BARRIERS TO INTERNAL TRADE IN FARM PRODUCTS

A Special Report TO THE SECRETARY OF AGRICULTURE

BY THE BUREAU OF AGRICULTURAL ECONOMICS

UNITED STATES DEPARTMENT OF AGRICULTURE

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BARRIERS TO INTERNAL TRADE IN FARM PRODUCTS

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The cooperation of trade associations has been of great value in the preparation of several parts in this report. These include, in addition to those already mentioned, the Institute of Margarine Manufacturers, the National Association of Margarine Manufacturers, the National Highway Users Conference, American Trucking Associations, Inc., the Evaporated Milk Institute, the American Dry Milk Institute, and the Wine Institute. Mention should also be made of the Chamber of Commerce of the United States of America.

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Joseph F. Herrick, Jr., of the Bureau of Agricultural Economics, has aided materially in the research that has been done in connection with the preparation of this publication.

Foreword

THE FOLLOWING PAGES describe a situation which is becoming of critical importance to every economic group in the United States.

The existence of trade barriers between the States provided a powerful incentive for calling the Constitutional Convention of 1787. The resulting Constitution, it was thought, insured free trade between the States.

Today, we cannot say that we have free trade between the States. It develops that public health and sanitation measures may be so designed as to restrict trade across State lines. The same may be said of certain tax laws, of motortruck regulation, of quarantines, of grading, labeling, and packaging laws, and of State-financed advertising of farm products. However worthy the purpose of most of these laws and regulations, in many cases they have been so drawn and administered as to cause large and unnecessary economic losses to the whole community.

We cannot easily reverse this trend toward interstate trade barriers, but it is encouraging to record that many of the States are now concerned about the situation and are apparently in the mood for remedial action. It is significant that this special report has been sponsored by the marketing committee of the National Association of Commissioners, Secretaries, and Directors of Agriculture.

This report does not make specific legislative recommendations, but it does indicate where change is needed and in what direction new legislation or regulation might wisely move. The heaviest burden for remedial action obviously falls upon the States, but there may well be a number of things the Federal Government can do. Together, I hope we can map a continuous, vigorous, intelligent program of action to the end that State lines may again become broad highways of commerce, serving the general welfare.

HENRY A. WALLACE,
Secretary of Agriculture.

Committee Statement[1]

THE RIGHT to self-government is inextricably enmeshed with the duty of self-restraint. Just as individual freedom is eventually curbed when the individual fails to subordinate the exercise of his liberty to the general welfare of the community, so the priceless States' rights will gradually be lost to Federal dominance if the State governmental agencies fail to give due consideration to equally priceless interstate rights.

The marketing committee of the National Association of Commissioners, Secretaries, and Directors of Agriculture is proud to be associated with the Bureau of Agricultural Economics in this important study of interstate trade barriers. If this report prompts a more serious consideration of quarantines and regulations, as well as of our special-interest laws, in the light of their potential danger to the very interests and industries they are designed to protect, the effort is well worth while.

State trade barriers, regardless of their merit, certainly are a strain on neighborliness, and State trade barriers that are erected without regard to their merit are potential invitations to destructive reprisals.

This committee is deeply grateful for the honor of sponsoring this investigation and sincerely appreciates the painstaking efforts of Frederick V. Waugh and his coworkers in the preparation of this report. It is offered for the serious consideration of State officials and legislators, and in hope that they will make every effort to convey, to their constituents, the lessons it carries.

[1] This statement was prepared by the marketing committee of the National Association of Commissioners, Secretaries, and Directors of Agriculture. The committee helped very substantially in this study, both by suggesting problems that needed special consideration and by reviewing the entire manuscript and making suggestions for improvements. The membership of the committee is:

Director Walter J. Robinson of Washington, chairman.
Commissioner Harry D. Wilson of Louisiana.
Director J. H. Lloyd of Illinois.
Commissioner Andrew L. Felker of New Hampshire.
Commissioner J. C. Holton of Mississippi.
Director W. C. Sweinhart of Colorado.
Commissioner Jewell Mayes of Missouri.

Director A. A. Brock of California, chairman of the National Association of Commissioners, Secretaries, and Directors of Agriculture, was not a member of the committee, but gave valuable assistance.

Contents

Introduction

THE UNITED STATES of America was formed as a federation of 13 States. Many benefits were expected from the Union. Not the least of these was the abolition of interstate tariffs and the establishment of free trade among the States. Farmers and manufacturers were to be free to produce wherever conditions were favorable, and they were to have the right to sell their products in any part of the country without unnecessary hindrances.

A Constitution was drawn up which gave to the Federal Government the duty of regulating interstate and foreign commerce [1] and which forbade the States to lay duties on goods imported from other States and from foreign countries. [2] Although some people felt that these provisions in the Constitution left the States insufficient sources of revenue, nobody seems to have doubted the need for encouraging unimpeded commerce among the several States.

At the Massachusetts Convention held in 1788 to ratify the Constitution, Mr. Dawes stated the situation in these words: [3]

"As to commerce, it is well known that the different States now pursue different systems of duties with regard to each other. By this and for want of general laws of prohibition through the Union we have not secured even our own domestic traffic that passes from State to State." This probably expressed the view of well-informed people in all the States. Everyone saw the danger of State protectionism and the need for assuring the farmer and the manufacturer a free market.

Since the adoption of the Constitution the policies of the National and State Governments have been mainly such as to allow and even to promote the free exchange of goods throughout the country. Without such policies we could not have developed our specialized agriculture nor could we have built large-scale manufacturing industries. In fact, it is not too much to say that the prosperity of American agriculture and industry is built largely on the foundation of free trade throughout a large country.

Yet, as the country grew, as transportation became cheaper, as consuming cities reached out farther for their supplies of food, as foods became more highly processed, and as the marketing system became more complex, it became necessary to have an increasing number of laws, regulations, and ordinances to protect the farmer, the dealer, and the consumer. Food had to be inspected to prevent adulteration and fraud. It had to be graded and identified as to quality. Dishonest business practices had to be prevented. Services such as that of supplying market news were required. Quarantines were needed to prevent the spread of pests and diseases. To meet these and similar legitimate needs the States and the Federal Government have adopted and en-

[1] Art. 1, sec. 8, of the Constitution provides that "the Congress shall have the power . . . to regulate commerce with foreign nations and among the several States and with the Indian tribes."

[2] Art. 1, sec. 10, of the Constitution provides that "No State shall, without the consent of Congress, lay any duties on exports or imports except what may be absolutely necessary for its inspection laws."

[3] The Independent Chronicle and The Universal Advertiser, Boston, Mass., January 31, 1788.

forced an increasing number of marketing laws, and are constantly urged to pass more.

With the great increase in these regulations, two closely related and often indistinguishable dangers arose. One was that by their very complexity and multiplicity these regulations might, quite without intention, hamper trade more than help it; the other that the tendency might arise to use such measures to raise barriers against distant competitors and thus, while possibly helping local producers or dealers, hurt other producers and dealers and all consumers. Recognizing the growing importance of this problem, the Bureau of Agricultural Economics has cooperated with the various State departments of agriculture to study the situation. The following report summarizes the results of this study.

The reader should be warned at the outset not to confuse the terms "free trade" and "unregulated trade." If we should abolish all Federal and State laws on the subject of marketing we would not promote free trade. In fact, we might destroy a large part of the interstate trade which now exists. The freest possible trade can occur only when the farmer, the dealer, and the consumer are all protected by sound laws which are enforced honestly and impartially. *By the term, "free trade," as we use it here, we mean a situation in which (1) each State and each market in each State admits any healthful and honestly described products from any part of the country without any kind of discrimination on account of the location of the producer or dealer, and (2) the various State governments and the Federal Government cooperate in the development of laws and regulations that are as simple as possible and as uniform as possible in order that a shipment that is acceptable in one market will also be acceptable in any other market in the country.*

This report reviews several types of marketing laws and regulations. In many cases these laws seem to interfere with free trade as defined above. Probably most of these laws are intended for purposes, the desirability of which no one would question, such as the protection of health, the prevention of fraud, and the conservation of future food supplies. In such cases the interferences with free trade are unintentional, or at least incidental. But some laws and some city ordinances seem to have been designed to protect nearby farmers by making it unnecessarily difficult or expensive for distant farmers or dealers to get their products on the local market. The number and variety of such laws and ordinances seem to be growing, and this publication will show that in recent years laws have sometimes been passed in retaliation against real or fancied discrimination in other States.

Probably few agricultural economists and marketing specialists fully realize the seriousness of the problem discussed in this report. Although most students and officials who are familiar with the marketing of agricultural products are aware that there are some laws and regulations which are discriminatory and which hamper the free movement and sale of agricultural products, each single law or regulation taken by itself is likely to seem rather unimportant. But a general review of the situation reveals how far we have departed from the principle of unimpeded commerce among the States and how seriously these departures may affect the prosperity of agriculture.

The fact that some of the most discriminatory laws and regulations are either not enforced at all or are only occasionally employed is sometimes used to minimize the seriousness of the present situation. In many cases, however, irregularity and capriciousness of enforcement constitute in themselves a grave problem. Intermittently enforced laws may have as detrimental an effect upon the flow of farm products as discriminatory regulations that are rigorously applied.

This report does not include a quantitative estimate of the economic losses suffered by farmers, dealers, and consumers on account of laws and regulations that interfere with the free movement of agricultural products. Statistics are presented in a few cases to indicate roughly the extent to which trade has been reduced by particular measures. But in general pertinent statistics are not available, and it would be a Gargantuan task to develop them. It has been deemed more important at this point to survey the entire field than to ascertain the precise economic effects of the various restrictive measures.

On the basis of the survey that has been made of these measures and which is presented in the following pages of this publication, the authors believe that the economic losses caused by laws and regulations that unduly restrict commerce in agricultural products have been substantial. This opinion is shared by a large number of State officials who have worked with the authors in the preparation of this report.

This publication does not presume to be a legal document. It has been written by economists and is primarily concerned with the economic implications of these laws. Their constitutional aspects have received but slight attention and such interpretation as appears in the report is that of the economist, not the legal expert.

As we see it, there is a real need for many kinds of marketing laws and this need probably will continue to increase as our civilization becomes more complex. This situation calls for active cooperation between Federal, State, and municipal officials to give the public all necessary protection and, at the same time, to allow and to promote the free exchange of goods from one part of the country to another.

The problem is not one that can be solved simply by repealing a few laws or by writing a few new ones. It will be solved only if farmers and public officials alike see the dangers inherent in some of the recent legislative trends and are willing to work continuously and intelligently to develop a cooperative program. A large number of Federal, State, and city officials were consulted in connection with the study on which this publication is based. Without exception they all showed a real interest in the problem and a desire to improve the present interstate trade situation. For example, one of the eight State commissioners of agriculture who reviewed the manuscript of this report wrote:

"I have read all of the chapters on this great subject of interstate movement of farm commodities and noted the barriers and handicaps that are shown in your research work. I am amazed at the contents of these several chapters and the picture that you have been able to present . . . One of two things, I am sure, will happen in consequence. Either the people of the several States will come to their senses and recognize that we have a Union of 48 States instead of a disunion, or there will be drastic demands for Federal control over these matters. Sooner or later it should mean cooperation by all of the States and the Federal Government in place of individual State action or absolute Federal control."

Similar comments were made by several other State commissioners of agriculture and by State marketing officials. The thought in the last quoted sentence has been expressed by almost all Federal and State officials who have discussed this subject with the authors. None of them wants to see the Federal Government take over all regulation in the field of marketing, and all believe there is a growing need for a cooperative program on which the Federal, State, and municipal governments can unite.

In the various parts of this report the authors have felt an obligation to make suggestions which might well be considered in such a cooperative program of legislation, but these suggestions are necessarily tentative and general in character. A great deal of detailed work would be necessary to put these suggestions into effect and to develop others that offer promise of greater protection to the public and of freer movement of farm products in interstate commerce.

One general suggestion might well be made here. Regional and national associations of milk inspectors, quarantine officials, graders, and other specialists can perform a very useful and important public service by providing for free and frank discussion of their common problems and by working cooperatively for uniform laws, or at least for laws that do not conflict unnecessarily with one another. The regional plant boards and the National Plant Board have done very effective work in recent years toward the elimination of unnecessary quarantines and in the coordination of quarantines in the several States. The National Association of Marketing Officials has cooperated actively with the Bureau of Agricultural Economics in the development of standardized grades for farm products. Activities of this kind should be encouraged and expanded.

But it is believed that to the discussions of such specialized groups of scientists and officials should be added the viewpoints of the general economists, the marketing research men, the home economists, and others working in related fields. The effects of a law or regulation upon consumers, its effect upon the marketing system, and its general economic effects, need to be considered as well as its effects upon the producers in a special field. The discussion of quarantines mentions the work of a California committee of entomologists, plant pathologists, and general economists which made a thorough study of the quarantines in California and recommended a specific program for improving them. There is a decided need for similar studies of this and other problems in other States.

Moreover, the reader will note the wide variety of laws and regulations. It is not enough to improve the laws on a single subject when many kinds of laws may hinder the free movement of farm products in our markets. Some way must be found for coordinating the recommendations of the many groups of specialists into a general program. Probably this can be done best by cooperation between the United States Department of Agriculture and various organizations of State officials such as the National Association of Commissioners, Secretaries, and Directors of Agriculture, and between the United States Department of Agriculture and the Council of State Governments, which has recently interested itself in the problem of interstate trade barriers.

If this publication attracts interest to the growing need for cooperative efforts to maintain free markets for farm products in this country, and especially if it results in definite action to accomplish this end, it will have served its purpose.

Dairy Products

THE GREAT MASS of dairy legislation that has appeared in the last 10 or 15 years has been designed primarily to accomplish one or both of the following ends: (1) To protect the health of consumers of dairy products by insuring a clean and wholesome product, and (2) to stabilize the dairy industry and to increase the purchasing power of dairy farmers.

In the attempt to obtain these objectives (objectives which in the laws are often combined and almost indistinguishable), legislation has been adopted which has given rise to serious interference with interstate and even intrastate commerce. The evidence of such interference will now be examined, first as it has to do with health and sanitary legislation, and then in connection with laws designed directly to stabilize or control the supply, price, or marketing processes.

Health and Sanitary Measures

Tremendous progress has been made during the last two decades toward the production of clean and wholesome milk. In part this has resulted from educational work, not only of the United States Public Health Service, but also of the health departments of States, counties, and cities. Chiefly, it has been achieved as a result of laws and regulations adopted by the States, counties, and cities, as well as by other subdivisions of the States. These measures prescribe, often in minute detail, the conditions under which dairy products shall be produced, processed, and distributed. To enforce the sanitary standards prescribed, official inspection is usually required. Farmers, processors, and distributors are typically granted licenses or permits to dispose of their product in a given market only after certification of satisfactory inspection by the officials of the city or State concerned.

We are concerned here not with the details of these regulations, but rather with the extent to which they constitute an obstacle to the free movement of dairy products.[1] Especially important are the market restrictions that have been placed on fluid milk and cream in certain parts of the country. These will be considered first and then some attention will be given to restrictions on other dairy products.

MILK AND CREAM

In a number of Eastern States (including Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Virginia, and Florida) all fluid milk (and in some cases cream) must come from farms that are licensed or inspected by the officials of the State into which the milk is shipped. All of these States produce milk and cream, but they also bring in a part of their supply from outside their own boundaries. It is obvious, therefore, that should any of them wish to use their health- and sanitary-inspection requirements for the purpose of retaining a larger part of the State market for State pro-

[1] A detailed study for the New England States has recently been published. See BRESSLER, R. G., JR., LAWS AND REGULATIONS GOVERNING THE PRODUCTION OF GRADE B MILK IN NEW ENGLAND. (Issued by the New England Research Council on Marketing and Food Supply), Boston, 1938. (Mimeographed.)

ducers, they could do so through limiting outside inspection and thus protecting home producers. Only a very thorough investigation would show the extent to which this has been either the purpose or the result of such legislation. The survey of the situation attempted here shows some of the existing tendencies toward market restriction.

Apparently the State of Connecticut has followed the practice of limiting its out-of-State inspection of farms that produce fluid milk for the Connecticut market. In 1931 permits were withheld from a small group of producers in New York State, located near the Connecticut border, who had been sending milk into Connecticut. Public protest led to the revival of these permits, but with the provision that the New York producers must pay inspection costs. Despite the concession, relatively little milk has been permitted to come in from outside the State. In part, at least, as a result of this restrictive policy, Connecticut producers have been enabled to get relatively high prices for their fluid milk.[2]

This conclusion is supported by the study made by the Federal Trade Commission of the Connecticut milkshed. The commission reports that—

"There are . . . indications that Connecticut has used its milk-inspection laws advantageously in keeping out milk from other States, although it does not admit this use of its powers." [3]

Recent dairy legislation passed by the State of Connecticut directs the State commissioner to refuse to inspect farms outside the "natural milkshed." Perusal of the pages of the Connecticut Milk Producers Association Bulletin strongly indicates that an important purpose of this legislation was to secure even more effective restriction of out-of-State milk.[4]

The Massachusetts law requires registration and inspection by Massachusetts officials of all farms from which fluid milk is shipped into the State. The cost of such inspection is borne by the Commonwealth. The Federal Trade Commission report on the Boston market (1936) says that ". . . it is not the purpose of the Massachusetts State inspection authorities to exclude out of State milk." [5]

But there has been considerable pressure from certain State interests to use inspection laws for restrictive purposes. Bills have been proposed before the last two sessions of the legislature which would extend inspection requirements to cream as well as fluid milk. One of the latest proposed measures provided that special inspection certificates should be issued to cream shippers which would not entitle them to ship milk as well. Such a distinction is apparently related not so much to public health as to market exclusion. At least the editor of the New England Dairyman seems to have regarded protection to Massachusetts producers as the chief purpose of this proposal.[6]

Rhode Island admits cream from outside the State on the basis of proper certification by the State of origin. Since 1931, however, this State has been one of the most active in passing health and sanitation laws with respect to fluid milk which, whether or not so designed, may be used for restrictive purposes. Inspection and registration is required of all farms shipping to Rhode Island markets and numerous regulations have been adopted which put the distant producer at a disadvantage.[7] By an amendment to its laws in 1936, Rhode Island required reregistration of all dairy farms. In this process, 62 registrations of farms were terminated in Massachusetts and Connecticut and only one distributor was reregistered in Vermont. The number of shipments of milk from Vermont have been nearly cut in half since 1931, they have entirely ceased from New Hampshire, and from Massachusetts and Connecticut they have been appreciably reduced.[8]

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[2] SPENCER, LELAND, PRACTICE AND THEORY OF MARKET EXCLUSION WITHIN THE UNITED STATES, Journal of Farm Economics, vol. XV, pp. 150–1.

[3] Sale and Distribution of Milk Products, Connecticut and Philadelphia Milksheds, 74th Cong., 1st sess., House Doc. 152 (1935), p. 90.

[4] Connecticut Milk Producers Association Bulletin, April, May, and June 1937.

[5] Distribution and Sale of Milk and Milk Products, Boston, Baltimore, Cincinnati, St. Louis, 74th Cong., 2d sess., House Doc. No. 501 (1936), p. 18.

[6] See, for example, the issue of January 1938.

[7] See below, pp. 10–11.

[8] See FIELDING, J. G., A STUDY OF THE MILK AND CREAM SUPPLY OF GREATER PROVIDENCE, *1929–1931*, R. I. State Coll., Agr. Expt. Sta., Bull. 237 (Kingston, R. I., 1932); Second Annual Report of the Department of Agriculture and Conservation, Rhode Island, 1936, p. 41; and LELAND SPENCER, PRACTICE AND THEORY OF MARKET EXCLUSION WITHIN THE UNITED STATES, Journal of Farm Economics, vol. XV, pp. 152–154.

In the Middle Atlantic States, municipal regulations have often been of greater importance than those of the States. The strict inspection laws of both New Jersey and Pennsylvania have exerted a considerable market influence, however, especially as they require their own farm inspection not only of milk but also of cream supplies. In both States ice-cream manufacturers report that were it not for inspection restrictions they would make larger purchases of western cream than are now possible. In the 1938 session of the legislature New Jersey extended its requirements for inspection of the farm source of supply to include goat's milk.

Recently ice-cream manufacturers in western Pennsylvania have been trying unsuccessfully to get permission to import cream from sources in Ohio. In retaliation against the Pennsylvania restrictions, cream producers in Ohio have threatened to urge passage by the State of Ohio of inspection laws which would bar dairy products from those small localities across the border in Pennsylvania that send milk or cream into Ohio.

Finally, two students of the dairy problem who have studied the Pennsylvania situation are here quoted. Leland Spencer found that regulations of the Pennsylvania State Department of Health ". . . cut down considerably the receipts of outside cream in Pennsylvania markets, particularly during the last 2 or 3 years." [9] And James Andes, who has made an elaborate study of the Philadelphia market supply, writes:

"The Pennsylvania inspection movement also gives some indication of attempts to limit the milkshed through health regulations." [10]

The Florida inspection law could be used for market-restriction purposes, but we have seen no evidence that this has been the case. A New York State law, adopted in May 1937, provides for out-of-State farm inspection by New York State officials, but this legislation has been on the statute books too short a time to give clear indications as to how it will be used.[11] But it may be noted that upon the passage of this law the editor of the American Produce Review remarked:

"It remains to be seen whether the law is to be enforced as a health measure, or a disguised plan of discriminating economically against dairymen located outside New York State." [12]

Market restriction through inspection requirements is promoted by cities and towns as well as by States. In fact, the regulations of certain large cities have been of equal importance with those of the States. Since 1906, New York City has maintained farm inspection of its sources of milk and cream supply, and since 1926 has definitely limited this inspection area. Thus it is practically impossible to ship fluid milk or cream to the New York City markets from points west of the New York or Pennsylvania State lines.[13] So far as fluid milk is concerned the restriction is not very important at present, for probably very little milk would move into New York City from beyond the inspected areas in any case. But cream, which as compared with milk combines greater value with less bulk, can be shipped for long distances. The effect, therefore, of the New York inspection requirements is to bar western cream and to raise the price of cream in the New York City market.[14]

Several years ago the city of Baltimore had a drastic limitation on its supplies of milk and cream. The commissioner of health of Baltimore ruled that cream for manufacturing ice cream could not be brought from a greater distance than 50 miles from the city except when "emergency" shortages were declared to exist. This ruling was contested in the Federal district court and found invalid by Judge Chestnut. A brief excerpt from his decision may well be quoted here. He said:

". . . when local regulations under the guise of

[9] Western Cream for Eastern Markets, Farm Credit Administration, Cooperative Division, Misc. Report No. 14 (Washington, D. C., 1937), p. 4.

[10] ANDES, JAMES, PROBLEMS IN THE BASIC-SURPLUS PLAN IN THE PHILADELPHIA MILKSHED, p. 94. (Privately printed. Copy on file in the Library of the University of Pennsylvania.)

[11] The same may be said of the recent Virginia law which requires permits of all producers of fluid milk and cream who market their product within the State.

[12] May 26, 1937.

[13] Report of the Federal Trade Commission on the Sale and Distribution of Milk and Milk Products, New York Milk Sales Area, 75th Cong., 1st sess., House Doc. No. 95 (1937), p. 7.

[14] SPENCER, LELAND, PRACTICE AND THEORY OF MARKET EXCLUSION WITHIN THE UNITED STATES, Journal of Farm Economics, vol. XV, p. 147.

police power are not reasonably adapted to accomplish these legitimate ends (i. e., protecting the health, morals and welfare of the community) and constitute a direct burden upon interstate commerce, they must fall."[15]

Small towns as well as large cities place definite limits on the area from which they will accept shipment of dairy products. In a study recently completed, R. G. Bressler, Jr. shows that three Massachusetts towns follow this plan. He points out that grade B milk for Haverhill must be produced within 40 miles of the town, for Walpole within 30 miles, and for North Attleboro within 8 miles.[16]

Some eastern cities that have strict milk-inspection regulations accept outside inspection of their cream supplies. Boston, for example, furnishes an important market for western cream and accepts outside inspection. However, for a part of 1930 the city of Boston did exclude western cream through inspection requirements. But the experiment was soon abandoned partly because of public protests and the failure of other parts of the metropolitan area to follow Boston's lead.

For many towns or cities the limitation of the inspection area is on an informal yet effective basis. The board of health, usually elected or appointed locally, may find it desirable to cooperate with local producers or distributors [17] in restricting the inspection area. This limitation may take the form of refusal to inspect outside a certain radius. Thus, a local producers' association near a small New England town cooperates with the local health authorities to make sure there are no inspections at a greater distance than 3 miles from the town, but there is apparently no official ruling to this effect.

Instead of refusing to inspect beyond a given number of miles, the authorities may use less obvious methods. Obstacles may be raised to the licensing of new producers. Inspection may be promised but indefinitely delayed, or higher standards may be required of new producers who wish to enter the milkshed than are required of those already licensed. Thus, farmers seeking to enter the market may be discouraged by being told that certain expensive alterations in their plant or certain new equipment will be required before permits will be issued. An authority on the economic problems of the dairying industry on the West coast has written us as follows:

"The city of San Francisco permits only the distribution of pasteurized milk or certified milk. Along with producers' associations and distributors the city inspection authorities place impediments and obstacles in the way of new producers or new areas coming into the market. These obstacles take the form of unwillingness to extend inspection services to new areas or extra stringent regulations or rules regarding milk houses, barns, and refrigeration. Producers who may want to get into the market are in normal times deterred by these arduous requirements or difficulties. Similar conditions are found in many cities other than San Francisco."

A press release issued by the United States Department of Justice, dated July 7, 1938, describes how sanitary regulations may raise barriers to trade. It says in part:

". . . A frequent method of erecting such a barrier was by limiting the number of farms which could be inspected and certified by the health authorities in a given milk shed. In some cases municipal ordinances prevented farmers located beyond an arbitrarily selected area from obtaining licenses to ship milk to the city in question. More often, however (and this is true in the Chicago area), the area in which farms could be inspected was left to the sole and uncontrolled discretion of the health authorities. This resulted in a condition under which farmers able to supply milk of the required grade were denied a market under ordinances ostensibly directed at sanitation.

"This development gave local boards of health not only sanitary control over the quality of milk, but economic control over the price of

[15] *Miller* v. *Williams*, 12 Fed. Sup. 241 (1935).

[16] BRESSLER, R. G., JR., LAWS AND REGULATIONS GOVERNING THE PRODUCTION OF GRADE B MILK IN NEW ENGLAND. (Issued by the New England Research Council on Marketing and Food Supply), Boston, 1938. (Mimeographed.)

[17] Limitation of total milk supplies for a given area may redound to the advantage of certain established distributors, for new distributors and competitors of the larger distributors may find it difficult to secure adequate supplies of milk as a result of the application of sanitary laws.

milk, because they regulated the supply. It created enormous political pressure upon such boards. Gradually their part in the milk price structure became openly admitted at public meetings . . ."

Especially for small towns, a great deal of discretion as to which producers shall be inspected may rest with the local inspector. He is likely to be on friendly terms with nearby dairymen and to favor retaining the market for local producers. In some jurisdictions his remuneration comes directly from local dairymen. He is often a producer himself and, if so, probably also a member of the local producers' organization. Moreover, his salary for part-time employment as milk inspector is often so small that he simply cannot afford to travel appreciable distances to make farm inspections.

The local milk inspector may even determine which producers' farms he will inspect, on the basis of retaliation against limitation of inspection areas by other authorities. Thus, the case is reported to the authors of a Massachusetts inspector who stated he would continue to inspect the farms of those producers across the line in Connecticut who had already received licenses, but, as Connecticut was refusing to inspect dairies in Massachusetts, he would not inspect any for new Connecticut producers.

Although the general public is often unaware of these informal market limitations, those in the industry usually understand the situation and often give such restrictions their open approval. The case may be cited of a statement made at a meeting sponsored by the milk control board of a New England State. A member of a milk producers' association who addressed this meeting gave enthusiastic approval of restriction through health measures. The Springfield Republican reported him as saying:

"The attitude of the board of health is the key to success in producing a situation in which the surplus milk problem is brought to the vanishing point. This desirable result is produced by refusal of the board of health to approve dairies outside a certain radius." [18]

The secretary of the Maryland Cooperative Milk Producers, Inc. expressed his approval of the situation under the Baltimore regulation which prohibited the bringing of cream into the city from a distance greater than 50 miles. In his annual report of January 26, 1935, he said:

"Due to the high quality of our product we were able to market 3,148,574 gallons of milk in the form of cream to local ice-cream manufacturers during the past year. Through the cooperation of the health department the use of cream produced in other areas, not under their direct supervision, is prohibited at all times when this market has an ample supply. This protection to our market is very important, and especially so during the past year when most eastern markets were glutted with western cream, selling at times at a very low level." [19]

A common practice for States as well as for many cities is to limit the area in which inspection is conducted at public expense. Producers outside this area, or more often the distributors who buy from them, must themselves cover all inspection costs. The problem is especially serious in the case of cream, which may be shipped 800 or 1,000 miles to an eastern market. Often the eastern State or city is unwilling or unable to bear the heavy costs of sending officials to inspect dairy farms in the Middle West, and, obviously, western farmers cannot individually finance such inspection. To some extent inspectors' expenses (usually $8 per day plus traveling costs) have been paid for by producer or distributor organizations. For example, such groups have paid inspectors from Cleveland and Baltimore and from the State of Pennsylvania to go to Wisconsin to inspect dairies.

Even where shippers of western cream are in a position to cover this inspection cost, they may be confronted with difficulties in persuading eastern public authorities to provide the inspectors. In such cases the western dairymen are inclined to believe that the refusal to provide inspectors is deliberate and designed to keep western cream from the eastern market. On the other hand, the eastern city or State may

[18] October 16, 1935.

[19] Quoted in the Report of the Federal Trade Commission on the Distribution and Sale of Milk and Milk Products, Boston, Baltimore, Cincinnati, St. Louis, 74th Cong., 2d sess., House Doc. No. 501 (1936), p. 47.

claim, honestly enough, that, with a limited staff, it cannot afford to cripple its local inspection force by sending its officials on long western trips, even if distributors or manufacturers are willing to bear the expense. At best, these western inspection tours can be made only at relatively infrequent intervals, so the officials of Eastern States or cities are likely to assert that they cannot have complete confidence in the quality of western cream.

This difficulty is avoided where, as in the case of States like Rhode Island or cities like Boston, the eastern market authorities are willing to accept the inspection and certification of the public authority established in the area where the cream is produced. The usual reason given for the refusal of certain eastern governmental units to accept outside inspection is that they have developed high standards that they believe can be adequately protected only by their own carefully trained personnel. They think that elaborate inspection laws signify little unless accompanied by rigorous enforcement. Without question this view is often sincerely held. But we must note that those areas which may gain most through market restrictions are usually those most uncompromising in holding to this position. Moreover, the logical position of those cities or States that set very high standards and insist on their own inspection for their fluid-milk supply is somewhat weakened in those cases in which, for cream or other dairy products, they readily accept inspection by outside agencies, if indeed they require for them any farm inspection at all. It is worth noting that some States and cities that set up expensive and elaborate arrangements for inspecting the sources of supply of their fluid milk give much less attention to similar safeguards for other dairy products, like cream and ice cream. No investigation of the technical evidence concerning possible danger to public health through contamination of these products was possible in connection with this study. But there appears no good reason why, purely from the standpoint of public health, any city should set very high standards for fluid milk and at the same time make little or no provision for inspecting other dairy products. Nor does there appear on similar grounds clear reason for refusing to accept outside inspection in one case and not in the other.

Some areas have constantly raised their standards for the production of fluid milk. In any given case it would probably be impossible to tell in what degree this resulted from attempts to exclude outside milk or from a sincere desire to improve the quality of the product. But supposing the latter motive to be dominant, there is serious question from the social point of view as to how high these standards should be permitted to go. It is at least arguable that health protection beyond a certain degree may cost more than it is worth. Sanitary experts are loath to concede that there can be too much regulation in the interest of protecting health. Yet a common-sense view may hold otherwise on occasion. When it is found, for example, that refinements of regulatory procedure cause milk to sell regularly at 1 and 2 cents a quart more than in other nearby well-regulated cities (as is the case in the District of Columbia), the ordinary consumer may wonder if this additional item of protection is fully justified in terms of public health. Low-income families who can afford little and frequently no milk for their children might bear witness to the adverse public-health effects of an inspection program that helps to hold milk out of their reach.

One other type of market limitation that comes under the heading of health regulations is that having to do with pasteurization and transportion to market. Utica, N. Y., in 1932 required that no new permits should be issued to milk distributors unless they had a processing plant within the city limits. A number of other cities, including Milwaukee, Wis., now have a similar requirement. Massachusetts requires that all grade A milk must be pasteurized and bottled within the State. A Minneapolis ordinance requiring pasteurization within the city limits was declared unconstitutional by the State Supreme Court.[20]

Rhode Island stipulates that normally all milk

[20] Summary Report on Conditions with Respect to the Sale and Distribution of Milk and Dairy Products, 75th Cong., 1st sess., House Doc. No. 94 (1937), p. 18.

shipped into the State shall go directly from the farm where it is produced to the consumer or dealer within Rhode Island. The disadvantage of this law to farmers located any appreciable distance from the Rhode Island boundary is obvious. If milk is delivered in violation of this Rhode Island law the commissioner of agriculture of the State is empowered to add colored vegetable matter to this milk so that it may be easily identified. On August 10, 1937 such action was taken and red coloring matter added to 5,000 quarts of milk from Bellows Falls, Vt. This was widely protested and court action was begun by the interested distributors. Pending a court ruling, Rhode Island has made no further move to add color to out-of-State milk.[21]

OTHER DAIRY PRODUCTS

Once a system of inspection is set up for fluid milk and cream, the present trend appears to be toward extending such inspection to all dairy products including ice cream, ice-cream mix, cheese, and butter. Actually the specific dairy products to which inspection requirements apply vary greatly from one public authority to another. Some cities apply inspection requirements to cream for table use only, others to all cream but not to ice-cream mix. Apparently the frequent leniency in respect to ice-cream mix is accounted for by the fact that it cannot be easily reconverted into such form as to find its way into local markets in competition with table cream. This seems to have been the purpose underlying the Pennsylvania law of 1933 which provides that—

"No milk shall be sold for ice cream making purposes from sources which have not been inspected and approved by the secretary, unless such milk shall be denatured by having sugar added. . . ."[22]

Some States and cities have made their inspection requirements all-inclusive and may require inspection at the source by their own inspectors of all dairy products. The States of New York and Pennsylvania and the city of Cleveland have such inclusive legislation.[23]

An interesting development has to do with the required inspection of the farm source of supply of evaporated, condensed, and dry milk. These products are ordinarily processed at a temperature much higher than that commonly used in pasteurizing fluid milk. There is a strong presumption that all harmful bacteria are destroyed at the higher temperature. At least no authoritative studies have indicated, so far as we know, any real danger from the presence of bacteria in these products. On the other hand, there is something to be said for clean milk in whatever form it may come. Sterilized dirt may be wholesome, but it lacks esthetic appeal. However, the general cleanliness and wholesomeness of good brands of evaporated or dry milk appear unquestioned. At least, physicians often recommend their use for small babies.

Producers and distributors of fluid milk have become increasingly disturbed over the competition from condensed or evaporated milk. A recent study shows that for this country consumption of evaporated milk which amounted in 1923 to 7.6 percent of the consumption of fluid milk had increased to 11.7 percent in 1936. Accompanying this increased consumption of evaporated milk was a marked increase in the spread between the price of evaporated and fluid milk.[24]

Pennsylvania is apparently the only State which requires inspection by its officials of the farm source of supply of all concentrated milk sold in the State. Ice-cream manufacturing companies of Pennsylvania that use dry milk must either purchase this product from Pennsylvania producers or procure it from companies that have gone to the expense of financing Pennsylvania inspection of their western farm sources

[21] The Dairymen's League News, August 24, 1937, p. 13, and the Providence Journal, August 11, 1937. In view of the indignant protests that came from Vermont over the coloring of their milk, it is of interest that 48 years earlier Vermont had sought to protect its own dairymen by a strikingly similar method. In 1890 Vermont adopted a law requiring that all oleomargarine sold in the State should be colored pink.

[22] Laws of 1933, Act 123, sec. 3.

[23] The New York State law does not apply to dairy products in hermetically sealed containers.

[24] Consumers' Guide, June 6 and 20, 1938, pp. 14 and 18. See also BARTLETT, R. W., HIGH MARKET MILK PRICES REDUCE MILK CONSUMPTION, Illinois Farm Economics (monthly publication of the Ill. Coll. of Agr.), March-April 1938, pp. 162—163.

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of supply. The city of Cleveland, Ohio, has similar regulations. All evaporated and condensed milk sold in this city must come from farms inspected by Cleveland officials. As a result, at least one company engaged in the sale of these commodities has had to shoulder the expense of sending Cleveland officials to inspect Wisconsin farms.

In addition to the movement for inspection of the farm source of supply of concentrated milk, there has been some agitation in favor of legislation forbidding the sale of such milk unless from cows certified to be free from tuberculosis. The States of Washington and Utah already have such legislation and the legislatures of several Eastern States have seriously considered such measures.

Various other measures have been adopted which, whether or not such is their purpose, may discourage the consumption of evaporated and condensed milk. The Pennsylvania State Department of Agriculture administers a law which prevents the use of dry milk in the manufacture of sausage. Georgia has placed a sales tax of 5 cents per pound on dry milk when the product is used for producing fluid milk. Recently agitation has appeared in certain Eastern States for the passage of State laws that would require labels on food products showing the point of origin. Such labeling laws would, of course, make more effective the buy-at-home campaigns.[25] The similarity is striking to the Federal requirement that in foreign commerce imports must be clearly marked with the country of origin.

One final aspect of the restrictive effect of health and sanitary regulations on dairy products should be mentioned. The insistence of cities and States upon their own regulations and inspection by their own officials reaches rather absurd limits in areas where production is normally carried on for more than one market. Reports from ice-cream manufacturing plants in many parts of the country indicate that their farm sources of cream supply are often subjected to inspection by 3, 4, or even more State, county, or city health departments. Cities often refuse to accept the inspection reports of their own State official, and neighboring counties or townships refuse to enter into reciprocal inspection agreements. In its investigation of the New York milkshed the Federal Trade Commission found that:

"Usually each State, subdivision of a State, and municipality, insists on making its own inspection and will not accept inspections by authorities of other jurisdictions. Operators of country receiving plants and farmers supplying them sometimes find it necessary to submit to as many as seven or more separate inspections."[26]

A Vermont State official writes:

"The utter lack of uniformity in sanitary inspection requirements among the States into which our dairy products are shipped is a serious handicap to Vermont dairy interests. It is a source of constant difficulty and annoyance and if these requirements could be made uniform it would be very helpful indeed."

Occasionally a really absurd situation has arisen when farmers or receiving-plant operators have found that in order to conform with the requirements of one authority they must violate those of another.[27]

APPLICATION OF INSPECTION LEGISLATION TO NONDAIRY FOODS

Barriers to interstate trade, through the use of health and sanitary inspection requirements, have also been raised in other fields than dairy products. But to date the courts have proved an insuperable obstacle to such legislation. Two examples may be cited.

In 1889 Minnesota[28] adopted laws requiring that all meat sold within the State must be from animals inspected by the State's own officials within 24 hours after the animals were slaughtered. The Supreme Court found that the act

[25] A bill introduced in the Connecticut Legislature in 1937 provided that all milk produced and sold in the State should be labeled "Connecticut product."

[26] Report of the Federal Trade Commission on the Sale and Distribution of Milk and Milk Products, New York Milk Sales Area, 75th Cong., 1st sess., House Doc. No. 95 (1937), p. 3.

[27] See, for example, the statement of George W. Grim, Twenty-fourth Annual Report of the International Association of Dairy and Milk Inspectors (Albany, 1936), p. 244.

[28] Indiana adopted a similar law during the same year.

would prevent the importation of wholesome meat from other States and was therefore unconstitutional as an unreasonable burden on interstate commerce.[29] In view of the reluctance of many States to accept outside inspection the opinion of the Court as expressed by Justice Harlan is of peculiar interest. He said in part:

"It will not do to say—certainly no judicial tribunal can, with propriety, assume—that the people of Minnesota may not, with due regard to their health, rely upon inspections in other States of animals there slaughtered for purposes of human food." [30]

A more recent case, in December 1934, concerned an ordinance of the city of Reno, Nev. This ordinance provided for the licensing and inspection by Reno officials of all bakeries selling their products in the city. The law became effective February 1, 1935, and on that date California bakeries were prevented from making deliveries in Reno despite the fact that no move had been made to inspect their plants. The California bakeries whose products were sold in Reno secured a temporary injunction restraining the city from imposing its regulations. In March 1936 this injunction was made permanent by order of the United States District Court.[31]

HEALTH AND SANITARY MEASURES IN RELATION TO INTERSTATE COMMERCE

In concluding this examination of health and sanitary regulations, we may well raise a question as to the social desirability of this legislation. Obviously, the protection of public health through proper sanitary regulations and license requirements is highly desirable. Even if such health measures interfere with interstate commerce and increase the cost of milk to the consumer, probably few people would raise serious objection if they felt that public health could be protected in no other way. But are the two objectives, wholesome dairy products and free movement of goods in interstate commerce, mutually exclusive? If we desire one, must we sacrifice the other?

