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# The Use of Marketing Quotas in the Stabilization of the Sugar Industry

by

Neil Brooks & Alfred A. Greenwood

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# THE USE OF MARKETING QUOTAS IN THE STABILIZATION OF THE SUGAR INDUSTRY

*Neil Brooks* and Alfred A. Greenwood***

## I. INTRODUCTION

"The sugar problem of the country" has been characterized as "an old and obstinate one." [1] The sugar industry is of wide economic importance, and in view of the variant needs of the Nation sugar has been the subject of tariffs, bounties, valorization, treaties, international agreements, and marketing quotas. The system of marketing quotas for sugar has been used—pursuant to congressional authorization[2]—since 1934 as the major means of effectuating the stabilization of the industry. The wide-ranging significance of the quota program is indicated by reference to the domestic and international markets and their factors of mutability.

Sugar is a leading staple in international commerce, but the great flow of international trade in sugar has been marked by irregularity of direction and by periods of alternating scarcity and surplus.[3] "The history of sugar is one of extreme economic nationalism, burdensome surpluses and acute shortages, sharp price fluctuations, and marked shifts in the pattern of production and trade. These disruptive elements in the world's sugar commerce have persisted over a long period of years." [4]

*Assistant General Counsel, United States Department of Agriculture.

**Marketing Specialist, Sugar Division, Commodity Stabilization Service, United States Department of Agriculture.

The views expressed herein are not intended to be inconsistent with the official views of the United States Department of Agriculture, but nothing herein is to be construed as expressing any official views of the Department.

[1] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 615 (1950).

[2] Jones-Costigan Act of 1934, 48 STAT. 670, later amended by 49 STAT. 1539 (1936); Sugar Act of 1937, 50 STAT. 903, later amended by 54 STAT. 1178 (1940), 55 STAT. 872 (1941), 58 STAT. 283 (1944), 60 STAT. 706 (1946); Sugar Act of 1948, 61 STAT. 922, later amended by 65 STAT. 318 (1951) and 70 STAT. 217 (1956), 7 U.S.C. §§ 1100-1161 (1952 and Supp. IV, 1956).

[3] S. REP. No. 1461, 84th Cong., 2d Sess. 6 (1956); H.R. REP. No. 1348, 84th Cong., 1st Sess. 10 (1955); SWERLING, INTERNATIONAL CONTROL OF SUGAR, 1918-41, at 17 (1949); U.S. DEP'T OF AGRICULTURE, INFORMATION BULLETIN No. 111, THE UNITED STATES SUGAR PROGRAM 4 (1953).

[4] CALLANAN, THE NEW INTERNATIONAL SUGAR AGREEMENT, 29 DEPARTMENT OF STATE BULLETIN 542 (1953). See also, U.S. DEP'T OF AGRICULTURE, INFORMATION BULLETIN No. 111, THE UNITED STATES SUGAR PROGRAM 3-7 (1953).

The domestic sugar producing areas of the United States, including the domestic off-shore areas, supply approximately 53 per centum of the requirements of consumers of sugar in the continental United States, and the remainder is supplied by foreign sources.[5] The sugar beets and sugarcane produced in the continental United States make available a quantity of sugar which is approximately 28 per centum of our consumptive demand for sugar, and the domestic off-shore areas of Hawaii, Puerto Rico, and the Virgin Islands supply an additional 25 per centum of our requirements.[6]

There was a pronounced shortage of sugar—an essential product for industrial and commercial purposes—in World War I and World War II.[7] The use of sugar, in the form of invert molasses, in the United States to make industrial alcohol which was needed in World War II, "in previously unheard of quantities largely because of the program for making synthetic rubber," contributed to the shortage of sugar during that period.[8] "For many years it has been the policy of the United States Government—for defense and strategic reasons—to preserve within the United States the ability to produce a portion of our sugar requirements."[9] "A large portion of the world's sugar production is grown in tropical countries," and "it is unlikely that a significant amount of sugar would be grown in the continental

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[5] S. REP. No. 1461, 84th Cong., 2d Sess. 1 (1956); U.S. DEP'T OF AGRICULTURE, MARKETING, 1954 YEARBOOK OF AGRICULTURE 433; U.S. DEP'T OF AGRICULTURE, AGRICULTURAL STATISTICS 1956, 79, 82 (1957). The "amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1957" was determined by the Secretary of Agriculture "to be 8,800,000 short tons, raw value." 21 FED. REG. 10322 (1956), and has been amended, from time to time, so as to increase the amount to 8,975,000 short tons, raw value, 22 FED. REG. 9829 (1957).

[6] These percentages are reflected in the quotas for 1957. 21 FED. REG. 10332 (1956); 22 FED. REG. 6481 (1957).

[7] DALTON, SUGAR—A CASE STUDY OF GOVERNMENT CONTROL 34-38 (1937); BERNHARDT, THE SUGAR INDUSTRY AND THE FEDERAL GOVERNMENT 29-45 (1948); BALLINGER, SUGAR DURING WORLD WAR II, U.S. DEP'T OF AGRICULTURE 1 (War Records Monograph No. 3, 1946). See also, Sugar Institute, Inc. v. United States, 297 U.S. 553, 573 (1936).

[8] BALLINGER, SUGAR DURING WORLD WAR II, U.S. DEP'T OF AGRICULTURE 1 (War Records Monograph No. 3, 1946). Rationing and price ceilings were applicable to sugar in World War II. *Id.* at 11-16, 19. The shipment of sugar from off-shore areas was centrally controlled—via the purchase of the entire crops by the United States Government—in order to make efficient use of available shipping during the War. *Id.* at 16-19. The "artificial rubber program during the war years was largely dependent for a basic raw ingredient on industrial alcohol manufatured from sugar and molasses. This alcohol also played a vital role in the manufacture of explosives and other war supplies." WILSON, SUGAR AND ITS WARTIME CONTROLS, 1941-1947, at 166.

[9] H.R. REP. No. 1348, 84th Cong., 1st Sess. 10 (1955). See also, S. REP. No. 1461, 84th Cong., 2d Sess. 6 (1956). "Uncertainty as to supplies in wartime motivates to a large extent the maintenance of sugar industries by many countries through various control measures." U.S. DEP'T AGRICULTURE, MARKETING, 1954 YEARBOOK OF AGRICULTURE 434.

United States if American producers had to compete on the open world market with sugar produced with cheap tropical labor." [10]

The quota system for sugar was adopted by Congress after it was concluded that a protective tariff *per se* was inadequate to serve fully the needs of the Nation.[11] The first tariff on sugar was imposed in 1789,[12] and the protective tariff was conducive to the production of sugar cane in Louisiana after that area became a part of the United States in 1803.[13] Hawaii also received the benefit of the tariff protection by virtue of the Treaty of Reciprocity in 1875.[14] The tariff also gave encouragement and protection to the sugar beet industry in the continental United States.[15] Sugar was on the free list from 1890 to 1894, subject to some exceptions,[16] and during that period a

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[10] S. REP. No. 1461, 84th Cong., 2d Sess. 6 (1956). See also, H.R. REP. No. 1348, 84th Cong., 1st Sess. 10 (1955).

[11] UNITED STATES TARIFF COMMISSION, REPORT No. 73, at 25 (2d series, 1933); H.R. REP. No. 1109, 73d Cong., 2d Sess. 1-2 (1934); H.R. REP. No. 810, 82d Cong., 1st Sess. 9 (1951); U.S. DEP'T OF AGRICULTURE, INFORMATION BULLETIN No. 111, THE UNITED STATES SUGAR PROGRAM 3-8 (1953).

[12] The Act of July 4, 1789, c. 2, 1 STAT. 24, imposing a tariff on sugar, was to provide revenue and, also, to encourage and protect the domestic "manufactures." The quantities of brown sugar and other sugar imported into the United States during each year from 1790 to 1819, inclusive, are shown in the QUARTERLY REPORTS OF THE BUREAU OF STATISTICS, TREASURY DEPARTMENT, 1886-1887, at 634-635 (1886). "Sugar refining enjoyed the blessings of government protection even before the formation of the Constitution. Pennsylvania had encouraged the industry by means of a favorable duty, and had brought it to a very flourishing condition." VOGT, THE SUGAR REFINING INDUSTRY OF THE UNITED STATES 19 (1908).

[13] H.R. REP. No. 1348, 84th Cong., 1st Sess. 14 (1955); S. REP. No. 1461, 84th Cong., 2d Sess. 10-11 (1956). It was said in Barlow v. United States, 32 U.S. (7 Pet.) 404, 407 (1833), "until after the acquisition of Louisiana in 1803, no sugars were grown in the United States; and consequently, all which were used or refined within the United States must have been of foreign growth and importation." See also, SITTERSON, SUGAR COUNTRY 27, 175-178 (1953). The refining of raw sugar, however, was established in New York in 1689 and by the time of the Revolutionary War several refining plants were in operation. VOGT, THE SUGAR REFINING INDUSTRY OF THE UNITED STATES 6 (1908). The tariff imposed in 1789 by the First Congress was 1¢ per pound on brown sugar, 3¢ per pound on "loaf sugar," and 1½¢ per pound on all other sugar. c. 2, § 2, 1 STAT. 25 (1789). But in 1790 the tariff was changed to 5¢ per pound on "loaf sugar," 1½¢ on brown sugar, and 2½¢ on other sugar. c. 39, § 1, 1 STAT. 180 (1790). Then in 1794, the tariff was increased by an additional 4¢ on refined sugar. c. 51, § 12, 1 STAT. 387 (1794).

