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Federal Farm Programs – Past, Present and Future—Will We Learn from our Mistakes?

by

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FEDERAL FARM PROGRAMS – PAST, PRESENT AND FUTURE—WILL WE LEARN FROM OUR MISTAKES?

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By 2002, Congress must pass a new farm bill. If it does not, our nation's permanent farm legislation will go back into effect. The permanent farm legislation consists of the 1938 and 1949 farm bills. The 1938 law provides for marketing quotas and parity payments as well as non-recourse loans, conservation payments and crop insurance. The 1949 law includes most of the 1938 provisions but raises the level of price supports for basic commodities such as corn and wheat. Prices are to be supported at 90% of parity.

Parity is a concept that has been abandoned in modern farm legislation. A parity price is a commodity price that will give the commodity purchasing power equivalent to what it had during the golden age of agriculture between 1909 and 1914. For example, if farmers were paid parity prices in 1999, they would have received $6.35/bu for corn, $9.47/bu for wheat, $152/cwt for cattle and $103/cwt for hogs.

It is highly unlikely that Congress will fail to enact a new farm bill and allow the permanent farm legislation to take over. Farmers and ranchers cannot reasonably expect to receive old-style parity prices. Too much has changed in agriculture and the world since 1938.

Congress is currently debating the type of programs that the 2002 farm bill should contain. The debate is taking place at a time of change and stress in agriculture as well as in the country as a whole. Commodity prices are at all time lows. Many farmers are in financial distress. Government payments constitute a high percentage of farm income. Large agribusinesses are consolidating their control of crop and livestock markets. Small farms are going out of business. Large farms are expanding. The United States faces increased foreign competition in agricultural trade and continued barriers to the sale of its own products abroad. Urban sprawl is converting millions of acres of productive farmland to houses and shopping malls. Agricultural operations are coming under increased scrutiny by environmental agencies.

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The farm legislation Congress ultimately adopts will address some, but not likely all, of these issues. The debate will include much rhetoric and smoke and mirrors. The question that must be decided, however, is what type of farm programs will help solve the problems faced by American agriculture. The answer to that question may lie in the history of previous farm programs.

This essay will discuss the history of federal farm programs since their inception during the Great Depression.[1] It will explain and analyze the major farm program tools used since that time.[2] It will conclude by proposing a draft of the 2002 farm bill based on the lessons we should have learned from the history of past farm bills.

BOOM AND BUST

Modern federal farm programs may have had their beginnings during the Great Depression of the 1930s.[3] To fully understand these programs, however, one must first look at the golden age of American agriculture that occurred between 1909 and 1914.

Farmers prospered throughout the country during the golden age. Prices were high, weather conditions were favorable, and export demand increased. Farmers expanded their land holdings, bought new equipment and in many areas of the country built large homes. Farm income enjoyed a purchasing power relative to the non-farm economy that it would never have again.

Farmers received no government payments during this period. The golden age was the last period of American history to see a completely free market agricultural economy.

World War I gave an additional boost to the farm economy. However, the bottom fell out in 1920. The agricultural sector was thrown into a depression fully nine years before the rest of the nation.

With the end of the war, export demand shriveled. Farm prices collapsed. On the Great Plains, farmers plowed up millions of acres of native grass to create new cropland. In doing so, farmers attempted to increase production in order to offset declining prices. They succeeded only in creating larger surpluses that drove prices even lower. Farm income declined precipitously.

The worst was yet to come. When the decade changed, so did the

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1. This essay has its beginnings in farm policy courses I taught at the University of Arkansas Law School and in a series of articles I wrote for the *Scottsbluff, Nebraska, Star-Herald* during a long, lonely winter on the High Plains. The articles were published in the winter of 2000 and the spring of 2001.

2. *See* R.D. KNUTSON ET AL., POLICY TOOLS FOR U.S. AGRICULTURE (Agricultural and Food Policy Center 1986) for a detailed description of the technical aspects of most of the federal farm programs discussed in this essay.

3. *See* MURRAY BENEDICT, FARM POLICIES OF THE UNITED STATES: 1790-1950 (Twentieth Century Fund 1953), and M.R. BENEDICT AND O.C. STINE, THE AGRICULTURAL COMMODITY PROGRAMS (Twentieth Century Fund 1956) for excellent, exhaustive studies of the early history of federal farm programs. *See also* M.C. HALLBERG, POLICY FOR AMERICAN AGRICULTURE: CHOICES AND CONSEQUENCES (Iowa State University Press 1992), a well known text on the history and economics of federal farm programs.

weather. The early 1930s brought drought and the Dust Bowl. On the high plains, dark clouds forced motorists to turn on their headlights at midday, and dirt piled high over fence lines and farm buildings. Livestock and people died during the storms. In some areas, no significant rain fell for several years. Crops withered, and productive topsoil was blown away.[4]

Public officials spent most of the 1920s debating what was to become known as the farm problem. Little action was taken, and farmers saw no relief in sight. One proposed solution was the McNary-Haughen bill.[5]

The bill would have created a two price system for agricultural commodities. A fair price would be established for commodities sold in the United States. Surplus commodities would be sold on the world market, presumably at a lower price, by a government corporation. President Coolidge vetoed this bill twice. The two price approach would later be used extensively by the European Union and by the United States in its peanut program. This type of farm program is now generally condemned by the World Trade Organization (W.T.O.).

In 1929, at the urging of President Hoover, Congress enacted the Agricultural Marketing Act.[6] The legislation created the Federal Farm Board and directed the Treasury to loan the Board $500 million. The Board in turn made loans to government corporations that purchased surplus commodities in an effort to stabilize prices at higher levels.

The Board also loaned money to cooperatives and authorized them to use the money to make loans to their members at 3-1/2% interest. The cooperatives were to regulate farmers' production and market commodities through centralized associations that eliminated competition between cooperatives. This would hopefully result in lower production and higher prices.

The Agricultural Marketing Act of 1929 was generally a failure. Its timing was bad. The stock market crashed that year, and the rest of the nation joined farmers in the Depression. The government corporations purchased commodities but were unable to resell them to repay the Farm Board loans. Surpluses continued, and prices fell further. Farmers joined cooperatives, and new cooperatives were formed. However, the cooperatives were unable to significantly curtail production or reduce competition. The program was eventually abandoned.

THE NEW DEAL BEGINS

President Roosevelt was elected in 1932, and New Deal legislation was quickly passed by Congress including the Agricultural Adjustment Act of 1933.[7] Despite being declared unconstitutional by the Supreme Court in 1936,[8]

4. JOHN STEINBECK, THE GRAPES OF WRATH (Viking Press 1939).

5. S. 2012 and H.R. 5563, 68th Cong. (1st Session 1924). Similar legislation was introduced in 1925, 1926, 1927 and 1928.

6. Pub. L. No. 10, 46 Stat. 11 (1929).

7. Pub. L. No. 10, 48 Stat. 31 (1933).

the 1933 Act would radically change federal farm policy and would provide a basis for federal farm programs that followed through the rest of the century.

The first modern farm bill was the Agricultural Adjustment Act of 1933. It was quickly followed by the Soil Conservation and Domestic Allotment Act of 1936[9] and the Agricultural Adjustment Act of 1938.[10] The majority of farm programs enacted by Congress during the twentieth century have their origins in these three pieces of legislation. Later farm bills would adopt, discard, re-adopt or modify the basic farm policy tools found in these Acts.

The 1933 Act applied to wheat, cotton, corn, rice, tobacco, milk and hogs. In 1934, the Act was amended to add rye, flax, barley, grain sorghum, peanuts, sugar cane, sugar beets, and cattle. Potatoes were added in 1935.

The Act established the concept of price parity. Prices were to be set at a level that would give producers the same purchasing power that they enjoyed during the golden age of agriculture (1909-1914) and thereby equalize the purchasing power of farmers and nonfarmers.

Parity was to be achieved through a number of programs. The United States Department of Agriculture (U.S.D.A.) was granted the authority to enter into voluntary contracts with farmers to reduce crop acreages in exchange for rental and parity payments. It could also regulate marketing through agreements with processors, handlers, and producer associations. These contracts were to be funded by a processing tax. The contracts' acreage reduction provisions were intended to manage commodity supplies and thus reduce surpluses. The rental and parity payments provided income supports to producers.