Our study of the problem indicates that these ideals are by no means necessarily in conflict. A much greater degree of uniformity in health and sanitary regulations is possible without the loss of full protection to public health. The details of how this might be worked out are not within the province of this study, but there is no reason to believe that they could not be formulated through discussion and study by experts and administrators vitally interested in solving the problem.

Two possible ways out might be suggested here. These are general rather than detailed plans, and they are offered as suggestions, not as recommendations.

One possible way would be for Congress to impose a uniform set of sanitary requirements upon all dairy products moving in interstate trade, and provide that inspection be made by State officials subject to general supervision and check-up by the Federal Government. A plan not unlike this is in operation in England. This Federal action would need to be supported by parallel State legislation regulating intrastate trade in dairy products.

If this procedure is believed to involve constitutional difficulties or to give powers to the Federal Government which should be retained by the States, or if enforcement would be impracticable for any reason, then a plan could be adopted that would leave much more authority with the States.[32] Under this program it would be necessary for the States to adopt some standard milk ordinance which would safeguard the twofold purpose of adequately protecting public health and interfering as little as possible with the free flow of dairy products. If their aim is really public health (not market restriction) such agreement, at least for a great number of States, ought not to be impossible. Probably under this scheme, it would be necessary to pro-

[29] *Minnesota* v. *Barber*, 136 U. S. 313 (1890).

[30] Ibid., p. 322.

[31] *Langendorf United Bakeries, Inc.* v. *City of Reno*, 16 Fed. Supp. 442 (1936).

[32] The authors believe that, as a general proposition, cooperation between the States is preferable to a centralization of powers in the Federal Government. The degree to which it is desirable to have the Federal Government take over functions heretofore exercised by State or local authorities would seem to be determined by the practical necessities of each case.

vide Federal inspectors, with powers limited to investigation and report, whose duty it would be regularly to designate those States in which the inspection service was up to the agreed standard. If this were done and States adopted legislation permitting the entrance of dairy products from all other States reported by the Federal Government as meeting the agreed minimum standards, [33] then we might realize the objective both of wholesome dairy products and free trade among the States.

If we really wish to attain these objectives, we could, despite difficulties of procedure and detail which are always bound to arise, work out some kind of satisfactory program along one of the lines suggested above.

The fact is that health regulations, so far as they are directed to purely health objectives, need place no restraints on interstate or local commerce. On the other hand, if board-of-health regulations are to be used for protecting local dairy interests then interstate trade may be restricted. A major step forward would be accomplished if States and municipalities would recognize and clearly state the purpose of their regulations. If, after open consideration, the decision is made to protect local dairy interests, then the question may well be faced as to whether this should be done through health regulations or by more direct means. At any rate, if the purpose is to protect public health let that clearly appear. If the aim is solely or in part to achieve market restriction, such purpose should likewise be publicly recognized.

State Milk Control Boards

Between 1933 and 1936, 21 or more States attempted to deal with the dairy problem by setting up milk control boards of some kind. A few State laws are no longer in effect; 19 States still had milk-control laws on May 6, 1938. The depression years, 1931–34, marked a period of increasing milk production and low consumer purchasing power. As a result, fluid-milk consumption fell off in industrial centers, milk prices declined, and dairy farmers generally found themselves in a very difficult position.

The situation was further complicated by the fact that transportion improvements during the last 20 years have continuously widened the area from which fluid milk and cream can be profitably shipped to market. The natural protection formerly enjoyed by producers in the vicinity of the large industrial cities of the East has been greatly decreased not only through the development of railroad tank cars for shipping milk and cream, but particularly by the growing use of the motortruck. Improvements in roads and in truck-refrigeration methods, including tank trucks, have greatly increased the distance over which fluid milk and cream may be shipped to market.

State milk-control laws have been designed to help the dairy farmers and have provided price-fixing machinery to deal with the extremely complex problems of pricing and bargaining relationships which exist in this industry. The vicissitudes of these boards, their successes and failures, cannot be discussed here. We are primarily interested to examine the milk-control laws from the standpoint of their effect upon the free movement of milk and cream in interstate commerce.

A central feature of State milk-control laws has been the setting of prices that distributors must pay the producers for fluid milk and cream. A difficult problem arose for those eastern industrial States into which milk could be profitably shipped from Western States and northern New England States. Thus, if the law were effectively to help producers within a given State, it must require distributors to pay the fixed price to all producers, both those within and those beyond the State lines. Otherwise, the effect would be to stimulate importation of fluid milk from out-of-State low-cost areas and further to embarrass the milk producers of the State.

To prevent this development, many of the early laws provided that the fixed price must be paid to outside producers as well as to those within the State. Such a provision made the milk-control law effective because it was im-

[33] Possibly State adoption would not be necessary, for the courts might find that dairy products from a federally approved source in one State could not be barred from another.

possible to buy milk at a lower price outside the State than within the State. In fact, much support for these laws appears to have resulted from the belief that producers within the State, with out-of-State competition reduced, would be able to sell a larger proportion of their milk in the fluid-milk markets of their own State.

The New York Milk Control Board Act was the first in which this provision was put to court test. The case had to do with a New York milk dealer, G. A. F. Seelig, who sold milk in New York City which had been purchased in Vermont at a price lower than that which the New York State Milk Control Board ruled should be paid to producers whether in or outside the State. The Supreme Court of the United States, deciding the case in favor of Seelig, found that this provision of the New York law was a violation of the commerce clause of the Constitution and, therefore, was unconstitutional. In delivering the opinion of the Court, Justice Cardozo said:

"If New York, in order to promote the economic welfare of her farmers, may guard them against competition with the cheaper prices of Vermont, the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the States to the power of the nation." [34]

The chief threat of the milk-control boards to interstate commerce was therefore nullified by this decision. Nevertheless, there is at least some indication that these boards may at times, indirectly and informally, still discourage interstate shipments of milk or cream. All milk dealers must be licensed under the milk-control laws of most of the States. To secure such a license and to keep it, distributors must conform to numerous rulings and requirements of the State milk control board. In many States a dealer's license may be refused or revoked for action "demoralizing to price structure." It is claimed by dealers in certain States that the milk board puts effective pressure upon them to decrease or at least not to increase their out-of-State purchases of fluid milk. Such charges would be difficult to prove, but the powers of the milk boards are often so broad and include such wide areas of administrative discretion that there is a clear possibility that their authority might be so used. To the extent that State boards do use their powers in this way, appreciable hindrance to interstate trade may result.

Of course, any measures that result in controlling prices or production are likely to have some effect, direct or indirect, on interstate trade in dairy products. A thorough examination of this question is beyond the scope of this publication. It may be noted, however, that milk and milk products, in this country, are seldom if ever produced and distributed under conditions of pure competition. The alternative to public control is not open competition but a combination of competition and private monopolistic or semimonopolistic control.[35]

The larger question of whether there should be public control of the dairy industry in the interest of stability and orderly marketing cannot be dealt with here. We may merely emphasize the fact that efforts to stabilize the industry, whether through health and sanitary regulations or through price-fixing legislation, *may* appreciably hinder the movement of dairy products in interstate commerce. In promoting stability, interstate trade may be reduced. Here is a difficult problem of alternative objectives—one that needs careful study and that eventually the public must decide.

A number of bills have been urged in Congress by which the Agricultural Adjustment Administration would be empowered to adopt policies that would place restrictions on the free flow of dairy products in interstate trade. None of these bills has been adopted. None had the support of the Agricultural Adjustment Administration. In opposing an act of this nature—a shipping permit proposed in 1934 (H.R. 8988)—the Administration took the position that:

". . . Use of governmental powers to discriminate as between different groups of farmers has seemed to this Administration undemocratic and unjustifiable.

[34] *Baldwin* v. *G. A. F. Seelig*, 294 U. S. 522 (1935).

[35] For a discussion of this subject see: E. W. Gaumnitz and O. M. Reed, SOME PROBLEMS INVOLVED IN ESTABLISHING MILK PRICES, Marketing Information Series, Agricultural Adjustment Administration, 1937.

"The erection of 'tariff walls' around milksheds, creation of monopoly for farmers within, and exclusion by law of those outside, have the same unfortunate effects inside this country as erection of international trade barriers has upon world commerce. They lead to retaliatory action, which is injurious to the farmers and the public because it interrupts the economic flow of commerce." [36]

[36] BLACK, JOHN D., THE DAIRY INDUSTRY AND THE A. A. A. (Washington, D. C., 1935), p. 132.

Margarine

HISTORY OF MARGARINE LEGISLATION [1]

ALMOST from the time of its introduction into this country in the early 1870's Federal and State taxes and regulatory laws have, with varying success, been applied to the manufacture and sale of margarine (oleomargarine).[2] Irrespective of whether or not such was its purpose, the actual effect of much of this legislation has been to raise appreciable barriers to interstate trade in butter substitutes.

Federal margarine legislation, although to a certain extent restrictive, affects the country as a whole and, in the usual sense in which the expression is used, does not constitute a barrier to shipments across State lines. The history of Federal legislation may be briefly reviewed, however, as a background against which to examine the very important recent developments in State legislation relative to margarine.

A Federal margarine law providing for both license fees and an excise tax was adopted in 1886.[3] Annual license fees were set at $600 for manufacturers of margarine, $480 for wholesalers, and $48 for retailers. For dealers confining their business to uncolored margarine these license fees were reduced in 1902.[4] Annual payments for wholesalers were then placed at $200, and for retailers at $6.

The act of 1886 also provided for an excise tax of 2 cents per pound on all margarine manufactured in the United States and a stamp tax of 15 cents per pound on imported margarine. The act of 1902 distinguished between the colored and uncolored product, the excise on the former being 10 cents per pound and that on the latter one-fourth cent per pound. Numerous attempts to change these rates have met with failure, and they remain today the same as in 1902. Margarine imported from abroad has been subject to an import duty since 1883, as well as to the stamp tax imposed in 1886. The rate of duty since 1930 has been 14 cents per pound, the same as that paid on butter.

From the standpoint of this study of barriers to interstate trade, the history of State margarine legislation falls into two periods: (1) The years before 1929 when legislation that stood up in court tests was only moderately restrictive to interstate commerce, and (2) the period from 1929 to the present when effective restrictive legislation has been adopted and has survived the test of constitutionality.[5]

Even before the first Federal margarine law was adopted in 1886, over one-half of the States had enacted margarine laws. Most of these were planned to prevent the sale of margarine as butter, and some provided for license fees to be paid by margarine manufacturers and

[1] For a more detailed historical treatment see: SNODGRASS, KATHARINE, MARGARINE AS A BUTTER SUBSTITUTE (Stanford University, 1930). A good brief account appears in DEWEES, ANNE, STATE AND FEDERAL LEGISLATION AND DECISIONS RELATING TO OLEOMARGARINE, Bureau of Agricultural Economics, U. S. Department of Agriculture, 1939.

[2] As most margarine is now made from vegetable oils instead of from oleo and other animal oils, the term "margarine" is to be preferred to "oleomargarine."

[3] 24 Stat. 209.

[4] 32 Stat. 193.

[5] Early State legislation did result in drastically restricting the manufacture and sale of colored margarine.

dealers. Seven were apparently designed to exclude the product from the State. As with so much legislation of this kind, the motives that led to its adoption were complex, Certainly the prohibitive laws were strongly sponsored by dairy interests and apparently market exclusion was a major consideration in securing their adoption. Yet the claims of the dairymen that the purpose was to prevent fraud upon the public also has validity, for unscrupulous elements in the margarine industry in the early period did successfully pass off for butter considerable quantities of their product. Moreover, passage of restrictive legislation was rendered additionally easy, as pointed out by a contemporary student, by the popular prejudice against this new food. A considerable number of people honestly regarded margarine as ". . . foul in its nature and deleterious to the public health, or, perhaps, a positive poison." [6]

These early laws, insofar as they were prohibitive and seriously interfered with interstate commerce, were rendered inoperative as a result of the Federal act of 1886 and of Supreme Court decisions which found completely prohibitory laws unconstitutional. As a result, those who were opposed to margarine sponsored laws prohibiting its manufacture or sale when colored to resemble butter. By 1902 more than half the States had adopted such legislation. These laws held up satisfactorily under court appeal, but were not regarded as adequate by those who wished to curtail the use of all margarine including the uncolored product.

Another and more drastic type of legislation was attempted in this early period. Five States [7] attempted to deal with the situation by adopting laws requiring that butter substitutes should not be offered for sale unless colored pink. These laws became inoperative when in 1898 the New Hampshire law was declared unconstitutional by the United States Supreme Court. In rendering its decision the Court stated in part:

"Although under the wording of this statute the importer is permitted to sell oleomargarine freely and to any extent, provided he colors it pink, yet the permission to sell, when accompanied by the imposition of a condition which, if complied with, will effectually prevent any sale, amounts in law to a prohibition." [8]

Very little State legislation regarding margarine was adopted between 1902 and the early 1920's. Increasing difficulties appeared in connection with the enforcement of the Federal 10 cents-per-pound tax on artificially colored margarine which had been adopted in 1902. About 1909, manufacturers began to utilize in the production of margarine ingredients like peanut oil and soybean oil, which could be used to impart a naturally yellow color to margarine. As the Federal tax of 10 cents per pound applied to the "artificially" colored product, a serious enforcement problem arose, and the United States Bureau of Internal Revenue urged the need of legislation that would carefully define the term "artificially colored." Congress took no action until 1931. In that year the 10-cent tax was applied to all yellow margarine and the meaning of "yellow in color" was defined.

The last 15 years have seen a revival of State legislation directed against margarine. At first this new movement took the form of laws prohibiting the sale or manufacture of butter substitutes in which milk or cream was combined with edible oils.[9] The prohibitory character of these laws arose from the fact that some milk or cream is necessary to the production of palatable butter substitutes.

The legislatures of Oregon and Washington passed such an act in 1923. But in both States the law was defeated on being subjected to popular referendum. In 1925, Wisconsin adopted similar legislation, but here again without lasting success. In this case the supreme court of the State permanently enjoined the dairy and food commissioner from enforcing the law. The court found that the purpose of the act was to prohibit the sale and manufacture of oleomargarine within the State of Wisconsin.[10]

Although losing out in this skirmish, those

[6] BANNARD, H. C., THE OLEOMARGARINE LAW: A STUDY OF CONGRESSIONAL POLITICS, Political Science Quarterly, vol. 2, p. 547, 1887.

[7] New Hampshire, 1885; Vermont, 1886; Minnesota and West Virginia, 1891; and South Dakota, 1897.

[8] *Collins* v. *New Hampshire*, 171 U. S. 34 (1898).

[9] "Vegetable fats" in the case of the Oregon and Washington laws.

[10] *John F. Jelke* v. *Emery*, 193 Wis. 311 (1927).

wishing more restrictive margarine legislation presently led the attack on a new and this time much more successful front. Two States, Montana and California, had earlier experimented with a State excise on margarine, but no State had such an impost at the beginning of 1929. In that year Utah placed a 5-cent-per-pound excise on uncolored margarine. In 1931, following Utah's lead, 10 States adopted margarine excise taxes. Today over half the States of the Union have margarine excise legislation of one kind or another. In addition, many of these States have increased or for the first time have imposed license fees upon those who manufacture or sell margarine. Since 1929, therefore, we have entered a period in which margarine taxes have a place on the statute books of more than half of our States.

EXISTING MARGARINE LAWS

Before describing the present status of margarine taxes we may well note some of the miscellaneous provisions of State margarine laws. Most States strictly regulate the labeling of margarine packages so that the consumer may know what product he is purchasing.[11] Then many States provide not only that stores selling margarine shall make that fact known in some conspicuous way, but also require that similar clear notification shall be given to all patrons of public eating places and boarding houses. Arkansas and Missouri even prescribe that the dishes upon which margarine is served be clearly labeled with the term "oleomargarine." About one-half of the States prohibit the serving of margarine in State institutions, including, in some States, the State prisons. Thirty-one States prohibit outright the sale of colored margarine.

State license fees for margarine manufacturers and dealers are by no means new. Seventeen States now have such laws, seven having adopted them before 1930. In some States the fees are nominal. Thus, Minnesota assessed $1 per year against manufacturers, wholesalers, and retailers, and Utah collects $5 annually from wholesalers and retailers. In certain other States the charges are more substantial; some are not only higher than those assessed by the Federal Government, but cover a larger number of agencies. Thus, three States—North Carolina, Pennsylvania, and Wisconsin—require $1,000 annually from each manufacturer. Montana collects a $400 annual license fee from retailers. Of all the States, none assesses more comprehensive license fees than Wisconsin. Not only do manufacturers pay $1,000 annually, but wholesalers must pay $500, retailers, restaurants, and hotels $25, boarding houses $5, and bakers and confectioners and individual consumers who buy in interstate trade must pay $1.

At least half the States now have excise taxes on margarine.[12] Some of these apply only to margarine made from certain specified raw materials.[13] Nine States have excise taxes on all uncolored margarine. Of these, Idaho, Iowa, and Utah[14] levy 5 cents per pound, Oklahoma,[15] North Dakota, South Dakota, and Tennessee, 10 cents per pound, and Washington and Wisconsin, 15 cents per pound.

THE "PROTECTIVE" PURPOSE OF MARGARINE LAWS

Although elimination of fraud was undoubtedly an important basis for much of the early margarine legislation, this is obviously not the object of the recent movement for high margarine sales taxes and license fees. The practice of passing off margarine as butter has practically disappeared in recent years.[16]

Generally those favoring margarine legislation have been frank to say that their object is to "protect" the dairy industry. When the Washington tax of 15 cents per pound was carried to the Supreme Court the sponsors of the act candidly stated that their purpose was to help the butter industry and they made their arguments on that basis. The report of the South Dakota Tax Conference in 1931 typifies

[11] To a considerable extent these merely duplicate Federal laws and regulations.

[12] See table 2.

[13] These laws are described on p. 20.

[14] Idaho and Utah double this rate if the margarine is colored.

[15] A 1937 amendment exempts margarine manufactured from "domestic" products from this tax. This law has not yet been put into effect and is now held up by a legal dispute.

[16] Based on an examination of the reports by the U. S. Department of Agriculture of violations of the Federal Food and Drug Acts.

the attitude in butter-producing States. This report reads in part:[17]

"The South Dakota farmers and dairymen are developing a great dairy industry which should be encouraged and protected in every legitimate way. The use of substitute dairy products, such as oleomargarine, limits the use and lowers the market of butter.

"A tax of ten cents per pound on butter substitutes will afford a measure of protection to the dairy interests and at the same time protect the general public from the use of substitutes inferior in every way to pure South Daokta butter.

"This tax will operate to the benefit of the dairy industry in reducing the amount of such substitutes used or, if the sale of butter substitutes is not curtailed, will be a fair revenue producer. As between the two possibilities, we would prefer that it operate in a reduction of the use of butter substitutes."

The recent wave of margarine excise laws exempting from taxation margarine made from "domestic" ingredients illustrates a new development of the protective principle in State margarine legislation. Until the close of the World War oleo oil, a beef product, was the chief constituent of margarine. Gradually, however, the use of vegetable oils was perfected and cottonseed oil in particular became increasingly important as a margarine constituent. By 1915, cottonseed oil made up 30 percent of the fats and oils used in the manufacture of margarine in this country. About that time the use of coconut oil began to increase rapidly, and, by 1933, 75 percent of all fats and oils used in the manufacture of margarine came from this source.[18]

The results of this technological change were reflected before long in Federal and State legislation. Not only did the Federal Government (1934) place an excise tax of 3 cents per pound on coconut oil from the Philippines or other United States possessions,[19] but a curious new form of State margarine legislation flowered, especially in the cotton- and cattle-producing States. In the 3 years 1933–35, 14 States passed legislation providing in effect for an excise of from 10 to 15 cents per pound on margarine containing certain foreign ingredients.[20] Typical of these laws is that of Texas which provides for a 10-cent tax on margarine containing any fat or oil other than oleo oil, oleo stock, oleo stearine, neutral lard, corn oil, cottonseed oil, peanut oil, soybean oil, or milk fat.

More restrictive are the laws of certain important cattle-producing States outside the Cotton Belt. Thus, Minnesota, Nebraska, and Wyoming penalize cottonseed along with coconut and other foreign oils by providing for an excise tax on all margarine not containing a substantial percentage of animal fats.[21]

EFFECTIVENESS OF MARGARINE TAXES AS REVENUE AND AS PROTECTIVE MEASURES

Students of the tariff have long recognized that customs duties low enough to bring in appreciable revenue give little or no protection and that those that really give broad protection bring in practically no revenue. So State excise taxes may be a source of revenue or they may afford protection, but they cannot effectively do both at the same time.

Table 1 shows, as far as such data are available, the annual revenue collected during the calendar year 1937 or the fiscal year 1938 from State margarine excises and licenses. Iowa, with a 5-cent excise on all margarine, is the only State that has obtained considerable revenue from a margarine excise. In recent years this State has realized approximately one-quarter million dollars annually from this source. Utah collected about $44,000 during the fiscal year 1938. Other States have received much less revenue, and some none at all. States that exempt domestic oils from the excise collected

[17] See p. 14, Report of the South Dakota Tax Conference. [S. Dak. Div. of Taxation, Bull. 14.]

[18] DEWEES, ANNE, op. cit., p. 14.

[19] 5 cents per pound if from foreign countries.

[20] The actual wording of the laws usually specifies that margarine made from certain products is exempt from the tax. These products are "domestic" only in the sense that they are commonly produced in this country. In most cases they are also imported in considerable quantities.

[21] To be exempt from the excise tax, margarine must contain animal fats up to at least 65 percent in Minnesota, 50 percent in Nebraska, and 20 percent in Wyoming. Minnesota and Nebraska also discriminate against foreign vegetable fats and oils.

TABLE 1.—*Revenue from margarine excises and license fees, by States, for last fiscal year* [1]

STATES HAVING EXCISE ON ALL MARGARINE

State	Rate of excise per pound	Annual license fees						Revenue from—		
		Manufacturers	Wholesalers	Retailers	Restaurants	Hotels	Boarding houses	Excise	License	Total
	Cents	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*
Idaho	[2] 5		200	50				1,430.00	330.00	1,760.00
Iowa	5							315,329.90		315,329.90
Oklahoma	10	10	10	5	2	2	2	0	0	0
North Dakota	10	10	5	2				503.40	14.00	517.40
South Dakota	10							4,585.50		4,585.50
Tennessee [3]	10	5	3	2	2	3	1	([6])	([6])	14,603.00
Utah	[2] 5		5	5				42,334.64	1,720.00	44,054.64
Washington	15							0		0
Wisconsin [4]	15	1,000	500	25	25	25	5	[5] 13.42	[5] 1.00	14.42

STATES IMPOSING EXCISE ONLY ON CERTAIN TYPES OF MARGARINE

Alabama	10							0		0
Arkansas	10							0		0
Colorado	10	25	25					0	375.00	375.00
Florida	10							0		0
Georgia	10							0		0
Kansas	10							0		0
Louisiana	12							([6])		([6])
Maine	10							0		0
Minnesota	10	1	1	1				0	1,981.00	1,981.00
Nebraska	[7] 15	100	25	1				0	3,300.00	3,300.00
New Mexico	10							0		0
North Carolina	10	1,000	100					2.40	2,400.00	2,402.40
South Carolina	10							([6])		([6])
Texas	10							0		0
Wyoming	10							2,274.40		2,274.40

STATES HAVING LICENSE ONLY

California		100	50	5	2	2	2		59,150.19	59,150.19
Connecticut		100	50	6	3	3			9,700.05	9,700.05
Mississippi			100	10					([6])	([6])
Montana			1,000	400					9,100.00	9,100.00
Pennsylvania		1,000	500	100	50	50	10		424,700.74	424,700.74
Vermont			25	25					11,117.45	11,117.45

[1] Compiled August 1938 from data received from State officials. (Except for Tennessee.) Fiscal years range from calendar year 1937 to fiscal year ended July 31, 1938.

[2] Idaho and Utah each have an excise tax of 10 cents per pound on colored margarine.

[3] Data for Tennessee from p. 44, vol. V, No. 1, Tax Policy (publication of the Tax Policy League, New York).

[4] A license fee of $1 and a use tax of 6 cents per pound are charged consumers who import margarine from outside the State.

[5] Data received from Wisconsin showed a total revenue of $14.42 and indicated that 1 consumer's license had been issued. The break-down of the total has been made by the authors.

[6] Data not available.

[7] State actually collects 14¾ cents per pound as credits are given for Federal excise.

nothing from the margarine excise, with the exception of North Carolina which received $2.40.

The story is similar for license fees. Pennsylvania with its $100 annual license fee from retailers received over $400,000 from these fees in the calendar year 1937. California collected nearly $60,000 from license fees in the same period. Other States received much less. As a source of revenue, therefore, margarine taxes and license fees are not important except in Iowa, Pennsylvania, and perhaps, though in less degree, in Utah and Montana.[22]

What has been the effect of these taxes on the consumption of margarine? Unfortunately there are no statistics on margarine consumption by States. Neither State nor Federal revenue reports on margarine excises are in such form as to give a satisfactory measure of the quantity of margarine consumed. However, the annual reports of the United States Commissioner of Internal Revenue do give the number of retailers licensed to sell margarine in each State. These data provide our best indication of the effect of margarine taxes on consumption. But obviously they must be used with caution as other factors besides taxes may influence the number of dealers. Thus, for example, shifts in the number and size of all retail establishments, changes in the quantity of margarine sold by licensed dealers, changes in the number of licensed dealers due to manufacturers' sales campaigns or business conditions, may somewhat obscure the picture.

Tables 2 and 3 present an analysis of the data by States, showing the number of retail dealers having Federal licenses to sell uncolored margarine. Table 2 shows a comparison of the number of dealers licensed in 1928 and 1937. In 1928, no States had margarine excise taxes, but by 1937 one-half of the States had margarine excises of some kind. The table is arranged to show the changes that have taken place for groups of States having different types and rates of tax.

[22] The figures given are for gross returns. The net revenue realized would be somewhat smaller.

TABLE 2.—*Number of retail dealers licensed to sell uncolored margarine, by States, 1928 and 1937*

State	Excise per pound, 1937	Retail dealers		Percentage change, 1928 to 1937
		1928	1937	
	Cents	*Number*	*Number*	*Percent*
STATES HAVING A SALES TAX ON ALL UNCOLORED MARGARINE				
Idaho [1]	5	699	6	−99.1
Iowa	5	7,400	3,989	−46.1
Utah [1]	5	733	286	−61.0
Total		8,832	4,281	−51.5
North Dakota	10	764		−100.0
South Dakota	10	1,523	48	−96.8
Tennessee	10	2,363	320	−86.5
Oklahoma [2]	10	3,498	344	−90.2
Total		8,148	712	−91.3
Washington	15	3,986	11	−99.7
Wisconsin	15	5,007	3	−99.9
Total		8,993	14	−99.8
Grand Total		25,973	5,007	−80.7
STATES HAVING A SALES TAX ON ALL MARGARINE NOT CONTAINING A SUBSTANTIAL AMOUNT OF ANIMAL OILS				
Minnesota	10	5,416	2,144	−60.4
Nebraska	14¾	3,410	2,849	−16.5
Wyoming	10	275	346	+25.8
Total		9,101	5,339	−41.3
STATES HAVING A SALES TAX ON MARGARINE EXCEPT THAT MANUFACTURED FROM SPECIFIED DOMESTIC PRODUCTS SUCH AS COTTONSEED OIL, OLEO OILS, ETC.				
Alabama	10	1,389	2,420	+74.2
Arkansas	10	1,432	2,163	+51.0
Colorado	10	2,362	2,315	−2.0
Florida	10	2,288	3,870	+69.1
Georgia	10	1,601	3,257	+103.4
Kansas	10	7,278	5,516	−24.2
Louisiana	12	1,602	2,691	+68.0
Maine	10	1,435	1,966	+37.0
New Mexico	10	194	539	+177.8
North Carolina	10	821	2,878	+250.5
South Carolina	10	432	1,689	+291.0
Texas	10	2,341	7,681	+228.1
Total		23,175	36,985	+59.6

[1] 10 cents on colored margarine.

[2] New law now held up by court action provides for tax which exempts from taxation margarine from "domestic" products.

TABLE 2.—*Number of retail dealers licensed to sell uncolored margarine, by States, 1928 and 1937*—Continued

STATES HAVING NO MARGARINE EXCISE TAXES

State	Excise per pound, 1937	Retail dealers		Percentage change, 1928 to 1937
		1928	1937	
	Cents	*Number*	*Number*	*Percent*
Arizona		531	726	+36.7
California		12,236	11,353	−7.2
Connecticut		899	1,313	+46.1
Delaware		341	401	+17.6
District of Columbia		443	929	+109.7
Illinois		15,436	16,116	+4.4
Indiana		10,306	9,748	−5.4
Kentucky		1,954	3,789	+93.9
Maryland		1,958	3,271	+67.1
Massachusetts		4,629	4,563	−1.4
Michigan		10,516	11,838	+12.6
Mississippi		302	626	+107.3
Missouri		6,986	8,451	+21.0
Montana		5	26	+420.0
Nevada		63	111	+76.2
New Hampshire		699	1,014	+45.1
New Jersey		5,817	4,769	−18.0
New York		13,986	13,255	−5.2
Ohio		16,298	16,677	+2.3
Oregon		2,530	2,493	−1.5
Pennsylvania		4,177	4,078	−2.4
Rhode Island		604	974	+61.3
Vermont		196	352	+79.6
Virginia		1,824	4,068	+123.0
West Virginia		2,094	6,233	+197.7
Total		114,830	127,174	+10.7
Total all States		173,079	174,505	+0.8

Annual Report of the Commissioner of Internal Revenue, 1928, p. 113, and 1937, p. 122.

TABLE 3.—*Percentage of retail stores licensed to sell uncolored margarine, by States, 1929 and 1935* [1, 2]

Rank by percentage of retail stores	1929		1935	
	State	Percentage of retail stores	State	Percentage of retail stores
		Percent		*Percent*
1	Montana	0.8	**Washington**	0
2	Mississippi	4.2	**North Dakota**	.1
3	South Carolina	11.2	**Wisconsin**	.2
4	Pennsylvania	12.2	**Idaho**	.5
5	Georgia	12.9	Montana	1.0
6	North Carolina	13.8	**Oklahoma**	2.8
7	Texas	14.5	**South Dakota**	3.3
8	New Mexico	14.8	**Tennessee**	4.3
9	Alabama	15.4	Mississippi	6.7
10	Connecticut	15.6	Pennsylvania	11.1

TABLE 3.—*Percentage of retail stores licensed to sell uncolored margarine, by States, 1929 and 1935*—Continued

Rank by percentage of retail stores	1929		1935	
	State	Percentage of retail stores	State	Percentage of retail stores
		Percent		*Percent*
11	Kentucky	17.0	**Utah**	14.1
12	Louisiana	17.1	Arkansas	17.8
13	Virginia	20.8	Vermont	19.7
14	Arkansas	21.5	Louisiana	20.4
15	Vermont	22.5	North Carolina	20.6
16	**Tennessee**	24.5	Georgia	20.8
17	Nevada	29.6	Alabama	21.1
18	Rhode Island	30.4	Connecticut	21.3
19	Maryland	30.6	South Carolina	21.6
20	Delaware	31.2	New Mexico	24.2
21	New Hampshire	31.6	Kentucky	24.2
22	Florida	32.2	Nevada	27.1
23	Massachusetts	34.1	Texas	28.3
24	New Jersey	38.2	Virginia	29.7
25	West Virginia	38.7	Minnesota	31.1
26	New York	41.1	Massachusetts	33.7
27	Maine	43.4	New York	35.2
28	Arizona	45.7	Delaware	38.8
29	**Oklahoma**	50.8	New Jersey	40.6
30	Wyoming	58.3	Rhode Island	40.9
31	**North Dakota**	61.7	New Hampshire	42.2
32	Missouri	62.2	Maryland	43.6
33	**Utah**	63.2	Wyoming	44.4
34	**Wisconsin**	63.6	Maine	45.1
35	District of Columbia.	69.7	Florida	47.5
36	Kansas	72.2	West Virginia	50.9
37	**Idaho**	74.9	**Iowa**	51.5
38	Minnesota	75.7	Arizona	52.8
39	Colorado	75.8	Missouri	53.3
40	Illinois	79.1	District of Columbia.	53.3
41	Michigan	83.8	California	56.2
42	Ohio	84.2	Oregon	63.3
43	California	92.0	Illinois	68.8
44	Indiana	93.2	Colorado	70.3
45	**South Dakota**	94.3	Michigan	71.7
46	Nebraska	96.6	Nebraska	72.0
47	Oregon	99.4	Ohio	75.9
48	**Washington**	[3] 112.6	Indiana	80.8
49	**Iowa**	[3] 113.8	Kansas	87.1
	United States	44.4	United States	36.8

[1] Source of data used in computing percentages of number of food stores is the total number of grocery stores, combination stores (meat and grocery), and general stores (with food) as reported for 1929 in the Fifteenth Census of the U. S., 1930, Retail Distribution, vol. I, pts. 2 and 3, table 1 for States, and for 1935 in Census of Business, 1935, Retail Distribution, vol. III, table 1A.

Number of retail dealers licensed to sell uncolored margarine taken from the Annual Reports of the Commissioner of Internal Revenue, for 1929, table 12, p. 100; and for 1935, table 34, p. 129.

[2] States that appear in bold-face type had an excise tax on margarine in 1935.

[3] The percentages for Washington and Iowa are obviously too high, because of difficulties explained in the text.

An examination of the changes for individual States and groups of States brings out some striking differences. Thus, States having a tax on all uncolored margarine show a drastic drop in the number of retail licenses, a decline which averages 52 percent for States having a 5-cent excise, 91 percent for those having a 10-cent excise, and more than 99 percent for those having a 15-cent excise. These decreases are especially striking in view of the substantial increases taking place in most other States.

States that exempt from the excise any margarine containing a substantial quantity of animal fats show, on the average, a 41-percent decline in retail licenses. The 20-percent animal-fat requirement of Wyoming does not appear to have had a restrictive influence, for licenses in that State increased 26 percent. Nebraska, however, which sets a 50-percent requirement on beef fat, shows a 16-percent decline, and Minnesota, with the highest requirement of all, 65 percent, shows the sharpest decline, 60 percent.

Of the States that exempt from the excise any margarine that is manufactured from domestic products, 10 show an increase in the number of licenses and 2 show relatively small decreases, the average increase for the whole group being 60 percent. States having no margarine excise show an average increase of 11 percent. For the country as a whole there has been a slight increase in the number of licensed retail dealers since 1928. Another approach to these data is shown in table 3. This table shows the percentage of retail food stores (grocery, combination, and general stores) licensed to sell margarine in 1929 and 1935. For each year the stores are arranged in order of their percentage rank in this respect, beginning at the top with those having the smallest and ending at the bottom with those having the highest percentage of retailers who have licenses to sell margarine.[23] The States in bold-face type are those having an excise on all margarine in 1935. None of the States, with the exception of Utah whose law became effective May 14, 1929, had an excise in the earlier year. It will be noted that all but 1 [24] of the 9 States having an excise on all margarine in 1935 are among the 11 having in that year the lowest percentage of licenses. Even more striking is the fact that all of these States had a much higher ratio of licenses in 1929 than in 1935; 2 of them, Washington and Iowa, actually having the highest ratios of all the States before the taxes were imposed. The inclusion of Montana and Pennsylvania in the lowest 11 in 1935 may well be caused in part by the fact that they are the 2 States having highest license fees for retailers ($400 and $100, respectively). For both of these States the license fees antedate 1929, and the existence of these fees may well be a factor in causing their low ratios in 1929.

Undoubtedly factors other than taxes are responsible for some of the changes shown in the tables. Moreover, number of retail stores is not a perfect measure of consumption changes. Certainly the exact percentages shown should not be taken too seriously. Yet the data do create a strong presumption for the conclusion that margarine excises, and probably to some extent also high retail license fees, do substantially curtail margarine consumption.

Although State excises that exempt margarine made from certain specified ingredients have brought in very little revenue and have apparently not curtailed the total quantity of margarine consumed in the States concerned, they have, like the protective tariff, profoundly affected the manufacture and the flow of trade in the product taxed. Thus, in 1933, of the fats and oils used to produce margarine in this country, about 75 percent consisted of coconut oil and 9 percent of cottonseed oil. By the fiscal year 1938, coconut oil had declined to 26 percent of the total fats and oils and cottonseed oil had become 52 percent.[25]

[23] Two inadequacies in these data should be borne in mind. (1) The accuracy and completeness of the count of food stores probably varied somewhat both from State to State and from one census to the other. (2) We have included as food stores only the categories indicated, but to some extent other types of dealers may have sold margarine. It will be noted that two States have percentages higher than 100 in 1929. This would appear to be due either to the fact that not all retail food dealers were counted in the 1929 census, or that, if counted, they appear in categories other than those that we have included.

[24] Iowa.

[25] Reports of the Commissioner of Internal Revenue. The Federal excise of 1934 on imported coconut oil was partly responsible for this shift. Percentages for 1938 were computed from preliminary figures.

This new legislation, so far as it is directed against foreign oils, has been supported by producers of cotton, soybeans, livestock, and peanuts, but the chief sponsorship has apparently come from those units in the margarine industry that were willing to go on a domestic ingredients basis. The gains and losses that may result from this new development are difficult to appraise, but some immediate gain may result to those manufacturing units in the industry which are best equipped to utilize domestic oils. Moreover, some general support has been recruited in the South and West by the margarine industry in its struggle against more sweeping antimargarine legislation.

On the other hand, the advantage to producers of "domestic" oils does not promise to be very great so long as the "domestic" constituents of margarine, such as cottonseed oil, continue to be imported in quantities actually greater than the total quantity used in this country for margarine purposes. The consumer, who is so often lost sight of in interindustry battles, presumably pays at least a little more for his margarine now that the least expensive ingredients (the chief of which is coconut oil) can no longer be so advantageously used.[26]

It is of some interest to note that we have, in the case of the State excises on margarine which exempt it from a tax when manufactured from domestic oils, the appearance of something that bears a resemblance, at least, to State protection against foreign competition. Tariff protection from foreign competition is a domain which many suppose is the sole province of the Federal Government. How far this State movement can go and still be constitutional remains to be determined. But already similar developments have appeared in other fields. State legislation regarding wine and beer giving preference to State-produced raw materials is obviously a disadvantage to foreign nations as well as to other States.[27] The California Agricultural Code requires that all cold-storage meat imported from outside the United States shall be inspected. Under this law the director may prescribe fees and make such rulings as will bar meats from New Zealand and Australia. Florida placed an inspection fee on importations of cement when the United States Government gave Belgium certain advantages under a reciprocal agreement.[28] Legislation that would place a high inspection tax on foreign-made boots and shoes was urged recently before the Massachusetts Legislature, but failed of adoption.

At least six Western States [29] have laws that place special restrictions on the sale of eggs or egg products imported from abroad. By way of illustration, California requires that no imported egg products shall be sold before they are inspected and such sale authorized by the State Department of Health. Most of these States provide for signs or labels announcing the use or sale of foreign eggs. Idaho stipulates that each egg shall be plainly stamped with the country of origin. The Arizona law requires that places of business where foreign meats, poultry, eggs, or butter are sold shall display a sign stating that such products are sold. This sign must be at least 4 feet long and 8 inches wide.

LEGAL ASPECTS

The constitutionality of State margarine legislation has depended primarily upon the real purpose for which it was passed. The basis, therefore, upon which the courts have judged the purpose of these laws becomes a crucial consideration. When margarine legislation is based on the police powers of the State—that is, when it is designed to prevent fraud or promote the health and welfare of the people—the Federal courts have shown a disposition to go behind the purpose as expressed in the acts of the State legislatures, to examine the actual need for such protection, and to inquire into the obvious results that may be expected from the act.

On this basis the Supreme Court has found that State legislation forbidding the sale of colored margarine is constitutional.[30] On the

[26] They cannot be used at all in the States having a special excise on margarine made from foreign oils, as the tax is prohibitive. Insofar as margarine manufactured from coconut oil is sold in other States its cost is raised by the Federal excise.

[27] See pp. 32–33.

[28] As this report goes to press, the Florida law has been declared unconstitutional by the Supreme Court. *Hale* v. *Bimco Trading Co.*, No. 418, October term, 1938.

[29] Arizona, California, Idaho, Montana, Oregon, and Washington.

