

## NOTE ON GOVERNMENTAL PRODUCT FAVORITISM

The Editor regrets keenly that unexpected difficulties prevent publication of a completed analysis by an able commentator of state and federal legislation effecting, and the economic implications of, governmental favoritism between products.<sup>1</sup> For just as elementary economic theory distinguishes between commodity and substituted competition, so governmental restrictions on entry of products into the market comprise not alone qualitative and quantitative limitations on given products<sup>2</sup> but, as well, marketing handicaps that advantage one product at the expense of a competing commodity.<sup>3</sup> Such product favoritism ranges from the intended to the indirect to the unintentional, the legislative measure inducing it may in its immediate incidence restrict the one commodity or promote the other; but in any case government plays the favorite and varying economic impact follows in its train.

Because the production of particular products, like the shaping of human character, is so largely conditioned by environmental factors, product favoritism is often

<sup>1</sup> Instances of product favoritism on the local level are collected in McIntire and Rhyne, *Municipal Legislative Barriers to a Free Market*, *infra* this issue; effectuation of favoritism between competitive products by administrative action is considered by Bane, *Administrative Marketing Barriers*, *infra* this issue.

<sup>2</sup> Silverman, Bennett and Lechliter, *Control by Licensing Over Entry Into the Market*, *supra* this issue, discuss some of the types of product restriction which adversely affect commodity competition. Tucked away in the statute books of the American states are other types of such limitation. It is common in liquor control legislation to find quantitative restrictions on the amount of intoxicants that can be sold to any one person at one time. W. VA. CODE (1937) §5907 (49) is illustrative. Quantitative limitation may also be legislatively decreed at the production stage. N. Y. AGRIC. & MARKETS LAW §258j prohibits municipal authorities from approving any new milk dairy or plant or authorizing the shipment of milk "from such premises or plant for sale or use within this state without satisfying the commissioner that such proposed added milk supply is *reasonably needed* for such municipality . . ." (ital. added). OKLA. STAT. ANN. (1937) tit. 52, §272 phrases the measurement of limitation expressly in terms of the self-interest of the industry involved: "The taking of crude oil or petroleum from any oil bearing sand or sands . . . at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited. . . ." Restrictions on the use of natural resources are sometimes of a qualitative rather than a wholly quantitative character. Thus DEL. CODE (1935) §3008, and N. J. REV. STAT. (1937) §23:5-25 prohibit the conversion of food fish into oil or fertilizer; their use for other purposes is not limited. Legislation of like tenor is to be found in state enactments directed at the control of human resources. OHIO GEN. CODE (Throckmorton, 1940) §2228-1, prohibiting open-market sale of convict-made goods, and *id.* §§12993 *et seq.*, forbidding labor of children under sixteen years of age, are typical of limitations on commodity competition imposed by reason of the particular labor group involved in their production.

<sup>3</sup> Silverman, Bennett and Lechliter, *supra* note 2, in the course of their discussion also cite instances of those governmental restrictions which effect favoritism in product competition. The importance of this form of barrier merits, however, separate, extended treatment.

an expression of geographical interests. There is, in short, a close interrelationship between the type of barrier here under consideration and the more familiar interstate trade barrier. Butter's antipathy for margarine, translated through a powerful lobby into widespread legislation restrictive of the latter's manufacture and sale, is the outstanding illustration of this hybridism.<sup>4</sup> Numbered in the thirties are the states which, following the celebrated federal excise of ten cents per pound,<sup>5</sup> heavily tax or otherwise prohibit the sale of colored margarine.<sup>6</sup> At least nine states have five to fifteen cent excises on uncolored margarine as well,<sup>7</sup> a complete protection which in recent years the dairy interests have wished from the federal government because of the significant rise, in the face of the lesser prohibition, in the percentage of margarine to butter consumption.<sup>8</sup>