Corn loans were established for the first time. These nonrecourse loans were essentially the same as today's nine month commodity loans. Loans are a price support tool. Since farmers can forfeit the corn rather than repay the loan, corn prices will generally not fall below the loan rate. However, recent farm legislation, including the current 1996 farm bill, has allowed farmers to repay commodity loans at the world price of the commodity rather than at the loan rate. This has reduced the amount of corn and other commodities forfeited to the federal government, but it has also reduced the effectiveness of commodity loans as price supports.

The 1933 Act paid farmers to plow up 10 million acres of cotton and to slaughter 6.5 million hogs on an emergency basis. The later program was controversial. The media dubbed it the "killing of little pigs" despite the fact that the meat went to relief programs. Both programs were intended to reduce surpluses and raise prices for these commodities. They represent other examples of supply management programs.

The Act also created the Commodity Credit Corporation (CCC). The CCC is still a major player under current farm legislation. The U.S. Supreme

8. United States v. Butler, 297 U.S. 1, 56 S.Ct. 312 (1936).
9. Pub. L. No. 461, 49 Stat. 1148 (1936).
10. Pub. L. No. 430, 52 Stat. 31 (1938).

Court declared the 1933 Act unconstitutional in 1936 in the case of *United States v. Butler.*[11] The Court found that the Commerce Clause of the Constitution did not permit the use of a processing tax to regulate agricultural production. The Court also struck down other New Deal legislation leading President Roosevelt to propose a plan to increase the number of justices sitting on the Supreme Court. This was never implemented. Instead, Roosevelt was able to fill vacancies that soon occurred on the Court with justices who were more sympathetic to his programs.

However, the 1933 Act had done its job. Farm income in 1935 was 50% higher than in 1932. Twenty-five percent of this increase came from farm program payments.

MODERN FARM POLICY EVOLVES

Congress had to find a way around the Supreme Court's decision in *Butler.* The Court had particularly objected to the 1933 Act's funding mechanism, a tax on processors of agricultural commodities. The 1936 and 1938 Acts avoided this tax but kept many other provisions of the 1933 Act. The Supreme Court would eventually uphold the constitutionality of the 1938 Act in the famous case of *Wickard v. Filburn,*[12] ruling that the Commerce Clause did indeed allow the federal government to regulate agricultural production including crops grown for on farm use.

In the Soil Conservation and Domestic Allotment Act of 1936, Congress funded payments to farmers through general appropriations, and tied those payments to requirements that farmers shift production from soil depleting surplus crops to soil conserving legumes and grasses. Otherwise, the 1936 Act farm programs were similar to those found in the 1933 Act.

The 1936 Act was the first farm bill to condition receipt of farm program payments on compliance with soil conservation requirements. As well as overcoming a constitutional issue, the Act's conservation provisions addressed a serious environmental problem of the time. The worst years of the Dust Bowl were 1934, 1935 and 1936. The drought was horrific, and soil was being lost to wind and water erosion at alarming rates.

The 1936 Act had the dual objectives of reining in crop surpluses and controlling soil erosion. Future farm bills would continue to impose conservation requirements. The 1985 farm bill, for example, conditioned eligibility for program payments on requirements that included compliance with a soil conservation plan and with sod-buster and swamp-buster restrictions. The Act also created the Conservation Reserve Program.

The Act also had a third stated objective, the protection of consumers by assuring adequate supplies of food and fiber. Although it is hard to image now, despite commodity surpluses, many people starved to death during the Depression. Many others were severely malnourished. Over the years that

11. United States v. Butler, 297 U.S. 1, 56 S.Ct. 312 (1936).
12. Wickard v. Filburn, 317 U.S. 111, 63 S.Ct. 82 (1942).

followed, an alliance would form between farm state Congressmen and those representing poor inner city districts. The political trade off was inner city support for farm program payments to farmers in exchange for farm state support for food distribution programs such as food stamps, the school lunch program, and the Women, Infants and Children Program (WIC).

Finally, the 1936 Act introduced the concept of income parity. Farm income was to be supported, whether through price supports, supply management, conservation payments, or direct income supports, so that farmers per capita net income bore the same ratio to the per capita net income of nonfarmers as it did during the period between 1909 and 1914.

Economic conditions improved for some farmers in 1935 and 1936. Dust Bowl farmers, however, saw the worst of the drought during these years. Then the 1938-1939 recession wiped out many of the gains of the preceding years. In those parts of the country that did get rain, farmers continued to overproduce. Export demand declined, and farm prices fell 20% from 1938 to 1940.

Secretary of Agriculture Henry Wallace saw the problem as one of excess farm population. Too many farmers were producing too much food. He advised Eleanor Roosevelt in 1939 that there were 400,000 to 500,000 more births than deaths on American farms each year. In 1940, the farm population was 30.5 million. The current U.S. farm population is under two million and continues to decline. Yet, in the year 2001, we are again faced with surpluses and low prices.

THE 1938 ACT

Against this backdrop, Congress passed the Agricultural Adjustment Act of 1938. The Act built upon and expanded the farm programs started in the 1933 and 1936 Acts. One new provision in the 1938 Act was the marketing quota. Quotas could be applied to corn, cotton, rice, tobacco, and wheat.

Marketing quotas were mandatory if approved by two-thirds of the producers in a referendum called by the secretary of agriculture following his determination that supplies of that crop would exceed a "normal supply."[13] Quotas were determined by a national allotment broken down by state, county, and farm. Amounts sold by a farmer in excess of his or her quota were taxed at a rate so high as to essentially confiscate the excess commodity. Also, farmers were not permitted to use crops exceeding their quotas to feed livestock on their own farms.

The 1938 Act refined the non-recourse loan program. Loan rates were set below parity prices with loan rates reduced as surpluses accumulated. Loans were mandatory for corn, wheat, and cotton, and for other commodities at the discretion of the Secretary. The loans were a key component of the Administration's ever-normal granary plan. They established a floor for

13. Pub. L. No. 430 § 301(b)(10)(A)-(B), 52 Stat. 31, 41 (1936).

commodity prices and provided financing to farmers while they held supplies until there was a market for them.

The Act also provided parity payments to farmers. The amount of the parity payment was the difference between the market price actually received by the producer and the higher parity price for the commodity. This was similar to the target price and deficiency payment system used in the 1980s and early 1990s under later farm legislation. Both types of payments are income supports to farmers.

In addition, farmers who converted land from soil depleting crops to soil conserving crops could receive conservation payments. This program was taken from the 1936 Act.

The 1938 Act established the first crop insurance program. Initially the program was limited to wheat. The Act also increased the use of state and local committees to administer U.S.D.A. programs at the local level.

The Act provided farmers with a needed infusion. In 1939, 35% of net cash income from crop and livestock sales came from direct government payments to producers. Farm program payments likely prevented a more drastic reduction in farm income from occurring during this period.

It is sobering to note that recent reports suggest that 45% of 2001 farm income in Nebraska will come from farm program payments of one type or another. Similar percentages hold for other farm states.

WAR ENDS THE DEPRESSION

World War II brought an end to the Great Depression and a return of prosperity to American farmers. The war did not end the federal farm programs initiated during the 1930s. However, the objectives of those programs changed to meet the needs of a new agricultural economy created by the war.

The United States entered the war with crop surpluses, but the war disrupted agricultural production in Europe and Asia and increased demand for agricultural products, both in this country and abroad. Demand for farm products began to exceed supply. This caused both rising prices and food shortages. Congress passed a series of emergency farm bills from 1941 to 1944 designed to encourage greater production of certain crops required by our troops and allies while keeping food prices affordable for consumers at home.

The legislation retained the nonrecourse commodity loans created by the farm bills of the 1930s and kept loan rates high to support commodity prices between 80 and 90% of parity. Loans were available for the basic commodities, corn, cotton, wheat, rice, tobacco, and peanuts, and for nonbasic commodities, manufactured milk, butterfat, chickens, eggs, turkeys, hogs, dry peas, dry beans, soybeans for oil, flaxseed for oil, peanuts for oil, American-Egyptian cotton, Irish potatoes, and sweet potatoes.

However, the wartime legislation relaxed the penalties imposed by the 1938 farm bill on farmers who exceeded their acreage allotments if they

planted the excess land to crops required for the war effort. By 1943, marketing quotas were suspended for most crops.

The legislation also established production goals for certain commodities. For example, the 1942 goals included a call for an 8% increase in milk production, a 6% production increase for corn, and a 73% increase for dry peas. Support prices were raised to encourage farmers to meet these goals. In some areas of the country, support payments were reduced for farmers who failed to plant at least 90% of their share of the war crop goals.