[30] *Plumley* v. *Massachusetts*, 155 U. S. 461 (1894).

other hand, it has declared that prohibition of the introduction and subsequent sale of all margarine goes beyond the limits of the legitimate police powers of the State, must result in a serious burden on interstate commerce, and is, therefore, unconstitutional.[31] Similarly, laws requiring that all margarine be colored pink are unconstitutional even though the law itself states that it is designed to prevent fraud. The necessity in such cases of looking beyond the stated purpose of the act was emphasized in the Supreme Court decision on the New Hampshire law which required that all margarine sold in the State be tinted pink. The court said in part:

"In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect." [32]

Margarine excise taxes which have recently proved so effective in curtailing the sale of butter substitutes within the borders of certain States have stood up well under court test. The most recent Supreme Court decision is that upholding the Washington excise of 15 cents per pound on all margarine sold within that State. The legislative history of this act, and the defense before the Court show clearly that the law was designed, in part at least, to "protect" the dairy farmers.[33] The result of the tax, so far as revenue is concerned, was practically to wipe out all State income from this source. But the Court took the position that it must accept the judgment of the legislature as expressed in the wording of the act itself. The decision reads in part:

" . . . a tax designed to be expended for a public purpose does not cease to be one levied for that purpose because it has the effect of imposing a burden upon one class of business enterprises in such a way as to benefit another class . . . (Taxes) do not lose their character as taxes because of the incidental motive. . . . The statute here under review is in form plainly a taxing act, with nothing in its terms to suggest that it was intended to be anything else . . . From the beginning of our Government, the courts have sustained taxes although imposed with the collateral intent of effecting ulterior ends which, considered apart, were beyond the constitutional power of the lawmakers to realize by legislation directly addressed to their accomplishment." [34]

As matters now stand, therefore, carefully drawn margarine excise laws appear to be constitutional even though their result may be to bar margarine from the State.[35]

CURRENT ARGUMENTS IN DEFENSE OF MARGARINE LEGISLATION

Although during the early history of margarine legislation many apparently believed margarine to be an unwholesome food, few now take this position. In fact, the Supreme Court of the United States in a recent decision declared a particular brand of margarine to be " . . . a nutritious and pure article of food, with a well-established place in the dietary." [36] Butter and margarine are fat foods of equal caloric content and digestibility. It is true, however, that butter is an important source of vitamin A, whereas margarine does not naturally contain this vitamin in appreciable quantities. As margarine is consumed chiefly by poor people—especially the very poor whose diet is likely to be deficient in this vitamin—some take the position that governmental measures to discourage the use of margarine are justified in the interest of public health.

In the light of recent scientific research on the subject one cannot doubt the importance of vitamin A in the diet, but it may well be questioned whether legislation designed to discourage margarine consumption is an effective method of assuring a proper vitamin diet to the lowest income groups. Studies of consumption suggest that to some extent (how great we do not know) very poor people deprived of margarine will turn not to the relatively expensive butter but

[31] *Schollenberger* v. *Pennsylvania*, 171 U. S. 1 (1898).

[32] *Collins* v. *New Hampshire*, 171 U. S. 34 (1898).

[33] See for example the Seattle Daily Times, Seattle, Wash., January 21, 1931, and the Spokesman Review, Spokane, Wash., February 3, 1931.

[34] *A. Magnano Co.* v. *Hamilton*, 292 U. S. 40 (1934).

[35] In an earlier case, *Glen* v. *Field Packing Co.*, 290 U. S. 177 (1933), the Supreme Court held a Kentucky excise of 10 cents per pound unconstitutional but the legal points at issue appear to have been somewhat different from those in the Washington case.

[36] *A. Magnano Co.* v. *Hamilton*, 292 U. S. 42 (1934).

to peanut butter, lard, and other cheap substitutes, most of which are not rich in this vitamin. At certain seasons of the year, other sources of vitamin A, particularly green vegetables, are a cheap and wholesome source of this vitamin. Of course, persons who buy margarine instead of butter may not eat a proper quantity of these other vitamin-bearing foods and, at least in the North, may find such foods relatively expensive in winter. For those of moderate income probably this danger is slight but nutritional experts do report a serious deficiency of vitamin A as not infrequent especially among very poor people whose diet all too often contains insufficient quantities of butter or other foods that are rich in vitamins.

Recently certain margarine manufacturers have succeeded in adding vitamin A to their product so that it is present in about the same quantity as in good butter. It may be assumed that those who have opposed margarine solely on health grounds will now approve the removal of restrictive legislation on margarine of high vitamin content.

Much used in the last few years in support of excise taxes on margarine in important dairy States has been the argument that, as dairying pays heavy taxes, it is no more than fair that an equivalent tax burden should be borne by margarine. Reasoning in this vein was important in justifying the Washington excise. It was argued that a tax of at least 15 cents per pound was needed to insure an equal contribution to the revenues of the State by each pound of margarine and a similar weight of butter.

The statistical and theoretical reasoning that lies behind this argument is simply not acceptable to most students of statistics and public finance. The reader is referred to the analysis of this subject by W. R. Pabst in his book entitled, "Butter and Oleomargarine."[37] Without attempting here to go into detailed analysis, it may be pointed out that a general application of this new principle of "equalizing the burden of taxation" would lead to some very curious legislation not at all to the liking of the dairy States. Thus, following this reasoning, cotton bears a considerable burden of taxation in certain southern States. In order to equalize this burden, butter, which is largely brought in from other States, ought to bear an appreciable sales tax. Again following the same reasoning, potato growers of Maine bear a heavy burden of taxation whereas the bread consumed in Maine is made largely from wheat grown in our western States and so contributes practically nothing to the revenues of the State of Maine. According to this reasoning Maine should equalize this burden by placing a sales tax on bread.

At times this argument takes a slightly different form although the reasoning is pretty much the same. It is said that, because of taxes and other costs, butter is at a competitive disadvantage with margarine and that, therefore, the State should place a tax on margarine sufficient to equalize this difference and to protect dairying from unfair competition. The theory of equalizing costs in cases of competing commodities has been accepted, it is true, by the Congress of the United States as a basis for fixing protective customs duties on foreign imports. But this principle can hardly be carried over to State legislation without adopting there also the protective principle which is its justification in our foreign trade. If State taxation is to be based upon the principle of equalizing cost of production, then the western dairying States will be the first to object, for certain populous Eastern States, which form the great market for western butter and cheese, would by this reasoning, be justified in placing a sales tax on dairy products when imported from Western States—a tax fully justified by differences in the cost of production in the two areas.

Finally, we may note the argument, especially strong in times of low prices for butter, that margarine taxes are justifiable because they give much-needed aid to dairying, an important and severely distressed industry. Admitting the depressed condition of the farmers whose livelihood depends on the butter market, and their need of relief, we must raise the question whether prohibitive margarine legislation will help sub-

[37] Pabst, W. R., Jr., butter and oleomargarine: an analysis of competing commodities. N. Y., Columbia Univ. Press. 1937. See especially ch. IV.

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stantially to bring such relief. If, as a result of prohibitory margarine legislation, people consume butter instead of margarine, either the prices or the consumption of butter (or both) may be expected (if there are no other changes in the situation) to rise. However, it is important to note that they cannot rise in Wisconsin or Washington (States with prohibitive legislation) more than they do in other States so long as there is no interference with the interstate movement in butter. Furthermore, we cannot assume that all the purchasing power now going for margarine purchases will be deflected to butter. In fact, students of this problem point out that, if denied margarine, many consumers will not increase their purchases of butter. Thus families of moderate means who use margarine for cooking may now buy cooking compounds and not turn to butter for this purpose. Very poor families may replace margarine with butter, or, on the other hand, they may turn to such cheap substitutes as lard or peanut butter. Obviously without elaborate consumption studies of this subject, we cannot predict with any assurance the exact effect of margarine legislation on consumption or prices of butter.

The fact is that State legislation regarding margarine cannot be expected to give appreciable aid to dairy farmers. In all probability even national legislation of a prohibitive character would be of but little help. A bulletin issued by the Agricultural Adjustment Administration says:

"The government never before has prohibited the use of any safe and non-injurious food product. Even if it should do so now, and if all consumption of oleomargarine were prohibited and persons formerly using this product turned to butter, the maximum increase in the price of butter probably would be less than 2 cents a pound. And since many oleo users might not turn to butter, the actual increase might be less than a cent a pound." [38]

Finally, should relief be given to one industry if it hurts another, even though the harmed industry is in another State? Without attempting a categorical answer to this question, we do submit that it is worthy of careful consideration. Moreover, if out-of-State interests are hurt, there is always the danger of retaliation.

[38] Dairy Adjustment—What and Why, March 31, 1934.

RETALIATION

Among the unfortunate results of margarine taxes, as of all measures resembling State tariffs, are the ill-feeling and retaliation they are likely to engender in the States whose producers believe themselves hurt by such legislation. Expressions of resentment and threats of reprisal immediately appeared in the cotton-growing States upon the passage of the Wisconsin margarine excise of 1935.

The Governor of Alabama and the State commissioner of agriculture of Louisiana issued public protests.[39] In its official publication, the Mid-South Cotton News, the Mid-South Cotton Growers Association, declared:

"We are Wisconsin's best customer for butter, cheese, condensed milk, farm implements, farm light plants, plumbing supplies and road building machinery. Without our patronage she would indeed be in a sad plight. She has invited such a calamity upon herself. She has chosen to wall herself in. Let her see how she likes it.

"The Wisconsin Manufacturers Association has announced that millions of dollars of contracts for Wisconsin agricultural and manufactured products have already been cancelled by business men in sympathy with Southern producers of fats and oils.

"COTTON OIL is to the cotton States what butterfat is to Wisconsin and what hog lard is to the corn-hog States. Any interference with the free movement of cotton oil strikes at the heart of the cotton grower and the South generally—AND CANNOT BE TOLERATED."

The head of a grocery-products distributing company in Georgia declared that Wisconsin products such as beer, paper, plumbing supplies, cheese, and evaporated milk had been hurt in southern markets. The secretary of the Mississippi Wholesale Grocers Association reported plans for reprisals in that State.[40]

[39] The New York Journal of Commerce, November 15, 1935. Governor Allred of Texas sent letters of protest to the leading dairy States. The Cotton and Cotton Oil Press, June 18, 1938.

[40] New York Journal of Commerce, November 15, 1935.

Even labor added its voice to the protest. At its convention held in June 1938, the Tennessee Federation of Labor protested against margarine taxation, adopting a resolution which reads in part:

"Whereas, Oleomargarine conforms to all the requirements of the Federal and State Pure Food laws and is sold purely on its own merit as an article of food, and

"Whereas, Oleomargarine is used primarily by labor, its families and low income consumers because of its price economy and adaptability as a table and cooking fat in the house,

"Be it resolved by the Tennessee Federation of Labor in convention assembled that it is opposed to the taxation of this wholesome, nutritious and pure food product by federal and state governments, because such taxation harms both the low-income consumers and the domestic producers of oils and fats; and because there is no social or economic necessity or sound reason for subjecting any food product that conforms to the Federal and State Pure Food laws to additional special and restrictive taxes or license fees or other harmful impositions . . ."

In March 1938, the Arkansas General Assembly in concurrent resolution protested against—

". . . proscriptive tax laws against the importation, sale and consumption in their several states of certain wholesome food products from other states under the guise of protecting their own producers of competing products."

The actual extent to which the sale of Wisconsin products in the South was curtailed cannot be determined. At the time the passage of the act was being considered a Senator from an important manufacturing district in Wisconsin declared that Southern States were already beginning to boycott Wisconsin machinery and canned milk. Soon after the act was adopted the Wisconsin Manufacturers Association (strongly opposed to the bill) reported threatened losses in sales of $1,000,000 to Wisconsin paper manufacturers, and $2,500,000 to Milwaukee manufactures of textiles and machinery. One margarine manufacturer was reported to have cancelled his purchases of paper cartons from a firm in Menasha, Wis. These were said to have amounted to $350,000 a year.[41]

Actually, reprisals do not appear to have been adopted to anything like the extent predicted. J. D. Beck, commissioner of the Wisconsin Department of Agriculture and Markets, is reported to have denied that southern retaliation reached serious proportions.[42] Certainly, southern markets are still absorbing large quantities of products from Wisconsin, and southern legislatures have not yet adopted retaliatory taxes on Wisconsin goods.[43]

On the other hand, much resentment does persist in the South. Apparently, it was partly a recognition of this fact that led to a recent movement in Wisconsin, sponsored jointly by the State and business interests, for a "Wisconsin Good Will Tour" of the Cotton Belt. This proposal did not materialize but its announcement in the South brought a renewed barrage of criticism from southern editors directed at Wisconsin's 15-cent margarine tax. One southern editor advised treatment of the Wisconsin delegation as follows:

"Treat them with courtesy, of course, but the good will tourists may also be reminded that good will is a game that two can play. Why come down to the South and expect to encourage our friendly relations when they have already placed a tax on some Georgia products which will make their use in Wisconsin prohibitive.[44]

POSSIBILITY OF OTHER PROTECTIVE EXCISE TAXES

Protective legislation, or even the threat of protective action, by one State may lead to similar measures by others. In the case of State protection, moreover, there is the danger that a competition for protective favors will arise within the State itself. Having granted protection against outside competition to one industry, the State may soon find itself under considerable pressure to grant similar favors to other dis-

[41] The Milwaukee Journal, July 7, 1935.

[42] Interview of July 9, 1936. MELDER, F. E., op. cit., p. 104.

[43] However, a bill has been introduced in the 1939 session of the Arkansas legislature which proposes a 25 percent ad valorem tax on milk, cream, butter, and apples grown in Washington, Wisconsin, Iowa, and Minnesota, and sold in Arkansas.

[44] Lavonia Times, Lavonia, Ga., December 17, 1937, as quoted in the Cotton and Cotton OilPress, January 8, 1938.

tressed industries. If excise taxes may be used against margarine, what is to bar their effective use against other commodities?

Already a beginning has been made in this direction. Later pages show how State excise taxes have been applied against "foreign" beer and wine. But such protection has also been applied to commodities related more closely to butter. Thus during the last 7 years repeated attempts have been made in Middlewestern States to pass laws designed to protect lard and corn oil against out-of-State substitutes, particularly cottonseed oil. In 1931, South Dakota adopted a law placing an excise of 5 cents a pound on vegetable oils and vegetable cooking compounds, except those made of corn oil. This law was defended as follows in the report of the South Dakota Tax Conference: [45]

"The production of pork and pork products is one of South Dakota's greatest farm industries. Lard is one of the leading by-products of the swine raising business. Any so-called substitute for use in place of lard reduces the demand for and consequently the price of pure lard and in turn has a depressing effect on hog prices.

"This tax of five cents per pound on the sale of all lard substitutes will tend to restore the market for lard now so largely controlled by substitutes . . ."

Partly, at least, as a result of protests from the South, this law was repealed at the next session of the State legislature.

A similar act proposing an excise of 3 cents per pound on all lard substitutes was urged before the Iowa Legislature in 1934. A leading State official in defending this proposal declared that pork and lard were the State's most important products and that he favored the law as "protection for a home industry." [46] The State of Florida has had a law on its statute books since 1937 that provides for a tax of 1 cent per dozen on all cold-storage eggs sold in the State. This law obviously affords at least some small protection to fresh eggs produced in Florida.

Only a small beginning has been made in the field of exise taxes as barriers to interstate trade outside of beer, wine, and margarine legislation. But, in view of the strides that legislation has made in these fields during the last 8 years, and the general tendency of "protective" legislation to spread from one field to another, it seems not improbable that State excise taxes may soon become an increasingly serious barrier to the free movement of farm products in interstate commerce.

[45] See p. 15, Report of the South Dakota Tax Conference. [S. Dak. Div. of Taxation, Bull. 14.]

[46] Cotton Oil Press, January 1934. Cited by WEBER, GEORGES M., LEGISLATIVE WEAPONS IN INTER-INDUSTRY COMPETITION—OILS AND FATS, Harvard Business Review, vol. 13, p. 79. (October 1934).

Alcoholic Beverages

LEGAL ASPECTS

STATE REGULATION of the interstate movement of intoxicating beverages is not limited by the commerce clause of the United States Constitution in the same degree as are other commodities with which this publication deals. It was early felt that States wishing to exclude or restrict the consumption of intoxicating beverages should not be hampered in this objective by Federal control over interstate commerce.

To effect this purpose the Wilson Act of 1890 provided that liquor introduced into a State should become immediately subject to the police regulations of that State. Judicial interpretations greatly weakened the effectiveness of the law. But the Webb-Kenyon Act of 1913, and later the twenty-first amendment to the Constitution successfully freed the States from the restrictions of the interstate-commerce clause of the Constitution and gave them the right to prevent shipments in violation of their laws.

The constitutionality of State laws designed to protect in-State liquor manufacturers and dealers or the farmers growing the raw materials used in the manufacture of intoxicating beverages now seems definitely established. In the leading case in this field, *State Board of Equalization of California* v. *Young's Market Co.*,[1] the court upheld a California statute that placed a $500 license fee on importers of out-of-State beer.[2] In a more recent decision, which involved the exclusion of Indiana beer by the State of Michigan, the position of the court was reaffirmed and clarified. The opinion of the court reads in part:

"Whether the Michigan law should not more properly be described as a protective measure, we have no occasion to consider. For whatever its character, the law is valid. Since the Twenty-First Amendment . . . the right of a state to prohibit or regulate the importation of intoxicating liquor is not limited by the commerce clause . . ."[3]

Although the purpose of Congress was obviously to give the States the power to protect their citizens as far as they saw fit from the evils believed to be associated with the consumption and sale of intoxicating beverages, the door was now opened for State restrictions on interstate trade for the purpose of protecting local industry. The Wilson Act had provided that, after having moved in interstate commerce, the beverages of other States should be subject to the laws of each State enacted in the exercise of its police powers *to the same extent and in the same manner* as if they had been produced within the State. No such specific limitation was included in the Webb-Kenyon Act or the constitutional amendment. The result was soon apparent, for a number of States levied taxes that were clearly for economic rather than sumptuary purposes.

[1] 299 U. S. 59 (1936).

[2] California repealed this law in 1937.

[3] *Indianapolis Brewing Co., Inc.*, v. *The Liquor Control Commission of the State of Michigan, et al.*, 59 Sup. Ct. Rep. 254 (1939). See also, *Mahoney, Liquor Control Commissioner* v. *Joseph Triner Corp.*, 304 U. S. 401 (1938) and *Joseph S. Finch and Co., et al.*, v. *Roy McKittrick, Attorney General of the State of Missouri, et al.*, 59 Sup. Ct. Rep. 256 (1939).

LEGISLATION FAVORABLE TO IN-STATE PRODUCERS AND DISTRIBUTORS OF INTOXICATING LIQUOR

Insofar as State liquor laws raise barriers to interstate trade they appear to be designed to give advantage to two groups: (1) In-State manufacturers and wholesalers of alcoholic beverages, and (2) in-State farmers who produce the crops used in the manufacture of wine and beer. The first of these is the more important and extensive as a barrier to trade, but has only an indirect effect on the movement of farm products. The second has not become of great economic importance, but is worth careful consideration both as an existing barrier to interstate trade in farm products and as an example of the present trend toward State protectionism.

State laws that give protection to manufacturers and distributors of alcoholic beverages may be summarized under four heads. Of course, the official purpose of these laws is regulation or the procurement of revenue, but whether or not so designed, they all have protective features.[4]

(1) Sales taxes may be higher on "foreign" than on "domestic" liquor. From 1933 to 1937, Michigan, in addition to the regular taxes which all must pay, had a tax on out-of-State beer of 25 cents per barrel. Although it was designated an "inspection" fee, its effect was exactly that of an import duty. This impost was repealed in 1937, but similar laws have recently been strongly urged before many State legislatures. Thus a tariff on beer of $3 per barrel has been proposed in Connecticut, $3.10 per barrel in Idaho, and 4 cents per gallon in Iowa. In the last two sessions of the Massachusetts Legislature a bill was considered to tax out-of-State beer $1 per barrel more than in-State beer.

At least two States, Georgia and Arkansas, have an export tax on alcoholic beverages which have been imported from another State, have acquired intrastate character, and are then shipped out of the State.

(2) In-State distributors of "foreign" beer may be required to pay special license fees that are higher than for those distributors who sell the domestic product exclusively. Importers of foreign beer find themselves in this situation in at least five States: Pennsylvania, Maryland, Indiana, Nevada, and Washington. Indiana importers pay the highest license fee, $1,500 annually, and submit to a rigorous port-of-entry system.

(3) Nonresident wholesalers and manufacturers must obtain a license before they can ship into certain States. At least eight States have such requirements.[5] Where the license fees are high ($1,000 in Colorado, $500 in New Hampshire, and $750 in Vermont) the small shipper from outside the State may be appreciably burdened.

(4) Miscellaneous other provisions may be even more restrictive than taxes and license fees. Thus, in order to secure a license, a manufacturer may have to qualify to do business in the State as a foreign corporation. This may involve additional taxes and burdens that do not ordinarily fall on the out-of-State shipper dealing in other commodities. Troubles of various kinds may arise in getting the goods into the State. In some cases special stamps must be affixed to containers before shipment. Out-of-State brewers complained in 1935 that in shipping beer into Michigan the necessity of trucking their beer long distances to get it stamped was a greater burden than the 25 cents per barrel inspection fee.[6]

In States maintaining a monopoly of liquor retailing, advantage may be given to in-State producers. In Maine liquor stores, preference must be given to local products. Minnesota prohibits the importation of intoxicating liquor of more than 25-percent alcohol content unless the brands have been duly registered in the United States Patent Office. No such requirement is placed on liquor produced in Minnesota.

LAWS DIRECTLY AFFECTING FARMERS

An appreciable amount of wine legislation restrictive to interstate commerce seems de-

[4] The following analysis is based in large part upon an article in the Columbia Law Review (Vol. 38, Apr. 1938, pp. 644–69) entitled "Liquor Control: The Latest Phase."

[5] Maine, New Hampshire, New Mexico, North Carolina, Vermont, Washington, Michigan, and Colorado.

[6] Brewers Journal-Western Brewer, October 1935, p. 27.

signed directly to aid local producers of materials going into the manufacture of these products. Most important of these laws are those that provide for a tax differential in favor of wine made from local raw materials.

Legislation providing for a preferential tax rate on native products used in wine manufacture has been adopted in a number of States. Arkansas, Michigan, Georgia, and New Mexico have a higher excise on imported than on domestic wine. Michigan, for example, taxes domestic wine 4 cents per gallon and foreign wine 50 cents per gallon, and Georgia taxes dry wine 5 cents per gallon if made from native grapes, but 40 cents if made from imported grapes.

A like end is attained by a different method in Maine. All dry wine must pay a tax of 50 cents per gallon, but a tax of 4 cents per gallon is also assessed on liquid and 2 cents per pound on solid or semisolid raw materials grown outside of Maine and used in Maine wineries. A Georgia law contains similar provisions applying to distilled spirits. (This is a local option law. To become effective in any county it must receive a favorable vote in a referendum held in that county.) A tax of 50 cents per wine gallon is imposed on distilled spirits manufactured in Georgia from domestic products, and $1 per gallon is levied on spirits imported from some other State.

Other types of legislation also help the domestic producer. The State of Washington provides that domestic wineries may sell their wines directly to licensed retailers, whereas "foreign" wine producers may sell only to the Washington Liquor Control Board. Ohio has a regulation prohibiting wine tank-car shipments into the State. As most California wine was formerly shipped in this way, the result has been to help local producers. In 1935 North Carolina adopted the most protective type of wine legislation. This law, which was amended in 1937, erected an embargo against foreign wine by limiting sale within the State to the native product.

Finally, three States—Wisconsin, Minnesota, and Iowa—require that beer be made from 66⅔ percent or more of barley malt. The purpose of this legislation seems to be to discourage the use of substitutes for barley, particularly brewer's rice, in the brewing of beer. At any rate, all three of the States that have thought it worth while to pass this type of legislation raise no rice but are among the leaders in the production of barley.

RETALIATORY LAWS

Not the least significant aspect of protective legislation regarding beer and wine has been the swift appearance of administrative reprisals and retaliatory legislation. The most drastic of these retaliatory laws has been adopted by Missouri. This law completely bars from the State all alcoholic liquors from any State that has discriminatory liquor legislation of any kind. The definition of "discriminatory law" is so broad and administrative discretion is so great that the law is well described as setting up a "shotgun embargo power."[7] A similar bill has been urged before other State legislatures. California passed such an act, but the governor vetoed it on the grounds that the State would probably gain more by setting a good example than by trying to coerce other States to repeal their discriminatory legislation.

Retaliatory laws of one kind or another have been adopted by many States. Connecticut, Ohio, Pennsylvania, and Florida have laws that provide for retaliatory taxes on out-of-State liquor[8] when imported from States that are believed to have discriminatory taxes. Pennsylvania legislation provides for retaliation by imposing taxes, fees, or restrictions on out-of-State beer in the same measure that the outside State takes such action toward the Pennsylvania product. Michigan empowers its liquor control commission to forbid the importation of beer from any State that unreasonably discriminates against Michigan beer. Numerous beer and liquor wars, not unlike the truck-license wars described later (pp. 41–43), have been waged among the States. In December 1935, "hostilities" broke out on the New York-Connecticut

[7] Columbia Law Review, vol. 38 (April 1938) p. 656.
[8] Beer and wine in Ohio; beer in Pennsylvania; wine in Florida.

border.[9] Liquor dealers in New York attempted to prevent residents of New York from buying in Connecticut where prices were cheaper. Protests arose and arrests were made, but the court found no violation of law and the war died down.

Much more serious has been the struggle between Michigan and Pennsylvania. Discrimination led to retaliation and retaliation to further retaliation until, during the first few months of 1938, both States had taken measures to place an embargo on beer importations from the other. Recently Michigan has removed its prohibition on beer from Pennsylvania and apparently at least a temporary peace has been arranged.

The most spectacular of these struggles has been that in which Michigan, Indiana, and Ohio have been engaged since 1935. Charges and counter charges have been made. Each State has considered itself unfairly discriminated against. Practically all the weapons of modern tariff reprisals have been resorted to, including retaliatory taxes, fees, and inspections; ports-of-entry; and absolute embargoes. At present there is a lull in the battle between Michigan and Indiana, both States having now removed their embargoes. But the Michigan embargo on beer from Ohio is still in effect and Indiana-Ohio relations are decidedly strained.[10]

Speaking on present trends in liquor control at Macinac Island, Mich., July 19, 1937, the Administrator of the Federal Alcohol Administration, W. S. Alexander, touched on this problem. He said in part:[11]

"At this point I would like to digress for a moment to note one trend of state legislative policy which is personally very distressing and which, I believe, is an unfortunate development in the control of the alcoholic beverage industry. This is a matter which directly concerns the states themselves and does not infringe upon federal jurisdiction. I have noticed, in reviewing the recent legislation of many of the states, the increasing presence of measures which discriminate against the products of other states. Inspired by such measures there now appear provisions which I believe to be even more dangerous. Some of the state legislatures have empowered their liquor control boards or taxing authorities to prescribe retaliatory regulations or taxes, directed against the importation of alcoholic beverages from any state which appears to discriminate against their products. Such measures, in the long run, will be productive of conditions which tend towards chaos and will give rise to further and more violent measures on the part of other states affected thereby. It was the adoption of discriminatory legislation of this nature by the original thirteen states which, in large part, made necessary the adoption of a federal constitution, and caused the control over interstate commerce to be lodged in the federal government. The twenty-first amendment to the Constitution has returned to the states part of the power to restrict or impede interstate commerce in liquor. I urge that this power be used in moderation and not abused, lest the chaotic conditions of pre-constitutional days appear again in the control of liquor traffic. May I therefore, be permitted to suggest the advisability of warning your state legislatures against such provisions, and of advising them to be especially critical of proposals of this nature. Such measures are often prompted by the selfishness of local interests in trying to monopolize intrastate business, or by fears of lost markets in other states. In most cases, such fears are in fact groundless."

RESULTS OF PROTECTIVE LIQUOR LEGISLATION

Sufficient evidence has been marshalled to show the lush growth of State protection in the field of liquor legislation. It is interesting to find that these restrictive laws apply in large part to beer and wine and not to distilled liquors in spite of the fact that it is in relation to distilled liquors that the need of control is deemed greatest from the standpoint of public health and morals.

The explanation is apparently an economic one. The manufacture of distilled spirits is a large-scale industry highly concentrated in a few States. Wine and beer, on the other hand, are

[9] New York Herald-Tribune, Dec. 17 and 18, 1935.

[10] Brewers Journal-Western Brewer, October 1935, pp. 23–28; November 1935, pp. 35–39; and The Brewers Digest, May 1938, pp. 45–46.

[11] As reported in mimeographed release of the U. S. Treasury Department.

produced in many States and often on a relatively small scale. Although California is the great wine center in this country, other States produce appreciable quantities of grapes and manufacture local wines. Beer manufacture is even more localized than wine. Although certain States like Wisconsin and Missouri produce more for export than do most others, small breweries that manufacture for a local market will be found in all but a few States.

The direct effect of State laws that raise barriers to interstate commerce in intoxicating beverages, is probably much greater upon manufacturers and distributors than upon farmers. Laws that stimulate the production of beer in one area and discourage it in another may possible have some small effect in shifting barley-raising from more advantageous to less advantageous areas—that is, less advantageous on a cost-of-production basis.

The laws that give preference to native wines are probably of somewhat greater significance to farmers and may directly interfere with the development of agricultural production in the most advantageous areas. If this movement were carried to its limit, its absurdity would be apparent to all. Suppose each State placed an embargo on all out-of-State wine. Then each might develop its own vineyards. But grape production would be drastically curtailed, especially in California, and to some extent in other States that export wine, like New York and Michigan. Less wine would be sold, prices would be higher, and production would be stimulated in those States that are least adapted to grape culture and discouraged in those best fitted by soil and climate for growing grapes.

CONCLUSIONS REGARDING PROTECTIVE LIQUOR LEGISLATION

There appears to be almost universal agreement that each State should be permitted to control the consumption and sale of alcoholic beverages within its own borders whether such beverages are produced within the State or in some other part of the country. But the question arises, in exercising such control should States be permitted to enact legislation favorable to local products or to in-State distributors or producers? Neither for the protection of public morals nor for the enhancement of the economic welfare of the whole country does such discrimination seem justified.

Unless State protectionism is to be encouraged, some way must be found to prevent States from adopting "protective" legislation of the kind here described. Some believe that this can be accomplished only through further action by Congress which will make impossible, as was done in the Wilson Act of 1890,[12] all discrimination against out-of-State alcoholic beverages. Others have held that new legislation is unnecessary. They have maintained that the twenty-first amendment did not give States the right to enact liquor legislation for the purpose of economic protection and that future interpretation by the United States Supreme Court will support this view. Recent court decisions, however, have not given encouragement to this viewpoint. Finally, many believe that the States, realizing the disadvantages of this type of legislation and the dangers of retaliatory laws, will find it desirable to repeal discriminatory liquor laws.

[12] See p. 31.

Railroad and Motor-Vehicle Regulation

Railroad Regulation

As long as transportation in this country was carried on chiefly by horse and wagon on roads and turnpikes and by flatboats and ships on rivers, canals, and coastal waters, neither the States nor the Federal Government attempted much in the way of regulation. Even in the early days of the railroads there was little public control. In fact, down to the last quarter of the nineteenth century the chief public concern was in building a satisfactory transportation system.

But as the great period of railroad construction drew to a close, the character of the problem changed and public attention began to focus upon the need for making sure that the transportation system functioned to the greatest practicable public advantage.

Of the many problems that now arose, a very important one was the need of maintaining a free flow of commerce unimpeded by discrimination in favor of particular persons, places, or commodities. In no small part the Federal and State legislation of the period was designed to eliminate discriminatory practices. But State regulatory legislation itself presently led to a new problem in discrimination—the tendency of States to set rates that gave an advantage to intrastate trade but that burdened interstate commerce. It was soon apparent that, with State legislation so largely colored by local interest, effective regulation in the national interest by the Interstate Commerce Commission must include control over intrastate rates.

The situation as it existed in 1905 was described by Hugo R. Meyer in his testimony before the United States Senate Committee on Interstate Commerce. He declared:

". . . practically all the State commissions that have been active in the matter of regulating railway rates have regulated largely with an eye to establishing local protection. To-day you can establish protection by means of regulation of railway rates in an astonishing degree of efficiency; and practically all of the State commissions that have been active in railway rate regulation have done that." [1]

Gradually, therefore, the Federal Government found it necessary to extend its control over the railroads and to curtail the regulative powers of the States. The power of the Interstate Commerce Commission to regulate intrastate rates where they were found to involve unreasonable discrimination against interstate commerce was finally established by the courts.[2] Moreover, Congress included a provision in the Transportation Act of 1920 giving the Interstate Commerce Commission control of intrastate rates where it found ". . . any undue or unreasonable advantage, preference, or prejudice as between . . ." interstate and intrastate commerce.[3]

As a result of this Federal power, the Interstate Commerce Commission has been able greatly to

[1] Hearings on Senate Resolution No. 288, 58th Cong., 3d sess. (1905), vol. 2, p. 1553.

[2] See especially *Houston, E. and W. T. Railway Co.* v. *United States* 234 U. S. 342 (1914).

[3] 41 Stat. 484.

restrain the tendency of the States to fix railroad rates in their own interest and to the national disadvantage. But it should not be supposed that the Interstate Commerce Commission has completely taken over the regulation of intrastate rates or that intrastate rates are always exactly in line with interstate rates. To a considerable extent intrastate regulation is still left in the hands of State commissions, and the Interstate Commerce Commission enters the picture only when questions of discrimination or undue prejudice are raised. That State commissions are still active in keeping intrastate rates as low as possible is indicated by the fact that cases in this field are almost constantly before the Interstate Commerce Commission.[4]

One of the most recent of these is Intrastate Class and Commodity Rates in Kentucky, decided July 13, 1937.[5] As a result of action by the Kentucky commission, intrastate rates were generally lowered so that in many cases they were definitely less on a distance basis than interstate rates. Thus it was brought out that under the rate level as established by the State commission:

"Kentucky intrastate shippers can have merchandise rated first class transported 150 miles at a rate of 66 cents, whereas an interstate shipper from an Ohio River crossing or from a point in Tennessee or other southern State, must pay the same rate for a haul of 70 miles . . ." [6]

Although recognizing that there was some maladjustment and suggesting the possibility of future reconsideration, the Commission stated:

"The record does not contain evidence necessary to support a finding that the rates required by the Kentucky commission cause undue and unreasonable preference and prejudice as between persons and localities in intrastate commerce on the one hand and interstate commerce on the other." [7]

To the extent that this kind of situation exists, relative advantage may still be given to intrastate commerce and appreciable barriers erected to interstate trade. It cannot be doubted, however, that the influence of the Interstate Commerce Commission has been greatly to reduce the inequalities between intrastate and interstate railroad rates, and the case cited above appears somewhat exceptional in that the Commission permitted the continuance of rates appreciably different for intrastate as compared with interstate commerce.

Perhaps more serious than the problem of the relation of intrastate to interstate rates is the question of interregional freight rates. Three major railroad-rate territories or sections have emerged in this country, each one of which has developed, more or less independently, its own system of classification and charges. As a result of this regional development, appreciable rate barriers have in some cases been erected to interregional transportation. Just how serious these restrictions are to the movement of agricultural products it would be impossible to determine without elaborate study. But it is true that there has been a growing tendency toward uniformity and that some of the worst of these interregional difficulties appear to have been eliminated.

Yet there is impressive testimony to the fact that the situation is as yet not entirely satisfactory. In a recent study, the Tennessee Valley Authority found that certain producers in official or eastern territory [8] had a considerable advantage, so far as railroad rates were concerned, in selling their products in official territory. Shippers located in other rate territories typically had to pay substantially higher rates to reach equally distant markets in official territory. One example may be cited from this study. It was found that potato shipments from Maine to Ohio and Indiana points (intraregional traffic) involved freight charges appreciably less than from Colorado (interregional traffic) to the same markets which were approximately equidistant from the two producing areas.[9]

Obviously, different rates over equal distances may be justified by the presence of costs unre-

[4] See the intrastate rate cases regularly listed in the annual reports of the Interstate Commerce Commission.

[5] 223 I. C. C. 109.

[6] Ibid., pp. 114–115.

[7] Ibid, pp. 122–123.

[8] Roughly this area is east of the Mississippi River and north of Kentucky and North Carolina. Appreciable parts of Wisconsin, Michigan, and Virginia are not included.

[9] House Doc. 264, 75th Cong., 1st sess., p. 40. 1937.

lated to distance. But on the basis of the Tennessee Valley study, Arthur E. Morgan concluded: ". . . that the present territorial freight-rate boundaries, which are the outgrowth of tradition, constitute barriers against the free flow of commerce which are hampering and restricting the normal development of the Nation as a whole by preventing a full utilization of the varied natural resources that exist in the different regions of the country." [10]

Of course, this is a situation of which the Interstate Commerce Commission is aware and with which it is attempting to deal. Federal Coordinator of Transportation Eastman said in 1934: ". . . An objectionable phase of the railroad situation for many years has been the maintenance of regional differences and distinctions, which are very imperfectly related to differences in costs and of territorial boundary lines ("Chinese walls") where rate systems and practices change. It has tended to provincialize the railroads and discourage national unity of action. It has been a prolific source of complaints to the Commission. Regional competition in rates and service has been as keen as the direct competition of parallel lines, and has had equally undesirable and uneven results. It tends to concentrate at the points best located to enjoy it. Moreover, it has been difficult for the Commission to remedy such inequalities, for the courts have recognized differences in competitive conditions as a defense against discrimination." [11]

Only a very extensive study of our whole freight-rate structure would show exactly how important this problem is. Certainly the whole tendency of Federal regulation of railways has been to remove discriminations. But there is clearly some indication that our railroad freight-rate structure may still be of some importance in raising barriers to the free movement of agricultural products in interstate and interregional trade.

Motor-Vehicle Regulation

Perhaps no invention of recent times has been more productive of laws and regulations than the automobile. Although the chief purpose of motor-vehicle legislation has been to regulate and to tax, not infrequently an important result, whether intended or not, has been to place a heavy burden upon interstate commerce. From the standpoint of this study three types of State motor-vehicle legislation will be considered: (1) Registration (licenses) and taxes, (2) regulation of weights, size, and equipment, and (3) port-of-entry laws. Finally, the effect of action by the Federal Government under the Motor Carrier Act, 1935, will be discussed.

License requirements and taxes on out-of-state motortrucks

Registration and license fees are ordinarily imposed on motor vehicles so that they will contribute toward the cost of building and maintaining highways and of regulating the traffic upon them. But a problem arises in connection with motortrucks from other States. It is conceivable that a balanced interstate truck movement might exist between two States. In such a case the burden would be fairly well equalized and a reciprocal agreement not to tax the trucks from the outside State might be easily arranged. But such a situation seldom exists, and the State from which few trucks leave in interstate commerce but whose highways are used to a great extent by out-of-State trucks, feels itself justified in taxing the foreign motor vehicles.

The actual situation in regard to registration requirements and taxation of out-of-State trucks is extremely complicated as would be expected with independent legislation by 48 States and the District of Columbia.[12] All that can be done here is briefly to summarize the situation and to indicate those aspects which seem most burdensome to interstate commerce.

[10] Ibid., p. iv.

[11] Sen. Doc. 119, 73d Cong., 2d sess., p. 29, 1934.

[12] For detailed factual summaries of motor-vehicle laws and regulations see: Motor-Vehicle Traffic Conditions in the United States, Part I, Nonuniformity of State Motor-Vehicle Traffic Laws, House Document No. 462, pt. I, 75th Cong., 3d sess.; Motor Carrier Reciprocity (Washington, D. C., 1937) issued by the American Trucking Association, Inc.; and the following publications of the National Highway Users Conference of Washington, D. C.: State Barriers to Highway Transportation, 1938; Registration Fees and Special Taxes for Motor Vehicles, 1938; and State Restrictions on Motor Vehicle Sizes and Weights, 1938.

Most States have varying license and tax regulations for different classes of out-of-State carriers. These requirements are usually most exacting on common carriers, less drastic on contract carriers, and least severe on private carriers. Our discussion is confined chiefly to the last-named group, for, in most parts of the country, truck movement of farm produce is accomplished largely by private carriers. As State regulations are most liberal on this class of carrier, the effect will be to understate rather than to overstate the difficulties in the situation.[13]

The disadvantages to interstate commerce may arise in two ways. (1) If the "foreign" truck is forced to take out a second registration (or even more, depending upon the number of States it enters), it bears a heavier burden in terms of license fees than does the carrier that confines itself to intrastate commerce. (2) A few States charge a relatively higher ton-mile tax on trucks that have foreign licenses than they do on those that bear their own license plates.

Certain other taxes may be a deterrent to interstate motortruck movement, even though not ordinarily placing any heavier burden on interstate than on intrastate commerce. This situation arises in the case of States that have relatively high gasoline taxes. Of course, an advantage to the interstate trucker may result if he can buy gasoline in a low-tax State for use in one having a higher tax. But most States that have a relatively high gasoline tax effectively guard against this contingency either by limiting the quantity of gas that can be brought into the State or by providing that taxes shall be paid on gasoline brought across the State line.