When, some twenty-odd years ago, vegetable oils began to supplement animal fats as the basic margarine constituent, feuds commenced within the margarine family itself. Three of the important cattle-producing states lay an excise on all margarine not containing a substantial percentage of animal fats.<sup>9</sup> Search has revealed no Southern state counterpart favoring the vegetable oil base, probably because Southern agriculture has an interest in cattle and hogs as well as in cottonseed. Southern states have, however, joined in the trend toward elimination of the foreign coconut oil in aid of products locally produced.<sup>10</sup> Thus Tennessee has just amended its ten-year-old "all-out" law to exempt from that ten cent excise on all colored and uncolored margarine, brands containing no oil ingredient save peanut, soybean, cottonseed or corn and no fat ingredient other than beef, milk and neutral hog lard.<sup>11</sup> The domestic-oil coverage provided in this exemption, although quite common, is here and there expanded or contracted to effect favoritism as well between continental American sources of vegetable oils.<sup>12</sup> Butter loses legislative ground as

<sup>4</sup> Thus see the treatment of the margarine laws in Truitt, *Interstate Trade Barriers in the United States*, *supra* this issue. <sup>5</sup> 53 STAT. 247-248, 26 U. S. C. A. §§2300-2301 (1939).

<sup>6</sup> Taylor, Burtis and Waugh, *Barriers to Internal Trade in Farm Products* (U. S. Dep't Agric., 1939) 19; *Barriers to Trade Between States* (Marketing Laws Survey, 1939) 31-45.

<sup>7</sup> *Ibid.*; see also Truitt, *supra* note 4, at 213.

<sup>8</sup> Buell, *Death by Tariff* (Aug. 1938) 18 FORTUNE 32, 34. Aside from legislation of the type described, use is made of onerous labelling requirements, prohibitions on sales to state institutions, etc., and heavy license fees required of manufacturers, dealers, dispensers and even consumers, in order to aid butter. Provisions of these types are collected in *Barriers to Trade Between States*, *supra* note 6.

<sup>9</sup> Taylor, Burtis and Waugh, *supra* note 6, at 20; Truitt, *supra* note 4, at 213.

<sup>10</sup> See Truitt, *supra* note 4, at 213, citing from testimony before the T.N.E.C. The Federal Congress also joined in this protectionist move both by limiting the amount of duty-free importations of coconut oil and by imposing an excise of 3-5 cents on the first domestic processing of coconut and palm oils in case an effort was made to import the oil-producing products. 53 STAT. 264, 26 U. S. C. A. §2470 (1939).

<sup>11</sup> Tenn. Laws 1941, c. 71, amending Tenn. Laws 1931, c. 19.

<sup>12</sup> As ordinarily worded, the exemption imports a discrimination against pecan oil which Georgia overcomes by expanding the favored group to include this type of oil. Colorado, Kansas and Minnesota, failing to extend exemption to soybean oil, discriminate against a product not of the South but of sister states in the midwest section. *Barriers to Trade Between States*, *supra* note 6, at 33, 34, 35, 37.

The Minnesota law, 3 MINN. STAT. (Mason, 1940 Supp.) §3855-10, is unique in effecting a combination form of exemption by taxing oleomargarine containing (1) less than 65% animal fats and/or oils or (2) any fats and/or oils other than animal, milk, peanut, cottonseed, or corn. This explains the reference to Minnesota in both the present note and note 9, *supra*.

the demand for governmental protection of home products, taking its cue from the pioneer dairy lobbyists, spreads to embrace other economic interests.

One area affected in this extension of protectionist philosophy has been the related one of cooking oils and shortenings. South Dakota in 1931 laid an excise of five cents per pound on vegetable oils and vegetable cooking compounds except those made of corn oil.<sup>13</sup> Admittedly enacted to protect the home hog industry, it was followed by what have been described as "repeated attempts . . . in Middle-western States to pass laws designed to protect lard and corn oil against out-of-State substitutes, particularly cottonseed oil."<sup>14</sup> The Iowa legislature in 1934 and again in 1937 considered legislation to tax lard substitutes. The later bill, calling for a prohibitive tax of \$5 per pound on all shortening other than lard, precipitated a resolution in the Georgia legislature expressing that body's "regret" at the proposed action of the sister commonwealth.<sup>15</sup> Recent intense competition with corn oil, lard and soybean oil is seriously threatening outlets for cottonseed oil, which has of late represented close to ten percent of the value of the Southern cotton crop.