To curb rapid inflation during the war, price and wage controls were imposed across the U.S. economy. The legislation, however, contained limitations on price controls for agricultural products. This was done by setting minimum prices for agricultural commodities as a percentage of parity. Farm state Congressmen fought with the Administration to get this linkage. By tying price controls to parity, they sought to avoid the precipitous decline of prices at the end of the war that had occurred at the end of World War I.

The wartime legislation sought to stabilize food prices through direct government payments to producers, processors, and importers. Farmers generally objected to these subsidies, perhaps because they wanted consumers to become accustomed to paying higher prices, which would help sustain those prices in the future. The federal government also bought and sold commodities in an effort to control prices.

The legislation also dealt with food shortages. Purchase of certain nonperishable food products at the store required ration coupons.

POST-WAR FARM POLICY

At the end of World War II, the United States had one of the few working economies left in the world. Europe and Asia were in a shambles. Food supplies were inadequate for much of the planet. The United States undertook massive international relief projects such as the Marshall Plan for Europe.

Rationing was abandoned in the United States. For many products, this resulted in greater shortages than had existed during the war. Competition for limited supplies caused spiraling inflation. There was a sharp rise in food prices that was matched by wage increases. Net farm income rose.

Nevertheless, farmers and farm policy makers feared an agricultural recession like the one that followed World War I. Despite high commodity prices and farm incomes, the Agricultural Act of 1948[14] continued wartime price supports at 90% of parity for the basic commodities plus dairy products, hogs, chickens, and eggs.

However, the 1948 Act provided that beginning in 1950, flexible price supports would be implemented starting at 75% of parity for a "normal supply"[15] with a downward adjustment in years with surpluses and an upward

14. Pub. L. No. 897, 62 Stat. 1247 (1948).
15. *Id.* at §201(d)(10)(A)-(B), 62 Stat. 1247, 1251 (1948).

adjustment in short years. Price supports for nonbasic commodities would become optional. The Act also revised the parity formula to adjust for the fact that mechanization had reduced the cost of production of some commodities but not others. The Act retained nonrecourse loans and other price supporting mechanisms from the 1938 Act.

The flexible price support system was never implemented. Farm prices began falling in 1949, and fears of a postwar recession intensified. Congress replaced the 1948 Act with the Agricultural Act of 1949.[16]

THE 1949 ACT

The debate over the 1949 Act was contentious. Secretary of Agriculture Brannan proposed a new approach for farm subsidies. The Brannan plan would have replaced the parity price standard with an income standard designed to assure farmers a certain income level relative to the incomes of nonfarmers. Prices would be supported at income parity levels for basic commodities plus eggs, chickens, milk, hogs, beef cattle, and lambs. Producers of perishable commodities such as fruits and vegetables would be provided direct income payments.

A key provision of the Brannan plan placed a limit on the amount of income support that any farmer could receive. The limit would be determined by the size of a typical family farm. In later years, this concept would be championed by Marty Strange of Nebraska's Center for Rural Affairs and other family farm advocates.[17]

The 1949 Act represented a defeat for the Brannan plan and a victory for large commercial farmers who wanted high, inflexible price supports. The Act supported basic commodity prices at 90% of parity for 1950 and between 80 and 90% of parity for 1951 if producers did not reject marketing quotas for that year. Mandatory price supports for certain nonbasic commodities were set between 60 and 90% of parity. The Act allowed for optional price supports for other nonbasic commodities.

The Act also provided for supply management through the use of acreage allotments and marketing quotas. Price supports were to be implemented by nonrecourse loans and other mechanisms contained in the 1938 Act. The 1949 Act further amended the price parity formula so as to raise the support price levels. For example, wages of hired farm labor were now to be included with the cost of items purchased by farmers, and wartime subsidy payments were to be used in determining farm gate commodity prices even when those payments were not actually received by the farmers.

The 1949 Act amended and supplemented the 1938 Act. As stated at the beginning of this essay, the 1938 and 1949 Acts are still our permanent farm

16. Pub. L. No. 439, 63 Stat. 1051 (1949).

17. MARTY STRANGE, FAMILY FARMING. A NEW ECONOMIC VISION (University of Nebraska Press 1988).

legislation. Should Congress fail to enact a new farm bill in 2002, these two Acts would go back into effect.

THE SURPLUS PROBLEM OF THE 1950S

Although farm prices did begin to fall in 1948, the advent of the Korean War in 1950 deferred the possible recession as the war increased demand for agricultural products at home and abroad. Congress passed the Defense Production Acts of 1950, 1951, and 1952 to adjust U.S. farm programs to meet wartime needs.[18]

These Acts continued price supports for basic commodities at 90 percent of parity through 1954. Parity prices were calculated both under a new formula and under the formula from the 1949 Act with the highest price being used. Allotments and marketing quotas for wheat, rice, corn, and cotton were eliminated for 1951 and 1952.

As it turned out, the Korean War only postponed the day of reckoning for U.S. farm policy. By 1954, commodity surpluses were expanding, government stocks of wheat, feed grains, and cotton were growing rapidly, and exports were flat. Hybrids and agricultural chemicals developed after World War II increased crop yields dramatically. This new technology, combined with high price supports, encouraged farmers to grow even more of the surplus crops.

Congress attempted to address the surplus problem by passing two statutes in 1954. The Agricultural Act of 1954 authorized U.S.D.A. to use flexible price supports for the basic commodities.[19] Prices would be supported at between 82.5 and 90% of parity in 1955 and between 75 and 90% beginning in 1956. Nonrecourse loans were to be used as the principal price support tool. Within these ranges, U.S.D.A. could reduce price supports as surpluses increased and increase supports as they declined. Congress and the Administration hoped that farmers would reduce production of surplus commodities as price supports were lowered.

Congress also passed legislation known as Food for Peace.[20] Public Law 480 is still with us today in modified form. It permits the sale of surplus agricultural commodities to foreign countries for nonconvertible foreign currencies or on other concessional terms that would be unacceptable in normal commercial transactions.

Public Law 480 has three major sections. Title I of the Act permits sales to foreign countries at low interest rates and gives these countries up to 40 years to pay for the commodities.[21] Title II authorizes emergency food aid to

18. Defense Production Act of 1950, Pub. L. No. 774, 64 Stat. 798. Defense Production Act Amendments of 1951, Pub. L. No. 96, 65 Stat. 131. Defense Production Act Amendments of 1952, Pub. L. No. 774, 66 Stat. 798.

19. Pub. L. No. 690, 68 Stat. 897 (1954).

20. Agricultural Trade Development and Assistance Act of 1954, Pub. L. No. 480, 68 Stat. 454 (1954).

21. *Id.* at §§ 101-109, 68 Stat. 454, 455-57 (1954).

starving countries,[22] and Title III allows assistance to foreign nations in purchasing U.S. agricultural commodities as part of a multi-year development program.[23]

Public Law 480 has two basic functions. The first is as a foreign policy tool to provide humanitarian aid and economic development assistance to underdeveloped nations. The second is to expand demand for U.S. agricultural commodities abroad. P.L. 480 helped increase commodity exports from $449 dollars in 1952 to $1.9 billion in 1957. Since then, P.L. 480 sales have been in the $1 to 2 billion range. Some parts of P.L. 480 may now run afoul of W.T.O. restrictions on export subsidies.

Despite the ultimate success of P.L. 480, surpluses continued to plague the country in 1956. As surpluses rose, net farm income began to decline. Trying a new approach, the Agricultural Act of 1956 attempted to control surpluses by paying farmers to take cropland out of production and put it into a Soil Bank.[24]

The Soil Bank had two parts. The first was the Acreage Reserve program that operated in 1956, 1957, and 1958.[25] Farmers were paid to convert acreage used to grow basic commodities to conserving uses such as grass or trees. Twenty-one million acres were enrolled in the Acreage Reserve in 1957.

The second part of the Soil Bank was the Conservation Reserve.[26] This program was available to all farmers, not just those who grew basic commodities. Whole farms could be banked under the program. Farmers contracted with U.S.D.A. to put their land into conserving uses for periods of up to ten years.

The Soil Bank program had mixed success. Substantial amounts of land were removed from production. However, farmers who did not enroll their entire farms in the Soil Bank increased production on their remaining acres. Per acre yields continued to increase through the 1950s and 1960s as the result of new seeds, increased use of commercial fertilizers, and other factors. The whole farm enrollment provisions of the Soil Bank were criticized by farm communities and input suppliers that lost business from those farms. Taxpayers complained about the high cost of the program. The Conservation Reserve program continued until 1972 but was not actively promoted by U.S.D.A. after 1959. This program should not be confused with the Conservation Reserve Program (CRP) under our current farm legislation.