The States differ greatly among themselves in respect to their license requirements on foreign motortrucks. A number of States having the most liberal laws in this respect collect no ton-mile taxes and make no attempt to require private carriers from outside the State to take out licenses as long as they do not engage in intrastate business. Usually, but not always, the granting of such favors is contingent upon the conferring of reciprocal privileges by the other States concerned. Typical of the States in this group are Massachusetts, New York, California, and Ohio.

At the other extreme, a second group of States requires practically all out-of-State trucks that come across the line to register and pay a fee, or if this is not done, to pay higher ton-mile taxes than trucks having only domestic licenses. States illustrative of this group are Arizona, Kansas, Oklahoma, and Wyoming.

Many of the States have laws which lie between these two extremes. Typically, they have strict general requirements as to the licensing of out-of-State vehicles which they appreciably liberalize through special reciprocity agreements with certain States. Representative States in this group are Florida, Minnesota, and Virginia.

Especially if only a few trips are made, the cost of securing an out-of-State license may place a considerable burden on the foreign trucker. The out-of-State farmer who wishes to enter Wyoming with his 1-ton truck is required, according to the regulations of that State, to pay the annual fee of $7.50. If his truck weighs 2 tons the fee is $30, and for heavier vehicles the fee is graduated steeply upward.

In addition to the license fee the trucker entering Wyoming must pay a county registration fee, the amount of which depends upon the factory price and the age of the truck. Thus, on a new $1,000 truck he would pay $18. If the truck were in its fourth year of service he would pay $6. Finally, if the trucker engages in "for-hire" business, additional fees are collected and a mileage tax must be paid of 2 mills per revenue ton-mile.

Certain States that require registration of out-of-State trucks permit outside trucks to enter the State for a short period on payment of some fraction of the annual fee. Arizona will give one short-time permit per year, the amount of the fee depending on the length of time for which it is issued and the weight of the truck, but in no case is the fee less than $3.50. Oklahoma has a somewhat similar system, but in addition permits nonresident carriers, under certain special condi-

[13] It should be noted, however, that a high license fee on a common carrier that makes daily trips across a State line may be less burdensome because the cost is spread over many loads than a relatively low fee on a private carrier that makes only a small number of trips during the year.

tions, to make occasional trips of not more than 72 hours in duration without payment of any registration fee. Such a truck owner, however, must pay a mileage tax to the State of Oklahoma which is graduated according to the weight of the truck and is much higher than the rate charged similar trucks having Oklahoma licenses. It may also be noted that the nonresident owner of a trailer taking out an Oklahoma license must, unless the vehicle is less than a year old, pay appreciably more to secure registration than the resident owner whose trailer has been continuously registered in Oklahoma.

Although no statistical measure is available, there is abundant testimony to the fact that registration and ton-mile taxes are an important discouragement to interstate transportation. Not infrequently farmers are led to protest against the requirements of their own State on out-of-State trucks. Thus, for example, potato growers in Colorado in August 1935 appealed to the State Public Utilities Commission to relax its requirements so that out-of-State truckers could come in and move their crop. When their petition was rejected and serious losses threatened, they offered to pay the tax themselves if outside truckers would come into the State.[14]

Similar conditions prevailed recently in South Carolina. A conference that was held at Columbia, S. C., between a delegation of peach growers and certain members of the State legislature, is described as follows:

"The conference was the outgrowth of difficulties encountered by peach growers during last season's peach harvest when State highway patrolmen began enforcing truck licensing regulations against trucks from States which did not have reciprocal agreements with South Carolina, mainly those from Tennessee.

"Peach growers claimed that they had suffered large losses as the result of the enforcement of the regulations against foreign trucks, and means for remedying the situation were discussed at a meeting with the county delegation here last week. Sentiment at the meeting was that trucks coming into the State to buy perishable produce should be exempted from licensing requirements regardless of whether South Carolina has reciprocal agreements with the States in which they are registered." [15]

Many letters have been received at the Bureau of Agricultural Economics testifying to the restrictive effect of license requirements. The following excerpts are taken from letters received from what are believed to be well-informed local sources:

From Connecticut:[16]

"Some of our growers have run into serious difficulties in trucking farm products into Maine, because Maine requires that all trucks of more than a ton and a half capacity must be registered in Maine and pay their regular license fee."

From Kansas:[17]

"I would say that we are having interminable trouble in farm truck transportation between our neighboring States. It is reported that the laws and rules and regulations, particularly of Oklahoma and Missouri, almost make it prohibitive for Kansas farm trucks to cross the line."

From South Dakota:[18]

"The truckers have very often been held up because of the fact that they did not have a State license in addition to the one in which they resided, and such practices have resulted to the detriment of our stockmen. A commercial trucker may be in a position to take out a trucker's license in more than the one State, but this is not true of the farmer who does his own trucking."

From Illinois:[19]

"The chief handicap in the interstate movement of livestock to this market rests in the lack of reciprocal agreements concerning licenses and the abolition of mileage taxes. Illinois and Missouri have complete reciprocity on trucks hauling farm products on a so-called 'farm to market and market to farm movement.' If this reciprocity could be extended to other States, and Illinois is taking a more lenient view

[14] The New York Packer, August 31, 1935, p. 16.

[15] Ibid., February 12, 1938. For a similar situation which recently developed in Arkansas in connection with the moving of their peach crop see The New York Packer, June 11, 1938.

[16] March 9, 1938.

[17] February 23, 1938.

[18] March 7, 1938.

[19] March 30, 1938.

in this respect, it would remove many handicaps to interstate traffic."

As suggested in the last letter quoted, States have often entered into reciprocity agreements by which each State honors the automobile license plates issued by the other States entering the agreements. In certain sections of the country these reciprocity agreements in respect to automobile registration have at times and over limited areas done much to remove barriers to interstate motor-truck movement. But even under the best of circumstances, difficulties and uncertainties remain. Not only is reciprocity usually limited merely to registration fees and not extended to other important considerations such as ton-mile taxes and permissible size of trucks, but reciprocity agreements may break down at any time because of action by the legislature or the State highway authority.

The result of the break-down of a reciprocity agreement is very likely to be a "border war," which, temporarily at least, ties up interstate traffic and brings serious loss both to truckers and to producers. The complete story of the so-called motor-vehicle "border wars" cannot be told here, but table 4 suggests a picture of some of these which have disrupted interstate commerce in the period 1931–37.[20] Some of these wars, like that between Pennsylvania and New Jersey, have flared up for a few days, and then died out completely. Others like that between Illinois and Wisconsin, have smouldered for years, with occasional violent outbreaks.

The term "war" is, of course, used only figuratively. However, conditions do sometimes approach battle conditions. Thus, when Maine seized a New York truck driver, one Leo Jubb, in June 1933, and forced him to pay a license fee of $75 on his truck, New York retaliated by holding two Maine truck drivers for not having New York license plates.[21] In a Kansas-Nebraska dispute at about the same time a Nebraska constable was reported to have opened fire on a Kansas truck.[22] Most border conflicts have not involved the use of such extreme measures but wholesale arrests have been common and serious interference with interstate commerce has resulted.

Sometimes the border wars have been followed by mutual concessions and reciprocity agreements. In other cases reciprocity has been abandoned and laws that are in part, at least, retaliatory in character, have found a seemingly permanent place on the statute books.

To the cost of the out-of-State licenses and taxes and the danger of outbreak of border wars must be added a further difficulty—the time and trouble involved in conforming to State registration requirements. Not the least of the trucker's difficulties is the necessity of informing himself in regard to the law. This is not always easy, for some of the State laws are complex and many of them are subject to frequent change, especially in respect to reciprocity provisions. Unusually strict provisions in respect to insurance or the posting of bonds may be a further discouraging factor for the out-of-State trucker.

Even with the requirements of the law clearly in mind the interstate trucker must plan his trip carefully in advance. For travel in certain States, he must write for and receive a permit before he crosses the State line, or on crossing the State boundary he must proceed directly to the proper authorities and there fill out such blanks and pay such fees as are required before proceeding farther into the State.

Thus a private carrier whose truck is registered in South Dakota can make three trips into North Dakota in any one year without having to take out a regular North Dakota license. However, he must buy an identification plate which costs $5, and if he penetrates farther into the State than 5 miles from the border, or if his trip exceeds 10 miles even if within this 5-mile zone, he must secure a permit from the North Dakota Board of Railroad

[20] As newspaper sources have had to be used here as the chief source of information, there may be some exaggeration or distortion. However, it is believed that the picture shown here is substantially accurate.

[21] New York Times, June 30, 1933.

[22] World-Herald, Omaha, Nebraska, June 28, 1933.

Commissioners and pay a mileage tax that is determined by the net weight of his truck.

The private carrier who plans to take his truck into Alabama need make no application before he enters the State. But once the State line is crossed, he must go directly to a county judge of probate in the first county he enters and there secure a permit. If he is carrying goods that are actually his own property he may receive a 5-day permit for $1.50. The extra time and travel required to get the permit from the judge of probate may be more of a handicap than the fee. The fees are much higher if the carrier is transporting goods for another. In that case he must appear before the judge, pay $5.50 for a permit to bring the goods into the State, pay an additional $5.50 to take goods out of the State, and, finally, pay a mileage tax 50 percent higher than is required of trucks regularly registered in Alabama.

SIZE, EQUIPMENT, AND OTHER REGULATIONS

For various purposes, but primarily to promote safety on the highways and to prevent damage to roads and bridges, State legislatures have been extremely active in passing laws and authorizing administrative regulations having to do with the weight, size, equipment, and insurance of motor vehicles. The nonuniformity of these laws has constituted an appreciable hindrance to interstate commerce. Moreover, the limits set, as for example those on the size and weight of motor vehicles, may be so low as to prevent such long-distance hauling.

Every State in the Union has established a maximum gross or net weight for motor vehicles. But the maximums permitted vary greatly from State to State and the methods of weight determination or limitation are manifold. Certain States determine permissible weights by formulas that take into account the distance in feet be-

TABLE 4.—*Motor-vehicle "border wars"*

Period	States involved	Vehicles affected	Cause of conflict	Effect on traffic
Intermittent wars 1931-37.[1]	Illinois v. Wisconsin (Iowa, Minnesota).	Commercial trucks	Wisconsin required registration of out-of-State trucks.	At times amounted to embargo on out-of-State trucks. Many truck drivers arrested on both sides of border. Perishable foodstuffs held up.
September 1931[2] and at intervals since 1926.	Kentucky v. Indiana; Tennessee v. Indiana	All trucks	Impounding of Indiana trucks by nonreciprocal States.	
February-March 1931.[3]	New York v. Connecticut, Massachusetts, New Jersey.	All commercial vehicles.	New York arrests for violation of reciprocal rights or "improper registration."	
July 1931[4]	Vermont v. Massachusetts.	Trucks over 3,000 pounds carrying capacity and buses over 10-passenger capacity.		
February-May 1932.[5]	Mississippi v. Louisiana	All trucks	Dispute over right of truckers to make occasional trips to Mississippi without taking out Mississippi license.	
May-November 1932.[6]	Tennessee, Kentucky, Missouri, Arkansas, Georgia, Mississippi, Alabama.	For-hire trucks	Tennessee and Arkansas campaign to enforce tax laws; then spreading to other States.	
November 1932[7]	Pennsylvania v. New Jersey (Maryland, Delaware, New York, West Virginia, and Ohio).	Commercial vehicles and finally all trucks.	Pennsylvania enforcing its law requiring licensing of all trucks owned by nonresidents and operated in that State for hire or on regular schedules.	Traffic was tied up as a result at all Delaware River crossings. Trucks were forced to avoid Pennsylvania. Within 2 hours, more than 200 Pennsylvania trucks were stopped by New Jersey inspectors. Tons of produce were threatened with destruction.

See footnotes at end of table.

TABLE 4.—*Motor-vehicle "border wars"*—Continued

Period	States involved	Vehicles affected	Cause of conflict	Effect on traffic
March 1933 [8]	Colorado v. Nebraska (Wyoming).	All trucks	Nebraska enforcing the law requiring out-of-State trucks to be properly licensed in Nebraska.	Trucks, not properly licensed in Colorado and Nebraska, were stopped when crossing into State in which not properly licensed; not permitted to proceed until license had been obtained. In some cases movement of livestock was seriously hampered.
June–August 1933.[9]	Kansas v. Nebraska	All trucks. Later truckers hanling their own goods received full reciprocity within a radius of 25 miles of their headquarters.	Kansas reqniring out-of-State truckers to pay registration fee, ton-mileage tax, and corporation commission permit fees.	Interstate movement of traffic was seriously hampered. It was reported livestock was being held up.
February 1934 [10]	Tennessee v. Illinois	Trucks	Tennessee forcing Illinois trucks to secure Tennessee license even for 1 trip through the State.	Chicago motorists advised to avoid Tennessee.
July 1935 [11]	West Virginia v. Virginia and Maryland (North Carolina, Pennsylvania, and Ohio).	For-hire trucks	West Virginia law requiring for-hire trucks from other States to have permits to operate over West Virginia roads.	People wishing to move out of West Virginia found it virtually impossible to hire moving vans to carry household goods. Orchardists of the east panhandle, ready to move their July fruit, found it difficult to get trucks for that purpose.
March 1936 [12]	Iowa v. Minnesota	For-hire trucks and those carrying owner's merchandise, except farm trucks.	Minnesota attorney general's opinion requiring registration of certain types of Iowa trucks.	Iowa highway patrolmen were ordered to stop all Minnesota trucks and force Iowa registration.[13]
June 1936 [14]	Wyoming v. Washington	Commercial vehicles	Wyoming nonrecognition of license plates.	

[1] Milwaukee (Wis.) Journal, June 13, 1931; December 2, 1931. Transport Topics, January 6, 1936. Transport Topics, February 10, 1936. Transport Topics, May 11, 1936. Milwaukee (Wis.) Sentinel, May 30, 1936. Motor Freight (and Commercial Transportation), June 1936. Motor Freight (and Commercial Transportation), August 1937. Transport Topics, August 30, 1937. Motor Freight (and Commercial Transportation), February 1937.

[2] Louisville (Ky.) Times, September 12, 1931. Louisville (Ky.) Courier-Journal, September 13, 1931; September 14, 1931; September 15, 1931; September 16, 1931.

[3] New York Times, March 18, 1931. New York Herald-Tribune, March 18, 1931. Brooklyn Eagle, March 22, 1931.

[4] White River Junction (Vt.) Landmark, July 2, 1931. Bennington (Vt.) Free Press, August 1, 1931. Automotive Daily Press (N. Y.), August 6, 1931. Bennington (Vt.) Banner, May 20, 1932. Worcester (Mass.) Gazette, June 15, 1932.

[5] Jackson (Miss.) Clarion Ledger, February 20, 1932. New Orleans (La.) Times-Picayune, May 7, 1932; May 24, 1932.

[6] Jackson (Miss.) News, May 7, 1932. Memphis (Tenn.) Commercial Appeal, May 7, 1932. Memphis (Tenn.) Evening Appeal, May 7, 1932.

[7] New York Times, November 3, 1932; November 4, 1932; November 5, 1932.

[8] The Rocky Mountain News (Denver, Colo.), March 24, 1933. Nebraska State Journal (Lincoln, Nebr.), March 25, 1933. The Rocky Mountain News (Denver, Colo.), March 25, 1933; March 26, 1933. Omaha (Nebr.) World-Herald, April 1, 1933.

[9] Omaha (Nebr.) World-Herald, June 28, 1933; July 8, 1933; July 18, 1933; August 9, 1933.

[10] Memphis (Tenn.) Commercial Appeal, February 2, 1934. Illinois State Register (Springfield, Ill.), February 9, 1934; February 25, 1934. New York Times, February 18, 1934.

[11] Baltimore (Md.) Sun, July 6, 1935. Wheeling (W. Va.) Register, July 3, 1935; July 19, 1935; July 21, 1935; August 2, 1935. New York Times, July 21, 1935.

[12] Sioux City (Iowa) Journal, March 13, 1936. Des Moines (Iowa) Register, March 17, 1936. Sioux City (Iowa) Journal, March 17, 1936. Des Moines (Iowa) Register, March 18, 1936; March 19, 1936.

[13] An example of "sanctions" available in reprisals of this nature: "The patrolmen were instructed to stop all trucks operating in either direction to check on chauffeurs' licenses, overloads, safety appliances. Automobiles also were being checked when there is time . . ." Sioux City (Iowa) Journal, March 17, 1936.

[14] Truck Talks, vol. 1, No. 6, 1936.

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tween the first and last axles; others make the basis "tire width, wheel load, axle load, net load, or gross weight, either for a single vehicle or for specified combinations of vehicles." [23]

The restrictions on the maximum gross weight of any permissible combination of vehicles are summarized by States in figure 1. The spread is obviously very great from the 18,000 pounds authorized in Kentucky and Tennessee to the 120,000 approved by Rhode Island. Significant from the standpoint of interstate commerce is the wide difference in permissible maximums authorized by pairs of contiguous States. Thus Connecticut allows gross weights of 40,000 pounds and Rhode Island 120,000 pounds, Wyoming 48,000 and Montana 84,800, Kentucky 18,000 and Illinois 72,000.

The maximum dimensions of trucks are also definitely prescribed in most States. Considerable uniformity now exists as to width, with most States prescribing 8 feet as the maximum. But for other dimensions, no such uniformity prevails. Appreciable variation exists as to permissible height of motor vehicles. Four States have no limitations on height; the others have maximums varying from 11 to 14½ feet, with 12½ the most common.

In regard to the number of units permitted to be drawn by a single truck or tractor and the length of each unit or combination of units, there is again considerable diversity. At least 4 States, although permitting tractor-semitrailers, do not allow full trailers to be used. At the other extreme, 11 States have no limitation on the number of trailer units. The length permitted on combinations, whether tractor-semitrailers or trucks with full trailers, also varies within wide limits. Kentucky permits a maximum length of 30 feet, Georgia specifies 85 feet, and Maryland has no limit at all (fig. 2).

In addition to size and weight requirements there has been a tremendous mass of other legislation having to do with particular parts of the truck or the equipment that must be carried. Lights, mufflers, fenders, steering gear, windshield wipers, defrosters, tool kits, fire extinguishers, locks and keys, bumpers, windshields, and fuel tanks have been the objects of extremely detailed, highly divergent, and sometimes obscure legislation.[24] Perhaps the maximum of divergence existed in rules for color of clearance lights. To conform with the law of one State a carrier sometimes had to violate that of another.

Often the enforcement of these laws varied from State to State, from time to time in a given State, and from one section of a given State to another. Their lax or sporadic enforcement has frequently led carriers to ignore them and to run the risk of occasional fines. Where this situation has existed, these regulations have been a potential threat to interstate commerce. They existed as effective weapons that might be used against "foreign" trucks whenever State interests dictated. Actually their enforcement has been an effective means of retaliation against foreign trucks in case of border wars.

Although equipment requirements have caused a great deal of trouble to interstate carriers in the past, difficulty from these laws should not be so serious in the future. The Interstate Commerce Commission, under authority of the Motor Carrier Act, 1935, has now issued regulations that set up uniform safety and equipment standards for interstate carriers. By September 1, 1938, 14 States had adopted these regulations for their intrastate vehicles and many other States had adopted them in part.

On the other hand, State legislation regulating sizes and weights continues to be a considerable hindrance to interstate commerce. By their nonuniformity these laws effectively bar trucks which can operate in certain States from operating in others. By placing very low limits on size, weight, or number of units, they create a situation in which long-haul transportation is often impossible because unprofitable.

The actual effect of legislation regulating size and weight depends largely on the strictness of enforcement of the law, although the possibility or threat of enforcement may be in itself to some

[23] Motor-Vehicle Traffic Conditions in the United States, Part I, Nonuniformity of State Motor-Vehicle Traffic Laws, House Document No. 462, pt. I, 75th Cong., 3d sess., p. 9.

[24] National Highway Users Conference, Washington, D. C., Equipment Requirements for Motor Vehicles, 1938.

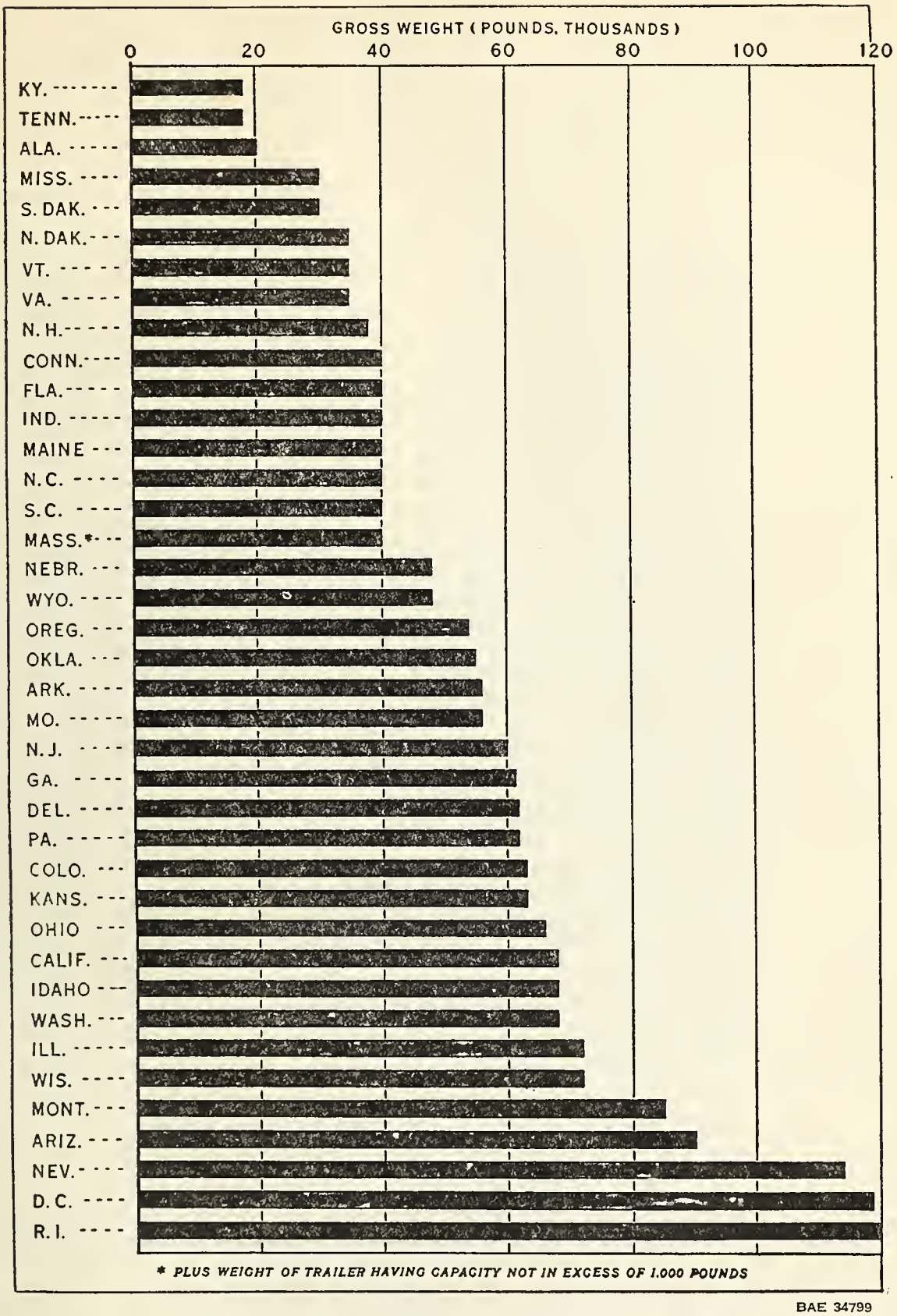

FIGURE 1.—MAXIMUM GROSS WEIGHT OF PERMISSIBLE COMBINATION OF MOTOR VEHICLES, BY STATES.

The maximum gross weight permitted by the different States varies all the way from 18,000 pounds in Kentucky and Tennessee to 120,000 pounds in Rhode Island. (States not shown on this chart limit gross weight in accordance with formulas which take into account the distance between the first and the last axle.)

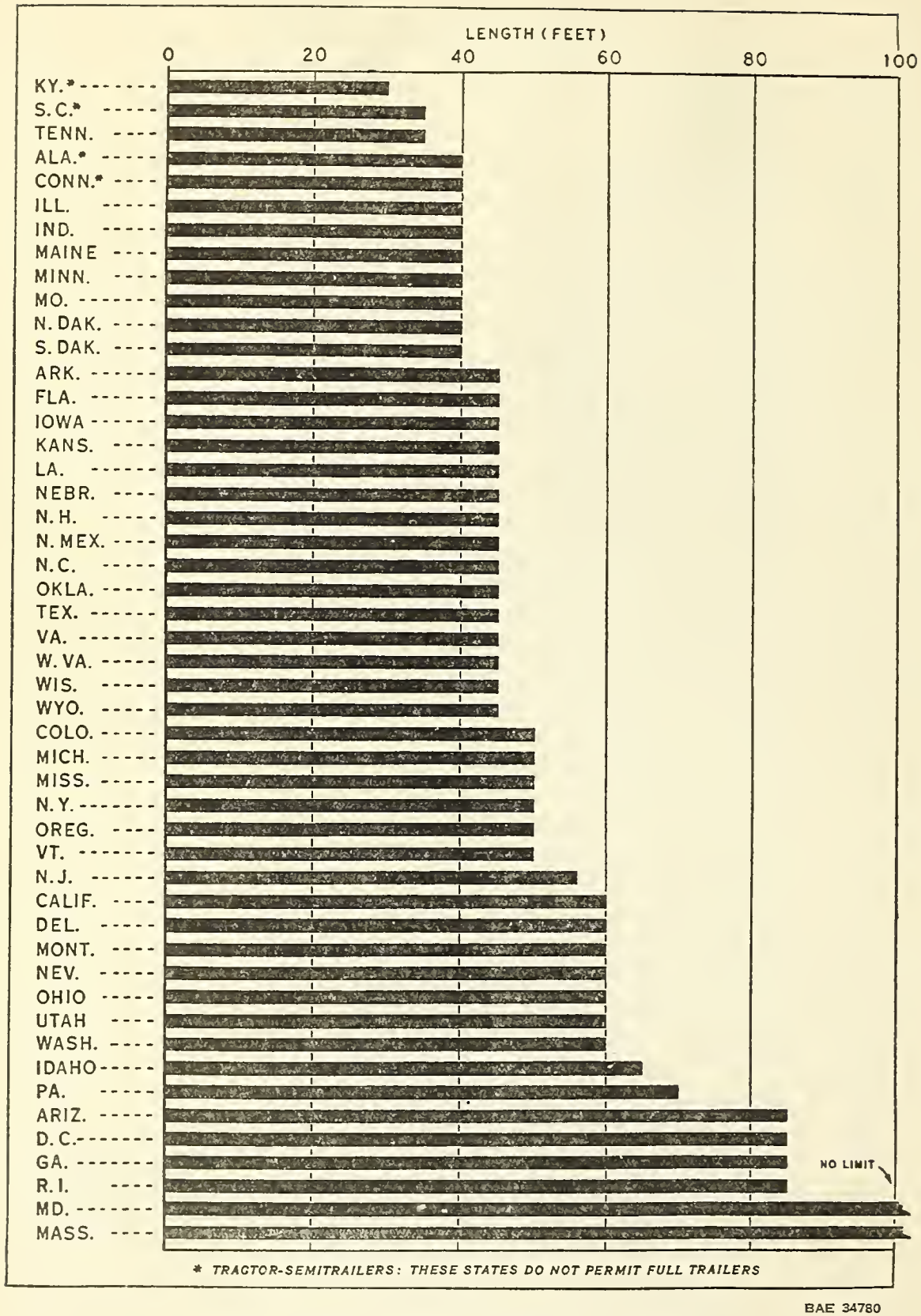

FIGURE 2.—MAXIMUM LENGTH OF COMBINATIONS OF VEHICLES.

The maximum length of combinations of motor vehicles permitted by the different States varies from 30 feet in Kentucky to 85 feet in four States, while Maryland and Massachusetts have no limit at all.

extent a discouragement to interstate trade. The South Carolina law of 1933, which prescribed a maximum width of 90 inches and limited trucks to a gross weight of 20,000 pounds, was never enforced and has recently been repealed.[25] It was found in the district court that enforcement of the law would necessitate increases in transportation rates on commodities shipped into, out of, or through South Carolina and "render it practically impossible for a large part of interstate commerce now conducted by truck to use the roads of that State." [26] It was also found that textile and lumber mills in South Carolina would be placed at a disadvantage, that the cost of fertilizer would be increased to farmers, and

"That enforcement . . . would discriminate against South Carolina truck farmers and vegetable growers in favor of their competitors in other States and would injure if not destroy this industry in South Carolina." [27]

Other States, too, would have suffered by enforcement of the South Carolina law. R. R. McLaughlin of the motor-vehicle division of the Department of Revenue of North Carolina said in respect to this law:

"It means that more than half of the North Carolina trucks now making trips into South Carolina will be barred . . .

"If the various States keep on making widely different regulations a man starting on a truck trip which is to take him through seven different States, for instance, is liable to find himself in jail seven times." [28]

Citrus growers and shippers in Florida also believed themselves seriously threatened. Thousands of truckloads of citrus fruits move to or through South Carolina in reaching a market. Enforcement of the South Carolina law would stop most of this movement. In fact, the State of Florida felt its interests so seriously threatened that it joined with other interests in opposing the law before the courts.

The threat of the South Carolina law was especially serious in view of the low weight limitations already in effect in Kentucky and Tennessee. Both of these States have a maximum gross weight limitation of 18,000 pounds. If the size and weight laws of South Carolina, Kentucky, and Tennessee had all been enforced, an effective barrier against long-distance trucking would have been stretched from the Atlantic Ocean to the Mississippi River.[29]

At least where they are enforced, low weight and size laws have caused appreciable curtailment of produce movement. The manager of a State farmers' wholesale market in Florida writes: [30]

". . . one thing . . . has been brought out more forcibly this year than ever before, namely, a UNIFORM system of maximum load limits should be worked out between States. That is a crying need. Right now it seems nearly every State has a different maximum and truck buyers coming into Florida (as well as other states) have almost to be lawyers to keep up with the changes. Frequently, 'truckers' are compelled to stop six or eight times before reaching destination points, drive up on these flimsy 'one wheel at a time' road scales at great danger to their trucks, and and if an axle is broken there is no remuneration therefor. There is need for something to be done along that line."

No study has been made to determine how strictly those States having the most drastic weight limitations (Kentucky, Tennessee, and Texas) have enforced these laws. But from the complaints that have appeared it seems evident that some serious enforcement efforts have been attempted. An Illinois State official writes: [31]

"Probably the laws which have caused our Illinois fruit growers to suffer loss of markets to the greatest extent have been the highway and trucking difficulties existing between Kentucky and Tennessee and the state of Illinois.

[25] April 29, 1938.

[26] From the Court's Findings of Fact and Conclusions of Law, in *Barnwell Bros., Inc.* v. *South Carolina State Highway Department*, given in full in a bulletin of the National Highway Users Conference dated February 4, 1937. The opinion of the court is given in 17 Fed. Sup. 803 (1937). The law was found unconstitutional in the district court, but this decision was reversed by the Supreme Court of the United States. 303 U. S. 177 (1938).

[27] Ibid.

[28] The New York Packer, March 5, 1938, p. 8.

[29] The route around South Carolina through Georgia and North Carolina is not a feasible one for most shippers.

[30] March 23, 1938.

[31] March 4, 1938.

This has to a considerable extent cut off our southern markets."

Similar complaints come from Indiana and Ohio. An Indiana correspondent points out that not only the limitations in Kentucky and Tennessee, but also the Illinois maximum length of 35 feet for tractor-semitrailer, work out to the disadvantage of Indiana livestock shippers, as the limit in Indiana is 40 feet.

Much testimony is at hand indicating the restrictive effect of the Texas law, which limits net loads to 7,000 pounds (or 14,000 for trucks going to or from the nearest railroad station), whenever strict enforcement is attempted. The newspapers report that a drive has been made recently to secure more effective enforcement of this law. According to an item of April 1, 1938, 13 truck drivers, nearly all of whom were transporting fruits and vegetables, were arrested near Mason, Tex. Not only were they fined, but many were forced to reduce their net loads to 7,000 pounds by dumping the surplus which averaged approximately 2,500 to 3,000 pounds.[32]

Even before this recent drive the law, either through enforcement or the threat of such action, has had an appreciable restraining effect on interstate commerce. Thus, a Texas correspondent writes: [33]

"Most States adjoining Texas have a much more liberal load limit, and, of course, the very low load limit in Texas tends to restrict the flow of livestock from bordering States to Fort Worth. . . . The various State licensing laws cause further burden on interstate commerce as some States insist on the purchase of the State license by the operator of an out-of-State truck. Shippers of livestock from both Oklahoma and New Mexico have often complained of the low load limit allowed in Texas, and the requirement that they purchase Texas State licenses in some instances. Some Southern Oklahoma shippers have stated that although they prefer as a rule to market their livestock at the Fort Worth market, they find it more advantageous to go to Oklahoma City on account of the restrictive truck laws and regulations existing in Texas."

Another observer in a nearby State writes:

"Last fall the movement of cotton from Oklahoma through Texas to points of export by truck transportation was lessened as the result of the Texas Highway Department claiming the load weights were excessive."

A letter received from a Missouri wholesaler says: [34]

"We wanted a truckload of 250 sacks of onions out of Raymondville, Texas, which would be about half a carload as these first onions are not too good and we did not want to take a full carload; but under the State law trucks cannot exceed 7,000 lbs. and hence we had to pass up getting the truckload of onions for the reason the charges would be too high to transport this small amount."

Where State motor-vehicle regulations are only partly enforced there may be a strong temptation to apply them more rigorously against the out-of-State trucks than against the local carrier. Complaints arise, especially in those areas where enforcement is left to local agencies. Officials are frequently reluctant to hurt local interests by strict enforcement, but may enforce such regulations against trucks from other States or even distant parts of the same State without fear of political reprisal. In fact, honest local officials may be subject to considerable pressure to follow such a policy. The dean of a State agricultural college has recently written: [35]

"The shipping of products, particularly by motor trucks, is also much impeded by the manner of enforcement of laws and regulations. Shippers report that local conditions frequently result in different degrees of enforcement sometimes resulting in loss or discrimination against individual shippers. There are even reported instances where such discrimination resulted from misunderstandings between neighboring law enforcement administrations."

Where fines go in part to the local enforcement agency, the situation may be further complicated. The charge is made that officials are sometimes tempted to assess fines on foreign trucks just sufficient to provide a small income

[32] San Angelo Standard, April 1, 1938; and San Antonio Express, April 2 and 5, 1938.

[33] Apr. 8, 1938.

[34] Apr. 4, 1938.

[35] Mar. 15, 1938.

to themselves or to the local government, but not large enough to force the truckers to quit the business or to follow roundabout routes to avoid the areas where fines are imposed. This situation is probably not common; perhaps it now exists in no part of the country. But wherever drastic State motor-vehicle laws are not strictly enforced, warranted or unwarranted charges may be made against public officials.[36]

PORT-OF-ENTRY LEGISLATION

Under port-of-entry legislation, States have set up checking stations at points where main highways enter the State. Here officials halt incoming (and in some cases outgoing) traffic in order to subject motor vehicles to certain regulations, inspections, and taxes. Kansas, which inaugurated this type of legislation, experimented in 1933 with the policing of its borders to keep out "bootleg gasoline," and on January 1, 1934, put into effect a full-fledged port-of-entry system.

Under this program all trucks entering the State are required to obtain proper clearance. For trucks bearing Kansas license plates, this is a relatively simple matter. For others the procedure is more complicated. The driver of a carrier not having a Kansas registration is required to fill out a rather elaborate form describing the truck and its load, the proposed route of travel in the State, etc. State officials are required under the law to inspect the truck and its equipment to make sure it meets the requirements of Kansas, to check for proper insurance coverage, and to collect taxes that vary with the weight of the vehicle and the distance it is to travel in the State.

The Kansas plan has spread rapidly, having been put into operation in one form or another by Oklahoma, Nebraska, Arizona, New Mexico, California, Idaho, Utah, and Colorado. Up to the present time, Kansas and Oklahoma have set up the most elaborate systems, the former with 66 ports of entry, and the latter with 58. The other States vary considerably in the way in which they have organized their port-of-entry systems, but most of them appear to have sufficient stations to cover the main highways and effectively to enforce their registration and taxation requirements on out-of-State cars. Also, in a number of States (California, Arizona, and Idaho) ports of entry have been combined with, or are supplemented by, highway quarantine stations.

The ports of entry may act as a deterrent to interstate commerce because of the trouble and delay caused by the inspection procedure. When first subjected to this border inspection truckmen usually resent very much being held up by the clearing formalities. As they become accustomed to the system, however, they may not find it as troublesome as they had feared. Where the inspection of truck and equipment is superficial or nominal, as is often the case, and the clearing is courteously and expeditiously accomplished, the delay and annoyance are reduced to a minimum. It is the occasional trucker, the man who does a small business or only occasionally has his truck or trucks entering the State, who is most troubled by the port-of-entry inspection.[37]

Most States having ports of entry require carriers that make regular or repeated trips to take out State licenses. With such licenses they are expeditiously cleared; indeed, they may not have to stop at the border station. Moreover, large trucking organizations may be able to make arrangements by which their motor equipment is certified as satisfactory by a State inspector, their taxes are paid directly to the central State authority, and the necessary forms

[36] The example may be cited of two sheriffs in one State who ran for reelection upon a platform pledging nonenforcement of the motor-vehicle laws. Report of the Federal Coordinator of Transportation on the Regulation of Transportation Agencies Other than Railroads and on Proposed Changes in Railroad Regulation, Senate Doc. No. 152, 73d Cong., 2d sess., p. 195 footnote.

[37] A mimeographed letter (undated) received from the Kansas State Corporation Commission, April 1, 1938 says: "The purpose of the law is to provide for occasional or temporary truck or bus operations in or through the State, by out of state operators. Any motor carrier, whether common, contract, or private who intends to operate regularly or over a period of time should obtain proper certificate, license or permit, from the State Corporation Commission of this state. Motor vehicles operated under proper authority from the Commission and in good standing must also obtain proper clearance through the various Ports of Entry but are not required to pay the special tax as such taxes are collected in a different manner, based on the per ton miles operated and are considerably less per mile than the taxes due on special or occasional operations not under proper authority from the Commission."

are prepared ahead of time at a central office for the truck driver. So they are free of all or at least a large part of the delay that may be caused by border-station inspection. The greatest inconvenience therefore is likely to be caused to the small trucker or farmer.

The indirect effects of the port-of-entry system are probably much more important than trouble and delay of border inspection, at least in those States having severe regulations as to out-of-State vehicles. Thus, State laws as to ton-mile taxes, limitations on weights and sizes, insurance requirements, etc., may be, and apparently are, efficiently and strictly enforced by the States having a port-of-entry system.[38] Much can be said for a system that results in efficient execution of State laws. On the other hand, if State laws having to do with licensing of out-of-State vehicles or with truck sizes, weight, and equipment are such as heavily to burden interstate commerce, then port-of-entry laws, by facilitating the enforcement of such legislation, may play an important part in discouraging interstate commerce.

The initiation of port-of-entry legislation by a State is very likely to lead to retaliatory laws of a similar character in bordering States. The Kansas act has been in force for about 5 years, and the State is now completely surrounded by States that have adopted port-of-entry legislation.[39] In fact, port-of-entry legislation seems to be an infection (benign or malignant, depending on the point of view) which spreads only by direct contact. All States that have adopted this scheme lie in the West and far West, and each now finds on its borders at least one other State that has passed such legislation.

On the other hand, fear of retaliatory action has been a most important factor in keeping States in the eastern part of the country from adopting the plan.[40] Many Eastern States (among them Pennsylvania, New Jersey, and Virginia) have seriously considered, but finally decided against, the port-of-entry procedure. Delaware, apprehensive that such legislation would be adopted by its neighbors, adopted a law in 1935 by which it may go on to a port-of-entry system by executive order as soon as two of its neighbors establish ports of entry.

A great deal of opposition to this whole system has appeared and shippers and producers often believe their interstate markets are seriously hurt by it. Truck shipments of livestock have been especially affected by Kansas and Oklahoma border-station inspection. A leading Kansas livestock shipper declared in respect to the system in these two States:[41]

"These ports of entry with their resultant formalities have been a decided factor in diverting certain livestock shipments from an interstate haul to an intrastate haul."

Certain markets have been especially hurt. A well-informed observer writes:[42]

"Stock movements to St. Joseph by truck from southeastern Nebraska come mostly through Kansas and because of unfavorable Kansas laws and regulations this movement is materially less than would be the case otherwise."

He goes on to say that a bridge across the Missouri River at Rulo, Nebr., has been urged in order to make it possible to avoid Kansas in making these shipments.

