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THE DEFENSE PRODUCTION ACT EXTENDED AND AMENDED

The summer of 1951 marked the first year of operation under the primary statutory control mechanism supporting our present mobilization effort, the Defense Production Act of 1950.¹ That Act, passed in the patriotic upsurge which followed our entry into the Korean affair, has proved to be substantially adequate in serving as the legal basis for the great majority of executive orders² and administrative rules and regulations³ needed to effectively mobilize, control and stabilize the national economy. Attacks upon the legality of the Defense Production Act of 1950 and the administrative action taken thereunder have been rare and almost universally unsuccessful.⁴ Previous expositions and analyses of the Act in the law reviews⁵ and elsewhere have emphasized the obvious fact that the Act was not particularly novel in scope or kind, but was, on the whole, merely an up-to-date reflection and compilation of the statutory control mechanisms of World War II.

¹ 64 STAT. 798 (1950), 50 U.S.C. APP. § 2061 *et seq.* (Supp. 1951).

² For example, Exec. Order No. 10161, 15 FED. REG. 6105 (1950), delegated priority, allocation, requisitioning, loan, procurement, stabilization and credit control powers; Exec. Order No. 10172, 15 FED. REG. 6929 (1950), designated certifying authority with respect to accelerated tax amortization; Exec. Order No. 10182, 15 FED. REG. 8013 (1950), prescribed regulations for appointment of persons and exempting them from conflict of interest statutes; Exec. Order No. 10193, 15 FED. REG. 9031 (1950), bestowed over-all mobilization control authority in a Director of Defense Mobilization; Exec. Order No. 10200, 16 FED. REG. 61 (1951), established the Defense Production Administration; and Exec. Order No. 10281, 16 FED. REG. 8789 (1951), set up the Defense Materials Procurement Agency with centralized authority to procure strategic materials.

³ See the calendar of formal actions taken by the federal agencies to implement the Defense Production Act. *Hearings before the Senate Committee on Banking and Currency on S. 1397*, 82d Cong., 1st Sess. 71 (1951).

⁴ No important court decisions have been rendered on the Defense Production Act as of the date of this article.

⁵ Frey, *Maintaining Economic Freedom Under the Defense Act of 1950*, 18 U. OF CHI. L. REV. 218 (1951); Tyson, *Manpower Aspects of the Defense Production Act of 1950*, 46 ILL. L. REV. 1 (1951); Scanlan, *The Defense Production Act of 1950*, 5 RUTGERS L. REV. 518 (1951).

In spite of the fact that the Act represented no basic change in the law of statutory control applied in the *total* mobilization for World War II, nevertheless, it has served the country effectively in the first year of *partial* mobilization during the cold war era.⁶ Operating under its provisions, we have been able to double the combined active strength of our armed forces, and in the summer of 1951, there were already approximately three million men under arms. We have placed orders for over twenty-three billion dollars worth of equipment.⁷ Industry is rapidly converting, deliveries are coming up the production line at an ever-accelerating rate, and defense expenditures have doubled since Korea, now running at a rate of approximately two billion dollars per month. Moreover, in addition to the increasing tempo in placing orders and securing deliveries, substantial progress has been made in the long range expansion of all productive capacity, with our ultimate goal being the maintenance of sufficient production lines to enable us to have our guns as well as our butter.⁸

While it is true that our success thus far in mobilizing the nation's industrial and military strength might not have been accomplished without the statutory authority provided by the Defense Production Act, nevertheless, progress under it was not always smooth or successful.⁹ It was partially for this reason that watchful and sometimes very vocal members of congressional investigating committees gave ceaseless

⁶ See, in support of this conclusion, the testimony of Charles E. Wilson, Director of Defense Mobilization, given before the House Committee on Banking and Currency, *House Hearings on H.R. 3871*, 82d Cong., 1st Sess. 4 (1951).

⁷ Testimony of John Small, Chairman of the Munitions Board, *id.* at 84.

⁸ "With the fullest degree of drive and unity, we can do this job by 1953. By that date our readiness to enter upon total mobilization should be sufficient; and production, in addition to meeting current military needs, should support a civilian economy at or above pre-Korean levels." *Building America's Might*, Report to the President by the Director of Defense Mobilization, April 1, 1951, p. 2. The thesis that we can have more "butter" as well as guns has been challenged. See, e.g., testimony of Professor Seymour Harris, *Senate Hearings on S. 1397*, 82d Cong., 1st Sess. 1540 (1951).

⁹ This was especially true of stabilization problems. *Hearings, supra* note 3, at 25-7.

attention to many phases of the administration of the Act during the first ten months of its existence. Apart from the Joint Committee on Defense Production, established by the terms of the original Act itself,¹⁰ other congressional committees took to the field and to the hearing room frequently, to check on the civilian control agencies and the military departments as they performed their respective mobilization duties. The spate of these congressional investigations embraced procurement,¹¹ military expenditures,¹² tax amortization,¹³ Government loans,¹⁴ parity,¹⁵ price and wage control,¹⁶ and allocations. And above all things, there was always the persistent inquiry, the ever-unanswered question, "what about small business?"¹⁷ Their investigations and findings supplied much of the factual background for the debate which pervaded the further extension and amendment of the Act in the summer of 1951.¹⁸

In spite of the tremendous progress made under the Defense Production Act, as June, 1951 approached, it became

¹⁰ 64 STAT. 820 (1950), 50 U.S.C. APP. § 2162 (Supp. 1951). The Joint Committee, comprising five members from both the Senate and House, held extensive hearings in which the officials of the civilian control agencies presented voluminous testimony regarding the administration of the Act. *Hearings before the Joint Committee on Defense Production*, 82d Cong., 1st Sess. February 8, 9, 13, March 8, 19, April 4, 12 (1951).

¹¹ Report on Federal Supply Management, H. R. REP. No. 658, 82d Cong., 1st Sess. 11 (1951).

¹² *Hearings before the Senate Subcommittee on Department of Defense Appropriations*, 82d Cong., 1st Sess., May 7 (1951).

¹³ *Hearings before Joint Congressional Committee on Defense Production*, 82d Cong., 1st Sess., March 19 (1951).

¹⁴ Certificates of Necessity and Government Plant Expansion Loans, H. R. REP. No. 504, 82d Cong., 1st Sess., May 28 (1951).

¹⁵ *Hearings*, *supra* note 13, March 8 (1951).

¹⁶ *Hearings*, *supra* note 13, February 13, March 2 (1951).

¹⁷ See, e.g., *Participation of Small Business in Military Procurement*, Committee Print, Senate Select Committee on Small Business, 82d Cong., 1st Sess., May, 1951; *Small Business Clinic (Tucson, Arizona)*, Committee Print, Senate Select Committee on Small Business, 82d Cong., 1st Sess., (April 16, 1951).

¹⁸ In addition, the Preparedness Subcommittee of the Senate Committee on Armed Services, headed by the aggressive Senator Lyndon Johnson of Texas, was constantly looking over the shoulder of administrative agencies, especially the military. In its efforts to duplicate the vigilance of the Truman Committee of World War II, it has received extensive publicity and published over forty reports, which, in the opinion of some critics, were distinguished primarily by a lurid prose and rhetorical flourish.

necessary for the Congress to give attention to the extension of the Act and its possible amendment. The greatest initiative to that end of course came from the Administration under the leadership of the Director of Defense Mobilization. He was supported in the Department of Defense whose representatives were aware that the defense program had not yet achieved its maximum impact on the American economy. As the Director of Defense Mobilization testified to the Congress, the greatest need for controlling the flow and use of scarce materials was yet to come.¹⁹ Similarly, the greatest pressures on prices and wages were prospective.²⁰ Time is proving the accuracy of that prophecy. In spite of the obvious need for the extension of the Defense Production Act in order to continue our mobilization effort at an ever-accelerating pace, and at the same time avoid the disasters of mounting inflation, the general atmosphere of the times was not propitious when the Congress began hearings on the Defense Production Act Amendments of 1951. In the first place, there was a strange lethargy on the part of the public, an indifference, almost a somnolence, toward the whole problem of controls and inflation.²¹ Complaints about high prices were intermingled in the same breath with warnings of the evil that controls themselves represented. In the midst of this paradoxical public reaction, the pressure group movements which so often have had an influential effect in shaping the course of legislation smoothly operated. Another factor which militated against the extension and strengthening of the Defense Production Act during the late spring and early summer days of 1951 was the onslaught by the cattlemen against roll back orders which the Office of Price Stabiliza-

¹⁹ *Hearings, supra* note 6, at 5.

²⁰ *Id.* at 88.