The Soil Bank program was primarily a supply management program. However, it also was a conservation program intended to reduce soil erosion. The country had experienced drought and a mini-Dust Bowl during the early 1950s. The Soil Bank helped stabilize some of the land that had begun to blow

22. *Id.* at §§ 201-204, 68 Stat. 454, 457-58 (1954).
23. *Id.* at §§ 301-305, 68 Stat. 454, 458-59 (1954).
24. Pub. L. No. 540, 70 Stat. 188 (1956).
25. *Id.* at §§ 103-106, 70 Stat. 188, 189-91 (1956).
26. *Id.* at §§ 107-126, 70 Stat. 188, 191-98 (1956).

and wash away as farmers temporarily forgot the lessons they learned during the Depression.

AMERICA CHANGES IN THE 1960S

By 1961, surpluses had reached crisis proportions. Prices were far below the loan rates on nonrecourse crop loans, and farmers routinely forfeited their stored crops rather than repay the loans. The cost to the government of storing a bushel of forfeited grain exceeded its value.

Congress and the Kennedy Administration saw the cause of the problem as high, parity-based support prices. Accordingly, Congress enacted a series of farm bills from 1961 through 1965 that reduced price supports to near world equilibrium prices. This assured that farmers would not forfeit their crops but would instead sell them on the open market, either domestically or internationally.

To help farmers deal with lower prices, Congress created new income support and land diversion payment programs. The income support program made production payments to farmers based on the difference between the old, higher support price and the new, lower support price. For example, between 1962 and 1963, the loan rate for corn was dropped from $1.20/bushel to $1.07/bushel. U.S.D.A. then paid farmers a production payment of 13 cents/bushel for the farmers' normal corn production. Normal production was calculated by multiplying a farmer's allotment acreage for a crop times the farmer's established yield for that crop.

U.S.D.A. also paid farmers to withdraw land from production. Unlike the old marketing quotas, these new programs were completely voluntary. However, to receive income support and land diversion payments, and to be eligible for crop loans, farmers had to agree to divert a certain percentage of their cropland to conservation uses such as grass or trees.

The U.S. population had become increasingly urbanized since World War II. The Kennedy and Johnson administrations believed that politically such a population would not support continuing high farm program payments, nor would it support significant increases in food prices. In addition to the price and income support changes, the administrations pushed for new programs to feed the poor and to expand exports. Expanded exports would help keep farm prices up and subsidies down. Domestic food programs would mitigate the negative effects of higher food prices.

During this period, Congress enacted the Food Stamp program that is still active today. The passage of this law was facilitated by a coalition of farm state legislators and inner city legislators. The inner city legislators were willing to support extensive farm programs if the farm state legislators would support their food relief and other social welfare programs. This coalition would secure the enactment of other farm bills and social welfare legislation during the 1970s, 1980s, and 1990s.

FENCE ROW TO FENCE ROW

By 1970 international demand for U.S. agricultural products had begun to increase, and surpluses were declining. The Agricultural Act of 1970, enacted during the Nixon administration, largely continued and refined the 1960s' farm programs.[27] Income supports were retained together with lower price supports. Land diversions, now called "set asides,"[28] were still required to receive program payments.

The 1970 Act abolished marketing quotas and acreage allotments for wheat, cotton, and feed grains although it retained the concept of base acres for the purpose of computing support payments.

The Act added one new important provision. It imposed a payment limitation on the receipt of farm program benefits. This provision capped benefits at $55,000 per crop per producer. Payment limitations would be included, and modified by, most later farm legislation.

The early 1970s saw unprecedented world demand for U.S. agricultural products. The United States concluded a massive grain deal with the Soviet Union in 1972. U.S. and world grain levels dropped to extremely low levels. The surpluses of the 1950s and 1960s were gone. The resulting scramble for limited supplies drove grain prices to high levels in 1973 and 1974. Oil prices also jumped with the Arab oil embargo of 1973.

Famine hit parts of Africa and Asia. Drought and high fertilizer prices curtailed production in these regions, and millions died. Secretary of Agriculture Butz announced that it was now time to get government out of agriculture. He also exhorted farmers to plant "fence row to fence row" and to expand their operations in order to meet world demand. Farm credit was made available on favorable terms to finance such expansion.

Congress passed the Agricultural and Consumer Protection Act in 1973.[29] The Act extended most of the provisions of the 1965 and 1970 Acts. Payment limitations, however, were reduced from $50,000 per crop per producer to $20,000 per crop per producer. This limitation proved easy to avoid by subdividing farms among family members to create additional producers.

The 1973 Act also added the concept of the target price, referred to by some economists as a "what ought to be price." Target prices were used to calculate income support payments to farmers. These income supports, called deficiency payments, were determined by subtracting the actual price received by the farmer for the crop from the target price. Target prices were not based on parity but on averages of past crop prices. They were established for the basic commodities such as cotton, wheat and feed grains, but not for soybeans. Target prices remained part of federal farm programs until 1996.

However, from 1974 through 1976, market prices exceeded target prices, and commodity programs became nonoperational. There were also no set

27. Pub. L. No. 91-524, 84 Stat. 1358 (1970).
28. *Id.* at § 101(3), 84 Stat. 1358, 1359 (1970).
29. Pub. L. No. 93-86, 87 Stat. 221 (1973).

asides during this period. Food prices in the U.S. rose significantly. There were some temporary shortages. Beef, for example, was in short supply for several weeks. Some families reportedly substituted horsemeat in their menus. The 1973 Act contained no reserve stock programs to stabilize prices.

Lower income people in the U.S. felt the pinch of higher food prices. Expenditures for the Food Stamp program increased significantly. Farmers, on the other hand, reaped the benefits of the higher prices. They increased production and bought more land and equipment. Large operators often bought out their smaller neighbors.

CLOUDS ON THE HORIZON

But farm prosperity would not last forever. By 1976 the export boom had peaked, and the farm economy weakened. The cost of agricultural inputs, particularly fuel and fertilizer increased, and net farm income declined.

Farm prices fell from their record highs in 1974 and 1975. In 1980, U.S. grain exports declined sharply as the result of the U.S. grain embargo against the Soviet Union following its invasion of Afghanistan.

The economic downturn caused many farmers to take to the streets. Between 1977 and 1980, the American Agricultural Movement (A.A.M.) organized demonstrations to encourage Congress to address the agricultural recession. These included the well-known Washington tractorcades.

The A.A.M. demanded that crop prices be supported at 100% of parity. It attempted to organize a farmers' strike during which farmers would not plant any crops. This effort quickly failed. The A.A.M. tractorcades greatly annoyed Washington commuters and did not convince Congress to return to the parity standards of the 1938 and 1949 Acts. However, they did achieve some legislative relief.

Congress enacted the Food and Agriculture Act in 1977[30] and the Emergency Assistance Act in 1978.[31] These Acts largely re-adopted the farm programs and policies found in the 1965, 1970, and 1973 farm bills. However, the 1977 Act increased target prices and loan rates modestly, and the 1978 Act did so again.

Payment limitations were increased in increments – to $40,000 per farmer in 1978, $45,000 in 1979, and $50,000 in 1980 and 1981. The 1977 Act also created the Farmer Owned Reserve (FOR).[32] The FOR permitted three-year extensions of Commodity Credit Corporation nonrecourse loans. Ownership of the stored commodities remained with the farmer until the expiration of the loan extension or until the price of the commodities reached a trigger price, whichever occurred first. The FOR was intended to stabilize commodity prices by spreading sales over a longer timeframe and to create a grain reserve to draw upon in times of shortage.

30. Pub. L. No. 95-113, 91 Stat. 913 (1977).
31. Pub. L. No. 95-334, 92 Stat. 420 (1978).
32. Pub. L. No. 95-113 § 110, 91 Stat. 913, 951-953 (1977).

The farm situation improved somewhat in 1978 and 1979. As a whole, the 1970s were a prosperous decade for farmers and ranchers. Farmland values increased by over 200% during this period. However, the agricultural bubble would burst in the 1980s and bring hard times to farm country the likes of which had not been seen since the Great Depression.

THE AGRICULTURAL DEPRESSION OF THE 1980S

By 1981, U.S. agriculture was in deep trouble. Agricultural exports were declining at the same time farmers were increasing production. Farm debt rose from $50 billion in the early 1970s to $200 billion in the early 1980s. Land values that had increased steadily in the 1970s were now falling. Commodity prices and net farm income were also declining.