PURPOSE OF STATE MOTOR-VEHICLE LEGISLATION

Having now set forth the main features of these State motor-vehicle laws and regulations and shown how they may be a factor in obstructing the free flow of trade across State borders, let us raise the question, Are these laws designed to have such a result, or are the interferences to interstate commerce entirely unintended and incidental?

Whether purpose is determined on the basis of legislative history, the statement of purpose in the act itself, or the results of the act in actual practice, it seems reasonably clear that the main object of most of this legislation is to raise revenue and to regulate highway traffic in such a way as to promote safety and to conserve property.

Yet any discussion would be less than candid which did not recognize that other purposes are

[38] State collections from gasoline and ton-mile taxes have typically increased following the adoption of the port-of-entry system.

[39] Missouri has not yet put its law into operation.

[40] Maine has a system which approximates the port-of-entry plan.

[41] April 11, 1938.

[42] April 7, 1938.

obviously present. Special interests in the States are often on the alert to influence motor-vehicle legislation to their own advantage. The fact that in their registration requirements on out-of-State vehicles States are prone to give special exemptions to important economic interests seems to indicate that revenue and highway safety and conservation are not their only objectives. Thus, many States make concessions to farmers who carry their own produce. Registration requirements are eased under certain conditions for trucks carrying dairy products in Missouri; ore, minerals, and mining supplies in Nevada; and livestock in New Mexico.

The railroads have an obvious interest in motor-vehicle legislation, not only as heavy taxpayers themselves, but also as the chief competitors of motor vehicles. Both in trade groups and before State legislatures they have taken a prominent part in urging stricter regulation of highway traffic. For a number of years an internal struggle has been waged within the United States Chamber of Commerce between the automobile and trucking interests on the one hand and the railroads on the other over the question as to whether the chamber should go on record as favoring the uniform State legislation concerning size, weight, and speed of trucks recommended by the American Association of State Highway Officials. Up to the present time the railroad group has successfully blocked approval of such a resolution.[43]

Before the State legislatures the railroads have been active in promoting the types of legislation which have been shown in the previous discussion to be most restrictive. They have favored the establishment of ports of entry and the adoption of low limits on the size and weight of trucks. Thus, early in 1936 the presidents of the three leading railroads in New England urged the adoption of the Kansas port-of-entry system by the States of New England.[44] The South Carolina law of 1933 and the Texas law of 1931, both favored by railroad interests, are examples of the most drastic of size- or weight-limitation laws.[45]

Some provisions in the State laws indicate that "protectionist" interests have had some direct part in motor-vehicle legislation. Certain goods may be taken into or out of New Mexico but may not be taken through the State unless a New Mexico license is purchased. Some of the laws suggest that the States are more anxious to promote exports than to invite imports. For instance, Texas provides that nonresident owners of trucks living in an adjoining State may enter Texas without securing a license if their purpose is to buy goods, wares, and merchandise. No such exemption is made for those who take trucks into the State to sell products. Florida gives special privileges to nonresidents who come into the State to buy citrus fruit. An Arkansas law states in forthright fashion that owners of trucks may drive them into the State without securing an Arkansas permit or license if they bring the trucks in empty and for the purpose of buying or removing Arkansas products or merchandise.

LEGAL STATUS OF STATE LEGISLATION

The legal right of a State to tax out-of-State motor vehicles that use its highways has been the subject of considerable controversy. But it is now well established that taxes and fees may be levied on interstate motor carriers when the purpose is to obtain compensation for the use of the highways or to help cover the cost of regulation and policing.[46] Even where special taxes are levied on interstate carriers they may be approved by the courts unless it can be shown that such taxes are clearly discriminatory or have no reasonable relation to the privileges granted.[47]

[43] See for example the following, published by the United States Chamber of Commerce: Regulation and Taxation of Highway Transportation, Jan. 30, 1933; Referendum Number Sixty-Five; Competing Forms of Transportation (Special Bulletin), Nov. 25, 1933; and Standards for Highway Vehicles Committee Report, Dec. 1934. A communication from the chamber informs us that the following resolution was adopted at the annual meeting, May 1935: "Determination of the standards for highway construction and the size and weight of motor vehicles operating over them should be left to the several States in accordance with their respective situations and problems." For the railroad position on size and weight legislation see the handbook issued by the Association of American Railroads entitled Sizes and Weight of Motor Vehicles (Washington, D. C., 1938).

[44] Boston Post, Boston, Mass., Feb. 20, 1936.

[45] Of course, automobile and trucking interests have also done what they could to bring about State legislation favorable to themselves.

[46] See, for example, *Hendrick* v. *Maryland*, 235 U. S. 610 (1915); *Kane* v. *New Jersey*, 242 U. S. 160 (1916); *Clark* v. *Poor*, 274 U. S. 554 (1927).

[47] *Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245 (1928); *Ingels* v. *Morf*, 300 U. S. 290 (1937).

However, past action by the Federal courts clearly indicates that if any of these laws can be shown to be clearly discriminatory or deliberately designed to burden interstate commerce, they are unconstitutional.[48]

The legal status of State laws that limit the size or weight of motor vehicles has been somewhat clarified by recent decisions of the courts. Apparently, at least until Congress shall act, States may limit the size and weight of trucks moving in interstate commerce even though such laws may restrict interstate commerce. The Texas law that limits net loads to 7,000 pounds and the South Carolina law that limits gross weight to 20,000 pounds have both been declared constitutional by the United States Supreme Court.[49] Length and width restrictions by the States have also been upheld by the courts. The chief basis for these decisions appears to be the right of the States to promote highway safety and to secure economy in the use of the roads.[50]

FEDERAL REGULATION OF MOTOR VEHICLES

Congress has devoted much time since 1925 to the subject of Federal regulation of motor vehicles operating in interstate commerce. Finally, following two reports of the Federal Coordinator of Transportation (March 10, 1934, and January 31, 1935) which strongly urged the need of a unified system of regulation including all forms of transportation, Congress adopted the Motor Carrier Act in 1935.[51] The Interstate Commerce Commission is still engaged in the process of setting up and completing the machinery of regulation. On many important points the powers of the Commission will have to be clarified through court action. The law has been actually in effect, therefore, too short a time to show clearly what its results will be. A brief examination of the present situation may be attempted, however, in order to discover tendencies that are already appearing under the 1935 law.

From the standpoint of this study the chief advantage so far evident is the trend toward uniformity in safety regulations. Four general orders having to do with various subjects affecting safety of motor-vehicle operation have been issued. Particularly important from the standpoint of facilitating interstate commerce is the Interstate Commerce Commission order effective July 1, 1937, which set up standards for equipment of motor carriers engaged in interstate commerce. The complicated and often conflicting State regulations as to lights, brakes, flares, etc., are now replaced, so far as interstate transportation is concerned, by uniform requirements for the whole country. (States may still have the power to require equipment additional to that prescribed by the Interstate Commerce Commission. This question is now before the courts.) Already many States have changed their laws or regulations concerning interstate transportation to conform with those set up by the Interstate Commerce Commission. This much-needed uniformity in truck-equipment requirements ought appreciably to facilitate the flow of interstate trade.[52]

It must be emphasized that the law goes only a very short distance in removing existing barriers to interstate movement of motor vehicles. The right of States to require registration of interstate motor vehicles is not affected. In fact, there is now the additional trouble of securing an Interstate Commerce Commission registration. As yet the Interstate Commerce Commission has made little progress in bringing about greater uniformity of weight and size regulations. Recently they have ordered a general investigation of the subject. The actual power of the Commission to prescribe maximum size and weight restrictions on vehicles engaged in interstate transportation has been the subject of much controversy. Court action will undoubtedly be necessary to clarify the situation.

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[48] *Sprout* v. *South Bend*, 277 U. S. 163 (1928); *Interstate Transit, Inc.* v. *Lindsey*, 283 U. S. 183 (1931).

[49] The South Carolina law has since been repealed. See p. 47.

[50] *South Carolina State Highway Department* v. *Barnwell Brothers, Inc.*, 303 U. S. 177 (1938); *State* v. *Wetzel*, 208 Wis. 603 (1932); *Sproles* v. *Binford*, 286 U. S. 374 (1932).

[51] Signed by the President August 9, 1935.

[52] In certain parts of the country, however, where strict equipment laws did not previously exist or, if on the statute books, were unenforced, the cost of complying with the Interstate Commerce Commission regulations may force some truckers out of interstate trade.

Wherever Interstate Commerce Commission control over interstate trucking rates has been made effective, the tendency has been to raise the rates substantially and in many cases to make them roughly equivalent to railroad rates. Increased trucking costs during the last few years have been urged as one justification for this action. Permission to engage in interstate transportation over specific routes or in definite areas is limited under the law to those who were actually engaged in such transportation when the act went into effect or who, starting in business since that time, can show that public convenience or necessity creates a real need for their services. Hence, the effect has been to reduce competition and to raise interstate trucking rates. The extent to which increased rates have curtailed interstate trade could be determined only by detailed studies which would take into account such factors as the amount by which rates had been increased and the elasticity of demand for interstate trucking services. No such studies have been reported.

The regulation of rates does not, of course, apply to intrastate trade. In fact, the Motor Carrier Act, 1935, states that the Interstate Commerce Commission shall not regulate intrastate motor traffic "for the purpose of removing discrimination against interstate commerce or for any other purpose . . ." This provision of the law is remarkable, to say the least, in view of the fact that Congress and the courts have for years labored in connection with State railway regulation to guard against regulations or rates that would discriminate unfairly against interstate commerce.

Of course, no problem of discrimination arises where State commissions set up substantially the same regulations and rates as are imposed on interstate trucking. Some States have done this. Others have set intrastate rates lower than those established under the Interstate Commerce Commission, or have attempted no rate regulation at all.

The result of higher rates for interstate than for intrastate trade may obviously be to restrain movement from State to State and to stimulate greater intrastate shipment. The producer located near a State line may find the cost of his out-of-State shipments increased to such an extent that he will be forced to sell in the markets of his own State, even though their distance is considerably greater than out-of-State markets.

On the other hand, note must be taken of the fact that before the passage of the Transportation Act of 1935, interstate motor traffic often enjoyed an "unfair" advantage over intrastate traffic. This resulted in those cases where States regulated intrastate truck rates. The inability of the States to enforce their regulations and rates on interstate trade meant that producers shipping across State lines might have an appreciable advantage over those making purely intrastate shipments.[53]

The fear that higher rates for interstate than for intrastate shipments would place farmers near State lines at a disadvantage led agricultural interests to secure important exemptions in the Motor Carrier Act of 1935.[54] Under the provisions of this act as finally adopted, powers of the Interstate Commerce Commission over rates do not extend to private carriers (those transporting solely for themselves) nor to certain specifically exempted carriers, the most important of which are those engaged in the transportation of unmanufactured agricultural products.

But in actual practice this exemption of unmanufactured agricultural products has not proved so broad as was apparently anticipated by farm interests. The act might have been expected to encourage shippers, especially farm cooperatives, to own their own trucks, and thus avoid the necessity of hiring common or contract carriers the rates for which have typically been advanced under the operation of the Federal law. But the law is so worded that this recourse has not always been possible. The livestock cooperatives have found that the profitable operation of their trucks often requires a return haul of processed or manufactured goods. Likewise, certain fruit and vegetable cooperatives find own-

[53] See Report of the Federal Coordinator of Transportation on the Regulation of Transportation Agencies Other than Railroads and on Proposed Changes in Railroad Regulation, Senate Document No. 152, 73d Cong., 2d sess., p. 195.

[54] Hearing before the House of Representatives Committee on Interstate and Foreign Commerce on H. R. 6836, 73d Cong., 2d sess., 1934. See especially pp. 120–121, 134–135.

ing their own trucks profitable only if, at off seasons of the year, they can utilize their trucks for other than their own needs. In either eventuality an Interstate Commerce Commission license is very likely to be required. Moreover such a license cannot be secured unless it can be shown that motor-vehicle facilities already in existence cannot take care of this business.

In fact, the law so reads and has been so interpreted that, if strictly enforced, large numbers of farmers' trucks could not be exempted. A farmer who owns a truck often expects to do some trucking for his neighbors. But if he collects products from others and transports them to a city across the State line, he must make sure that such products are *unmanufactured*. As the law has been interpreted unless he first secures an Interstate Commerce Commission license, he cannot transport such products as pasteurized milk or cleaned rice, nor can he bring back from the city a box of corn flakes, a pound of butter, or a sack of fertilizer for a neighbor.

CONCLUSIONS REGARDING REGULATION OF MOTOR VEHICLES

Relief from the obstacles to interstate commerce that have been set up in the field of motor transportation is clearly needed. But where does the remedy lie? How are present restrictions to be reduced and the increase of such barriers to be avoided in the future? Although no simple or easy answer emerges from our study, we can profitably consider the possibilities in the current situation.

What has been or can be done to decrease the barriers to interstate commerce that arise from State efforts to tax out-of-State motor vehicles? Very little trouble as to license plates now exists in the States on the Atlantic coast from Massachusetts to Virginia, as most of these States have clauses in their laws granting liberal reciprocal privileges to "foreign" motor vehicles. Considerable progress has been made recently in certain parts of the country in the direction of bilateral State reciprocity agreements involving recognition of out-of-State license plates. For instance, Michigan has recently worked out reciprocal arrangements with Illinois, Indiana, and Ohio. A similar situation exists in the far West where at least six adjoining States have entered into fairly liberal bilateral reciprocity agreements. If this movement could grow steadily so as to include the whole country an appreciable gain to the free interstate movement of goods would result.

Past experience has indicated, however, that reciprocity agreements have appreciable weaknesses, not the least of which is that they are likely to break down at any time. Sometimes when this happens a severe border war may result, to be followed possibly by a new reciprocity agreement or, as has not infrequently happened in the past, by the rigorous enforcement of retaliatory legislation. Furthermore, even the most liberal of the reciprocity agreements do not go very far. They do not ordinarily give the foreign carrier the right to do any intrastate trucking in the foreign State, nor do they often cover special taxes such as the ton-mile or wheel tax. Finally, certain States, like Wyoming and Oklahoma, steadfastly refuse to enter reciprocal agreements.

Although some further development may come along the line of reciprocity agreements, appreciable difficulties stand in the way. Especially persistent is the feeling that the outside trucker should contribute to the State revenue. But other motives, including protection of State interests and retaliation against laws of other States, are also important.

The difficulty of making appreciable progress through voluntary State adoption of broad reciprocity agreements suggests the alternative of Federal action. A Federal law might be passed providing that no further registrations could be required of any motor vehicle moving in interstate commerce which was properly registered in its home State and had, in addition, an Interstate Commerce Commission registration. Such a law might also provide that no State ton-mile, wheel, or other taxes could be levied on interstate motor vehicles which were not also levied on intrastate vehicles. If such a plan were found to involve serious legal difficulties adoption of substantially the same program might be ob-

tained in some other way. For example, Federal grants-in-aid might be made only to those States that were willing to cooperate in such a plan. Under such pressure all States might be willing to adopt the scheme.

Such a program would bring obvious advantages to interstate truck movement. But what disadvantages might be anticipated? Some States would undoubtedly object to losing the revenue which comes from taxing the out-of-State truck. This objection might be met by prorating to the States on the basis of the amount of interstate trucking done in each State the income received by the Federal Government from Interstate Commerce Commission licenses. Since only a nominal amount is now charged for Interstate Commerce Commission registration this fee would have to be greatly increased if appreciable revenue were to result. The practical difficulties in the administration of such a plan would have to be carefully studied and evaluated.

Moreover, unless such a program were worked out very carefully it might result, just as has the Motor Carrier Act, 1935, in creating new difficulties for interstate commerce at the same time that it eliminated others. Thus, if the number of trucks given Interstate Commerce Commission licenses were severely limited, or if the cost of the license were high, interstate trade might be discouraged. Certainly if a high license fee were assessed at a flat rate on all trucks, farmers and small business men who make only occasional interstate trips might be largely excluded from such trade. Although these considerations are not necessarily an argument against Federal control, they do indicate the necessity of framing such legislation with the greatest care. No easy solution appears, therefore, to the problems of motor-vehicle registration and taxation as hindrances to interstate commerce. However, unless much greater progress can be made in the direction of State reciprocity agreements, Federal control on one basis or another seems unavoidable.

The problem of the barriers to interstate trade created by State laws having to do with truck size and weight also presents obstacles to easy solution. State action in the direction of uniformity has been lamentably slow despite the fact that the whole question of uniform standards for size and weight of trucks has been given a great deal of attention by both private and public agencies. A uniform vehicle code was drawn up in 1925–26 by the National Conference on Street and Highway Safety cooperating with the National Conference of Commissioners on Uniform State Laws. This code has been revised from time to time and, following a conference in which many agencies participated,[55] was published in its most recent form on July 31, 1934, by the Bureau of Public Roads of the Department of Agriculture.

It may be that the efforts of these groups have accomplished something in the way of preventing even greater nonuniformity of State laws than now exists. But their influence in securing uniformity has hardly been striking. This can best be appreciated perhaps by comparing the situation as shown in figures 1 and 2 with the standards set up and urged for general adoption by the conference. The conference recommended a maximum length of 45 feet for tractor combinations (35 feet for single units or tractor-semitrailers). Weight limitations per wheel were set at 8,000 pounds for high-pressure and 9,000 pounds for low-pressure pneumatic tires.[56]

Moreover, practically no progress toward standard size and weight limitations has been made by means of State reciprocity agreements. The few States, like New York, that offer general reciprocal treatment on truck weight and size are the ones whose laws are already so liberal as

[55] U. S. Department of Commerce; Bureau of Public Roads, U. S. Department of Agriculture; American Association of Motor Vehicle Administrators; American Automobile Association; American Mutual Alliance; American Railway Association; American Transit Association; Chamber of Commerce of the United States; National Automobile Chamber of Commerce; National Bureau of Casualty and Surety Underwriters; and National Safety Council.

[56] From the standpoint of conservation of the roads the wheel or axle weights are considered by many engineers as much more significant than gross weight of vehicle and load. The maximum gross weight according to the wheel limits given above would be 36,000 pounds for a truck having four wheels and equipped with low-pressure tires. In actual practice this would seldom be realized because of the fact that the weight is usually considerably greater on the rear than on the front axles. For the protection of bridges, the American Association of State Highway Officials recommends the following formula: $W=700\ (L+40)$ where W equals the gross weight in pounds and L equals the length in feet between the centers of the first and last axles of a vehicle or combination of vehicles.

to place no appreciable restrictions on interstate truck movement. Although but little help in removing these barriers may be expected to result from State reciprocity agreements, the recent action of the State of South Carolina in repealing its drastic size and weight law indicates that the movement toward lower limitations may be checked. When producers within a State are brought to realize the losses they may suffer from laws of their own State that restrict truck size and weight, they may be expected to put up formidable opposition to such legislation.[57]

In view of the great difficulty of securing uniform State action there is certainly much to be said for a Federal law that would set maximums on size and weight of trucks moving in interstate commerce. Already this has been accomplished insofar as truck-equipment requirements are concerned. In fact, many believed it was the intent of the Motor Carrier Act of 1935 to empower the Interstate Commerce Commission to regulate truck size and weights, as well as equipment. But court decisions have not yet clearly established the power of the Commission in this respect.

Objections have been urged against Federal legislation to provide for uniform limits on the size and weight of motor vehicles. One contention is that conditions as to the nature and construction of the roads are so dissimilar in different parts of the country that maximum loads that would be reasonable for one State would be destructive to highways and a menace to safety in another. The question raised is important, but it would hardly be valid against legislation that left ample power to the Interstate Commerce Commission to determine which highways could be suitably used for heavy interstate trucking.

The nature of the highways and their suitability to heavy truck use varies as much within States as between States. Unquestionably there are within every State in the Union many roads that the Interstate Commerce Commission could not approve for heavy interstate truck movement. On the other hand, every State has some well-constructed roads and bridges, built in considerable part at Federal expense and in line with Federal specifications, which are adapted to heavy traffic. Future Federal grants-in-aid for road building might be made (as certainly has been the case in the past, at least in part) with the special purpose of linking up all sections of the country with wide, strong, and safe highways.

The further objection may be raised that heavy trucks, moving interstate, congest the highways and greatly detract from the pleasure that people derive from automobiles. The question posed here is a broad one of general public policy. Do we, as a people, wish freer and cheaper movement of goods in interstate commerce by motor vehicle or do we prefer roads cleared of trucks, the better to enjoy our automobile rides? Or do we wish both objectives and want them badly enough to build more roads?

These are questions of social objective which the people will have to decide. But should this decision be made by the country as a whole through Federal legislation or should it be left to the individual States? If it is left to the States and a very small number of the States lying across the main routes of commerce decide drastically to limit interstate trucking by putting very low size and weight limitations on trucks, then it is obvious that these States will exercise a privilege that may greatly affect people who live beyond their borders and who can have no part in making the decision.

What of the disadvantages that result to interstate commerce from the port-of-entry system? Undoubtedly the greatest present protection against the spread of this device is the fear of retaliation. However, if the other problems are solved, the port of entry will undoubtedly disappear. But as long as States have drastic differences in size, weight, and insurance requirements, and while they still look upon the "foreign" truck as an important source of revenue or possibly as an agent of outside and therefore unfair or disadvantageous competition—as long

[57] It may be noted, however, that despite much opposition by trucking interests and certain producer groups, the Texas net-weight law has survived several serious attempts to secure its repeal.

as these conditions hold we shall probably have to be resigned to the continuance of the port-of-entry system in a considerable number of ourStates.

Finally, what of these disadvantages to interstate commerce which seem to result from the Motor Carrier Act, 1935? The answer is exceedingly difficult. Much further experience and study are needed for a satisfactory answer. So many other questions are involved—questions of how far we should go in attempting to stabilize the trucking industry, what carrier should come under the act, whether large or small trucking units should be encouraged, to what extent the object should be to protect the railroads and to keep them in business, and whether railroad ownership of trucks should be promoted or prohibited. Perhaps all that we can ask is that, in the heat of controversy over these issues, the fact shall be clearly recognized that Federal measures affecting motor vehicles will almost inevitably either encourage or discourage interstate commerce. If the latter, should we not try to make sure that the expected benefit in some new direction is at least equal to the loss that results from the restraint set up on interstate trade?

Merchant-Truckers

REAPPEARANCE OF THE ITINERANT MERCHANT

ITINERANT MERCHANTS and traveling peddlers were a normal and accepted feature of our early American economic organization. But as means of transportation improved and, especially, as the railroad became the customary means of land transportation over appreciable distances, the business of buying and selling became predominately a sedentary occupation.

In recent years, however, with the advent of inexpensive motor vehicles and improved roads, the itinerant merchant has reappeared. Especially in the marketing of agricultural goods, but in other fields as well, during the past decade he has reestablished himself as a significant part of our marketing system.

Modern itinerant merchants are of many kinds and perform their varying functions in so many different ways that they are difficult to describe or to classify in satisfactory categories. In general, they buy produce from growers, dealers, or other truckers. Sometimes they produce the product themselves. They are then often called grower- or farmer-truckers. In most cases they haul the goods in their own trucks and sell it in established markets. The merchant-trucker[1] often disposes of his produce on a farmers' market. But he may sell it himself either by parking his truck and selling to customers who come to him or by driving from house to house hawking his wares. In this latter case he is often called a "trucker-peddler."

Frequently the business of being a merchant-trucker is a part-time, occasional, or seasonal occupation. A farmer may become a merchant-trucker for a few days or weeks in order to sell his own produce or his neighbor's. Contract truckers who operate for regular shippers or wholesalers occasionally haul for themselves and buy and sell at their own risk. In such cases they become, temporarily at least, merchant-truckers. Thus in many parts of the country livestock dealers have become regular merchant-truckers traveling from farm to farm to buy livestock and to transport it often to distant markets, in other lines, such as eggs, poultry, grain, and fresh fruits and vegetables, the merchant-trucker has often become a regular full-time operator.

In making his reappearance as an important factor in our marketing system, the itinerant merchant has disturbed existing institutions. Established agencies, producers, wholesalers, jobbers, retailers, common carriers, municipal markets, as well as other elements in our complex marketing structure, have had to accommodate themselves to this new factor in the marketing of commodities. This process of readjustment has not been easy, nor are all the problems yet solved. But in an attempt to deal with the situation, States and their subdivisions have already provided a great deal of regulation.

Our main concern here is to study this new

[1] The terms "itinerant merchant" and "merchant-trucker" are used interchangeably. Of course there are still a few itinerant merchants who travel by foot or by vehicles other than trucks.

legislation from the standpoint of the barriers it has raised to commerce both within and between States. Having examined these barriers, the question must be raised as to whether they are necessary and desirable despite the interference they may cause to the free flow of commodities.

RESTRAINTS ON MERCHANT-TRUCKERS BY STATES AND LOCALITIES

An exhaustive study of State and local legislation regulating merchant-truckers is greatly needed but was not possible in connection with this investigation. Here we have done no more than sample the great mass of existing legislation, giving particular attention to those statutes that appear to be in any way restrictive to interstate or local commerce. It should be borne in mind that these laws place barriers on commerce in the sense that they are restrictive to the free movement of goods by merchant-truckers. Like other restrictions, they may or may not be justifiable, but an evaluation is deferred to pages 65–67 of this report. We shall first take up certain general provisions of these laws, reserving for later treatment the matter of exemptions and preferential treatmcnt to certain groups.

In many States and cities each merchant-trucker is required to take out a license[2] and to post a bond. This is generally deemed necessary for purposes of regulation and taxation and to protect the public from fraud and dishonesty. In a few jurisdictions no license or bond is required; in others the fees are nominal or at least not so high as to be a heavy burden. In most localities a fee must be paid not only to the State but also to the municipality and possibly to other authorities such as the county. In addition, the regular motor-vehicle registration fees must be paid, and it should be borne in mind that the merchant-trucker is one of those especially burdened by State registration requirements on out-of-State trucks.

[2] The fact that the merchant-trucker must secure a license to do business as a merchant-trucker *for each vehicle* he uses may lead to some confusion of terms. Where the term "license" is used in this discussion, it refers to the license to do business; where reference is made to the regular requirements on *all* trucks that they be licensed or registered, the term "registration" is used in this section.

The cost of a license to do business as a merchant-trucker varies considerably from State to State. Thus in Nebraska, the State fees are relatively moderate. On each vehicle he uses in his business a merchant-trucker must pay an annual license fee of $25 plus an occupation tax of $10. Moreover he must file an indemnity bond of $250. In Montana, the rates are much higher—$100 for the annual license fee ($50 for each additional truck), and a bond of at least $1,000 must be posted.

Some States require that a license fee must be paid in each county in which the merchant-trucker operates. West Virginia requires a license in each county but varies the amount of the fee with the capacity of the truck. For trucks of not more than ½-ton capacity the license fee in each county is $15 and the charge is graduated steeply upward for heavier vehicles. Thus the itinerant merchant whose truck has a capacity of between 3 and 4 tons must pay $250 annually in each county in which he does business. In Idaho and Washington the merchant-trucker pays a flat rate, $300 in each county. In addition, he must make a cash deposit of $500 with the county treasurer.

Most States also permit various subdivisions of the State to require licenses and to make such regulations for the itinerant merchant as they may wish. In many places the rates are merely nominal. On the other hand many instances have been brought to our attention of rates so high as to be seriously restrictive or even prohibitive. Although some cities provide for short-time licenses, a great many require that an itinerant merchant must pay the annual fee even if he wishes to operate in a given area for only a few days. Annual license rates of from $25 to $100 are very common, but rates of $200 or even higher are assessed by many cities. Thus Denver, Omaha,[3] Pittsburgh, Mobile, Baltimore, Cleveland, and St. Louis are among those fixing the rate of $200. A considerable number are even higher. Thus the annual fee in Louisville, Ky., is $250 and in Fort Wayne, Ind., $300. Many cities also require the posting of bonds. Both Pittsburgh and St. Louis,

[3] Applies only to itinerant wholesale fruit and vegetable peddlers.

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whose requirements are mong the highest, exact a $1,000 bond. Fort Wayne, in addition to the $300 license fee, requires a deposit of $300 in cash or a surety bond of $500.

In some cities the amount of the annual license fee required of itinerant merchants is twice or more than twice that required of established merchants. For example, in Mobile the license to do business as a wholesale produce dealer of the first class costs $92.50; as a wholesale produce dealer of the second class, $67.50; as an itinerant wholesale produce dealer, $200. In Louisville the established dealer must pay $100, in contrast to the $250 required from the itinerant merchant.

From these very high rates it is, of course, but one step further simply to outlaw all itinerant merchants. So far as we know, this has not been done, but some cities have forbidden hawking or peddling from door to door. Thus the city of Petoskey, Mich., forbids "the practice of going in and upon private residences" by peddlers or itinerant merchants without invitation from the occupants, for the purpose of soliciting orders or selling goods.

In some cases where the license fees and regulations applying to merchant-truckers are very heavy the merchant-truckers have rented rooms or stores for a few days or weeks in order to set themselves up as regular retailers and so avoid high license fees. Apparently to prevent this practice as well as to regulate or discourage other temporary dealers and tradesmen, a number of cities have passed ordinances placing a high license fee and other requirements on "itinerant venders." Such "itinerant venders" are usually described as those who conduct a temporary or transient business with the intention of continuing it not more than 120 days and who for that purpose occupy a room or building to exhibit and sell their merchandise.

Grand Rapids, Mich., places a license fee of from $50 to $100 per month or fraction thereof on all such "itinerant venders." St. Louis, Mo., assesses $25 a day, and in Youngstown, Ohio, the rate is $150 a day.

At least two States—South Carolina and Virginia—have also enacted legislation of this type. Any person "not being a regular retail merchant" in the State, who displays merchandise for retail sale in a hotel room (or in any room, in South Carolina) or in a house, rented or occupied temporarily, is required by this legislation to pay an annual privilege tax of $250.

In addition to the license and bond requirements, the itinerant merchant may find rules and regulations that are very difficult to meet. In some areas elaborate records must be kept of purchases and sales. Identification cards, special license plates, photographs, and special lettering on the truck are often required. Moreover the process of securing a license may require the filling out of elaborate blanks, it may be necessary under the law for the merchant-trucker to establish the fact he is of good moral character, and finally in some jurisdictions (for instance, Lima, Ohio) he must give names of at least two citizens of the community who can testify to his character. Both of the last two requirements might easily be used by local officials to bar strangers from engaging in the business of itinerant merchant.

In some States and cities all wholesale dealers, itinerant as well as those having established places of business, have to pay a license fee. But the annual fees for the itinerant merchant are typically much higher than for others. Moreover, even where equal, they often fall with greater weight upon the itinerant merchant because his volume of business is ordinarily much less than that of the established merchant.

Of course, like so much other restrictive legislation, these laws are not always strictly enforced. In certain communities they have become a dead letter; in others enforcement is sporadic. But in many cases vigorous enforcement takes place, and, if fees are very high, itinerant merchants are practically kept off the roads. Not infrequently established merchants and real-estate groups are active in reporting offenders, promoting enforcement, and in warning itinerant merchants to keep away.[4]

[4] See, for example, an advertisement sponsored by the North Side Business and Improvement Association of Kansas City, Mo., in The New York Packer, June 25, 1938, p. 11.

Peculiarly significant from the standpoint of this study are the provisions in these merchant-trucker laws which specifically give protection against outside competition to local farmers or dealers. With only rare exceptions State laws and local ordinances give special privileges to the grower-trucker. Usually he pays no license and is freed from all regulation, or he may be subjected to a nominal fee (as in Oregon) or required to have with him proof that he is a bona fide grower.

The laws of Kansas and West Virginia are typical in that they specify that the provisions of the law regarding the licensing and regulation of merchant-truckers shall not apply to farmers who are disposing of their own produce. Florida goes a step further and provides that no county or municipality shall require a license of the grower-dealer.

Most cities specifically exempt the grower. The following, taken from the ordinance of the city of Louisville, Ky., is typical:

"There is specifically exempted from this definition and ordinance any person who sells only produce raised or produced by him as owner, landlord, or tenant, provided he has, before offering any such produce for sale, obtained a Permit of Exemption. . . . Such permit shall be issued upon application and payment of fee of fifty cents . . . "

It should be emphasized that the effect of a provision like this is not to give an advantage to all growers but chiefly to those not far distant from the local market. Most grower-truckers do not make long trips. Not only do they ordinarily find it inconvenient to be away from home for more than a short time but also their trucks are usually small and not adapted to long-distance hauling. Moreover, a single farmer may not have enough produce of his own to ship a full truck load at any given time. The difficulty that distant growers meet from this type of regulation is described in a letter received from an official in North Carolina. He writes in part:

"We run into . . . difficulty in this State, particularly in the western part, in selling produce to Georgia and South Carolina towns. The Boards of aldermen from time to time set up regulations in regard to who shall sell produce in the towns without license. In many cases the license fee is rather high, especially to those hauling produce which they did not produce. For instance in Henderson County a few years ago every person taking their produce to certain South Carolina towns would have to have a certificate from the Register of Deeds stating that the produce offered for sale was produced on the bearer's individual farm and that they were not selling anyone's produce except that they had grown. This regulation was harmful to the producers in Henderson County for the simple reason that few of the growers produced in large enough quantities to own trucks to transport their material which could have been more easily handled by regular truckers, taking a load of produce from Henderson County to South Carolina and in turn bringing back products from that State to sell at the point from which they originally started."

The purpose of these grower exemptions is usually admittedly protective. Thus, a bulletin published by the Department of Agriculture of the State of Oregon says that one of the purposes of its Peddlers' Act is: "To give bona fide growers and farmers a financial advantage by permitting them to peddle retail and wholesale."

But home protection frequently does not stop with exemptions to growers. Some States require an additional license fee from the out-of-State merchant-trucker. The Indiana law says that the "traveling merchants . . . , who are not residents of this State" who "vend foreign merchandise" shall pay a special license fee *in each county* in which they operate. This fee is $5 if the capital employed does not exceed $1,000 and higher rates are provided for larger capitals.

The burdens to interstate commerce caused by motor-vehicle legislation, registration fees, size and weight restrictions, and port-of-entry legislation,[5] all fall with peculiar weight upon the itinerant merchant. In fact, some of the

[5] See pp. 38–50.

most restrictive of these laws are sometimes defended for the very reason that they curtail the movements of the merchant-truckers.

Finally it may be noted that laws discriminating in favor of the in-State grower or dealer may give rise to retaliation by other States. Thus, it is now argued in Georgia that a license should be required of out-of-State itinerant truckers because neighboring States impose a license fee on such dealers from Georgia. In supporting this position, an article in the Georgia Market Bulletin says that Georgia is about the only Southern State in which selling by out-of-State trucks is practically free, and declares:

"It is most important that something along this line be done in our State and not have us as at present the dumping ground for all the surplus produce of surrounding States. For instance, were it not for the snap beans and tomatoes run in here from Tennessee, Alabama, and North and South Carolina our Georgia farmers would have received a fair price for their crop this summer instead of having to sell, in many instances, them below the cost of production."[6]

Another example to be noted in connection with State retaliation is a Florida law which levies a license fee of $75 on persons who sell agricultural products, but which exempts Florida producers. This law, following the reciprocity provisions of certain State motor-vehicle legislation, provides that the exemption of Florida grower-dealers from the license shall be extended to grower-dealers of such other States as grant a similar exemption from their license fees to the grower-dealers of Florida.[7]

PREFERENCE TO LOCAL INTERESTS IN FARMERS' MARKETS

Along with the great increase in the use of the motortruck for marketing farm produce and the increasingly important place of the merchant-trucker, has come the rise of the farmers' market. In other days farm produce was largely shipped by rail to city terminals, from where it was distributed by wholesalers and commission houses to the retail trade. Now increasing quantities are brought to the farmers' markets. Here middlemen still carry on some business, but to a large extent the produce is bought directly by independent retailers, chain stores, peddlers, and, where permitted, even by consumers. Sometimes these markets are privately owned but usually they are regulated and controlled by a public or quasi-public body. A major question that inevitably arises is whether these markets shall be open to all comers on an equal basis or whether preference shall be given to local growers or to dealers in local produce.

Market regulations usually provide for at least some preference to local interests. Most common perhaps is the limiting of the facilities of the market to the grower-trucker, the farmer who is disposing of the produce which he, himself, has raised. The Columbus, Ohio, producers' market and the farmers' market in New Orleans may be cited as among the many markets having this requirement.[8] Sometimes the produce of the nongrower is not completely excluded but a preferential treatment is given to the grower. Thus in the Los Angeles City Market preference in the assignment of stalls is given to local farmers and growers.

In a considerable number of markets trading is restricted to local products, thus keeping out the distant merchant-trucker and forcing out-of-State farmers to market their produce through established middlemen or commission merchants. The trucker-dealer may operate in the Syracuse farmers' section of the regional market, but only if he sells produce grown in New York State. The Farmers' Market in Hartford, Conn., permits sale only of Connecticut produce, with the exception of onions from Massachusetts. Merchant-truckers selling out-of-State produce on the Marsh Market in Batlimore have to secure a special license at a cost of $200 annually.

Recently, most of the dealers in the Northern Ohio Food Terminal, Cleveland's centralized produce market, pledged themselves not to

[6] Aug. 1, 1938.

[7] Laws of 1929, ch. 13875.

[8] In Columbus the grower may sell on the producers' market through an agent, provided he pays the agent on a flat salary basis and not on commission.

receive truck shipments of fruits and vegetables originating outside of the State.[9]

An extreme example of discrimination against out-of-State produce is afforded by a Georgia law enacted in 1935. After giving the Commissioner of Agriculture certain powers with respect to establishing and maintaining eight farmers' markets and authorizing him to promulgate and enforce official grades for farm products sold in these eight markets, the law empowers the commissioner to embargo fruits and vegetables coming into the State whenever such action is necessary to protect Georgia growers.[10]

It seems to be intended frankly to benefit the Georgia grower at the expense of outsiders and at the expense of the Georgia consumer.

LEGAL ASPECTS

The constitutional status of many of the laws described in this part of the report has not as yet been clearly determined through court action. However, a number of tendencies may be briefly noted. As shown in pages 51–52, taxes may be found, in view of the stated purpose of the act, to be unreasonable and burdensome. The case may be cited of the city of Duluth, Minn., which imposed a license fee of $25 per day on transient merchants. In holding this fee unreasonable and, therefore, invalid the Minnesota Supreme Court said: "The ordinance is not concerned with the business done, nor does it seem to have any reference to the cost of issuing the license and the possible amount of police supervision required."[11]

The constitutionality of the various laws that give preference to certain merchant-truckers seems to depend largely on the kind of preference granted. Thus laws that exempt the grower-trucker from certain taxes or give him other advantages may be valid. One of the leading cases in this field has to do with a license tax imposed on the business of refining sugar in Louisiana. Farmers grinding and refining their own sugar were exempted from the tax. The United States Supreme Court upheld the law saying it had always been the policy of Government to exempt producers from the taxation of the methods employed by them in getting their produce to market.[12]

On the other hand, laws that give preference to local produce and those that place a tax or other burden on products from other States have been repeatedly thrown out by the courts.[13] In general, laws prohibiting or placing direct burdens on house-to-house peddling have, where interstate commerce is involved, been found invalid.[14] In general, these laws and ordinances appear to be constitutional insofar as they give exemptions to farmers disposing of their own product but are invalid when they discriminate against the products of another State.

STATEMENT OF THE PROBLEM

The questions raised by these attempts to restrict or regulate the merchant-trucker and to limit the use of farmers' markets are but a part of larger problems arising from the tremendous changes that have resulted, and are still resulting, from the growing use of the motor-vehicle. A thorough discussion of this whole matter is clearly beyond the scope of this study. We must content ourselves here with a brief analysis of the more important aspects of the restrictive legislation that has been described in this chapter.

One of the chief incentives leading to this

[9] The New York Packer, October 22 and October 29, 1938, and The Produce News (New York), November 19, 1938.

[10] Laws of 1935, no. 44, pp. 369–72. Sec. 8 reads as follows: "Sec. 8. The Commissioner of Agriculture in carrying out the terms of this bill shall, in addition to the power heretofore given him, have authority to inspect all fruits, vegetables and truck crops coming into Georgia markets or offered for sale within the State. He shall have power, and is hereby directed, insofar as is possible, to protect the Georgia growers and consumers of fruits, vegetables and truck crops by declaring an embargo on any fruit, vegetable or truck crop coming into this State when the supply of the same fruit, vegetable or truck crop grown in this State is ample for the markets of this State at that time."

[11] *City of Duluth* v. *Rosenblum* (Supreme Court, Minnesota), 230 Northwestern 830 (1930).

[12] *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89 (1900).

[13] See for example: *Webber* v. *Virginia*, 103 U. S. 344; *Welton* v. *The State of Missouri*, 91 U. S. 275; *Guy* v. *Baltimore*, 100 U. S. 434; and *Brown* v. *Maryland*, 25 U. S. 419.

