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LEGAL REGULATION OF PRICES IN TANZANIA: AN EXAMINATION OF THE REGULATION OF PRICES ACT 1973 AS A TOOL OF SOCIAL CHANGE AND DEVELOPMENT

by

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Being a thesis submitted in fulfilment of the requirements for the award of the degree of Doctor of Philosophy in Law.

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FEBRUARY 1987

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ACKNOWLEDGEMENTS

A thesis is a social product. So all those who, in one way or another, have contributed to it deserve a word of thanks. However, it is not possible to mention them all here. I would like to express my special gratitude to the following persons: Their responsibility is limited to whatever there is merit in the thesis and does not extend to its shortcomings.

I am especially grateful to Professor Yash Ghai, first for drawing my attention to the subject; secondly for finding time to discuss and help organise my thoughts; thirdly for his support and encouragement through various stages of the study, and fourth for supervising me during the first year.

My sincere gratitude go to Jill Cottrell of the Law School, Warwick University, who took over my supervision from Yash Ghai. Not only did she read my first and second drafts and made useful comments, but also she educated me on many aspects of writing and organisation. She was also a constant source of information and suggestions.

I would like to thank Professor J.P.W.B. McAuslan and Dr Sol Picciotto, both of the Law School here in Warwick, who all took part in assisting me by offering relevant reading material and for the constant encouragement they gave me.

I am indebted to the Commonwealth Scholarship Commission of the UK, who most kindly provided funds to enable me pursue the Ph.D. programme at Warwick University. Similar assistance was received from the Research and Publications Committee of the University of Daresalaam for my fieldwork.

May I also seize this opportunity to thank all the staff and students of Warwick University for making my stay there intellectually hospitable and socially enjoyable. I must mention my colleagues in the postgraduate community, in particular Dr George Yankey, Albert Kawana and John Barya, who have been of tremendous help to me in their wealth of experience and deep knowledge of socio-economic problems of developing countries.

It is customary for the writer to thank his wife for support, encouragement and understanding. I will not depart from this precedent. However, I must thank my wife, Elice Mfinanga, for much more. She spent part of her savings to supplement my research funds when I ran out of money. Without her moral support, collaboration and understanding the work simply could not have been written.

I also wish to thank Margaret Barwick of the Central Library, for her typing skills.

I would like to emphasize that as the author of this work I am solely responsible for any errors or shortcomings.

ABBREVIATIONS

A.C.	Appeal Cases
All E.R.	All England Law Reports
E.A.	East African Law Reports
E.A.C.A.	Court of Appeal for Eastern Africa
E.A.L.J.	East African Law Journal
E.A.L.R.	East African Law Review
E.A.P.L.R.	East African Protectorate Law Reports
H.C.	High Court of Tanzania
I.C.P.E.	International Centre for Public Enterprise
K.B.	King's Bench
K.L.R.	Kenya Law Reports
L.R.K.	Law Reports of Kenya
L.R.T.	Law Reports of Tanzania
N.P.C.	National Price Commission
Q.B.	Queen's Bench Reports
T.L.R. (R)	Tanganyika Law Reports (Revised)
U.L.R.	Uganda Law Reports
W.L.R.	Weekly Law Reports

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Companies (Regulation of Dividends and Surpluses and Miscellaneous Provisions) Act 1972, No.22.

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Constitution (Fifth Amendment) Act 1984, No.15.

Constitution (Consequential, Trans. and Temp. Provisions) Act 1984, No.16.

Cooperative Societies Act 1982, No.14.

Cotton Marketing Board Act 1984, No.19.

Customary Leaseholds (Enfranchisement) Act 1968, No.17.

Defence (Determination of Cost-Price) Order 1946, G.N. 37.

Defence (Control of Prices) (Consolidation) Regulations 1946.

Duties and Taxes (Prevention of Prices Increases) Act 1970, No.14.

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B. GHANA

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C. KENYA

Price Control Act 1964 (cap.504), L.N. 2, 1964.

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DEDICATION

This work is dedicated to the four most important people in my life. First in memory of my father Gabriel and my mother Benedicta. Second, my wife Elice, and Nancy my daughter.

ABSTRACT

Drawing mainly from the Tazanian experience this study attempts to review the principal issues in the legal regulation of prices, by identifying both the general and specific importance of law in this respect. The position I shall present is that legal control is both necessary and desirable for the welfare and social development of the people. The key issue is whether the market-place will perform its function satisfactory: Will it produce socially desirable results? If it will not, wny will it not? And will legal regulation help to do the job a little better?

In an attempt to answer some of these questions, I first of all, outline the basic issues raised by the study in the first Chapter. Then I examine the general case for price controls - the theory about the controls, the motives and reasons for their imposition and the manner in which they are effected in different economic systems. This is done in Chapter Two. Relying most on the available literature on the regulatory process, this Chapter also looks at the relationship between law and economic regulation and concludes that the effectiveness of law depends on the existence of a conducive socio-economic environment. In Chapter Three I describe the past record of price control laws in Tanzania. I conclude that despite the failure in the past, the controls still constitute an important policy instrument in the transition to socialism. In Chapters Four and Five I describe the manner in which the current regulations are implemented and the problems encountered. I conclude that the operational performance of the controls is constrained by internal and external influences

on the economic and political life of the country. In the concluding Chapter I assess the impact of the controls: Do the controls work? Do people buy goods at the controlled prices? Why today the controls are almost popularly accepted as worthwhile? I conclude that while there may be no measurable economic gains derived by consumers, the controls have a stabilising effect on the social and political front. In the final section I argue that the future success of the legislation depends on creating a correspondence between the economic structures and the control system. What makes the controls ineffective is not so much defects in the law but the contradictions between the orientation of and functioning of the economic system and the ideological commitment.

CHAPTER 1

GENERAL INTRODUCTION

1.1. Scope and Purpose

Tanzania is among the few countries that pursue a vigorous policy of statutory price controls (ILO 1982). A rough estimate shows that out of the 625 Acts passed between 1967 and 1985, about 400 (i.e. 65%) have to do with regulating prices of goods or services of one kind or another (Tables of Acts of Parliament, Chief Parliament Draftsmen, Daresalaam). Today legal regulation of prices still remains one of the difficult problems facing contemporary Tanzania (Budget Speech 1986/87, Daily News, Daresalaam, June 20, 1986). Overall many governmental and parastatal bodies (perhaps almost all) have as some feature of their activities an aspect of price regulation. The main control machinery, the subject of this study, was established by the Regulation of Prices Act 1973. Historical accounts, however show that the government had for many decades before that legislated to control prices. The first law was passed as early as 1920 (Kimble 1970 p.28; Price Control Ordinance 1920).

The revival of interest in price controls that took place in 1973, however, occured in a very different context from the earlier legislation on the subject. A change in the whole social, economic and political climate had taken place dating back to the Arusha Declaration of 1967. The Declaration proclaimed a policy of socialism and self-reliance and emphasized the need for economic independence (Nyerere 1977). It gave priority to the eradication of social and economic evils such as poverty,

ignorance and disease; the improvement in the standards of living of the majority; the removal of social and economic inequalities with the accent on the equitable redistribution of wealth and spending power; the maintenance of economic stability and stimulation of long term growth by removing factors that cause inflation and undevelopment; the reorganisation of farm production on the basis of communal (ujamaa) villages and the promotion of national unity.

Following this Declaration, the government nationalised all major economic activities and enacted laws to place them into public ownership (Mittelman 1981); and passed laws to authorise nationalisation of the remaining commanding heights of the economy. The nationalised activities covered banking, insurance and large trading enterprises. Also nationalised were all key services and industries. Since then majority government shareholdings have been acquired in the main manufacturing enterprises, oil companies, transport and shipping (Industrial Shares Acquisition Acts 1967 and 1984); while major newspapers are wholly owned by the state (Newspaper Act 1968, No.23)[1]. Wholesale, export and import trade also came under state control and ownership. State Trading Corporations were set up and given a monopoly over the procurement, distribution and supply of specified goods (under the State Trading Corporation Acts 1967 and 1972; and the Confinement of Imports Order 1981, G.N.96). Besides public ownership and control of the major means of production, the broad economic policy principles of socialism (ujamaa) are self-

1. And the Tanzania News Agency Act 1976 gives monopoly to the agency to act within Tanzania as the "sole receiver and distributor of news and news material from sources outside Tanzania" (section 4(1)(C) Tanzania News Agency Act 1976, No.5.

reliance and rural development (Nyerere 1968, Coulson 1982). The Declaration lays down strict controls in other areas of social and economic activity. For example, it lays down a stringent code of conduct for politicians, senior government and parastatal employees and public officers, none of whom may derive profits, benefits, inducements or salary from any activity outside his official employment (The Committee on Enforcement of Leadership Code Act 1973).[2] The conduct of all these public officers, both in public and private, is closely monitored by watchdogs like the Permanent Commission of Enquiry,[3] anti-corruption squad and leadership committee in addition to law enforcers like the police and people's militia force.

Wages, terms and conditions of employment are regulated by the government. In the case of government employees it is the government which sets salaries (the Regulation of Wages Act 1961, cap 300). In the private sector wages and conditions of pay are regulated by an industrial tribunal - The Permanent Labour Tribunal. The Act establishing this tribunal - the Permanent Labour Tribunal Act 1967 - outlaws all traditional forms of industrial action like strikes, go-slow, picketing. Instead, it institutes a system of compulsory arbitration through the

2. It seems the provisions of this Act have left a loophole which enables leaders to evade its restrictions by running businesses through trust devices such as owning shares in private firms through relatives, friends and children. It is not clear whether this was lack of foresight on the part of the draftsman or deliberate. Studies show that this gap is being exploited by leaders. See for example, the African Concorde, London, August 1986; Africa Contemporary Records 1976-77, B339-371.

3. For a detailed analysis of the commission's activities in curbing maladministration in public offices, see Martin R. (1973) Personal Freedom and the Law in Tanzania, (London: Oxford University Press).

tribunal, the Ministry of Labour and the workers' organisation (NUTA). The Wages and Incomes policy adoted since 1967 requires private companies considering a revision in employees wages or conditions of employment to submit to the tribunal evidence of increased productivity and profits (Government Paper 3 of 1967 and Government Paper 1 1981). Even then annual wage increases are not allowed to go beyond five percent (Government Paper 4 1967, Green 1974). The terms and conditions of employment for government employees are regulated by the Ministry of Labour and Manpower (the Regulation of Wages and Terms of Employment Act 1961, No.41). Those for parastatal employees are regulated by the Standing Committee on Parastatal Organisations, in consultation with the Association of Parastatal Employees (see, SCOPO Directive, G.N. 1976 of 1967).

We find in Tanzania after 1967, therefore, a highly regulated economy. One area that was little affected by the nationalisation laws was retail trade at the consumer level. Despite the effort taken to establish state trading corporations and village shops by 1981 only about eight thousand public owned shops had been opened. This can be compared with over fifty thousand registered individual retail shops (Statement by Minister of Trade, Regulation of Trade Bill, First Reading, April 16, 1980). The registered shops exclude the numerous middlemen- such as unlicenced hawkers, street vendors and roadside traders who supply the bulk of consumer goods to ultimate consumers. And all indications show that the position as regards retail trade is likely to remain unchanged for the foreseeable future. The former President, Julius Nyerere made it clear that it is not

government policy to extend state involvement in every aspect of retail trade. According to Nyerere the Arusha Declaration is a policy of "state control of the major means of production which leaves plenty of room for private enterprise" (The Economist, Intelligence Unit, London, No.1 1978).

In view of all these developments price control became necessary. For one, there was the need to protect consumers from abuse of dominant market power by businessmen in non-competitive situation. Because the consumer class is deficient - consumers are not organised, they are not well informed and possess inadequate resources, price control was a necessary measure to protect consumer interests against potential abuses such as price overcharge, substandard products and services and discriminatory pricing. Price control was also necessary as a means of achieving equity between various groups. Equity was sought between workers and peasants, between owners of capital and labour (Green 1974, Mongi 1980) as well as between state interests, the consumer and producer. It may also be argued that price control was part of the general policy measures to influence wages, incomes, economic development, investment and the price level. Moreover, price control, was an essential adjunct to wage restraint policy. Workers are more likely to accept restraints on wages and incomes from a government that is seen to control prices since the two - prices and wages - have a bearing on each other. By controlling prices the incomes of low income-earners would be stabilised and this would forestall demands for increased wages and pay (Government Policy on Productivity, Incomes and Prices, Government Paper 1, 1981 para. 4).

In response to these demands, the Regulation of Prices Act 1973 was passed establishing, among others, a National Price Commission (hereinafter referred to as the "NPC"), with extensive statutory powers to decide each price through to the final price (section 8(1). The commision's jurisdiction is restricted to mainland Tanzania and does not cover the Islands of Zanzibar and Pemba, which though part of the United Republic, constitute a sovereign state (Mongi 1980: 97; section 6(b) of the Act).

In general terms the functions of the Commission are "(a) to determine reasonable price structures on a national basis and to provide for their orderly variation when necessary; (b) to ensure that prices of goods and services in Tanganyika are compatible with and conform to the principles of socialism and the political, economic and social aspirations of the people; (c) to perform such other functions as are conferred on it by this Act, or as the President, may from time to time, by order published in the Gazette, confer upon it, (section 6).

In specific terms, the Commission has statutory power to fix and enforce maximum prices at ex-factory, wholesale, sub-wholesale and retail levels for any goods and services except where authority has been delegated to other agencies like in the case of water, electricity and transport. The NPC is basically responsible for fixing prices of manufactured goods, both locally produced and imported. These include food and beverages; textiles and clothing; household articles; building and construction materials; pharmaceuticals and other miscellaneous items like arms, ammunition and explosives (List of Price Controlled Items

as at 12th September 1984, the NPC).

Since its inception the price control system has been a subject of intense controversy. Questions have been raised as to whether the controls work (Shimwela 1984, Semboja 1985, the World Bank 1975 and ILO 1977). Right from the outset, the Daresalaam Chamber of Commerce voiced strong objection to the Act. In their representations to the government the merchants argued

> No price fixer can avoid working damage on the fortunes of individuals, if not in an absolute sense, then at least in relation to opportunity. His task consists in denying men income they have had or could have had. When such effect is wrought by the free market there is no one to blame. When a price fixer damages a man's fortune or his hope of one, that individual is left in no doubt as to who is responsible (Gazette of the United Republic, No.3, vol.LIV, July 27, 1973).

To the business community, the controls were thus seen as distasteful and harmful to their interests.

Some economists, from within and without, have questioned the desirability of the controls. They have argued that the controls cannot cure inflation and that experience from other countries has shown that an effective ceiling price below the market price only results in excess demand (Ndyeshobola, 1980, Shimwela 1984, Lipumba and Mbogoro 1985), non-price rationing (Rice 1976) and misallocation of resources (Rice 1976, Shimwela 1984, ILO 1977; 1982). Parastatal managers have more than once called upon the government to repeal the Act and allow them to fix the prices for the products of their firms (Sunday News, Daresalaam, February 16, 1986). The managers have blamed the NPC for losses in their

firms arguing that the prices it fixes are often below the market clearing level and that the activities of the NPC severely damage the efficient working of the market system (Shimwela 1984). Other agencies have expressed much stronger opposition to the Act. The World Bank and the IMF have made the repeal of this law and the total dismantling of price controls a necessary condition for any credit and loan facilities (Daily News, Daresalaam, November 23, 1984; Payer 1983, Green 1983). Other western donor agencies have made similar demands (Nyerere 1986: 396). On the other hand those who work in the Commission have strongly defended it (Mongi 1980, Whitworth 1982). And so has the government (Budget Speech 1986/87 para 124, Government Policy on Productivity, Incomes and Prices, Paper 1 1981 para.62-65). President Nyerere (as he then was) persistently argued that, in the circumstances of Tanzania, arguably of other developing countries too, the controls are both necessary and desirable (Development Dialogue 1980: 8-10; Development and Change 1986, vol.17 p.397). The most important consideration, as Whitworth rightly points out, is that regulation by the market (the rich country approach to the problem) is not a viable solution for poor countries because, as we shall see, the assumptions underlying competition do not obtain in such countries (Whitworth 1982: 485). In developing countries a non-competitive environment prevails (Murray 1981 , Ghai 1985, Helleiner 1980). Consumers are not well informed. Resources, especially labour are not mobile. Single firms command considerable monopoly (Murray 1981, Killick 1978, Kimble 1970). Furthermore import controls aimed at judicious use of scarce foreign exchange have strengthened the monopolistic tendencies (Green 1980, Helleiner 1980).

Rejecting World Bank and IMF demands that price controls be dismantled, the former President Nyerere countered

> Our price control system may not be the most effective in the world; but we will not abandon price control, we will only strive to make it more efficient. And above all, we will continue with our endeavour to build socialism (Development Dialogue, 1980, Vol.2, p.8).

Explaining the reasons for his rejection of any suggestion to scrap the price control Act and its institutions Nyerere pointed out that the social and political consequences of such a decision would be unbearable (Daily News, Daresalaam, November 23 1984). Price decontrols are obviously dreaded by politicians in many African states. Decontrolled prices have often marked the beginning of political and social unrest and the downfall of the government. For example, several hundred people died during the food riots in Morocco in June 1985 in protest against increased prices. Protesters took to the streets in Sudan in January 1985 after price rises for basic commodities following price decontrols initiated by the IMF. In the process the political regime of President Numeiri fell (Africa Now, London, February 1986: 28). Other African states which have faced unrest associated price decontrols in the 1980's are Kenya 1982, Tunisia 1983, Egypt 1985, Zambia 1983 and Liberia.[4] In view of this background the the government's reluctance to remove the controls is understandable.

This study therefore takes as a starting point the assumption that price controls will continue to be a significant

4. For a fuller discussion of how price decontrols have led to social and political unrest in some African states, see, Development and Change 1986, vol.17, p.425; The Guardian, London, December 10, 1986: 8.

instrument of economic and social policy in Tanzania and presumably in other developing countries.[5]

1.2. Focus

In this study my main focus is to examine critically the implementation of the controls as governed by the Regulation of Prices Act 1973 and administered by the National Price Commission and affiliated agencies, in terms of its successes and failures in achieving its objectives and to explore its constraints and limitations as a tool of social change and development.

The Act, undoubtedly one of the most important pieces of legislation in the post-Arusha Declaration era contains a grand design for restructuring social and economic relations and the law is given a substantial directive role in this effort. This is evidenced by the fact that the duties of the price control agencies cover broad objectives like (i) promoting the social and economic welfare of the masses of the poorer sections of the community (Government Paper 1, 1981, para.63), (ii) reducing income inequalities among various groups in society, (iii) re-structuring society and the economic and political relationships in it towards socialist relations (Section 6(b); (iv) using the controls to prevent exploitation of one person by another and to limit accummulation of wealth by individuals (section 12(1)(e),

5. Sone interesting studies on the extent to which developing countries have used price controls to solve social and economic problems can be found in: Thorpe R. ed. (1979) Inflation and Stabilisation in Latin America (Macmillan, London); The Economist, London, December 15, 1986, "Hyperinflation: Taming the Beast", pp.57-64; Gupta, S. P. and Srinivasam, T.G. (1984) "Inflation and the Role of Administered Prices in India", Economic and Political Weekly, Vol.VIX, No.36, p.1579.

(v) to enable the government to raise revenue for public expenditure and (vi) using the price control system to promote other social and economic objectives of the economy such as preserving and expanding employment, promoting greater efficiency in trade and industry (section 12(1)(g), safeguarding investments, enabling parastatals to operate profitably and bringing prices of basic commodities within the reach of the majority of the people.

These are important objectives and their attainment depends on the satisfactory performance of the control system.

1.3. Approach

The approach I have adopted is to examine the Act and related legislation on the subject within their operational context.[6] The regulatory rules will be presented, analysed, discussed and their operation will be assessed within the social and political context of the Tanzanian society. References will be made to the laws and legal institutions in other countries in so far as necessary to identify a set of potentially feasible alternatives.