Two government policies made the situation worse. The Federal Reserve Board attacked inflation by raising interest rates, and Congress cut taxes without cutting government expenditures thus causing massive budget deficits. These policies hurt farmers by strengthening the dollar, which in turn made U.S. exports less competitive, and by increasing farmers' borrowing costs.

Congress passed the Agriculture and Food Act in 1981.[33] The 1981 Act contained all the major farm program tools of the 1970s - target prices, deficiency payments, nonrecourse loans, acreage reduction programs, the farmer owned reserve, Pub. L. No. 480 and the food stamp program.

The 1981 Act set high nonrecourse loan rates. The loan rates established a floor for commodity prices below which prices would not fall. High prices in turn made U.S. commodities less attractive abroad and further discouraged exports. U.S. exports were also hurt by expanding agricultural production in other countries. Agricultural exports would decline from $43.8 billion in 1981 to $26.3 billion in 1986.

The year 1982 brought bumper crops and record surpluses. CCC inventories reached new highs. Government payments to farmers had been less than a billion dollars in 1975 and just over $1 billion dollars in 1980. Payments jumped to $9.3 billion in 1983 and $10 billion in 1986. The average payment per farm was $320 in 1975. By 1983 it was $3,922.

In 1983, the federal government addressed the crisis by implementing a Payment-in-Kind or PIK program. The government made PIK payments to farmers in the form of certificates redeemable by U.S.D.A. in stored commodities. Farmers could redeem the certificates and sell the grain or could simply sell the certificates to grain dealers. In return, the farmers were required to retire part or all of their land from the production of those commodities.

The PIK program was successful in reducing grain carry-overs in 1984 but at a huge price. Government cash outlays for the program were $18.5 billion in fiscal 1983. In addition, the PIK payments themselves were valued at $10 to $11 billion for a total of approximately $28 to $30 billion in 1983 alone. Also,

33. Pub. L. No. 97-98, 95 Stat. 1213 (1981).

input suppliers and farm community merchants did not like the program because farmer spending declined markedly. Some farmers planted no crops at all that year.

The PIK program would not solve the agricultural crisis of the 1980s. The worst was yet to come.

By 1985, the U.S. farm economy was in a full-blown depression. Farmers filed for bankruptcy in record numbers. Farm foreclosures reached levels not seen since the 1930s. Businesses dependent on agriculture suffered. Sixty-eight agricultural banks failed in that year alone. Equipment dealers and chemical suppliers went under. Migration from the countryside increased dramatically. Between 1981 and 1985, the state of Iowa lost 33,000 people. Commodity prices stayed low, but export demand did not increase.

Congress responded with a new farm bill. The Food Security Act of 1985 was more than a thousand pages long.[34] The Act retained all the old policy tools, target prices, deficiency payments, price support loans, and acreage reductions, and added new ones.

The 1985 Act kept target prices high in order to protect farm income. Loan rates, however, were gradually reduced in an attempt to lower commodity prices and regain lost exports. For the first time, loans were made available for soybeans.

Acreage reduction programs were increased to control supplies and reduce the amount of subsidies paid by the government. These included a new acreage reduction program called 50-92. This voluntary program permitted wheat and feed grain producers to plant as little as 50% of their crop yet still receive deficiency payments on up to 92% of their established program yields for that crop. The 50-92 program was expanded to a 0-92 program in 1987. Farmers could then receive deficiency payments on 92% of their program yields without planting any crop at all.

The 50-92 and 0-92 programs *decoupled* payments to farmers from the amount of their production. The decoupling concept would be expanded further in the 1996 farm bill.

The 1985 Act contained other provisions designed to increase agricultural exports. The Act gave the secretary of agriculture authority to lower loan rates on nonrecourse loans when crop surpluses reached a certain level. Lower loan rates would have the effect of lowering commodity prices. This in turn would make these commodities more attractive on the world market and reduce the quantity of commodities forfeited to the government. Government storage costs for forfeited commodities were reaching astronomical proportions at the time.

The Act authorized several billion dollars for export enhancements. This program paid trading companies to lower commodity prices to select U.S. overseas customers, particularly in the European Union. Payment was usually in form of government owned commodities. Again, the purpose of this

34. Pub. L. No. 99-198, 99 Stat. 1354 (1985).

program was to move more U.S. grain overseas and reduce forfeitures to the government.

The Act also introduced the concept of "marketing loans,"[35] initially limited to rice and cotton. Producers were permitted to repay marketing loans at less than the loan rate. The repayment rate was set at or near the world price of the commodity in order to promote export sales. The repayment rate in effect became the new price floor. The difference between the loan rate and the repayment rate is an income subsidy to the producers. Marketing loans were expanded in later farm bills to include wheat, feed grains, and other commodities and are still with us today in the 1996 farm bill.

The 1985 Act included new, major conservation programs. These programs were at least partially in response to soil erosion problems created during the 1970s when farmers put many acres of marginal and highly erodible farmland into production to meet perceived world food demand. The new programs included the Conservation Reserve Program (CRP), the sod-buster and swamp-buster programs, and conservation compliance.

The CRP program pays farmers annual rent on multi-year contracts to take highly erodible cropland out of production. The program, in modified form, is still in place today. Swamp-buster denies farm program benefits to farmers who convert wetlands to cropland. Sod-buster denies such benefits to farmers who convert highly erodible grasslands or woodlands to cropland without using appropriate soil conservation methods. Conservation compliance conditions the receipt of farm program benefits on producers implementing approved soil conservation plans.

The 1985 Act programs worked but at a substantial cost to taxpayers. By 1987 exports had increased and farmland values were rising. In 1986 alone, however, the federal government had spent $26 billion on farm and export subsidies. There was a growing consensus in the United States that our farm policy required a major overhaul.

Also, in the 1980s, the United States was in the middle of negotiations in the Uruguay Round of the General Agreement on Tariffs and Trade (G.A.T.T.). This round would eventually lead to the creation of the W.T.O. The Reagan Administration saw expanded trade as a way out of the expensive U.S. farm policy dilemma. To accomplish that objective, it pushed for a reduction of agricultural subsidies by all countries. This meant, of course, that the United States would eventually have to reduce or eliminate some of its own farm subsidies. Our G.A.T.T. commitments would influence changes to U.S. farm policy made in the 1990 and 1996 farm bills and will likely influence the type of farm programs enacted in the upcoming 2002 farm bill.

A RETURN TO PROSPERITY?

The agricultural depression of the 1980s finally ended. Farm income rose steadily between 1987 and 1989. Agricultural exports increased from $26

35. *Id.* at §§ 501, 602, 99 Stat. 1354, 1407-18, 1427-29 (1985).

billion in 1986 to $40 billion in 1990. Part of the nation suffered a serious drought during the summer of 1988. The drought reduced supplies, which in turn drove commodity prices up and deficiency payments down. Farm program costs dropped from a high of $26 billion in 1986 to $6.5 billion in 1990. Congress nevertheless found it necessary to appropriate $3.9 billion in special drought relief payments in 1989 and additional drought relief funds in 1990.

During the Reagan Administration, the country had incurred monumental budget deficits. The incoming Bush Administration and Congress were committed to major reductions in government spending to bring the deficits under control. Government payments still constituted a substantial portion of farm income. The Administration proposed that $13.6 billion of spending cuts come from federal farm programs. Also, Congress had passed Gramm-Rudman in 1987.[36] That law placed ceilings on government spending to force deficit reductions.

Much of the debate over the 1990 farm bill focused on budget issues. Congress was also concerned about the limitations placed on farm subsidies by the newly created W.T.O. Maintaining high levels of exports was generally agreed to be important to keep farm income up and farm program payments under control. Yet, compliance with W.T.O. requirements by the United States was necessary if other countries were to be expected to reduce their trade barriers to allow more U.S. products into their markets.

The farm bill enacted by Congress in 1990 was actually passed as two laws, the Food, Agriculture, Conservation and Trade Act of 1990[37] and the Agricultural Reconciliation Act of 1990.[38] The new legislation kept the nonrecourse loan, target price, deficiency payment, and acreage reduction programs in the 1985 farm bill.[39] However, it reduced loan rates to fairly low levels and froze target prices. For example, the target prices for wheat and corn were frozen at $4 per bushel and $2.75 per bushel respectively. Program yields used for calculating deficiency payments were also frozen.