[14] 19 STAT. 625 (1875). See S. REP. No. 1461, 84th Cong., 2d Sess. 11 (1956). The treaty in 1875 provided, *inter alia*, that the United States would admit, free of duty, from Hawaii "muscovado, brown, and all other unrefined sugar, meaning . . . the grades of sugar heretofore commonly imported from the Hawaiian Islands and now known in the markets of San Francisco and Portland as 'Sandwich Island sugar' . . . ." 19 STAT. 625 (1875). The Treaty of Reciprocity in 1875 was extended by the Supplementary Convention of 1884. 25 STAT. 1399-1400 (1887).

[15] S. REP. No. 1461, 84th Cong., 2d Sess. 11 (1956).

[16] The free list included "sugars, all not above number sixteen Dutch standard in color, all tank bottoms, all sugar drainings and sugar sweepings, sirups of cane juice, melada, concentrated melada, and concrete and concentrated molasses, and molasses." 26 STAT. 610 (1890). "All sugars above number sixteen Dutch standard in color" were subject to a duty. 26 STAT. 584 (1890).

bounty was paid on domestically produced sugar.[17] But thereafter until 1934 the tariff was used as a protective device for the domestic sugar industry.[18] Puerto Rico and the Philippine Islands also received the benefit of the tariff protection, and a preferred tariff status was granted to Cuba.[19]

Economic stability was not maintained in the sugar industry by means of the protective tariff.[20] Not only did the tariff system fail to protect adequately the domestic sugar industry, but its impact on Cuba, our principal foreign source of supply, was so severe in its economic implications that "Cuba was no longer a major market for American goods." [21] Although the tariff was of assistance to domestic producers, "it still left them exposed to the price fluctuations of the world sugar market. It also increased the price of sugar to consumers

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[17] Act of October 1, 1890, c. 1244, § 1, 26 STAT. 583; Act of August 27, 1894, c. 349, § 1, 28 STAT. 508, 521; S. REP. No. 1461, 84th Cong., 2d Sess. 11 (1956). The payment of the bounty to producers was "to encourage and stimulate them in the otherwise losing business of producing sugar in the United States. It was intended to be . . . a guaranty of reimbursement to sugar producers accepting the terms of the statute, of part, at least, of the cost of production." Calder v. Henderson, 54 Fed. 802, 804 (5th Cir. 1893). "The production and manufacture of sugar in the Southern and some portions of the Western States from sugar cane and from sorghum and beets had become at the time of the passage of the [bounty] act of 1890 an industry in which large numbers of the citizens of this country were engaged, and its prosecution involved the use of a very large amount of capital. The tariff theretofore had been very high upon imported sugar, and the native industry had thereby been encouraged, fostered, and greatly increased. . . . Before that time the revenue on imported sugar had amounted to nearly $60,000,000 in one year. To put sugar on the free list would reduce the revenue that amount, but at the same time it might, as was urged in Congress, ruin the persons engaged in the industry in this country. So the tariff on sugar was reduced while at the same time a bounty was placed upon its production here of an amount which it was thought would equal the protection the industry had theretofore enjoyed under the tariff." United States v. Realty Company, 163 U.S. 427, 434-435 (1896). Production of sugar in Cuba was stimulated by the removal of the tariff in 1890, but "Hawaii was hurt badly when it lost its preferred position in the American market as a result of the discontinuance of the sugar duty." U.S. DEP'T OF AGRICULTURE, INFORMATION BULLETIN No. 111, THE UNITED STATES SUGAR PROGRAM 3 (1953). In addition to the bounty paid under congressional authorization, a manufacturer of sugar was entitled to receive, under the Nebraska Sess. Laws 1889, c. 70, § 1, a bounty of 1¢ per pound on each pound of sugar manufactured from sugar beets, sorghum, or other sugar yielding canes or plants grown in Nebraska.

[18] ELLIS, TARIFF ON SUGAR 48-73 (1933). For the tariff rates on raw sugar from 1789 to 1951, see H.R. REP. No. 810, 82d Cong., 1st Sess. 9 (1951).

[19] S. REP. No. 1461, 84th Cong., 2d Sess. 11 (1956).

[20] H.R. REP. No. 1109, 73d Cong., 2d Sess. 1-2 (1934); S. EXECUTIVE REP. No. 4, 83d Cong., 2d Sess. 1 (1954); S. REP. No. 1461, 84th Cong., 2d Sess. 11 (1956). See also, UNITED STATES TARIFF COMMISSION, REPORT No. 73, at 25 (2d series, 1933); DALTON, SUGAR—A CASE STUDY OF GOVERNMENT CONTROL 69-70 (1937).

[21] S. REP. No. 1461, 84th Cong., 2d Sess. 11 (1956). See also, *Hearings on H.R. 7907 before House Committee on Agriculture,* 73d Cong., 2d Sess. 5 (1934). "[E]xperience demonstrated that our historic tariff program did not give effective protection to either our domestic sugar industry or our import and export trade." Statement by the Under Secretary of Agriculture on January 16, 1956, at the *Hearings on H.R. 7030 before the Senate Committee on Finance,* 84th Cong., 2d Sess. 58-59 (1956).

in the United States without assuring them of adequate foreign sources of supply in case of emergencies." [22]

A great expansion in the production of sugar occurred after World War I, and large foreign areas produce and dispose of sugar "even though prices may fall to the level of variable direct costs," a circumstance which "is especially pronounced in sugarcane areas where ratoon crops are grown and the land may be planted only once in 4 to 8 years." [23] The problem is made more difficult by virtue of the fact that some tropical areas have few, if any, alternative crops.[24] Since World War II "the shortage of exchange has further complicated the sugar problem by causing many nations to want to become self-sufficient in sugar or to procure their supplies from soft-currency areas. Such factors in addition to drastically low wages, highly protected production, and export subsidies put heavy and continuing pressures on the supply side of the world sugar situation."[25]

The problem is also difficult and complicated with respect to the demand for sugar.

> The great bulk of the sugar of the world is produced within the country where it is consumed or it is shipped into consuming areas which give it a tariff preference or advantage in competition against world sugar. The so-called world free market is a term which covers only that part of the world supply that moves in international trade without concessions on tariffs or similar imposts and involves only around 10 to 15 percent of the total production and consumption of sugar. . . . It is the world free market onto which surpluses are dumped in periods of over-production and it is the world free market supply that countries turn to fill their increased requirements in periods of short crops or enlarged demand.[26]

The quota system for sugar was originally instituted by Congress after 145 years of congressional decisions and actions affecting the sugar industry. The tariff, although serving as a supplementary means of protection, has been reduced 75 per centum since the enactment of the Jones-Costigan Act of 1934.[27] The quota system, in-

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[22] H.R. REP. No. 1348, 84th Cong., 1st Sess. 10-11 (1955).

[23] Statement of the Under Secretary of Agriculture on March 18, 1954, at the *Hearings before a Subcommittee of the Senate Committee on Foreign Relations, on the International Sugar Agreement,* 83d Cong., 2d Sess. 45 (1954).

[24] *Ibid.*

[25] *Id.* at 45-46.

[26] *Id.* at 46.

[27] S. REP. No. 1461, 84th Cong., 2d Sess. 11 (1956); U.S. DEP'T OF AGRICULTURE, INFORMATION BULLETIN No. 111, THE UNITED STATES SUGAR PROGRAM 34 (1953).

cluding the related conditional payments, was designed (1) to maintain and protect the domestic sugar production industry, (2) to avoid any undue burden on domestic consumers, (3) to increase our imports of sugar and thereby to benefit our general export trade, and (4) to insure that the benefits of the system would be passed on to farmers and laborers and that the use of child labor in the production of sugarcane and sugar beets would be eliminated.[28]

## II. The Legislative Enactments for Marketing Quotas

The quota system for sugar was originally provided for by the Jones-Costigan Act of 1934,[29] which remained in effect until the enactment of the Sugar Act of 1937.[30]

The Sugar Act of 1937 became effective on September 1, 1937,[31] and was to remain in effect until December 31, 1940.[32] It was amended, from time to time, so as to continue in effect until December 31, 1947.[33]

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"An import quota, either alone or in combination with the tariff, lends itself to the requirements of a flexible instrument. It can be designed to meet the usually foreseeable situations and at the same time may be provided with provisions for emergency adjustments. An example of such adjustability is found in the sugar quota established under the Sugar Act." *Subcommittee on Foreign Trade Policy of the House Committee on Ways and Means,* Foreign Trade Policy 631-632 (1957).

[28] Statement by the Under Secretary of Agriculture on January 16, 1956, at the *Hearings on H.R. 7030 before the Senate Committee on Finance,* 84th Cong., 2d Sess. 59 (1956). See also, 101 Cong. Rec. 12445 (1955); H.R. Rep. No. 1109, 73d Cong., 2d Sess. 1-2 (1934); U.S. Dep't of Agriculture, Information Bulletin No. 111, The United States Sugar Program 9-10 (1953).

[29] c. 263, 48 Stat. 670 (1934).