1.4. Structure

The study is divided into six chapters. The First Chapter is of a General Introductory nature. I first outline the scope and purpose of the study. Here endeavour is made to delineate the problem - outlining the significance of price control to

6. As examples of this approach in the literature on East African Law, see Ghai, Y. and McAuslan, J.P.W.B. (1970), Public Law and Political Change in Kenya (Nairobi, Oxford University Press); and Martin, R. (1974), Personal Freedom and the Law in Tanzania, (Daresalaam, Oxford University Press) in contrast to the mechanistic approach of Cole, J.S.R. and Denison, W.N. (1964), Tanganyika: The Development of its Laws and Constitutions, London; Stevens and Sons.

the Tanzanian economy and the controversy surrounding it. This is followed by an enumeration of the general issues to be covered. Then there is a section setting out some basic propositions to be tested. Finally there is a description of the approaches and methods used to collect data and information as well as the problems encountered and the techniques used to overcome those problems. In the Second Chapter I examine the theoretical aspects of price control. I endeavour to find out what price control is all about? Why society may impose price controls and also the reasons for the choice of law as a tool for price regulation, that is the role of law in the regulatory process. I conclude by examining the various regulatory methods. In the Third Chapter I shift specifically to the Tanzanian experience. I examine how the controls have evolved historically - describing the changing role of the controls, the motives behind them and their successes and limitations. In the same chapter I trace the social and political developments that laid the foundations of the present price control regime. I show that the shift to the socialist path of development inevitably meant changes in social and legal institutions to ensure they serve socialist objectives. Legal regulation was increasingly used during this period to cover various areas of social life and also to try to systematically influence economic and social activity.[7] It was assumed that the social relations

7. As examples of such laws one can cite the regulation of industrial relations under the Permanent Labour Tribunal Act 1964 No.41; customary land tenure systems under Customary Leasehold (Enfranchisement) Act 1969, No.47; prevention of maladministration in government by establishing an ombudsman under the Permanent Commission of Enquiry Act 1968, No.2 and the Prevention of Corruption Act 1971, No.16.

would follow the patters inherent in legal norms. The main conclusion of this chapter is that the enactment of the Regulation of Prices Act and the creation of the commission and allied institutions largely owe their origin to the socialist policies of this era. Having sketched the social origins of the Act, I then move to an examination of its implementation in Chapter Four. I first begin with a description of the statutory rules - outlining their content, goal-structure and the manner in which they are interpreted by the NPC. In the next section I look at the organisational structure of the price control agencies - the National Price Commission, the Assistant Price Commissioners and the Price Control Advisory Committees. Attempt is made to explore their respective functions and their functional relationship. In a subsequent section, I examine how the National Price Commission fixes prices at the manufacturer, wholesale, subwholesale and retail levels both for locally manufactured products and imported goods. In the concluding section I show that although there are some apparent contraditions in the goal structure of the rules, the Commission have found no difficulty in resolving them.

In the Fifth Chapter I continue with an examination of the other major function of the price controllers - enforcement of ceiling prices. First, I describe the methods and techniques employed. Then I investigate how the enforcers carry out their functions in practice. This is followed by an examination of the various measures instituted to assist in effective enforcement. Such measures include: the laws relating to distribution of essential commodities; those concerning rationing and consumer registration; prevention of hoarding and black marketeering; control of quality

and the calibration of measuring and weighing instruments. In conclusion, I argue that enforcement of these laws is made ineffective by vested interest groups.

In the Sixth Chapter I discuss the impact of the law. I try to answer the question whether the controls are working. I first note that there are contradictory versions on this point. The differences in my view, arise from the fact that those who dislike the controls, in most cases out of ideological reasons, always emphasize the negative effects while those who defend them invariably produce evidence to show they are working. Taken together the overwhelming evidence is that they do not work. I also take stock of the areas where the controls have failed and try to explain the causes. I conclude by noting that it is unequal distribution of economic and political opportunity that reduces the potentiality of this Act to effect changes in the direction that would benefit the economically weaker groups as originally intended.

1.5. Existing Studies

There is a large amount of literature about price controls in general.[8] Much of this work - whether focussed on particular

8. For case studies of price controls from Western perspectives, see Galbraith, J.K. (1980) A Theory of Price Control (Cambridge: Harvard University Press); US Congress (1973) Price and Wages Controls: An Evaluation of Current Policies (Washington, Government Printing Office); Mitchell, J. (1980) "Prices Policy", in Morris, D. ed. Economics of Consumer Protection, (Heinemann Education Books) Chapter 10.

   For Eastern perspectives, see Manove, M. (1973) "Soviet Pricing, Profits and Technological Choice" (Louvain: Centre for Operations Research. Discussion Paper 7307); Kaser, M.B. The Soviet Planning and Price Mechanism. (1950) Economic Journal pp.81-91; Abouchar, A. ed. (1977) The Socialist Price System, (Durham, Duke University Press, North Carolina).

countries or more theoretical and comparative propositions - reveals the predominance of views from scholars from the capitalist block. The majority of Western scholars have examined the issue from either economic perspectives (Galbraith 1980, Cheung 1974, Cox 1980), or from management and administration perspectives (Stigler 1962, Campbell 1971, Mitchell 1978). These scholars tend to ignore social, political and equitable considerations.

Some studies make observations on price controls in developing countries (Bauer 1965, Killick 1973). These studies suggest the need to consider the specific political and social forces that precede the price controls at the particular moment in each of the developing countries and show that the question of determining motives for the controls seems particularly troublesome when price controls in the Third World countries are studied.

A few studies have examined the Tanzanian price control system. The most notable are those by Kimble 1970, Rice 1976, Mongi 1980 and Whitworth 1982. Kimble's study contains an illuminating account of the price control system prior to the present regime. Her study covers the position up to 1970 during which the law applicable was the Price Control Ordinance 1951 and numerous price control orders issued under different laws. Rice's study, on the other hand was made a few months after the passage of the Act. His comments are impressionistic and most of his conclusions are premature. They were made only a few months after the Act had been passed. The accent of Rice's argument is the one commonly found among economists opposed to price control - that the controls

do not work[9] (Rice 1976: 95-110). The studies by Whitworth deal with the price fixing processes for locally manufactured goods (Whitworth 1978, 1982). Whitworth does not look at what happens to the ceiling prices - whether consumers in practice buy at the controlled prices. Subject to this limitation his studies provide an excellent account of what goes on at the commission. Mongi, on the other hand describes the objectives of the commission and the manner in which it carries out its functions. He does not, however, deal with the impact of the NPC's activities on society. Nor does he discuss whether the commission is achieving its objectives. Surely he is the person best placed to speak on these issues by virtue of his continuous service as Chairman of the NPC (since its inception up to the time of writing this thesis). Several other studies have been made on the NPC and the Tanzanian price control system in general (World Bank 1975, ILO 1977, 1982, Shimwela 1984). These studies make a critical but passing reference to NPC.

So far there is no empirical study which provides a coherent view from a socio-legal point of the extent to which the Act has been used to further varying social, economic and political purposes. This study attempts to help fill that gap.

9. Some of the leading proponents of this view are: Stigler, G. (1962) "What can Regulations Regulate: The Case of Electricity", Journal of Law and Economics, Vol.5, pp.1-16; Posner, R.A. (1969) "Natural Monopoly and Its Regulation", in Stanford L.R., Vol.21, pp.548-643; Walker, M.D. ed. (1976) <u>The Illusion of Wage and Price Controls: Essays in Inflation, Its causes and Its cures</u>. (Vancouver B.C., Fraser Institute).

1.6. Hypotheses

My discussion in this thesis proceeds from three basic assumptions about the relationship between law and regulation of economic and social activity. My first assumption is that the law is an instrument for the protection of the interests of the weak in society. This is the most popular view about the price control law in Tanzania. The government emphatically argues that price controls protect consumers from unscrupulous traders (Budget Speech 1986/87 para 120). Commemorating the tenth anniversary of the NPC, the Daily News, the official mouthpiece of the government, described the Act as a "dependable tool for ensuring fair prices to the consumer" and concluded that the "controls help to stabilise prices, thereby reducing or eliminating uncalled for fluctuations of incomes and wages" (Daily News, Daresalaam, Wednesday, August 14, 1985:1). The chairman of the commission considers protection of the masses of the poor consumers to be their main duty (Mongi, 1980: 97). To test the validity of this proposition we need to consider whether there exists the necessary mechanisms to enable the weak to use the law to protect themselves. Some of the questions we may ask are: Do consumers have any say in the affairs and activities of the control agencies? Does there exist a machinery through which the decisions of the controllers can be reviewed, challenged or appealed against by dissatisfied consumers? And also whether the controllers do always act in ways that are consistent with the implications of this proposition.

My second assumption is that for the law to succeed in achieving its objectives there must exist the necessary preconditions. These include: first, an economic, political and

legal environment which gives room for the rules to be enforced and obeyed; second, a clear government policy about the objectives to be pursued and the means of achieving them; third, a social structure which is flexible enough to allow the regulations to operate, such as a common economic and social interest or an equal access to opportunities; and fourth, especially in the case of price controls, an adequate infrastructure including an education system, means of communications and transportation which facilitates access to the controlled goods and services.

It is necessasry to stress that the minimum requirements for the effective operation of the controls referred to above will have to be met if the law is to work successfully. An examination of the existing studies reveals for example, that the controls will work well where goods are available (Mitchell 1978, Cockfield 1978, Campbell 1971) and will not work in a situation of shortages as was the case in Chile in 1970-73 Ghana (Struthers 1981) and India (Gupta and Srimvasam 1984).

My third assumption is that the controls have been deliberately designed to enable the government to collect money for public expenditure. To test the validity of this statement we shall look at who, among the interested parties in the controls - producers, consumers and government - has his interests better taken care of. It may be noted here that there is nothing wrong in the government using the controls to generate revenue. What is important is what happens to the money. So long as the money goes into public expenditure programmes that benefit the majority, the objectives of the Act will still be served.

We shall see how each of the foregoing propositions is affirmed, rejected or modified by the evidence presented.

1.7. Research Methods, Data Collection, Problems and Results

The study is a result of research conducted partly at Warwick University in the UK and partly in Tanzania. The first phase consisted of general reading on the subject which I carried out at Warwick University from October 1983 to September 1984. During this period I was able to make a literature review by examining relevant texts, journals, statutes, legal instruments, cases and other material, mainly on the experiences of other countries. The aim was to get some light on how the problem has been dealt with in other societies and with what success. One objective of the exercise was to identify a set of potentially feasible alternatives.

The major conclusion I would make from my review of literature is that the price controls are viewed from different perspectives. Different views are held by scholars in market economies, in the command economies and those in developing economies.[10] The differences, as I shall endeavour to explain later on, are not merely of economic theory. They involve totally different

10. For examples of views from market economy perspective, see: US Congress (1973) Price and Wage Controls: An Evaluation of Current Policies (Washington Government Printing Office); Walker, M. ed. (1976) supra note; Jervis, F.R.J. (1949) Price Control: Government Intervention or the Free Market (London: Hutchinson's Scientific and Technical Publications).

    For socialist perspectives, see Spulber, N. (1966) The Soviet Economy: Structure, Principles and Problems (New York: Random House); Kaser, M.C. (1950)"The Soviet Planning and Planning Mechanism," in Economic Journal 1950 pp.81-91.

    For developing countries, see Killick, T. (1973) "Price Controls in Africa: The Ghanaian Experience" in Journal of Modern African Studies 405-426; Whitworth, A. (1982) "Price Control Techniques in Poor Countries", in World Development, Vol.10, No.6, p.485.

approaches to development. At the heart of the controversy are three different ways of looking at economic development, in fact three different sets of value judgements about the purposes of and the ends of economic activity and three incompatible views on what is politically possible.

The second part of the research consisted of fieldwork conducted in Tanzania from November 1984 to May 1985. Some institutions charged with the administration of the Act were visited. Of those institutions I planned to visit I managed to visit the following: the National Price Commission in Daresalaam, where I was able to hold discussions with the Chairman of the National Price Commission, departmental heads in the Commission's divisions and price inspectors attached to the Price Commission. While in Daresalaam I was also able to visit and interview officials of the National Food Commission, Regional Trading Company, Weights and Measures, District Trade Office (dealing with business licensing), National Distributors, the Kariakoo Market Corporation, the Senior Resident Magistrate at Kivukoni Court, the City Council and Daresalaam Chamber of Commerce. I was not able to conduct research in the National Milling Corporation, the Bureau of Standards and the National Development Corporation as originally planned, due to time constraints. To obtain a representative view of the situation I visited four up-country regions: Kilimanjaro, Mbeya, Ruvuma and Dodoma. The same authorities were contacted in each region. These were the Assistant Price Commissioners (the Regional Development Directors); the Regional Trade Officers, the Regional Trading Companies, the Magistrates Courts, the Office of the Public Prosecutor and the Regional or District Directors. While in the regions

I also visited the main market areas to observe the prices charged on some commodities and compare them with the official price lists.

The criteria used to select the regions were mainly three: First, the incidence of price violation. The records at the NPC revealed that Kilimanjaro and Mbeya regions had a relatively higher rate of reported violations while Ruvuma and Dodoma had a low rate. Second, it appeared that on national average magistrates in Mbeya and Kilimanjaro imposed higher penalties on violators than their counterparts in Dodoma and Ruvuma for similar offences. Yet, it is in the very regions with strict magistrates that violations are higher. Third, the regions selected were relatively more accessible in transport compared to others. On the other hand Daresalaam was chosen by virtue of its being the major city (and until recently the capital). It also houses all head offices for ministries.

To obtain the information I used interviews and questionnaires. Questionnaires were distributed to price inspectors, weights and measures officers, city council and the Kariakoo Market Corporation. The turn out was generally poor. The reasons were probably two: The first is that the officials thought the issue to be politically too sensitive to comment upon. The Act and its institutions had become a point of hot contention between the IMF and Western aid donor agencies on one hand and the government on the other (The Economist, London 1980, No.1, Daily News, Daresalaam, November 23, 1984: 1, Development Dialogue 1980: 8). By December 1984 government refusal to repeal the Act had

become the principal stumbling block for the release of badly needed loans from the World Bank (Nyerere 1986, Green 1983). Second, the NPC had announced drastic consumer price increases in September 1984 (Price Control List, September 12, 1984). This was largely due to removal of government subsidies on these items in addition to increased costs of raw materials, labour, transport and fuel (National Price Commission Working Papers 1984, Nos. 116,120,148,153).[11] This caused a stormy debate in Parliament (Uhuru, Daresalaam, October 19, 1984). Many parliamentarians erroneously blamed the NPC for the increases and called for its abolition. A third factor may have been apathy on the part of some government and parastatal leaders to researchers. It has been noted by Nditi 1985 and Wambali 1985 that officials shy away from researchers, consider them as troublemakers or simply as persons interested in exposing administrative deficiencies.[12]

Interviews were preceded by written questions to guide the discussions. I interviewed the Assistant Price Commissioners in the regions visited, Regional Trading Officers, Magistrates at Kivukoni and city courts and those in the regions, officials in the Ministry of Trade, the Kariakoo Market Corporation, traders and buyers on the markets visited and public prosecutors in Daresalaam, Kilimanjaro and Ruvuma. The interviewees were asked a set of control questions: What they thought about the Act;

11. Paper 116 Car batteries; 120 Soft drinks; 148 Edible oils; 153 Bedsheets.

12. Nditi, N.N. (1985) "Report of Research Findings on Consumer Protection Law and Practice" (University of Daresalaam, Unpublished); Wambali, M.K. (1985) Government Liability in Tort: The Impact of the Government Proceedings Act 1967 (Faculty of Law, Daresalaam, LLM Thesis).

whether the controls were necessary and desirable; their opinion, views and attitudes about the controls; their knowledge, awareness, commitment to enforcing the rules; the conditions that hamper the effectiveness of the controls and what changes should be made to improve the situation.

The information based on the questions and subsequent discussion proved useful and I was satisfied that the same was representative of the information I might get elsewhere.

During my visit to the courts I was able to examine court files on cases relating to violation of the controls. The analysis of the files gave me data on the statutory provisions that are most frequently violated. My assumption was that a deficient functioning of the rules would be established by an increase in the number of cases reaching the courts. The problem encountered in the courts was how to locate the files. The courts do not keep records in such a neat way that price control cases would be in any manner easily traceable.

Finally, I consulted the indices on the National Consumer Retail Price Index, the cost of living index for minimum wage earners in Daresalaam and eighteen other urban centres. The indices on these subjects are compiled by the Central Statistical Bureau. The Marketing Development Bureau and the ILO 1982, 1983 have also compiled data on the same. The object was to examine the trend in retail prices and hence cost of living before and after the imposition of the controls. By using the data we would be able to tell the effect of the controls on issues such as

price stability, real incomes and income inequality. One point which needs to be mentioned in this regard is that there is a shortage of up-to-date data and satisfactory information on many important questions. For example, the latest data on the cost of living in urban centres (other than Daresalaam) is that of 1980. The other problem is disparities and inconsistencies in the figures kept by the various institutions. To resolve inconsistencies I supplemented the data by seeking clarification locally from the officials responsible. In other cases I adopted figures which I thought were more realistic in the light of what I personally saw and knew.

The information collected from these sources has been supplemented by my own personal observations and knowledge of the Tanzanian economy.

It is in the light of this information that the issues raised in the study have been posed, examined, analysed and discussed. The material presented is as far as possible Tanzanian. Non-Tanzanian sources have been used in two situations: first, where scholars in other countries have formulated theories which seem appropriate to the study; and second, to illustrate the way in which other countries have dealt with the situation.

CHAPTER 2

PRICE CONTROL: THEORY, LAW AND ECONOMIC REGULATION

In this Chapter I shall attempt to examine four main issues. First, I examine the concept of "price control" - what it is all about and how it arises. Second, what objectives do the controls serve - that is the role that price control may play within the development policy of a state. Third, the reasons that may justify their imposition, and fourth, the methods used to implement the controls. Finally, the role of Law in the control process.

2.1. The Concept of "Price Control"

The term "price control" frequently used and defined in the most different ways needs some clarification. "Price", as ordinarily defined, is an "estimation of the value of an economic good or service in terms of money" (New Dictionary of Economics, 1969: 233). This does not mean that prices are not possible where there is no money involved. Indeed, as the Longman's Dictionary shows, prices are possible in a barter system where no money exists. In such a system the price of a product or service can be expressed in terms of another product - an exchange rate (Longman Dictionary, 1984: 539). "Control" ordinarily implies power to direct, check, regulate or exercise influence over another. A control system would therefore mean a mechanism used to regulate or influence the operation of an institution, agency or social activity.

Despite the apparent clarity in the terms "price"

and "control", when viewed individually, there appears to be no universally accepted definition of "price control". Yet it is significant to note that the concept is frequently used in the context of social and economic regulation. It is important therefore to take a brief look at the concept - defining it and examining several of what may be termed its popular definitional perspectives.

Before developing a definition to be employed in this study, it is interesting to examine one employed in economic literature. According to Cheung, price control is "government interference to influence the price level" (Cheung, 1974: 53). A similar definition is given in the Encyclopedia of Social Sciences which defines price control as "administrative interference by government statutory order in fixing the price level" (International Encyclopedia of Social Sciences, Vol.12,p.459). The central element of this class of definition is an "interference" - a focus which I find misleading. "Interference" connotes a restriction, a blocking off or a diversion from what would otherwise occur without the controls.[1] What may be faulty with this definition is that it looks at price control from the negative point of view. It tends to emphasize the notion that some harm or loss will necessarily be suffered by the controlled firms. Some authorities have argued that this is bound to be a result of any price control (Posner 1969, Confederation of British Industry, "Price Controls and Price Commission: The Business View", London, May 1979). This definition ignores the controller's

1. For a forceful exposition of the notion of interference in the general context of social and economic regulation, see Mitnick, B.M. (1980) The Political Economy of Regulation: Creating, Designing and Removing Regulatory Forms, (New York, Columbia University Press) pp.2-4.

positive role of guiding, assisting and protecting the interests of the controlled firms. Interference also seems to connote lack of purpose, concern or objectives on the part of those who are exercising the controls. Finally, interference connotes an intermittent, and unplanned action. It connotes meddling.

In my view, "price control" has to be interpreted much more broadly than economists sometimes think. Control to me implies an intentional or purposive and systematic influence over a given area of social activity so as to make that activity conform to or serve defined objectives or goals. Control, says Heath, implies an on-going process or relation where the controller's goal remains consistent over time (Heath 1982). The definition that contains these fundamental elements- of purpose, goal, objective and consistency is, perhaps, that of Mitchell, who says, that price control is "government action to influence prices by rules, regulations and directives" (Mitchell, 1978: 36). Mitchell then goes on to amplify her definition by saying that the action that qualifies to be called "price control" is action which is, "carefully arranged, deliberate and purposive; designed to be performed over a long period of time, with long term objectives" (ibid). The merit of this definition is obvious. For one, it is opposed to a situation where there is short-term meddling with prices - the kind of interventions that are motivated by the expediency of short-term political considerations such as winning an election. For the other, it looks at the controls from a positive point of view.

2.2. Why do Government Control Prices?

This is indeed an important question as the very necessity and desirability of the controls is often disputed. Views differ on the desirability of the controls between scholars in the capitalist camp (Stigler 1966, Cheung 1974, Leftwich and Eckert 1985) and those in the socialist camp (Spulber 1966, Bornstein 1970, Barrat Brown 1984). Even within the socialist camp the extent and form of the controls differ between those who adhere to the market socialist economic model, like Hungary and Yugoslavia (Fortes 1970, Ramanadhan 1981) and those who follow the command model (Abouchar 1977, Barrat Brown 1984).

Before I examine the perspectives from which price controls are viewed in the various economic systems let me attempt to state the theory about price controls. Simply stated, the purpose of price control is to protect specific special interest groups in the economy (Cairncross, 1975: 73, Samuelson, 1979: 392, Leftwich and Sharp 1980: 30, Galbraith, 1974: 112). Such groups may be consumers, producers, distributors or the state itself. For example, where the government desires to protect consumers of a selected commodity it may set a price-ceiling (maximum prices) and will not let the item be sold at more than the prescribed price (Bauer 1965, Killick 1973, Leftwich and Sharp 1980). A typical case is the prices of consumer goods found in many control systems (Mitchell 1978, Galbraith 1974, Whitworth 1982). The second case is that of agricultural prices (Helleiner 1966, Ellis 1982, Bates 1984). Government may fix minimum prices (price floors) and would not let them be sold below the prescribed prices. The third case, is where the state

enters into industrial production through government corporations (institutions widely used in Tanzania and other developing countries, see Ghai, 1977: 15-17) or where the government provides certain indispensable services, which by their nature cannot appropriately be left to private enterprise, like postal services, electricity, rail services. The government may impose controls to ensure that the enterprises get the necessary minimum of earnings to run the services (Galbraith, 1974: 115, Mongi, 1982: 97-125) or that prices are set at a level which the majority of the people can afford. Where the government is the principal consumer of a product or service, control may be imposed to ensure that it gets the product at a reasonable price (Fels 1983, Steel 1981).

