive power of an executive officer to expend moneys appropriated. That matter is one for Congress alone to decide and, having decided it, the discretion remaining in the Secretary of Agriculture is an executive function for him to exercise as he deems appropriate in effectuating the Congressional policy. No question is raised here that the Secretary, in the exercise of his discretion, has not made his expenditures in such manner as to carry out that policy. Having acted within the limits imposed by Congress upon the expenditure of the funds appropriated, whether or not those limitations be precise or indefinite, the Secretary has performed the duty as to which Congress invoked his assistance.

(c) THE TIME THE TAX TERMINATES.

Section 9(a) of the Act provides that—

> "The processing tax shall terminate at the end of the marketing year current at the time the Secretary 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: * * * "

The considerations governing the constitutional validity of this provision are similar to those involved in the constitutional validity of the provisions relating to the time the processing tax takes effect. Further discussion is not necessary here, except to point out that the question is not strictly before this Court inasmuch as no action has been taken by the Secretary of Agriculture with respect to the termination of the processing tax upon cotton. Furthermore, the determination of the Secretary to cease the expenditure of funds for a particular purpose would in no wise injure the respondents and they should not be heard to complain of this prospective exercise of executive discretion.

CONCLUSION

It is submitted that the legislation providing for the processing taxes imposed upon the respondents constitutes a valid exercise of the authority placed in Congress by the Constitution. The taxes are valid excises, uniform, and not in violation of the Fifth Amendment, considered separately from the use made of their proceeds. The taxes, as such, being valid, respondents have no right to question their validity from the standpoint of the use made of their proceeds. However, the expenditure provisions of the Act are for the general welfare and, therefore, the taxes are levied for the general welfare. The Act involves no improper delegation of legislative power and even if there had been

that constitutional defect has been corrected by the legalization and ratification of the taxes assessed and collected by the Treasury officers. Neither the imposition of the tax nor the use made of its proceeds violates the Tenth Amendment.

WHEREFORE it is urged that the decision below should be reversed.

Respectfully submitted,

FREDERIC P. LEE,
Counsel for American Farm Bureau Federation as Amicus Curiae.

DONALD KIRKPATRICK,
Transportation Bldg.,
Chicago, Ill.

ALVORD AND ALVORD,
Munsey Bldg.,
Washington, D. C.,
Of Counsel.

November, 1935.

APPENDIX I

Text of Statutes Involved

A. 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 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.

---

[1] Section 8(a) of the National Industrial Recovery Act, c. 90, 48 Stat. 195, provided that Title I of the Act of May 12, 1933, might "for all purposes" be thereafter referred to as the "Agricultural Adjustment Act".

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 indicated herein by footnotes.

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 to the farmer in the prewar period, August 1909-July 1914.

* * * * * * * *

PART 2—COMMODITY BENEFITS

GENERAL POWERS

SEC. 8. In order to effectuate[2] 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

[2] Error in enrolling of original.

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 and reasonable, to be paid out of any moneys available for such payments.

* * * * * * * *

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 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 au-

thority 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 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 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.

MISCELLANEOUS

SEC. 10. * * *

* * * * * * * *

(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.

* * * * * * * *

COMMODITIES

SEC. 11.[3] 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

[3] "Sugar beets and sugarcane" were added to this list by Sec. 1 of the Jones-Costigan Sugar Act, c. 263, 48 Stat. 670; "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; "potatoes" by Sec. 61 of the Act approved August 24, 1935.

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 can not be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof.

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.

(b)[4] 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

---

[4] Section 3 of the Act of August 24, 1935 (Public 320, 74th Cong., 1st Sess.) amended the first sentence of this subdivision 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."

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.

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.

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.

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 manu-

facture that the imposition of the processing tax would prevent in whole or in large part the use of the 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 Agriculture 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 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.

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 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.

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.

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) 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.

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, in so far 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,[6] 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 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.

B. Section 30 of Public 320, 74th Cong., 1st Sess., approved August 24, 1935:

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

"SEC. 21. (a) * * *

"(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 President 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, deter-

[6] By section 2 of Public 62, 74th Cong., 1st Sess., the Secretary may in his discretion extend this period to not exceeding six months.

mination, 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 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.