[30] c. 898, 50 Stat. 903 (1937). The Jones-Costigan Act, as amended by c. 612, 49 Stat. 1539 (1936), was to remain in effect until December 31, 1937, but the Sugar Act of 1937 repealed the provisions of the Jones-Costigan Act of 1934. Sugar Act of 1937, c. 898, § 510, 50 Stat. 903, 916. A processing tax was also provided for by the Jones-Costigan Act of 1934; and following the decision in United States v. Butler, 297 U.S. 1 (1936), invalidating a processing tax on cotton under the Agricultural Adjustment Act of 1933, c. 25, § 6, 48 Stat. 33, the Jones-Costigan Act of 1934 was amended so as to provide, *inter alia,* that "no further processing, compensating, or floor-stocks tax shall be levied or collected respecting sugar beets or sugar cane or the products thereof as defined by such Act as amended . . . but in all other respects such amendatory Act shall be and remain in force and effect until December 31, 1937, and the quotas established and allotments heretofore made by the Secretary of Agriculture are hereby ratified." Act of June 19, 1936, c. 612, § 1, 49 Stat. 1539.

[31] The statute was enacted on September 1, 1937, and it provided that the "provisions of this title shall become effective on the date of enactment of this Act." Sugar Act of 1937, c. 898, § 406, 50 Stat. 914.

[32] Sugar Act of 1937, c. 898, § 513, 50 Stat. 916.

[33] Act of October 15, 1940, c. 887, 54 Stat. 1178; Act of December 26, 1941, c. 638, 55 Stat. 872; Act of June 20, 1944, c. 266, 58 Stat. 283; Act of July 27, 1946, c. 685, 60 Stat. 706. This legislation remained in effect notwithstanding the ratification on December 20, 1937, of the International Agreement Regarding the Regulation of the Production and Marketing of Sugar, 59 Stat. 923 (1937). See 82 Cong. Rec. 1940-1956 (1937). The International Agreement was entered into "in pursuance of the

The Sugar Act of 1948[34] became effective on January 1, 1948. It was originally specified in the Sugar Act of 1948 that it would terminate on December 31, 1952,[35] but an amendment provides that it is to continue in effect until December 31, 1960.[36] The Secretary of Agriculture is authorized by the Sugar Act of 1948 to issue such regulations as may be necessary to carry out article 7 of the International Sugar Agreement of 1953.[37]

## III. The Establishment of Marketing Quotas

The regulatory plan has been referred to as providing "the familiar device of a quota system," [38] and, as in other similar programs,[39] it would have been impractical for Congress to undertake to prescribe all of the details with respect to the quotas. The myriaded and changeable circumstances relative to the various parts or segments of the sugar industry, domestic and foreign, are such that some of the matters incident to the quotas are, *ex necessitate*, for decision by the

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recommendation of the World Monetary and Economic Conference of 1933 that negotiations should continue with a view to establishing and maintaining an orderly relationship between the supply and demand for sugar in the world market." 59 STAT. 923 (1937). The delegate of the United States to the International Sugar Conference held in London in 1937 reported to the President that "article 9 of the agreement contains specific undertakings of the United States to permit a net importation of sugar from foreign countries not enjoying preferential duty rates, and as to the allocation of quotas among such countries. These undertakings involve no departure from policies which have been in force since the enactment of the Jones-Costigan Act of May 9, 1934. The agreement is in fact the application on a world-wide scale of some of the principles embodied in the policy of the United States with regard to sugar." 4 TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS AND AGREEMENTS BETWEEN THE UNITED STATES AND OTHER POWERS, 1923-1937, 5619 (1938).

[34] 61 STAT. 922, as amended, 7 U.S.C. §§ 1100-1161 (1952 and Supp. IV, 1956). The Sugar Act of 1948 was enacted on August 8, 1947, and by its terms the "provisions of this Act, except where an earlier effective date is provided for herein, shall become effective January 1, 1948." Section 412 of the Sugar Act of 1948, 61 STAT. 934, 7 U.S.C. § 1101 (note) (1952).

[35] Section 411 of the Sugar Act of 1948, 61 STAT. 933, 7 U.S.C. § 1101 (note) (1952).

[36] Section 5 of the Act of September 1, 1951, 65 STAT. 320; § 18 of the Act of May 29, 1956, 70 STAT. 221, 7 U.S.C. § 1101 (note) (Supp. IV, 1956). The quota provisions may be suspended by proclamation of the President upon his finding that a "national economic or other emergency exists with respect to sugar or liquid sugar. . . ." 61 STAT. 933 (1947), 7 U.S.C. § 1158 (1952).

[37] 70 STAT. 221 (1957), 7 U.S.C. § 1161 (Supp IV, 1956). The International Sugar Agreement of 1953 was ratified by the United States Senate on April 29, 1954, and it is provided in Article 17 of the Agreement that "exports of sugar to the United States of America for consumption therein shall not be considered exports to the free market and shall not be charged against the export quotas established under this Agreement." 100 CONG. REC. 5634-5642 (1954); 6 *United States Treaties and Other International Agreements* 212 (T.I.A.S. No. 3177, 1955).

[38] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 606 (1950).

[39] See, *e.g.*, Mulford v. Smith, 307 U.S. 38, 42-44 (1939); Wickard v. Filburn, 317 U.S. 111, 115-116 (1942).

administrative agency in accordance with the statutory criteria. Congress has, however, resolved many of the difficult and complex controversies with respect to the quotas for the various areas, and the legislation is notable, in that respect, for its specificity.

There are, in short, three basic steps in the establishment of marketing quotas, *scil.*, (1) the determination of the annual sugar requirements of the consumers in the continental United States, (2) the allotment of our total requirements to the domestic and certain foreign sugar producing areas, and (3) the allotment of the quota established for an area among the marketers or importers of sugar.

### A. *The Administrative Determinations Relative to the Annual Sugar Requirements of Consumers in the Continental United States.*

The Secretary is required to determine for each calendar year the amount of sugar needed to meet the requirements of consumers in the continental United States.[40] The statute sets forth the criteria for the governance of the Secretary in arriving at the determination.[41] The Secretary's function, in this respect, is to appraise the relevant facts, to draw inferences from the factual circumstances, and to bring to bear upon the problem an expert judgment so as to arrive at a determination, on analysis of the total situation, in accordance with the statutory provisions.

The Secretary is required—in making the determination as to the annual requirements of consumers of sugar in the continental United States—to "use as a basis" the quantity of "direct-consumption sugar" [42] distributed for consumption, as indicated by official statistics of the United States Department of Agriculture, "during the twelve-month period ending October 31 next preceding the calendar year for which the determination is being made, and shall make allowances for a deficiency or surplus in inventories of sugar, and for changes in consumption because of changes in population and demand conditions, as computed from statistics published by agencies of the

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[40] 61 STAT. 923 (1947), as amended, 7 U.S.C. § 1111 (Supp. IV, 1956).

[41] *Ibid.*

[42] The term "direct-consumption sugar," as defined in the act, "means any sugars principally of crystalline structure and any liquid sugar (exclusive of liquid sugar from foreign countries having liquid sugar quotas), which are not to be further refined or improved in quality." 61 STAT. 922 (1947), as amended, 7 U.S.C. § 1101(e) (Supp. IV, 1956). See also, 22 FED. REG. 8170 (1957) for the regulations with respect to the processings of sugar which constitute further refinement or improvement in quality, and the distinction of sugars of specific qualities as raw sugar or direct-consumption sugar.

Federal Government . . . ." [43] The statute provides that in order for such determination to protect the welfare of consumers and of those engaged in the domestic sugar industry by providing such supply of sugar as will be consumed at prices which will not be excessive to consumers and which will fairly and equitably maintain and protect the welfare of the domestic sugar industry, "the Secretary, in making any such determination, in addition to the consumption, inventory, population, and demand factors above specified and the level and trend of consumer purchasing power, shall take into consideration the relationship between the prices at wholesale for refined sugar that would result from such determination and the general cost of living in the United States as compared with the relationship between prices at wholesale for refined sugar and the general cost of living in the United States obtaining during 1947-1949 as indicated by the Consumers' Price Index as published by the Bureau of Labor Statistics in the Department of Labor." [44]

The statute does not require that the Secretary's determination be made on the basis of a hearing record, and accordingly sections 7 and 8 of the Administrative Procedure Act are not applicable.[45] The administrative agency, however, affords all interested persons an opportunity—prior to the decision by the Secretary—to submit data, views, and arguments for consideration by the Secretary with respect to the annual requirements of sugar in the continental United States.[46]

Each determination by the Secretary is published in the Federal Register in conjunction with a statement of the basis for the deter-

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[43] *Supra* note 40.

[44] *Ibid.* The Secretary is also required to determine the requirements for local consumption of sugar in Hawaii and Puerto Rico, and to "establish quotas for the amounts of sugar which may be marketed for local consumption in such areas equal to the amounts determined to be needed to meet the requirements of consumers therein." 61 STAT. 925 (1947), as amended, 7 U.S.C. § 1113 (1952).

[45] "Where rules are required by statute to be made on the record after opportunity for an agency hearing," the requirements of §§ 7 and 8 of the Administrative Procedure Act, 60 STAT. 241 (1947), 5 U.S.C. § § 1006-1007 (1952), apply in place of the provisions of the act with respect to informal rule-making. 60 STAT. 238 (1947), 5 U.S.C. § 1003(b) (1952). But the procedural requirements in §§ 7 and 8 of the Administrative Procedure Act for formal rule-making relate only to agency action which is required by statute to be made on the record of a public hearing. American Trucking Ass'ns v. United States, 344 U.S. 298, 319-320 (1953); Air Line Pilots Ass'n, Int'l v. CAB, 215 F.2d 122, 124 (2d Cir. 1954).