Limitation of cotton acreage under the Federal Agricultural Adjustment Acts of 1933<sup>16</sup> and 1938<sup>17</sup> has at the same time meant a corresponding decline for the South in its cottonseed oil production. The consequent loss in the oil market has been taken up largely by expansion in soybean production, which is confined for the most part to the East Central States.<sup>18</sup> Removal of the surplus peanut crop from the edible trade through diversion to the oil market, effected by what is now the Surplus Marketing Administration, has enabled Southern farmers to make up a part of their loss in this market occasioned by the enforced reduction in cottonseed oil. But peanut oil averages less than one percent of the total of fats and oils produced; nor is it profitable to sell peanuts for oil at prevailing prices.<sup>19</sup> Of similarly less direct but albeit cognizable geographical favoritism are numerous provisions to be found among the exemption statutes of state property taxation. Thus Wyoming grants a five-year exemption to property used in the manufacture of beet sugar or beet sugar products.<sup>20</sup> Some exemption provisions are so inclusive, however, that their purpose is more to stimulate a general economic development rather than to foster one product over another. This appears to be true of Mississippi,<sup>21</sup> which

<sup>13</sup> S. D. Laws 1931, c. 259, repealed by S. D. Laws 1933, c. 183.

<sup>14</sup> Taylor, Burtis and Waugh, *supra* note 6, at 30. See *Wesson* (Sept. 1939) 20 FORTUNE 67, for a discussion of the South's problem viewed through the corporate eyes of the manufacturers of Snowdrift and Wesson Oil.

<sup>15</sup> Ga. Laws 1937, pp. 2190-2191. Neither Iowa bill was enacted. Compare the joint resolution adopted by the Wisconsin legislature in an effort to placate the cotton states over Wisconsin's hostility toward margarine. See Truitt, *supra* note 4, at 217, n. 39.

<sup>16</sup> 48 STAT. 31 (1933).

<sup>17</sup> 52 STAT. 31, 7 U. S. C. A. §§1281-1407 (1938).

<sup>18</sup> See SEN. REP. No. 147, 77th Cong., 1st Sess. (1941) at 2.

<sup>19</sup> *Ibid.*

<sup>20</sup> WYO. REV. STAT. (Supp. 1939) ¶115.105 A. Present possibilities in the competition of sugar with corn derivatives are indicated in *Corn Products* (Sept. 1938) 18 FORTUNE 55.

<sup>21</sup> MISS. CODE ANN. (Supp. 1938) c. 61, ¶323. *Cf.*, however, *id.* ¶317G exempting lint cotton for five years and cottonseed for one.

has been a leader among Southern states in efforts to lure industry across the Mason and Dixon line.<sup>22</sup>

State and federal expenditures for highway construction afford a classic illustration of geographical favoritism in product competition effected indirectly—and doubtless unintentionally—through an economic chain of causation. Good roads are responsible for the competitive advantage which motor carriers now enjoy in some respects over rail transportation. Emergence of the motor truck as a significant means of carriage has, in turn, been enormously advantageous to the seafood industry. Oysters, especially, are now placed in Midwestern towns in active competition with inland substitutes.<sup>23</sup>

With other instances of product favoritism, on the other hand, the geographical factor either has receded into the background or is completely absent. Georgia now exempts from its unit taxes on merchandise vending machines, machines dispensing nuts grown within the United States; North Carolina, machines “that vend solely peanuts and candies made of peanuts containing fifty percent or more peanuts.”<sup>24</sup> Georgia, though it has a definite economic interest in the pecan trade, extends the exemption to all other members of the nut family. The Tar Heel state is one of the great peanut-producing areas; yet of the products with which it can be said the lowly peanut “competes” in the edible trade, as many are native as are foreign. Similarly, two states taxing soft drinks exempt from the provisions of their statutes pure fruit and vegetable juices.<sup>25</sup> By imposing on distributors of fuel oil an excise tax not balanced by any comparable exaction applicable to distributors of coal, wood and other competing fuels,<sup>26</sup> the State of Washington plumped for a form of product favoritism which as to it must have been motivated by functional rather than geographical considerations. It has been said that John L. Lewis recently proposed a federal tax of similar purport as one possible cure for the sickness in the bituminous coal industry which competition of other fuels helped to produce.<sup>27</sup> The same authority declares that recent legislation proposed for federal control of the petroleum industry would, if enacted, have empowered the Department of the Interior to prohibit the use of crude oil for fuel.<sup>28</sup>