* * * * * * * *

APPENDIX II

Legislative History of the Agricultural Adjustment Act

There is set forth in this appendix, in chronological sequence, according to Congresses, the various bills favorably acted upon by the committees of Congress and involving the fundamental principle of the Agricultural Adjustment Act, namely, control of surplus production of agricultural commodities and the financing of the operations in connection therewith. There are also listed the various committee reports and Congressional hearings and investigations in connection with these bills. These bills, reports, hearings, and investigations are those referred to in the discussion in this brief under the heading "Summary of Legislative History", pages 4 to 11.

68th Congress, 1st Session:

Original McNary-Haugen (Equalization Fee) Bill—Proposed legislation first introduced in Congress January 16, 1924. S. 2012 by Senator McNary, Chairman of the Committee on Agriculture and Forestry of the Senate, and H. R. 5563 by Representative Haugen, Chairman of the Committee on Agriculture of the House of Representatives.

Following extensive hearings (Hearings before the Committee on Agriculture and Forestry, U. S. Senate, entitled "Purchase and Sale of Farm Products", January 7-26, 1924), the Senate bill was reported to the Senate. (S. Rept. 193, March 1, 1924) When this measure was reached on the Senate calendar its consideration was indefinitely postponed (65 Cong. Rec. 6760, April 21, 1924) at the request of the chairman of the committee, inasmuch as the committee had in the meantime given further consideration to the legislation and reported to the Senate a substitute bill. (S. 3091, accompanied by S. Rept. 410, April 16, 1924)

The House bill was also reported in a revised form (H. R. 9033, accompanied by H. Rept. 631, May 2, 1924) after full hearings (Hearings before the Committee on Agriculture, House of Representatives, entitled "McNary-Haugen Bill", January 21-March 19, 1924) but was rejected by a vote of the House. (65 Cong. Rec. 10341, June 3, 1924)

The principal features of these bills are set forth above in the main text of the brief, pages 8 to 9.

Prior to the consideration of this legislation by either committee, there had been a comprehensive study of the agricultural situation made during the 67th Congress by the Joint Senate and House Commission of Agricultural Inquiry. See, particularly, Part I, Report of the Joint Commission of Agricultural Inquiry entitled "The Agricultural Crisis and its Causes", H. Rept. 408, 67th Cong., 1st Sess. Part II of the report relates to credit, Part III to transportation, and Part IV to marketing and distribution.

The committees also had before them the report of the National Agricultural Conference, called at the direction of President Harding, which advocated, among other matters, Congressional and Presidential steps "to immediately reestablish a fair exchange value for all farm products with that of all other commodities". (H. Doc. 195, 67th Cong., 2nd Sess., p. 186)

Also in the 67th Congress, 2nd Session, the Committee on Agriculture and Forestry, U. S. Senate, held hearings on the agricultural situation, entitled "Stabilizing the Prices of Certain Agricultural Products", January 26-March 22, 1922.

68th Congress, 2nd Session:

Following further hearings (Joint hearings before the Committee on Agriculture and Forestry, U. S. Senate, and the Committee on Agriculture, House of Representatives, entitled "The McNary-Haugen Bill", January 21, 1925; Hearings before the Committee on Agriculture, House of Representatives, entitled "Agricutural Relief", February 2-19, 1925), the legislation was again reported to the House and Senate by the respective committees. (S. 4206, accompanied by S. Rept. 1234, February 26, 1925; H.R. 12390, accompanied by H. Rept. 1595, February 26, 1925) The revised bills eliminated two principal objections urged against the original bill, by requiring purchases of surpluses to be made at the market, rather than the ratio or parity, price and by eliminating incidental authority that had been given to the President to increase tariff duties. No action was taken on the legislation by either House.