[46] See, *e.g.*, 20 FED. REG. 7706 (1955). The administrative practice, in this respect, has been described as affording an opportunity to "all interested persons, including consumers, industrial users, wholesalers, refiners, sugar cane and sugar beet processors, and producers" to present their "views and recommendations on the matter." 101 CONG. REC. 12446 (1955).

mination.[47] The fundamental considerations for a determination are thus made known by the Secretary's explanation of his application of the statutory standards to the relevant factual situations in a particular year. Here, as in other similar situations,[48] there is broad latitude for administrative judgment. The needs of the Nation are variable, and the statutory considerations are of broad import. Although the determination is required to be made in December, for the succeeding calendar year, the Secretary is authorized to make amendatory determinations "at such other times during such calendar year as the Secretary may deem necessary to meet such requirements." [49]

B. *Proration of Quotas.*

After the Secretary has issued the determination with respect to the estimated requirements, in the continental United States, for sugar during a particular year, quotas are made effective for the domestic sugar producing areas and for foreign countries.[50] Congress could have provided for the proration of the quotas in accordance with broad statutory standards.[51] But the statutory language in this respect is characterized by unusual circumstantiality and particularity.

The various interests and claims of the domestic and foreign sugar producing areas have, from time to time, been carefully considered by Congress with respect to the enactment and amendment of the quota system in the Sugar Act of 1948 and the antecedent legislation, the Sugar Act of 1937 and the Jones-Costigan Act of 1934.[52] In view

[47] See, *e.g.*, 20 FED. REG. 9848 (1955). The requirement in the statute that "each determination issued by the Secretary in connection with quotas and deficits . . . shall be promptly published in the Federal Register and shall be accompanied by a statement of the bases and considerations upon which such determination was made," 61 STAT. 932 (1947), 7 U.S.C. § 1153(b) (1952), is similar to the statutory requirement in the Administrative Procedure Act that, in formal rule-making, "the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose." 60 STAT. 238 (1946), 5 U.S.C. § 1003(b) (1952).

[48] *E.g.*, the Secretary's determination of the national acreage allotment for wheat under the Agricultural Adjustment Act of 1938. 52 STAT. 53 (1938), 7 U.S.C. § 1333 (1952).

[49] *Supra* note 40. See, *e.g.*, the amendatory determination of July 5, 1957. 22 FED. REG. 4847 (1957).

[50] 61 STAT. 924, as amended, 7 U.S.C. § 1112 (1952 and Supp. IV, 1956).

[51] See, *e.g.*, Lichter v. United States, 334 U.S. 742, 785-786 (1948); Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 600-602 (1944); National Broadcasting Co. v. United States, 319 U.S. 190, 225-226 (1943); Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 397-398 (1940); United States v. Rock Royal Co-op., 307 U.S. 533, 574-577 (1939).

[52] H.R. REP. No. 796, 80th Cong., 1st Sess. 2 (1947); S. REP. No. 1461, 84th Cong., 2d Sess. 11-12 (1956). "Representatives of every country and area participating in

of changing circumstances, the quotas for the various areas have been modified from time to time by Congress in its resolution of the competing claims of the various areas.[53] It has been said that the "empiric process of legislation" is revealed "at its fairest" by "frequent reconsideration, intensive study of the consequences of what has been done, readjustment to changing conditions, and safeguarding the future on the basis of responsible forecasts." [54] The legislation for sugar quotas manifests those qualities, and also it is an example of legislation in which Congress has resolved, in detail, conflicts of major economic and public concern. The specificative provisions in the act are so detailed that it has been said that the statute is "one of the most complicated pieces of legislation" that Congress "has ever been called upon to consider." [55]

The act provides for the administrative agency to apportion among the domestic sugar producing areas 4,444,000 short tons, raw value,[56] as follows: For the domestic beet sugar area, 1,800,000 short tons, raw value; for the mainland cane sugar area, 500,000 short tons, raw value; for Hawaii, 1,052,000 short tons, raw value; for Puerto Rico, 1,080,000 short tons, raw value; and for the Virgin Islands, 12,000 short tons, raw value.[57] In addition to the 4,444,000 short tons, raw value, for apportionment among the domestic sugar producing areas, there shall be added an amount equal to 55 per centum of the amount by which the Secretary's determination of the requirements of consumers in the continental United States, for the particular calendar year, exceeds 8,350,000 short tons, raw value.[58] Such additional

this program have been very active in behalf of the particular area in which they are interested." Statement by the Chairman of the *House Agriculture Committee,* 101 CONG. REC. 12434 (1955).

[53] *Ibid.*

[54] East New York Bank v. Hahn, 326 U.S. 230, 234-235 (1945).

[55] Statement by the Chairman of the *House Agriculture Committee, supra* note 52.

[56] The term "raw value" of any quantity of "sugars"—*i.e.,* any grade or type of saccharine product derived from sugar cane or sugar beets, which contains sucrose, dextrose, or levulose—means, as defined in the act, "its equivalent in terms of ordinary commercial raw sugar testing ninety-six sugar degrees by the polariscope, determined in accordance with regulations to be issued by the Secretary." 61 STAT. 922 (1947), 7 U.S.C. § 1101(h) (1952). The principal grades and types of sugar and liquid sugar shall be translated into terms of raw value as provided in the statutory definement. *Ibid.* The term "raw sugar," as defined in the act, means "any sugars (exclusive of liquid sugar from foreign countries having liquid sugar quotas), whether or not principally of crystalline structure, which are to be further refined or improved in quality to produce any sugars principally of crystalline structure or liquid sugar." 61 STAT. 922 (1947), as amended, 7 U.S.C. § 1101(d) (Supp. IV, 1956). See also, 22 FED. REG. 8170 (1957).

[57] 61 STAT. 924 (1947), as amended, 7 U.S.C. § 1112 (Supp. IV, 1956).

[58] *Ibid.*

amount shall be apportioned among and added to the quotas for the domestic sugar producing areas as follows: (1) The first 165,000 short tons, raw value, or any part thereof by which quotas for the domestic areas are so increased shall be apportioned 51.5 per centum to the domestic beet sugar area and 48.5 per centum to the mainland cane sugar area; (2) the next 20,000 short tons, raw value, or any part thereof by which such quotas are so increased shall be apportioned to Puerto Rico; (3) the next 3,000 short tons, raw value, or any part thereof by which such quotas are so increased shall be apportioned to the Virgin Islands; and (4) any additional amount shall be apportioned on the basis of the quotas established by the apportionment of the original 4,444,000 short tons, raw value, as adjusted by the authorized additions.[59]

The quota for the Republic of the Philippines is specified in the statute as 952,000 short tons of sugar.[60] The Secretary is required to establish quotas for foreign countries other than the Republic of the Philippines, as follows: (1) By prorating to Cuba 96 per centum and to other foreign countries four per centum of the amount of sugar, raw value, by which 8,350,000 short tons, raw value, or such lesser amount as determined by the Secretary constitutes the estimated requirements in the continental United States exceeds the sum of 4,444,000 short tons, raw value, and the quota of 952,000 short tons of sugar—*i.e.*, 980,000 short tons, raw value—for the Republic of the Philippines, and (2) by prorating 45 per centum of the amount of sugar, raw value, by which the amount determined to be the estimated requirements in the continental United States exceeds 8,350,000 short tons, raw value, as follows: For Cuba, 29.59 per centum; for Peru, 4.33 per centum; for the Dominican Republic, 4.95 per centum; for Mexico, 5.10 per centum; for other countries, 1.03 per centum.[61] The proration of 1.03 per centum to foreign countries other than Cuba, the Republic of the Philippines, Peru, the Dominican Republic, and Mexico is apportioned to such other countries whose average entries within the quotas during 1953 and 1954 exceeded 1,000 short

[59] *Ibid.*

[60] 61 STAT. 924 (1947), as amended, 7 U.S.C. § 1112(b) (1952). "On the basis of the average polarization of Philippine sugar brought into the continental United States during 1955 . . . a quota of 980,000 short tons, raw value, is required to permit the entry of the quantity of sugar established as the quota for the Republic of the Philippines by section 202 of the act." 20 FED. REG. 9848, 9850 (1955).