Not only have fuel oil's competitors been accorded legislative succor; at the other

<sup>22</sup> See Note (1940) 9 DUKE BAR ASS'N J. 15.

<sup>23</sup> See the testimony of John V. Lawrence, *T.N.E.C. Hearings*, 76th Cong., 2d Sess. (1941) Pt. 29, at 16033.

<sup>24</sup> Ga. H. B. 505, 1941; N. C. CODE (Michie, 1939) §7880(61).

<sup>25</sup> S. C. Acts 1939, act 346, §96; W. Va. Laws 1939, c. 119, §30. In extending the exemption only to wholesale and retail groceries selling the juices the West Virginia law at the same time effects a discrimination in methods and channels of distribution. This phase of the barrier question is analysed in Cook, *Legislative Restrictions on Marketing Integration*; Gould, *Legislative Intervention in the Conflict Between Orthodox and Direct-Selling Distribution Channels*, both *infra* this issue.

<sup>26</sup> Wash. Laws 1939, c. 186. The legislation, dating back to Wash. Laws 1935, c. 180, ¶178, was condemned as violative of the equal protection guaranty in *State of Washington v. Inland Empire Refineries*, 3 Wash. (2d) 651, 101 P. (2d) 975, *cert. denied*, 61 Sup. Ct. 395 (1940).

<sup>27</sup> PETTENGILL, *SMOKE SCREEN* (1940) 113.

<sup>28</sup> *Ibid.* On the effectuation of barriers through the intended or usurped exercise of administrative powers of discretion, see Bane, *supra* note 1.

end of the petroleum scale gasoline faces some actual, and the threat of much more, legislative partiality for power alcohol. In the initial phases of the competitive struggle, however, legislation may actually operate indirectly to favor the petroleum industry.<sup>29</sup> This is well illustrated by a 1935 development in South Dakota. That state has long required inspection of petroleum products, and prohibited sale as gasoline of any product found to fail the statutory specifications. In the year mentioned the state law was amended in order "that gasoline sold in this state . . . may be blended with completely denatured Ethyl alcohol. . . ."<sup>30</sup> But 1935 saw more than legislative equality attained for the new use of agricultural commodities; Nebraska that same year embarked on a policy it still pursues of suckling the infant competitive product through a technique of tax favoritism. The original enactment effected preferential taxation of blended motor fuels by excluding the alcohol content of alcohol-gasoline mixtures from the definition of taxable motor fuel.<sup>31</sup> A 1939 supplemental enactment exempted the entire mixture from tax when used for other than highway or aircraft purposes, except for that portion of the tax diverted to social security.<sup>32</sup> Administrative complexity and confusion growing out of simultaneous enforcement of these two laws possibly grounds a proposal now before Nebraska's unicameral legislature to exempt all alcohol-blend gasoline from the present five cent motor fuel tax, imposing upon it instead a differential tax of three cents.<sup>33</sup>

Agitation commenced in recent years and extending down into the present months has for its purpose the extension of this brand of governmental product favoritism to other states and to the Federal Congress. These proposals, reaching bill stage to receive legislative consideration, are significant straws in the wind despite their failure of enactment. For not only is their number far from small; nearly every one would build a barrier wall higher than that so far constructed by the Cornhusker state.<sup>34</sup> Some have called for complete exemption;<sup>35</sup> by far the greater number of state proposals and half the federal bills would adopt the European pattern<sup>36</sup> of compulsory blending.<sup>37</sup> It seems reasonable to believe that some at

<sup>29</sup> Compare the Seattle ordinance, which purposely discriminated in favor of liquid fuel dealers, cited in McIntire and Rhyne, *Municipal Legislative Barriers to a Free Market*, *infra* this issue.