²¹ Except for the large labor organizations, no consumer groups were sufficiently concerned to testify during the hearings on the amendments. More than one defense official speculated whether the American people have the "will" to tolerate economic controls in a period short of all-out war. Defense Mobilization Board Minutes 5, March 14, 1951.

tion had placed upon certain meat products.²² This, combined with the general distaste for the large army of "bureaucrats" who were necessary to administer the law, produced an atmosphere not conducive to successful achievement of the goals which the Administration sought in amendments to the Defense Production Act. Finally, in the midst of hearings on the Defense Production Act, peace negotiations were started in Korea, and it looked for a few weeks at least as if hostilities in the Far East would soon be terminated. Consequently, in spite of the warning of men in high places that to terminate controls for that reason would be disastrous,²³ a strong undercurrent of sentiment grew which argued that controls would no longer be necessary, since peace was practically upon us. Contemporary events attest to the gross error of that view.

Faced then with the attitudes discussed above, the Administration adopted an unusual strategy as they attempted to shepherd the bill through the pitfalls of congressional hearings and debates. Basically, that strategy²⁴ had three objectives. The primary goal was to secure extension of the Defense Production Act as it stood. Second in importance was a resolution to prevent crippling amendments from being added to the extended bill. Thirdly, and the least important in spite of the fact that it received the most publicity, was the plan to strengthen the Act as it then stood by amending it in certain particulars. As these pages may reveal, that strategy was in part successful and yet, in certain substantial respects, manifestly unsuccessful. The purpose of this article is to point out the particulars in which that strategy was successful and those in which it was not, by referring to the

²² *Hearings*, *supra* note 6, at 279-82.

²³ "Mr. Small. 'I couldn't tell you with more sincerity, Mr. Chairman, I think unless this Act is extended we will have industrial chaos, inevitably.'" *Hearings*, *supra* note 6, at 90. Mr. Small is Chairman of the Munitions Board, Department of Defense.

²⁴ The strategy as discussed herein was outlined to this writer, among others, on the eve of the amendment hearings by a responsible official of the Office of Defense Mobilization.

provisions of the amendments which were suggested, the congressional reaction to them, and the final disposition of them, either by defeat, modification, or unaltered inclusion in the final draft of the bill as it became law on the 31st of July, 1951.

Early in the spring of 1951 the Office of Defense Mobilization began the process of coordinating with the other interested governmental agencies in the preparation of drafts of amendments to be introduced to the Defense Production Act.²⁵ After many had been considered and more rejected, the amendments thought necessary were introduced into Congress. On the Senate side, a bill embracing the amendments proposed by the Administration was introduced by the Chairman of the Senate Committee on Banking and Currency, Senator Maybank of South Carolina,²⁶ who, though scrupulously fair in his conduct of the hearings, made it clear that he introduced the bill on request, was not its sponsor in all its parts, and in fact had reservations about certain aspects of it.²⁷ In the House, the Chairman of the House Banking and Currency Committee, Representative Spence of Kentucky, introduced the Administration bill²⁸ and fought vigorously in its behalf, both before his committee and in the House debate which preceded final passage of the bill. That the bill finally passed as it did must be acknowledged in part as his accomplishment. However, both the Senate and House Banking and Currency Committees held long hearings which were very fairly conducted and at which the voices of the public, including capital, labor and

25 "Mr. Wilson. 'They are the recommendations of all the agencies, the various agencies that constitute the mobilization program. They all had their hand in it and gave us their recommendations.'" *Hearings, supra* note 3, at 50.

26 S. 1397, 82d Cong., 1st Sess., April 26, 1951.

27 "The Chairman. '... I stated at the White House, in the presence of Mr. Wilson, that there are some things in the bill that I did not think much of. I have to be convinced, as this hearing progresses, that such changes are necessary.'" *Hearings, supra* note 3, at 68.

28 H.R. 3871, 82d Cong., 1st Sess., April 26, 1951, introduced by Mr. Spence. Future references to this citation will be with respect to amendments as introduced, and not as finally passed.

agriculture, as well as those of the Government officials charged with administering the law, were fully heard. It is doubtful whether any control bill in our history received the extended consideration that these amendments did.

In spite of the fact that the amendments as introduced actually would not have called for much additional governmental control of the economy, and even though many of the Government officials administering the law made it clear that neither by desire nor training were they interested in expanding their administrative authority,²⁹ the amendments encountered rough going. The hearings served as a general review and re-examination of many of the controversial problems that had arisen over the past year concerning the statutory control of the economy under the Defense Production Act. Agricultural groups, with congressional support, were quick to strike at any attempt, real or imagined, to interfere with the farm parity price concept and were very critical of the price roll backs and slaughtering restrictions imposed by the Office of Price Stabilization.³⁰ Small business representatives complained about the favoritism which larger business allegedly enjoyed in receiving defense contracts and in being allowed accelerated amortization on their plants and facilities.³¹ Members of both the Senate and House committees were concerned lest the subsidy power be abused to the point where "too much government" and "Socialism" might rear their unwanted heads.³² Another school of thought took the tack that direct controls like those over prices and wages, and allocation and priority orders were all unnecessary, at least until the direct controls, including credit restrictions

29 "Mr. Johnston. 'Gentlemen, as much as we dislike controls — and I heartily agree with everything you have said about the dislike of controls and I am sure everyone in this room agrees with that — as much as we dislike them, there are times when it is essential in my opinion that they be imposed.'" *Hearings, supra* note 6, at 210-1. Eric Johnston was then Economic Stabilization Director.

30 *See, e.g.*, statement of H. M. Conway, Director of Research, National Livestock Producers Association, *Hearings, supra* note 3, at 1333 *et seq.*

31 *Id.* at 94.

32 *See, e.g.*, *Hearings, supra* note 3, at 409; *Hearings, supra* note 6, at 35.

and stricter taxation restraints, were allowed a chance.³³ At the same time other groups and other Congressmen complained that the credit restrictions already in existence were too severe and were strangling certain industries as well as discriminating against the defense worker.³⁴ Labor lamented the lack of "real price control"³⁵ and indicated that unless it was forthcoming, labor would move for further wage increases to meet the mounting cost of living. In addition to these major brickbats, the hearings on the Defense Production Act amendments brought forth complaints about plant dispersals, the failure to set up control machinery earlier, the problem of rent controls and many others. That Congress was finally able to extend the Act and amend it in certain particulars was to some extent amazing in view of the storm of oratory pro and con that accompanied the legislative history of the amendments to the Defense Production Act.

Priorities and Allocation

Title I of the original Defense Production Act provided authority to assign priorities and allocate materials and facilities to promote the national defense.³⁶ In addition, it contained anti-hoarding provisions which made criminal the accumulation of scarce materials in excess of the reasonable demands of business, personal or home consumption, or for purposes of resale at prices in excess of prevailing market prices.³⁷ Title I was a grant of authority which Congress intended to be broadly used.³⁸ It has been so used. Under it,

³³ "Mr. Wolcott. ' . . . There is a school of thought, however, that teaches that there are certain orthodox methods of stabilizing our economy which have not been used to their fullest capacity.'" *Hearings, supra* note 6, at 12. Mr. Wolcott later failed in an attempt to amend the bill to provide that price, wage and credit controls sections were not to be operative until and unless certain individual contracts had been utilized. 97 Cong. Rec. 7985 (July 9, 1951).

³⁴ *Hearings, supra* note 3, at 3301 *et seq.*

³⁵ Statement of Walter Reuther, *Hearings, supra* note 3, at 2130 *et seq.*

³⁶ 64 STAT. 799 (1950), 50 U.S.C. APP. § 2071 (Supp. 1951).

³⁷ 64 STAT. 799 (1950), 50 U.S.C. APP. § 2072 (Supp. 1951).

³⁸ "It is necessary that these powers should be broad and flexible because limited or restricted or partial authority might even prove insufficient to accomplish the desired end in the given situation, or might do more harm than good by

for instance, the National Production Authority has been able to set up a priority system to channel materials and industrial capacity into direct defense production. Limitation, simplification, standardization, prohibition and distribution orders, as well as inventory control regulations and a controlled materials plan, have been issued by the National Production Authority and the other appropriate agencies. In general, Congress in reviewing the administrative actions taken under the original Title I of the Defense Production Act felt that the flexible authority granted had been well administered.³⁹ For that reason there was little inclination to tamper with that section of the Act, although Congress had been petitioned to amend Title I to incorporate specific formulas for the allocation of adequate materials to continue civilian production wherever this was consistent with military needs.⁴⁰ Congress, however, realized that such amendments might create undesirable inflexibility in the administration of allocation and priority powers and, primarily for that reason, rejected them.⁴¹

The bill which the Administration recommended for amending the Defense Production Act contained only one minor modification of Title I. This amendment would have made it clear that the President could prescribe conditions and exceptions to the permitted accumulation of scarce materials under the anti-hoarding provisions of the Act.⁴² This amendment prevailed with the Congress, although it was changed to spell out the congressional intent that any exceptions or conditions must be made on a general class basis and could not be used as a device to show partiality to particular companies.

making it necessary to use a shotgun instead of a rifle in order to accomplish a single purpose." SEN. REP. NO. 2250, 81st Cong., 2d Sess. 13 (1950).