[61] 70 STAT. 218 (1956), 7 U.S.C. § 1112(c)(2) (Supp. IV, 1956).

tons, raw value, on the basis of the average entries within the quotas from each country for the years 1951, 1952, 1953, and 1954.[62]

The proration of the four per centum previously referred to for foreign countries other than Cuba and the Republic of the Philippines is apportioned as follows: (1) By assigning to each such foreign country whose average entries within the quotas during the years 1953 and 1954 were less than 1,000 short tons, raw value, a proration equal to its average entries within the quotas during 1953 and 1954, (2) by assigning to each such foreign country whose average entries within the quotas during 1953 and 1954 were not less than 1,000 nor more than 2,000 short tons, raw value, a proration of 3,000 short tons, raw value, (3) by assigning to each foreign country whose average entries within the quotas during 1953 and 1954 were more than 2,000 and less than 3,000 short tons, raw value, a proration equal to the average entries from each such country within the quotas during 1953 and 1954 plus 2,000 short tons, raw value, (4) by assigning to each foreign country whose average entries within the quotas during 1953 and 1954 were not less than 3,000 nor more than 10,000 short tons, raw value, a proration equal to the average entries from each such country within the quotas during 1953 and 1954, and (5) by prorating the balance of such proration to such foreign countries whose average entries within the quotas during 1953 and 1954 exceeded 10,000 short tons, raw value, on the basis of the average entries within the quotas from each such country for the years 1951, 1952, 1953, and 1954.[63]

With respect to Cuba, however, it is provided that notwithstanding the other terms of the act relative to the proration of quotas, the minimum quota for Cuba, including increases resulting from deficits, shall not be less than (1) 28.6 per centum of the amount of sugar determined by the Secretary to meet the requirements of consumers in the continental United States when such amount is 7,400,000 short tons or less, and (2) 2,116,000 short tons when the amount of sugar determined by the Secretary to meet the requirements of consumers in the continental United States is more than 7,400,000 short tons.[64] The quotas for domestic sugar producing areas shall be reduced pro rata by such amounts as may be required to establish the minimum quota for Cuba.[65]

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[62] *Ibid.*
[63] 70 STAT. 218-19 (1956), 7 U.S.C. § 1112(c)(3) (Supp. IV, 1956).
[64] 61 STAT. 924 (1947), 7 U.S.C. § 1112(d) (1952).
[65] *Ibid.*

Whenever a foreign country with a quota or proration thereof of more than 10,000 short tons fails to fill the quota or proration by more than 10 per centum and at any time during the particular year the world price of sugar exceeds the domestic price, the quota or proration thereof for such country for subsequent years shall be reduced by an amount equal to the amount by which the country failed to fill its quota or proration thereof, unless the Secretary finds that such failure was due to crop disaster or *force majeure* or finds that such reduction would be contrary to the objectives of the statute.[66] Any reduction which is thus effectuated shall be prorated in the same manner as deficits are prorated.

C. *Proration of Quota Deficits.*

Adaptability is one of the attributes of the quota system, and provision is made in the statute for the proration of quota deficits. The Secretary is required to determine, from time to time, whether any area will be unable to market the quota for that area.[67] The determination by the Secretary is to be arrived at on the basis of the current inventories of sugar, the estimated production from the acreage of sugar cane or sugar beets planted, the normal marketings within a calendar year of new-crop sugar, and other pertinent factors.[68]

The Secretary is required, on the finding by him that an area will be unable to market the quota for that area, to revise—within the limitations of the act—the quota in accordance with the standards in the statute so as to prorate to other specified areas an amount of sugar equal to the deficit so determined by the Secretary.[69] Also if the Secretary finds that "any area will be unable to fill its proration of any such deficit, he may apportion such unfilled amount on such basis and to such areas as he determines is required to fill such deficit" subject, however, to the exceptions and limitations in the act.[70]

D. *Amount of Quota to be Filled by Direct-Consumption Sugar.*

The comprehensive plan relates to the marketing of direct-consumption sugar as well as raw sugar. The quotas for the sugar pro-

[66] 70 STAT. 219 (1956), 7 U.S.C. § 1112(e) (Supp. IV, 1956).

[67] 61 STAT. 925 (1947), as amended, 7 U.S.C. § 1114(a) (Supp. IV, 1956).

[68] *Ibid.*

[69] 61 STAT. 925-26 (1947), as amended, 7 U.S.C. § 1114(a), (b), and (c) (1952 and Supp. IV, 1956). The quota for an area is not, however, "reduced by reason of any determination of a deficit . . . ." 61 STAT. 926 (1947), 7 U.S.C. § 1114(c) (1952).

[70] 61 STAT. 925 (1947), as amended, 7 U.S.C. § 1114(a) (Supp. IV, 1956).

ducing areas—domestic and foreign—limit the amount of sugar that may be marketed in any form from each area of supply.[71] However, the general quotas for the principal off-shore areas, both domestic and foreign, are qualified by the statutory provisions which limit to a portion of each quota the amount that may be filled in the form of direct-consumption sugar.[72] The balance of each quota must be filled with raw sugar which is then refined by the refiners on the mainland before being sold to consumers.

The purpose of the statutory limitation with respect to the amount of the quota to be filled by refined or direct-consumption sugar is to distribute among the mainland refiners and the off-shore refiners the opportunity to refine the limited quantity of sugar permitted to be marketed under the general quotas.[73] The need for this limitation arises, primarily, as a result of the impact of the general quotas and exemplifies the fact that market controls, while ameliorating the effect of disorderly marketing, may serve as the originant of additional problems. "It is a commonplace that reforms may bring in their train new difficulties" the prevention or mitigation of which "becomes a proper legislative concern." [74]

The quota system, limiting the total quantity of sugar that may be marketed from the various areas of supply, necessarily limits the raw sugar supplies available to refiners located on the mainland. To the extent the raw sugar is refined before it is marketed in the continental United States, the problem of the mainland refiners is intensified. Refiners in off-shore areas customarily market sugar at lower prices than the mainland refiners.[75] The mainland refiners obtain most of

[71] 61 STAT. 928 (1947), 7 U.S.C. § 1119(a), (b), (c), and (d) (1952).

[72] 61 STAT. 927-28 (1947), as amended, 7 U.S.C. § 1117 (1952 and Supp. IV, 1956). Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 606-607 (1950). There is no intermediate raw sugar stage in the processing of sugar beets. Sugar beets are processed directly into refined sugar, and the sugar is marketed only in that form. "Most sugar from cane goes through two stages of processing to produce the refined sugar commonly used in American households. The first process, that of extracting, boiling, and otherwise processing the cane juice, is conducted in the producing area in raw cane-sugar mills. The products obtained are raw sugar, usually in crystalline form, and various by-products such as blackstrap molasses and bagasse. . . . Most of the cane sugar brought into this country from offshore areas, both foreign and domestic, is in the raw form. It is put through the second process—the refining process—in refineries, most of which are located in large port cities. . . . In contrast to cane sugar, refined sugar from beets goes through the entire process in a single plant." U.S. DEP'T OF AGRICULTURE, INFORMATION BULLETIN No. 111, THE UNITED STATES SUGAR PROGRAM 1-2 (1953).

[73] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 606-607, 615-616 (1950).

[74] *Id.* at 616.

[75] UNITED STATES TARIFF COMMISSION, REPORT No. 73 at 106 (2d series, 1933); *Hearings on H.R. 5326 Before the Special Subcommittee of the House Committee on*

their raw sugar supplies from the off-shore areas,[76] and if the full amounts of the quotas for off-shore areas could be imported in refined form the mainland refiners would lose to the off-shore refiners their major sources of supply of raw sugar. In order to meet the problem thus created the statute limits the portions of the quotas for the off-shore areas that may be filled with sugar that is not to be further refined on the mainland, *i.e.*, direct-consumption sugar. The statutory provisions thus assure a division of the restricted raw sugar supplies between the mainland and off-shore refiners.

The congressional purpose to regulate the marketing of all sugar, in the interest of consumers and of the entire sugar industry, is manifested by the express provisions of the statute and by the legislative history. The act refers to the purpose to provide a supply of sugar that "will be consumed at prices that will not be excessive to consumers and which will fairly and equitably maintain and protect the welfare of the domestic sugar industry." [77] Regulation of the marketing of refined sugar from off-shore areas has been an integral part of the program since its inception in the Jones-Costigan Act of 1934. The legislative history of the Sugar Act of 1948 shows that its primary objective is the "stabilization of the sugar producing, refining, and importing industries." [78] Congress has deliberately adopted a comprehensive scheme which recognizes the position of the refiners as an essential part of the domestic sugar industry, and the regulatory program deals with their problems as well as with the problems of producers and consumers.

> Congress might of course have limited its intervention to the raw sugar market, trusting that thereby stability in the refined sugar market would be produced. Congress thought otherwise; it evidently felt that competition among refiners for a legally limited supply of raw sugar, in a period of overexpanded refining capacity, ought not to be left at large.[79]

Congress has established specific limitations with respect to the amount of the quota for each off-shore area which may be filled

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*Agriculture*, 75th Cong., 1st Sess. 111 (1937); *Willett and Gray*, 24 WEEKLY STATISTICAL SUGAR TRADE JOURNAL 242 (1957).

[76] U.S. DEP'T OF AGRICULTURE, STATISTICAL BULLETIN No. 214, SUGAR STATISTICS AND DATA 43-45 (1957).

[77] 61 STAT. 924 (1947), as amended, 7 U.S.C. § 1111 (Supp. IV, 1956).

[78] H.R. REP. No. 796, 80th Cong., 1st Sess. 1 (1947).

[79] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 615 (1950).

by direct-consumption sugar. It was provided in the Jones-Costigan Act of 1934 that the quota for direct-consumption sugar, for each domestic off-shore area, was to be the largest amount shipped to the mainland from the respective area in any one of the three preceding years.[80] "By the Sugar Acts of 1937 and 1948, Congress embedded this amount in legislation." [81]

E. *Quotas for Liquid Sugar.*

Quotas for liquid sugar for certain foreign countries are established by the statute, and the amount of each quota is specified in the act.[82] The term "liquid sugar" is defined in the act,[83] and the quotas for this product are expressed in "wine gallons of 72 per centum total sugar content." [84]

The liquid sugar quotas provided for by the act are 7,970,558 gallons for Cuba; 830,894 gallons for the Dominican Republic; 300,000 gallons for the British West Indies, and none for other foreign countries.[85]

## IV. Allotments of Quotas or Prorations

"All the details for the control of a commodity like sugar could not, of course, be legislatively predetermined." [86] The quotas for each area, including the amount of each quota which can be filled by direct-consumption sugar, are established in the statute, but the allotment of a quota or proration for an area to the persons who market or import sugar or liquid sugar is left to administrative action by the Secretary.

