

The paragraph in terms gives power to debit the Stabilization Account with “subsidies.” The subsidies existing are subsidies to suppliers. Counsel for the Government take the words “Where a subsidy is required to keep costs of any product down to the level” to mean when the costs of production of the primary producer require a subsidy. But the costs of the primary producer do not require a subsidy. The obligation of the Government is to ensure that the price of the primary producer’s product is equated to his costs of production. The words cannot be taken to refer to a non-existent condition. Such subsidies as were before the mind of the parties related to the costs of suppliers’ products. And the words are not “the costs of production,” but “the costs of production of any product,” and the product referred to must have reference to the product purchased by the primary producer, not created by him.

In the grant of a subsidy there must be a grantor and a grantee. The grantee contemplated is the manufacturer or supplier of a product which the primary producer has to purchase. A debit to a fund in the stability of which the primary producer is vitally interested is not a subsidy to that producer, since it comes, in part at least, from his own moneys. Therefore, why interpret the paragraph as if it were intended to meet the case of a payment clearly not a subsidy at all?

A construction that throws on the primary producer the cost of meeting his own cost of production out of purchase-money accumulated against a rainy day undermines the whole plan of control set up by the statute, and it should not be adopted unless the intention to make the change is apparent from the whole agreement and expressed in clear and unambiguous language. Quite apart from the statute, the normal way in which to meet increased costs of production is to increase price. A construction that prevents this course being adopted, especially where it would relieve the other party to the agreement from his obligation to see that the price received does cover the producers’ costs of production, is one to be avoided. No canon of construction I am aware of can be cited which supports a claim to force into the agreement a payment not in character a subsidy by expanding the ordinary use of a term used in the same connection in its ordinary sense.

In my opinion, for the foregoing reasons, the question as to whether the costs above the price realized incurred in holding the retail price of butter and cheese in New Zealand can, under the provisions of the said agreement, be debited to the Dairy Industry Stabilization Account, being an account raised in the Marketing Department pursuant to the said agreement, should be answered in the negative.

(Sgd.) H. JOHNSTON, J.

Dated at Wellington, this 29th day of July, 1946.