[14] See for example: *Real Silk Hosiery* v. *Portland*, 268 U. S. 325 (1925) and *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489 (1887). A recent case which appears to uphold such local restrictions is *Town of Green River* v. *Fuller Brush Co.*, 65 Fed. Rep. (2nd) 112 (1933).

legislation has been the desire of existing groups to protect themselves from new forms of competition. The merchant-trucker is an innovator and his appearance frequently forces a drastic reorganization of the distributive machinery. He competes with and sometimes short cuts the old, established middlemen by carrying produce directly from the farmer to the processor, the city wholesale market, or in come cases directly to the retailer, or the consumer. The middleman's function and organization may be greatly modified, or he may not even survive.

One need not look far into the marketing of most agricultural products to discover abundant evidence of these changes. A few random examples may be given. In the marketing of fresh fruits and vegetables in many parts of the country the truck has superseded the railroad as the chief transportation agency. Large percentages of the onion crop of Massachusetts, the peach crops of Michigan and Illinois, and the citrus fruits of Texas are moved by merchant-truckers.

Merchant-truckers sometimes sell through established wholesalers or commission merchants, but sometimes themselves act as wholesalers or jobbers.[15] Occasionally the process is carried a step farther and the produce is distributed directly to the consumer from markets or from roadside stands, or by peddlers from house to house, thus eliminating the established retailer.

Similar changes have taken place in the marketing of livestock and are, at present, rapidly appearing in the marketing of grain. A few years ago, hogs and cattle were ordinarily bought, assembled, and shipped by livestock buyers, dealers, or cooperative associations located in hundreds of small railroad towns. Some of this business has passed to merchant-truckers who buy the animals at the farm and haul them, sometimes over long distances, to the stockyards in large cities.

Similarly the small-town grain buyer or cooperative elevator formerly received the grain brought in directly by the farmers, often stored it for a time, and then shipped it on by rail to the great markets. In some areas of the Middle West the merchant-trucker is now rapidly changing this procedure. He obtains the grain from the farm and transports it directly by truck to the large storage, processing, and shipping centers.

The legislation described in this section is largely restrictive to the new methods of marketing and is protective to the established institutions. If we were to take a completely laissez-faire position, we would condemn the bulk of this legislation as meddlesome interference with business by Government. We would point out that, unless hindered by repressive legislation, technological changes constantly alter the forms and functioning of our economic machinery. The stage-coach drivers, the teamsters, the innkeepers, and the canal companies—the "legitimate" institutions—fought the introduction of the railroad. Yet the railroad won because shippers and the public gave it their patronage.

So, with the system of marketing through merchant-truckers and farmers' markets, it might be said from the laissez-faire viewpoint, let this system displace the older one to the extent that producers find it profitable to sell their products in this way and retailers and consumers find that they get lower prices or better service. Much has been made of the wide spread in prices between the farmer and the consumer. Here is a new method of marketing which presumably reduces this spread. Then let us continue to put our faith in competition, assume that producers and consumers know their own best interests, and let nature take its course.

Such is the laissez-faire position, but it is a line of reasoning that is unacceptable to the established dealers and which, in fact, the public is no longer inclined to follow without critical examination. Many people feel that the new method should be carefully examined to make sure that its displacement of the old will result in a net social advantage. After such examination they believe the State should, where necessary, regulate or even prohibit. From this point of view let us examine the chief arguments advanced for the restrictions on local and inter-

[15] On the marketing of fruits and vegetables, see especially CROW, W. C., WHOLESALE MARKETS FOR FRUITS AND VEGETABLES IN 40 CITIES, U. S. Dept. Agr., Cir. No. 463 (Washington, 1938).

state trade that result from regulating itinerant merchants and farmers' markets.

THE ARGUMENTS FOR RESTRICTIVE LEGISLATION

The licensing and regulation of the itinerant-merchant is generally deemed necessary to protect farmers, dealers, and consumers from fraud. It is charged that merchant-truckers give short weight, pay with worthless checks, and are generally given to fraudulent practices. Instances of dishonesty can be cited, but no study has been made to show exactly how common these practices are. Those who defend the merchant-truckers claim that most of them are honest and reliable and cite as proof that growers, retailers, and consumers must on the whole be honestly dealt with or they would not continue to do business with the merchant-truckers.

Insofar as there is a tendency to fraud and dishonesty, licensing, the posting of bonds, and other regulations may be necessary for the protection of the public. As the merchant-trucker has no established place of business, and may be here today and gone tomorrow, there is probably more need to regulate him than the man with an established place of business. But this is an administrative problem, which, it appears, could be successfully handled without placing unreasonable burdens on honest itinerants.

Where truckers are permitted to use market facilities and to sell directly to jobbers, retailers, or consumers, thus competing with the established local merchants, the latter often complain that it is unfair to let the truckers use a market that is made possible and is financially supported by the local people. The answer would appear to be that the marketing system is so much more efficient when all the produce brought into a city is concentrated in one market, and the consumers, the farmers, the retailers, and the trade itself are so much benefited, that the public interest demands that truckers be given a place in the market. They should pay their fair share of costs and fees, of course, so they will not have an artificial advantage over the established merchants.

What this fair share may be is a subject properly open to earnest discussion by those who are concerned and interested in the problem. The following suggestions are submitted for consideration.

(1) Merchant-truckers should be charged a rental for the facilities provided for them, sufficient to pay the cost of those facilities. In computing this, allowance should be made for the administrative overhead of the market and for the fact that the facilities will be partially empty during a part of the year, if ample space is to be provided for the peak season.

(2) Fees for the privilege of doing business and occupational taxes should be set at such levels that the per diem amount will be the same or virtually the same for the merchant-trucker as for the established merchant who does about the same daily volume of business.

(3) Merchant-truckers should be given their choice of paying rentals, fees, and taxes on a daily, weekly, monthly, quarterly, or annual basis, in order that they may take full advantage of the flexibility of action and the flexibility of schedule that the motortruck makes possible At the same time, payments on a daily basis should include a sum sufficient to pay for any additional costs of collection made necessary by daily collection; and the same rule should be applied to weekly, monthly, or quarterly payments.

A complaint frequently made, especially by the wholesalers and jobbers, is that merchant-truckers typically bring in low-grade produce and reduce prices on the local markets. Although he sometimes handles high-quality products, there has been a tendency, at least in certain markets, for the merchant-trucker to bring in much ungraded or lower grade commodities whereas the railroads have retained a considerable share in the transportation of the higher grades. However, the Bureau of Agricultural Economics is not ready to accept the proposition that movement to market of the lower grade produce is always undesirable. If lower prices for the produce of the better grades result from the presence of poorer grades on the market, some producers and possibly some dealers may make less profit from the sale of the

better grades. But it by no means follows that it is socially desirable to prevent the merchant-trucker from carrying the lower grade produce to market. By purchasing this produce the itinerant merchant may help the producer of these products to dispose of them, and the merchant-trucker may help the low-income consumer by making available to him fruits and vegetables that are cheap and wholesome.

Closely related to the above is the contention that movements by trucks, especially of fresh fruits and vegetables, are so fluctuating and unpredictable as to demoralize the wholesale markets.[16] When transportation is by rail the trade is kept well informed of shipments, knows when arrival may be expected, and is in a position to take the risk of future commitments. With the rise of truck transportation the stability of the market has been rudely shattered. The merchant-truckers are often uninformed as to market conditions. Like the sailing vessels of a century ago, before the days of the cable and radio, they may glut the market one week only to leave it understocked the next. Moreover, the trucks may arrive any time during the day or night, thus causing sharp price fluctuations within a given day. In general, this instability appears to be disadvantageous to the established trade and probably also is not in the best interests of producers and consumers, although individuals may occasionally gain from it.

But here again one may seriously doubt that the best solution is suppression of this new marketing method. At least before such action is taken, certain other remedies for the present situation merit consideration. Without going into the details of such plans here, it should be noted that, in part, the present chaos is due to the fact that we are in a period of rapidly changing market structure. Periods of transition are almost inevitably unstable and disruptive. Many students believe that, as readjustments are made following the impact of these new forces, greater stability will appear. This will be greatly facilitated as new methods and devices for collecting and disseminating market information are developed. More careful regulation of markets, especially the regulation of hours during which a market shall be open each day, with the stipulation that produce to be sold that day must arrive by a certain time, may be effective in greatly reducing market fluctuations within a single day. Finally the merchant-trucker may be, when well-informed of market conditions, a stabilizing rather than an unsettling influence. His great advantage is flexibility of movement. Were his activity well directed, gluts might be broken and shortages relieved more rapidly than is now possible under the usual conditions of rail shipment.

The problem of the peddler who hawks his wares in the street or goes from door to door is a rather special one. In many cases his activity apparently results in the disposal of a larger quantity of certain commodities than would be sold without his efforts. Thus the recent barring of pushcart operators in New York was protested by wholesalers and jobbers who claimed that consumption was reduced by eliminating a market outlet which was well adapted to handle highly perishable produce at low cost.

There is also the question of whether consumers want this type of marketing. Sometimes the hucksters' prices are lower than those of the established dealers. Some people value the convenience of being able to buy at the door or in the street. Others consider these possible advantages as more than offset by the trouble and annoyance often caused by hucksters and door-to-door peddlers. Where a clear majority of consumers do not wish this service probably they ought to be able to restrict or even to forbid it. For example, in the model community of Greenbelt, recently established just outside the District of Columbia, the residents have voted to keep out hucksters and most door-to-door venders of commodities.

Finally there is the question of those regulations which restrict trade either by giving preference to local merchant-truckers or by placing special impediments on those from a distance.

[16] It may be noted that this is a charge against all movement by truck not just by the merchant-trucker. However, the merchant-trucker as the least organized and probably the least well-informed element must bear the chief responsibility.

Laws that give preference to local merchant-truckers and grower-truckers appear to have no more justification than other laws that limit the market in order to give local advantage. The gain to local interests is offset by the disadvantage to those in other parts of the country and the consumer stands to lose because he must buy in a more limited market.

A similar conclusion must be reached in regard to local-preference rules in connection with farmers' markets. The only group that is likely to gain from limiting the farmers' market to growers or to home produce is the established middleman, but in many cases he also is harmed for such regulations commonly limit the size of the market and drive away business.

But does not the local farmer benefit from being given a privileged position on the nearby market? Apparently some farmers believe they gain by keeping out products from competing areas. In many cases, however, the regulations barring distant produce from particular markets simply force truckers to sell it on the streets or to peddle it from store to store. This may lead to more unstable conditions than would exist if the distant products were allowed to come into the regular market places. Moreover, in the height of the local growing seasons, when the local farmer has the most to sell, such regulations usually have no value because distant producers cannot compete with the local ones. In the height of the local season, the local grower has a surplus to sell in other markets and wants to be restricted as little as possible. Also restricting the use of particular market places usually makes it necessary to provide several markets in each city, although in most cases probably one would be more efficient. It is doubtful whether the local farmer gains much by most attempts at excluding distant products. Where such attempts lead to retaliation in other cities or States, he may suffer further disadvantage.

Furthermore, it may be noted that the market will probably be a relatively small one if out-of-State produce and merchant-truckers are excluded. This may be disadvantageous to local farmers for it may mean fewer buyers. In general, the larger and freer the market the more buyers are attracted to it. Out-of-State merchant-truckers bringing in loads of produce are eager for a back haul. If permitted to come, they may relieve the market of a surplus by taking back with them those products which they find lowest in price.

The consumers have apparently been little considered in connection with these preferences and exemptions. Insofar as these laws limit the efficiency of the market, or from time to time help to hold up prices or prevent good food from being sold, they result in a loss to the consumers.

We may conclude that regulation and licensing of the merchant-trucker is often necessary and justifiable. On the other hand, excessive license fees and restrictive regulations as well as preferential treatment to local interests appear to set up unnecessary and burdensome restrictions on local and interstate trade. Finally preferential treatment of local interests on farmers' markets appears contrary to the best interests of producers and consumers generally.

Grades, Standards, and Labeling

Introduction

In the field of legislation affecting the marketing of agricultural products, there is a large and important group of laws dealing with grading, packaging, and labeling. Only a few scattered instances of such laws were to be found on the statute books 25 years ago, but since then there has been a tremendous growth of this type of legislation.

State grading and labeling legislation.—Every State in the Union now has legislation either prescribing grade standards for at least one farm product or requiring or authorizing their establishment. In 31 States, laws grant the commissioner or board of agriculture or some other State agency the authority to set up grade standards for any farm product. Nine other States grant the same authority with respect to any fruit or vegetable. In 34 States there are laws applying to one or two specific fruits or vegetables. In 40 States there is egg grading and labeling legislation, and in 20, legislation relating to grades for grain. Some notion may be gained of the extent as well as the complexity of this legislation when it is realized that the States have on their statute books, at present, approximately 170 separate pieces of legislation relating to the grading and labeling of farm products.

Federal grading and labeling legislation.—The Federal Government has also been active in this field. As early as 1902, funds were allotted to the Bureau of Plant Industry "to investigate the varieties of wheat . . . in order to standardize the naming of varieties . . . as an assistance in commercial grading." In 1906 the same Bureau was authorized for the first time to carry on special investigations in the grading of grain. This authority has gradually been widened to the point where each annual appropriation act now allots funds to the Bureau of Agricultural Economics for carrying on research in grade standards and promoting the use of uniform grades for farm products generally. In addition, there are 12 acts of Congress that contain provisions relating to grading and labeling.[1]

Among the earliest and most important of these Federal acts are the Cotton Futures Act of 1914 (revised and reenacted in 1916), the Grain Standards Act of 1916, and the Cotton Standards Act of 1923. All three have compulsory features, and the great bulk of the trading in grain and cotton is carried on in terms of the uniform national grades established by the authority of these acts. Under authority granted in the Commodity Exchange Act of 1936, on April 1, 1939 Federal grade standards will be made compulsory for futures trading in butter. It is expected that one result of this will be the widespread use of Federal grades in all types of transactions in butter.

Trading in other agricultural products is not

[1] These 12 acts are: Standard Apple Barrel Act of 1912; Cotton Futures Act of 1914 (as revised and reenacted in 1916); Grain Standards Act of 1916; Warehouse Act of 1916; Cotton Standards Act of 1923; Special Appropriation Act of May 17, 1928, relating to the promotion of Federal wool grades; Tobacco Statistics Act of 1929; Perishable Agricultural Commodities Act of 1930; Export Apple and Pear Act of 1933; Tobacco Inspection Act of 1935; Commodity Exchange Act of 1936; and Peanut Stocks and Standards Act of 1936.

characterized by the same degree of uniformity, as the remaining Federal acts having grading provisions either provide merely for the *voluntary* use of Federal grades to be established or else affect only a small part of the total volume of the commodity going to market.

NEED FOR GRADING AND LABELING LEGISLATION.—The multiplication of laws dealing with the grading and labeling of farm products has reflected a rapidly growing need. As the market for a product widens and seller and buyer find themselves farther and farther apart, buying on personal inspection becomes less and less satisfactory as a method of doing business and the need for a system of objective grades, that will furnish a common language for buyer and seller, becomes more and more imperative. As pointed out in a previous publication of this Department, "The growth of large terminal wholesale markets, and the sale of farm products by telegraph and especially by futures contract, made some system of uniform grading almost indispensable for the marketing of the most important farm products." [2]

Because grain and cotton were the first farm products in this country to be traded in large volume and across long distances, they were the first to be traded in on the basis of grade. In the first stage, grain and cotton exchanges each formulated their own sets of grades, and some grain-producing States established State grades. Although this was much better than having no grades at all, it was not satisfactory. In at least one State, the official grain grades were redetermined every year.

In the resulting confusion it is not surprising that conflicts among the States broke out. For example, the cities of Duluth, Minn., and Superior, Wis., located across the Saint Louis River from one another, were for all practical purposes one single grain market. The board of trade was located in Duluth, and the buying and selling was done on the basis of Minnesota grades. Over half of the warehouse and milling capacity of the two cities, however, was in Superior. Much of the inspection to ascertain grades was done on the Wisconsin side by Minnesota inspectors. Minnesota inspectors inspecting in Wisconsin were outside the jurisdiction of the Minnesota law, and Wisconsin had no law to regulate them.

Abuses had grown out of this situation. The growers were being systematically defrauded by short-weighting and undergrading. As a remedy, the Wisconsin Legislature enacted a law in 1905 setting up the Superior Grain and Warehouse Commission to supervise the merchandising and warehousing of grain in Superior. However, not content with remedying the evils that existed, the legislature forbade the use of Minnesota grades in connection with selling and buying, or storing grain in Superior. Wisconsin grades were prescribed instead. A war for the grain trade ensued, between the Duluth Board of Trade and the State of Wisconsin, which was ended when a Federal court declared the Wisconsin statute an unconstitutional interference with interstate commerce.[3]

The multiplicity and confusion of conflicting private and State grades for cotton and grain were brought to an end by the enactment of the Cotton Futures Act in 1914 (as revised and reenacted in 1916), the Grain Standards Act in 1916, and the Cotton Standards Act in 1923.

The more recent development of grading legislation for eggs and for fruits and vegetables reflects the great broadening of markets for these products that resulted from the commercial development of cold storage and rapid refrigerated transportation. It became possible for great cities to reach out across the breadth of the continent for their supplies of these commodities; and conversely, specialized areas of intensive production developed at long distances from their markets. Just as in earlier years the need for grades for cotton and grain had been keenly felt, so now the need for grades for fruits and vegetables became urgent. At the first stage, private and local grades were formulated. Later, most of them were discarded in favor of State and Federal grades.

BENEFITS OF GRADING.—The advantages of standardization—that is, of having a set of

[2] National Standards for Farm Products, U. S. Dept. Agr. Circ. No. 8 (Rev. 1935) p. 1.

[3] *Globe Elevator Co.* v. *Andrew et al.*, 144 Fed. 871 (1906).

commonly accepted grades—have been summarized as follows:[4] First, there are all the advantages of having a common language between seller and buyer and other financially interested parties such as banks that loan money on warehouse receipts. Contracts can be made in clear-cut terms. Many disputes are avoided, and a solid basis exists for the settlement of those which do arise. Telegraphic and futures sales would be practically impossible without a system of commonly accepted grades. The usefulness of market news price quotations is greatly enhanced when it is possible to refer to definite grades. Intelligent comparisons of prices in different markets and from one season to another are made possible. In the second place, there are the advantages that are derived from the physical separation of the product into grades. The buyer is enabled to purchase goods of the quality he desires, unmixed with qualities he does not want. If the product is graded at the farm, the poorer qualities, which will bring lower prices and will not stand as long a haul, can be sold nearer home or used on the farm. Finally, if the commodity is graded all the way back from the consumer to the producer, the producer receives a fuller reward for high quality and his incentive to produce the quality that consumers prefer is heightened.

STANDARDIZATION OF CONTAINERS.—The first Federal legislation defining a standard container was enacted in 1912, when Congress passed the Standard Apple Barrel Act. This act became obsolete in 1916 when the Standard Barrel Act was made law. The Standard Barrel Act of 1916 is still in full effect. It prescribes the dimensions of the standard barrel for fruits, vegetables, and other dry commodities. It also prescribes the dimensions of a standard barrel for cranberries. It provides for one-third, one-half, and three-fourth barrels, and forbids the use of nonstandard barrels in connection with transactions in fruits, vegetables, or other dry commodities. The Standard Container Act of 1916 establishes standard sizes and dimensions for berry boxes and certain types of baskets used in marketing fruits and vegetables. It forbids the manufacture for shipment, and shipment, in interstate commerce, of nonstandard berry boxes and certain types of fruit and vegetable baskets. The Standard Container Act of 1928 establishes standard sizes for certain other types of baskets used in marketing fruits and vegetables. Among other things, the act requires manufacturers to have specifications for such types of baskets approved; forbids manufacture, sale, and shipment of nonstandard sizes and nonapproved baskets; provides for seizure of nonstandard sizes; and makes inoperative all State weight-per-bushel laws so far as fruits and vegetables packed in baskets standardized under the act are concerned.

The Standard Barrel Act and the Standard Container Act of 1928 are based on the weights-and-measures power of Congress and, therefore, apply to intrastate as well as interstate transactions. The Standard Container Act of 1916 applies only to interstate transactions.

A great deal of legislation has also been enacted by the States defining standard containers or authorizing some State official or State board to do so. All of the States except four have at least one law of this type on their books. For the most part the State laws deal with boxes and crates, which are not covered by any of the Federal Standard Container acts. But there are rather numerous State laws that deal with the same types of containers as the Federal acts although a Federal act takes precedence over the State laws if it is based on the weights-and-measures power of Congress. Some room for nonuniformity is left, under the Standard Container Act of 1916, since that act applies only to interstate transactions. Nonuniformity of State container laws is discussed later (see pp. 75–77).

PURE FOOD AND DRUG LAWS.—Closely related to packaging, grading, and labeling laws are the pure food and drug laws, since they also govern the package and its contents on the way to market. A large degree of national uniformity was achieved in this type of legislation when the Federal Food and Drugs Act was passed in 1906[5] and most of the States, in the same or immedi-

[4] National Standards for Farm Products, pp. 4–7.

[5] This act has been amended 6 times—in 1912, 1913, 1919, 1927, 1930, and 1935. For its present form, see 21 U. S. C. 917 and 21 U. S. C. Sup. III, 283.

ately following years, enacted laws roughly parallel to the Federal act. All 48 States, excepting only New Mexico, now have food-and-drug legislation.

Three provisions in the Federal Food and Drugs Act deserve special attention here.[6] (1) Any food is declared to be adulterated and therefore illegal in interstate commerce—

"First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

"Second. If any substance has been substituted wholly or in part for the article.

"Third. If any valuable constituent of the article has been wholly or in part abstracted.

"Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

"Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health. . . .

"Sixth. If it consist in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food. . . ."

(2) If a canned food, other than canned meat [7] and canned milk, falls below the standard of quality, condition, and fill of container promulgated for it by the Secretary of Agriculture, the can must be plainly labeled to show that the food contained in it is below the Federal standard. (3) Labeling provisions in the act not only prohibit false labeling, but also define a food as misbranded, and therefore illegal in interstate commerce, if it be in package form and "the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count."

Most of the State food and drug laws are closely patterned after the Federal act, although they frequently deviate from it in the phraseology of some of the provisions. Many States also have special legislation establishing minimum standards of condition and quality for specific products such as sausage, vinegar, and ice cream.

The Federal Food and Drug Administration has been active in enforcing maximum limits on the quantity of spray residue permitted on fruits and vegetables and in bringing actions against frost-damaged or artificially colored immature citrus fruit, and against wormy fruits, especially berries. Since January 1937, regulatory work has been carried on in cooperation with the Bureau of Agricultural Economics, to eliminate misgraded and otherwise misbranded fresh fruits and vegetables from commercial channels. The Administration has also given particular attention to adulteration and misbranding not easily recognized by consumers, for example, where they occur in canned foods.

In June 1938 the Congress passed a new act, the Federal Food, Drug, and Cosmetic Act,[8] to take the place of the existing law. Insofar as the new act affects foods, however, it does not become effective until June 1939. With respect to foods, it is a strengthened and expanded version of the old law, following the same main lines.

Minimum standards.—In three far western States—California, Arizona, and Colorado—legislation has been enacted which sets up minimum standards for specified fruits and vegetables: 30 fruits and vegetables are covered by the California act, 18 by the Arizona law, as 12 by the Colorado law. This legislation forbids the sale or shipment of the specified fruits and vegetables produced within the State unless they meet the specifications of the minimum standards. In California, out-of-State produce is forbidden to be sold within the State unless it meets the minimum standards.

Problems and Difficulties

In the preceding section Federal and State grading, labeling, and packaging legislation, pure food and drug laws, and minimum-stand-

[6] Sec. 7, sec. 8, par. 10, and sec. 8, par. 14.

[7] Canned meat is regulated under the Meat Inspection Act of 1907 (34 Stat. 1260).

[8] 52 Stat. 1040. Ch. IV of this act (secs. 401–6) deals specifically with food. For a concise statement of the differences between this act and the old one, see Digest of the New Federal Food, Drug, and Cosmetic Act, multilithed publication of the Food and Drug Administration, dated June 27, 1938.

ards laws have been briefly surveyed. It is intended now to give particular attention to the ways in which such legislation may hinder the flow of agricultural products.

There is general agreement among students of marketing that grading, labeling, and packaging laws perform an important service—in some cases a well-nigh indispensable one—in the marketing process. Nor will anyone deny the benefits of the pure food and drug legislation nor of the minimum standards acts. It remains a worth-while task, nonetheless, to look into the way this mass of legislation operates, to see whether in some instances it may affect injuriously the flow of agricultural products, and, if so, under what circumstances. The ultimate aim of such an investigation must be to discover imperfections and to discuss possible ways in which they may be remedied, in order that the framework of law within which marketing is carried on may be made as nearly ideal as possible.

NONUNIFORMITY

In studying grading laws and similar legislation from this point of view, it soon becomes apparent that nonuniformity of grades and standards and regulations as among States is a potential source of a multitude of annoyances and hindrances to trade in agricultural products. Suppose, for instance, that each State should set up its own grade specifications, at the same time making it compulsory to grade and label all produce sold within the State in accordance with those specifications. Great confusion would result. Produce packed in accordance with the regulations of one State would have to be regraded and relabeled before it could be sold in another State. Diversions from one large market to another would entail the costs of regrading and repacking.

Although this picture is fortunately an imaginary one, conditions somewhat resembling it do exist in some parts of the country in the marketing of fruits and vegetables. A responsible official in close touch with the marketing of fruits and vegetables says:

"The lack of uniformity in standardization requirements of various States constitutes in itself a hindrance to interstate trading. No shipper can be expected to be familiar with the quality and marking requirements of all the States to which he may ship."

It is instructive here to digress for a moment in order to trace the development of grade standards for fruits and vegetables. Until about 1910 there were no State nor Federal grades for fruits and vegetables. About that time refrigerated cars for shipment of fruits and vegetables began to come into use and specialized areas began to spring up in the Southern and Western States. Whereas the fruit and vegetable industry had been localized in large degree, each consuming market drawing from a surrounding area within the radius of a few miles, it now rapidly became Nation-wide in character, with producing areas finding their markets half or all the way across the continent. With buyer and seller so far away from each other, the need for grades was evident. Each enterprising producing section took the initiative and established a set of grades for its own produce. Although this did provide some basis for trading it was not adequate to meet the needs of a Nation-wide market. Great confusion still existed. The jumble of grade standards that existed before 1916 has been graphically described, as follows: [9]

"The truth is that up to the date of the organization of the Food Administration there was not a single fruit or vegetable for which definite grades were recognized throughout the country. . . .

"The writing of grade specifications was little more than a part of the advertising of the organization or district which issued them. The standards set in the literature of many organizations were impracticably high and were 'interpreted' at harvest time to include anything which in the judgment of the shipper was 'a good commercial delivery.'

"Local pride and jealousies did much to retard real progress in true standardization. There was a prevalent idea that it was a fine thing for a community or organization to have a distinctive

[9] WELLS A. SHERMAN, MERCHANDIZING FRUITS AND VEGETABLES, Chicago and New York, A. W. Shaw Company, 1928, pp. 178-179.

brand and a separate and strictly local standard. There were more than 20 separate valleys and districts shipping boxed apples from the Rocky Mountains and Pacific Northwest. A dozen or more varieties were grown in each. Usually 3 grades or qualities were shipped of each variety. Worse yet, there were from 5 to 50 organizations operating competitively in nearly every district. Each had its distinctive brands and often its special grade specifications. . . .

"This is not an exaggerated picture of the situation which obtained in 1913–15. . . . Local pride said: 'We will never suffer our unparalleled fruit to be packed and sold on any such low standard as must be set to meet the needs of the growers in yonder valley over the Divide, where they have multitudes of pests which to us are happily unknown.' "

Gradually, a large degree of order has been brought out of this chaos. Between 1915 and 1925 many States enacted their first grading legislation for fruits and vegetables. In 1917 the Federal Department of Agriculture began recommending grading standards for fruits and vegetables, and the list of such standards has steadily lengthened ever since until now practically all that are grown on a commercial scale have been provided for. The establishment of the Federal inspection service at receiving markets in the same year and the extension of the service to shippers at shipping points in 1922 have necessarily exerted a constant pressure toward the use of well defined, practicable, and uniform grades.

The present situation, therefore, represents a much closer approach toward uniformity than existed 25 years ago.[10] Aside from a very few outstanding exceptions, State or Federal grades have been substituted for private grades sponsored by local groups. This has greatly facilitated trading and has made possible the development of specialized producing areas distant from market.

But from the viewpoint of interstate trade, the nonuniformity that now exists is more serious than formerly. The competition for markets has led some States to make grading compulsory. Many producers have believed that if all produce shipped from their State were well graded according to a strict standard and were plainly marked according to grade, it would win a commanding position in the markets where it is sold. In some States the legislatures have accordingly enacted legislation requiring all produce to be graded according to the official State grades. It has then been deemed necessary to require produce shipped into the State to also be graded in accordance with these State standards in order to protect home-grown produce from competition with less well-graded produce from outside the State. Any State grade definitions or packing or marking requirements which differ in any way from those required in other States lead to some degree of interference with the flow of goods into that State.

The degree of interference that may occur varies from State to State. In 1933, Ohio enenacted a law requiring packages of fresh fruits and vegetables to be marked with the grade according to United States standards or with the words "Growers Grade." In practice, any established State grade or private brand is permitted as a marking. The chief effect of the law is, therefore, to cause a great number of packages to be marked "Growers Grade" that would otherwise be offered for sale without any grade marking. The degree of interference caused by the Ohio law may be measured by the expense and trouble entailed in marking a large volume of containers with the words "Growers Grade."

The legislature of the State of New York enacted in 1937 a law requiring all packages of fruits or vegetables shipped into the State to be marked according to United States grades. In this case the local grower in New York State was not required to mark the grade of his fruits and vegetables. Many growers in nearby States

[10] A very useful summary and analysis of State fruit and vegetable grading and labeling legislation is presented in Present Status of State Legislation in the United States As It Relates to the Standardization of Fresh Fruits and Vegetables, mimeographed publication of the Bureau of Agricultural Economics, U. S. Department of Agriculture, December 1938. A compilation of State laws governing the marketing of eggs may be found in Egg Legislation and Grades in the United States, compiled by a special committee of the National Association of Marketing Officials (mimeographed, Connecticut Department of Agriculture, State Office Building, Hartford, Conn., December 1935).

considered this as discrimination. The law was repealed in the 1938 session of the legislature, before active enforcement had begun.

A Louisiana act, passed in 1934, requiring all farm products raised in the State to be graded and labeled in accordance with Federal standards before being shipped, whether to home markets or out-of-State markets, is particularly exacting with respect to produce shipped into the State. The State Market and Warehouse Commission is authorized—

"To prohibit the shipment into the State of Louisiana . . . any farm products, fruits, or vegetables and the offering for sale of same without the said farm products, fruits, or vegetables having first been inspected and classified according to the rules, ordinances, and regulations as adopted by the State Market and Warehouse Commission." [11]

It is reported that Louisiana has been requiring certificates of inspection with shipments of potatoes out of Maine. This requirement has been easy to meet because the potato-producing areas in Maine are very important commercial areas and inspectors are available in practically every area where potatoes are shipped in any quantity. It is also reported that the law has been administered with discretion and that care has been taken not to interfere seriously with interstate commerce. It is easy to see that a very serious handicap to out-of-State produce could be created by unwise regulations by the State board.

An Indiana law, enacted in 1935, requires fresh fruits and vegetables sold or offered for sale within the State to be graded and labeled in accordance with Federal grades; or, if originating outside the State, with the grades of the State of origin, providing these are at least as strict as the Federal grades. The law further requires fruits and vegetables shipped into the State to be "accompanied by a certificate showing that such fruit or vegetables comply in all respects with the requirements of the State and Federal laws and the rules and regulations issued thereunder. . . ." No appropriation has ever been made specifically for enforcement of the law, and at present it is a dead letter.

In the four cases just mentioned, the threat to the flow of farm products has not materialized; but in some Western States substantial hindrances actually exist.

Montana requires fruits and vegetables to be graded and labeled in accordance with its own grade standards. These are based on the Federal grades, but differ from them in several details. In the case of Washington apples, the official apple grades (excepting "Orchard Run") of that State are recognized by Montana. It is reported that Montana has been enforcing its official State grades by stopping all trucks entering the State with loads of fruits or vegetables. The produce is inspected and an inspection fee is charged, whether or not a Federal-State inspection certificate accompanies the produce. If the produce is found not to be marked in accordance with the official grade designation (except in the case of Washington apples), it must be relabeled. From a neighboring State it is reported that:

". . . they (Montana) refuse to admit produce even when accompanied by Federal certificates covering the lot except after making inspection of their own for which they make a charge."

An official in another neighboring State says:

"It is my understanding that when a load of fruits or vegetables arrives at the Montana State line, even though they carry the inspection certificate of (our) State, issued under our joint Federal and State set-up, they must be again re-inspected and another charge made for the inspection by the Montana people."

And again the lack of uniformity is stressed as follows:

"On commodities such as peaches and cantaloupes, which are marked according to (our own) standards in this State, they (Montana) insist that the grades be marked according to U. S. Standards. This of course requires a duplication of the markings and causes considerable confusion to truckers hauling into (Montana)."

[11] Louisiana, Laws of 1934, Act No. 223, sec. 2 (d).

The multiplicity of the barriers that would be put in the way of interstate trade, if every State tried seriously to impose its own grade standards upon all brought-in fruits and vegetables, can be glimpsed in the following quotation:

"Oregon does not recognize Washington combination grades of potatoes which call for a minimum of 50 percent U. S. No. 1. Such shipments must be marked U. S. No. 2 if for shipment into Oregon. Montana and California do not recognize all of our Washington State apple grades or some of our combinations of these grades. Also our State does not have some of the grades for apples which are recognized in their own States. For instance, Montana recognizes a 'Cooker' grade which this State does not."

California prescribes minimum standards for 30 different fruits and vegetables. California-grown fruits and vegetables that fail to meet these minmum standards may not be sold within the State, nor may they be shipped out. Similarly, out-of-State produce that fails to meet the standards is not permitted in California markets. The minimum standard for avocados is said to require such a high oil content that it would be impossible for Florida-grown avocados to meet it. The minimum standard for potatoes specifies freedom from hollow heart, whereas the Federal standard specifies only that potatoes, to be of No. 1 grade, must be free from damage caused by hollow heart; or to be of No. 2 grade, free from serious damage caused by hollow heart. According to a letter from a marketing official—

"a lot of U. S. No. 1 potatoes might theoretically fail to meet the requirements of the (California) standardization law because of the presence of hollow heart. Some years ago several cars of Oregon U. S. No. 2 Russet potatoes were condemned in Los Angeles by the State standardization authorities and required to be resorted because of the presence of a degree of hollow heart which, while permitted in the U. S. No. 2 grade was not allowed by the State law."

The greatest amount of trouble seems to arise over shipments of apples into the State from Washington. The Washington grade standard for apples does not take condition into account, whereas the California standard does. In addition, the California standard is more strict for some defects than the Washington standard, and vice versa. Very frequently, therefore, Washington apples brought into California have to be regraded and relabeled.

California, like Montana, stops trucks at the border for inspection, and like Montana, does not recognize certification from other States. This causes considerable annoyance to shippers. The manager of a shipping association says:

"If a car or truck of merchandise is inspected in (our State) and shipped to California, the fact that it is inspected in (our State) does not mean a thing if the California authorities decide to reinspect (the) same and in view of the fact that their State regulations are different from (ours) it is a simple matter to find cars or trucks out of grade which, in that case, always causes a loss to the grower or shipper."

The State of Maine has set up a "Utility" grade for its potatoes which has met with disfavor in some States. For instance, the Pennsylvania Bureau of Markets recommended that consignees of these potatoes in Pennsylvania retag them as "Unclassified" when offering them for sale.

The strict Pennsylvania law on marking potatoes is reported to have caused some difficulty to growers of New York when marketing in Pennsylvania.

STANDARD CONTAINER ACTS.—Laws regulating the dimensions and other details with regard to the containers in which produce is shipped also afford some instances of nonuniformity.

In passing, it may be noted that five States retain on their statute books standard barrel laws that are at variance with the Federal Standard Barrel Act. The Federal act, being a weights-and-measures law, applies to interstate and intrastate commerce alike. It therefore supersedes State legislation. The State laws are nevertheless worth attention as an example of the lack of uniformity that would exist were there no Federal law. As table 5 shows, there is a

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17-percent variation in the required cubical contents of the standard barrels which are defined in terms of cubical content, and an even greater variation in the cubical contents of those which are defined by dimension.

TABLE 5.—*Comparison of Federal and State standard barrel specifications*

Standard barrel of—	Cubical content	Diameter of head	Circumference of bulge	Length of stave	Maximum thickness of staves
	Cubic inches	*Inches*	*Inches*	*Inches*	*Inches*
United States	7,056	17⅛	64	28½	0.4
Delaware	[1] 5,914				
Maine	7,000				
Ohio		17⅛	66	28½	
Maryland [2]		16½	58.1	27½	
Missouri		17¼	[3] 64.4	28½	

[1] 11 pecks dry measure.

[2] Maryland also has a standard apple barrel with the same dimensions as the United States standard barrel.

[3] Inside measurement.

Crates and boxes remain undefined by Federal action, and the lack of uniformity of State standards in this field is startling. For example, there are 15 different sizes of cantaloup crates defined by State standards, and of these 5 are defined according to inside length in one group of States and according to outside length in another. There are two slightly different sizes of "Standard flat", two slightly different sizes of "Standard crate", and three slightly different sizes of "Pony crate." Of apple boxes there are seven kinds, four of which are only slightly different from one of the three others. For example, in 10 States the standard apple box is 10½ inches by 11½ inches by 18 inches (inside measurement), but in Idaho it is 10½ inches by 11½ by 18⅛. Many similar examples could be cited.[12]

As far as known, this lack of uniformity in State standards for containers has thus far not acted as a barrier to interstate commerce except in one instance because, except for that instance, State container standards are voluntary and are intended only for shipments out of the State. They are not applied to receiving markets.

The exception occurred when Oregon made its berry-box standards compulsory for boxes shipped out of the State and California declared such boxes illegal for sale of berries within California. Here again, as in grading regulations, it is the combination of compulsory use of official standards with nonuniformity of standards among States which makes serious difficulty for interstate commerce.

Closely allied to the standard-container laws are the standard-weights-and-measures laws. An interesting example of conflict between State laws occurred recently when the State of Pennsylvania prescribed standard dimensions for peck and bushel sacks to be used by growers in Pennsylvania when marketing their potatoes, and Ohio authorities refused to recognize these, because according to the Ohio law a bushel of potatoes means 60 pounds of potatoes, and a peck means 15 pounds. The two laws are in conflict because in one the bushel is defined in terms of dry measure, and in the other it is defined in terms of weight.

Two States—Utah and Montana—require fruits and vegetables shipped into the State to be in new, clean containers. Arizona requires that they be in new or clean containers and requires them to be accompanied by an inspection certificate.

There is considerable discussion at present regarding the possible dangers in the repeated use of containers. It has been the usual practice for nearby produce to be hauled to market in old boxes, crates, and baskets; and the regulations of Montana, Utah, and Arizona represent a departure from customary methods. In the case of Montana, at least, the regulations concerning the use of new boxes have aroused criticism. An official of a neighboring State complains in a letter that Montana's "interpretation of new boxes at times has been . . .

[12] Federal and State legislation regulating the dimensions, etc., of containers is described in detail in a mimeographed publication of the U. S. Dept. Agr., Bur. Agr. Econ., entitled "Summary of Federal and State Laws Pertaining to Containers for Fruits and Vegetables," dated March 1938. Laws defining standard weights per bushel or prescribing the units of measurement to be used in lieu of standard weights are summarized in another mimeographed publication of the same Bureau, entitled "Synopsis of Federal and State Laws Relating to Legal or Standard Weights per Bushel and the Sale of Fruits and Vegetables." (In process.)

unfair. Recently they held that boxes that had held apples loose in storage and that had been used for picking were not new boxes."

In selecting a number of examples of nonuniformity, the purpose has been not to criticize the States involved, but to call attention to concrete situations that actually exist. These examples demonstrate that nonuniformity can create serious handicaps to interstate trade. On pages 83–84, possible ways are discussed in which a greater degree of uniformity might be brought about without losing the benefits of legislation regarding grading, marking, and packaging.

CHOICE OF REQUIREMENTS

When producer groups turn to their State to set up and enforce grade standards they are naturally interested in having standards set up that will give them the greatest advantage possible over competing products. Even without any deliberate intention to favor their own product, local groups would tend to think of a proper standard as one that contained strict requirements for those characteristics in which the local product excels and less stringent requirements for characteristics in which the local product is less outstanding.

In a few cases where there is an important group of producers in a State which also imports substantial quantities of the product they raise, a practice has grown up that must be regarded even more seriously than the existence of nonuniformity. This is the more or less deliberate use of marketing regulations to hinder out-of-State products from reaching State markets, or to place them at a disadvantage in the home markets. This point of view is reflected in the words of one official as follows:

"Before we started to 'tighten up', and have border inspection stations for fruits, vegetables and other agricultural products, surrounding States were using (our State) as a dumping ground for their inferior products, at a cut price, . . . very much to the disadvantage of (our growers).