Let us now see the policy pursued with regard to the price controls in various economic systems.

2.2.1. Price Controls in a Market Economy

According to economists, market economies are, "those in which decisions about the allocation of resources and production are made on the basis of prices determined by voluntary exchanges between producers, consumers, workers and owners of factors of production" (Dictionary of Modern Economics, revised edition, 1983, p.348). Decision making in such an economy is decentralised. That is to say, decisions about "what, how, for whom and where", to produce are made independently by groups and individuals in the economy rather than by central planners (Samuelson, 1979: 41-45, Galbraith, 1974: 110). Market economies usually also involve a system of private ownership of means of production (Leftwich

and Eckert, 1985: 20-22, Mitchell, 1978: 8). The economies of the leading capitalist states of the UK, USA and other western countries, although characterised by considerable government activity and influence, are classic examples of free enterprise market economies. What distinguishes them from command economies is that freedom from price control by government is their basic feature of economic policy (Galbraith, 1974: 110; Cairncross, 1966: 193). Such freedom finds strong support in the economic role of prices in that prices play a central role in organising production. In the words of Galbraith prices are "the intelligence network of the economic system" (Galbraith, 1974: 110). The "intelligence" task of prices, according to Leftwich and Eckert, is that of allocating resources among firms, distributing output, rationing commodities, distributing incomes among owners of factors of production, instilling economic efficiency in the use of resources and maintaining and expanding growth in the economy (Leftwich and Eckert, 1985: 21-22). Let me briefly examine the basic assumptions underlying the functioning of the market economy and the realistic limitations on it. The objective of the examination will be to demonstrate that the virtues claimed for a free enterprise economy are fully realised only when the complete elements of "perfect competition" are present.

2.2.2. The Underlying Assumptions

The basic assumption for the operation of the market system is that there is "perfect competition" on the market (Leftwich and Eckert 1985, Samuelson 1979). "Perfect competition" as used by economists is a technical term. Briefly stated "perfect

competition[2] is thought to exist in the economic system when "all decisions about the allocation of resources and production are made on the basis of process generated by voluntary exchanges between producers, consumers, workers and owners of factors of production" (Leftwich and Eckert, 1985: 22). Implicit in this view lie certain fundamental assumptions: First, that there is a right of every individual to possess private property and dispose of it at their discretion. Second, every seller and consumer regards the price as given with none having control or influence over prices. Third, every consumer regards the products of all sellers in a particular market as identical. Implicit in this condition is the capacity of goods to be uniformly described and graded. Fourth, the consumers behave rationally in their choices purchasing according to their own individual preferences - free from any pressures, inducements, influences - economic or otherwise. Fifth, that there is easy and speedy means of communications and transport between markets locally, nationally and internationally. Sixth, that resources will be freely mobile to enter into their most profitable use without restrictions, delay or prohibitions. Finally, that all consumers and sellers possess perfect knowledge about alternative opportunities open to them to obtain similar goods. It would seem any departure from these conditions produces an imperfect market (Samuelson,1979: 147); Barrat Brown 1984).

The point to consider here is whether these assumptions obtain in real situations? If not, why.

2. A comprehensive analysis of the concept of "perfect competition" as a technical term in economic literature appears in Samuelson, P.A. (1979) Economics, 10th edition, (McGraw-Hill, New York) Chapter 3; Leftwich, R.H. and Eckert, R.D. (1985), The Price System and Resource Allocation, 9th edition (London: The Dryden Press) pp.39-42.

2.2.3. Imperfections of the Market Mechanism

Several factors bring imperfections in the market. First, it is important to note, as Samuelson rightly points out, that in the real world, there is no economy which is purely run by market forces (Samuelson, 1979: 48). It is equally true to say that no economy is a pure command economy. Most economies are mixed economies in which elements of state control are intermingled with market elements in organising production and consumption. What makes an economy fall in either the market or command category is the degree of state involvement in the ownership and management of the economy. This difference, in my view, arises because of fundamental differences in the way society views the ultimate objective of social activity. In socialist economies, as we shall see, the main focus is to satisfy human needs. The state is supposed to ensure public interest and general welfare of the masses hence the direct involvement of the state in the allocation of resources (Dalton 1979). Second, in the real world competition is nowhere near perfect. For one, there is an unequal distribution of income and power in society. Income distribution is unequal due to unequal distribution of resources. This inequality in income results in market behaviour quite different from what would have been if wealth were equally distributed. Another fact is that allocation of resources is not really made by the market. The truth of the matter is that it is those who own and control resources, mostly multinational companies and their subsidiaries, who plan and determine the use of the world's resources (Murray 1981, Penrose 1976). Their decisions whether to use a given resource are primarily motivated by the desire to make money rather than serve human wants (Barrat Brown, 1984:

39, BBC1 "Day-to-Day: Do private monopolies respond to Consumer Interests, better than Public Monopolies", Tuesday, November 25, 1986). Also in a competitive system many producers simply do not know the methods of other producers (Samuelson, 1979: 47-49). Moreover, as Samuelson says, in the competitive system one can succeed as much as by keeping knowledge scarce as by keeping production high (ibid). Furthermore, the assumed freedoms of consumers and sellers are subject to a host of government regulations. For example, freedom to set up business organisations is restricted by laws requiring business licenses, planning permission and registration.[3] The costs of meeting the demands of such regulations may be prohibitive. Or the agencies administering the regulations may simply refuse to give the permit.

Similar limitations emerge if we examine the assumed legal freedoms of consumers - freedom to buy commodities of their own choice, to move across the markets and shop locally, nationally and internationally; to bargain for prices with sellers on equal terms. Again in the real world such freedom rarely exists in practice. Let us take the case of prices. They are fixed by sellers (Galbraith, 1974: 110-120). The consumers have often very little choice - either to take them as given or do without the goods. Sometimes even governments seem powerless in front of sellers when it comes to fixing prices. When the Shell Oil Company raised prices of oil throughout the UK in August 12, 1986, members of Parliament from all parties called on the government to take action to curb the excessive profits of the oil companies. The Parliamentarians attributed the increase

3. For an illuminating account of these limitations, see Ulf, B. (1960) "The Market Law as a Legal Discipline", Scandinavian Studies in Law, Vol.23, 1953.

to the desire by Shell for more profits as there was no other plausible explanation in view of the fact that there was an oil glut in the world market. The industry secretary said the Government would not interfere in the pricing and production policies of the oil companies. These, according to the secretary, were matters of commercial judgment for the companies themselves. The Prime Minister went on to say that motorists could shop around to get cheaper prices and "competition is an important element in bringing price down" (The Birmingham Post, Thursday August, 14 1986: 5). The next morning all other major oil companies, B.P., Esso, Texaco, Mobil raised their prices. Several Parliamentarians condemned the companies. Some of them described the companies as, "bandits bent on price rigging" (The Evening Telegraph, Coventry, Wednesday August 13, 1986: 6). This case demonstrates clearly how flawed the notion of consumers influence over prices may be. Furthermore, in the competitive market, consumers are supposed to have sufficient and reliable information about the goods and the substitutes available (Stigler 1966). Consumer preferences and tastes are assumed to dictate what should be produced, how and by whom. In the real world, as Galbraith never tires of pointing out, consumers desires are not always the genuine result of their wants, needs and tastes. On the contrary

> The consumer is conditioned by a clever slogan or association of ideas to believe in the superiority of one beer, cigarette, or detergent over another and surrenders to the will of the seller (Galbraith,1974: 150).

Business firms spend a lot of money on advertising to shape, and Samuelson insists, distort consumer demands. In Paul Samuelson's view

> We are terrorized into buying deodorants; from childhood on, we are conditioned to desire what business wants to sell (Samuelson, 1979: 48).

[illegible], from the point of view of the workers the assumed legal freedoms include: that of deciding with whom one wishes to enter into an employment contract; that of each party supplying the terms of contract and of opting out of employment when and as one wishes. In the real life situation the case is quite different. What we often see are standardised terms and conditions of employment offered to workers. We find powerful employers associations acting on behalf of capital having an upper hand when negotiating with trade unions. We also find that the type of training, education and skills we receive tend to restrict us to certain types of jobs. Above all, we find that labour, on account of economic pressure, is in the weaker bargaining position. So the state is called in to intervene to modify or prohibit certain forms of contracts considered unfair. A good example isthe UK Unfair Contract Terms Act 1977.

The major serious deviation from perfect competition is probably the existence of monopolistic firms, private and public. These firms can manipulate production and prices to their advantage through wrong pricing, creation of distorted patterns of demand by advertising and monopoly profits (Samuelson, 1979: 47), Cairncross,1966: 162-169).

Economic limitations apart one can also question the moral and ethical merits of relying solely on the market mechanism to determine production. For example, is it proper that goods should be produced simply because money votes and not necessarily human wants, have said so? Should we condone a practice in which, as Samuelson sees possibly happening, "John Rockefellers' dog

may receive the milk that a poor child needs to avoid rickets" (Samuelson, 1979: 46); or where, as George Bernard Shaw warned

> A New York lady, for instance, having a nature of exquisite sensitivity, orders an elegant rosewood and silver coffin, upholstered in pink, satin for her dead dog. It is made: And meanwhile a live child is prowling barefooted and hunger stricken in the frozen gutter outside (Fabian Essays,1950: 24).

Aware of these limitations, governments in market economies institute measures to redress the imbalances brought about by the market mechanism. For example, in times of war or other economic emergency situations like droughts, famine, economic depression, when supply difficulties would lead to exceptionally large price increases price controls are imposed to protect the vulnerable sections of the community (Jefferson 1966, Campbell 1971, Mitchell 1978). Such was the case during the First and Second World Wars and the economic depression of the 1970's (Mitchell 1978, Cockfield 1978, Galbraith 1984). Apart from such wartime periods and other periods of economic hardship governments in market economies especially those of the USA and UK, have restricted their direct influence over prices to a few specific areas (Pearce 1983: 348, Taylor, 1968: 233, Galbraith ,1984: 166-168). Public utility pricing is a classic example.[4] Here because of the peculiar economic and physical features of the industries competition cannot be relied upon to produce socially acceptable results (Galbraith 1984, Samuelson 1979, Taylor 1969). I would argue here that there is also considerable indirect government intervention in prices. The establishment of regulatory commissions such as the Interstate Commerce Commission in the US (Galbraith 1984, Samuelson 1979)

4. Turvey, R. (1970) "Public Utility Pricing" in American Economic Review, Vol.3 and Reid, G.L. ed. (1973) The Nationalised Fuel Industries (Heinemann Educational Books) give reasons why government control is necessary.

and the Monopolies and Mergers Commission in the UK (The Fair Trading Act 1973) is a clear example. The activities of such agencies have a lot of influence on the pricing behaviour of business enterprises. In the UK the Fair Trading Act empowers the Secretary of State to direct the commission to have regard to the "desirability of promoting the interests of consumers in respect of prices and the quality of goods and services" in the course of its investigations (Section 12(2)(a) Fair Trading Act 1973). The Secretary of State can specifically direct the Monopolies Commission to investigate firms to ensure that consumers are fairly treated as regards: terms and conditions on which goods are supplied; advertising labelling or marking of goods; methods of salesmanship methods of demanding payments and the manner in which terms and conditions of sale are communicated (Section 13(a)-(f) Fair Trading Act 1973).

2.3. Price controls in a Command Economy

It is in the planned economies of the Soviet Union and other socialist states that we find pervasive and comprehensive use of price controls. The planned economies offer a fundamentally different form of economic organisation to the market model. The basic characteristic of the command economy is the social direction of priorities in place of the market indicators of prices and profits. A command economy is also different from a market socialist economy. In a market socialist economy, the day-to-day running of the economy is left to the market mechanism, while the major means of production are socially owned and basic decisions and directions of development are planned centrally.

In a command economy, on the other hand, all crucial economic processes are determined to a large extent not by market forces, but an economic planning body which implements society's major goals. For example, in the classical command model it is the central planning authorities who issue orders on how much to produce; by what means; by whom and for whom; where, when and by what combination of resources. The orders are made by central planning bodies on the basis of broader social and economic considerations. The planners set specific targets as the aims of industrial and agricultural production and use physical controls in the process. Resources are allocated in physical quantities to each enterprise, priority being given to items needed most by society.

A basic prerequisite of the planned model is the socialisation or collectivisation of production and use of surpluses generated by the productive forces (Dalton 1979). The state owns and controls the commanding heights of the economy - banks, industrial companies, land. State plants produce basic consumer goods as well as capital goods. The dominance of state enterprises in production and the increasing of state's resources in providing investment capital has ensured the subordination of the private sector to the public sector, both in industry and agriculture.

As a result of centralised planning, the command economy has four implications for market relationships: First, the displacement of the market. This in turn has led to three other consequences. The social direction of priorities in place of market indicators being one. Here we find central planners and not markets determining

quantities and qualities of output, imports and exports, supply and demand, prices and wages, jobs available and labour, tax rates and credit. The other is social motivation to replace the profit motive as the driving force in increased productivity. Efficiency and productivity is enhanced through workers participation in decision making and worker's improved welfare by the provision of free health, transport and educational facilities. The third is centralised coordination and articulation of enterprise plans in place of market uncertainties.

The state in the USSR, through the Planning Departments of Industry and Agriculture at the centre , fixes prices. The state-owned banking system fixes the rates of interest for different industries. These departments also control overall allocation of resources (Barrat Brown, 1984: 137). Within this framework enterprises have freedom to make their own bargains with their suppliers and customers. The same freedom is accorded to artisans, peasants and private traders (Abouchar 1977).

An important point to note here is that the principle guiding the determination of prices in the USSR is Marx's theory of value, which sees a close link between price and value (Marglin 1984). Marx argues that, "price taken by itself is nothing, but the expression of value" (Marx and Engels, Selected Works, Vol.I: 398-457). In Marx's analysis, prices of commodities are primarily determined by prices of labour (wages). For example, Marx wrote that the market price of a product expresses "the average amount of social labour necessary under average conditions of production to supply the market with certain mass of a certain article"

(Ibid. at p.415). Implicit in Marx's view is the assumption that the value of a commodity is derived from the amount of labour time socially necessary to supply that commodity. And that value always reflects utility or use of the commodity to society. Marx distinguished prices in the capitalist market, where he said they reflect nothing "but the exchange value of the commodity expressed in a definite quantity of the equivalent in money terms", from prices of commodities under primitive commodity production where prices reflect use values. According to Marx, in an exchange economy prices are composed of three elements: (a) the value of past labour embodied in machinery, plant and material - the production of which has caused a certain amount of labour time; plus (b) the value of current labour in the form of wages; plus (c) the value of that portion of labour for which the worker is not compensated (surplus value). In Marx's view it is incorrect to say that prices are determined by supply and demand. He argued:

> Supply and demand regulate nothing but the termporary fluctuations of market prices. They will explain to you why the market price of a commodity rises above or sinks below , but they would not tell you how prices are formed in the first place (Ibid.).

The hallmarks of the Marxist theory of price are three: One, that prices of commodities are regulated by the price of labour; two, that nothing can have value without being in social demand; and three, that not all labour is of productive of value. In particular Marx excluded the labour of the merchant and landlord as not of productive value (Marglin 1984).

In applying Marx's interpretation of the theory of price one has to bear in mind the context in which Marx developed his views. Basically Marx was concerned with explaining one particular

form of price - that of labour power. That is why he argued that wages were the money paid by the capitalist employer for a particular output of labour while some portion of the labour remained unpaid to generate surplus for the employer. This explanation, in my view, cannot account for all elements that constitute prices of commodities. Clearly commodities require other factors of production, other than labour. For example, land. This also enhances value and hence price. Marx also concentrated on comparing prices under primitive communalism and capitalism.

The Marxist analysis remains the guiding principle in the pricing policy of the Soviet economy and other socialist states. I, for one, find its denial of supply and demand forces as not the real determinants of prices, quite convincing. For example, when oil prices fell in the world market during the first half of 1986 we were told there was over production. This would necessarily have meant cheaper prices to the consumer. On the contrary, it was left to the oil companies to decide whether to pass the benefits to consumers or pocket the money themselves. As a consequence, only a few countries (Germany, France) made substantial price reductions. Elsewhere, the companies preferred to benefit themselves. And I suspect it is the oil monopolies which fix prices rather than supply and demand factors. The concept of supply and demand factors conceals the human instrumentalities and their interests.

Let us now examine how prices in the command economy are controlled to reflect Marx's theory of value. In the Soviet Union, prices as a general rule, are fixed at a level proportionate

to what it costs labour to produce a product (Manove 1973, Abouchar 1977). To this, the planners make provision to enable the enterprise to recover costs of raw materials and generate revenue for investment. The actual workings of the Soviet pricing system, like some other aspects of the operations of its economy, as Barrat Brown rightly points out, have never been fully disclosed (Barrat Brown, 1984: 140). From Bornstein's studies, it appears that prices do not contain elements of rent on account of scarcities or monopoly. Prices are strictly controlled at each point of supply (Manove 1973).

At the enterprise level, individual firms fix the ex-factory prices of their products. The fact that an equivalent product is available to meet the specific need means a new product must be slotted into the existing price structure with due allowance for differences in quality, processing problems and savings made possible by its use. The primary factor considered in the pricing of new products is the price of competing or substitute products (Abouchar 1977). However for an entirely new product considerable discretion is available and an enterprise can decide at what price the product should be introduced. For such radically new products the prices will be determined by the net-planned costs plus a percentage of profit margin. In order to provide incentives for technological innovation firms may be subsidised, compensated or given a tax allowance on pre-production expenses. Interenterprise purchases and sales of inputs and other raw materials are freely bargained for among individual sellers and buyers (Abouchar 1977).

The Council of Ministers in individual union republics

fixes retail prices and rates for food, transport and control acquisition and distribution. Prices are fixed taking into consideration differences in geographical and economic factors like productivity of land, incomes, level of wages and level of development in the province. At a higher level, there is the special Commission of the Presidium of Council of Ministers. The commission formulates directives on the rules and procedures of fixing prices for raw materials, agricultural and industrial goods. It also supervises and coordinates the work of state agencies responsible for price controls. The Special Commission is responsible for recommending changes in the prices of basic commodities like meat, fish, bread and so forth. Also it acts as government adviser on pricing policy.

At the top of the hierarchy, there is the State Planning Department for Industry and Agriculture which ratifies the decisions of subordinate agencies.

Bornstein identifies three functions of prices in the Soviet economy. First, the allocative function. Soviet planning authorities use prices to quantify in value terms the output and consumption of goods in the economy. Enterprises plan their purchase and sales targets on the basis of prevailing prices. Second, is the income-redistribution function. Here central planners use prices as a means of redistributing income on equitable basis. The objective is to achieve equality in real income and economic welfare. This is done through tax and subsidy elements in the price structure. People with relatively higher incomes pay more while those with little pay less for the same commodities. People in areas with less economic development or resource endowment

are subsidised by the state. In this way economic inequalities are evened out. The third role is the measurement role. Prices are used to measure the general wealth of the nation (Abouchar 1977, Bornstein 1977).

Apart from the human needs orientation of the command economy, there are also other advantages in this model. Compared to the pure market economy, the command economy offers more scope for implementation of needs of society. Second, there is a reduction of uncoordinated economic activity which may lead to inefficient utilisation of resources (Taylor 1969). Furthermore, there is greater potential for solving problems of unemployment in a planned than market economy. Finally, for a developing country a planned economy provides opportunity for faster economic growth than would the case with a market economy. This is because with planning, resources can be concentrated in certain key-sectors that constitute the backbone of the growth of the economy.

2.3.1. Disadvantages of the Command Economy

The command model requires large organisations and enormous resources to coordinate the activities of planning authorities with those of individual units implementing the commands. A large number of staff is needed to collect, organise, work out and disseminate information on matters such as input and output quantities, demand and supply, prices, wages and labour. Short of a complex, computerised information system, the model can only be operated by a few countries. A basic deficiency, noticeable in command economies, is insensitivity to consumer preferences. Goods not in demand by consumers may be ordered produced.

State agencies may insist on the production of mass, poor quality goods so that resources are released for other purposes, such as military expenditure (Barrat Brown 1984: 141, Samuelson 1979: 878). A clear case of insensitivity to consumer wishes occured in 1984 in the USSR where the State Trading Corporation had huge stock piles of unsaleable shoes amid complaints of shoe shortages in the provinces (Panorama, BBC2, February 2, 1986). The shoes would not sell due to poor quality and design.

A further disadvantage is misallocation of resources. The misallocation occurs in terms of wastage in expenditure of time, manpower and money to administer the controls. There is also evidence that managers and administrators neglect the procedures laid down for the distribution of goods and indulge in malpractices like favouritism, concealment of goods, and corruption (Barrat Brown,1984: 141, Samuelson,1979: 877-880).