³⁹ SEN. REP. NO. 470, 82d Cong., 1st Sess. 12-4 (1951).

⁴⁰ *Id.* at 13.

⁴¹ *Ibid.*

⁴² H.R. 3871, 82d Cong., 1st Sess. § 101 (1951).

In addition to this minor change sponsored by the Administration, there were several other amendments to Title I enacted which brought few cheers from those entrusted with administering the Act. The first of these was the addition of Section 101(a) which provides that no restriction, quota or other limitation shall be placed upon the quantity of livestock which may be slaughtered or handled by any processor.⁴³ This amendment was added to the bill during debate in the Senate⁴⁴ and the House,⁴⁵ and had as its avowed purpose the elimination of the slaughtering quota system which the Office of Price Stabilization had established to assure proper distribution of meat products and to enforce ceiling prices for them. The proponents of the amendment argued that the quota system curtailed production and that the passage of the amendment would permit more stock to be slaughtered, causing prices to fall. Opponents of the amendment maintained that it would cause the channeling of livestock into black markets, whereas until that time livestock could be reserved for reputable companies. Shortly after the enactment of the slaughtering quota restriction amendment, President Truman condemned it as one of the sections of the Act which made effective control of inflationary meat prices very difficult to achieve. He called for its repeal and a bill aimed in that direction was brought before the Senate Banking and Currency Committee.⁴⁶

In addition, the amendments of 1951 added a new section, 101(c), to Title I of the present Act. This new sub-section provides that no imports of certain fats and oils, peanuts, butter, cheese and other dairy or rice products shall be admitted to the United States before July 1, 1952, if the Secretary of Agriculture should determine that these imports

⁴³ Section 101, as amended by Pub. L. No. 96, 82d Cong., 1st Sess. § 101(a) (July 31, 1951).

⁴⁴ 97 Cong. Rec. 7461 (June 27, 1951).

⁴⁵ 97 Cong. Rec. 8079 (July 10, 1951).

⁴⁶ S. 2048, 82d Cong., 1st Sess., introduced August 23, 1951, by Senators Ferguson, Nixon and Welker.

would impair domestic production or interfere with the orderly domestic storing and marketing, or result in any unnecessary expenditures to Government price-support programs.⁴⁷ This amendment was aided on the floor of the House ⁴⁸ during the debate on the bill. According to its proponents, its purpose was to provide "continued encouragement" for an industry which might be needed in time of all-out war. On the other hand, its enactment soon provoked complaints from some of our allies that the amendment was a violation of existing treaty commitments and made a mockery of the economic aid we gave them. In effect, we were asking them to increase production and at the same time refusing to buy their goods.⁴⁹

However, an even more drastic limitation on imports would have been permitted under an amendment to the Act which the House Banking and Currency Committee reported out favorably,⁵⁰ but which was defeated on the floor.⁵¹ It would have amended the priority and allocation authority to provide that whenever priorities or allocations are in effect with respect to any raw material, the President should prohibit the importation of any article or product manufactured in whole or in part from such raw material. This so-called Moulter amendment anticipated an evil of the last war which arose when the domestic watch industry suffered because foreign watches were imported into the United

⁴⁷ Pub. L. No. 96, 82d Cong., 1st Sess. § 101(c) (July 31, 1951).

⁴⁸ 97 Cong. Rec. 8065 (July 10, 1951).

⁴⁹ "Formal memoranda have already been received by the Department of State from the Governments of Canada, Denmark, France, Italy, Netherlands, New Zealand, and Switzerland. Argentina, Australia, and Norway have also protested. The first six nations named have protested action under Section 104 as being in violation of the letter and spirit of the General Agreement on Tariffs and Trade, and detrimental to tariff concessions negotiated under GATT. Some of these countries have stated that this action on the part of the United States is inconsistent with its actions in taking the lead in attempts to break down trade barriers in Europe and elsewhere." SEN. REP. No. 790, 82d Cong., 1st Sess. 9 (1951).

⁵⁰ H.R. REP. No. 639, 82d Cong., 1st Sess. 23 (1951).

⁵¹ Opponents of the amendment stressed the point that its passage might result in needlessly preventing the United States from obtaining commodities which are needed and could also mean that commodities might be directed to markets of the communist bloc. 97 Cong. Rec. 8002 (July 9, 1951).

States. Those responsible for the administration of the priority and allocation program in support of the defense effort undoubtedly heaved a sigh of relief when this amendment was defeated during the course of the legislative history.⁵²

Requisitioning and Condemnation

Title II of the original Defense Production Act permitted the requisitioning of equipment for supplies or component parts needed for national defense, as well as the requisitioning of materials or facilities which might be necessary for the manufacture, maintenance, or operation of the equipment, supplies, or component parts. Congress also required that the national defense need must be immediate, not permitting delay or resort to other sources. And, even then, the requisitioning must be based upon the condition that all other means of obtaining the use of the property for the United States upon fair and reasonable terms had been exhausted.⁵³ Congress, in permitting this drastic administration power, felt that it was an indispensable complement to the allocation and priority power granted under Title I.⁵⁴ It was not used at all during the first year of the administration of the Act. This duplicates to some extent the experience during World War II, where only 5% of the instances in which requisitioning was resorted to involved actual refusal to sell to the government. The great majority of World War II requisitioning proceedings occurred because of title difficulties or other legal impediments, or because of honest differences of opinion about the value of the property.

The bill which the Administration sent to Congress contained an amendment to Title II, which would have granted condemnation authority.⁵⁵ The original Title II of the De-

⁵² *Ibid.*

⁵³ 64 STAT. 799 (1950), 50 U.S.C. APP. § 2081 (Supp. 1951).

⁵⁴ "Properly used, however, this power [to requisition] is an indispensable complement to the allocation and priority powers." SEN. REP. NO. 2250, 81st Cong., 2d Sess. 15 (1950).

⁵⁵ H.R. 3871, 82d Cong., 1st Sess., April 26, 1951.

fense Production Act permitted requisitioning of materials or manufacturing facilities, but did not expressly permit the requisitioning of property for use as command facilities, such as land for an airfield or army barracks. At least, this is what a literal reading of the original Title II revealed, although some senators indicated that the original intention in drafting Title II was to allow requisitioning for any defense purpose.⁵⁶ To clear up this point and to secure the same condemnation authority which Congress had provided in Title II of the Second War Powers Act, the Department of Defense drafted an amendment which would have permitted the condemnation of property for command, training and operational facilities. In addition, the proposed amendment would have permitted acquisition of the property before an actual formal court order, which in many cases can be delayed for a year or more by vexatious litigation.⁵⁷ Furthermore, due to a statutory omission, the Department of the Navy did not possess the full condemnation authority which an earlier

⁵⁶ "Senator Capehart. 'As a member of this Committee who sat through the hearings when the act was passed, it was my intention to give you the right to do that [requisitioning land for any defense purpose]. Of course, I do not know how you could acquire a factory building without acquiring the land it sits on, do you?'

"Mr. Scanlan. 'No. Absolutely not. It was certainly the intention to allow us to acquire land on which production facilities rested, but we were never sure, and in fact the interpretation was rendered to the contrary, that it authorized condemnation of land for command facilities. But if your intention had prevailed, we would have no real problem.' " *Hearings, supra* note 3, at 399.

⁵⁷ Under the Declaration of Taking Act, 46 STAT. 1421 (1931), 40 U.S.C. § 258(a) (1946), an accurate land survey and map must be available. This is necessary since the Government is bound by the declaration of taking, and title to the described area and all interests therein are irrevocably vested unless the owner consents to dismissal. The acquiring authority must deposit in court an estimate of just compensation on a tract by tract basis. This requires the procurement of appraisals plus, possibly, supplementary information and the recommendation to the Secretary of estimated amounts for deposit. The parties in interest and the extent of their holdings must be definitely known since the deposits are allocated for their use by withdrawal from the registry of the court in advance of the final determination of compensation. In like manner, this requires the procurement of title services, preparation of certificates or abstracts and review. It may be observed at this point that both the appraiser and the title searcher are seriously handicapped and delayed unless an accurate survey of the site, tract by tract, delineating the individual ownerships, is available. This survey is distinct from any over-all perimeter which constitutes only the external boundary of the site to be acquired.