Marketing loans, which allow producers to repay nonrecourse commodity loans at the world price rather than at the higher loan rate and pocket the difference between the world price and the amount of the loans they had received, were expanded by the 1990 legislation. Marketing loans were made mandatory for rice, upland cotton, soybeans and other oilseeds. The legislation gave the secretary of agriculture discretion to implement marketing loans for wheat and feed grains.

The 1990 legislation authorized a new farm program tool, the loan

36. The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, 101 Stat. 754.

37. Pub. L. No. 101-624, 104 Stat. 3359 (1990).

38. Pub. L. No. 101-508, 104 Stat. 1388 (1990).

39. *See* UNITED STATES DEPARTMENT OF AGRICULTURE, ECONOMIC RESEARCH SERVICE, THE 1990 FARM ACT AND THE 1990 BUDGET RECONCILIATION ACT: HOW U.S. FARM POLICY MECHANISMS WILL WORK UNDER THE NEW LEGISLATION (Misc. Pub. No. 1489 Dec. 1990).

deficiency payment or LDP (not to be confused with deficiency payments related to target prices). Farmers who did not place their crops under government loan at harvest could receive a loan deficiency payment equal to the amount of the marketing loan gain received by farmers who did take out loans. For example, if a farmer made an extra 20 cents per bushel by selling corn under loan at the market price and then repaying the loan at that market price rather than at the loan rate, the loan deficiency payment for farmers who did not take out loans would also be 20 cents per bushel. Farmers who took LDP's instead of loans saved the government the administrative costs of processing the loans and monitoring crops in storage.

The legislation also expanded the acreage reduction program (ARP). As under the previous farm bill, farmers were required to set aside a certain percentage of their land, and plant it to grass or other conserving uses, in order to remain eligible for deficiency payments and other benefits for the program crops grown on their remaining land.

Under the new farm bill, farmers were also denied deficiency payments for an additional 15% of their land known as flex acres. However, they could plant a non-program crop on these flex acres without losing any program base acres as would have occurred under previous farm bills. They could also plant non-program crops on another 10% of their land, referred to as optional flex acres, again receiving no deficiency payments on such crops but not losing base either. Not losing base acres meant that farmers would remain eligible to receive deficiency payments and other benefits on program crops grown on those acres in the future should the set aside provisions be reduced or eliminated.

These flexibility provisions were intended to reduce production of surplus program crops and to reduce government outlays for deficiency payments and other farm program benefits. The hope was that farmers would make their planting decisions based on market forces rather than on the availability of program payments. Flex acres, like other set aside programs in the past, were only partially successful. The payments available for program crops such as wheat, corn and cotton continued to drive many planting decisions. Slippage continued to be a problem. Farmers put their worst acres into ARP and flex acres and increased the yields of program crops on their best acres. The cost of federal farm programs remained higher than many thought acceptable.

The 1990 legislation also continued conservation programs established by the 1985 legislation, including the Conservation Reserve Program, and added new programs as well. These included the Wetlands Reserve Program, the Water Quality Incentive Program, and the Integrated Farm Management Program. The Conservation Reserve Program had enrolled 34 million acres by that time.

Finally, the 1990 farm bill changed the payment limitation rules. Deficiency payments and land diversion payments were capped at $50,000. A $75,000 payment limitation was applied to marketing loan gains and loan deficiency payments. However, the law permitted a farming operation to be

divided into up to three separate entities, such as corporations and partnerships, with each entity entitled to its own payment limitations. This dramatically increased the amount of farm program benefits that large farms could receive by hiring a good lawyer to create the additional entities.

Good times came to American agriculture in the early 1990s. Farm exports approached $60 billion per year. Serious floods reduced U.S. production. Prices rose to record highs in 1995 and 1996 with corn briefly exceeding $5 per bushel and wheat $7 per bushel. Prices were so high that U.S.D.A. paid no deficiency payments on the 1995 crop. However, those farmers whose crops were destroyed by flooding did receive disaster assistance.

THE CURRENT FARM BILL

Congress was scheduled to enact a new farm bill in 1995 but could not agree on the form such legislation should take. A heated debate delayed passage of the Federal Agriculture Improvement and Reform Act until 1996.[40]

Many farmers and their representatives argued for continuation of existing farm programs on the theory that "if it ain't broke, don't fix it." The agricultural economy was good, farm program costs had declined substantially, and current farm policies seemed to be working.

Other farmers and Congressmen, lead by Pat Roberts of Kansas, demanded radical changes to U.S. farm policy. They argued that market forces rather than government programs were driving the current economic prosperity and that now was a good time to begin agriculture's transition to a total free market economy. Roberts' proposed legislation was dubbed "Freedom to Farm."

The 1996 farm bill reflected a number of compromises between the Roberts' faction and those who supported the status quo.[41] On balance, however, the Freedom to Farm forces got much of what they wanted. The Federal Agriculture Improvement and Reform Act made dramatic changes to longstanding farm programs, many of which had been around since the 1930s.

The Act abolished target prices and deficiency payments. It also terminated all supply management programs, including the acreage reduction program (ARP), the flex acreage requirements, the 50-92 and 0-92 programs, and the Farmer Owned Reserve.

The farm income support provided by target prices and deficiency payments was replaced with a seven-year series of contract payments, referred to as Production Flexibility Contract (PFC) or Agricultural Market Transition Act (AMTA) payments. Farmers who had participated in the wheat, feed grains, cotton or rice programs in any one the five preceding years were

40. Pub. L. No. 104-127, 110 Stat. 888 (1996).

41. *See* UNITED STATES DEPARTMENT OF AGRICULTURE, ECONOMIC RESEARCH SERVICE, PROVISIONS OF THE FEDERAL AGRICULTURE IMPROVEMENT AND REFORM ACT OF 1996 (Agric. Info. Bull. No. 729 Sept. 1996).

eligible to receive such payments. A one-time contract sign up was held in the summer of 1996. Ninety-nine percent of eligible farmers entered into PFCs.

Congress authorized $35.6 billion for contract payments, $5.56 billion for 1996, $5.4 billion for 1997, $5.8 billion for 1998, $5.6 billion for 1999, $5.1 billion for 2000, $4.1 billion for 2001, and $4 billion for 2002. Twenty-six percent of this amount was allocated to wheat, 46% to corn, 5% to sorghum, 2% to barley, 15% to oats, 12% to cotton, and 8% to rice.

An individual farmer's contract payment in a given year is calculated as follows: crop acreage base for the farm x 85% x 1995 farm program payment yield for the commodity for the farm x national annual payment rate for the commodity for that year = farmer's contract payment.[42] The national annual payment rate is determined by dividing the total amount authorized by Congress for the commodity for the year by the sum of all contract payment quantities for all farms in that year.

PFC eligibility is based on past production of program crops. However, receipt of PFC payments has been completely decoupled from current agricultural production. With certain expectations for fruits and vegetables, farmers receive PFC payments regardless of the crop they plant or whether they plant any crop at all. The land must be used for agricultural purposes, but such purposes include using the land for pasture and allowing it to lay fallow.

Contract payments are scheduled to end in 2002. The idea behind this key component of the 1996 farm bill is that these payments would provide farmers with money to assist in their transition to a free market economy and that no further payments would be made after 2002. However, Congress is unlikely to set farmers free in 2002. Indeed, during the first five years of the PFC period, Congress has supplemented regular PFC payments by an additional $13 billion. The transition has obviously not been going well.

The 1996 farm bill, through PFC contracts, expanded the concept of decoupling first seen in the form of the 50-92 and 0-92 programs in the 1985 bill. It also expanded the concept of planting flexibility found in the flex acre provisions of the 1990 farm bill. However, it did not completely decouple planting decisions from eligibility for farm program benefits nor was full planting flexibility really achieved.

The law retained nonrecourse loans, marketing loans, and loan deficiency payments (LDPs) from prior farm legislation. These programs, however, were only made available to farmers who grew program crops – wheat, feed grains, cotton, rice, and soybeans. As commodity prices declined in the late 1990s, marketing loan gains and LDPs became an important component of farm income. PFC payments were not enough to carry farmers over bad years. Thus, the availability of marketing loans and LDPs only for program crops pushed farmers to grow more of these commodities and fewer non-program crops that they were permitted to grow under their PFC contracts. This

42. *Id.* at §114, 110 Stat. 888, 901, 902 (1996).

contributed to program crop surpluses and low prices at the turn of the new century.