69th Congress, 1st Session:

The surplus control legislation was again reported to the Senate by its committee as an amendment to the Co-operative Marketing Bill (H.R. 7893, accompanied by S. Rept. 664, April 13, 1926) but was rejected by vote of the Senate. (67 Cong. Rec. 11872, June 24, 1926) Additional hearings had previously been held by the Senate committee. (Hearings before the Committee on Agriculture and Forestry, U. S. Senate, entitled "To Promote Cooperative Marketing", March 5-23, 1926; Hearings before Committee on Agriculture and Forestry, U. S. Senate, entitled "Agricultural Relief", March-April, 1926)

The House committee also held further hearings (Hearings before the Committee on Agriculture, House of Representatives, entitled "Agricultural Relief", January 15-April 21, 1926) and thereafter reported a new bill. (H.R. 11603, accompanied by H. Rept. 1003, April 27, 1926) This bill was rejected by vote of the House. (67 Cong. Rec. 9863, May 21, 1926)

The bills in this session substituted a Federal Farm Board for the corporation, provided for removal of surpluses to foreign markets through agreements with agricultural cooperative associations and reimbursement of their losses from the equalization fees, and declared the fee to be a regulation of commerce.

69th Congress, 2nd Session:

The "First" McNary-Haugen Bill—The House committee held hearings (Hearings before the Committee on Agriculture, House of Representatives, entitled "Agricultural Relief", January 7-10, 1927) and thereafter reported to the House H.R. 15474, accompanied by H. Rept. 1790, January 18, 1927.

The Senate committee reported S. 4808, accompanied by S. Rept. 1304, January 24, 1927, which passed the Senate. The Senate committee also held hearings. (Hearings before the Committee on Agriculture and Forestry, U. S. Senate, entitled "Agricultural Relief", January 18-20, 1927)

The House passed without amendment the Senate bill in lieu of the bill reported by the House Committee. (68 Cong.

Rec. 4099, February 17, 1927) The former bill eliminated the import embargo feature and, in consequence, and also in order to avoid the charge of "price fixing", the ratio or parity price provisions. Purchases of surpluses were to be made pursuant to a declared policy to promote orderly marketing, prevent excessive market fluctuations, and preserve advantageous domestic markets.

The bill was vetoed by President Coolidge. (68 Cong. Rec. 4771, February 25, 1927; S. Doc. 214) The President accompanied his veto message with an opinion rendered by Attorney General Sargent. The Attorney General held that the purpose and direct effect of the bill was to fix prices for agricultural commodities, that this was beyond the power of the Congress under the commerce clause, that whether or not the equalization fee was a tax it constituted a taking of property without due process of law, and that both the marketing operations and the equalization fee involved unconstitutional delegations of legislative power. (Cf., speech of Representative L. J. Dickinson of Iowa upon the veto message, 68 Cong. Rec. 5448-5454, March 2, 1927)

70th Congress:

The "Second" McNary-Haugen Bill—Further hearings were held by the House committee. (Hearings before the Committee on Agriculture, House of Representatives, entitled "Agricultural Relief", January 17-February 24, 1928) The committee reported the bill, H.R. 12687, accompanied by H. Rept. 1141, April 5, 1928.

The Senate committee reported the bill, S. 3555, accompanied by S. Rept. 500, March 8, 1928. Both House and Senate bills had been revised to meet some of the Presidential objectons set forth in the veto message. For example, the bills were made applicable to all, instead of merely basic, agricultural commodities, special provision was made for perishables, and the equalization fee was applied to competitive imported food products. In addition, as an initial alternative, provision was made for loans to agricultural cooperative associations to carry out the purposes of the Act unless such loans were found to be ineffective to that end. The Senate bill passed the Senate, but the House committee substituted and reported the text of the House bill.

(H. Rept. 1273) As so amended the bill was passed by the House. In conference a final revised bill was agreed to by the conference committee and passed by both Houses. (H. Rept. 1620, May 12, 1928)

This bill was also vetoed by President Coolidge. (69 Cong. Rec. 9524, May 23, 1928; S. Doc. 141) The veto message was again accompanied with an opinion of the Attorney General. (Cf., speech of Representative L. J. Dickinson of Iowa upon the second veto message, 69 Cong. Rec. 10780-10785, May 29, 1928)

71st Congress:

The Farm Board Act (Agricultural Marketing Act)—Additional hearings were held. (Hearings before the Committee on Agriculture and Forestry, U. S. Senate, entitled "Farm Relief Legislation", March 25-April 12, 1929; Hearings before the Committee on Agriculture, House of Representatives, entitled "Agricultural Relief", March 27-April 4, 1929) Thereafter, a bill (H.R. 1) was reported to the House (H. Rept. 1, April 17, 1929) and a bill (S. 1) reported to the Senate (S. Rept. 3, April 23, 1929).