1917 Act⁵⁸ vested in the Secretary of War, and which a transfer order under the National Security Act of 1947, as amended,⁵⁹ had extended to the Department of the Air Force. Passage of the proposed condemnation amendment would have rectified this anomalous situation.

During the course of the legislative history, the proposed condemnation amendment was vigorously challenged by several members of the Senate Committee on Banking and Currency⁶⁰ and by members of the House Committee.⁶¹ In spite of the fact that the proposed amendment was ostensibly identical with the condemnation authority granted during World War II, Congress, not satisfied that there was need for it, rejected the proposal. However, the bill as finally enacted did contain authority to acquire real property for defense purposes by purchase, donation or other means of transfer and by condemnation.⁶² The original requisitioning section was amended to prohibit the requisitioning of real property except in a limited area. In general, the condemnation authority granted appears merely to be a restatement of powers already existing by virtue of the Declaration of Taking Act of 1931,⁶³ and does not add to the authority that the military departments already possess in this field.

Furthermore, the House version of the new condemnation authority would have required that before it was exercised for the use of the military services, they would have been required to come into agreement with the Committees on Armed Services of the Senate and House with respect to the terms of individual acquisitions.⁶⁴ This provision was inserted at the request of Congressman Vinson, Chairman

⁵⁸ 40 STAT. 241 (1917), as amended, 50 U.S.C. § 171 (1946).

⁵⁹ 61 STAT. 496 (1947), as amended, 50 U.S.C. § 401 *et seq.* (Supp. 1951).

⁶⁰ *Hearings, supra* note 3, at 396-404.

⁶¹ *Hearings, supra* note 6, at 117-9.

⁶² 64 STAT. 799 (1950), 50 U.S.C. APP. § 2081 (a) (Supp. 1951), as amended by Pub. L. No. 96, 82d Cong., 1st Sess. § 102 (July 31, 1951).

⁶³ 46 STAT. 1421 (1931), 40 U.S.C. § 258(a) (1946).

⁶⁴ H.R. REP. No. 639, 82d Cong., 1st Sess. 2 (1951).

of the House Committee on Armed Services, but was deleted by the conference on the bill and does not appear in the Act as it finally passed.

That the condemnation authority finally granted was less than that originally requested is perhaps immaterial, since there are other legislative alternatives. For instance, Section 18(c) of the Selective Service Act of 1948 permits the seizure of a facility of a manufacturer who refuses or fails to comply in filling a mandatory order placed with him for the delivery of goods for the use of the armed services.⁶⁵ The plant seizure provisions of an earlier Selective Service Act⁶⁶ were utilized during World War II when manufacturers were recalcitrant, or when labor disputes had closed down important defense plants.⁶⁷ Section 18(c) could be used again if the occasion demands it. In addition, the emergency strike provisions of the Labor Management Relations Act of 1947⁶⁸ furnish another method of forcing the continuation of production in vital industry.

Expansion of Productive Capacity and Supply

Title III of the original Defense Production Act was designed to expand the productive capacity and supply of the economy. Several means were provided. There was the guaranteed loan program,⁶⁹ which, like the "V" loan program of World War II, permitted Government agencies, including the military departments, to guarantee loans made by private sources to defense manufacturers. These guarantees were designed primarily to support working capital loans,

⁶⁵ 62 STAT. 626 (1948), 50 U.S.C. APP. § 468(c) (Supp. 1951).

⁶⁶ 54 STAT. 892 (1940), as amended, 57 STAT. 164 (1943). The earlier Selective Service Act provisions permitted, in express terms, seizure of plants where labor disputes impeded the war effort. The present Selective Service Act impliedly covers the labor dispute situation.

⁶⁷ *Ken-Rad Tube & Lamp Corp. v. Badeau*, 55 F. Supp. 193 (W.D. Ky. 1944).

⁶⁸ 61 STAT. 155-6 (1947), 29 U.S.C. §§ 176-80 (Supp. 1951). Of course, the remedy here is not seizure but rather the deterrent effect of the contempt power of the federal courts.

⁶⁹ 64 STAT. 800 (1950); 50 U.S.C. APP. § 2091 (Supp. 1951).

as opposed to loans for the expansion of productive facilities. Title III of the Act accomplished plant expansion by authorizing direct Government loans, through the medium of the Reconstruction Finance Corporation with certification of the appropriate delegate agency, to be made to private enterprise which could not secure the capital elsewhere for the expansion of facilities needed for national defense.⁷⁰ In addition, the original Title III provided a form of subsidy through the use of the guaranteed purchase contract, and also authorized governmental purchase of metals, minerals, and other raw materials for Government use and for resale, even at a loss if necessary, to private industry.⁷¹ Finally, Section 303(d) of the original Title permitted the installation of additional equipment, facilities or improvements in Government plants, and the installation of Government-owned equipment in privately-owned facilities. At the same time, an amendment to the Internal Revenue Code⁷² authorized accelerated tax amortization to companies investing in defense facilities as an incentive device.

Under these various media, the expansion rate of the economy between the first quarter of 1950 and the first quarter of 1951 rose by 10%, and during the fourth quarter of 1950 the annual rate of production of goods and services reached the three hundred billion dollar mark, approximately equal in real output to the peak war year of 1944.⁷³ However, despite the progress made in this direction, there were many complaints, both within the walls of Congress and without, aimed at the administration of certain of the expansion programs. This was especially true of accelerated tax amortization, where the complaints of favoritism leveled by

⁷⁰ *Id.*, 50 U.S.C., § 2092.

⁷¹ *Id.*, 50 U.S.C., § 2093.

⁷² INT. REV. CODE § 124, as amended by 64 STAT. 939 (1950), 26 U.S.C. § 124 (a) (Supp. 1951). Accelerated amortization has received a fair share of criticism from some quarters who regard it as a business "hand out." The Hardy Subcommittee characterized the program as "a shovel in the barrel" approach. H.R. REP. No. 504, 82d Cong., 1st Sess. 2 (1951).

⁷³ *Building America's Might*, *op. cit. supra* note 8.

small business representatives and others mounted in intensity.⁷⁴ In contrast, however, at the same time there was bitter congressional criticism of several of the direct Government loans that had been granted to small and financially unstable enterprises.⁷⁵ In addition to finding themselves in this "damned if we do and damned if we don't" dilemma, the administrators of our defense program were criticized for failure to act more rapidly to effect metal and mineral expansion.⁷⁶

As mentioned above, under the original Title III, metals, minerals and other "raw materials" could be purchased by the Government for its own use or for resale. In the administration of this provision, some difficulties were encountered due to the ambiguity of the term "raw materials." For instance, it was not clear that the section as it then stood would authorize the purchase of materials in more advanced stages of production, such as sheet metal or extrusions. For this reason, an amendment was proposed which would delete the word "raw" preceding the word "materials," and thus make clear that the purchase authority granted was broad enough to include materials generally.⁷⁷ While this proposed amendment received some congressional criticism, due primarily because of its tie-up with the subsidy concept, nevertheless, it did pass. This may have been due in some measure to the testimony of Department of Defense representatives, who pointed out that the broadened authority could be used for placing pool orders on machine tools and some types of electronics equipment.⁷⁸ Machine tool short-

⁷⁴ See, e.g., *Inquiring into the Policy, Procedure and Program Involving Granting of Certificates of Necessity and Defense Loans*, House Hearings, 82d Cong., 1st Sess., March 19, 20, April 5, 9, 20, and 23 (1951).

⁷⁵ "The subcommittee wishes to express itself clearly and without qualification that loans of the Hazelton type are not in the public interest." H.R. REP. No. 504, 82d Cong., 1st Sess. 6 (1951).

⁷⁶ See, e.g., Egan, *Need of Subsidies in Defense is Seen*, N.Y. Times, March 23, 1951, p. 29, col. 1.

⁷⁷ H.R. 3871, 82d Cong., 1st Sess. § 103(a) (1951); [1951] U.S.C. Cong. & Adm. Serv. 1841-2.

⁷⁸ See, e.g., testimony of Munitions Board, Chairman Small, *Hearings, supra* note 3, at 404-5.

ages constituted a tremendous bottleneck to the expansion of productive facilities and the satisfaction of military requirements.