> Congress could not itself, as a practical matter, allot the area quotas among individual marketers. The details on which fair judgment must be based are too shifting and judgment upon them

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[80] c. 263, §4, 48 STAT. 672 (1934).

[81] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 607 (1950).

[82] 61 STAT. 928 (1947), 7 U.S.C. § 1118 (1952).

[83] The term "liquid sugar" means "any sugars (exclusive of sirup of cane juice produced from sugarcane grown in continental United States) which are principally not of crystalline structure and which contain, or which are to be used for the production of any sugars principally not of crystalline structure which contain, soluble nonsugar solids (excluding any foreign substances that may have been added or developed in the product) equal to 6 per centum or less of the total soluble solids." 61 STAT. 922 (1947), 7 U.S.C. § 1101(f) (1952). See also, 22 FED. REG. 8170 (1957).

[84] 65 STAT. 319 (1951), 7 U.S.C. § 1118 (1952).

[85] *Ibid.*

[86] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 607 (1950).

> calls for too specialized understanding to make direct congressional determination feasible. Almost inescapably the function of allotting the area quotas among individual marketers becomes an administrative function . . . .[87]

The Secretary is authorized to make allotments of the quota or proration for any area by allotting to persons who market or import sugar or liquid sugar, for such periods as may be designated by the Secretary, the quantities of sugar or liquid sugar which each such person may market in the continental United States, the territory of Hawaii, or Puerto Rico, or may import or bring into the continental United States for consumption therein.[88] Any such allotment may be made by the Secretary only if he finds that the allotment is necessary (1) to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate or foreign commerce, (2) to prevent disorderly marketing or importation of sugar or liquid sugar, (3) to maintain a continuous and stable supply of sugar or liquid sugar, or (4) to afford all interested persons an equitable opportunity to market sugar or liquid sugar within the area's quota. Also the allotment may be made by the Secretary only after he has held a public hearing—pursuant to notice thereof—with respect to the proposed allotment of the quota.[89]

An allotment by the Secretary shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of the quota or proration thereof, by taking into consideration the processings of sugar or liquid sugar from sugar beets or sugar cane to which proportionate shares pertained, as provided in the act; the past marketings or importations of each such person; and the ability of such person to market or import that portion of such quota or proration thereof allotted to him.[90] The Secretary may also take into

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[87] *Id.* at 610.

[88] 70 STAT. 219 (1956), 7 U.S.C. § 1115(a) (Supp. IV, 1956). "Allotment orders currently are in effect for the marketing of the beet-sugar and mainland cane-sugar quotas. . . . In most years the Puerto Rican quota also is allotted. Hawaiian sugar is marketed by a Capper-Volstead Cooperative. Virgin Islands sugar is marketed by a Government corporation. Consequently, no marketing allotment orders have been necessary in these two offshore areas. The Department has never undertaken to allot quotas for imports from foreign countries." *Subcommittee on Foreign Trade Policy of the House Committee on Ways and Means,* Foreign Trade Policy, 688-689 (1957), statement in an exhibit attached to the letter of September 6, 1957, by the Assistant Secretary of Agriculture. The complexities in the allotment of a quota are, *e.g.*, revealed in the allotments of the sugar quotas for the domestic sugar beet area in 1957 and the mainland cane sugar area in 1957. 22 FED. REG. 3700, 4597 (1957).

[89] 70 STAT. 217 (1956), 7 U.S.C. § 1115(a) (Supp. IV, 1956).

[90] *Ibid.*

consideration, in making any such allotments, and make due allowance for the adverse effect of drought, storm, flood, freeze, disease, insects, or other similar abnormal and uncontrollable conditions seriously and broadly affecting any general area served by the factory or factories of such person.[91]

The statutable standards to be followed in allocating a quota to individual marketers allow "wide areas of judgment and therefore of discretion." [92] The act does not provide what weight should be given to each factor or, for that matter, whether in a particular situation all of the statutory factors must receive a quantitative share in the computation.[93] In this area of administration, the Secretary "could not be left at large and yet he could not be rigidly bounded. Either extreme would defeat the control system. They could be avoided only by laying down standards of such breadth as inevitably to give the Secretary leeway for his expert judgment. Its exercise presumes a judgment at once comprehensive and conscientious. Accordingly, Congress instructed the Secretary to make allotments 'in such manner and in such amounts as to provide a fair, efficient, and equitable distribution' of the quota." [94] The standards in the statute "preclude abstract or doctrinaire categories. A variety of plans of allotment may well conform to the statutory standards. But the choice among permissive plans is necessarily the Secretary's . . . ." [95]

Congress provided, as a guide to the Secretary in formulating a fair distribution of allotments, that the Secretary should consider past marketings, ability to market, and processings to which proportionate shares pertained. Those terms were the subject of consideration, *in extenso*, in *Secretary of Agriculture v. Central Roig Refining Co.*[96] With respect to past marketings, the Court held:

> It was evidently deemed fair that in a controlled market each producer should be permitted to retain more or less the share of the market which he had acquired in the past. Accordingly, past marketings were to be taken into consideration in the Secretary's allotments. But the past is relevant only if it furnishes a representative index of the relative positions of different marketers. And there is

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[91] *Ibid.*

[92] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 611 (1950).

[93] *Id.* at 612.

[94] *Id.* at 610-611.

[95] *Id.* at 614.

[96] 338 U.S. 604, 611-613 (1950).

> no calculus available for determining whether a base period for measurement is fairly representative. Whether conditions have been so unusual as to make a period unrepresentative is not a matter of counting figures but of weighing imponderables. If he is to exercise the function of allotting a limited supply among avid contenders for it, the Secretary cannot escape the necessity of passing judgment on their relative competitive positions. For Congress announced that one of the main purposes justifying the making of allotments is 'to afford all interested persons an equitable opportunity to market sugar' . . . .[97]

The statutory term "ability to market" is also to be admeasured by the facts and circumstances of the particular case. It was held in the *Central Roig* case that:

> In directing the Secretary to take into consideration ability to market, Congress in effect charged the Secretary with making a forecast of the marketers' capacity to perform in the immediate future. Such a forecast no doubt draws heavily on experience, but history never quite repeats itself even in the vicissitudes of industry. Whether ability to market is most rationally measured by plant capacity or by past performance, whether, if the latter, the base period should be a year and what year or a group of years and what group—these are not questions to be dealt with as statistical problems. They require a disinterested, informed judgment based on circumstances themselves difficult of prophetic interpretation.[98]

The statutory term "proportionate shares" and the other statutory factors are standards of general import. The metes and bounds of the statutory provisions are not to be ascertained in the abstract, but are to be gauged on the basis of the factual circumstances in a particular situation.

> The proper mode of ascertaining 'processings of sugar . . . to which proportionate shares . . . pertained' is not here in controversy. Perhaps this factor too implies choice. But the question common to all three standards is whether the Secretary may conclude, after due consideration, that in the particular situation before him it is not essential that each of the three factors be quantitatively reflected in the final allotment formula. Concededly, § 205(a) empowers the Secretary to attribute different influences to the three factors. Obviously one factor may be more influential than another

[97] *Id.* at 612.

[98] *Id.* at 612-613.

> in the sense of furnishing a better means of achieving a 'fair, efficient, and equitable distribution.' But it is not consonant with reason to authorize the Secretary to find in the context of the situation before him that a criterion has little value and is entitled to no more than nominal weight, but to find it unreasonable for him to conclude that this factor has no significance and therefore should not be at all reflected quantitatively.
>
> Congress did not predetermine the periods of time to which the standards should be related or the respective weights to be accorded them. . . .[99]

A public hearing is required by the statute whenever the Secretary finds that an allotment should be made of the quota or proration for a particular area.[100] The hearing is for the adduction of the relevant evidence on which to make the allotments to the individual marketers of sugar. The usual attributes of a formal hearing are reflected in the rules of practice and procedure governing the proceeding.[101]

The notice of hearing is published in the Federal Register, and the hearing is publicly conducted and the testimony is reported verbatim.[102] Each witness is sworn, and all interested persons are permitted to present oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.[103] A representative of the Department is to submit such data and other information available to the Department which is deemed to be relevant and material to the subjects and issues involved in the proceeding, and the representative of the Department shall, unless he states that such would be impractical, unnecessary, or contrary to the public interest, also present a proposed method or methods of allotment, together with a statement of the facts and reasons in support of the proposal.[104]

Briefs, proposed findings, and conclusions may be submitted subsequent to the hearing.[105] As soon as practicable following the termination of the period allowed for the filing of briefs, proposed findings, and conclusions, a recommended decision is issued by the Ad-

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[99] *Id.* at 613.

[100] *Supra* note 89.

[101] 7 C.F.R. § 801.1-801.20 (Supp. 1956). The requirements of §§ 7 and 8 of the Administrative Procedure Act, *supra* note 47, are reflected in the procedural rules relative to the allotment of sugar quotas or prorations.

[102] 7 C.F.R. §§ 801.5(1), 801.9(d)(1) (Supp. 1956).