<sup>30</sup> S. D. Laws 1935, c. 169, p. 270, now S. D. CODE ANN. (1939) §22.1506.

<sup>31</sup> Neb. Laws 1935, c. 161, now NEB. COMP. STAT. (Supp. 1939) §66-401.

<sup>32</sup> Neb. Laws 1939, c. 82, now NEB. COMP. STAT. (Supp. 1939) §66-431. Since at present 20 percent of the revenue from the regular five cents per gallon motor fuel tax is so diverted, in effect a one cent per gallon tax is levied on blended gasoline when used for the purposes specified, as against the five cent tax required of petroleum gasoline. *Id.* §66-405 levies the tax for social security.

<sup>33</sup> Neb. L. B. 88, 1941. (Feb. 1941) 1 (No. 4) STATE TAX REV. 3.

<sup>34</sup> Neb. L. B. 1, 1939, would have required compulsory blending whenever there existed a sufficient supply of ethyl alcohol. Amer. Petroleum Industries Comm., *Summary of Alcohol-Gasoline Legislation* (1941).

<sup>35</sup> Rep. Harrington, 75th Cong. (complete exemption); Sen. Gurney, 76th Cong. (semble); S. B. 552, 76th Cong. (semble); H. R. 2559, 76th Cong. (semble); *cf.* Idaho H. B. 218, 1941 (exemption of alcohol content only). Data from Amer. Petroleum Industries Comm., *supra* note 34.

<sup>36</sup> See Legis. (1937) 22 IOWA L. REV. 736, 750.

<sup>37</sup> Iowa H. F. 96, S. F. 364, 1939 (police power); Mich. H. B. 294, S. B. 275, 1939 (semble); Minn. H. B. 1430, S. B. 1305, 1939 (semble); Wash. H. B. 567, 1939 (semble); Wash. H. B. 412, 1941 (semble; highway use only); Rep. Knutson, 75th Cong. (prohibitory tax); H. R. 175, 76th Cong.

least of these schemes would have flowered into law were it not for the fact the National Farm Chemurgic Council and interests allied with it have elected to press the farm chemurgy movement wholly in terms of the inherent economic power of the new products to compete successfully in the market place.

This attitude must necessarily account to some extent also for the relative absence of governmental effort to foster other phases of this movement, which, roughly speaking, pits agricultural commodities against those that are the product of the extractive industries and of established industrial processes.<sup>38</sup> The phenomenal rise of the soybean has, so far as search reveals, enlisted only an instance of administrative favoritism.<sup>39</sup> Nor does there appear to be—one would scarcely expect it—any evidence of legislative intervention to protect accepted drug sources from the likely competition of farm wastes only quite recently translated by the chemist's modern alchemy into substances having significant medicinal properties. But while there is to date little actual governmental favoritism in this immediate sense, legislation promotive of the farm chemurgy movement as a whole, and thus indirectly of product favoritism, is not uncommon. The Agricultural Adjustment Act of 1938<sup>40</sup> established four great regional laboratories for extensive research into new uses and new and extended markets for farm commodities and their by-products. Through their agricultural colleges and stations, several states are investing large sums toward the same end.<sup>41</sup>

Federal limitations, through the two Agricultural Adjustment Acts,<sup>42</sup> of the production of basic farm commodities has effected direct favoritism in commodity competition only as a by-product. Limitation of cotton acreage, stimulating a significant expansion in peanut production, would presumably have advantaged the lowly goober beyond the slight gain realized through diversion to the oil market had the edible-trade demand kept pace with that expansion. Failing to do so,<sup>43</sup> there resulted a mounting surplus of peanuts which has now induced legislation extending the marketing quota system to this commodity.<sup>44</sup> That the federal agri-

---

(police power and prohibitory taxation); H. R. 9582, 76th Cong. (police power over interstate commerce); H. R. 35, 77th Cong. (semble); H. R. 2819, 77th Cong. (police power and prohibitory taxation). Data from Amer. Petroleum Industries Comm., *supra* note 34.