The second amendment proposed by the Administration to the original Section 303(a) of the Defense Production Act was directed at eliminating the language of the Section as it then stood which restricted the purchases of agricultural commodities for resale to industry use and stockpiling only.⁷⁹ This original limitation, of course, represented congressional vigilance to insure that the Defense Production Act was not used as a price control mechanism by which farm prices could be deflated by governmental purchase and dumping of agricultural commodities on the market. However, the amendment proposed did not go this far; it only authorized the removal of the restriction on *imported* agricultural commodities, thus permitting their purchase and resale for stabilization purposes. It would not permit the purchase of *domestic* agricultural commodities for these purposes. The amendment passed, although Congress inserted a proviso prohibiting imported commodities purchased thereunder from being sold at less than the established ceiling price, or if no ceiling price had been established, at less than the current domestic market price. Moreover, Congress provided that no commitment to purchase imported agricultural commodities could be made which called for delivery more than one year after the expiration of the Act. The law, as amended, thus permits the purchase and resale of imported agricultural commodities at a loss when the price in the world market for the commodity has reached a point where resale at the world market price (which would have been necessary before the amendment) would add to the inflationary pressure in the domestic economy. According to testimony before Congress, this broadened authority was regarded as merely "stand-by," to be used when necessary in those limited areas

79 H.R. 3871, 82d Cong., 1st Sess. § 103(a) (1951).

where foreign-produced commodities play a significant role in our domestic economy.⁸⁰

Much more controversial than the two amendments discussed above was an amendment proposed by the administration which would have granted limited subsidy authority, or, as some called it, "differential subsidy" authority. The amendment provided that, in order to assure the continuance of necessary domestic production and to aid in assuring stable prices in the face of temporary increases in certain costs of operation, authority was granted to make limited subsidy payments to high-cost domestic producers of materials or purchasers of agricultural commodities and to producers whose temporary increases in production, distribution, or transportation costs threatened to impair maximum production or supply of a material.⁸¹

As might be expected, the proposal to grant subsidy powers was subjected to a great amount of criticism during the hearings. Several senators and representatives voiced their fears that it could be utilized as a substitute or indirect "Brannan Plan" to control agricultural production and prices.⁸² In spite of this vigorous opposition to the proposed subsidy authority, the need for it was spelled out at great length by witnesses for the Government during the hearings. They pointed out that the subsidy authority was required to protect the economy from temporary increases in costs resulting from the needs of the mobilization program. Similar authority was used effectively during World War II when the subsidy technique furnished a means of maintaining necessary production without adding to inflationary pressure,

80 "Mr. Wilson, ' . . . It may be necessary for the Government to purchase agricultural commodities for purposes other than stockpiling or industrial use. In addition, the resale of imported agricultural commodities at a loss should be permitted when the price in the world market for the commodity has reached the point where resale at the world market price would add to the inflationary pressures in the domestic economy. This broadened authority should be available to us on a standby basis should our mobilization program require such action.' "

Hearings, supra note 6, at 6.

81 H.R. 3871, 82d Cong., 1st Sess. § 303(a), (b), (c) (1951).

82 See, e.g., *Hearings, supra* note 3, at 41.

since only the marginal producers received it. However, while the Defense Production Act amendments, as finally passed, contain limited subsidy authority, they were cut down considerably from those originally asked by the Administration. The requested power was definitely erased as to agricultural commodities, and limited to raw or non-processed material where there might be a decrease in supply from high cost sources, or where there was a temporary rise in the costs of transportation which threatened to impair the maximum production or supply of materials. Congress further surrounded the subsidy authority granted with what it regarded as precautionary prerequisites inhibiting its use, by requiring certain findings to be made⁸³ and by admonishing, in the committee reports on the bill, that the authority granted was to be used sparingly.⁸⁴ That this parsimonious use was the original intent had been many times professed by officials of the control agencies during their testimony on the bill. While Congress took them at their word, it took steps to insure that they kept it.

Another provocative amendment sought by the Administration was one which would have provided authority for the construction and operation by the Government of facilities for the manufacture and marketing of materials needed for national defense. This power, if granted, would have

⁸³ "(c) If the President finds — (1) that under generally fair and equitable ceiling prices for any raw or nonprocessed material, there will result a decrease in supplies from high-cost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of the Act; or (2) that an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials, he may make provision for subsidy payments on any such domestically produced material other than an agricultural commodity in such amounts and in such manner (including purchases of such material and its resale at a loss without regard to the limitations of existing law), and on such terms and conditions, as he determines to be necessary to insure that supplies from such high-cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be." Section 303 (c), as amended by Pub. L. No. 96, 82d Cong., 1st Sess. § 103(b) (July 31, 1951); [1951] U.S.C. Cong. & Adm. Serv. 1692.

⁸⁴ H.R. REP. No. 639, 82d Cong. 1st Sess. 25 (1951). House Conference Rep. No. 770, 82d Cong., 1st Sess. 23 (July 27, 1951).

duplicated the authority given the Defense Plants Corporation in World War II, and it would have enabled the Government to build facilities, with due consideration being given to their strategic location, and to construct plants which private industry would not undertake, because of their lack of utility for peacetime purposes.⁸⁵ For instance, as Government witnesses asserted during the hearings, there are certain types of military production in which individuals do not wish to invest, and in those instances it is exceedingly difficult to procure the necessary facilities without making commitments which involve high costs to the Government and practically no risk to the investor. Moreover, private capital, even with the maximum incentives available, might not necessarily wish to construct new plants in areas thought to be strategic from the point of view of defense, yet uneconomical from the point of view of investment.⁸⁶ Testimony of the Department of Defense representatives supporting this amendment cited the possible need for this defense plant corporation authority in areas where there is no civilian counterpart for the item produced, for example,

⁸⁵ "(e) When in his judgment it will aid the national defense, the President is authorized (1) to acquire by purchase, donation, condemnation, or other means of transfer any real property, including facilities, or other interests therein, and to erect and construct plants, factories, and other industrial facilities for the purposes of manufacturing, producing and processing materials necessary to the national defense and to engage in the marketing, transportation, and storage of such materials; (2) to install additional equipment, facilities and processes in, and construct additions and improvements to, plants, factories, and other industrial facilities owned by the United States Government; (3) to operate, lease, license or otherwise arrange for the use by others of such plants, factories and industrial facilities; and (4) to install Government-owned equipment, facilities, and processes in plants, factories and other industrial facilities owned by private persons. To the fullest extent the President deems practicable, a fair charge shall be made for the use by others of Government-owned property facilities, and processes under the authority of this subsection, in order to reimburse the Government for the cost incurred by it." H.R. 3871, 82d Cong., 1st Sess. § 303 (e) (1951).

⁸⁶ "Mr. Wilson. . . . 'Moreover, private capital, even with the maximum incentives, is frequently unwilling or unable to locate new plants in strategic locations which necessarily involve such economic disadvantages as to make the plants useless to them under normal competitive conditions. For these reasons, the Government should be authorized to construct and operate defense plants as was the case during World War II. This authority would be utilized only in those comparatively few instances where private industry would not or could not undertake expansions at reasonable terms in the national interest.' " *Hearings, supra* note 3, at 25.

in areas where ammunition depots and shell loading plants are needed.⁸⁷ In addition, the Department of Interior thought that authority might be required in processing certain rare metals, such as magnesium.⁸⁸ Finally, the authority, if granted, would have been another weapon to use when negotiating with private industry for expansion in certain areas where it otherwise might be reluctant to do so, unless it realized that, if needed, the Government might invest and compete.

In spite of these arguments, Congress was not disposed to grant the authority requested. Although the House bill as reported did contain the amendment,⁸⁹ it met vigorous opposition in the Senate. Senator Capehart thought it could be too easily abused and could be utilized to put the Government in competition with normal private industry, such as the automobile industry.⁹⁰ Other senators referred to the beneficial elimination of monopolies in the postwar disposal of surplus plants and facilities owned by the Defense Plant Corporation of World War II.⁹¹ Although Senator Benton also pointed out that accelerated amortization was much more expensive and more conducive to monopoly growth of the larger corporations than the establishment of a defense plants corporation authority would be, his amendment to that effect was defeated on the floor in the Senate,⁹² and the original provision of the House bill was also deleted on the floor of the House.⁹³ The argument that prevailed was that the authority, if granted, would be too great a step toward nationalization of industry. Representative Javits attempted to meet this opposition by requiring the certification of the Director of Defense Mobilization in each case before

⁸⁷ *Hearings, supra* note 3, at 408.

⁸⁸ *Id.* at 454.

⁸⁹ H.R. REP. No. 639, 82d Cong., 1st Sess. 25 (1951).

⁹⁰ *Hearings, supra* note 3, at 409-12.

⁹¹ *Id.* at 412.