[103] *Id.* § 801.9(d).

[104] *Id.* § 801.9(c)(2).

[105] *Id.* § 801.10(b).

ministrator.[106] The Administrator's recommended decision shall include (1) a preliminary statement with respect to the history of the proceeding, including a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to the issues as well as the reasons or basis for the proposed findings and conclusions; (2) a ruling upon each finding or conclusion proposed by interested persons; and (3) an appropriate proposed determination or regulation.[107] Exceptions may be filed to the recommended decision.[108] The recommended decision may, however, be omitted if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires the omission of the recommended decision.[109]

The Secretary's decision, arrived at after due consideration of the entire record in the proceeding, "shall be based upon and made in accordance with reliable, probative, and substantial evidence adduced at the hearing, and shall include (a) a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record; (c) a ruling upon each exception filed by interested persons; and (d) a final determination or regulation." [110]

## V. Judicial Review of the Allotments of the Quotas or Prorations

It is for Congress to determine how the rights which it creates shall be enforced,[111] and jurisdiction is vested in the United States Court of Appeals for the District of Columbia to review the administrative allotments of the quotas or prorations.[112] The Sugar Act of 1948

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[106] *Id.* § 801.13(a).

[107] *Id.* § 801.13(b).

[108] *Id.* § 801.13(c).

[109] *Id.* § 801.13(d).

[110] 7 C.F.R. § 801.15 (Supp. 1956). With respect to administrative findings of fact, it has been held that the failure of an agency to list the findings in numerical order is not reversible error if the findings are sufficiently clear to show the facts found. Baltimore & O. R. Co. v. United States, 201 F.2d 795, 798 (3d Cir. 1953).

[111] Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297, 301 (1943); Mario Mercado E Hijos v. Benson, 231 F.2d 251, 252-253 (D.C. Cir. 1956).

[112] 61 Stat. 926 (1947), 7 U.S.C. § 1115(b)-(f) (1952). The congressional authorization for judicial review by the Court of Appeals is similar, in some respects, to

defines those persons who have standing to maintain judicial review of administrative action. An application for judicial review may be filed—within 20 days after the effective date of the administrative decision which is the subject of the petition for review—by (1) "any applicant for an allotment whose application" was denied, or (2) "any person aggrieved by reason of any decision of the Secretary granting or revising any allotment to him." [113] Any person who would be aggrieved or whose interest would be adversely affected by the reversal or modification of the administrative action complained of may intervene and participate in the proceeding on judicial review.[114]

The record on judicial review is the record of the proceeding before the administrative agency.[115] Judicial review is limited to "questions of law" and the "findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Secretary are arbitrary and capricious." [116] The courts, on judicial review, are not to substitute their judgment for that of the Secretary, and the administrative findings are not to be set aside unless they are baseless or arbitrary.[117] It is not for the courts to reject the Secretary's allotment of a quota unless "his judgment is not one that a fair minded tribunal with specialized knowledge could have reached." [118]

The issues in the administrative proceeding may, if prejudicial error is disclosed,[119] be resolved on judicial review. A failure, however,

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the so-called Hobbs Act, 64 STAT. 1129-1132 (1950), 5 U.S.C. §§ 1031-1041 (1952), which provides for judicial review of administrative action under certain regulatory statutes. Judicial review of the allotments of sugar quotas or prorations is limited, however, to review in the United States Court of Appeals for the District of Columbia and then, on petition for certiorari, in the Supreme Court of the United States, whereas under the Hobbs Act the petition for judicial review may be filed "in the judicial circuit wherein is the residence of the party or any of the parties filing the petition for review, or wherein such party or any of such parties has its principal office, or in the United States Court of Appeals for the District of Columbia," 64 STAT. 1130 (1950), 5 U.S.C. § 1033 (1952), and then, on petition for certiorari, in the Supreme Court.

[113] 61 STAT. 926 (1947), 7 U.S.C. § 1115(b)-(c) (1952). A person who alleges that he is adversely affected by administrative action must show that the administrative action complained of invades a legal right of such person. United Milk Producers of New Jersey v. Benson, 225 F.2d 527, 529 (D.C. Cir. 1955); Benson v. Schofield, 236 F.2d 719, 722-723 (D.C. Cir. 1956), *cert. denied,* 352 U.S. 976 (1957).

[114] 61 STAT. 926 (1947), 7 U.S.C. § 1115(d) (1952).

[115] *Id.* § 1115(c).

[116] *Id.* § 1115(e).

[117] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 614 (1950).

[118] *Ibid.*

[119] Only prejudicial error in an administrative proceeding is reversible error. United States v. Pierce Auto Freight Lines Inc., 327 U.S. 515, 530 (1946); Philadelphia Co. v. SEC, 177 F.2d 720, 725 (D.C. Cir. 1949); Union Starch & Refining Co. v. NLRB, 186 F.2d 1008, 1013 (7th Cir. 1951), *cert. denied,* 342 U.S. 815 (1951).

to present an issue in the administrative proceeding precludes the presentation of the issue on judicial review.[120] "A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the agency of an opportunity to consider the matter, make its ruling, and state the reasons for its action." [121]

In an administrative proceeding a constitutional issue may be presented and, on judicial review, the issue may be resolved.[122] Constitutional issues were decided in *Secretary of Agriculture v. Central Roig Refining Co.*,[123] with respect to the Secretary's allotment of the Puerto Rican quota for direct-consumption sugar, and the constitutional issues were originally presented in the administrative proceeding.[124] It was held, in the *Central Roig* case, that there is no requirement of geographic uniformity under the commerce clause of the Constitution, that a legislative policy may be established so as to give due regard to the varying and fluctuating interests of different regions, and that there is no discrimination of such an injurious character, in the statutory provisions with respect to the quota limitations for direct-consumption sugar from Puerto Rico, as to impinge on the due process clause in the Fifth Amendment.[125] The

120 United States v. Tucker Truck Lines, 344 U.S. 33, 37 (1952); Unemployment Compensation Comm'n of Alaska v. Aragon, 329 U.S. 143, 155 (1946); United States v. Northern Pacific Ry., 288 U.S. 490, 494 (1933); Vajtauer v. Comm'r of Immigration, 273 U.S. 103, 113 (1927); Spiller v. Atchison, T. & S. F. Ry. Co., 253 U.S. 117, 130-131 (1920).

121 Unemployment Compensation Comm'n of Alaska v. Aragon, 329 U.S. 143, 155 (1946).

122 Allen v. Grand Cent. Aircraft Co., 347 U.S. 535, 553 (1954); Franklin v. Jonco Aircraft Corp., 346 U.S. 868 (1953), *reversing* Jonco Aircraft Corporation v. Franklin, 114 F. Supp. 392 (N.D. Tex. 1953); United States v. Capital Transit Co., 338 U.S. 286, 291 (1949); Oklahoma v. United States Civil Service Comm'n, 330 U.S. 127, 140-142 (1947); Anniston Mfg. Co. v. Davis, 301 U.S. 337, 345-346 (1937); Miller v. United States, 242 F.2d 392, 395 (6th Cir. 1957), *cert. denied*, 26 U.S.L. WEEK 3117 (U.S. Oct. 15, 1957) (No. 297).

123 338 U.S. 604, 614-619 (1950).

124 Transcript of Record, p. 177, Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604 (1950).

125 Secretary of Agriculture v. Central Roig Refining Co. *Id.* at 614-619. "There is no requirement of uniformity in connection with the commerce power." Currin v. Wallace, 306 U.S. 1, 14 (1939). "Congress may choose the commodities and places to which its regulation shall apply. . . ," and it may "consider and weigh relative situations and needs." *Ibid.* It has been familiar doctrine since McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 423 (1819), that if a statutory provision is not prohibited by the Constitution "to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretentions to such a power." See also, Oklahoma v. Atkinson Co., 313 U.S. 508, 527 (1941); Arizona v. California, 283 U.S. 423, 456 (1931); Everard's Breweries v. Day, 265 U.S. 545, 559 (1924); Northern Securities Co. v. United States, 193 U.S. 197, 350 (1904).

fact that a particular regulation "may demonstrably be disadvantageous to certain areas or persons" is not enough to constitute a violation of the due process clause.[126]

## VI. Prohibited Acts, Penalties, and Enforcement Actions

The statute enumerates the acts which are prohibited, and it prescribes the civil penalties for violations.[127] The marketing or importing of sugar or liquid sugar beyond the limitation of a relevant quota is prohibited. A person who violates the act is subject to a civil penalty, payable to the United States, in a sum equal to three times the market value, at the time of the violation, of the quantity of sugar or liquid sugar involved in the violation.[128] A person who subjects sugar imported as raw sugar, which subsequently is determined to be of direct-consumption quality, to further processing or refining is also subject to a civil penalty, *i.e.*, the forfeiture of a sum equal to 1¢ per pound for each pound, raw value, of such sugar in excess of that part of the direct-consumption portion of the applicable quota or proration or allotment remaining unfilled at the time such sugar is determined to be of direct-consumption quality.[129] Additional penalties are prescribed with respect to the violation of an order or regulation of the Secretary or the wilful failure to submit information required by the Secretary or the wilful submission of any false information to the Secretary.[130]

The district courts of the United States are vested with jurisdiction specifically to enforce the provisions of the act or the provisions of

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126 Secretary of Agriculture v. Central Roig Refining Co., *supra* note 124, at 618. It has been "pointed out many times that the exercise of the federal commerce power is not dependent on its maintenance of the economic *status quo;* the Fifth Amendment is no protection against a congressional scheme of business regulation otherwise valid, merely because it disturbs the profitability or methods" of the person or business concern affected. American Trucking Ass'ns v. United States, 344 U.S. 298, 322, fn. 20 (1953). The fact that a marketing allotment for sugar is denied does not give rise to an infirmity under the Constitution. Gay Union Corporation v. Wallace, 112 F.2d 192, 200 (D.C. Cir.), *cert. denied,* 310 U.S. 647 (1940).