2.3.2. Reforms in Command Economies

Of late there have been reforms in many command economies (The Economist, London, October 11, 1986: 53-55). Measures to avoid excessive regulation and excessive formalism which stifle economic initiative have been initiated in USSR and other socialist economies (Samuelson, 1979: 874-881, Galbraith, 1974: 215-222). The reforms do not set out to undermine the principles of the command economy as such, but they aim at improving its efficiency by using criteria such as profit to measure factory performance, instituting flexible prices responding to the market forces of demand and supply, and charging interest on government money loaned to enterprises (Fortes 1970, Abouchar 1977).

The main changes made in the economic plan 1986 in the Soviet Union are: First, enterprise decisions as regards manufacture and marketing of consumer goods now rely more on market indicators than the commands of state officials (The Economist, London, November 11, 1986: pp.53-54). The purpose is to make enterprises respond to the growing demand for goods of better design and quality. Previous experiences, as we noted above, had shown factories flooded with goods that could not sell. Second, measures to give freedom to individual managers to allow them to decide what to produce and how to sell it have been taken. Central control is restricted to specifying targets, that is the volume. Third, the profit motive is being elevated as a prime element. Profits instead of being surrendered to the government will partly be invested in the firms and partly be used for granting bonuses to workers and managers. Fourth, state trading corporations are being allowed more freedom to reorganise distribution on the basis of market research and economic incentives. Finally, firms are no longer bound to buy and sell their products to given enterprises. Now they are allowed to buy and sell to any firm they want (The Economist, October, 1986: 53-54).

Other socialist states have also embarked on reforming their economies. In Hungary and Yugoslavia they have instituted market socialism in which the day to day running of the economy is left to the market mechanism while the means of production are socially owned and basic decisions and directions of development are centrally planned (The International Encyclopedia of Social Sciences, Vol.12, 1983 p.459, Ramanadhan 1981). In Hungary, for example, prices are established in response to supply and demand

factors. Centralised specification of production targets for enterprises has been abandoned (Portes, 1970: 307). Instead, enterprises determine production levels and prices on the basis of contracts with buyers. Second, there has been abolition of central allocation of resources and credit facilities. Third, profit has been restored as the criterion of efficient performance of the state enterprises. Inevitably, this means reduction in controls to which every phase of the enterprise had previously been subjected (Samuelson, 1979: 875-876). There are no monopolistic or monopsonistic distributors. Prices of commodities are determined by average costs of production plus a profit mark up. The cost elements that go into prices are constituted of: costs of raw materials, wages, a fixed pay roll tax, depreciation allowances, a fixed charge on the gross value of fixed and working capital plus a margin at a prescribed rate (Portes 1970). The Hungarian formula for computing costs approaches price formation from the point of view of the supplier. The object is to ensure that firms do not sell at a loss. The state still retains overall responsibility to audit efficiency, indicate societal preferences or even intervene in public interest.

In Yugoslavia the shift has been towards worker's control and management of firms as opposed to central planning (Samuelson, 1979: 875, Ramanadhan 1981). Yugoslav workers control major decision making processes, including the fixing of prices. The enterprises buy and sell to each other at arms-length on the basis of negotiated contracts. Decisions about production, distribution, marketing and technical aspects are taken by the management. Wherever the state feels that factors of a social nature need to be taken into account in the pricing of a selected product it may order

so. But the enterprises have a right to state subsidies if it turns out that the extra obligations will occasion losses to their operations. As a result of these reforms, the economy of Hungary is regarded as the most prosperous in the socialist block (Portes 1970). Similarly the reforms in the Soviet Union have significantly improved the economy in recent years compared to the stagnation of the early 1980's (Barrat Brown 1984, The Economist, London, October 11, 1986: 54).

To sum the argument, I would say there are fundamental differences in policies as regards price controls between market and command economies. While command economies consider price control a potent instrument for social and economic development, market economies prefer freedom of the market. The differences are not academic. They are based on differences on the development policies and ideological outlook of each system. We also note that in both economic systems there have been shifts from the classical concept. What we need to bear in mind is the fact that whereas the current tendency in planned economies is a shift towards indicative planning, in the capitalist economies of the UK and USA the shift is towards a more orthodox view of the free enterprise system (Barrat Brown, 1984: 71, Galbraith, 1984: xviii-xxi). This includes minimal government intervention in economic affairs. Reliance is on normal market forces. This is still the basic approach in many of the western economies. They rely on the existence of a large number of entrepreneurially minded persons with financial resources to back up production, supply and purchases. In contrast, central regulation of both investment and current production is the characteristic of the approach of the planned

economies. It leaves a very limited sphere for the operation of the market forces.

2.4. Developing Economies

In considering the appropriateness of the market and command economy approach to price controls for developing countries the question which one has to ask is: Do the basic preconditions for such models exist in any of the developing countries?

The most cursory look at some of the basic characteristics of these countries will show that they cannot take advantage of the market or command model. First, most of the developing countries, especially those of Africa, which I am more familiar with, were colonised (Rodney 1972). Decades of colonial rule did little to develop the colonies and the little development that occured was mostly geared to the interests of the colonial powers (Barrat Brown, 1984: 174). The overall result of colonialism was that the colonisers took away more than they brought leaving the colonies underdeveloped (Fanon 1984, Rodney 1972). The second characteristic is the dependent nature of the economies. They depend on capitalist markets for the import and export of their products. Production is concentrated on processing raw materials for export. Manufacturing depends on import of inputs - raw materials, machinery as well as managerial and technical skills (Stewart, 1976: 89-109). The third is the fact of economic and social problems of low incomes, poverty, ignorance, disease and illiteracy. The fourth, is the lack of control by governments over economic destiny of their countries. Multinational corporations based in developing countries control vital sectors of the economy

- manufacturing, trade and infrastructural services. And so, the multinationals hold a commanding influence over the market (Murray 1981, Penrose 1976). Even in those states like Tanzania and Mozambique which have tried to curb the power of multinationals through nationalisation the success has been only partial (Mittelman 1981, Shivji 1976). The multinationals have made a strong comeback through joint ventures with public and local private firms (Shivji 1973, Lall 1984). Because the multinationals control the foreign components in the ventures such as supply of machinery, technology, management, they have an upper hand in taking major decisions, including determining prices. Fourth, is the existence of a consumer class ill equipped to exert infuence over the market due to deficiences in money, information, knowledge and restricted mobility. Finally, as a result of colonial rule and with a view to preserving colonial ties, a class of petty bourgeoisie consisting of government officials, traders and the military that took over power after independence, controls and uses the resources to promote their political interests (Mamdani 1982, Fanon 1984). So, income inequalities and other social inequities still persist. It is clear from those characteristics that I find it difficult, in fact impossible, for developing countries to organise their economies successfully on the market or command model.

2.5. Some Motives for Price Control

Accepting the argument that all economies have experienced price controls of one form or another, there still remains an important question: What motives could justify their imposition in a given case?

There may be several different reasons that may call for price controls, some of which are economic, social, equitable and ethical. They do not necessarily exclude one another and are better regarded as different elements in any situation that requires price control. At any given time, one or the other of these elements may predominate over the rest or bringing the others into play. A good illustration of the existence of most or all of these factors is the UK control system set up in 1973. Under the Counter Inflation Programme (Cmnd 5667, para. 3-7) it was stated that the reasons were: to fight inflation, restore the balance of payments equilibrium, protect public interest, protect vulnerable sections of the public and also protect traders against unjust taunts that they are profiteers.

I will endeavour to examine the reasons under four broad categories: economic, political, social and constitutional rights. My categorisation is purely one for convenient analysis.

2.5.1. The Constitutional/Legal Rights Reasons

The constitutions of some modern states contain clauses which guarantee fundamental rights. Good examples are those of India and Tanzania. Article 38 of the Indian Constitution reads:

> .... The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social economic and political, shall inform all the institutions of the national life (Article 38 Constitution of India 1950).

To foster this goal the other provisions of Article 38 exhort the state to ensure that citizens have an adequate means of livelihood, that the operation of the economic system and the ownership

and control of the material resources of the country subserve the common good.

The Tanzanian constitution is more explicit. It states that it shall be the responsibility of government to ensure that

> a) all fundamental human rights are respected and protected;
>
> c) government activity is conducted in a manner which ensures that the ownership and control of the material wealth of the nation are so distributed as best to subserve the common good, in particular it shall be the duty of the government to ensure that the operation of the economic system does not result in the exploitation of one person by another;
>
> g) the citizens, men and women equally have the right to an adequate means of livelihood;
>
> h) there is equal opportunity, equal pay for equal work irrespective of ones creed, religion, sex, colour or status;
>
> i) the country's wealth is used for the development of the people, and in particular for the elimination of poverty, illiteracy and disease;
>
> j) ensure economic justice through effective state control over the major means of production and ensure that the operation of the economic system does not result in the concentration of means of production and wealth in the hands of a few individuals[5]
>
> (Article 9(1) of the Constitution of Tanzania (Fifth Amendment) 1984, No.15).

From a reading of these clauses it appears that the constitution is against unequal distribution of wealth and all other forms of economic and social injustice. It directs the government to control economic activity so as to ensure it subserves national or public good. Presumably the constitution is directing its attention on the rights of the economically and socially weaker sections of the community (Austin, 1966: 66).

5. Personal (unofficial) translation from the Swahili text.

The constitution leaves it to the government to decide what type of activity should be controlled, the circumstances and methods and the degree of control to be imposed. The state may decide to control through involvement in direct production of certain goods or through regulation or both. The form chosen will depend on the nature of the activity in question and its significance to the welfare of the society.

What I can conclude is that such legal guarantees may constitute a justification to people demanding protection when they feel that there are economic injustifices. For example, in the debates to the Regulation of Prices Bill 1973 one member of Parliament asked whether the government was not breaching a constitutional duty by not intervening to stop price increases. He queried

> Is our socialist government not aware that the preamble to the constitution gives it power to prevent traders from exploiting consumers. Why do they want us to pass another law? (Hon. Leons Ngalai, Hansard, April 4, 1973: 296).

2.5.2. Economic Justifications

In a market economy the common justification for imposing controls would be market failure (Leftwich and Sharp, 1980: 29-61; Cairncross, 1975: 73; Samuelson, 1979: 392-400). This, as we noted in Section 2.2.3 may relate to dominant power of certain firms on the market, failure to produce socially desirable results or informational failure (Samuelson, 1979: 49).

2.5.2.(a) To Curb Possible Abuses of Monopoly Power

An obvious motive for imposing price controls would be to prevent abuse of monopoly power by firms enjoying domination of the market. Among other things effective monopolies are characterised by higher price levels (Leftwich and Eckert, 1985: 362), extensive price discriminations (Jordan 1972), rates of return on investment exceeding those obtainable if the firm operated in a competitive market structure (Samuelson, 1979: 518, Whitworth, 1982: 476) and resource wastage or misallocation (Samuelson, 1979: 116; Leftwich and Eckert, 1985: 367-369).

Monopolistic enterprises are a feature found in both developed and developing countries; in the market as well as command economies (Samuelson 1979; Barrat Brown 1984). But there are differences in the nature and degree of monopoly existing in the different societies. In the developed market economies, monopolies are confined mainly in public utilities (Morris 1980; Posner 1969; Shepherd 1970). In the command economies they are mainly state monopolies (Samuelson, 1979: 875-881; Barrat Brown, 1984). In contrast, in developing countries the market is dominated by multinational monopolistic firms (Murray 1981; Ghai 1985). Particularly so in the market-orientated developing economies.

To appreciate the extent of monopoly in modern economies - the manner in which it may arise, the form it takes and problems it may cause to society, we need to understand the meaning of monopoly both in its classical sense and in real practical situations. According to Posner, a monopolistic firm is one which is "the only seller of a product or service having no close substitutes"

(Posner, 1969: 548). This is a pure monopoly (Leftwich and Sharp, 1985: 199).

Monopoly may arise for a variety of reasons. One, is that the firm may be in "control of the whole of a given market for a particular item with entrance by new firms in the industry effectively blocked" (Dorfman, 1965: 78). A typical case would be where one firm owns some essential patent, or controls unique natural resources, or is in some way able to deprive would-be competitors of entry. A case in point is that of the pharmaceutical company producing the antibiotic, tetracycline in the USA. Having been given exclusive patent rights, the company abused its monopoly position by overcharging consumers throughout the world by creating artificially high market prices for the drug (see: In re Antibiotic Antitrust Actions, 333 F. Supp. 317 (S.D.N.Y 1971)). Monopoly may also arise because entry into the market by new firms has become prohibitive or difficult due to the financial and other resource demands required to break into the market. This would be the case where heavy expenditure is needed in investment, purchase of machinery or inputs, marketing and research. The same would be the case where entry is restricted by government protectionist policies like licensing and administrative allocation of resources. Furthermore, monopoly may arise where the entire demand within the relevant market can be satisfied, at economic costs, by one firm rather than two. In this case monopoly is not a function of the actual number of sellers in the market, but of the relationship between demand and technology. If the market were to contain more than one firm, either the firms would quickly shake down to one through mergers or failures (Posner

1969); or production would be undertaken with more resources than necessary. Competition in such circumstancies would not be a viable regulatory mechanism. Direct governmental control over the firm's prices becomes necessary to guard against abuse by the monopoly position and also to ensure efficiency (Whitworth 1982). Controls over the rates, profits and service standards of public utilities in the US and UK have mainly been justified on those grounds (Rees 1979; Pearce 1983; Darby 1976). Finally, monopoly may be conferred by law - statutory monopolies. For example, government may want to protect a certain industry from competition to promote local industrial development; or the industry may have a special national significance like defence. Examples of statutory monopolies from Tanzania are beer, cigarette, postal and telephone services, water and electricity. In these industries monopoly has been granted to parastatals by Acts of Parliament. On the other hand it can be said that even without legislation, monopoly would arise in some activities because of the high financial requirements or economies of scale or limited size of the internal market. For example, to allow competition would be wasteful in activities like railways, telephones or electricity in countries with small markets like Tanzania. Public interest reasons may also account for the grant of monopoly to state enterprises[6] like water, posts, production of arms and ammunition (Bonin 1984; Samuelson 1979).

Besides situations of monopoly, there is also the question of domination on the market by a firm or group of firms. This

6. This view is strongly reflected in the thinking of leading scholars on public enterprises, e.g. Robson, W.A. (1962) Nationalised Industry and Public Ownership London: Allen and Unwin.

equally constitutes a justification for control. For example, the British Monopolies Commission will consider a situation to be one of market domination and therefore as a ground for investigation, where "one firm (or closely identified group of firms) holds at least one quarter (i.e. 25%) or more of the total sales in the relevant market" (The Fair Trading Act 1973 (UK) Sections 6 and 7). The criteria applied by the UK Monopolies Commission to determine market domination are as follows: First, where one quarter (i.e. 25%) of the market is supplied by two or more persons who conduct their affairs in a manner which prevents or distorts competition. This is referred to as a situation of a complex monopoly: Second, where one quarter or more of the supply is controlled by a particular person or group of persons. Such a situation is a 'scale monopoly'. Third is where one quarter or more of the amount of capital invested on an industry is dominated by one person or group of persons.

If we apply the definitions of monopoly and market domination outlined above to the Tanzanian economy, we find that most of the industries are dominated by monpolistic firms. First, there are those firms where production and supply of commodities and services for the country's market are in the hands of one public corporation, that is "absolute monopoly". Examples are beer, tyres and tubes, fertilisers, corrugated iron sheets, crude oil refining (Table I below). Second, there are those industries where single firms have market shares several times larger than all others combined. Examples are shoes, where the Bora Shoe Corporation is dominant because of its technological superiority and marketing capability; the soap industry where the Lake Soap

Industries control more than 60% of the market: In such circumstances the dominant firm is invariably the price-leader. Third, there are those industries where two firms control production and sale on the domestic market. Examples are radio receivers, domestic irons and dry cells supplied by two giant multinationals only, Philips (T) Limited and National Panasonic; petrol in which British Petroleum and Esso Limited have a duopoly. The areas where atomistic markets exist are butcheries, woodworking, road transport, fresh food and vegetable supplies. Table I demonstrates the degree of market imperfections in leading industries.

Table I: The Number of Establishments Employing 50 or more Persons in Leading Industries in Tanzania

Industry	No of Firms	Industry	No of Firms	Industry	No of Firms
Axes (shovels)	1	Cement	3	Envelopes	2
Agricultural Mach.	12	Cheese Rolls	3	Fresh Milk	6
Aluminium ware	4	Chemicals	3	Gramaphone Records	1
Ammonium Sulphate	1	Cigarrettes	1	Grey Sheeting	1
Baby Pram	2	Cooking Oil	3	Hoes	1
Ball Pens	4	Compact Cassette	1	Laundry Soap	19
Bedspread	2	Corrugated Sheets	1	Medicines	1
Bicyles (Tyres)	1	Crude Refining	1	Mosquito Coils	2
Biscuits	2	Foam Matress	5	Mosquito nets	3
Brassieres	3	Fertilisers	1	Maize Milling	18
Bread	35	Detergents	9	Match box	1
Butter	3	Domestic Irons	1	Shoes	12
Canned Fruit	1	Dry Batteries	2	Water Pumps	2
Canvas Goods	4	Electric bulbs	1	Wires (Electric)	1
Cereal Flours	9	Electric cookers	1	Wires (Barbed)	1

Source: The Tanzania Industrial Studies Consulting Organisation, Directory of Industries 1985.

The table covers all major industries. It has been constructed from TISCO's, directory of industries. The industries are those employing 50 or more persons. This classification is in line with the standards laid down by the International Standard Industrial Classification.

The table by itself does not tell much about the extent of monopoly. It is only if it is read with other evidence that we get a fuller glimpse of the market structure. Although there are 35 firms in the baking industry, 6 in cooking oil, there is hardly any effective competition among them. For example, one firm, VOIL Ltd., controls over 80% of vegetable oil production. The six firms entered under the soft drinks industry are each located in a different town and each sells its products within its locality. It is hard to find one type of soft drink, say coca cola, in a zone where pepsi cola firms operate. The reverse is also true. Whether there is complicity among the multinationals running this industry to share the market on that arrangement or not is hard to prove. It could be the prohibitive transport costs of supplying a wider market that account for this situation. But I found the arrangement very unsatisfactory. Consumers in the northern regions are virtually captives of the double cola company. Those in coastal areas are under pepsi cola. In the south they can only get coca cola. In central regions, it is either mirinda (a subsidiary of pepsi) or anjari (an Indian drink). Although the prices are all controlled by the commission, the price differential between them is quite substantial. Coca cola in southern regions cost twice as much as pepsi cola bottled in Daresalaam. The price differential could be caused by differences in production costs. But even then I am not convinced that the cost differentials between the regions are as big as the prices would suggest.

Furthermore there are other aspects that enhance market domination by few firms. The fact that there are several firms

in some of the industries does not necessarily mean that those firms are producing similar products or close substitutes as to compete on the market. The reality is far from that. For instance, out of the eight firms in the textile industry, only two, the Mwanza Textile Mill and the Friendship Textile Mill produce 'khanga' and 'kitenge' material - the two are the most popular textiles for which women have demonstrated in the streets and in Parliament about shortages. Again, out of the eight, only one produces 'Khaki drill' for school uniforms. Another factor which enhances market domination by a few firms is government policy which aims at protecting domestic industry and conserving the meagre foreign exchange. Under the Open General Licence Order 1978 the Bank of Tanzania has power to restrict or ban out right, the importation of goods similar to those manufactured by local firms. Similarity here refers to the use or service to which a product can be put. The order states

> Applications for the importation of goods, the like of which are manufactured locally, shall be accompanied by evidence from the local manufacturer or Ministry for the time being responsible for industries, indicating that the goods are not locally available in sufficient quantities (Open General Licence Order 1978, Fifth Schedule).

This order permits a local manufacturer to move the Central Bank to prohibit or restrict importation of goods for which they are capable of satisfying local demand. The only condition for the grant of the restriction is that the local manufacturer should show that he will be able to meet the anticipated demand.

The order is obviously too wide and vague. It does not lay down criteria for determining the grant or withholding of import restriction petitions. Also it does not say what should

happen where the firm's anticipated demand projections are overtaken by growth in actual demand. This is quite possible to happen in commodities like cloth for school uniforms where intake of children in schools may easily overshoot projected numbers; or change in the composition of the population may affect the demand for certain goods.[7] To guard against this happening some mechanism for adjustment should be provided for such as allowing the firm to import to fill the gap without restrictions.