<sup>38</sup> Although the product competition engendered by farm chemurgy in broad outline is one on the functional level, nevertheless legislative succor at times shows definite traces of geographical protectionism. Thus of the nine state bills listed in notes 35 and 37, *supra*, six stipulated for ethyl alcohol produced from agricultural commodities grown within the state. The present Nebraska proposal, cited *supra* note 33, although adhering to existing legislation in specifying that the farm products may be grown anywhere in the United States, excepts black-strap molasses. Regional interests are also reflected in the latest Washington State proposal, *supra* note 37, which specifies that the ethyl alcohol may come from waste or surpluses in farm crops, coal mines, timber, etc.

<sup>39</sup> See Bane, *supra* note 1. This administrative ruling concerned the use of soybean oil in paint; soybean plastics have apparently not provoked legislative retaliation on the part of the products being displaced.

<sup>40</sup> 52 STAT. 31, 37, 7 U. S. C. A. §1292 (1938).

<sup>41</sup> A further promotive device is to be found in North Carolina's limited tax exemption of agricultural products, just enacted. N. C. S. B. 106, 1941. Gould, *supra* note 25, at 322, finds in legislation directed against peddlers and transient merchants, numerous instances of exemptions favoring such products.

<sup>42</sup> Notes 16 and 17, *supra*.

<sup>43</sup> SEN. REP. No. 147, *supra* note 18, at 3.

<sup>44</sup> Pub. L. No. 27, 77th Cong., 1st Sess. (1941).

cultural program has, however, unintentionally produced direct favoritism between products is attested by the experience of the cotton industry under the first agricultural adjustment act. Unintended favoritism arose there as a consequence of the enforcement of the tax imposed upon the first domestic processing of raw cotton, the revenue from which was to be used to pay benefits to the cotton farmer.

"The effect of this tax was to increase in varying amounts the price of all cotton products subject thereto and those cotton products which were in competition with non-cotton products were placed at a serious competitive disadvantage. Such disadvantage was particularly marked in competition between the cotton product and paper bags and other paper containers, some rayon products, paper towels, non-cotton cord and other binding material, paper tapes of various kinds, paper shades and paper napkins and table covers.

"The Act itself contained provisions which were designed to afford relief by providing for a compensating tax on the competing non-cotton product where it could be proved that the tax was causing or would cause a shift away from the use of the cotton product. It was found by experience, however, that while a measure of relief was gained in a few instances, the administrative difficulties and the problems of proving to the satisfaction of the administrative agency that such shifts were taking place, effectually barred any real relief in most cases.

"Moreover, where a compensating tax was imposed on the competing non-cotton product it was frequently found that such product was in turn placed at a competitive disadvantage as against another non-cotton product, although the second product did not compete directly with the cotton product. With regard to protection of domestic cotton products against increased competition from imported cotton products, the situation was somewhat more satisfactory; there an additional tax was placed on the import of the foreign products approximately equal to the tax burden which the domestic products were bearing.

"After the tax was removed following the decision of the Supreme Court of the United States as to its unconstitutionality, many of the markets lost to cotton products as a result of the tax have probably not been wholly regained; the public during the interim having become used to the competitive product. This last, however, is a matter which is almost impossible to measure in mathematical terms and therefore cannot be stated categorically, although it is the confirmed opinion of most of the manufacturers of the cotton products involved.

"The experience of the Industry under the tax has been such as to compel the conclusion that no one product of an agricultural commodity can be singled out to bear the burden of a tax without necessarily placing it at a competitive disadvantage, directly and indirectly, with a large number of non-taxed products and setting up a chain of causation which tends to dislocate the operation of the normal competitive system."<sup>45</sup>

Adequate appraisal of the economic implications of governmental favoritism in

<sup>45</sup> Statement from the Cotton-Textile Institute, March 19, 1941.