127 61 Stat. 928 (1947), as amended, 7 U.S.C. §§ 1119, 1153(a), 1155, 1156, and 1157 (1952 and Supp. IV, 1956).

128 70 Stat. 220 (1956), 7 U.S.C. § 1155(a) (Supp. IV, 1956).

129 *Id.* § 1155(b). A civil penalty under the statute is to be collected in a civil action for a money judgment. See Miller v. United States, 242 F.2d 392, 393-395 (6th Cir. 1957), *cert. denied,* 26 U.S.L. Week 3117 (U.S. Oct. 15, 1957) (No. 297), and United States v. Stangland, 242 F.2d 843, 846-847 (7th Cir. 1957), involving suits for civil penalties under the provisions in the Agricultural Adjustment Act of 1938.

130 61 Stat. 932, 933 (1947), 7 U.S.C. §§ 1153(a) and 1156 (1952).

any order or regulation issued pursuant to the act.[131] The district courts have jurisdiction to enforce and to prevent and restrain any person from violating the act or an order or regulation in effect pursuant to the act.[132] The remedies provided by the act are in addition to any other remedies or penalties provided for by law.[133]

## VII. Assuring a Fair Division of the Benefits of the Program

One of the purposes of this legislation is to insure that domestic producers and workers in the sugar cane and sugar beet fields receive a fair share of the returns from sugar. The production of sugar needed to fill the quota for each area is divided among the farms in that area, and the "proportionate share" of each farm may be expressed in acres, tons of sugar beets or sugar cane, or in tons of sugar.[134] Proportionate shares are established, with respect to a farm, on the basis of past production and of ability to produce.[135] Special provisions apply with respect to new producers and small producers.[136]

Producers who have not exceeded their proportionate shares are entitled to receive certain payments subject to their compliance with certain other conditions. To be eligible for these payments a producer must refrain from using child labor, must pay fair and reasonable wages and, if he is also a processor who processes sugar beets or sugar cane grown by other producers, he must pay a fair and reasonable price to the other producers for their sugar beets or sugar cane.[137]

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[131] 61 Stat. 932 (1947), 7 U.S.C. 1154 (1952). Under similar statutory language, it has been held that an enforcement action, for an injunction, may be brought "in the name of the United States by the United States Attorney," and the Secretary of Agriculture is not a necessary party. Shafer v. United States, 229 F.2d 124, 130 (4th Cir.), *cert. denied*, 351 U.S. 931 (1956). The United States "is not bound to conform with the requirements of private litigation when it seeks the aid of the courts to give effect to the policy of Congress as manifested in a statute. It is a familiar doctrine that an injunction is an appropriate means for the enforcement of an Act of Congress where it is in the public interest." *Id.* at 128.

[132] *Supra* note 131.

[133] *Ibid.*

[134] 61 Stat. 929, 930 (1947), as amended, 7 U.S.C. §§ 1131(b), 1132 (1952 and Supp. IV, 1956).

[135] *Ibid.*

[136] *Ibid.*

[137] 61 Stat. 929 (1947), as amended, 7 U.S.C. § 1131 (1952 and Supp. IV, 1956). "The base rate of payment is 80 cents per 100 pounds of commercially recoverable sugar. This rate is scaled down for farms which produce in excess of 350 tons of sugar and declines to a minimum of 30 cents per 100 pounds on that portion of the farm's total production in excess of 30,000 tons." *Subcommittee on Foreign Trade Policy of the House Committee on Ways and Means*, Foreign Trade Policy 689 (1957), statement included as an exhibit to the letter of September 6, 1957, by the Assistant Secretary of Agriculture. The conditional payments and the crop insurance

The statutory provisions for fair and reasonable wages and rates or prices are terms of broad scope, and their application is dependent on the factual circumstances in each situation.[138] The fair and reasonable wages and prices are determined by the Secretary.[139]

A determination as to fair and reasonable prices and wages, for the purpose of a conditional payment, is made by the Secretary "after investigation and due notice and opportunity for public hearing,"[140] although there is no provision in the act for the determination to be based solely on the data received at the public hearing. It is provided in the procedural rules that the notice of hearing shall be published in the Federal Register,[141] and that all interested persons shall have a reasonable opportunity to submit relevant evidence at the hearing.[142] Subsequent to the hearing, written arguments may be submitted, but the arguments must be based on the evidence adduced at the hearing.[143] The Secretary's determination is published in the Federal Register.[144]

The Secretary's determination is final and conclusive with respect to the facts constituting the basis for a payment or the amount of payment.[145] The Sugar Act expressly subjects allotments of quotas

payments have been substantially less, in total amount, than the collections of excise taxes on sugar manufactured in the United States and import taxes on the importation of direct-consumption sugar since 1934. *Ibid.* In addition to the conditional payments, limited benefits in the form of crop insurance are provided, under specified circumstances, for crop deficiency and abandonment of planted acreage caused by drought, flood, or certain other unusual circumstances. 61 STAT. 930 (1947), 7 U.S.C. § 1133 (1952).

138 "Statutory reasonableness is an abstract quality represented by an area rather than a pinpoint. It allows a substantial spread between what is unreasonable because too low and what is unreasonable because too high." Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246, 251 (1951). "Questions of reasonableness are necessarily questions of relation and degree . . .," and the ultimate decision, in a case involving the application of a statutory standard of reasonableness, is to be arrived at on the basis of a close scrutiny of the facts. Sugar Institute v. United States, 297 U.S. 553, 600 (1936).

139 61 STAT. 929 (1947), 7 U.S.C. § 1131 (1952).

140 61 STAT. 930 (1947), 7 U.S.C. 1131(c) (1952). The Secretary has broad authority to obtain from all persons engaged in manufacturing, marketing, or transportation, or industrial use of sugar or liquid sugar information which he "deems necessary to enable him to administer the provisions of this Act." 61 STAT. 933 (1947), 7 U.S.C. § 1156 (1952).

141 7 C.F.R. § 802.3 (1955).

142 *Id.* § 802.5(d).

143 *Id.* § 802.5(f).

144 *Id.* § 802.6(c). See 21 FED. REG. 333 (1956); 21 FED. REG. 1796 (1956).

145 61 STAT. 932 (1947), 7 U.S.C. § 1136 (1952). The statutory provision in the Sugar Act is similar to that in 56 STAT. 372 (1942), 7 U.S.C. § 217a (1952) to the effect that (1) the Secretary's decision shall be final with respect to his determination as to which applicant is best qualified to perform brand inspection at a posted stockyard, under the Packers and Stockyards Act, and (2) the Secretary's order suspend-

to judicial review, but judicial review of administrative action is not otherwise provided for. "This contrast goes far to show that Congress did not intend" for judicial review to be available with regard to administrative determinations as to conditional payments, and that conclusion is confirmed by express statutory language.[146] "An administrative rejection of an alleged claim against the United States is conclusive when Congress has chosen to make it conclusive." [147] The courts are, therefore, without jurisdiction in this respect.[148]

## VIII. Conclusions

The pattern of administration is well defined by the practice and procedure established by the administrative agency. The methods adopted for rule-making, in the area in which authority is deputed to the Secretary, follow the customary channels, depending on whether it is formal or informal rule-making.

The complexities of the sugar industry and the variability of the needs of the Nation make the establishment of marketing quotas for sugar an undertaking of pronounced difficulty. The sugar industry, however, has actively participated in the review of the program, from time to time, by Congress, and the efforts by the industry have been conducive to the resolution of the difficulties and conflicting claims in the establishment and administration of the program.

The various interests to be served by the quota system are of wide range, including the interests of consumers in the continental United States. The program "is widely recognized as successful farm legislation," [149] it "has brought stability to a commodity which was notable for erratic price, production, and marketing behavior in the

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ing or revoking any such authorization and registration shall not be subject to review. Also see, California Lima Bean Growers Ass'n v. Bowles, 150 F.2d 964, 968 (Emerg. C.A., 1945), in which it was held that, under the statute there involved, the Secretary's determination of the parity price for an agricultural commodity is not subject to judicial review.

[146] Mario Mercado E Hijos v. Benson, 231 F.2d 251, 252 (D.C. Cir. 1956). The statutory language precludes judicial review "not only of the Secretary's finding, but of the hearing which led to it." *Ibid.*

[147] *Id.* at 253.

[148] *Ibid.*

[149] Statement of the Under Secretary of Agriculture on June 23, 1955, at the *Hearings before the House Committee on Agriculture,* 84th Cong., 1st Sess., 46 (1955).

years before quota legislation," [150] and the administrative agency has been commended for its work in the achievement of the legislative goal.[151]

[150] *Ibid.*

[151] See Statement by the Chairman of the House Agriculture Committee, 101 CONG. REC. A5760 (1955), and *Hearings before the House Committee on Agriculture,* 84th Cong., 1st Sess. 2 (1955).