There are strong indications that the order is causing difficulties. I suspect that some local manufacturers have either abused this right or recklessly applied for restrictions on import of goods similar to those they produce without making sound demand projections. For example, the Bank of Tanzania, prohibited the importation of textile materials, both cotton and synthetics on the ground that local manufacturing capacity was adequate to cope with demand. Between 1980-82 severe shortages arose. Then the government eased its restrictions temporarily in 1983. Local industries complained to the Minister for Industries that they were having difficulty in selling their products. The public were puzzled by this bizzare development. Either the local manufacturers had been deliberately withholding supplies to create scarcities so as to get higher prices or there had been a dramatic improvement in production in local industry. The latter was not the case and the government expressed grave concern about the way this development had occured (Daily News, Daresalaam, July 26, 1985: 3). The most plausible explanation, in my view, is that some local manufacturers had moved the Central Bank to restrict

7. This was the explanation given for shortage of school uniforms, Daily News, Daresalaam, June 20, 1986: 1).

imports simply to enhance their dominance in the domestic market, misusing the privilege. Second, where the local manufacturer failed to satisfy domestic demand, it was not easy to fill the gap with imported supplies. This is because the Bank of Tanzania takes a long time to clear applications for imports. Normally it approves import permits on very rigorous criteria and at periodic intervals of six months. Moreover, it has been suggested that the policy of restricting imports of goods similar to those produced by local firms encourages local firms to embark on production of goods at costs which are sometimes far higher than those of imports (Shimwela,1984: 17).

If we stretch the analysis further, we find that market domination by a few firms is also widespread in the trade sector - export and import; wholesale and retail trade. Under the Regulation of Trade Act 1980 public corporations and cooperative societies have a monopoly of acquisition and distribution of all essential commodities (Government Notice 94, 1980). The Act empowers the Minister for Trade to regulate or control the sale of any product where in his opinion it "is necessary or desirable to do so in public interest" (Regulation of Trade Act 1980, Section 3(1)). The Minister may designate any goods or services as 'controlled goods' and may confine their distribution to authorised traders. Village communities nominate the names of traders whom they consider fit to handle essential commodities and the regional authorities approve them. Once the Minister has issued the control order, no person other than an authorised dealer or trader may sell or offer for sale, or display such goods. Any person found in possession of controlled goods in quantities grossly dispropor-

tionate to his normal needs may be liable to prosecution under the Economic and Organised Crimes Control Act 1984. The Act also forbids manufacturers, importers or distributors from selling controlled goods to any unauthorised trader. Contravention of this provision constitutes a criminal offence. The offender may be liable to a fine of Tsh. 20,000.00 to Tsh. 100,000.00 (i.e. about £800-£4,000), or imprisonment of not less than 2 years and not exceeding 14 years; or both fine and imprisonment, Section 4(2). The first list of controlled goods and names of authorised dealers was issued under the Regulation of Trade Order 1980. The goods include agricultural chemicals supplied by multinational companies like Hoechst (T) Ltd.; Shell-BP; Pfiser ad Henkel. The companies can only sell to the Agricultural and Industrial Supplies Company which in turn distributes to cooperative societies and designated retailers. Baking powder, cheese, cooking oils and baby milk can only be imported and distributed by the Household Supplies Company. Likewise, radios, clocks, dry cells, air conditioners supplied by Philips (T) Ltd., and National Panasonic can only be distributed by the Regional Trading Companies. The Act also regulates the distribution of goods to ultimate consumers. Party functionaries, in collaboration with village leaders apportion the commodities to individual village shops. The consumers of certain basic commodities are given ration cards. The importation of goods is confined to specified companies, both public and private, by the Imports Control (Confinement) Order 1981 (G.N.96, 1981). What we find in the market structure is legislation conferring increasing monopoly on public enterprises.

But even without legislation, it cannot be said that

there is any meaningful competition in activities where we have atomistic markets. For example, the numerous suppliers one finds in the wood, shoe, soap, and retail trade in general have no effective competition between them (Rice 1976; Whitworth 1978). According to studies by Kimble 1970 and Rice 1976 each shopkeeper in the retail trade has a degree of monopoly power in his locality.[8] This is particularly so in the rural areas where there may be one shop in the whole village (Kimble, 1970: 58; Rice, 1976: 98). The existence of the shop will obviously command some special importance to the villagers. Market domination may be aggravated by consumer loyalty. Consumers, says Samuelson, are creatures of habit. They may develop such attachment to a particular shop so that even if there are other shops in the same area selling similar goods, customers tend to frequent their favourite shop (Samuelson, 1979: 635). I would also add that consumers tend to confine themselves to certain shops because of restricted mobility, money incomes and information.

Accepting the argument made by economists that market domination is the prevailing mode of economic life (Samuelson 1979: 48; Leftwich and Eckert, 1985: 203) the question that we have to ask is: What are the evils of monopoly and how can these be remedied?

Some of the potential evils of monopoly power tend to charge higher prices than would be the case if the markets

8. Similar findings have made from studies on trade in other developing countries, see, Preston L.E. (1968) "Market Control in Developing Economies" in Development Studies, Vol.4 pp.481-494; Killick, T. (1973) "Price Controls in Africa: The Ghanaian Experience", in Journal of Modern African Studies, Vol.11, pp.405-426. Rao, K.L.K., and Klaus Netter (1985) "The State and Its Modes of Market Intervention: Review of Methods and Institutional Processes", Paper presented at Seminar of International Expert Group, Penang, November 18-22, 1985.

in which they operate were competitive (Samuelson 1979: 518; Leftwich and Sharp, 1980: 177). A good example is that cited by Samuelson involving officials of the General Electric Westinghouse and other electric suppliers in the USA who were sent to jail for colluding on monopoly price setting (Samuelson 1979: 116). Milton Friedman also gives a penetrating analysis of market structures and monopoly pricing in the USA, which covers among others, pharmaceutical companies, taxi cabs and housing (Friedman, 1962: 119-36). Second, firms with monopoly power may be able to block the entry of new firms and new investments (Leftwich and Eckert, 1985: 361). To the extent that they are able to do so output will be lower, prices will be higher and profits will be greater than they would be if the entry was open, free and easy. Third, and as a result of the second, the monopoly firm will not use resources at their potential efficiency. Fourth, on a monopolised market, firms may engage in price discrimination. In some cases a monopolist finds it possible and profitable to separate and keep separate two or more markets for the same product, charging different prices in each. The typical cases are those of the drug multinationals (Leftwich and Sharp 1980: 182), oil companies and car-manufacturers (Samuelson, 1979: 111-114). Fifth, monopoly power in the sale of commodities leads to inequitable income distribution among economic units in the economy. Since entry by new firms is restricted and since prices are set too high in relation to social marginal costs of producing the items (Samuelson, 1979: 518) income is redistributed away from consumers towards monopolistic firms (Leftwich and Sharp, 1980: 183). Finally, monopolistic firms may disregard customer interests such as providing substandard goods or services or insensitivity to consumer complaints (Shepherd,

1970: 529-539).

There is a long and wide range of suggestions as to what can be done to remedy the evils of monopoly[9] (Posner 1969, Comanor 1970, Shepherd 1970, Cox 1980, Whitworth 1982). I will only attempt to summarise some of those suggestions. Then I will examine in detail the effects of price control in monopolistic conditions.

Among the solutions to remedy the possible evils of monopoly is that suggested by George Stigler that the monopolistic firms should be broken up into small pieces (Stigler, 1962: 1-16). But this solution seems to me impracticable in view of the point made earlier that monopolistic enterprises are a characteristic of our economic life because, as Samuelson rightly notes, of the "inherent nature of modern production characterised by economies of scale, patents, trade marks research and development and technological innovations" which tend to restrict the scope for effective competition (Samuelson, 1979: 48). The second device is government regulation and government anti monopoly laws. These are the principal weapons used in mixed economies to limit monopoly powers. As examples we could cite the Monopolies and Mergers Commission in the UK whose functions include, among others, "promoting the interests of consumers in respect of prices and the quality of goods and services", Section 12, UK Fair Trading Act 1973. Similarly in the USA they have the Interstate Commerce Commission and a series of antitrust laws to curb abuses of monopolistic

9. And internationally there is a wide variety of experience with regulation of monopolies with price controls, both directly and in a host of combinations with other techniques. Much of this rich and growing experience can be found in the expanding literature, e.g. Fenn, P. ed. (1980) A positive Economic Theory of Regulatory Enforcement, (Oxford University Press).

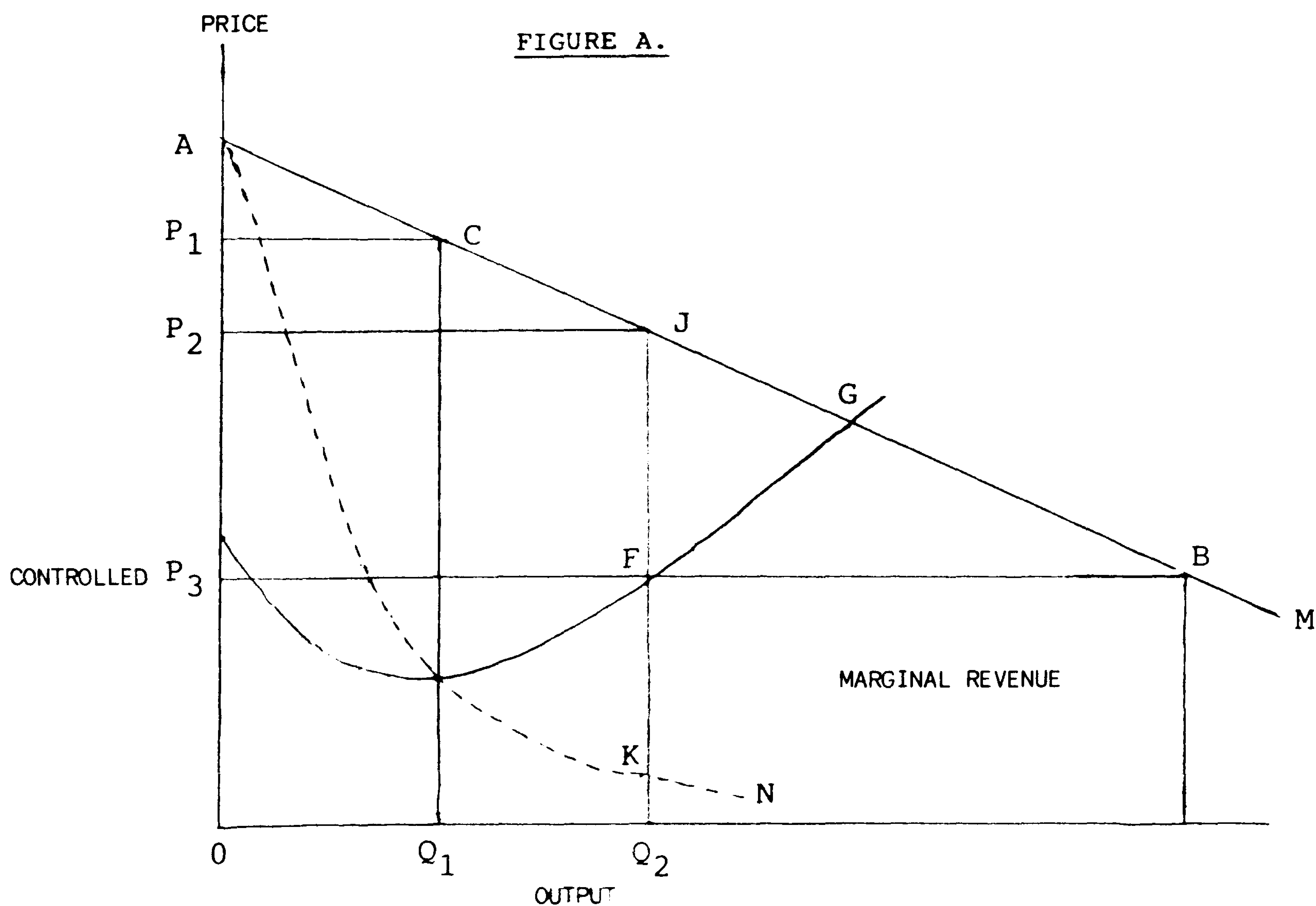
firms (Samuelson, 1979: 525). Other countries with regulatory commissions are Ghana under the Price Control Act 1962 (see Killick 1973 and 1978 for a documentation of its activities) and Tanzania under the Regulation of Prices Act 1973.

2.5.2.(b) Regulation of Monopoly by Price Control

The imposition of regulatory controls on a monopolistic firm aims to curb the adverse effects engendered by such firms on the market. One such objective is to curtail monopoly profits. The other is to induce efficiency in production. Yet another one is to enhance consumer welfare.

The manner in which price control can induce a monopolistic firm to increase production and achieve maximisation of consumer welfare can be illustrated by a diagram

FIGURE A.



SOURCE: Whitworth, A. (1978) Economic Research Bureau, Paper No.78.2, Daresalaam.

In the diagram above, let us assume that the monopolistic firm is attempting to maximise profits. Let us also assume that the firm produces only one commodity for which there is no close substitute on the market. Let us also assume that this firm is a pure or absolute monopoly controlling one hundred percent of the market. It follows that the firms Average Revenue Curve (AM) will also stand for the demand curve for the goods produced by this firm. The demand curve represents the aggregate demand from all consumers for this product. The dotted line AN represents the Marginal Revenue - the firms income - and lies below the demand curve (AM).

In an endeavour to maximise profits (in the absence of price controls) the firm will ordinarily produce an output equal to OQ_1 where the marginal cost equals marginal revenue. The firm will sell its product at a price OP_1. Assuming the regulatory agency fixes the ceiling price at OP_2, the firm cannot sell its product at a price exceeding OP_2 per unit of output. The effective demand curve of the firm will be P_2JM and the marginal revenue curve is P_2JKN. Since the firm is now restrained by price controls to sell its output per unit at the controlled price OP_2, it can only maximise profits by producing output OQ_2 at which the marginal cost and marginal revenue are equal. This is considered to be the level at which production is carried out efficiently. Price control in such a situation undoubtedly leads to lower and stable prices.[10] It has also encouraged the firm to increase production

10. The leading US Acts on this subject include the Sherman Act 1890, the Clayton Act 1914, the Federal Trade Commission Act 1914. For a survey of their history see, Bernstein, M.H. (1955) Regulating Business by Independent Commission.

by pushing it to increase output from OQ_1 to OQ_2 while at the same time lowering the price per unit from OP_1 to OP_2.

It will also be observed from the diagram that as the controllers strive to keep prices down, the profits of the firm are kept lower. This may in certain circumstances cause the firm to incur losses especially where costs are rising fast or where there is gross capacity underutilisation in the firm caused by circumstances beyond the firm's control such as power cuts; interruptions in water supply, non-availability of raw materials - problems which are common in many enterprises in Tanzania (Wangwe 1977; Green 1984). These will obviously affect the welfare of the firms. To offset the effects of price control, the NPC for example, considers capacity utilisation to be optimal if the firm utilises 80% of installed capacity, Section 12(4) Regulation of Prices Act 1973 (As amended in 1981). Of course there is hardly any firm which attains that level at the moment at least (Tanzania Audit Corporation Report 1984). Also, the commissioners award all firms a standard profit margin of 30%, section 12(5). This rate is considered sufficient to enable any firm earn a reasonable return on investment (Mongi 1980).

The effect of the controls to induce welfare of consumers can be appreciated if we take consumer welfare as being represented by the amount of savings which accrue to them as a result of the controls imposed on the price which the firm charges. In Figure A above, the consumer savings would be represented by area P_1AC. This area would stand for the demand curve for the wholesale traders of the product. Assuming that the demand curve

for the wholesale traders also represents the total demand for the consumers of the product, this area would then stand for the savings by consumers. The producer profits is represented by area P_1CDE (the area between the marginal cost curve and the unit price). The combined consumer surplus (savings) and that of producers (profits) would be represented by area ACDE. Now by bringing the product under controlled price OP_2 the amount of consumer savings will rise to area P_2AJ, while the producer's earnings will fall to area P_2JFE. The combined surplus of producers (savings) and consumers will increase to area AJFE. The overall effect will be an increase in consumer welfare by the amount equivalent to area CJFD.

The question we should ask is: Whether these effects do actually occur in practice? Some economists say that these effects will take place provided the control agency has the power and ability to enforce the controlled price (Shepherd 1970: 529-539). All empirical studies carried out on the Tanzanian price control system show that this was one of the objectives of regulating prices and that the controls are achieving these effects (Whitworth 1978; 1982; Mongi 1980). The effects are particularly noticeable at the manufacturer's level (Rice, 1976: 97). There is also some corroborative evidence that price controls have curbed monopoly pricing especially by local monopolistic enterprises, in recent studies by Singh, who says that because of the influence of the Price Commission, the level of prices has not sky-rocketed to high dimensions experienced by other developing states such as those of Latin America (Singh, 1986: 427). In view of this overwhelming evidence, we can conclude that price control, in a

monopolistic situation is a good remedial measure. The alternative which is regulation by the market will expose consumers to the possible abuses enumerated above.

2.5.3. Price Control as a Counter Inflationery Instrument

A common reason for imposing price controls would be to use them as an anti-inflationary mechanism. This seems to be the principal cause behind the controls found in many contemporary economies (Nixon 1974; Seers 1981). Evidence for this proposition is borne out by the fact that no matter what other justifications may be given, inflation constitutes the prelude to the controls in many societies (Cairncross, 1975: 63-75). In Tanzania the present controls were preceeded by an unusually inflationary spiral during 1972-1973. A report of the Parliamentary Select Committee set up to investigate the causes of shortage of consumer goods and rising costs of living in 1972 observed:

> We are deeply impressed by the rising level of inflation in the country. It is a great and urgent problem that requires drastic action to be immediately applied. We think some form of price regulation would greatly help in alleviating this problem (Hansard, April 25, 1972: 296).

Of course what the Select Committee did not realise, or say why they thought it inadequate, was that there was already in the Statute Book the Price Control Ordinance 1951. Probably the causes of inflation this time were of a different nature and could not be tackled by the methods provided under the 1951 Price Control law. Another good example of the link between price controls and inflation is the UK in 1973. Explaining the objectives of the Counter Inflation Act 1973 and the Prices Code 1973, the White Paper on the Programme for Controlling

Inflation stated that the government was determined to establish a "continuing machinery to bring inflation under control" (Cmnd 5205, 1973: 9). The White Paper went on to stress that among others the controls would, "steady prices; protect the more vulnerable members of the community and sustain a faster rate of economic growth" (Ibid.)

To see whether and how price controls can contain inflation we need to know what causes inflation and the type of problems inflation may cause in society. Knowledge of the causes is particularly important because the determination of appropriate strategies to curb inflation depends very much on the ability of those responsible for formulating policies to be able to identify correctly the real causes.

The debate as to what causes and propagates inflation is controversial and endless. Economists acknowledge this fact (Cairncross, 1975: 65; Leftwich and Sharp, 1980: 350; Samuelson, 1979: 270; Seers 1984). It would be presumptuous to hope that the question could be settled in the following paragraphs. What I will try to do is to set out the parameters of this debate and to formulate the main questions on which the debate revolves.

Economists have put forward several different explanations about the causes of inflation. The first is the quantity theory of money. Traditionally this is the leading view and one of its leading exponents is Milton Friedman who says that if the money supply increases, assuming full employment, aggregate demand will increase. Prices will also increase (Friedman 1973).

The other explanation is that inflation is caused by increases in costs (Cost-push inflation). According to Cairncross, increases in costs (of raw materials, wages or other factors of production) cause aggregate supply to decrease. This reduces the quantity of goods available and increases prices (Cairncross, 1975: 66, Leftwich and Sharp 1980: 301). The third explanation is that inflation is caused by external factors (imported inflation). According to this view with the growth of international trade comes cost inflation on the side of raw materials, machinery and technological inputs which have a different origin and cannot be explained solely in terms of a single country. Small countries, particularly those dependent on imports, are very much exposed to prevailing economic climate in the major economies dominating the world economy (Struthers 1981, Seers 1981, Lipumba and Mbogoro 1984).

These explanations have been reviewed by Cairncross 1975 and Seers 1981.[11] Their conclusions, which I very much agree with are worth noting. First those of Cairncross. His arguments are four. One, that inflation is not a purely economic disorder. It has its origin in social and political factors as well. For example it may grow out of the aspirations and expectations of the mass of the population. These may find political expression in assertion of rights, better incomes, health, education and employment. Second, all the economic variables considered as causes of inflation are merely different elements that can be found in any inflationary situation. They do not exclude one

11. For a fuller exposition of the views of these authors, see, Cairncross, A. (1975), Inflation, Growth and International Finance (London: George Allen and Unwin Ltd.) Chapter 4; Seers, D. (1981), Inflation: A Sketch for a Theory of World Inflation (Sussex: Institute of Development Studies. Discussion Paper 169).

another (Cairncross 1975: 66-75). Third, that in modern economies, the influence of international factors is also at work, transmitting inflation from one country to another. And changes in foreign demand, in commodity prices, in international capital flows or in exchange rates, exert pressure on the domestic price-structure. The inflationary pressure in Tanzania has been partly attributed to these external factors (Statement by Minister of Finance Budget Speech 1986/87 para.50, ILO 1983, Lipumba and Mbogoro 1984). Finally, that while there is a long run relationship between money and prices in an inflationary situation, this does not constitute an explanation of the inflationary process. What is required is an identification of the factors leading from monetary changes to price changes.

Seers, on the other hand, introduces a completely different perspective into the debate. He says that the conventional view of inflation (the monetarist theory) is not adequate for explaining the inflationary phenomenon in developing economies. The demand-pull view of inflation, for example, assumes that there will be increases in production and employment until the economy reaches full employment. And once full employment is reached, further increases in demand will cause increases in prices (Leftwich and Eckert, 1985: 90-93; Samuelson, 1979: 272). Economists say developing economies, I would say developing countries too, have not reached full employment (Sideri 1980, Struthers 1981, Killick 1978).