The 1996 farm bill also continued in modified form most of the conservation programs from the 1985 and 1990 farm bills. It revised the Conservation Reserve Program (CRP) to establish tougher eligibility requirements tied to conservation and environmental objectives and set a CRP cap of 36.4 million acres. It required conservation compliance by recipients of PFC payments. The farm bill established a new Environmental Quality Incentives Program (EQIP) with authorization for $1.3 billion in payments to farmers and ranchers to fund conservation and environmental improvements to their operations.

LESSONS TO BE LEARNED

What are the lessons to be learned from the history of federal farm programs? Here is what I have concluded from my reading of this history. These lessons in turn lead to my proposal for the 2002 Farm Bill.

LESSON 1: OVER TIME, PRICE SUPPORTS ALWAYS RESULT IN CROP SURPLUSES.

From their beginnings in the 1930s until 1990, federal farm programs relied heavily on price supports to subsidize U.S. agricultural production. Income supports were also used, and were expanded with the introduction of target prices and deficiency payments in 1973, but price supports were, with a couple of exceptions, kept high until the 1990 farm bill.

The primary price support mechanism has been the nonrecourse loan. Nonrecourse means that a farmer has the option of forfeiting the commodities that secure the loan to the government with no personal liability for the loan amount. Until marketing loan provisions were adopted in the 1985 farm bill, the loan rate on nonrecourse loans became the commodity price floor. Farmers could in effect always sell their grain for the loan amount.

The problem with high price supports is that over time the federal government becomes the buyer of more and more grain. Farmers keep increasing the production of program commodities because they are guaranteed acceptable prices. As surpluses accumulate in government storage, market prices fall well below loan prices, and the government is forced to sell the forfeited commodities at a loss or give them away through domestic and international aid programs.

These losses, and the government's storage costs, become expensive for the taxpayer. Also, no discipline is imposed on overproduction. Farmers have no incentive to cut back production when they are making good money growing price-supported crops.

Contributing to the problem was the fact that for many years only feed grains, wheat, cotton, and rice were eligible for nonrecourse loans. Soybeans

did not become eligible until 1985. Farmers had little incentive to grow alternative crops that did not have price supports.

LESSON 2: SUPPLY MANAGEMENT PROGRAMS HAVE NEVER BEEN COMPLETELY SUCCESSFUL IN REDUCING SURPLUSES AND RAISING PRICES.

Until 1996, most farm bills contained supply management programs of one type or another. These programs included acreage allotments, marketing quotas, the Soil Bank, acreage reduction programs (ARPs), the Farmer Owned Reserve, and flexible planting and fallow programs.

Supply management programs are an indirect type of price support. The theory is that by paying farmers to reduce production, surpluses will be eliminated, prices will rise, and government price and income support payments will decline by an amount greater than the cost of the supply management programs.

The problem is that supply management programs have not worked that well. Land is set aside, but total production continues to grow. The programs have not been able to keep up with agricultural technology. Since World War II, new hybrids, pesticides, and fertilizers have dramatically increased crop yields. More crops can be grown on fewer acres. The nation's ability to produce food has risen at a rate in excess of its population growth.

Also, slippage is a major problem. Farmers tend to idle their worst land, use extra inputs on their remaining land, and even bring new land into production to compensate for the production they lose on the land that they set aside. A few years later a farmer may actually be producing more of a program commodity than he or she did at the beginning of the supply management program.

Another problem with supply management programs is that they cannot control foreign production. If U.S. farmers reduce production, there are other countries, like Brazil, Argentina, Australia, and Canada, that will be happy to increase their production to sell to U.S. customers.

World Trade Organization requirements make it easier for our competitors to sell to both our foreign and domestic customers; so does the globalization of commodity markets as witnessed by recent mergers of large agribusinesses. If Cargill, for example, cannot buy enough U.S. grain at a price it likes, it will simply look to suppliers in other countries.

LESSON 3: INCOME SUPPORTS TIED TO PRODUCTION CAN ALSO PRODUCE SURPLUSES.

The old target price, deficiency payment program and the current marketing loan and loan deficiency payment (LDP) programs are income support rather than price support programs. These programs pay farmers a certain amount per bushel or per pound above the price they have already received by selling their commodities on the open market. Such payments

support farmers' income by supplementing the prices they receive. They do not increase the price paid by the purchaser.

One advantage of income support programs is that commodities are sold on the open market and not forfeited to the government. The government avoids the costs of storing surplus commodities and selling or giving them away at a loss. Allowing commodities to be sold at world market prices increases exports.

The problem with these programs is that they still encourage overproduction. Only program crops, wheat, feed grains, soybeans, oilseeds, rice, and cotton, are eligible for payments. If income supports are high enough, farmers will increase their production of program crops and not grow crops for which there are no income supports. Also, these programs, like the price support programs, do not provide any support to livestock producers.

Programs providing high income support levels are expensive for taxpayers in years with bumper crops but limited export demand like the early 1980s and the late 1990s. Support payments increase dramatically as commodity prices fall. Low income support levels in such years, however, will drive farmers out of business unless there are profitable non-program crops to which they can switch.

It is difficult to predict good and bad crop years. Also, Congress and U.S.D.A. move slowly in changing farm programs and support levels. These factors, when combined with income supports based on the quantity of production, tend to lock farmers into inflexible patterns of production and reduce their ability to respond to market signals that would indicate a need to reduce production or switch crops.

The 1996 farm bill was supposed to change all this by decoupling income support payments from the quantity and type of production. The bill was only partially successful in doing so. Production Flexibility Contract (AMTA) payments are made without regard to actual production. With some exceptions, farmers can grow any crops, or no crops at all, and still receive the payments.

However, the 1996 farm bill kept nonrecourse loans, marketing assistance loans, and loan deficiency payments (LDPs) for the traditional program crops. It did not authorize such programs for alternative crops. Nor did it provide any equivalent income subsidies for livestock producers.

By providing larger income subsidies for program crops than for other crops or livestock, the 1996 farm bill encouraged farmers to keep growing the same crops they had been growing for years. By 2000, surpluses were again a major problem. Like other farm bills, the 1996 legislation interfered with the operation of a free market.

LESSON 4: WITHOUT EFFECTIVE PAYMENT LIMITATIONS, A FEW FARMERS RECEIVE THE MAJORITY OF FARM SUBSIDY PAYMENTS.

Payment limitations capping the benefits that can be received by any one farmer were first instituted in the 1970 farm bill. Farmers quickly learned to minimize the effect of these limitations by dividing their operations into multiple entities, each with its own payment limitation. Eventually this approach was incorporated into farm law as the three entity rule with each farm being allowed up to three payment limitations. Payment limitations have been increased in recent years, and, in 2000, the payment limitation on LDPs and marketing loan gains was effectively eliminated.

Weak payment limitations have produced startling results. Farm income subsidies to Nebraska farmers between 1996 and 1998 totaled almost $1.6 billion dollars. These subsidies went to 80,000 farmers in the state. However, $787 million, or 49%, of that amount went to 8,000, or 10%, of those farmers. The average payment to all recipients was almost $20,000. But, the average payment to farmers in the top 10% was $98,000, and the average payment to the bottom 90% was just over $11,000 for the three-year period. The top recipient got over $831,000 during that period. Similar figures apply in all farm states.

Clearly the biggest farmers are getting the lion's share of federal farm income support. Several questions must be asked. The first is why are we giving the most money to the farmers who need it the least, the large commercial operators.

The second is where does the medium-sized operation, the classic family farmer, fit into the picture. In every farm bill debate, Congressmen have universally extolled the virtues of the American family farmer as the justification for farm subsidies. If the purpose of farm legislation is indeed to support family farmers against the vagaries of weather and farm economics, should income supports be limited to just those farms?

The third question is how long will non-farm voters support farm programs if they come to the conclusion that such programs are mainly corporate welfare for large agribusinesses.

LESSON 5: AGRICULTURAL TRADE IS NOT ENTIRELY UNDER U.S. CONTROL.

U.S. agriculture has usually done best when agricultural exports are high. Two examples are the period just before World War I and the early 1970s. However, foreign trade involves many factors that cannot be completely controlled by producers or the U.S. government.

Our international trade agreements, particularly the North American Free Trade Agreement (N.A.F.T.A.) and the W.T.O., dictate what barriers foreign nations can and cannot impose against U.S. products. They also tell us what barriers we can impose against foreign products coming into the United States.