The House bill was passed but in the Senate a new text was substituted and passed. A substitute for both the House bill and Senate amendment was agreed to by the conference committee (H. Rept. 18, June 6, 1929) but rejected by vote of the Senate. (71 Cong. Rec. 2661, June 11, 1929) A further substitute agreed to by a conference committee (H. Rept. 21, June 14, 1929) was passed by both Houses and approved by the President June 15, 1929. (46 Stat. 11)

Under the Act a Federal Farm Board was created. It could undertake surplus control operations through loans to specially-created commodity stabilization corporations controlled by agricultural cooperative associations. The corporations were guaranteed against loss. A half-billion dollar appropriation was provided for the purposes of the Act. No equalization fees or special taxes were provided to raise the necessary revenue for the Treasury. The operations were to be conducted in furtherance of a declared policy to promote effective merchandising of agricultural commodities so that agriculture would be on a basis of economic equality with other industries and to that end, among

other matters, so as to aid in preventing and controlling surpluses through orderly production and distribution.

The Export Debenture Plan—First introduced in the 69th Congress, 1st Session, by Senator McKinley (S. 2289, January 7, 1926) and Representative Adkins (H.R. 7392, January 11, 1926); also in revised form in the 70th Congress, 1st Session, by Representative Jones (H.R. 10762, February 9, 1928), Representative Ketcham (H.R. 12892, April 11, 1928; see H. Rept. 1141, Part 3, April 11, 1928, which accompanied H.R. 12687), and Representative Jones (H.R. 12893, April 11, 1928). It was passed by the Senate as an additional feature of the Farm Board Act but rejected in conference. It was opposed by President Hoover. (See his letter to Senator McNary April 20, 1929, S. Rept. 3, 71st Cong., 1st Sess., pp. 15-17) The plan as passed by the Senate provided for diversion of surplus agricultural commodities to foreign markets at the world price by the issuance of export debentures to exporters of such commodities or their products. These debentures were a form of currency which would be legal tender for payment of customs duties. The debentures equaled one-half the tariff duty on the commodity and 2 cents per pound on cotton, with authorization for reduction in rate to meet increase in production. In effect, the debentures were financed through the customs duties, these taxes being payable in the debentures issued the exporters, thus depriving the Treasury of its full receipts from customs duties.

72nd Congress, 1st Session:

The "Three-Way" Bill—This bill (S. 4536) proposed to amend the Farm Board Act by adding to it as alternatives the equalization fee plan and the export debenture plan (both set forth above) and the compulsory allotment plan. This latter plan provided for segregation of that portion of a farmer's production of an agricultural commodity for any year needed for domestic consumption. Purchasers of agricultural products were required to be licensed and to pay for this domestic allotment the cost of production thereof as proclaimed by the Farm Board. Failure to so pay constituted a criminal offense. Surpluses were controlled indirectly through the compulsory payment of a higher price for the domestic allotment than for the surplus to be ex-

ported or withheld from market or otherwise disposed of off the domestic market by the Farm Board and through automatic decrease of the domestic allotment as production increased. An earlier bill using the "cost of production" formula was the Crisp bill, H.R. 15963, 69th Cong., 2nd Sess. (See H. Rept. 1790, accompanying H. R. 15474, 69th Cong., 2nd Sess., pp. 2-4)

The bill (S. 4536) was reported to the Senate by the Senate committee (S. Rept. 732, May 25, 1932) but subsequently recommitted. (75 Cong. Rec. 13000, June 15, 1932)

Hearings were held by the Senate committee. (Hearings before the Committee on Agriculture and Forestry, U. S. Senate, entitled "Farm Relief Bills, Pertaining to Agricultural Marketing, Abolishing Federal Farm Board and Others", April 26-29, 1932; Hearings before the Committee on Agriculture, House of Representatives, entitled "Farm Marketing Program", February 16-18, 1932, and May 4, 11 and 25, 1932)

72nd Congress, 2nd Session:

The National Emergency Bill—Following extended hearings (Hearings before the Committee on Agriculture, House of Representatives, entitled "Agricultural Adjustment Program", December 14-20, 1932), the House committee reported the bill, H.R. 13991, accompanied by H. Rept. 1816, January 3, 1933. The bill was passed by the House and reported by the Senate committee (S. Rept. 1251, February 20, 1933) but failed of Senate action before expiration of the Congress on March 4, 1933. Hearings were also held by the Senate committee. (Hearings before the Committee on Agriculture and Forestry, U. S. Senate, entitled "Agricultural Adjustment Relief Plan", January 25-February 6, 1933)

The bill provided for estimating, on the basis of Government statistics of production and consumption, the percentage of certain basic crops that would be needed for domestic consumption. Each producer was to be given a benefit payment on the same percentage of his "crop marketed" (as reported to the Senate this was changed to "crop produced"). The payment was to equal the difference between the current national average farm price for the commodity and its fair exchange value (parity price)

computed substantially the same as under the present Agricultural Adjustment Act. The payments were to be financed by a processing tax similar to that under the present Act. As passed by the House, the benefit payment to any producer was conditioned upon his reducing acreage in accordance with amounts prescribed by the Secretary of Agriculture. Surplus control also resulted indirectly from the fact that payments would not be made on that portion of production over domestic requirements. The plan was voluntary, gave emphasis to reduction of production, provided a processing tax so as to finance itself, and established a parity price. Much of the present Act, introduced in Congress within a month after the National Emergency Bill was reported to the Senate, is obviously adapted from it.

73rd Congress:

The Agricultural Adjustment Act—Introduced in House and reported to House (H. R. 3835, accompanied by H. Rept. 6, March 20, 1933) following message to Congress by President Roosevelt on March 16, 1933. The message is set forth on page 1 of the House report.

Passed by House March 22, 1933, reported to Senate (S. Rept. 16) April 5, 1933, and passed by Senate with amendments April 28, 1933. Report of conference committee (H. Rept. 100, May 5, 1933) was agreed to by both Houses and, on May 12, 1933, bill was approved by President. (48 Stat. 31)

The House report (H. Rept. 6, p. 2) refers to House and Senate committee hearings of the preceding session and also to hearings before the Committee on Finance, U. S. Senate, 72nd Congress, 2nd Session, entitled "Investigation of Economic Problems", February 13-28, 1933. (See particularly pages 108-162 of the hearings) Also the Senate Committee held hearings of its own. (Hearings before the Committee on Agriculture and Forestry, U. S. Senate, 73rd Cong., 1st Sess., entitled "Agricultural Emergency Act to Increase Farm Purchasing Power", March 17-28, 1933.

Compulsory Allotment Plan—This plan was first acted on by Congress in the 72nd Congress, 1st Session. See description above in this appendix under "72nd Congress, 1st

Session''. It was included with modifications as an alternative feature of the Agricultural Adjustment Act as passed by the Senate but rejected in conference. The plan provided for payment to the farmer by purchasers of farm products of cost of production plus a reasonable profit, enforced by criminal penalties and a license system.

74th Congress, 1st Session:

Amendments to Agricultural Adjustment Act—The amendments pertinent to the present litigation were introduced in the House as H. R. 8052 on May 14, 1935, and reported to the House (H. Rept. 952) on May 15, 1935.

Following the decision in *Schechter Poultry Corp.* v. *United States,* decided May 27, 1935, 295 U. S. 495, this House bill was superseded by H. R. 8492, June 14, 1935, which was reported to the House (H. Rept. 1241) on June 15, 1935, and passed June 18, 1935. The Senate committee reported this bill with amendments. (S. Rept. 1011, July 3, 1935) The bill was amended and passed by the Senate July 23, 1935, an agreement reached in conference (H. Rept. 1757), and approved by the two Houses. The bill was approved by the President August 24, 1935. (Public No. 320)

See, also, pamphlet printed by the Committee on Agriculture and Forestry, U. S. Senate, for its use, entitled ''Agricultural Adjustment Act—Constitutionality of the Agricultural Adjustment Act as amended by the Bill H. R. 8492'', prepared by the Solicitor, Department of Agriculture.