According to Seers, the theory most appropriate to explaining inflationary tendencies in developing economies is

the structuralist one.[12] This theory holds that inflation is caused by endemic bottlenecks and rigidities in supply that exist in the developing economies (Seers, 1981: 2; Struthers, 1981: 177-85). The basic underlying cause being pressure for economic growth and social development, or obstacles to such change, exerted on an undeveloped social and economic structure which produces a series of developments contributing to inflation. Some of the structural indicators common among developing countries are: fast population growth, slow growth of food production, increased dependency on imports of oil and industrial inputs (UNCTAD, Report on Least Developed Countries 1984, Document TD/B/1027 p.210), inadequate transport, unproductive expenditure, poor management of the monetary sector, export instability, expansion in public sector and foreign exchange scarcity (Struthers, 1981: 177-213; Sideri, 1980: 313; Seers 1981).

It seems to me the differences between the monetarist view and the structuralist one are not merely methodological. They involve totally different approaches to development. At the heart of the controversy, as Seers rightly points out, are two different ways of looking at economic development (Seers 1981). I would add that what is involved are two different sets of value judgements about the purposes of economic activity and the ends of such activity as well as two incompatible views on what is politically desirable.

What ever the causes may be, inflation is said by economists to be a scourge to the society. Leftwich and Sharp

12. The structuralist model has been used to explain inflation in Latin America, Ghana and Tanzania, see Thorpe, R. ed. (1979), Inflation and Stabilisation in Latin America, (London: Macmillan), Struthers, J. (1981) "Inflation in Ghana" in Development and Change, Vol.12, pp.177-213, Ndyeshobola, A.A. (1979), Structure Causes of Inflation in open-dependent Economy. The Tanzanian Experience (The Hague).

say it is "equal to or second only, to unemployment among the major economic problems facing society" (Leftwich and Sharp, 1980: 292). Some of the evils of inflation are: First, it affects the distribution of income. For one, it reduces real income, especially for those with fixed incomes or whose incomes do not rise as fast as the price level (Samuelson, 1979: 271-72; Cairncross, 1975: pp.79-81). Examples of these groups are those on pensions, civil servants and those on public assistance. For a second, it induces inequitable redistribution of income. Some people benefit, and some are worse off due to inflation. Those who hold real assets that appreciate in value faster than inflation gain. Second, a country with a high inflation will find its products becoming less competitive on the domestic market and overseas markets. This is the argument made by the UK legislators in 1973 (The 1973 White Paper, "The Programme for Controlling Inflation", cmnd 5205, para.7). A similar argument was put forward by their Tanzanian counterparts when enacting the Regulation of Prices Act (as reflected in section 12(1)(c) of the Act; also Hansard, April 25, 1972: 294-297). Third, in inflationary conditions, capital formation becomes inadequate in real terms as costs are inflated. Fourth, a country facing inflation will experience growing disequilibrium in the balance of payments as the gap between export revenue and import expenditure will increase (Leftwich and Sharp 1980; Ndyeshebola 1980; Green 1983). Fifth, public expenditure tends to rise faster in absolute terms than the growth in real incomes (Struthers, 1981: 177-185; Killick, 1978: 286-291; Sideri, 1979: 313-362). Sixth, inflation leads to unemployment as firms may try to offset increased industrial costs by reducing expenditure on labour.

Alternatively, business firms may attempt to protect their profits by passing the higher costs on to consumers in higher consumer prices. This may lead to social unrest. Finally, increases in the price level may induce economic groups to react in socially undesirable manner. For example, consumers expecting increases in prices may increase current consumer spending, thus not only distorting their budgets but also causing a reduction in money savings and artificial shortages (Leftwich and Sharp 1980: 293), or those on fixed incomes may indulge in anti-social and illegal practices to offset the loss in real earnings to make up a comfortable living. Corruption, embezzlement and diversion of controlled goods to the black markets that are taking place in Tanzania have been largely blamed on inflation (Africa Contemporary Record, 1982-83 B278; Daily News, Daresalaam, October 4, 1983; Ndyeshobola, 1980: 7-36; Nyerere 1977). It is because of these problems that governments give top priority to fighting inflation.

The logical question is what are the appropriate policies to control inflation and what is the role of price control. Well, much depends on the causes. One method is monetary policy. This consists of control over money supply such as reduction in borrowing, increase in interest rates (Samuelson, 1979: 287-288). The other measure would be to increase output through increased investments or the importation of goods in short supply. Still, the government can use fiscal policies to withdraw purchasing power by raising taxes or reducing public expenditure (Cairncross, 1975: 68; Samuelson, 1979: 314-315; Leftwich and Sharp, 1980: 303-307). Each of these policy measures has its drawbacks. Reduction in public expenditure, for example, may mean withdrawing assistance

to the poor or contraction in employment. Raising taxes on goods whose demand is relatively inelastic may inflate prices. Take the case of beer and cigarrettes - the natural candidates for tax increases almost every year in Tanzania (Budget Speeches, various Ministry of Finance and Economic Planning, Daresalaam). These commodities are considered as luxuries by the government. At the same time the government would like to discourage their consumption, especially among the young. But studies show demand for them is as inelastic as that for basic necessities (Shimwela 1984; Semboja 1984). As a result raising taxes on beer and tobacco, far from deflating demand, only inflates prices (Africa Contemporary Record 1982-83; B278-80). The fourth policy option is price controls.

Opinion is divided among economists as to whether price controls can halt inflation. There are those who hold a pessimistic view (Friedman 1971, Darby 1976, Cox 1980). These deny that any price control is needed (Darby 1976) and insist that no price control policy is going to do anything but make inflation worse

> Freezing individual prices and wages in order to halt inflation is like freezing the rudder of a boat and making it impossible to steer, in order to correct a tendency for the boat to drift one degree off course (Friedman 1971, Newsweek, August 30, 1971, p.22).

Another group of economists, primarily Cairncross 1975, Galbraith 1980, Samuelson 1979 and Leftwich and Sharp 1980, say price controls help to contain inflation. For example, Cairncross argues, and in my view correctly so, that

> There are times when price control has a useful contribution to make to greater stability, and at all times the government needs some machinery for investigating complaints of excessive prices (Cairncross 1975: 95).

Galbraith declares conclusively that price controls curb inflation

> In time of war, we controlled prices and wages by imposed ceilings and commands. Peace is no different from war. The only solution for the creeping wage inflation and its concomitant inflation of oligopostically administered prices is permanent wage-price control (Galbraith 1980).

I would agree with those who say price control can contribute towards controlling inflation. For example, control can hold down prices from rising rapidly and frequently and thus protect incomes from being eroded. This is said to be the case in Tanzania (Singh,1986: 427; Government Policy on Productivity, Incomes and Prices, Paper No.1, 1981, para.61). The controls may also boost the competitiveness of a country's products, both on the domestic and export markets (Turner 1966). Moreover, it can protect consumers and socially disadvantaged groups from exploitation by sellers (Samuelson, 1979: 822-825). These effects will acrue where the price control agencies have power and the capacity to limit profit margins, restrict cost increases (cost-push inflation) from being passed into consumer prices and can pass over the benefits of a fall in costs to consumers through reduced commodity prices. Indeed these effects were officially acknowledged in the USA during the mandatory price controls of November 1971 to January 1973 (Leftwich and Sharp, 1980: 311), in the UK after the first year of controls 1972-73 (see, The Counter Inflation Programme, Stage Two, Cmnd 5267, para.12) and in Tanzania after a decade of price controls (Mongi, 1980: 120-127; Whitworth, 1982: 482-484). Finally, the controls may act as an inducement to savings.

In a situation where there are too frequent and rapid price increases, there is a tendency for people to spend all their money on consumption as soon as they get it or to hoard money for speculative rather than productive purposes (Turner 1966, Leftwich and Sharp, 1980: 283-285). This reduces the amount of money required for the economy to invest in new plant and equipment and to grow. Investors will have to depend on increased borrowing from the banks. More bank lending injects more money into circulation, and assuming supply is fixed, this will fuel inflation. There will be an excess of demand stimulated by more spending power. In the long run this process is bound to adversely affect the economy. For one, it will slow down economic growth by reducing the proportion of output that goes into savings and investment compared to that which goes into consumption (Leftwich and Sharp, 1980: 295-298). A persistent increase in the general price level also sends false signals to consumers. Thinking that prices might rise further consumers may be tempted to purchase goods in excess of their normal requirements and stock pile them. By moderating the rate of price inflation, price control would encourage people to save rather consume more of their incomes.

The relationship between the savings ratio and price control can be demonstrated by an analysis of the savings pattern in the Tanzanian economy. The pattern shows clearly that the controls have significantly contributed to an increase in savings, both private and public. For example, before the current inflationary pressure gained a strong foothold in 1972, the rate of domestic savings was growing impressively (Curry 1978, Kuuya 1975, Semboya

1984). On average, the rate of domestic savings to the GDP was 25 per cent between 1965-1970 (Kuuya 1975; Curry 1978: 16). Then it began to fall sharply and averaged only 10 per cent between 1972-75. This decline coincided with the inflationary spiral experienced in the economy during 1970-1972 (Economist, Intelligence Unit, London, No.3, 1973, p.4; Rwegasira 1980; Lipumba and Mbogoro 1984; Green 1980a). As a result of the inflationary pressures, many enterprises failed to save and invest more during this period (Green 1980a, Curry 1978). Many public enterprises failed to save and invest more due to the rise in the prices of basic inputs, especially fuel (following the first oil price shock in 1973) (Clark 1978: 98-201, UNCTAD Report on "Least Developed Countries" 1984 TD/B/1027, p.210). Private savings also fell. A combination of factors seems to have contributed to this development. One, was the increase in expenditure on consumer goods caused by higher prices (Curry 1978, Shimwela 1984, Ndyeshebola, 1979: 7-36). The other was the increase in hoarding of money. The latter is evidenced by the fact that vast sums of cash were unearthed in private homes in 1983 when the government embarked on cracking down economic saboteurs following the enactment of the Economic Sabotage (Special Provisions) Act 1983 (Africa Contemporary Record, 1982-83 B284). Another factor that contributed to the decline in private savings, especially with the banks and financial institutions, is probably the low interest rates that savers were paid on their savings. According to the Bank of Tanzania reports interest on bank deposits averaged 4 per cent only for short term deposits and 6 per cent for medium term deposits during 1970-75 while the rate of inflation averaged 30 per cent during the same period (Bank of Tanzania, Economic

and Operations Report, June 1982, ILO 1982). Such low interest rates could not attract savings as they were far below the inflation rate and many prospective savers would not find it worthwhile to keep money in the banks (Lloyds Bank Group, Country Report, November 1985). Of late price controls are thought to have brought down inflation in the economies of Argentina, Brazil and Bolivia (The Economist, London, November 15, 1986: 157-64).

2.5.4. Price Control as a Mechanism for Equitable Redistribution of Income

The equitable redistribution of income is an objective often encountered in the statements on the purposes of price controls (as examples, see, the UK "Price and Pay Code: A Consultative Document 1973", Cmnd 5243; the Regulation of Prices Act 1973 of Tanzania, Section 12(1)(e); Control of Prices Act 1965 (cap 298) of Ghana, Section 3). An inclination for equitable redistribution of income is a preoccupation of many societies (Samuelson 1979: 82-86); Bonin 1984; Galbraith 1984: 67-69). Just what form this redistribution should take and how far it should go is a value judgement.

Among classical economists, like David Ricardo,[12] income inequality was presumed a matter of natural law and equity (Ricardo 1817). For Ricardo and his followers, the luxurious income of the landlords and capitalists was the inevitable arrangement of nature (Ricardo 1817, Tawney, 1952: 85). Interference with it would disrupt the natural order of things and make the lot of everyone much worse since it would prevent, "persons

13. See, Ricardo, D. (1817), On the Principles of Political Economy and Taxation. Tawney, R.H. (1952), Equality, 4th ed., rev. (London: Allen and Unwin) pp.82-87).

endowed by nature with unusual qualities of strength, audacity or cunning from reaping the fruits of these powers" (Tawney, 1952: 85).

The defence of inequality has continued in the thinking of neo-classical economists like Simon Kuznets. Kuznets argues that equal distribution of income is undesirable for its alleged tendency to lower the savings ratio and capital formation (Kuznets 1966). His proposition, which I think some of us will take issue with, is that if income were widely distributed it would be spent. But if it flowed in the hands of few (rich men) it would be saved and invested. This would bring greater production, employment and better incomes to all. In other words, Kuznets sees the existence of an automatic trade off between economic growth and income equality, with income differentials narrowing down as the economy expands. In recent times this tenet has been revived by the conservative policies of the governments in the USA and UK (Barrat Brown 1984, Galbraith 1984). According to Galbraith, the US federal tax limit of 50 per cent on earned income is seen as an essential incentive to the rich so as to boost capital formation necessary for the expansion and growth of the economy. This, it is hoped by US officials, will reduce the level of poverty and income inequality (Samuelson, 1979: 163-174, Galbraith,1984: 67-81).

This approach to income inequality has been severely criticised by other economists (Seers 1968, Leftwich and Sharp 1980). Seers, for example, says that the pursuit of economic growth without a proper planned policy of income distribution

only aggravates economic and social inequalities (Seers 1969: 1). Samuelson is of the same view. He says that it would be a great mistake to think that inequality of income will automatically narrow down as the economy grows. The truth, as he rightly points out, is that it is the developed economies of the USA and UK which have the highest incidence of inequality because certain few "peers and tycoons own concentrations of land and other property. The price that these people can get on these property enhances their wealth and widens the gap in inequality" (Samuelson, 1979: 87).

Socialist scholars, on the other hand, take the need for a drastic redistribution of income as the heart of socialism (Barrat Brown 1984, Dalton 1979, Bornstein 1970). Paul Sweezy sums up the socialist view very well when he says, "it is necessary to proclaim that equalitarianism is the most fundamental principle of a socialist society organised on Marxist lines" (Sweezy,1972: 10).

For the time being let me just point out here that achieving a more equitable distribution of income is a basic goal in Tanzania. This goal is enshrined in the Constitution of the United Republic and that of the ruling political party ("Chama Cha Mapinduzi" i.e. Revolutionary Party). Article 9(1) of the Constitution declares that, "all people are equal". Article 9(1)(c) defines equality, among others, to include "the right of access to an adequate means of livelihood". To achieve these objectives, the constitution places an obligation on the government to "control and own the major means of production so as to ensure

social and economic justice, and in particular, to prevent the accumulation of wealth by individuals to an extent which is inconsistent with the existence of a classless society" (Article 9(1)(j).

The existence of a classless society implies equality in every aspect of human life. In any case this is an ideal that even the Russians consider impossible (Bornstein 1970, Galbraith, 1984: 69). As far as equality of incomes is concerned, the Regulation of Prices Act 1973 seems to give a workable definition of what the policy entails. Section 12(1)(e) reads, "in determining prices, the Price Commission shall consider the need to maintain fair relationships among the incomes of different sectors of the community".

Before I examine the devices used in achieving a fair distribution of income in mixed economies, I would like to explore what income inequality connotes.

Income inequality can be viewed from two angles - the interpersonal and the interregional connotations. At the interpersonal level, the aim is probably to reduce the gap in income between one person and another - between the rich and poor, rural and urban and between employees within the same sector (ILO 1977, Burki and Ul Hag, 1981: 167, Green 1969). At the interregional level, the purpose is to reduce income disparities between one part of the territory and another (Liebenthal 1981).

Traditionally, the principal mechanisms employed by

governments to reduce income inequalities are fiscal policies and government expenditure (Samuelson 1979, Chapt.8; Leftwich and Sharp 1980, Chapt.14; Galbraith 1984, Chapt.7). The government may levy taxes on and pay subsidies to persons to redistribute incomes. Progressive income tax can reduce income inequality if it bites more on the rich. The money generated from taxes on the rich can then be spent on improving the welfare of the poor. This is particularly so if more of the public expenditure is focussed on measures which go into increasing the availability and accessibility of basic needs like food, water, housing, education and health to the underprivileged sections of society (ILO 1982, Leftwich and Sharp 1980, Liebenthal 1981). However, the use of tax devices and public expenditure policies as mechanisms to redistribute income, as studies show, are limited by certain factors. According to Ramanadhan, revenue from tax depends on the number of people in known gainful employment and company earnings (Ramanadhan, 1964: 392). So, taxation of incomes is only effective in reaching those with declared earnings. Second, at a certain level progressive taxation may become a disincentive to investors and may even be an inducement to fraud or cheating as firms try to look for ways and means of limiting their tax liability (Tixier, 1980: 387-394). Third, in the case of Tanzania, the effectiveness of government expenditure policies in reaching the poor categories of the community are said to be weakened by failure of government bureaucrats to identify the target groups who deserve the benefits[14] and to plan proper ways of effecting

14. For examples of cases in which government officials have misused resources meant for the poor in Tanzania see, Africa Contemporary Record, 1977-78, B339-371; Mukandala, R.S. (1983) "The Bureaucracy and Socialism in Tanzania", in The African Review, Vol.10, No.2, p.13.

the redistribution of income (ILO, 1982: 251; Green 1969). In his speech to commemorate the tenth anniversary of the Arusha Declaration, the former President, Julius Nyerere, complained about the dishonest practices of the bureaucracy

> We have reached the stage where our greatest danger is a new one. The thing which could now do most to undermine our socialist development would be failure in the battles against corruption, against theft and loss of public money and goods and other abuses of public office or against slackness in fulfilling the duties for which people are being paid (Nyerere Arusha Declaration Day Speech, February 2, 1977).

Where fiscal and monetary policies are considered as the primary mechanisms for income distribution, price control has a supplementary role only. One way in which income distribution can be pursued through price controls is by price discrimination. For example, consumers with different incomes could be charged different prices for the same commodity. A higher price could be charged to those with higher incomes. This method would certainly require a very elaborate machinery to plan and administer the prices. It would require a comprehensive system of identifying the different income groups and ensuring that the goods reach them at the prescribed prices. A clear case of such a system is that of public housing in Tanzania where rent is proportionate to salaries irrespective of the size or quality of the unit. Another method, currently in use in Tanzania, is that of fixing low prices for basic necessities or goods consumed by the poor and higher prices for luxuries (Rice 1976, Mongi 1980). The third, as regards reducing regional inequalities, the same price may be charged for a commodity throughout the country. Examples are prices of electricity, water, salt, some textles, medicines and household items (National Price Commission, Daresalaam,

Price Control List, September 12, 1984). The same prices apply pan-territorially. In this way consumers in high cost areas (remote rural villages) are subsidised by those in low cost areas. The assumption behind this policy is that since most of the goods are produced in urban centres, whose dwellers are also relatively more well-off than their rural counterparts, pan territorial pricing will redistribute income from the urban to the rural dwellers (Whitworth, 1982: p.488; Statement by Minister of Trade, Hansard, June 1976, p.7). There seems to be a strong case to support this policy. For one, most of the manufacturing and distribution firms are located in urban centres where they enjoy the benefits of publicly funded services like water, electricity, transport. These services are funded by all tax payers. Since all adults (men and women alike) in Tanzania pay a development levy (The Development Levy Act 1983) peasants who constitute 95 per cent ofthe population are the main contributors to the money invested in infrastructure (Statement by Minister of Finance, Budget Speech 1986/87 para.5). For the other, in developing countries, peasants shoulder the burden of funding public services since they produce the bulk of exportable commodities. It is only fair that they should enjoy part of the benefits of their labour by way of cross-subsidised prices embodied in the pan territorial pricing system.

2.5.5. To Improve Balance of Payments Position

A country facing a higher rate of inflation than that of its trading partners will encounter two problems: First, it will have difficulty in selling its high priced commodities on the foreign market due to higher costs of production; and

second, it will find its domestic market easily penetrable and flooded with cheap imports. Since its domestically produced goods are more expensive, they will be less competitive on the domestic market. Consequently the country will have a tendency to export less and import more. This leads to more expenditure of foreign exchange than that earned from exports. It also leads to a balance of payments disequilibrium.

There are three principal ways in which price control can help to restore the balance of payments equilibrium. First, it can contain a mechanism which discourages domestic consumption of locally produced goods that are on high demand on overseas markets and encourage the export of such goods. Second, it may contain a mechanism which discourages the consumption of imported goods for which local substitutes are available. Third, it can institute measures that will make local exporters find the domestic market for exportable goods less attractive than the foreign market. For example, in order to discourage the consumption of imported goods, the price control agencies could set the prices of imported consumer goods at a level which reflects the opportunity cost of the foreign exchange spent or saved on such expenditure. Such mechanisms would be heavy import duties or taxes on imported goods. Of course such a measure is likely to be met with retaliatory measures from the trading partners. Also, the usefulness of such measures will depend on government policies as regards trade. Where the policy is to liberalise trade, the measure might be challenged for contravening government policy. Price controls can assist in promoting exports if they contain incentives to exporters. For example, if the profit

margins earned by firms selling a commodity in demand on overseas markets on the domestic market are more than satisfactory to the trader to venture into overseas markets, the temptation will be to divert output meant for export into domestic consumption. It is recognised by scholars (Lipumba 1984, Moshi 1980) and the government in Tanzania that to promote exports and hence improvements in the balance of payments position depends on many other factors than controlled prices (Budget Speech 1986/87 para.50, Lipumba 1984, Moshi 1980). For example, export earnings depend on ability to stimulate foreign demand for our products. This can be achieved by producing high quality standard products. This could be achieved by investments in research and development of high quality consumer goods and the use of modern and cost-efficient marketing techniques. An increase in export earnings will also depend on prices which exports fetch on the world market. In this connection we may note that countries which depend on the export of primary commodities have little influence over prices (Helleiner 1983; Curry 1978; Africa Contemporary Record 1980-81 B327, World Bank 1981: 83). Prices are dependent on external influences. For example, the prices of crops like coffee, cocoa, tea and cotton are fixed by international bodies like the International Coffee Agreement. The volume which a country can sell may also be fixed. This limits the export capacity. Third, it has been suggested that the most crucial element to expanding exports is the ability to adopt a stable and realistic exchange rate (Lipumba 1982, Green 1980, Turner 1966). If a country's currency is overvalued against that of its trading partners, it will be unable to export more because its products become less competitive. Also exporters will find the risks

of exporting too prohibitive and the domestic market more lucrative (Turner 1966). Accordingly currency devaluation may be necessary (Green 1983).