Most farmers will tell you that they favor free trade. They want the European Union and other nations to buy more U.S. agricultural commodities. However, some farmers are not so sure that they want to allow more foreign commodities into the United States. There is the rub. To sell more products in other countries, you need to allow foreign nations greater access to your markets.

Sugar beet and cane producers are in a particularly tough spot. World sugar prices are substantially lower than the price at which sugar is supported in the United States. Our tariff rate quota severely limits imports of foreign sugar. That tariff rate quota may eventually run afoul of our W.T.O. and N.A.F.T.A. obligations. Nevertheless, sugar producers are likely to endorse a protectionist trade policy for their commodity. Sugar producers who also grow corn or beans are likely to be a bit schizophrenic on trade issues.

Another factor the United States cannot completely control is the strength of the dollar versus other currencies. If the dollar is very strong, U.S. exports will not be competitive even in the absence of other trade barriers. Foreign purchasers will not buy U.S. products if their money will go further in another country.

A strong dollar will also increase imports of farm products into the United States. A good current example is lamb. Despite subsidies paid to U.S. lamb producers, Australia and New Zealand continue to export substantial amounts of lamb to our country. The Australian dollar at the moment is worth approximately 52 cents U.S. giving that nation a tremendous competitive advantage.

A third factor is that we simply cannot make other countries buy things they do not want. The prime example is products containing genetically modified organisms (GMOs). The Europeans and the Japanese refuse to eat foods containing GMOs, and their governments support their choice by not allowing the importation of such products. It does not matter whether they are right or wrong scientifically. We cannot force them to eat foods they do not like.

Finally, agricultural exports depend on the economies of other countries. When Japan, Korea, and the other Asian tigers were enjoying economic booms, U.S. exports were strong. When these countries went into a recession, our exports to the region collapsed, and our farmers and ranchers suffered. Similarly, many third world nations desperately need our food products. However, they have little money with which to pay for them.

The point to be made here is that U.S. farm policy cannot be based solely on expanding U.S. agricultural exports. Exports will rise and fall due to circumstances that are beyond our control. There are legitimate actions that our government can take to promote freer trade and higher sales of U.S. products. However, neither diplomacy nor threats of military action will ever make the world satisfy all our export needs.

LESSON 6: CONSERVATION IS THE PRICE FOR CONTINUED INCOME SUPPORT.

In the 1985 farm bill, Congress made it clear that better soil conservation and water pollution control were the price to be paid by farmers for continued farm subsidies. The 1990 and 1996 farm bills continued to impose conservation and environmental requirements. The non-farm public is likely to demand even more stringent requirements in the 2002 farm bill.

Farmers actively promote the myth that family farmers are all good stewards of their land and thus no government regulation of agricultural activities is necessary. All that is necessary to debunk that myth is to drive across Nebraska's North Platte Valley on a windy, winter day. Some fields show little evidence of wind erosion. They have adequate vegetative cover or have been properly roughed. Other fields, however, are completely smooth and devoid of vegetation and are blowing so hard that you cannot see the hills in the distance.

Another way to tell an environmentally conscious farmer from a slob farmer is to look for blue or yellow plastic ditch. The environmentally conscious farmer rolls up the plastic ditch at the end of the growing season and disposes of it properly. The slob lets it lie around all winter and chops it up with his equipment so that it blows into ditches and windbreaks and onto neighbors' properties.

The truth is that when it comes to environmental protection farmers as a group are no better or worse than any other group of people. Many farmers work very hard to reduce soil erosion and chemical runoff into streams and lakes. Others do not. The difference between farmers and most other groups is that those other groups do not receive government income subsidies. The non-farm public recognizes this more every year.

The bad farmers among us will assure that future farm subsidies will continue to be conditioned on compliance with conservation and environmental requirements. Indeed, conservation compliance rather than production may become the principal justification for subsidizing the income of American farmers.

RECOMMENDATIONS FOR THE 2002 FARM BILL.

These historical lessons lead me to recommend that Congress do the following in the 2002 farm bill.

1. ABOLISH ALL PRICE SUPPORT MECHANISMS. This includes both nonrecourse loans used to control prices directly and supply management programs that attempt to control prices indirectly. At a minimum, Congress should resist any attempts to raise loan rates or to reinstate acreage reduction (ARP), Soil Bank, or other set aside programs.

2. DECOUPLE ALL INCOME SUPPORTS FROM PRODUCTION. The decoupling process begun in the 1996 farm bill should be completed. Income supports must not be based on quantity or type of production. Specifically,

LDPs and marketing loan gains should be abolished along with government subsidized crop insurance.

In their place, production flexibility contract type payments should be paid to farmers, and to livestock producers, regardless of the crops or livestock that they produce. They should be paid that amount necessary to guarantee a farm family a basic minimum income in times of low crop or low livestock prices.

The basic minimum income amount should be set somewhere between $50,000 and $75,000 per year and adjusted annually for inflation. The farmer or rancher would be paid the difference between that amount and the amount of their actual net income that year, taking into account income earned by all members of the farm family from all sources, not just farming or ranching.

In any year that a farmer or rancher's total income exceeds the minimum guaranteed income amount, the farmer or rancher would not receive any income support payment. This payment limitation should be tightly drafted and strictly enforced, as should a requirement that the farmer or rancher be actively farming or ranching. There may also have to be limitations as to the amount of debt a farmer could incur and still be eligible for support. Landlords, absentee owners and operators, hobby farmers, and land speculators would not be eligible for such payments.

3. CONDITION ELIGIBILITY FOR INCOME SUPPORT PAYMENTS ON SOIL CONSERVATION AND ENVIRONMENTAL REQUIREMENTS. Farmers and ranchers would be required to sign long term contracts to be eligible for the income support payments described above. The contracts would condition eligibility for those payments on compliance with specific soil conservation and environmental requirements. Possible requirements might include mandatory buffer and filter strips, windbreaks, tillage requirements to reduce erosion and chemical runoff, and management practices designed to increase carbon sequestration. The contracts would also prohibit development of the farm or ranch properties for residential or non-farm commercial uses.[43]

Optional conservation provisions might include additional cash payments to farmers and ranchers who make long-term conservation improvements on their properties or who place their properties under permanent conservation easements.

CONCLUSION

Obviously the details of the farm program I have recommended would need to be worked out. Some of those details will be difficult but not necessarily insurmountable. I believe that my basic proposal could lead to a sensible farm program that avoids many of the problems experienced by past programs.

43. *See* A. Olson, *The Law of the Land, in* UNDER THE BLADE: THE CONVERSION OF AGRICULTURAL LANDSCAPES 97-136 (R.Olson & T. Lyson eds., 1999) for a detailed discussion of a legal framework for the preservation of agricultural lands.

My proposal would allow the market to dictate what crops and livestock were produced and in what quantity. By not supporting prices and by decoupling income support from production, farm subsidies would not encourage production beyond what the market demands, and surpluses would be reduced. This in turn could have a stabilizing effect on prices.

When times did get hard, however, income support would be targeted to the family farmers who need it the most. Large operations would generally not receive support payments, and in good economic times, most farmers would receive no support payments. Government costs would be kept under control.

My proposal would give the non-farm public the conservation and environmental conditions they want. Most progressive farmers will not object to reasonable requirements tailored to fit their farms and regional conditions. They already do most things the contract would require. Bad farmers who routinely flout the conservation requirements of their contracts will receive no income support and may eventually be forced out of business.

A society that does not learn from its mistakes will decline and ultimately fail. We must learn from our historical experience with federal farm policy and not re-adopt the failed programs of the past. We must be willing to try new approaches. Congress needs to strike boldly in the 2002 Farm Bill and not simply give us more of the same.

POSTSCRIPT

As this essay goes to press in mid January of 2002, Congress is in recess, having failed to enact a new farm bill before Christmas. The 1996 farm bill does not expire until September 1. However, farm groups pressured Congress during the fall to enact a new bill immediately to give farmers more lead time in planning for the 2002 crop season and to address the severely depressed crop prices that continued in 2001. Conflicts between Senate Democrats on one side and Senate Republicans and the Administration on the other kept this from happening.

Neither the Senate Democrat's proposal nor the Republican proposal contains significant departures from the traditional farm programs of the 1980's and 1990's. The main debate is over the level of funding. Alternative proposals by Senator Harkin and others would shift funding from traditional programs to new conservation programs. My prediction, however, is that once the dust clears, the 2002 farm bill will increase conservation funding slightly, but otherwise will keep most of the programs from the 1996 bill plus borrow a few programs from the 1985 and 1990 farm bills. True reform will have to wait at least another five years.