⁹² 97 Cong. Rec. 7577, 7584 (June 28, 1951).

⁹³ 97 Cong. Rec. 8260 (July 12, 1951).

the Government could acquire plants and facilities.⁹⁴ However, even this resort to the high prestige of Mr. Charles E. Wilson failed. The 1951 amendments to the Defense Production Act do not permit the acquisition of plants and facilities by the Government, but merely continue the original provisions in Title III which allowed additions to plants and facilities already owned by the Government.

There were other minor flurries of amendments to Title III. For instance, the Administration, in the initial bills introduced in the House and Senate, sought to change the limitations which existed in Section 304(b) and (c) on authorized funds, and to provide, by means of specific appropriations, for determination of the amounts to be made available to carry out the procurement, loan and production activities authorized by Title III.⁹⁵ While the Administration was unsuccessful in this objective, Congress did revise the appropriation authority of Section 304(b) of the Act by increasing the amount, authorized to be borrowed and placed in a revolving fund to carry out Title III functions, from 6 hundred million dollars to 2 billion, 100 million dollars. In addition, Congress provided that for the purpose of the anti-deficiency statutes, the liability entailed in operations under Sections 302 and 303 of Title III was to be reckoned on a probable ultimate net liability basis, rather than on a gross contingent liability basis which had been the situation during the first ten months of the Act's existence, and which of course took a larger amount out of the revolving fund available.⁹⁶ Under the new authority, for instance, a purchase contract guaranteed by the Government would be reckoned as a liability only to the extent that there might be a probable ultimate net loss, rather than to the extent of the total

⁹⁴ 97 Cong. Rec. 8350 (July 13, 1951).

⁹⁵ H.R. 3871, 82d Cong., 1st Sess., April 26, 1951.

⁹⁶ Section 304 (b) as amended by Pub. L. No. 96, 82d Cong., 1st Sess. § 103(b) (July 31, 1951).

amount of the contract outstanding. This substantially increases the liquidation of funds supporting defense production activities.

Another area in which there were some attempts to change Title III was that of plant dispersal. Senator O'Mahoney in the Senate⁹⁷ and Representative Rains⁹⁸ in the House introduced amendments which would have required that, in the construction and expansion of plants and other facilities assisted by Government aid in the form of loans or tax amortization, there should be dispersal of facilities so far as practicable. Senator O'Mahoney's amendment would have required consideration of the following questions: (1) whether the areas concerned had sufficient natural resources; (2) whether the areas were fully utilizing their labor forces; (3) were relatively underdeveloped industrially; (4) had not retained their natural increase in population; and, (5) were relatively invulnerable to enemy attack by reason of geographical location or due to the absence of heavy concentration of population or vital defense industries. The attack on these proposed amendments did not follow party lines, but, as might have been expected, brought forth geographical alliances between the senators and representatives from industrialized areas of the country, especially in New England, against the representatives of the less populous areas of the country. Although the proponents of the dispersal amendments took pains to explain that it was not the purpose of their amendments to remake the United States from an economic point of view, their assurances evidently were unconvincing to their colleagues and the amendments were defeated. Later, the President, upon the advice of The National Security Resources Board, issued a plant dispersal policy statement which received some criticism as an attempt to do by executive order what Congress had rejected previously. However, an analysis of the President's policy makes

⁹⁷ 97 Cong. Rec. 7448 (June 27, 1951).

⁹⁸ 97 Cong. Rec. 8164 (July 11, 1951).

it clear that he was referring to the dispersal only of new and expanding industries, not in one section of the country as opposed to another, but rather dispersal within small geographical areas. Thus, the erection of a new plant several miles from a heavily industrialized area still would conform to the policy proclaimed.⁹⁹ In spite of the vital security considerations involved, it appears that relocation of vital defense industries in the United States must await the coming of the first enemy atomic bomb.

Stabilization

Under Title IV of the original Defense Production Act, the President was authorized to take price and wage stabilization measures. However, the stabilization authority granted at that time was restricted in two important respects. In the first place, by the terms of Section 402(b)(3) of the Act, once a price ceiling was established for a particular material or service, wages then had to be stabilized in the particular industry or business producing the material or performing the service, regardless of the fact that wages in that industry might be below the national average. Secondly, the original Defense Production Act protected Government price support of agricultural commodities by forbidding the establishment of ceilings on agricultural commodities below parity.

In addition to the restrictions on effective stabilization that arose out of the patchwork nature of Title IV, administrative action under it was rather slow in getting under way.

⁹⁹ "It is recognized that major centers of industrial production have become fairly integrated and that part of their efficiency is due to their concentration. Dispersion policy, to be effective and realistic, must not be allowed to cripple the efficiency of the productivity of our established industries lest the remedy become worse than the ill. Our policy, therefore, must be directed mainly toward the dispersal of new and expanding industries.

"Sites which need dispersion security standards can be found in local marketing areas adjacent to industrial and metropolitan districts in all sections of the country.

"Thus, this policy can be made to fit the economic and social pattern of any part of the country." *Statement of Policy on Industrial Dispersion*, issued by the President in a letter to the Heads of Executive Departments and Agencies, August 10, 1951.

In fact, the original appointee to the post of Economic Stabilization Director proved to be a unique choice for a top control position, since he continued to adhere to the theory of "voluntary controls" while prices and wages continued their unprecedented rise upwards.¹⁰⁰ However, after replacements of personnel in this job and others, a general price and wage freeze was issued in January, 1951, and from that time on the stabilization program took a change for the better, even though a "creeping" inflationary trend still seems to be with us. The Director of Defense Mobilization reported that the Consumers Price Index showed virtually no change between March and August, 1951.¹⁰¹ Moreover, wholesale prices have, on the average, continued the slow decline that began in March of 1951, and by the 25th of September were 3.9% below the peak reached six months earlier. On the other side of the chart, rises in wages since the general freeze order have been moderate. Nevertheless, despite the present relative stability, the strong inflationary pressures that arise as defense spending grows and personal and business incomes increase continue to threaten.

To meet these continued inflationary threats, the Administration proposed several changes in the Act which would have strengthened the stabilization provision with respect to price, wage and rent controls. The first would have allowed price ceilings on agricultural commodities. There was no attempt to knock out the prohibition against setting agricultural ceilings below parity, but in order to facilitate the administration of that requirement, it was proposed that, for stabilization purposes, the parity price of an agricultural commodity should be the parity price which existed at the beginning of the marketing season or year for that com-

¹⁰⁰ Mr. Valentine, the original Director of Economic Stabilization, was finally replaced. Incidentally, Mr. Di Salle as Director of the Office of Price Stabilization proved to be a dynamic figure in a difficult field where, without dynamism and a thick skin, an administrator is almost useless.

¹⁰¹ *Three Keys to Strength*, Third Quarterly Report to the President by the Director of Defense Mobilization, 30 (October 1, 1951).

modity.¹⁰² This revision would have enabled the Office of Price Stabilization to establish, for an agricultural commodity which had reached parity, a ceiling which would be stable for the remainder of the marketing season. However, the agricultural block, both within Congress and without, vigorously opposed even this slight tampering with the parity principle, and the amendment was defeated, although it was favorably reported out in the House version of the bill.¹⁰³

The second major proposal in the realm of stabilization was one which would have perhaps tightened up the administrative enforcement procedure. This was a request by the Administration for licensing authority similar to that accorded price control agencies in World War II.¹⁰⁴ Under the authority sought, all businesses would be automatically licensed but, after repeated warnings of price violations, they might suffer suspension of their license for a period not to exceed 12 months. This tonic also was too strong for Congress to take, and the licensing provision never saw the light of day in the reports of either the House or Senate committees.

In addition to the defeat of the amendments they had requested, even more disappointing to the Administration were certain stabilization provisions which were in the Act as it finally emerged from Congress. The first of these was the limitation on the roll-back of agricultural prices. In the spring of 1951, the Office of Price Stabilization had issued a number of temporary regulations in an attempt to roll back excessive prices and restore reasonable order to the price market while the long-run pattern of fair prices was to be worked out. Some of these roll-backs were applicable to agricultural commodities. Those applied to beef provoked a furor from the cattlemen who descended upon Washington en masse and heaped invective criticism on the head of the

102 H.R. 3871, 82d Cong., 1st Sess. § 104(b) (1951).

103 H.R. REP. No. 639, 82d Cong., 1st Sess. (1951).

104 H.R. 3871, 82d Cong., 1st Sess. § 104(h) (1951).

harried Mr. Di Salle, then Director of the Office of Price Stabilization. As a matter of fact, the impact of the cattlemen's protests probably was responsible for more than one of the limitations on stabilization authority which Congress then proceeded to put in the Act.