"One example is the fact that (an adjoining State), a few years ago, and especially during years of high prices, would grade its potatoes and truck their culls and No. 2's into (out State), and ship their No. 1's to Eastern markets, with the result that the low price they made on these culls completely demoralized the market for (our) growers. The same thing would be true in regard to our apple producers . . . if the practice were not checked. (Two neighboring States) would flood our State with cull apples, depressing our apple market. Some years ago this made little difference, as our . . . apples, of the better grade, found a ready market in New York, at a profitable price. Gradually, however, we have lost this market to Eastern growers, who have a cheaper freight rate, with the result that we are compelled to find a local market."

CHOICE OF GRADE SPECIFICATIONS.—One way of using grading legislation to place out-of-State products at a disadvantage is to set up requirements for the top grade or grades that can be met only by produce raised within the State.

In 1936, the Rhode Island Bureau of Markets, under authority of the State general farm products grading law, established a grade for eggs to be known as "Rhode Island Special Eggs." Not only must eggs meet the strictest candling tests for quality before they may be sold as "Rhode Island Specials," but they must have been laid in Rhode Island. Eggs meeting the same quality tests cannot be sold as "Rhode Island Specials" if they were laid outside the State.

The State regulations do not prohibit the sale of eggs graded according to the Federal grades, under which eggs laid outside the State and meeting the same candling requirements as "Rhode Island Specials" could be sold as U. S. Specials. Nevertheless, Federal egg grades are not in common use in Rhode Island. The Bureau of Markets says: [13]

"In Rhode Island we have three grades of eggs; . . . 'Rhode Island Specials', Fresh eggs . . ., and eggs that are not fresh . . .

* * * * *

[13] Pp. 19 and 25, Rhode Island Egg Quality Program, Bureau of Markets, Bull. No. 2. Providence, R. I., December 1936.

"*Consumers desiring the very best egg obtainable should demand a 'Rhode Island Special.' This is the highest grade of egg sold in Rhode Island. 'Rhode Island Specials' must be produced in Rhode Island*, of the highest quality, and of a greater average weight per dozen, packed in cartons by Rhode Island producers and producers' cooperative associations, sealed by the New England Quality label and under direct supervision of the State Bureau of Markets. [Italics ours.]

"The second grade of eggs in Rhode Island is commonly known as a 'fresh' egg. This egg may or may not be produced in Rhode Island, but must meet rigid requirements as to quality. Terms such as selected, fancy, nearby, new-laid and guaranteed used in connection with a sale of eggs must meet the requirements of the grade of 'fresh.'

"Eggs which fail to meet requirements of the grade of 'fresh' must be sold simply as 'eggs.' When a consumer observes no descriptive term in connection with a sale of eggs he can be assured such eggs in all probability are not fresh."

In setting up and strictly enforcing quality grades for eggs, the Rhode Island authorities are unquestionably doing the consumers in Rhode Island a service, by enabling them to be sure of getting the very highest quality egg if they ask for it. There is nevertheless the inference in the quotation just given that the grading system has been drawn up in such a way as to give Rhode Island producers an advantage over those producers in other States who can also produce eggs of the highest quality. The Bureau of Markets has repeatedly laid stress on its work in maintaining high prices for Rhode Island products. In his 1935 report, speaking of the egg quality improvement program, the Chief of the Bureau wrote, "The work has been rigidly carried on this year and we believe that it has resulted in sustained markets for Rhode Island products . . ." The annual report of the Rhode Island Department of Agriculture for 1936 points out that "The improved methods of production on western farms and modern transportation facilities have made it necessary that we set our standard higher in order to hold our own market for our own eggs." In February 1938 that department reported—

"Rhode Island 'Special' eggs, produced in Rhode Island, packed in cartons by Rhode Island producers and producer cooperative associations, and sealed with the New England Quality label have consistently topped the Rhode Island markets and proved that consumers will pay for high quality products."

There is certainly no objection to producers in any State improving their methods of production to hold as much of the premium market as possible. If local farmers have better eggs to sell than disant farmers it is only right that they should get higher prices. But the grades should be based strictly on the actual quality of the goods and if the distant producer can market eggs of the top quality it is only just to the consumers in the State and to the out-of-State farmer that the latter be allowed to use the same grade specifications and designations as the local farmer.

The fresh-egg laws of the Northeastern States, which are based upon the Federal egg grade specifications, have aroused considerable controversy because they require that to be considered fresh, eggs must have a nontremulous air-cell. The objection has been made that the jarring incident to transportation makes the air cell tremulous but does not affect the quality of the egg. Therefore, it has been contended that the requirement of a nontremulous air cell works unfairly, to the disadvantage of the producers farther away from the market.

Here is an example of an extremely difficult technical question. It is clear that the requirement of nontremulous air cells may keep distant eggs out of the top grades. This appears to be right and proper if tremulousness of air cells is a real index of the quality of eggs as judged by the rank and file of consumers. We offer no opinion here on this technical question, but wish simply to point out the principle upon which we believe all grades ought to rest.

A question of a similar kind is raised by a professor in a midwestern university:

"For poultry products I wish to point out two laws that are affecting the movement of (our)

eggs. First is the Federal law setting up the requirements for Federal grades for eggs. It has been found through experience that eggs having considerable yolk color cannot be graded into the top grade, other factors meeting the standards. In brief, it is impossible to produce eggs with lemon colored yolks in the Corn Belt where large amounts of corn are fed to the laying birds. Apparently it requires a lemon colored yolk to meet the top grade of the Federal standards. It is obvious that wherever Federal inspections are made on eggs, that the color in these yolks severely penalize (our) eggs.

"Further, eggs with considerable yellow color in the yolks can be fresh by every known test for egg quality, including the measurements of the relation of height to width when broken out, as well as the acidity test."

It should perhaps be pointed out that competent authorities are not in agreement over the technical question involved—whether eggs that would be considered fresh by the great majority of consumers are kept out of the top grade by the mere fact of having considerable yolk color. Until agreement is reached on this technical question, no judgment can be formed as to whether or not eggs laid by corn-fed birds are unfairly discriminated against on account of their yolk color.

Choice of labeling requirements.—North Carolina, South Carolina, and Florida all require eggs brought in the State to be labeled "Shipped" (unless they are cold-storage eggs, in which case they must be so labeled). Questions have been raised as to the fairness of this requirement. For instance, eggs produced in southern Georgia or southern Alabama and sold in the markets of western Florida may not have been shipped as far as competing eggs from the heavy-producing sections of Florida, which are around Jacksonville and Orlando.

It might also be questioned whether it is proper to require a product sold at retail to be labeled with the name of the State of origin as in Florida, Georgia, and Montana in regard to eggs; or with the name of the home State if produced within the State, as in North Carolina, South Carolina, and in Florida in connection with eggs.

Some years ago the Federal food and drug regulations, as well as the pure-foods laws of most States, required that when corn sugar or corn sirup was used in manufacturing such foods as jam and sweet pickles these foods be labeled with some word like "dextrose" or "glucose" to warn the consumer that the foods were not made wholly from cane or beet sugar. In 1930 the Federal regulations were changed, and since that time they have not required special labeling of foods made of corn sugar or corn sirup. Most State laws and regulations have been changed to agree substantially with the Federal regulations, but several States still require the labeling of foods and soft drinks that are made partly from corn sugar or corn sirup.

It is contended that these labeling laws interfere with the sale of products made of corn sugar and corn sirup. Probably this is true. When the consumer sees in the store a jar of strawberry jam with a label, "This jam contains dextrose," she suspects something is wrong. She probably would be just as skeptical of a label, "This jam contains sucrose." She wants to buy pure strawberry jam with no ifs, ands, or buts.

Consumers, manufacturers, technical nutrition specialists and pure-food experts all have a hand in making the Federal definitions for foods under the Food, Drugs, and Cosmetic Act of 1938. Marking and labeling requirements should be more uniform; when there is agreement on requirements that give necessary protection to the consumer and to the trade, these requirements ought to be accepted everywhere in the country. Lack of uniformity in regulations of this kind may interfere seriously with interstate trade.

Whether it is proper to require a product to be labeled with the name of the State of origin, whether it is fair to require out-of-State products to be labeled "shipped," and whether such requirements as the nontremulous air cell for the higher egg grades are fair to distant producers—all of these questions lead to the heart of the grading problem.

The ultimate basis of effective grades.—Grading has been promoted by producers and traders, and largely because they stood to gain

by it; but grades must rest solidly on consumers' preferences or on basic utility to consumers if they are to be effective. Consumers will not pay more for one grade than another if it makes no difference to them which grade they buy. Furthermore, the fundamental economic justification of grades likewise is that they afford a means for consumers to register their preferences more accurately and more effectively, so that, if the grading system is carried all the way back to the producer, consumers are better able to encourage the production of the grades they prefer and to discourage production of the less desirable grades.

In other words, although it has been producer groups primarily that have promoted grading, it is the consumers who determine the effectiveness of the grades set up. The grades established have been effective in proportion as they have reflected real differences in consumers' preferences. For example, candling is used to determine egg grades because it is the most reliable method known for estimating in advance how the egg will taste when served on the table; and certainly a real difference exists in the strength of a consumer's desire for a good, fair, or bad egg. If egg grades were based on the shape of the egg and that alone, consumers probably would pay no more for one grade than another, and there would be no incentive to producers to grade, nor indeed any reason why they should.

These principles, while clear enough, perhaps require some explanation to bring out their applicability to grading that does not reach all the way through to the ultimate consumer. To give a few of the many possible examples, the grades for canning peaches follow the product only as far as the canning factory. Wheat grades go only as far as the miller. Most grades for fresh fruits and vegetables are not used after the product reaches the wholesaler, for both the retailer and the consumer typically buy on personal inspection.

How then do grades rest on consumer preferences? There are two answers, depending on the commodity in question. If the commodity is radically changed in form on the way to the consumer, as when wheat is changed to flour, the ultimate consumer's influence on the choice of grade standards is indirect. Yet it is real. The miller prefers the qualities of wheat that will give a high yield of flour possessing the qualities consumers prefer. However, for commodities of this kind, which undergo a radical change in form, the arguments presented above are most realistic if "consumer" is understood to mean "user"; thus the miller is to be regarded as a consumer of wheat.

On the other hand, if the commodity is not greatly changed in form, the influence of the consumer is felt directly. Even if the consumer buys, say, lettuce on the basis of personal inspection and not on grade, yet the grades used by shippers and wholesalers are directly related to what the consumer wants. The qualities the dealer will prefer are usually and mainly the same ones that the consumer will prefer. Some modification of this statement is necessary, for the shipper and dealer will also prefer a type of produce that will ship and keep well. That is, to consumers' preferences, which they must keep in mind, they will add some preferences of their own growing out of the necessities of merchandising. This qualification is an addition to, and does not in any way weaken, the general principle that grades must be solidly based on consumers' preferences.

It is always possible that some irrelevant requirement may be included with relevant requirements in setting up grade standards. For example, it might be decided arbitrarily that only perfectly shaped eggs would be allowed in the top grade. Then eggs of nonstandard shapes would be thrown into the lower grades and the consumer would learn that in order to be sure of high quality, he must buy perfectly shaped eggs. In such a situation would lie opportunities for unfairness. Suppose, for instance, that farmer A's flock could produce eggs meeting all the standards that the eggs produced by farmer B's flock met, except that farmer A's eggs were not perfectly shaped. Then farmer A's eggs would be thrown into a lower grade, along with eggs inferior in quality, even though consumers would just as soon buy farmer A's product, and at the same price as farmer B's.

The problem of choosing "correct" grade standards involves several difficulties. The first difficulty is that there is no general agreement as to whether consumers' preferences as expressed through market prices, or home economists' or nutritionists' evaluation of basic usefulness, shall be taken as the basis of grade standards. The two may differ widely. The second difficulty is the small amount of research that has been done to determine consumers' preferences. We do not have very definite quantitative information about the details of consumer preferences. The third difficulty is to translate consumers' preferences into a description of the article in objective and measurable terms. It is desirable to formulate grade standards so far as possible in terms of definite measurements—in terms of inches, pounds, a certain number on a color scale, etc.

It is necessary to solve all these difficulties before the fairness or unfairness of a given requirement in a grade standard can be judged. For example, the question of whether the requirement of nontremulous air cells in the top grades of eggs is fair or unfair cannot be settled until there is general agreement as to whether a tremulous air cell is or is not a reliable index of quality—"quality" being defined either on the basis of consumers' preferences or according to some scale of "basic utility" requirements. If it is generally agreed that a tremulous air cell is a reliable index of quality, then the exclusion from the two top grades of any eggs that have been shipped in from a distance must be recognized as fair and just; but if a relationship between quality and tremulous air cells cannot be satisfactorily demonstrated, such exclusion must be judged as unfair to shippers who are at a distance from the market.

It is possible then that some arbitrary requirement may be added to the grade standards and that it will have the effect of discriminating against a certain group of producers. In order either to prove or to disprove that the requirement is arbitrary, it is necessary to discover what characteristics are considered by consumers (or, alternatively, by experts) as making up quality, and then to express those characteristics in definite, measurable terms. If the description so arrived at includes the disputed requirement, it may be concluded that the requirement is necessary; if not, that it is arbitrary.

The problem of judging the fairness of labeling requirements does not appear to be so complicated as that of determining correct grade standards. If the required labeling includes information that is not of interest to consumers, they will ignore it in making their purchases and it will have no effect. If, on the other hand, consumers are interested in the information given by a required label, it is hard to make out a case for denying it to them. But this does not mean that a strong and obvious case cannot be made against misleading labeling. In the past, some of the southern States have required eggs produced within the State to be labelcd "Fresh", provided only that they were not "partly or wholly decomposed" and had not been in cold storage and had not been shell-treated. Such labeling, which is in essence false, can only lead toward suspicion and disregard of all official labeling and official grades. Certainly it is a fair test of a labeling requirement to ask whether it gives the consumer accurate information and whether the prescribed terminology tends to misrepresent the produce or not.

"Buy-at-home" appeals.—Good reasons can be advanced for requiring that consumers be informed of the State in which the product they are buying was produced. Often a fruit or vegetable grown in a particular part of the country has a flavor or some other characteristic peculiar to that locality, which the consumer is looking for. In such cases he may be greatly aided in his buying if the product is marked to show what part of the country it came from.

In some instances, however, marking with the State of origin has apparently been required because it aids in building up a sentiment against out-of-State products. If required with such a purpose in mind, marking with the State of origin must be classified as a hindrance to interstate trade.

One Southern State recently promoted an in-

tensive Buy-at-Home campaign. As one feature of the campaign, consumers within the State were urged to buy eggs produced within the State in preference to those shipped in. In one of its annual reports, the State Department of Agriculture had the following to say about the purpose of the egg law:

"In the grocery stores of (this State), you will find signs reading 'Shipped Eggs', '(home State) Eggs', and in some instances, 'Cold Storage Eggs'. These signs are placed on cases containing eggs in compliance with (our) egg law. The law was designed for two purposes; first, to indicate to the purchaser the quality of the eggs on sale and second, to promote the use of eggs produced in the State. It has unquestionably been of great service in this direction. However, (our State) had a long way to go before she supplied eggs sufficient for her own consumption."

In the same report, the Department quotes with approval from a local paper as follows:

"The growing of poultry as a 'secondary farm income to replace some of the loss of cotton income' is strongly advocated. The shipping of live poultry has brought hundreds of thousands of dollars into the State in recent years but in spite of the growth in poultry production, *the State is still annually sending hundreds of thousands of dollars to other States for eggs.*" [Italics ours.]

To sum up the argument of the last few pages, it must be admitted that the choice of grade specifications or the choice of labeling requirements, either one, may have a restrictive effect on interstate commerce. A grade standard may contain a requirement that prevents produce originating at a distance from the market from qualifying for the top grades. Information may be required on a label which will influence consumers to buy produce raised within the home State rather than outside its borders. A requirement is not to be condemned automatically, however, on the sole ground that it exerts a restrictive influence on interstate commerce. It must be tested by the criterion of whether it is firmly based on consumers' preferences (or, alternatively, on experts' judgment of basic worth) and by the further criterion of whether it is thoroughly accurate and honest in its implications.

EMBARGOES ON SPECIFIED GRADES

A survey of the types of grading laws and regulations affecting interstate commerce would be incomplete if it did not include those which have the most direct and immediate effect of all—laws and regulations that prohibit the export or import of produce of low grade. The Michigan potato law does not permit cull potatoes to be sold for table use within the State or to be shipped out of the State. The Colorado egg law prohibits eggs grading as U. S. Trades from entering the State. A regulation of the State Department of Agriculture of Utah prohibits cull fruits and vegetables of every kind from entering the State, and directs inspectors of that Department to inspect any fruits or vegetables coming into the State to see whether they grade as culls. Furthermore, entering trucks are charged an inspection fee, varying from 50 cents to $4. In the summer of 1937, all of the incorporated towns of Bamberg County, S. C., adopted a uniform ordinance under which official inspection was required of all cucumbers to be shipped out of the county. By this means it was hoped to eliminate culls entirely from shipments. The marketing agreements of the Agricultural Adjustment Administration have also been used to keep produce of inferior grades off the market.

Many growers and dealers believe that prices of perishable agricultural commodities can be raised and stabilized by keeping inferior qualities off the market. The extent to which such a program may raise the total income of growers is not known and probably varies greatly from one commodity to another and from one season to another. The present study is not attempting to determine whether or not a general program to reduce the marketings of inferior grades is desirable. But it should be pointed out that any law which prohibits the shipment of produce of inferior grades into a given State, but which allows local producers within the State

to sell the inferior grades, is essentially a protectionist measure, closing the markets of the State to outside producers.

There appears to be more justification for certain State laws that prohibit the export of low-grade produce to other States. It usually costs as much to ship the lower grades as it does to ship the higher grades. If the markets are distant and if the prices are low, a program that keeps the culls at home may prevent many "red-ink" shipments.

Suggested Improvements in Laws on Grading, Labeling, and Packaging

This discussion has brought out the need for uniformity in grades and marking requirements and the need for standard packages. A great deal of improvement has been made in this respect during the past 25 years. Federal grades for cotton and the grain crops are now in nearly universal use in the United States, and there is widespread use of Federal grades in marketing most of the important farm crops. Some kinds of packages have been standardized throughout the country, and the number of different sizes and shapes of barrels, berry boxes, and fruit and vegetable baskets used in marketing farm products has been greatly reduced.

The resulting uniformity in grade requirements and in packaging has greatly facilitated interstate trade in most products. However, the grades commonly used for some farm products are far from uniform in different parts of the country. This is particularly true of grades for fruits and vegetables, eggs, and milk. Then in retail marketing, private brands are still commonly used for somewhat the same purposes as grades. Examples are the packers' brands for meats and the brands that individual canneries put on canned foods. There is still a definite need for more uniformity in grading requirements and in grade names, both in the wholesale markets and in the retail trade.

There is also a need for greater uniformity in the grade names for different kinds of foods. This is particularly true of retail grades. At present some retail grades are designated by simple terms such as grade A, grade B, etc., or grade 1, grade 2, etc., while the grades for other commodities are designated by names such as "Choice," "Extra," and "92-Score." It is very difficult for the consumer to learn the meaning of the long list of grade names which are applied to different kinds of foods.

Then there is still need for greater uniformity in packages. Under the Federal container acts a great deal of progress has been made in standardizing barrels, berry boxes, and the various types of fruit and vegetable baskets. In recent years, however, there has been substantial increase in the use of boxes and crates in marketing fruits and vegetables, and the Federal container acts do not give any authority for standardizing these kinds of packages. As a result, boxes and crates are being made in all sorts of sizes and shapes and the resulting nonuniformity is a rather serious detriment to trade.

Greater uniformity in grades, marking requirements, and packaging might be accomplished by agreements among the individual States in order to reduce or limit differences, by Federal legislation, or best of all by a combination of these two methods. Undoubtedly greater uniformity is still to be desired in the grades for a number of commodities. Federal and State officials need to discuss this matter fully and frankly and work out practical methods of accomplishing the degree of uniformity that is believed to be desired.

One of the possible methods of bringing about a greater degree of uniformity in State grades is by cooperation among State officials. The six New England States have used this method to establish uniform regional grades. However, the Nation-wide character of the markets for most agricultural products indicates the need for national conferences bringing together Federal officials and State officials from all parts of the country. Such conferences are held from time to time in connection with revisions of Federal grade specifications.

In some cases, at least, such conferences have also brought about greater uniformity in State laws and regulations. For example, in 1919 interested State officials from all over the

country met at St. Louis and, together with Federal officials, developed a uniform "good egg law" which was subsequently adopted by a great many States. Since the markets for most of our agricultural products are national in scope, in general, agreements among States should extend over as wide an area as possible, and in addition to cooperative efforts of the State officials it may be found desirable for the Federal Government to go further than it yet has to bring about uniformity in the labeling, grading, and packaging of certain farm products.

In addition to providing for more uniformity in grading, labeling, and packaging there is a constant need for reviewing grading requirements in order to make sure that they reflect as accurately as possible the preferences and needs of consumers and dealers. If grade standards are not firmly established on such a basis, it is always possible that they may, in effect, arbitrarily discriminate against one type or another of the product and thus act as an obstacle to the sale of that type in the market in which it rightfully belongs.

The Bureau of Agricultural Economics has under way a number of continuous studies which are useful in revising standards and grades to meet changes in market conditions. State departments of agriculture and the agricultural colleges, too, are conducting studies in this general field, the results of which have been very helpful. Also, technical research in nutrition and related fields has a bearing on many grading problems and the results of such research are being considered whenever it is believed they can be applied to the problem of revising standards and grades.

In the past, some Federal and State grades have been criticized on the grounds that they have been written mainly by technical commodity experts without enough consultation with general economists, nutrition experts, and others who might contribute to the problem. This is probably a fair criticism, particularly of some of the grades which were set up immediately following the World War when it was necessary to act quickly and set up tentative grades to be revised later.

At present, it is generally recognized that the technical commodity expert must work with the general economist, the nutrition expert, and others; and in many cases several agencies have cooperated on research projects intended to bring to bear on the problem of grading expert knowledge in several fields. For example, the Bureaus of Home Economics, Animal Industry, and Agricultural Economics of the Department of Agriculture have under way for several years a joint study of the palatability of cooked beef as related to the quality of beef carcasses and of live animals. Much more work of this character probably needs to be done before it is possible to make full use of our knowledge of nutrition and palatability as a partial basis for grades for farm products. More work is needed, too, to develop a fuller and more detailed knowledge of consumers' preferences. In time such studies should give us a much better understanding than we now have of the real desires and needs of consumers, and such knowledge is essential as the basis for improvement in the grading program.

Quarantines

"Quarantine" literally means a period of 40 days. The term originated in the days when passengers arriving in a port and suspected of having been exposed to a contagious disease were interned for observation, to determine whether or not they had contracted such a disease. The meaning of the word has been expanded until it now signifies, as applied to agricultural products, a "restraint or interdiction placed upon the transportation of animals, plants, of goods" suspected of being carriers of some disease or pest.

As here used, then, a quarantine may be a set of regulations to be complied with before animals, goods, or occasionally even persons, will be permitted to leave a given area or to enter a given area, or it may be an absolute prohibition upon the movement of certain classes of livestock or certain kinds of agricultural products into or out of an area, or it may include both kinds of provisions. To fall under the definition of a quarantine, such restraints or interdictions must apply to persons or goods suspected of being carriers of some disease or pest.

Laws and regulations governing the transportation and sale of nursery stock are here discussed. For the most part, these regulations fall under the definition of quarantines, but there also exists a rather numerous group of requirements regarding license fees and inspection fees. Usually such requirements are adjuncts of the quarantine regulations: a fee may be required for the inspection of nursery stock incident to enforcement of the quarantine, nurserymen who wish to ship into a State may be required to register every year, and so on. Because of the close relationship of the quarantine and nonquarantine features of most nursery-stock regulations, a brief discussion of nonquarantine features is included here. They are important from the general viewpoint of the study as a whole, and are most conveniently presented in their relation to quarantine regulations of nursery stock.

Because of their direct and often drastic effect upon trade, quarantines can do great harm to the exchange of products between different parts of the United States. On the other hand, because of their efficacy in preventing the spread of animal and plant diseases and of insect pests, quarantines can prevent, and have prevented, enormous losses to American agriculture. There can be no doubt that on the whole the good effects of quarantines far outweigh the bad ones, and that the great majority of quarantines are beneficial.

There is no thought, therefore, of condemning quarantines as a whole, nor of suggesting that most quarantines are harmful. But it has seemed important to call attention to ways in which some quarantines may hamper unnecessarily the movement of agricultural products, and to suggest ways in which the Nation-wide system of State and Federal quarantines might be better coordinated in order to reduce friction between the States and in order to give adequate protection against the spread of pests and diseases with as little interference as possible with the move-

ment of agricultural products in interstate commerce.

In the course of these pages much use is made of quotations. These quotations should not be taken as conclusive evidence either for or against any particular quarantines. In several instances there appears to be some disagreement among technical experts as to the biological necessity for some of the quarantines, and in such instances the authors of this publication do not feel qualified to take sides. The purpose of the quotations here given is simply to indicate the kinds of difficulties and the types of problems that need to be met in working out a sound quarantine program. However, the quotations used are all from responsible Federal or State officials who are well informed concerning problems of quarantines, or they are taken from resolutions and reports adopted by organizations of such officials. They do indicate that in spite of the great progress that has been made in this field there still are many difficulties and many problems that need careful study. Some of these problems are here pointed out with general indications as to how they may be attacked.

THE DIVISION OF QUARANTINE POWERS

Power to impose quarantines is shared by the Federal and State Governments. As early as 1796, legislation was passed by the Federal Congress to prohibit the shipment in interstate commerce of any goods shipped in violation of State quarantine and health laws.[1] Thus Federal and State Governments have cooperated in quarantine measures almost since the establishment of the Union.

Federal quarantine powers are exercised at present under authority of the Plant Quarantine Act of 1912 as amended and under the Cattle Contagious Diseases Acts of 1903 and 1905 as amended and the related act of 1884 as amended.[2]

[1] 1 Stat. 474.

[2] The Plant Quarantine Act is found in 37 Stat. 315. There are several amendments, of which that of 1926, 44 Stat. 250, is the most important. (See below, footnote 4, this page.) The acts of 1884, 1903, and 1905, authorizing the Bureau of Animal Industry to prohibit or regulate the interstate movement of livestock from infected areas, are found in 23 Stat. 31, 32 Stat. 791, and 33 Stat. 1264, respectively. A 1928 amendment (45 Stat. 59) to the 1884, 1903, and 1905 acts brings poultry within the scope of these acts.

Under the Plant Quarantine Act, as amended,[3] the Federal Government not only may establish Federal quarantines, but also may cooperate with the State governments in enforcing State quarantines. In a number of instances the Federal Government has acted under this authority to prevent interstate shipments in contravention of State regulations. Such action is usually taken in conjunction with cooperative Federal-State campaigns to eradicate certain plant diseases and insect pests. Then too, Federal officials, when under State appointment, cooperate in intrastate enforcement under special agreements with the State authorities. The act, as amended, expressly permits the States to establish quarantines against diseases and pests that are not the subject of a Federal quarantine; but according to a decision of the Supreme Court, State quarantines may not be directed against diseases and pests covered by existing Federal quarantines.[4] Products being transported in violation of a Federal quarantine, however, are subject to State police powers.

Another method of cooperation between State and Federal Governments for the enforcement of plant-quarantine laws and regulations is provided by the Terminal Inspection Act of 1915[5] as amended in 1936.[6] In States that elect to take advantage of this act, postmasters at points of destination are required to forward any packages that contain any plants or plant products named on a list approved by the Federal Secretary of Agriculture to State terminal inspection stations for inspection. At these stations the material is inspected and—if found to be infected—is disinfected. If the shipment is not in violation of State or Federal quarantine laws or regulations, it will then be reforwarded to the addressee, upon payment of sufficient postage.

[3] See sec. 8. This section contains all the provisions described in this paragraph. In fact, it constitutes the entire body of Federal legislation defining Federal powers with respect to domestic plant quarantines.

[4] In *Oregon-Washington R. Navigation Co.* v. *Washington* (270 U. S. 87) the Supreme Court interpreted the Plant Quarantine Act to mean that no State could impose a plant quarantine on products from another State. But shortly after this decision, the 1926 amendment was enacted by Congress, expressly permitting States to impose quarantines "with reference to any dangerous plant disease or insect infestation" not the subject of a Federal quarantine.

[5] 38 Stat. 1113.

[6] 49 Stat. 1461.

The initiative in establishing this arrangement in any State must be taken by the State authorities.

The division of powers between the Federal and State Governments with respect to animal quarantines is less sharply defined. The Secretary of Agriculture is "authorized and directed" to quarantine any State or portion of a State when he finds that the "cattle or other livestock in such State . . . are affected with any contagious, infectious, or communicable disease." [7] The Secretary of Agriculture is also authorized to cooperate with the States in the "suppression and extirpation" of dangerous livestock diseases, whether the plan of work be of Federal or State origin.[8] The rigors of a complete embargo on the movement of livestock out of an area under Federal quarantine are avoided by providing that "when the public safety will permit" the Secretary may promulgate rules of inspection, disinfection, handling, and so forth, under which shipments out of the area will be permitted.[9]

The States may not hamper shipments of livestock that are accompanied by a certificate issued by an inspector of the Federal Bureau of Animal Industry. These certificates are issued if, upon inspection of a lot of livestock to be shipped out of an area in which a contagious disease is believed to exist, the inspector finds that the animals in the lot are free from any contagious disease and have not been exposed to any such disease. The animals may then be moved "into and through any State . . . without further inspection or the exaction of fees of any kind, except such as may . . . be ordered . . . by the Secretary of Agriculture."[10]

Aside from this limitation, the States retain the power to impose animal quarantines not in conflict with Federal animal quarantines. In a decision handed down in May 1933,[11] the Supreme Court ruled that it was not the intent of Congress, in the acts of 1903 and 1905, to give the Federal Government a general authority over domestic animal quarantines. It seems to be clearly inferred in the decision that shipments are subject to State livestock quarantine regulations unless they come from an area under a Federal quarantine or are accompanied by a Federal inspection certificate.

[7] 21 U. S. C. 123.
[8] 21 U. S. C. 114.
[9] 21 U. S. C. 125.
[10] 21 U. S. C. 121.
[11] *Mintz et al.* v. *Baldwin*. 289 U. S. 346.

FEDERAL DOMESTIC QUARANTINES

Eleven plant diseases and insect pests are the subjects of Federal domestic plant quarantines. [12] Where the boundaries of quarantined areas pass through a State, legislation has been enacted under which State authorities work in cooperation with the Federal officials in enforcement work. On the other hand, the Federal Government assists in some of the State programs. Active cooperation is given in the State control work for Phony peach disease in the Southeastern States and in the control work for peach mosaic in California and the Southwestern States. Where State quarantine regulations require a certificate of inspection to accompany incoming shipments, Federal officials cooperate in many cases by inspecting such shipments at the point of origin and issuing the required certificate on those found to be disease- or pest-free. This is done, for example, in connection with State quarantines against the European corn borer.

Federal domestic animal quarantine regulations are specifically concerned with seven contagious diseases.[13] The acts of 1903 and 1905 prohibit the interstate movement of any livestock having a contagious disease; the administrative regulations set up the conditions that must be met before an animal that has had such a disease or has been exposed to it may be shipped interstate.

Except for the regulation dealing with hog cholera, the Federal animal quarantine regulations are adjuncts of eradication programs, differing in this respect from the great majority of plant quarantines. These eradication programs are undertaken as cooperative projects with the States, in which the Federal Govern-

[12] As of January 15, 1939. The diseases and pests concerned are the Japanese beetle, the gypsy moth and the brown-tail moth, the Mexican fruitfly, the pink bollworm, the Thurberia weevil, black stem rust, Woodgate rust, white-pine blister rust, Dutch elm disease, and the white-fringed beetle.

[13] As of November 1, 1938. The diseases are: Tick fever, scabies (mange) in sheep and cattle, dourine, hog cholera, Bang's disease, and tuberculosis.

ment makes funds available to States that carry out the program along the lines laid down by agreement with the Federal authorities. A major use of such funds is to make compensation payments to owners of infected stock to be destroyed as part of the campaign. Federal-State cooperation is thus at the very core of the Federal animal-quarantine activities.

Eradication programs have been in progress for approximately 30 years against southern tick fever (sometimes called Texas fever), scabies in sheep and cattle, and dourine; since 1917 against bovine tuberculosis; and since 1934 against Bang's disease. A notable degree of success has been achieved, and large areas have been cleaned up. For example, the quarantined area for tick fever originally covered the greater part of 11 States, but it now covers only a few counties in 2 States.

Notable successes have also been achieved in combating plant diseases and pests. A serious infestation of the Mediterranean fruitfly, occuring in Florida in 1929, was completely eradicated through vigorous measures. Had it not been controlled, this pest would have done enormous damage to fruit crops in the warmer parts of the United States. Citrus canker has been suppressed in all the commercial citrus-growing districts of the Southeast, where it was formerly widespread. The pink boll worm of cotton has been extirpated throughout large areas in which it formerly existed. In the Northeast, the spread of the gypsy moth has been arrested. In the Southwestern States, the date palm scale has been eradicated.

Despite this impressive record, it remains true that plant diseases and pests are typically much more difficult and much more expensive to control than animal diseases. In the majority of cases eradication is not attempted, and the affected area slowly expands, even with a quarantine in force. Thus, as a rule, plant quarantines play a somewhat different part in the control of pests and diseases than do animal quarantines.

STATE QUARANTINES

The preceding paragraphs give a birds-eye view of the Federal plant and animal quarantine regulations and activities. It would be impossible, within the compass of a few pages, to do the same thing for the State regulations,[14] for there are 48 States and their laws and regulations are not uniform. A tabulation of the State plant quarantines established by statute, by a specific quarantine, or by general regulation, showed 239 in effect on December 15, 1937.[15] Thirty-two States had promulgated quarantines to prevent the spread of the European corn borer into their territories; the alfalfa weevil was the subject of 27 State quarantines; the sweetpotato weevil and various sweetpotato diseases, of 22; various peach diseases, of 21; various citrus pests, of 12; and potato insects and diseases, of 11.

Definite figures concerning animal quarantines are not available, but it is true that there are a large number of State animal quarantines.

NONUNIFORMITY

State quarantine regulations exhibit the same lack of uniformity from State to State as do the regulations in other fields covered by the present study, such as grading and labeling, motor-trucks, and milk inspection.

The most extreme examples of uncoordinated State action in the quarantine field have occurred in connection with sudden outbreaks of contagious animal diseases of which this country is normally free. There were striking instances in 1924. Foot-and-mouth disease was discovered in California in February, and in September it was found in Texas. The European fowl pest, a new disease in the United States, broke out twice during the year. In all these cases Federal and State authorities joined hands in vigorous eradication campaigns; but until eradication had been accomplished, the States took independent and, in many instances, unnecessarily severe measures to protect themselves.

[14] A summary of the quarantine regulations in each State is found in Summary of State and Territorial Quarantines Affecting Interstate Shipments, by Maude A. Thompson, Miscellaneous Publication No. 80, U. S. Department of Agriculture, Washington, D. C., 1937 rev., and State Sanitary Requirements Governing Admission of Livestock, Miscellaneous Circular 14, U. S. Department of Agriculture, Washington, D. C., April 1, 1936, revised.

[15] Multilithed publication of the Federal Bureau of Entomology and Plant Quarantine, entitled "Insects and Plant Diseases under Quarantine by the Various States."

Some of the measures against foot-and-mouth disease were criticized as follows:

"Embargoes against agricultural products imposed by many of the States caused tremendous losses, not only to the agricultural interests of California, but to many other interests both within and without the State, without, in our opinion, affecting any increased protection to the live stock interests of the States concerned."[16]

One case is reported in which the railway company could not comply with the regulations of one State without violating those of another.[17]

These instances are extreme and as they resulted from extraordinary circumstances they should not be overemphasized. But milder difficulties due to nonuniformity have continued to crop up. In the middle 1920's, States began to issue regulations to prevent the importation of cattle that might be infected with Bang's disease. The movement rapidly grew. By the early 1930's the lack of uniformity in the regulations had brought about such a complicated situation that it became the subject of lively discussion at the meetings of the United States Live Stock Sanitary Association, a national organization of State officials in charge of animal quarantine work. At the annual meeting in 1932 the association passed a resolution that contained the following point:

"3. With 40 States having regulations regarding the interstate movement of cattle which react to the aggutination test for Bang's disease, and furthermore, recognizing the vast differences which exist in such regulations, and their consequent ill effects upon the cattle industry, we most earnestly recommend that the Bureau of Animal Industry of the United States Department of Agriculture take under consideration these various regulations, and establish uniform interstate rules in respect to Bang's disease. . . ." [18]

In 1938, lack of uniformity continued to be a subject of interest to State officials. A letter from one State official reads in part as follows:

"In our tests for Bang's disease we follow the procedure outlined by the U. S. Department of Agriculture very carefully, but we find that the regulations (of a neighboring State) are very different and consequently the movement of cattle from (our) State into (the neighboring State) to all practical purposes has been prohilted."

A State veterinary officer writes as follows:

"There has been a movement on foot for many, many years to have the regulations governing the interstate movement of livestock uniform. I am somewhat of the opinion, however, that we will not get uniform regulations as geographic and natural conditions vary in the different States. A regulation that would apply to New York would not necessarily apply to Montana and a regulation which we might get out governing the movement of range cattle would not necessarily be acceptable to New York. Be that as it may, there is no question but what there is need for a decided improvement and that more uniformity could be devised with no lessening of the protection given by present regulations."

Plant-quarantine regulations, too, are characterized by nonuniformity although a drive toward a greater degree of uniformity is under way. According to an analysis made by the Federal Bureau of Entomology and Plant Quarantine, on December 30, 1937, quarantines to prevent the spread of the alfalfa weevil into their respective territories had been imposed by 27 States. Of these, only 8 had regulations that were uniform. Seventeen States differed among themselves as to the area quarantined against. With regard to the articles under regulation (for instance, hay, alfalfa meal, used machinery, household goods) 8 States agreed on one list of such articles, 6 on another, 2 on a third, and each of the remaining 9 States had a

[16] Excerpt from speech by J. R. Mohler, Chief of Bureau of Animal Industry, U. S. Department of Agriculture, p. 149, Proceedings, 28th Annual Meeting, United States Live Stock Sanitary Association (1924). An interesting description of the various regulations promulgated by the States in connection with the outbreaks of foot-and-mouth disease and the European fowl pest will be found on pp. 179–180 and 183–184, Proceedings, 29th Annual Meeting, United States Live Stock Sanitary Association (1925).

[17] This instance is reported in a letter written by G. W. Luce of the Southern Pacific Railroad Co., which is printed on pp. 168–171, Proceedings, 28th Annual Meeting.

[18] Proceedings, 36th Annual Meeting, United States Live Stock Sanitary Association, held at Chicago, Ill., December 1932, p. 336.

list of its own. The difficulties of such a situation for shippers and transportation companies are obvious.

Enough evidence has been presented to demonstrate the existence of nonuniformity in State plant- and animal-quarantine regulations. It is not within the competence of this study to suggest what changes should be made in existing regulations. But the conclusion does seem warranted that the present lack of uniformity is a serious fault in the existing quarantine regulations, and that protection againts diseases and pests could be had under more nearly uniform regulations. This same conclusion was reached with regard to animal quarantines by the United States Live Stock Sanitary Association. At its annual meeting held in December 1933, the association adopted a report that reads in part as follows:

"The State regulations for the interstate shipment of live stock are not uniform, they have not been uniform, and this Committee is of the opinion that universal uniformity in such regulations is probably not desirable. However, a far greater degree of uniformity than now exists is desirable; is practical of achievement and, in some measure, necessary if the confidence of shippers of livestock in the good intent of such regulations is to be won or held." [19]

EFFORTS TOWARD A GREATER DEGREE OF UNIFORMITY

Efforts have already been made to achieve a greater degree of uniformity in State quarantine regulations. Since 1925, the Live Stock Sanitary Association has had a standing committee on the unification of laws and regulations. From 1929 to 1933 the association actively supported proposed Federal legislation which would give the States express authority to promulgate interstate quarantines but which would provide that no such regulations would become effective until officially approved by the Secretary of Agriculture of the United States.[20]

Regional associations have been formed in the West and the South to bring the State officials together to discuss the problems peculiar to their particular areas and to agree upon more nearly uniform measures.

There are similar organizations of plant quarantine officials. Every State is represented on one or another of four regional plant boards—the western, the southern, the central, or the eastern. The National Plant Board is composed of representatives of the regional plant boards. These boards have played a leading part in the movement toward a greater degree of uniformity in State regulations.