Empirical evidence shows, however, that currency devaluation as a mechanism for improving the balance of payments equilibrium has little meaning in poor, primary commodity exporting countries. Currency devaluation as a solution to the balance of payments problem is based on an assumption that there is a free market situation in which money earned by exports and services has fallen short of that spent on imports. As a result the value of the local currency has depreciated proportionately against that of the trading partner. The effect of the depreciation of the local currency will be to make imports more expensive in local currency (in the absence of proportionate adjustment) and exports become cheaper. This will naturally lead to an expansion in exports and fall in imports. But this theory according to some empirical studies, has little applicability to developing economies (Singh,1986: 427; Green 1983; Helleiner 1983).

In Tanzania a study by the Bank of Tanzania on currency devaluations carried out in 1971, 1973 and 1982, gives the following reasons on why it failed to improve the balance of payments position. First, failure of agricultural production to respond to the favourable conditions. For one the stimulus to increased agricultural exports is not an automatic reaction to higher prices. This is because climatic conditions may hamper increased output, or there may be domestic policy-mistakes which discourage peasants from expanding production (Bank of Tanzania Report

1982, Bates 1984, National Westminster Bank Report 1985). A clear case is that of coffee and tea in 1976. Due to bad weather in Brazil the prices of coffee and tea rose sharply and Tanzania's quota on coffee was raised. But farmers failed to respond and the country's quota had to be filled by coffee purchased from neighbouring states and re-exported (Statement by Minister of Finance, June 8, 1984). The reasons given for the failure of peasants to respond are many and varied. One is that some agricultural crops take a fairly long period to be grown, processed and marketed. On the average, coffee needs a minimum of four years between planting and the first harvest under the climate conditions of Tanzania (Ndyeshobola 1980, Lipumba 1984). Thus, even if conditions in the world market were favourable today, farmers would need time to clear land, plant and harvest. The other is poor prices which farmers get on cash crops from the marketing agencies. It is estimated that on the average peasants get only 40 per cent of the money agricultural exports earn on the world market (National Westminster Bank Report 1985). The remaining 60 per cent is taken by the marketing agencies. Currency devaluation may also not be a viable solution to developing countries, because, as noted earlier, of quantitative restrictions on the markets in developing countries.[15] Finally, currency devaluation may not necessarily induce increased exports because the devaluating country may not have goods that command demand in export markets. The commodities, as one study notes of Tanzania may not be of a competitive quality (Moshi 1980).

15. This point is discussed very well by Yeats in his chapter on "Non Tarrif Barriers Facing Developing Countries" see, Yeats, A.J. (1979), Trade Barriers Facing Developing Countries, (London: Macmillan Press).

On the contrary, the main lessons from the Tanzanian experience with devaluation are that it reduces the country's import capacity, affects the real value of incomes and provokes social unrest (Bank of Tanzania Report 1982). The Minister of Finance lamented about these effects when he told Parliament

> In 1983 the IMF pressed Tanzania to devalue the shilling by 20 per cent. Government has devalued it. To mitigate the effects on urban wage earners the minimum wage has been increased by 35 per cent, and the tax threshold has been raised accordingly. Government is aware of the problems this measure is going to bring (Daily News, Daresalaam, June 8, 1984).

Similarly, President Nyerere (as he then was) expressed grave reservation when the IMF pressed for further devaluations in 1984: In his view

> Massive currency devaluations have not helped improve any Third World economy. If implemented these conditions would result in riots in the streets (Daily News, Daresalaam, November 23, 1984; Development and Change 1986, Vol.17, No.3, pp.387-394).

While it is true that devaluation has not helped improve the Tanzanian economy (Lipumba and Mbogozo 1984, Bank of Tanzania Report 1982) recent studies by the Economist show that a combination of tight monetary and fiscal policies, that included control on prices and incomes and devaluation, have contributed to a dramatic improvement in the economies of Argentina, Brazil, Bolivia and Israel. The four were countries that had the highest rates of inflation in 1985 in the world (The Economist, London, November 15, 1986, pp.57-64). This seems to contradict Nyerere's sweeping generalisation about the efficacy of devaluation.

2.5.6. Price Control as a Mechanism for coordinating the Pricing Policies of Enterprises in the Economy

In an economy with a large and diverse public enterprise sector like Tanzania, price control may be necessary to coordinate the pricing policies of the enterprises in the different sectors of the economy. The International Centre for Public Enterprises says this is the principal reason why many governments in developing states need to instigate price controls (ICPE,1981: 8). Coordination of pricing becomes necessary because certain aspects of the enterprises raise issues of general concern to the public and the state itself. These issues are well illustrated by Tanzania's experience. But before I turn to the Tanzanian case, let me say that public enterprise is a pervasive phenomenon in many countries (for the US, see, Shepherd 1970, for UK, see, Redwood 1980, for developing countries, see, Ghai 1977, ICPE 1982). Governments use public enterprises for a variety of purposes: to fill gaps left by private entrepreneurs in certain sectors of the economy, which are either unprofitable or require larger investments (Wilson 1984: 3-27; Ghai, 1977: 15-30), to provide basic infrastructure in the economy (Tierney 1984: 73-92), to promote greater national economic independence (Clark, 1978: 98-200), to ensure a balanced distribution of industry (Kanesalingam 1972) and as a means of state participation in industry to attain certain social, political and economic goals (Ghai, 1977: 206; Bonin 1984), What is significant about public enterprise in almost every society is that these firms occupy a commanding influence on the welfare of the people. This is because they tend to concentrate in the sectors that create wealth in the economy such as energy, power, communications, transport and water (Pryke 1971, Baldwin,

1984: 25-27). In the case of Tanzania public enterprises cover every conceivable business - manufacturing, mining, agriculture, communications, transport, banking, insurance, export and import, trade, wholesale and retail trade as well as social, educational and health services (The Nationalisation Acts 1967). The prices of these services are vital to consumers as these products or services constitute the major percentage in the household expenditure (The Economic Survey 1984 says they constitute 75 per cent of the expenditure of minimum wage earners in Daresalaam. Economic Survey 1984-84, Ministry of Finance, Daresalaam). For the other, the majority of these enterprises have monopoly power over the supply and sale of their products. This point was discussed in detail in Section 2.3.2. Third, the activities of public enterprises often embody large elements of social objectives and other objectives of public policy.[16] Statutes creating public enterprises invariably impose on them social functions. Kreacic and Shio have catalogued some of the social objectives of the Tanzania Cigarette Company as: the generation of employment, income redistribution, provision of medical health, sports and recreational facilities to employees (Kreacic and Shio 1985: 193-194).

The relative importance of social objectives to the overall objectives of an enterprise will largely depend on the nature of the enterprise.

16. A study by Kreacic and Shio enumerates the objectives of the Tanzania Cigarette Company, a public enterprise as: (a) providing substantial funds to the Government (by sales tax, tax on profit and dividends) for use in other areas, (b) providing constant training and development for all categories of employees, (c) providing new employment in rural areas (through expansion of tobacco farms). For details see, Kreacic, V. and Shio, M.B. (1985) "Public Enterprise Study: The Tanzania Cigarette Company Ltd.", in Public Enterprise, Vol.5, No.2, pp.193-194.

Social objectives raise two problems relevant to pricing. First, they place an additional demand on the resources of the enterprise. Secondly, they create a dilemma when it comes to establishing efficiency criteria for the enterprise. For example, social objectives increase the costs of the enterprise - costs which may lead to losses or reduced profits (Fernandes, 1982: 13). This is likely to take place where the social costs are not fully accounted for in the price of the product or service. A familiar example is that cited by the ICPE about developing countries.

The ICPE notes of cases where, "conscious governmental policies of low pricing, deliberate subsidisation or development of backward areas" may be pursued, or " deliberately artificial price controls which compel the enterprises to sell below costs are imposed" (Fernandes 1982: 13).

It may be thought that the argument on the distinction between social and commercial objectives is unwarranted. That so long as the statute has laid down objectives for an enterprise they should carry the same weight. That to view some objectives as imposing a burden on the enterprises and others as commercial is to obscure the intention of the legislature. It is also to ignore that these enterprises are, by and large, instruments of social policy. This distinction between commercial and social enterprise objectives is largely derived from the private enterprise sphere. Its adoption by the public enterprise sector may be questionable. Furthermore, even in the private enterprise sector social objectives are established practice in the activities

of private companies (Galbraith 1974, Chapter 1; Backman, 1963: 25-43).

However, if we look at the actual expectations of society, we find that the distinction between commercial and social objectives cannot be avoided in the public enterprise sector.

The fact that the enterprises are set up as business undertakings, with commercial objectives ranging high on the list of functions and that they are bestowed with traditional instruments of commercial criteria like balance sheets, profit and loss accounts suggests that there is still a case for such a distinction.

But more important is the fact that they are primarily expected to pursue profitability. Failure to earn profits is seen by scholars as a sign of inefficiency (Eltis 1974, Redwood 1980, Moshi 1980, Ahmed 1982). Expressing his views on what criteria of performance he would use to judge the success of public enterprise in a developing country, John Keneth Galbraith says

> If I had to lay down a measure for performace of the publicly owned corporations in a developing country, it would be that the earnings that it is able to put into its own expansion. The most successful firm would be the one which by its efficiency and drive finds the earnings that allow it the greatest growth (Galbraith 1961).

In Tanzania, the making of profits is now a dominant theme in the debates on the efficiency of the public enterprises. President Nyerere argued that the views propounded by earlier socialist thinkers that public enterprises should operate on the basis of "no-profit-no-loss" principle are outdated and inconsistent

with socialist economic rules. According to him the proponents of this principle confuse the profit-motive and the purpose of profits. He argues that profit making is an essential aspect of a socialist enterprise system. What is required is that the profits should be used for the benefit of the majority of the people. He argued

> Our parastatals are not producing sufficient surplus to finance investment. For profit is necessary whether an enterprise is privately or publicly owned. Public ownership affects what happens to profits, not the necessity for them (Africa Contemporary Record 1976-77, B346).

In his Budget Speech 1985/86, the Minister for Finance told the National Assembly that all non-profit making enterprises in the industrial and commercial sector faced the risk of dissolution. That the Government would not intervene to rescue them and that they must look for ways of reducing expenditure on non-profitable activities. He warned that the managers and employees of such corporations would not be transferred to other public corporations, as has hitherto been the practice (Budget Speech, July 1985).

It follows from those views that public enterprises are expected to operate profitably and to generate incomes and surpluses just as their counterparts in the private sector (Kreacic and Shio 1985: 196-197, Ahmed 1982, Eltis 1974). This does necessarily raise possibilities of conflict. There is a likelihood of confrontation between their competing status as instruments of social policy (their role in fulfilling social hopes and aspirations of the people) and as business entities. This multidimensional nature of objectives raises problems in pricing. For instance,

what are the relative weights to be accorded to each set of enterprise objectives? In event of contradiction or conflict between them, which one should prevail?

One possibility of resolving such possible conflicts in objectives would be for the corporate and investment plans of the enterprises to spell out clearly what the social objectives are, the targets to be achieves by them and to quantify them in terms of financial expenditure. This would help in identifying and remedying losses incurred from social objectives beyond the limits of those charted in the corporate plan, or an account of externally imposed objectives. It would also help the enterprise and members of the public to be aware of the social and commercial targets and the requirements of meeting them. The enterprise could then be compensated by the government wherever the social objectives imposed could not be met by the financial resources of the enterprise itself. The compensation could take the form of a government subsidy, low interest loan, grant, exemption from taxes and duties, capital write off or price discrimination. An example of an enterprise with elaborate and quantified social objectives in its corporate plans is the Urafiki Textile Mill in Daresalaam. Its annual plans contain detailed projected revenue and expenditure on social objectives like: worker's education, sports, recreation, subsidised meals, nursery, free transport to factory employees (National Development Corporation Annual Report 1982).

The other method of resolving apparent contradictions between social and economic objectives and of keeping a proper

balance between them is through the control activities of the Price Commission. The price control system was seen as a mechanism which would enable the enterprises earn sufficient profits without jeopardising the implementation of the social and other public policy objectives.

It is contended that while there may be little to debate on the need for public enterprises to make profits, the manner in which the profits are made may be objectionable. One objection revolves around the cost-plus formula of price formation. Under this formula profits are treated as a matter of public enterprise right and not as something that they have to work for and be earned through efficient performance. According to Rice, under this formula the instinctive reaction for an enterprise operating at low profits or at a loss is to seek for price enhancement (Rice 1976). Unless a high degree of vigilance is exercised, by the Price Commission (in auditing the efficiency of the enterprises) the formula leaves ample scope for abuse. Consumers may be paying for costs that have been improperly or negligently incurred, such as through mistaken policies, short term political pressures, poor management, inefficient marketing, technological and sales practices (Shimwela 1984, Semboja 1984).

It is imperative to note that public enterprises are a major source of revenue for government expenditure (Clark, 1978: 98-200, Semboja 1984, Budget Speech 1986/87, Ministry of Finance, Daresalaam, para. 5). Price control ensures that they generate sufficient profits which can be used for their own expansion and for financing public expenditure (Mongi, 1980:

125-127). Inability to generate sufficient revenue for the repayment of loans, for payment of dividends, profit tax coupled with low capacity utilisation and poor management are some of the problems affecting the revenue of public enterprises (Wangwe 1977, Lipumba and Mbogoro 1984). For example, since 1972, says the auditor's report, debts to the value of Tsh. 70 million have not been paid to the Tanzania Rural Development Bank. As its loan portfolio is Tsh. 350 million, this means about 20% of the loans have not been repaid (Tanzania Audit Corporation, Annual Report 1982). President Nyerere expressed his concern about declining revenue from the public enterprises

> Certainly our parastatals are not producing sufficient surplus to finance new investment. In eight years between 1967-74, only about 20% of new productive investments was financed from resources of existing publicly owned corporations. They were not, in common terms making sufficient profits (Africa Contemporary Record 1976-77: B346).

The government gets revenue from the public enterprises through numerous means. The principal ones are: Firstly, the goods and services produced are taxed. Secondly, the profits earned by the enterprises are surrendered to the Treasury Registrar by way of dividends. In most of the public enterprises, the Treasury Registrar is the majority shareholder. Thirdly, that part of the profit retained by the enterprises is also liable to tax as corporate income-tax under the Income Tax Act 1973 (Kreacic and Shio 1985).

In these circumstances, President Nyerere's concern with falling revenue from the public enterprise sector is understandable. This is because as Mlamali says, the public enterprise sector is the economic lever - the necessary economic back up

for the political regime in post-colonial Tanzania. And any other explanation or rationalisation for its existence only obscures this reality (Africa Events, London, November 1985, p.64).

Fourthly, the public enterprise sector pricing behaviour requires controls because of the nature of the commodities provided by these enterprises. As noted earlier the goods constitute a large element in the expenditure of the individual consumer. They also constitute inputs, primary and intermediate, in the consumption of other public enterprises. This interdependent nature of the enterprises required coordinated and uniform pricing policies, approaches and strategies. Uncontrolled pricing would have made it difficult to institute price stabilisation strategies in one sector while other sectors raise or lower prices at will. In particular the welfare of the consumer would suffer.

Finally, the control of prices is necessary for purposes of securing a minimum level of earnings - for ensuring that uncontrolled prices do not plunge the firm (and industry) into loss (Whitworth 1982, Mitchell 1978). The control agencies fix the prices at a level which, while ensuring the necessary level of earnings, has the primary effect of sustaining and expanding sales (Cockfield 1978, Mongi 1980). Having established a generally satisfactory level of prices, the practice in most control agencies is to leave them unchanged for a prescribed period of time (Cockfield 1978, Mongi 1980). However, the level of prices may be further adjusted by the need to ensure a necessary minimum earnings for the enterprises (Mongi 1980, Whitworth 1982). For example,

price adjustments may be made to offset increases in costs that are not under control. Wages, raw materials, transport and energy prices are the most important examples of uncontrolled costs (Mitchell 1978, Whitworth 1982). The ability to offset these cost increases with price increases is of great importance for the protection of the firms. When prices are not fully controlled the enterprises would be compelled, initially at least, to absorb some or all of the uncontrolled cost increases. In a controlled situation in contrast, increased costs can readily be passed on to the public.

2.5.7. Price control as a Mechanism for Revenue Collection

Government control over prices may serve as a mechanism for generating revenue for the state. This may take several forms. In some cases, as in Tanzania, the government issues direct orders to the Price Commission to put up prices by a specific amount. A typical case occured in April 1981 when the government announced that it was finding it difficult to raise revenue from the traditional methods (sales, tax, dividends and profits tax) to cover planned expenditure. Accordingly, it instructed the Price Commission to raise prices as follows: beer sh. 4.10 per litre, spirits sh. 25.00 per litre, juices sh. 0.50 per litre, soap and detergents 50 per cent per unit, textiles (kitenge and khanga) sh. 6.00 per metre (Statement by Minister of Finance, Hansard, April 10, 1981 p.150). The Price Commission announced the increases the next morning (Daily News, Daresalaam, April 11, 1981). In the UK, the government uses its price control powers over public enterprises to raise revenue in an informal way (Steel 1984: 34, Likierman 1979:

16-32, N.E.D.O. Report 1976: 31). Traditionally departmental ministers have no statutory powers in determining prices, but in practice the government has always exercised its influence either through the practical way in which pricing decisions in the public enterprises are reached or through informal persuasion (Millward 1976: 226-242; Rees 1979: 5; Garner 1983: 62). First, departmental Ministers have to be consulted by the industry's boards on prices and ministers are entitled to ask for a price adjustment (Redwood 1976, N.E.D.O. Report 1976, Paper No.5, p.23). Second, under a 1978 White Paper, Ministers have power to issue specific directions to public enterprises in their departments (The Financial and Economic Obligations of the Nationalised Industries, Cmnd 7131, HMSO 1978). The extent to which these procedures may enable the government to use its price control powers to collect revenue is illustrated by the case of the electricity industry in 1984. In March 1984 the energy Minister asked the electricity board to raise charges by 2 per cent with effect from April 1, 1984 (The Times, London, March 1, 1984, p.1). In their evidence before a Commons Select Committee on energy both the management of the electricity industry and the Minster concerned admitted that the price rise was not needed by the industry since it was operating profitably at the then prevailing price. The government's case was that this profitable industry should contribute finances to the government to reduce public sector borrowing and to provide funds for investment in other sectors[17] (The Economist, March 17, 1984, pp.31-32).

17. The increase was unsuccessfully challenged by the London Electricity Consumer's Council. The Council raised three objections: First that the grounds for the increase were not one of those stipulated by the Electricity Industry Act 1982, second, that the motives for the increase were political, namely to reduce government borrowing, and third, that the increase amounted to taxation without Parliamentary approval (The Economist, March 17, 1984, Vol. 290, No. 7333).

Studies by Webb 1976, Eltis 1979, Redwood 1980 and Garner 1983, show that successive governments in the UK have used their price control powers over public enterprises to raise revenue.

The other device, commonly found in the agricultural sector in developing countries, is the creation of public monopsonies (Bates 1984, Ellis 1982). Governments establish marketing boards with monopsony to buy and market cash crops. The crop authorities purchase cash crops from the peasants at administratively determined domestic prices and sell them at the prevailing world market prices. The difference in price between what the authorities get on the world market and that paid to primary producers is accumulated by the marketing boards as trading revenues (Bates 1984, Seidman, 1972: 42-57). Government control over prices of agricultural products is primarily designed to secure revenue for the crop authorities. The money generated may be used to subsidise agricultural inputs (fertilisers, insecticides and farm implements) and to establish price stabilisation funds. But in most cases, as Bates rightly concludes, governments have always found means of diverting funds from these agencies to the treasury (Bates, 1984: 93). That the marketing boards serve as instruments of peasant taxation is a conclusion also reached by Gerald Helleiner in his studies on pricing of peasant crops in Nigeria, by Ann Seidman's studies in East Africa and by Robert Bates on agricultural pricing policies in some African states (Helleiner 1966, Seidman 1972, Bates 1984).