The first one of these was an anti-price roll-back amendment, Section 402(d) (3), which provides: "No ceiling shall be established or maintained for any agricultural commodity below 90% of the price received (by grade) by producers on May 19, 1951, as determined by the Secretary of Agriculture."

However, the provisions against roll-backs on agricultural commodities had an effect beyond that immediate area. When the Senate and House bills went to conference, the House had adopted the limitation on agricultural but not industrial roll-backs, whereas the Senate, in addition to prohibiting agricultural roll-backs, also forbade roll-backs below current price levels as of January-February, 1951. When these were brought to conference, differences were reconciled in what has now become the much-discussed "Capehart Amendment."¹⁰⁵ The differences between the House and Senate bills regarding industrial roll-backs were compromised by allowing industrial roll-backs beyond the January 25, 1951 price level, if industry-wide cost increase or decrease adjustments were allowed. Also, the compromise added a provision which would allow an individual seller, upon a proper showing, to have any selling price adjusted to cover increases in his prices and costs since June 24, 1950.

This adjustment amendment, labeled the "roll forward amendment" by opponents, was immediately attacked by spokesmen for the Administration as being unworkable at best, and terribly inflationary at worst.¹⁰⁶ Since the amendment required that price ceilings reflect changes in practi-

¹⁰⁵ House Conference Rep. No. 770, 82d Cong., 1st Sess., 23-4, (July 27, 1951).

¹⁰⁶ SEN. REP. No. 470, 82d Cong., 1st Sess. 27-34 (1951); [1951] U.S.C. Cong. & Adm. Serv. 1815 *et seq.*

cally all costs up to July 26, 1951, and required the measurement of changes in overhead costs per unit of output on the basis of individual products, it did pose tremendous problems for those called upon to administer it. The Director of Defense Mobilization, supporting the President, charged that the amendment could only result in higher price ceilings, and that with manufacturing profits at near peak levels and with provisions already in the law permitting adjustment for an industry or individual "squeeze" by price ceilings, there was no need for the higher price ceilings provided by the amendment.¹⁰⁷ After a caustic attack on the amendment by the President, legislation was introduced to repeal it. It passed the Senate but was still pending in the House of Representatives when the first session of the 82d Congress came to an end.¹⁰⁸ Its fate is uncertain since it apparently has become exclusively a matter of partisan politics.

In addition to the amendment discussed, there are several other provisions in the amended Defense Production Act which presumably did not contribute much in the effort to hold the price line. One amendment forbids the reduction of distributors' margins below their customary percentage margins immediately prior to Korea.¹⁰⁹ As the Director of Defense Mobilization pointed out, this amendment disregards the usual fact that the increase in distributors' operating costs is rarely proportionate to the increase in the cost of their merchandise.¹¹⁰ In effect, this amendment may well assure that all price increases at the wholesale level will be passed on to the consumer, although legislation has been introduced for its repeal as a result of the President's attack on it.¹¹¹

¹⁰⁷ *Three Keys to Strength*, *op. cit. supra* note 101, at 35.

¹⁰⁸ S. 2048, 82d Cong., 1st Sess., Aug. 23, 1951.

¹⁰⁹ Section 402 (k), as amended by Pub. L. No. 96, 82d Cong., 1st Sess. § 104(h) (July 31, 1951).

¹¹⁰ *Three Keys to Strength*, *op. cit. supra* note 101, at 35.

¹¹¹ S. 2048, 82d Cong., 1st Sess., Aug. 23, 1951.

The paucity of amendments proposed to change the wage stabilization authority existing under the Defense Production Act, belies the fact that wage stabilization was one of the more argumentative areas of administrative action during the first year of the Act's existence. For instance, the clash which organized labor had with the Director of Defense Mobilization concerning the wage formula was one of the more explosive developments during the first year.¹¹² After peace had been reached on this front, the Wage Stabilization Board was reconstituted in a way which made labor a bit more amenable to the wage freeze. There was at least one attempt on the floor of Congress to introduce an amendment that would have reconstructed the Wage Stabilization Board so that the public members would at all times outnumber the labor and industry representatives. This amendment was defeated on the floor of the House after an all-out campaign of opposition by labor.¹¹³

In rent stabilization the situation was different and much was accomplished, although not all that the Administration had originally requested. Under the terms of the bill which the Administration had introduced in the Senate and House, federal rent control would have been re-established on a national scale, with the President being granted the authority to establish maximum rents on housing and business accommodations in any area where he deemed it necessary. Maximum rents would have been the maximum rents effective on the date of the Defense Production Act amendments of 1951, with provision for adjustments in rents to cover increases in operating and maintenance costs for which landlords had not been compensated previously.¹¹⁴

¹¹² Whether the dispute between the representatives of organized labor and Mr. Wilson was due to personality clashes or stemmed from disagreement over vital policies was never clear to this writer. However, with the establishment of a National Advisory Board of Mobilization Policy to advise the President, and upon which labor was generously represented, the feuding ostensibly vanished.

¹¹³ 97 Cong. Rec. 8580-606 (July 18, 1951).

¹¹⁴ H.R. 3871, 82d Cong., 1st Sess. §§ 451-63 (1951).

Universal federal rent control was too harsh a medicine for Congress to swallow undiluted. Although the Housing and Rent Act of 1947,¹¹⁵ with its local option provisions, was extended by the Defense Production Act amendments to June 30, 1952, the rent control authority of the Housing and Rent Act was placed in the President, to be administered through the Economic Stabilization Agency rather than through the Housing Expediter.¹¹⁶ The Housing and Rent Act was amended to provide for the imposition of federal rent control where the state or political subdivision thereof might request it.¹¹⁷ This provision was an improvement over the local option provision to the extent that it allowed re-control as well as de-control to be achieved by local option. However, there was one nod in the direction of inflation by a provision of the bill which permitted a 20% increase in rents over the rent of June 30, 1947, with any previous increases to be taken into account in computing the 20%.¹¹⁸

All through the hearings on rent control, members of the Senate and House committee could not conceal their skepticism as to the purity of the motives of the civilian control agencies.¹¹⁹ Nowhere was this more evident than in their rejection of the proposal to put unrestricted rent re-control authority in the Housing Expediter or the Economic Stabilization Administrator. Their skepticism led them to bring the Secretary of Defense into the picture. The Act, as it finally emerged, provides that the Secretary of Defense and the Director of Defense Mobilization are to jointly determine and certify any area as a critical defense housing area. When this is done, and after credit restrictions are relaxed for that area, rent control may be established. Specific criteria must

¹¹⁵ 61 STAT. 196 (1947), as amended, 50 U.S.C. APP. § 1881 *et seq.* (Supp. 1951).

¹¹⁶ Pub. L. No. 96, 82d Cong., 1st Sess. §§ 201-12 (1951).

¹¹⁷ Pub. L. No. 96, 82d Cong., 1st Sess. § 203(k) (1951).

¹¹⁸ Pub. L. No. 96, 82d Cong., 1st Sess. § 203(o) (1951).

¹¹⁹ See, e.g., *Hearings, supra* note 3, at 748-9, where the members of the Senate Banking and Currency Committee "roast" Mr. Tighe Woods, the Housing Expediter.

be met before an area is to be certified. The testimony of the military departments as to the rent gouging prevalent around military installations had a persuasive force with Congress.¹²⁰ Nevertheless, Congress could not bring itself to sanction federal rent control without the imprimatur of the Secretary of Defense as to necessity. Despite the cumbersome administrative procedure thus established, the Secretary of Defense and the Director of Defense Mobilization, spurred on perhaps by the dramatic reports of the Senate Sub-Committee on Preparedness, have certified many areas throughout the nation as critical defense housing areas where rent control may be imposed.¹²¹

The rent control picture, then, is a prototype of the general congressional attitude toward the amended Defense Production Act. Aware of a real need for controls, if mobilization is to continue and inflation is to be curbed if not stopped, Congress has given grudging assent to the continuance of controls; but it has been very cautious so as to avoid extending authority which, in its opinion, is not necessary or which might be abused by overenthusiastic administrators.

Credit Controls

In an attempt to meet the inflationary threat which arose with the Korean invasion, Congress in the original Defense Production Act authorized the Board of Governors of the Federal Reserve to exercise consumer credit controls,¹²² in accordance with the famous Regulation W of World War II. This regulation increased minimum allowable down payments and shortened maturities on most installment loans. It had the effect of slowing down the rise in the total investment credit. In addition, the original Defense Production

¹²⁰ SEN. REP. No. 2250, 81st Cong., 2d Sess. 22 (1950).