During the last 2 years or so, definite progress has been made. Uniform regulations have been adopted by all States that are concerned with the Phony peach disease and the peach mosaic disease. Regulation of the shipment of nursery stock is a Nation-wide problem. The Central Plant Board has pioneered in this field. Since 1928 it has regularly revised a set or recommendations for the regulation of the interstate movement of nursery stock. At present, conferences are being held throughout the United States with a view to securing the adoption by all States of uniform nursery-stock inspection requirements. Currently there is also a committee at work drawing up uniform regulations covering three plant diseases and pests, to be presented to a conference of officials of Northwestern States for approval at the conference and subsequent adoption by the individual States concerned. The Southern Plant Board has been active in promoting uniform quarantine regulations in the Southern States. For example, at its annual meeting in February 1938, the board unanimously adopted resolutions recommending specific action by the constituent States on more than a dozen quarantines. Special attention was given to obtaining uniformity of regulations covering the sweetpotato weevil.

The efforts being made to improve our quarantine regulations are in themselves an indication of the need that exists for such improvement. That need is still large, despite the encouraging progress being made. Not only does nonuniformity remain as serious as ever in a great many fields of quarantine work, but other flaws exist which have a detrimental effect on the movement

[19] Proceedings, 37th Annual Meeting, United States Live Stock Sanitary Association, held in Chicago, Ill., December 1933, p. 537.
[20] Ibid., p. 366.

of agricultural products. These flaws may be classificd under the headings of: (1) Unnecessary red tape, annoyance, delay, and expense; (2) improper definition of the quarantined area, resulting in the restrictions upon shipments from areas where the disease or pest quarantined against does not exist; and (3) lack of a real biological basis for the quarantine.

The reader is again advised that technical experts do not agree among themselves as to the necessity for some of the provisions in some quarantine regulations and that some of the opinions quoted in the following discussion involve questions of a technical nature. The purpose in citing such opinions here is not to endorse them—for those making this study are not qualified to decide these technical questions—but to use them as a means of indicating the kinds of difficulties and the types of problems that appear to be important in the quarantine field.

RED TAPE, ANNOYANCE, DELAY, AND EXPENSE

Regulations governing the movement of nursery stock are probably the most prolific source of red tape, annoyance, delay, and expense. Some States require inspection of nursery stock at the point of destination even though it has already been inspected at the point of origin. At its annual meeting held on February 2, 1938, the Southern Plant Board adopted a recommendation of its committee on standardization which reads in part as follows:

"The committee believes . . . that the attention of the Southern Plant Board should be directed to the development of some plan or procedure which will result in the discontinuance of dual certification of nursery stock as is now required by a number of States in the southern group." [21]

The annoyance and delay of a second inspection, as well as the payment of a second fee commonly required for the inspection, tend to discourage interstate business.

Another serious deterrent to interstate commerce is the requirement of some States that an out-of-state nurseryman pay an annual registration or license fee to do business within the State. In some cases the fee amounts to as much as $25. The higher the fee, thc more business a nurseryman must do within the State to make it worth while to pay the fee. For example, some types of nurserymen receive many small mail orders. But if they do not expect to receive enough business from a State having a high annual fee, they will not take out a license and therefore must refuse orders from that State. This situation tends to a degree of localization of the markets for nursery stock and operates to discourage the free movement of such stock from one State to another.

Another kind of fee which increases the cost of doing business outside the home State is the license fee required by some States to be paid by agents (salesmen) who represent out-of-State nurserymen.

It is recognized that proper inspection of nursery stock and other products costs money and someone must pay for the inspection. But the necessary funds should not be raised by a system that imposes a second fee on shipments into another State. The authors believe it would be desirable to work out some plan of procedure under which a shipment would not have to be inspected more than once. This would probably require greater uniformity in the inspection regulations and procedure in the various States, in order that officials might be willing to accept inspections made by othcr States. In addition, it would be desirable to have fees of all kinds on such a basis that nurserymen doing approximately the same type and volume of business would be required to pay approximately the same total amount of fees, regardless of the number of States in which they did businces.

DEFINITION OF INFESTED OR DISEASED AREAS

Quarantines are sometimes enforced against areas that never were infested or diseased or which have become free of the pest or disease since the quarantine was promulgated.

For example, despite the fact that glanders is now found only sporadically in this country, some States still require horses and mules to pass the mallein test on entering the State. The pur-

[21] P. 6 of minutes.

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pose of this test is to detect infection with glanders. In 1930 and again in 1933 the Live Stock Sanitary Association adopted recommendations that the States discontinue the use of this test.[22] Nevertheless, 13 States were still requiring it in 1936.

A similar situation exists with reference to sheep scab. On this point one State veterinarian writes the following:

". . . we have not had sheep scab for more than 20 years and yet many States place rather severe restrictions on the movement of sheep into their State—several States even requiring all sheep entering their State to be dipped. We cannot see the reason for dipping sheep for scab when these sheep originate in a State in which scab does not exist."

In some cases an embargo has been imposed upon an entire State because a pest or disease has been found in one or two isolated parts of the State. One State official writes:

"We contend that the Tomato Pinworm Quarantine (of one of the Western States) against (our) entire State is unjustified, since the only infestation known in this State is in one greenhouse in (one) county. A quarantine affecting that county only may be justified."

However another State official points out that—

". . . unless a State is making an effort to prevent the spread of a given pest within the State, those States which have regulations against it have no assurance but what shipments of products from infested counties or districts could be moved into clean areas and shipped from there. Nor would they have any guaranty that they would be protected in the event that the pest appeared in other districts. If the State maintained a quarantine on the infested or infected territory and then made competent surveys from time to time in order to follow the distribution of the pest as it spread, there would be some assurance that shipments from infested or infected territories would not find their way into other States, but without any effort on the part of the infested or infected State to prevent the spread I am sure . . . the majority of quarantine officials will agree that the entire State should be quarantined."

The best solution of the problem is probably the one suggested by the following recommendation adopted by the Southern Plant Board in its annual meeting of February 1938:

". . . when any member State advises the other States comprising the Southern Plant Board that the sweet potato weevil has not been found for a period of two years, after careful inspection, in a given previously infested county or counties, . . . the States comprising the Southern Plant Board (should) eliminate that county or counties from their sweet potato weevil quarantine."

If, as here recommended, the State in which the disease or pest is found should carry on a systematic inspection to determine the prevalence or absence of the pest or disease from the different counties in the State, the other States could safely permit products to come in from the counties certified as free. In this way, adequate protection against the spread of the disease could be combined with a minimum of interference with the movement of agricultural products.

LACK OF A SOUND BIOLOGICAL BASIS

Special attention should be directed toward a very small group of quarantines that seem to be used not so much to prevent the spread of diseases or pests as to afford protection to growers within the State. Such use of quarantines is very dangerous because it tends to provoke mistrust of all quarantines and to arouse ill feeling between States.

According to the minutes of the meeting of the Southern Plant Board held in February 1938 it was developed in the meeting that a quarantine of a certain State was "promulgated more for the purpose of eliminating inferior market grades of roses than to prevent the spread of pests." It was moved that the State be asked "to rescind its quarantine and handle the matter as one of market grades. The motion was seconded . . . and passed by unanimous vote."

[22] ". . . it appears that the mallein test of horses shipped from one State to another, is no longer justified by the extent of glanders in this country, and this being a costly and an inconvenient restriction on the free interstate shipment of horses, that the requirement of mallein-testing be discontinued in the shipment of horses from the majority of States, where this disease no longer exists."—p. 538, ibid.

The lack of uniformity in State regulations concerning the alfalfa weevil has already been pointed out (p. 89). There apparently has been less agreement and more criticism with regard to these particular quarantines than any others. The general tenor of the criticisms is to the effect that the regulations impose an unnecessary handicap upon the movement of various agricultural products. One such criticism is here quoted from a letter:

"It appears that they use this quarantine, which they put on or take off apparently at will, to protect their hay growers in times of low prices or to open a market for the stockmen in times of high prices. That is, if they need (our) native hay or alfalfa in an area of (their State) which can be supplied by it, they relax the quarantine measure. If they have plenty of hay, the quarantine is maintained."

At the annual meetings of the United States Live Stock Sanitary Association in 1932 and 1933 a regulation of the State of New York was criticized. It required dairy cattle being brought into the State to have passed tests of such severity that only a very small percentage of the dairy stock in the United States could have been expected to qualify. The purpose of the regulation was to make sure that all dairy cattle brought into the State would be free from Bang's disease. But at that time Bang's disease was widespread in the State and no steps were being taken to see that the incoming cattle were placed in clean herds.[23] This regulation reduced the movement of dairy stock from Wisconsin to New York to from 5 to 10 percent of the volume in the years just preceding.[24]

During its 1938 session the Louisiana Legislature passed a bill providing for retaliatory quarantines or embargoes.[25] The first section of that act is as follows:

"SECTION 1. *Be it enacted by the Legislature of Louisiana*, That hereafter, in order to provide a system of reciprocal quarantines or embargoes between this State and other States, territories and foreign countries, it shall be unlawful for any person, firm, or corporation to ship or transport into this State, or to sell, deal in or handle in any manner within this State, any agricultural or horticultural plant or plant product from any State, Territory or foreign country which prohibits the shipment from this State of any such agricultural or horticultural plant or plant product by reason of quarantine or embargo of any kind or nature."

It should perhaps be emphasized that examples of quarantines or embargoes that do not have a sound biological basis are rare. Nevertheless, they are of the greatest importance in this discussion because they suggest a line of development in quarantines that should be avoided at all costs.

PRINCIPLES OF QUARANTINES

How can it be decided whether a quarantine is sound and justifiable both from a biological and from an economic point of view? A complete answer to this question would constitute a full-length study in itself. Indeed, just such a study has been made with particular reference to plant quarantines by a committee of entomologists, plant pathologists, and economists on the staff of the College of Agriculture of the University of California. The findings of the committee were published in 1933 and are well worth the careful attention of anyone interested in this problem.[26] Also worthy of attention is a condensed statement drawn up and published by the National Plant Board, enunciating the principles that should govern plant quarantines.[27]

In introducing its study, the California committee quotes from an earlier study,[28] as follows:

"We stand in danger of subjecting ourselves to ineffective and hampering regulations without adequate gain unless the quarantine procedure

[23] See Proceedings, 36th Annual Meeting, pp. 336–42, and Proceedings, 37th Annual Meeting, p. 539, par. 3.

[24] See table No. 18, p. 135, in F. E. Melder, State and Local Barriers to Interstate Commerce in the United States, University of Maine Studies, second series, No. 43. (University Press, Orono, Maine, 1937.)

[25] Act No. 299, acts of 1938, Louisiana, approved July 6, 1938.

[26] The Efficacy and Economic Effects of Plant Quarantines in California, Bul. 553, Univ. of Calif., Coll. of Agr., Agr. Expt. Sta., Berkeley, Calif., July 1933.

[27] Principles of Plant Quarantine, National Plant Board (office of the chairman, W. C. O'Kane, Durham, N. H., July 1931). Also see Explanatory Notes on Principles of Plant Quarantines, published at the same place and time.

[28] ORTON and BEATTIE, THE BIOLOGICAL BASIS FOR FOREIGN PLANT QUARANTINES, in Phytopathology 13: 295–306 (1923).

is based upon a firm scientific foundation of sound biological principles . . . relating to the nature of the parasites (pests or diseases) to be dealt with; their country of origin and geographic distribution; their host relations and the native home of the host; prevalence; climatic relations; manner of spread, and other factors." The committee goes on to say:

"The evaluation of a plant quarantine is, however, more than a biological problem. To be sound, not only must its objectives be reasonably probable of attainment from a biological standpoint, but it must be ecoonomically justifiable; . . . and it must not unnecessarily restrict the rights and liberties of the people. Thus the problem will be seen to be an exceedingly complex one."[29]

Despite the complexity of the problem, there are some principles that appear to be virtually self-evident. The following is submitted to the consideration of the reader:

I. The underlying general rule is that a quarantine is justified only if from the national viewpoint it is cheaper to prevent or delay the spread of a pest or disease than to fight it after it has spread—for example, with sprays, development of resistant varieties, or new farming practices. Among the costs of a quarantine must be counted the economic consequences of the stoppage or hindrance of trade that may be entailed.[30]

"From a broad social point of view a quarantine is economically justifiable so long as it requires less effort to maintain the quarantine than it would take to overcome the damage caused by the pest or disease."[31]

In more concrete terms.—

"Because of the existence of innumerable species of plant diseases and plant-feeding insects, it is necessary . . . to compromise between exclusion of all insects and diseases with complete cessation of exchange of commodities, and the unrestricted exchange of commodities with extreme risk of introduction of dangerous pests. . . . Therefore the rule seems to be justified that a quarantine against a specific pest or disease should be promulgated only if there is a reasonable chance that it would prove serious in the area to be protected, unless the regulations are inexpensive to enforce and are such as to create little or no economic disturbance."[32]

The National Plant Board has stated the conditions under which the establishment of a quarantine is justified as follows:

"Establishment of a quarantine should rest on fundamental prerequisites, as follows: (1) The pest concerned must be of such nature as to offer actual or expected threat to substantial interests; (2) the proposed quarantine must represent a necessary or desirable measure for which no other substitute, involving less interference with normal activities, is available; (3) the objective of the quarantine, either for preventing introduction or for limiting spread, must be reasonable of expectation; (4) the economic gains expected must outweigh the cost of administration and the interference with normal activities."[33]

II. "A quarantine established for the purpose of attaining an objective other than that which it indicates or defines is open to serious criticism, even though the actual objective is itself desirable."[34]

"Plant quarantines should never be used for any purpose other than the exclusion of pests and diseases." [35]

The same is true of animal quarantines.

III. "A plant quarantine should be so drawn and administered that there is the least possible interference with the movement of persons and commodities consistent with the accomplishment of its purpose."[36] The same is true of animal quarantines.

IV. If a disease or pest exists in part of a State, that State should not impose a quarantine against introduction of the same disease or pest unless control measures are being carried out within the State. A marketing official writes of one State:

"The laws require dipping of any sheep coming into the State, which many do not think justified

[29] Efficacy and Economic Effects of Plant Quarantines . . . , p. 12.
[30] For a discussion of the economic consequences of a quarantine, see ibid, pp. 38–81.
[31] Ibid., p. 246.
[32] Ibid., p. 245.
[33] Principles of Plant Quarantine.
[34] Ibid.
[35] Efficacy and Economic Effects of Plant Quarantine . . ., p. 245.
[36] Ibid., p. 245.

or consistent owing to the fact that (this State) permits sheep to move from state community sales to farms without dipping. The dipping charge figures about 5 cents per head where there is a carload at a time, but the minimum of $8 makes it prohibitive for smaller lots. This tends to restrict the movement of a good many lambs into the State for feeding purposes and also affects the movement or breeding ewes in summer."

At its annual meeting held in February 1938, the Southern Plant Board unanimously adopted the following recommendation of its committee on standardization:

"That the Southern Plant Board reaffirm, as an established policy or principle, the action taken at the San Antonio meeting in 1937 and again express its disapproval of the adoption by the member States of plant quarantine regulations aimed at restricting the shipment into such States of plants and plant materials listed as positive or potential carriers of plant pests as specified in such regulations, unless at the same time similar or parallel restrictions are in effect or are imposed applying to the movement of such plants or materials within the State promulgating the restrictive order."

A similar recommendation was presented to the United States Live Stock Sanitary Association and adopted by that body.[37] It read as follows:

"This Committee further desires to call attention to the fact that regulations providing for the freedom of animals from certain diseases of livestock, when coming into a state, are, in considerable measure, unjustifiable unless and until that State has taken measures to control the diseases within its own border, and to control the intrastate shipment of animals so affected."

V. "If the major usefulness of a quarantine has passed, or if it becomes evident that it is no longer effective, it should be promptly rescinded. If a State . . . does not recognize this obligation, it cannot expect and rightfully demand fair treatment in this regard by other States. . . ." [38]

"As conditions change, or as further facts become available, a quarantine should promptly be modified, either by inclusion of restrictions necessary to its success or by removal of requirements found not to be necessary . . . If a quarantine has attained its objective, or if the progress of events has clearly proved that the desired end is not possible of attainment by the restrictions adopted, the measure should be promptly reconsidered, either with a view to repeal or with intent of substituting other measures." [39]

The persistence of certain States in requiring incoming horses to pass the mallein test, although glanders is now practically nonexistent in the United States, has been noted, as well as the continuance by others of the requirement that incoming sheep be dipped, even when from States where scab has been eradicated.

The need for animal quarantines usually disappears because large areas are freed from infection. On the other hand, the usual reason why plant quarantines become useless, biologically, is that the disease or pest eventually finds its way into the State and becomes firmly established there despite the quarantine. Once infection or infestation is widespread within the State the quarantine is of course no longer justified. The minutes of the meeting of the Southern Plant Board in February 1938 give an instance of this sort:

". . . in its study of plant quarantines, the committee notes that of the Southern States, but one State—namely, Texas—has in effect a quarantine covering the subject of the Colorado potato beetle. In view of the apparently established fact that the Colorado potato beetle is already present and widely distributed within the State of Texas, as well as other States, it would appear that Texas would have no particular advantage in protecting its industry through continuance of this quarantine. The committee, therefore, recommends in the interests of uniformity, standardization, and simplicity of plant quarantines that the State of Texas be requested to rescind its quarantine covering the subject of the Colorado potato beetle.

"(Mr. Del Curto stated that Texas would re-

[37] See p. 539, Proceedings, 37th Annual Meeting, United States Live Stock Sanitary Association, Chicago, Ill., Dec. 1933.

[38] Efficacy and Economic Effects of Plant Quarantines, p. 245.

[39] Principles of Plant Quarantine.

seind its quarantine eovering the subjeet of the Colorado potato beetle, a formerly uninfested area in the State having since beeome infested.)"

VI. "If a quarantine is imposed in order that eradication of a pest from a given area may be undertaken, the restrietions involved may properly be relatively extensive, beeause of the importance of the objeetive sought, and because the time through which the quarantine will operate may be expected to be rclatively limited. . . . If a quarantine is imposed for the purpose of limiting or retarding spread of a pest, but without expectation of eradieation, the restrictions imposed should be sueh as are in line with the objective of the quarantine and should reeognize the faet that continuance of the pcst in the area where it is established, or possibly its spread in time to new areas, is aceepted."[40]

Those who are intcrested will find other principles stated in the California eommittee's published report[41] and in the National Plant Board's brief Principles of Plant Quarantine.

POSSIBLE METHODS OF ACHIEVING AN IMPROVED SYSTEM OF QUARANTINES

It seems elear from the foregoing discussion that although the State and Federal plant and animal quarantines, regarded as a whole, are benefieial and indispensable, they have faults that eould be remedied. Uniformity in State regulations is the exception rather than the rule. Some quarantines can be eritieized for requiring unneeessary red tape, delay, or expense; for including free areas within the limits of the area quarantined against; for lacking a sound biological basis; or for violating one or anothcr of thc prineiples that havc been suggestcd as desirable. At the same time, the exeellent work that has been done toward remedying the existing faults must not be forgotten. The persistent efforts of the National and Regional Plant Boards, and the competent, impartial study of the California committee stand in the forefront of the aceomplishments in this field to date.

Moreover, the lines along which these organizations have worked offer exeellent precedent for future efforts toward the improvement of both plant and animal quarantines. Some combination of the two types of approaeh would appear to be promising for an even greater degree of achievement than that which has been reaehed in the past. It would also seem desirable to promote the eollaboration of agrieultural economists with teehnieal experts and administrative officials in studying the problems and formulating reeommendations in this field.

Federal legislation has been suggested for bringing about a better situation in the quarantine field. The California Committee closed its study with the following paragraph:[42]

"The Committee believes it would be desirable for Congress to enact legislation providing that interstate quarantines promulgated by states be subject to review and possible disapproval by the federal Seeretary of Agriculture. This would prevent retaliatory, unfair, or otherwise unjustifiable state quarantines, which are likely to cause trouble in the future."

A similar proposal with regard to animal quarantines was aetively supported by the United States Live Stock Sanitary Association. The report of the committee on unification of laws and regulations to the 1933 annual meeting of the association eontained the following paragraphs:

"To remedy the present ehaotic conditions and prevent even greater confusion and injustiee in the future, this Committee reeommends that this Association eontinue its efforts to induce the Congress to enact legislation granting the states authority to promulgate regulations for the importation of live stock, *such regulations to be effective only after approval of the Secretary of the U. S. Department of Agriculture.* [Italics ours.]

"We believe that such legislation would bring about a far greater uniformity in interstate regulations than has obtained at any time within reeent years, and a uniformity as great as is desirable; it being reeognized that a regulation proper for the control of a shipment of horses from Utah to Idaho might be unnecessary in the shipment of horses from New Jersey to Pennsylvania, and that regulations for the shipment of sheep from New Mexico to Kansas need not be

[40] Ibid.

[41] See especially pp. 243–6.

[42] Efficacy and Economic Effects of Plant Quarantine, p. 253.

the same as for the shipment of these animals from Ohio to West Virginia." [43]

The report of the committee was adopted by the association.

It is noteworthy that two groups, each working independently in its own field, should have come to the same conclusion—that it would be desirable to give the Federal Secretary of Agriculture power to disapprove of State quarantine regulations. Whether such action is necessary in the future would appear to depend on the degree of voluntary cooperation during the next few years to eliminate unnecessary quarantines and to bring about greater uniformity.

[43] Proceedings, 37th Annual Meeting, United States Live Stock Sanitary Association, December 1933, p. 538.

State-Financed Advertising of Farm Products[1]

In recent years States have begun to sponsor advertising campaigns designed to stimulate sales of some of their major farm products. This new departure raises many interesting questions that await careful analysis by economists and students of marketing. Only one aspect of the subject falls within the sphere of this study—the relation of State-financed advertising campaigns to internal trade in farm products.

As the term is used in the following pages, a State-financed advertising campaign is an advertising campaign financed wholly or in part by a State, either by means of appropriations from the general funds of the State or by taxes upon the sale of the product to be advertised. If financed by the latter means, it may be argued that the campaign is in reality industry-financed and that the State merely acts as a collection agency. This argument overlooks the fact that the authority of the State is used to enforce payment upon those who do not wish to contribute, whereas an industry-financed campaign as ordinarily understood, is characterized by voluntary contributions. The advertising campaigns to be examined here have, therefore, an official and public character that they would lack were they not sponsored by State governments.

Advertising by States and the levying of special taxes to provide money for State advertising are not new. States have long advertised their attractions, their resources, and their products by means of handbooks, tourist literature, exhibits at fairs and expositions, etc. The novelty of the campaigns here discussed lies in the large sums of money expended, in the use of all the arsenal of modern advertising methods, and in the significant fact that State governments themselves have now entered the lists in the battle for agricultural markets.

[1] The discussion that follows, it should be emphasized, deals only with the advertising of farm commodities that is financed by State governments and does not attempt to deal, directly or indirectly, with ordinary commercial advertising.

DEVELOPMENT OF STATE-FINANCED ADVERTISING OF FARM PRODUCTS

New York was the first State to institute a full-fledged advertising campaign for a farm product. In May 1934 the legislature appropriated $500,000 for advertising milk in the State. At the same time it levied a tax of 1 cent per 100 pounds on milk sold within the State. The revenue from the tax was expected to be approximately equal to the amount of the appropriation. The same plan has been used in the succeeding years with somewhat smaller annual appropriations and correspondingly lower rates of tax.

Florida and Wisconsin were the next States to adopt the idea of large-scale advertising of their leading farm products. The legislatures of these States enacted the necessary legislation in 1935. Florida levied a tax of 1 cent per box on oranges, 3 cents per box on grapefruit, and 5 cents per box on tangerines. Wisconsin appropriated $50,000 from general funds to be used in promoting the sale of Wisconsin dairy products in the United States.

Seven more States joined the movement in 1937. In six of these the laws follow either the Florida or the Wisconsin example by levying an excise tax or appropriating from the general funds. In California, a law of a somewhat different type authorized the director of agriculture, under certain conditions, to enter into a marketing agreement or to issue a marketing order, or both, with respect to any agricultural commodity produced within the State. Any marketing order may contain provisions for the collection of a tax on the sale of the product (not to exceed 3 percent of the "gross dollar volume of sales by producers").

In the marketing year 1937–38, 10 States that had enacted legislation authorizing State-financed campaigns for advertising farm products spent approximately $2,000,000 for such advertising, and it is estimated that more than $2,500,000 will be spent in the same way in the marketing year 1938–39.

Table 6 presents detailed information as to the products advertised, the rate of tax levied, and the sums spent.

NATURE OF THE ADVERTISING CAMPAIGNS

The New York campaign to promote the use of milk throughout the State has been conducted by a bureau of milk publicity which is set up as a unit within the State Department of Agriculture. The advertising and publicity have been concentrated in the urban areas of the State and distributed roughly in proportion to the population. Some advertising has also been done in the agricultural journals to familiarize farmers with the purpose and progress of the campaign and in the State Journal of Medicine to explain to doctors the purpose and appeals of the campaign. Newspapers have been the principal medium for the advertising and publicity but other media have been used as well. Radio advertising, display pieces for store windows, recipe booklets, and posters in Grand Central Station at New York City have been used. A publicity service furnishes recipes, cartoons, and other material to subscribing newspapers throughout the State.

The advertising appeals used in the New York campaign do not stress the idea that the milk was produced in the State of New York. In this respect they are unlike the appeals used in most State-financed advertising of farm products. In the New York campaign it was not necessary to call the consumers' especial attention to New York milk because the great bulk of the milk brought into New York consuming markets is produced within the State. New York milk producers stand to gain automatically most of the benefit from any increase in the demand for milk by consumers in New York State. The excellence of milk in training for sports has been emphasized. Boys have been advised that champions train with milk. The testimony of the movie stars has been used to persuade girls and women that milk helps to keep a clear complexion and a trim figure. Appeals to adults have been based on the idea that milk helps to fortify against fatigue and against colds.

Most of the State advertising campaigns have been conducted by bureaus or commissions set up within the framework of the State government itself or, as in the case of Florida, by an advertising manager employed by a State agency. The State of Maine campaigns, however, have been conducted by a commercial advertising firm, and an advertising firm has been retained to carry on the 1938–39 campaign to advertise California dried prunes.

Massachusetts, New Jersey, and Michigan have confined all but a very little of their advertising within their respective borders. The State of Michigan has contributed $5,000 annually for 2 years to the Michigan Apple Institute. This appropriation has been added to private funds contributed to the institute for advertising Michigan apples. The advertising has been carried on chiefly in Detroit and other Michigan cities. Some has also been done in Chicago and Milwaukee. In New Jersey private funds have likewise been added to the State appropriation. A few advertisements of New Jersey certified fresh eggs were carried in New York papers, but with this exception the entire effort was confined to New Jersey itself. Specific products such as milk, eggs, apples,

TABLE 6.—*State taxes and expenditures for advertising farm products* [1]

State	Date of first legislation	Product	Per unit tax, if any						State expenditures for advertising				
			Unit	1934–35	1935–36	1936–37	1937–38	1938–39	1934–35	1935–36	1936–37	1937–38	1938–39
New York	May 1934	Milk	100 pounds	$0.01	$0.01	$0.005/8	$0.003¾	$0.003¾	[2] $500,000	[2] $450,000	[2] $250,000	[2] $300,000	[2] $300,000
Florida	June 1935	Oranges	Box		.01	.01	.01	.01		405,349	774,086	798,015	[3] 850,000
		Grapefruit	do		.03	.03	.03	.03					
		Tangerines	do		.05	.05	.05	.05					
Wisconsin	September 1935.	Dairy products								[2] 50,000	[2] 50,000	[3] 75,000	[2] 75,000
Idaho	March 1937	Apples	100 pounds				.01	.01					[4] 14,400
		Prunes	do				.01	.01					[4] 2,400
		Potatoes	do				.01	.01					[4] 09,000
		Onions	do				.01	.01					[4] 3,000
Washington	do	Apples	do				.02	.02				217,565	[5] 207,000
Maine	do	Potatoes	Barrel (165 pounds)				.01	.01				[5] 145,400	[5] 121,000
		Canned sweet corn, blueberries, lobsters, and scallops.										([6])	([6])
Massachusetts	May 1937	Apples, milk, and poultry											[2] 15,000
California	June 1937 [7]	Canning cling peaches	Ton				1.00					[5] 323,000	
		Fresh Bartlett pears	50 pounds				.03	.03				[8] 86,000	[8] 00,000
		Prunes	Ton					.75					[3] 125,000
		Wine, fortified	Wine gallon					.01½					[3] 605,000
		Wine, dry	do					.00¾					
		Wine, grape concentrate	do					.03					
		Ripe olives	Ton					.50					[3] 16,000
Michigan	June 1937	Apples										[2] 5,000	[2] 5,000
New Jersey	do	Products in season and especially milk, eggs, apples, and blueberries.										[2] 32,000	[2] 20,000
Total									500,000	905,340	1,078,086	1,982,580	2,579,000

[1] Compiled December 1938 from State statutes and letters received from State officials and advertising managers.

[2] Appropriation. In the case of New York, the per unit tax is designed to raise approximately the amount of the appropriation. In Michigan, private organizations and individuals contributed $12,000 in 1937–38 and $7,500 in 1038–39. In New Jersey, private organizations and individuals are expected to contribute $20,000 in 1938–39.

[3] Preliminary estimate of probable receipts from tax.

[4] Total amount collected in 1037–38 and up to December 15, 1938. No campaign in 1937–38. The authorizing act was being tested in court from November 1037 to September 1038.

[5] Estimate, obtained by multiplying the per unit tax by estimated commercial production.

[6] Financed by special appropriations and contributions by private individuals and organizations. The total amount spent in 1037–38 for advertising the 5 products listed (including potatoes) is estimated to be more than $200,000.

[7] Date of enactment of enabling act that authorizes the levy of an advertising assessment on any commodity for which a marketing order has been issued.

[8] Approximate.

and blueberries received special emphasis and every week an appeal was carried in the daily papers of the State to call attention to certain local fresh fruits and vegetables that were at the height of their season, both as to quality and as to cheapness.

In the other six States—California, Washington, Idaho, Maine, Wisconsin, and Florida—the markets principally cultivated have been those outside the State. For example, the Maine potato campaign has covered all of the territory as far south as Virginia, West Virginia, and Kentucky and as far west as the Mississippi River. The campaigns to advertise Florida fresh and canned citrus fruits have extended throughout the country and Florida canned grapefruit has been advertised in England. The advertising of most California products has been concentrated upon large urban markets of the States east of the Mississippi River and north of the Mason-Dixon line.

All States have relied heavily upon newspaper advertising and publicity. All modern forms of advertising—radio programs, dealer service, displays to be used by retail stores, car cards, posters, billboards, national magazines, and trade journals—have been used by one or more States. Another type of advertising commonly used has been the distribution of recipe books containing recipes which call for the product being advertised.

All State advertising, with the exception of that carried on by New York, has featured the name of the State in which the product was grown. This is somewhat less true of the California campaigns. Many California products—for example, ripe olives, canned cling peaches, dried figs, and raisins—are not produced, or are produced only in very small quantites, in other parts of the United States. In advertising products like these it is not necessary to emphasize the name of the State where they were grown in order for the benefit of the advertising to redound principally to producers in that State. But if the product, like apples or potatoes, is one that is grown in many different sections of the country, and if it is desired exclusively or largely to benefit producers in some particular State by the advertising of the product, it becomes necessary to differentiate in the minds of consumers between the product grown in that State and the same product grown in other States. And to create this differentiation it will usually be necessary to stress the name of the State.

Appeals that are designed to impress the consumer with the name of the State may be divided into three classes—those that merely mention the name of the State, those that imply superiority in the product if it has been grown in the State, and those that definitely claim superiority for the State-grown product.

The first class may be illustrated by the following examples:

"Jersey's Fresh Tender Snap Beans are Here."

"Eat Fine Firm Jersey Potatoes."

"Make a New Jersey Apple Pie Today"

"Watch for Maine Potatoes at Your Market."

"Ask Your Grocer for Maine Potatoes."

"Serve More Maine Potatoes, Generously Supplied with Needed Minerals, Calories, and Vitamin C."

"Serve Wisconsin Dated Cheese."

"Florida Oranges Are Back Again."

"Keep Slim, Cool, Clear-Skinned with Canned Florida Grapefruit."

Following are some examples of appeals which imply that the State-grown product is superior:

"Build your meals around the finer flavored Maine potatoes for nutrition, health, and real economy."

"You'll discover the difference in flavor, taste, and texture when you try a Maine Grown Potato."

"The freshest berries come from nearby farms." (An appeal used to advertise New Jersey berries to New Jersey consumers.)

"Jersey tomatoes have time to ripen red and juicy."

Appeals that definitely claim a superiority for the State-grown products sometimes make a flat statement that these products are better and sometimes give specific reasons why they are better by calling attention to specific points of alleged superiority. Following are some examples:

"Eat Michigan apples. They're best."

"New Jersey has finer eggs."

"New Jersey fresh State certified eggs contain more vitamins."

"¼ More Juice From Florida Oranges—that's like getting every 5th glass free! More Vitamins, too. Now you can afford BIG glasses for the children! Florida orange juice is far more than just a delicious treat. Every golden drop is packed with HEALTH. Read at right the list of vital health elements it contains. Can you—dare you—rob your children of any one of them? Don't, mother. Don't stint on orange juice. Health may suffer if you do.

"Buy Florida oranges. They give a fourth more juice, that's just like getting every 5th glass FREE. And they have the sweet, rich flavor that only Florida soil and sunshine can produce."

"Make sure your Canned Grapefruit comes from Florida. There's lots of difference in canned grapefruit. To satisfy your customers and develop repeat business, stock Florida canned grapefruit sections and juice.

"You know, of course, that most sections come from Florida. That's because it takes the very best grapefruit to pack sections—fruit of firm texture, rich juice, superior eating quality.

"For the same reason the best canned grapefruit juice comes from Florida. Others can pack grapefruit juice, but it's only in Florida juice that you can get the real grapefruit flavor that people like so well."

In contrast to the foregoing appeals which emphasize the superiority of products of a particular State at least two advertisements that made a general appeal for increased consumption of the product regardless of the State in which it was produced have been financed by contributions from State advertising funds. One of these was published in a national home magazine and discussed the various health-giving qualities of apples. The other was a Proclamation Dedicating National Potato Week, signed by the Governors of nine potato-producing States. This proclamation called attention to the benefits of potatoes without laying stress on potatoes grown in any particular State.

The legality of taxes levied to raise funds for advertising farm products has been questioned in two cases that have come before the courts: In *Floyd Fruit Co.* v. *Florida Citrus Commission*, decided by the Supreme Court of Florida in May 1937 [2] and in *State ex rel. Graham et al.* v. *Enking*, decided by the Supreme Court of Idaho in September 1938.[3]

Two points in these decisions are important to the discussion here. The Florida court decided (the Idaho court later expressing its agreement) that the advertising taxes under review were not a burden upon interstate commerce, and that they were imposed for a public, not a private purpose.

With respect to the first point, the laws of both States direct that the tax shall be applied when the fruit first enters the primary channel of trade. Therefore, according to the Florida court:

"The tax is applied before the commodity enters interstate commerce. It is elementary that a shipment does not enter into interstate commerce until it is loaded on the car or other conveyance, or otherwise delivered to a carrier, or is assembled for transportation to begin its journey from one State to another." [4]

In support of this statement the court quoted from a decision of the Supreme Court of the United States in part as follows:

". . . products of a state intended for exportation to another state . . . do not cease to be a part of the general mass of property in the state, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation, to another State, or have been started upon such transportation in a continuous route or journey." [5]

In discussing whether the advertising tax could be said to be imposed for a public purpose the Florida court quoted from a previous decision, in which it had held that—

"The protection of a large industry constitut-

[2] 175 So. 248.
[3] 82 Pac. 2d 649.
[4] 175 So. 252 (1937).
[5] *Coe* v. *Errol*, 116 U. S. 517 (1886).

ing one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the State is affected to such an extent by public interest as to be within the police power of the sovereign." [6]

Accordingly, in the opinion of the court, it cannot be held that the promotion and protection of the citrus industry in Florida is not a matter of public concern nor that the "legislature may not determine within reasonable bounds what is necessary for the protection and expedient for the promotion of that industry."[7] Moreover, the court had already recognized that advertising is a proper method for promoting the public welfare.[8]

Therefore, the court concluded, the tax is levied for a public purpose.

STATE-FINANCED ADVERTISING IN RELATION TO INTERNAL TRADE

If it becomes a generally accepted principle that each State may promote the general welfare of its citizens by advertising products grown within its borders, certain problems in interstate relations must arise. The following paragraphs discuss some of these problems. Fundamental to this discussion is the proposition that the general welfare of any individual State is subordinate to the general welfare of the United States, and indeed depends upon it; the further proposition that unimpeded commerce among the States is essential to the general national welfare; and the corollary proposition that the general welfare of any State is subordinate to and dependent upon the maintenance of unobstructed trade within the national boundaries. In less abstract terms, economic rivalry among the States must stop short of obstructing interstate trade; and with particular respect to advertising, each State has the responsibility of avoiding action that, even if within its legal powers, would be directly or indirectly restrictive of interstate trade.

[6] *Johnson* v. *State ex rel. Marcy*, 128 So. 853, 857 (1930).

[7] 175 So. 253.

[8] In a case involving a statute that permitted the city of Jacksonville to levy a special property tax to provide a fund for advertising the city. *City of Jacksonville et al.* v. *Oldham*, 150 So. 619 (1933).

Appeals to economic provincialism.—Whenever a State advertises its products within its own borders, the opportunity exists to appeal to local pride or interest. There is room for differences of opinion as to how far it is proper to go in appealing to local sentiment. No one would oppose exhibits of State-grown products at fairs and exhibitions within the State. Probably few would object to advertisements pointing out that certain local products are in season. But appeals like "Buy home-State products first!" and "Keep your dollars at home!" are more open to question. Such statements constitute an incitement to boycott the products of other States, and insofar as they are heeded they have as real and as detrimental an effect on interstate trade as any of the barriers considered in previous sections of this publication.

As a matter of fact, if State advertising takes the form of urging the citizens of the State to consume more of their own State's produce and less of that from other States, the chief results, insofar as the advertising is effective, are very similar to those of an import duty. Either advertising of this kind, if effective, or an import duty would tend to reduce the amount of imports into the State and to raise the price of the commodity within the State.

Competition among States in advertising.—When State advertising campaigns are carried on beyond the State boundaries, possibilities of a different kind of danger to interstate trade arise. These are related to the question of whether advertising the product grown in one State reduces the demand for the same product grown in other States. A hypothetical case illustrates the point. If an advertising campaign should succeed in increasing the demand for Kentucky dandelion greens, would this increase represent a corresponding reduction in the demand for dandelion greens from other States, or would it represent a net increase in the total demand for dandelion greens from all States? Or might the advertising even have resulted in an increased demand for dandelion greens grown in States other than Kentucky, as well as for those grown in Kentucky itself?

There is a real possibility that the various

States will adopt the view that advertising by other States jeopardizes their markets. In fact, just such a fear is expressed in the introductory section of the Idaho law that provides for State advertising of Idaho farm products. Section 1 reads in part:

". . . all major producing States of fruits and vegetables are and have been advertising their products throughout the United States to the extent that if Idaho is to enjoy her equitable share of trade in the State that fruits and vegetables in this State must be advertised to be able to retain their place on the markets of the United States; . . . in the interests of the public welfare and general prosperity of the State of Idaho this avoidable and unnecessary loss of markets to other producing areas can and should be eliminated by acquainting the general public with the health-giving qualities and the food value of the different fruits and vegetables grown in the State of Idaho." [9]

The fears of the States in this regard are likely to be heightened by the use of appeals which claim superiority for the portion of the product grown in the State doing the advertising. Appeals of this type plainly seem designed to divert consumers' demand from the part of the product grown in other States to that part of it grown in the advertising State. For this reason, from the point of view of interstate trade, general appeals that are designed to increase the demand for all of a crop would seem much preferable to appeals that emphasize the part of the crop that was grown in some particular State. Two examples of this general type of advertising have been given above. (See p. 102.)

Fear on the part of the various States that the demand for their products may be reduced by the advertising of rival States is a potential source of resentment, which conceivably might lead to retaliatory measures detrimental to interstate trade. Perhaps the most probable eventuality is that each State will hesitate not to advertise, for fear of losing part of its market, and that most of the States which produce a particular commodity will engage in competitive advertising campaigns. To what extent such campaigns would raise the total demand for the commodity and would not serve merely to counteract one another and add to marketing costs is a matter for conjecture, until it can be illuminated by statistical research.

Much further study of State advertising of farm products is necessary in order to discover the results to all concerned. Certain types of State advertising may be found generally advantageous. But States must be on the alert to recognize the probable disadvantages if advertising takes a form which results in lessening the interstate exchange of commodities. In particular, it would seem desirable to avoid appeals which by implication are derogatory to products of competing States.

[9] Laws of Idaho, ch. 252 (1937).