product competition requires extended examination at the hands of skilful analysts of economic phenomena. Only a few generalized observations can be here made. Clearly governmental marketing barriers of this type are not to be categorically condemned; product favoritism of each variety must be separately brought before the bar of economic judgment to be examined in terms of its character and its impact upon the public weal. Geographical favoritism, grounded as it is in provincial self-interest, may be more vicious than functional discrimination;<sup>46</sup> functional favoritism, in turn, may be good, bad or neither depending on its direct or collateral impact and on whether it is in aid of new or established product interests. Anti-margarine legislation, preventing or discouraging as it does the consumption by lower income groups of a low-cost,<sup>47</sup> yet equally nutritious<sup>48</sup> butter substitute, cannot be justified on the ground of the importance of the dairy industry. Especially must this be the judgment when it is not at all clear that that industry stands to gain materially from this barrier action.<sup>49</sup> If any discrimination of the old against the new can be justified on such an argument, sick bituminous coal would stand to claim the legislative crutch. Yet even so, actual and proposed legislation looking to this curative for black diamond's economic aches stands suspect on counts analogous to those recited in the indictment of governmental favoritism toward butter. Legislative obstructionism directed at other new competitive products may similarly result in the freezing of prices at arbitrary levels. Such is possibly the case with municipal efforts to prevent introduction of the paper milk container, which offers economies in the cost of milk distribution.<sup>50</sup> Or, although not depriving the consumer of an effective, less expensive substitute, such governmental action may deny him the advantages of an improved article at little or no increase in cost. That this is the situation in the building field is the verdict to be found from evidence and opinion laid before the Temporary National Economic Committee.<sup>51</sup> Like margarine, the articles are more accurately classed as necessities than as luxuries; and the private subsidies in aid of vested interests, governmentally exacted under guise of a public interest, fall heaviest on the lower income groups.

When government puts the shoe of favoritism on the other foot, economic analysis must carefully weigh the consumer's stake in the new style. If any merit remains in the "infant industry" argument, public interest would not appear to be the loser in governmental encouragement of research in farm chemurgy, or in the

<sup>46</sup> On geographical favoritism, whether of persons or products, contrast the attitude of Truitt, *supra* note 4, and Silverman, Bennett and Lechliter, *supra* note 2, with that expressed by McIntire and Rhyne, *supra* note 1.

<sup>47</sup> PABST, BUTTER AND OLEOMARGARINE (1937) c. 3 contains data on the relative prices of butter and margarine; see *id.* at 84 for comment on the significance of low prices for margarine.

<sup>48</sup> See the excellent discussion in SNODGRASS, MARGARINE AS A BUTTER SUBSTITUTE (1930) c. 14. The butter industry's thesis that margarine must be discouraged because detrimental to the public as compared with butter is belied by data on violations of pure food laws. See Truitt, *supra* note 4, at 216, n. 35.

<sup>49</sup> See comment of Taylor, Burtis and Waugh, *supra* note 6, at 27-28.

<sup>50</sup> See Silverman, Bennett and Lechliter, *supra* note 2, at 261, n. 130, quoting from a recent editorial in the Washington Post.

<sup>51</sup> *Id.* at 246, quoting from the T. N. E. C. Hearings.

rephrasing of such definitional requirements as North Dakota's specifications for motor fuel to legalize the use of products unknown at the time of original draftsmanship. Indeed, agriculture's handicap as against industry in the present economy, now fashionably expressed in terms of contrasting rigid and flexible price structures, may well justify differential taxation of those farm commodities that seek to compete in common markets with industrial products. But forced consumption of the new product, despite advanced prices necessitated by higher costs of production possibly accompanied by inferior quality, is a horse of another color. With the economic picture of power alcohol abounding in such consumer shadows,<sup>52</sup> only the strongest emphasis on the urgency of conserving remaining petroleum resources against the rainy days that seem to lie ahead can square such governmental favoritism with public interest. For an economy that remains dedicated to the idea of a free competitive market, governmental playing of favorites among competing products, like public creation of other forms of marketing barrier, is a game which the common weal can indulge in but seldom if it is not to suffer the economic and social consequences so quickly condemned when private interests load the dice without benefit of police protection.

<sup>52</sup> Summary data on the cost and quality of alcohol-blend gasoline may be found in Legis. (1937) 22 IOWA L. REV. 736, 747-749.