¹²¹ As of November 20, 1951, over 37 areas have been designated as critical defense housing areas by the Secretary of Defense and the Director of Defense Mobilization and rent controls have been imposed therein. Defense Mobilization Board Minutes 4, Nov. 7, 1951.

¹²² 64 STAT. 812 (1950), 50 U.S.C. APP. § 2131 (Supp. 1951).

Act provided authority ¹²³ for promulgation of Regulation X, which placed down payment and maturity requirements on new houses and commercial construction. This regulation contributed substantially to the decline in the construction of private housing units which, in turn, eased the demand for important materials needed for defense construction.

The Administration attempted to strengthen and add to these methods of credit control by proposing the amendments to the Defense Production Act under a new sub-title, Commodity Speculation, which would have amended the Commodity Exchange Act ¹²⁴ so as to authorize the President, when he deemed it necessary, to provide rules and regulations covering margin requirements for speculative transactions on commodity exchanges.¹²⁵

Not only did Congress reject this Administration proposal, but it also proceeded to dilute the credit control measures previously in effect. For instance, Regulation W was altered so as to permit smaller down payments and additional time for payment of installment purchases.¹²⁶ In addition, the Defense Production Act amendments substantially relaxed the down payment and maturity requirements on houses priced at \$12,000 or less.¹²⁷ Automobiles, household appliances, including radios and television sets, and household furniture were among the commodities upon which Congress relaxed consumer credit controls. Paradoxically, some members of Congress pressed successfully for relaxation of these indirect methods of control, while at the very same time their colleagues, and in some cases the same congressmen themselves, were arguing that before direct controls were re-enacted by Congress, there should be an attempt to utilize indirect controls alone! The weakening of the credit control

¹²³ 64 STAT. 813 (1950), 50 U.S.C. APP. § 2132 (Supp. 1951).

¹²⁴ 49 STAT. 1491 (1936), as amended, 7 U.S.C. §§ 1 *et seq.* (1946).

¹²⁵ H.R. 3871, 82d Cong., 1st Sess. § 611 (1951).

¹²⁶ Section 601, as amended by Pub. L. No. 96, 82d Cong., 1st Sess. § 106 (July 31, 1951).

¹²⁷ *Ibid.*

restrictions provoked some of the more serious criticisms leveled at the Defense Production Act amendments by responsible administrators.

Although logical justification for this relaxation can be made, in the end result it does appear that the movement for watered-down credit controls in a period of increasing inflation is an attempt to "have your cake and eat it too." Although the 1951 tax legislation may serve to reduce the inflationary effects of growing national security expenditures, and while savings have risen sharply in the last few months as consumer buying has slackened,¹²⁸ the impaired credit controls present a large gap in our anti-inflationary armor.

Small Defense Plants Administration

Previous reference has been made above to the disadvantageous position that the small businessman was occupying in the defense effort. A plethora of capacity but a shortage of vital materials had placed him in a squeeze. Cutback and limitation orders forced him to curtail his civilian production, but defense contracts which would take up the slack were not forthcoming. It was inevitable that these pressures were reflected in Congress. Various ideas were suggested by individual congressmen in an attempt to do something for small business. These ranged from introduction of legislation which would have provided for compulsory contracting or subcontracting of a percentage of defense orders with small businesses,¹²⁹ and which of course was an idea strenuously opposed by military procurement officials, to the comparatively innocuous suggestion that there be a Government coordinator in charge of small business affairs.¹³⁰

The legislative solution that became the new Section 714 of the Defense Production Act was the creation of an inde-

¹²⁸ *Three Keys to Strength*, *op. cit. supra* note 104, at 32.

¹²⁹ H.R. 4204, 82d Cong., 1st Sess., introduced by Representative Fogarty, May 22, 1951.

¹³⁰ S.J. Res. 49, 82d Cong., 1st Sess., introduced by Senator Humphrey, March 12, 1951.

pendent Small Defense Plants Administration. In the last war there had been a Smaller War Plants Corporation,¹³¹ which had authority to procure prime contracts from the military departments and subcontract them out to be performed by smaller business enterprises. It made loans and gave technical assistance and advice to small business. It was not unnatural that Congress turned to this device again, even though some substantial differences do exist in the legislative authority now granted to the Small Defense Plants Administration and that granted to the SWPC in World War II.

The bill originally introduced and passed by the House was much more severe in its provisions and mandatory in nature, requiring the procurement officers to follow the decisions of the Small Defense Plants Administration in many areas.¹³² The bill that came out of the Senate was much watered down. Senator Sparkman had originally introduced a bill substantially identical in terms with the House version.¹³³ However, the Senate Banking and Currency Committee refused to report it out. After it had been considerably changed to meet objections against its mandatory tenor voiced by the Department of Defense and other agencies of the Government, Senator Sparkman reintroduced his bill during the debate on the Defense Production Act.¹³⁴ It was passed and when the conference adjourned, it emerged as the version of the Small Defense Plants Administration authority which Congress found acceptable.¹³⁵

It is too early to decide whether the exhortatory power given to the Small Defense Plants Administration will contribute much to the solution of the "fix" in which the small

¹³¹ 56 STAT. 353 (1942).

¹³² H.R. REP. NO. 639, 82d Cong., 1st Sess. 30-2 (1951).

¹³³ S. 1397, 82d Cong. 1st Sess., introduced by Senator Sparkman (and forty-nine other senators), June 4, 1951.

¹³⁴ 97 Cong. Rec. 7597-602 (June 28, 1951).

¹³⁵ Section 714, as added by Pub. L. No. 96, 82d Cong., 1st Sess. § 110 (July 31, 1951).

businessman finds himself. It may be that the Administration will make a substantial contribution by intelligent inventory of the available productive facilities on a regional basis, and with the cooperation of the procurement officers in those regions, small business may benefit. On the other hand, because of its limited statutory powers, it may serve as a powerless conduit of the complaints which will continually arise because of the inability of small business to obtain a greater share of defense contracts.

In summary, the Small Defense Plants Administration is an independent agency for which a revolving fund of 50 million dollars was provided. This Administration is empowered to recommend to the RFC loans to aid small business; to enter into contracts with the United States Government obligating the Administration to furnish materials, articles, equipment and supplies to the Government; to arrange for the performance of these contracts by letting subcontracts to small business enterprises; and to provide technical and managerial assistance to small business. The most important function that it may perform is in carrying out the congressional direction that it make a complete inventory of all facilities of small business concerns which can be used in the defense program. The Department of Justice and at least one congressional committee have called for a creation of a centralized inventory as a necessary prerequisite to intelligent procurement planning that would insure equitable use of small business facilities. The Small Defense Plants Administration may certify to procurement officers as to the competency of small business with respect to credit and the capacity to perform specific Government contracts. Procurement officers would be required to accept the certification as conclusive and would then be authorized to let a contract to the concern certified without requiring it to meet any other requirement of capacity or credit. Finally, in an attempt to increase the availability of materials for small businesses, specific provision was made by Congress that whenever ma-

terials are allocated by law, a fair and equitable percentage shall be allocated to small plants which are unable to obtain the necessary materials or supplies from usual sources.

Conclusion

The Defense Production Act amendments of 1951 represent a victory for the point of view that America can mobilize her industrial and military might, and at the same time prevent a disastrous inflation, only by utilizing statutory and administrative authority to direct strategic materials and services into defense channels, while keeping within reasonable limitations the pressures of spiraling prices, wages and rent. No particularly novel or important authority was appended to the original Defense Production Act by the 1951 amendments. Nevertheless, by extending that original Act and amending it in certain particulars, Congress acknowledged the necessity for mobilization controls and, to that extent, the Administration was successful in executing the strategy mentioned at the outset of this article.

However, on the deficit side, at least from the point of view of effective stabilization, the amendments contained certain provisions which, if executed in accordance with the strict letter, might open up disastrous holes in the dike of anti-inflation control. It is possible, however, that these potentially dangerous provisions may be repealed or modified. Furthermore, Congress will get another opportunity to take a look at the stabilization picture when the Act comes up for another extension, if that is to be granted, in the summer of 1952.

The success of the Defense Production Act, as amended, will depend upon the temper of the times during which it is enforced. If the American people persist in the belief that the present hour is one of dire threat to our national security, there should be no doubt that it can do the job for which it was passed. On the other hand, if their will to sacrifice

wavers, if they prefer their "butter" to their "guns," or if they lose patience in attempting to follow a course of action which may achieve both, then the Defense Production Act will soon be wiped off the books, either by express congressional action, or by its negation in actual practice. In the opinion of this writer, either of the last two alternatives would be indeed a "fool's" choice.

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