2.6. Political Motives

In trying to gauge the political motives for price control - what the motives are and how they are achieved through price control, one faces an obvious problem: The motives are rarely publicly admitted by the politicians nor do they form a distinct and easily identifiable group. This problem has been well summed up by Stigler's observations on the relationship between price controls and political purposes in the USA where he says that "the political process defies rational explanation. Political reasons are an imponderable, a constantly and unpredictably shifting mixture of forces of the most diverse nature" (Stigler, 1971: 3).

By political motives I assume that the motive for imposing price controls, and hence the role of the price control agencies, is to maximise political support for the government. The evidence in support of this contention, for reasons stated above, is largely indirect. We have to draw inferences from the experiences of various countries to identify the possible political motives in each.

Broadly stated, the political considerations include: mollifying political conflict; rewarding political supporters; weakening the power of commercial groups and as an adjunct to wage restraint policies. The ultimate objective being to enable the government of the day to stay in power.

2.6.1. Mollifying Political Conflicts

In Africa, as in many other developing countries, people are very sensitive to prices. Rising prices create a potentially explosive political atmosphere. The keeping of consumer prices low and stable, therefore represents a form of political settlement designed to bring peaceful relations between the government and its urban and rural constituents. In this settlement, says Bates, peasants are the main losers (Bates, 1984: 39). Similar conclusions have been drawn by Ellis in his studies on Tanzania (Ellis, 1982: 263) and Sobhan 1980 on Bangladesh (Sobhan 1980, Chapt. VII). Empirical studies show that in the majority of developing countries, the rural-urban terms of trade weigh heavily in favour of urban dwellers (Bates 1984, ILO 1982). The question is why? The reason is that government policy as regards commodity prices deliberately favours manufactured, compared to agricultural, products. The explanation for such policies is partly political. For one, urban consumers constitute a relatively literate, informed and more vigilant group. They are spatially closer, more organised and constitute a strong pressure group demanding low prices for basic necessities like food. Since most of them depend on fixed wage earnings - the earnings are often low, and food consumes a large percentage of their earnings (about 75 per cent of the household budget in Tanzania according to the Economic Survey 1983) any increase in food prices is bound to have a big impact on their economic well-being.

Urban consumers also constitute a strong political pressure group. They are geographically concentrated, more mobile, and strategically located. They are easy to mobilise. Moreover,

most of the groups which constitute the state's political allies - the young pioneers, the military, the civil servants and other government bureaucrats, live in urban areas. Furthermore, urban unrest forms an important prelude to change in government (Singh, 1986: 427-430). And in this process, especially in the experience of African states, rising consumer prices constitute an important prelude to political unrest and subsequent change of government, bringing the downfall of one regime and ushering in another political leadership. Some of the cases cited by Singh are that of Egypt where the Cairo food riots led to bloody street battles between the army and protesters. In Sudan an increase in food prices sparked weeks of political unrest culminating into the downfall of the Numeiri regime in April 1985 (Singh, 1986: 427). In December 9, 1986 several people were killed in Zambia when thousands took to the streets in violent protests over price increases for basic food imposed by the government to conform with IMF economic adjustment plans (The Guardian, London, Wednesday December 10, 1986 p.8; The Financial Times, London, Wednesday December 10, 1986, p.48, The Times, London, December 10, 1986, p.1). Other African states which have faced this problem are Morocco, Tunisia and Kenya (Africa Now, London, April 1986: 15). Controlling prices has, therefore, become necessary not only for purposes of peace, unity and political stability, but also for the survival of the ruling groups. President Nyerere frankly acknowledged this fact. He admitted that if the government decontrols prices there will be "riots in the street. This will force the government to turn the police force against the people ... Then I will lose everything that I have" (Daily News, Daresalaam, November 23, 1984).

Obviously many political leaders in developing countries aware of the threat and political consequences that are associated with uncontrolled prices want to be seen to be doing something. It can be argued that the political argument made here applies to developed countries as well. For example, in the United Kingdom the price controls initiated by the Labour Government in the 1960's and 1970's were largely a political mechanism to defuse confrontation with the powerful trade unions on whom the government depended for support to stay in power (Millward 1976, Pearce 1983).

2.6.2. Concealing Government Inefficiencies

The existence of price control agencies may equip the government with a ready-made answer to fight criticism and may ease the burden on the government to explain some of the policies that are responsible for price inflation. This is happening in Tanzania where the price controls seem to divert public attention and criticism for rising prices away from government policies which propagate inflation such as unproductive expenditure and taxes (Semboja 1984, Shimwela 1984). Instead, the public, press and National Assembly concentrate their blame on the price control agencies. For instance, every time there is a price increase or violation of ceiling prices, it has become customary for all the blame to be shifted on the price controllers. As a matter of fact there is hardly any parliamentary session since 1974 where rising prices are not blamed on the National Price Commission. During the 1984/85 budget session leading Parliamentarians blamed the sharp rise in food prices that were announced in July 1984 on the commission (Uhuru, Daresalaam, October 29, 1984), while

in actual fact the cause lay in removal of food subsidies and inefficiencies of the National Milling Corporation. The National Milling Corporation, the main food procurement and distribution parastatal, had accumulated huge deficits due to poor management. To recoup the losses it has been raising prices of grain and other foodstuffs (Ergas 1981: 286; Africa Contemporary Record, 1981-82: B272). The Commission acted only as a legitimising agency for the decisions of the government. Looking at what has been happening over the recent years, the price commission has greatly relieved the government of the burden of explaining to the people the real causes of high prices - government policy-mistakes, declining productivity and an unfavourable international economic environment. I do not think this situation should remain unremedied. To me it is a clear case of violation of the principle of proper government accountability.

2.6.3. Rewarding Political Supporters

The extent to which the control systems can be used to benefit groups from whom governments draw political support is well documented by Killick's studies in Ghana 1973, 1978, Milward's on UK in 1976 and Sobhan's study on Bangladesh 1980.[18] In Tanzania the evidence is indirect. We have to draw inferences from the way in which the price control system taken together with the distribution and rationing of scarce commodities, have created opportunities for some groups to accumulate wealth.

18. Killick, T. (1973) "Price Controls in Africa: The Ghanaian Experience", in Journal of Modern African Studies, Vol.11, pp.405-426; Killick, T. (1978) "Price Controls" in Development Economics in Action, London, pp.286- ; Sobhan, A.R. (1980), Public Enterprise in an Intermediate Regime (Bangladesh Social Studies) Chapter VII; Millward, R. (1976), "Price Restraint, Anti-Inflation Policy and Public-Private Industry in the UK 1949-73", in Economic Journal, Vol.80, pp.226-242.

First, as we noted earlier, in Tanzania the control of distribution and consumer rationing means that for many basic consumer goods shops have become specific to residents of given areas. As a result people in urban areas with better access to the distribution system have their own shops of price controlled goods which differ from those of their rural counterparts. Entry to such shops is largely a function of residence which is often determined by ones occupation. For example, employees in sensitive areas like the army, police, hospitals and institutions of higher learning get supplies in cooperative shops at their places of work. These are assured of regular supplies because they get their allocations directly from the distributing or manufacturing firms. Since they are better equipped financially and in terms of transport, they can always afford to pay for their allotted quantities and sell it to their employees on credit. The case is different with rural dwellers. These depend on private shop-keepers to deliver their supplies. The commodities go through a long chain of distributors before reaching them. In the process the prices keep on escalating beyond the reach of many peasants or simply get diverted into the black markets (Lipumba and Mbogoro 1984, Shimwela 1984).

Factory workers in vital industries are given special allocations for the goods they produce. This gives them opportunity to indulge in black marketeering. Managers of public enterprises are given certain quantities of goods produced by their firms for promotional purposes - gifts, samples. They in turn use such privileges as bases of political and economic power to accumulate financial gains by selling the goods on the black

market; offering bribes to departmental heads; establishing relations with heads of financial institutions and to press for reciprocal treatment from other public enterprises (Africa Events, London, November 1985: 63-68). When he was invited to present awards to the best workers at the Friendship Textile Mill in 1985, the Minister for Trade and Industries openly complained that the gifts and party which the management had given him bore no sensible proportion to what the workers were being given. The Minister was particularly disturbed to hear that the best worker had invented spares for the spinning mills which had saved the government a lot of money in foreign exchange and had earned the factory a lot of profit. To his dismay, he was asked to present the workers with ebony carvings and a handful of shillings Most importantly, the employees were not invited to the grand beer party. The management was more concerned with entertaining the minister and his departmental officials because theirs is the parent ministry of the firm.

Influential personalities are given special permits to get the controlled goods directly from supplying firms. This enabled them to bypass the established machinery. There is nothing to stop them from auctioning their permits to the highest bidders: Seen in this context, the price control system has become an instrument of awarding privileges to influential social groups. In the end it is the weaker groups who bear the brunt of the burden. Those who have privileged access to the controlled goods obtain in excess of their consumption needs and sell the rest to their underprivileged cousins at exorbitant prices.

2.6.4. Moderating Wage Increase Pressures

Price controls are an important adjunct to wage restraint policy. We have seen how government policy and legislation have imposed a brake on wage increases. Under the Permanent Labour Tribunal Act 1967 workers in the private sector can only obtain an annual wage increase of up to 5% irrespective of the rate of inflation. Employees in public enterprises, party and government are barred from running commercial and business activities by the Leadership Code Act 1973. of course the provisions of this Act can and do easily get evaded through trust devices - running business through friends. Notwithstanding this loophole, the restraints imposed on workers as regards wage demands required corresponding measures to restrain price increases. In this way price controls were seen as an instrument to pay-restraint policy. It is an attempt to give a guarantee not to workers only, but also to the public as a whole that if they accept less in pay, then what they have given up will be reflected in lower prices of goods and services than would otherwise have prevailed (Mongi, 1980: 116). It is interesting to note that when the UK price commission was established in 1973 it was clearly stated that one major aim for controlling prices wasto moderate cost inflation caused by escalating increases in wages. The document containing proposals to moderate the rate of cost and price inflation was jointly worked out and agreed between the government, trade union congress and industrialists (White Paper 1973, cmnd 5267: 7). This shows that price control was an adjunct to wage restraint policy (Millward 1976, Jones 1973).

2.6.5. Price Controls and Employment Generation

The reduction of unemployment is an objective that figures high in the development programmes of many countries (Mitchell 1978, Fels 1972, Leftwich and Sharp 1980). Price control policies are also expected to contribute towards reducing unemployment. The expansion of employment usually implies the creation of new jobs and the preservation of existing jobs as the economy grows (Samuelson 1979; Leftwich and Sharp 1980). To that extent the contribution of price controls to job-creation is not a direct one. Rather, it is the effect of the controls on savings, investments and preventing business failure which create jobs. The role of the price control agencies is to ensure that firms earn profits for investment; that ailing enterprises do not go bankrupt and that the controlled prices will be sufficient to induce firms to remain in prodution (Galbraith 1974: 110-121). In Tanzania this is indirectly taken care of by the "cost-plus" formula which, as we shall see in Chapter 4, enables enterprises to recover fully costs and earn a profit (Rice 1979; Whitworth 1982).

2.6.6. Curtailing the Power of Traders

In the economies of developing countries, traders constitute a very influential group in politics and the economy. In Sudan the grain barons - grain importers and distributors - were the decisive factor in the elections in 1986 (Africa, London, May 1986). In Nigeria, one wealthy trader controlled the rice warehouses that were enough to feed the population for months and was the election campaign manager for deposed President Shehu Shagari (Africa Now, London, October 1984, p.59).

By using his wealth the Nigerian trader held the power to determine the popularity and unpopularity of government.

In the majority of African countries trade is controlled by foreign enterprises. And these are a force to reckon with whenever government policy on trade is made (Murray 1981; The Economist, Intelligence Unit, Quarterly Surveys of African Economy 1984). This overwhelming dominance of foreign trading enterprises in the economy naturally raises some concern to political leaders.

The first concern is the need to ensure fairness to the indigeneous population especially in rural communities from exploitation and price discrimination (Green 1980). The second, is the need to reduce excess profits accruing to these traders, especially in conditions of scarcity on the market. The third, is to dispel unwarranted feelings of suspicion that members of the public may hold against traders - that they are profiteers, or that the government is conniving with traders to increase prices. Although the power of traders has greatly diminished in Tanzania due to the establishment of state trading corporations, cooperative societies and communal shops, the bulk of retail trade remains in private retailers. For example, by 1980 there were a total of 50,000 registered private retailers compared to 8,000 communal and cooperative shops (Statement by Minster of Trade, Regulation of Trade Bill, Hansard, April 1980). Rich traders and industrialists are among trustees of the party. The first secretary general of the party (TANU) is now an influential businessman in Daresalaam. At the local level, shop owners constitute strong party members and leaders. To me the party umbrella shields

these traders (party leaders) against public criticism that they are exploiters. Of course this in itself a contravention of the party manifesto and the Leadership Code Act 1973. But the question is who can raise a finger against them when these traders fund party activities - donations and provide office accommodation in their premises for party activities.

Price controls also reduce the amount of money which traders would accumulate on the free market. The government imposes tax at every stage of distribution and sales to skim off any scarcity premium. By regulating the profit margin, the controls limit the profits accrued to retailers. By supplementing price controls with controlled distribution the government can also limit the political influence of traders.

These examples suggest the importance of examining the political motives or purposes served by the controls. Governments want to stay in power. They must appease their political supporters. This study stresses the role of such factors in the operation of the price control agencies.

2.7. Social Considerations

The social motives relate to: ensuring a 'just price' system; redressing imbalances between social groups; redistribution of real wealth; as well as rectifying inequalities in regional development.

The notion that there is something called a "just price" is one often encountered in many traditional African

societies. Writing about exchange of goods between Tanganyikan people who had no established markets, Bohannan says that the exchange of goods was made on the basis of moral judgements of what was considered 'reasonable and fair' equivalents. Of the Wahaya of North western Tanzania he notes:

> It appears the exchange of goods is reciprocative. The bananas that change hands in Buhaya are material and therefore economic items. But one cannot understand why they change hands in recurrent patterns without considering the structure and political obligations (Bohannan 1968, Chapter 1).

And he concludes that

> In all such societies in which the market principle is not dominant there are institutionalised methods in which items are converted from one sphere to another. This conversion, unlike the price mechanism excites moral judgment (ibid.)

Gulliver supports this view. He observes that among the Arusha of northern Tanzania there was a strong notion that there is a fair and stable price for each local commodity bartered. As a result, the rate at which goods were exchanged between the Arusha and their neighbouing tribes, the Meru and Masai, remained fairly the same over very long periods (Gulliver, 1968: 431).

The existence of the notion of an equitable price system permeates every society. In Europe the idea is said to have existed as early as the beginning of the exchange of goods itself. It is associated with the notion of natural law - that there is a natural price (Chalk, 1951: 332-347). In medieval times the churches in Europe used to preach, "Whatever ye would that men should unto you, do ye also unto them" (The Holy Bible, St. Matthew, VII, Verse 12). The interpretation of this command was that since commodities are freely given of God, a person

must not charge a price higher than what it has cost him to acquire under normal circumstances (Hollander, 1965: 615). Similar findings are made by Hall in his studies on pricing in traditional communities in India. Hall says, although there were no fixed money prices, there are several cases reaching traditional rulers from people complaining about unjust prices (Hall, 1977: 208).

These notions of a just price system find expression in modern statutory provisions and policy documents in phrases like "equitable" or "fair" prices. The UK White Paper on the "Counter-Inflation Programme" stated the objectives of price control to be "to maintain fair prices" between producers and consumers (Counter Inflation Programme 1973, cmnd 5267: 12). The Tanzanian Government Paper 1981 states that price controls will remain as part of government economic policy instruments to "create a juster pattern of society" by reducing differences between producers and consumers. And the Regulation of Prices Act 1973 provides that the goals of the controls shall be, inter alia to "maintain fair prices" between peasant producers and industrial producers. Accepting the argument that 'fairness' is one of the primary objectives of price controls the question that is often overlooked is who should be fair to whom and by whose standard of fairness are we to judge whether the controllers are acting in due fairness? It seems to me that the concept of fairness has no objective criterion. What firms may consider to be fair prices may be regarded as unfair by consumers. We shall see in detail the sort of difficulties this concept has generated in Chapter 4 when we examine the nature of the regulatory rules in Tanzania.

2.8. Conflicts in Goals

The list of goals usually expected to be achieved through price controls discussed in the foregoing sections is by no means exhaustive, but by and large, it covers the main thrust of thinking and popular expectations. It will be noted that there is apparent conflict in the goals. For some goals the more one is achieved the less the others can be achieved. For example, the need to ensure the continued ability of government to finance development programmes and recurrent expenditure can hardly be pursued without affecting the price level and hence people's incomes. Likwise the need to prevent prices from rising rapidly and frequently may conflict with that of ensuring that the enterprises operate profitably especially where costs of production are rising fast. Moreover, the imperative to keep prices low to appease the urban electorate is incompatible with the need to maintain a fair relationship between urban-rural terms of trade. Furthermore, the more the controllers put pressure on productive enterprises to keep their prices low so that they remain competitive on the market and to prevent price increases on consumers, the lower their profits will be. This will impair the capability of firms to generate resources to expand their business and to pay taxes to the government. Also, there will be stagnation or even reduction in job-creation.

In practice these inconsistencies seem to have been resolved by price control agencies without much difficulty. In the UK the Commission resolved the conflicts by treating some goals as being of a basic character and others as merely instruments and strategies for the achievement of the basic

objectives (Cockfield 1978). For example, the basic strategies were three: to steady prices; to be fair to consumers and producers and to sustain a faster rate of economic growth (Controlling Inflation, Cmnd 5205: 4). The rest were considered as not objectives but instruments. Admittedly, I find the distinction rather hard to draw.

In Tanzania, the National Price Commission draws a distinction between objectives that it should pursue and those it should not interfere with. For the commissioners, the Act contains objectives and limitations. For example while the commission can pursue any of the stated goals, it has to make sure that it does not impair government revenue needs or business prosperity. The Act thus contains objectives and caveats (restraints). While such an interpretation may be questionable on all principles of statutory interpretation, the commissioners seem to have overcome the apparent contraditions in the goal structure of the Act. In practice, therefore, the National Price Commission attempts to keep the prices charged by producers as low as possible subject to the constraint that enterprises are permitted to make up to a certain maximum margin on their products (Price Control Order 1984, September 12, 1984: 76-91).

It seems to me the resolution of the conflicting goals - the relative weight to be given to one over another will in the final analysis, depend on the political, social and economic pressures at a given moment rather than on preconceived principles of conflict resolution that some of the control agencies will have us believe.

To sum up the arguments in this Chapter we note that the motives for controlling prices are mixed. Governments institute price controls for a variety of reasons. These may be ideological - the belief that certain forms of economic organisation, and therefore socio-economic controls, are naturally preferrable than others. Others may impose controls out of economic and political expediency - to redress imbalances in the economy. We also note that the announced intentions may sometimes conceal the actual intentions. In addition, the government may impose price controls with a perfectly honest intention but with time social forces may alter the situation and the controls may end up serving the interests of powerful groups.

Finally, it is the alignment of social and political forces at a given period which influences the relative predominance of one goal over the others (Bates 1984; Ellis 1984). This is because the decision whether to pursue, neglect or diverge from one objective is not made in a vacuum. The controllers are agencies for advancing defined interests as determined by the socio-economic forces in society.

2.9. The Role of Law in the Regulation of Economic and Social Activity

In the preceding sections I have tried to examine the theory and motives for price control. Now I think it is appropriate to make a brief discussion about the role of law in the regulatory process. But before I do that I would like to point out that since different forms of regulation are directed at different problems (Mitnick 1980) it is not really possible

to produce a generalised description of the role of law that fits every regulatory situation. For that reason I will restrict my observations to price regulation.

The law lays down legal rules to regulate the conduct of economic units in the society - businessmen, producers and consumers. For example, in the Tanzanian case, the law specifies in detail how prices are to be formed (Section 12(2) the Regulation of Prices Act 1973). The Act imposes limits of various kinds on the activities that individuals or institutions in the economy can do. For instance, it fixes the maximum price at every stage of sale - ex factory, retail, wholesale, subwholesale, retail and consumer level. This is done by Price Control lists issued annually by the Price Commission under section 16(1). All persons (producers, distributors and consumers) are required to comply with the legal prices. Breach of the price orders renders them liable to penalties (sections 20 and 26) which may consist of a "fine not less than two thousand shillings or imprisonment for a term not exceeding five years or to both" (section 26). The effect of these regulations may be to bring about a price that in certain circumstances may be different from the one which would emerge from the spontaneous operation of market forces.

The law also provides a mechanism to enforce the regulations. In the case of the UK[19] and Tanzania this was by the establishment of independent regulatory agencies of the commission type (The UK Counter Inflation Act 1973, The Regulation of Prices

19. The UK Price Commission and the controls erected in 1973 were abolished in 1980 under the Competition Act 1980, Section 1 and Schedule 1 (S.I. 1980 Nos. 497, 978, c.20).

Act 1973, Tanzania). Where the law calls into existence a regulatory body it will give it a definite organisational form, a legal status, allocate rights and duties to it, state the patterns of permissible conduct and indicate the specific activity that is not allowed despite the judgements of those in charge of the agency that the activity might serve to achieve other goals. These points will become clearer when I examine the structure of the rules in the Tanzanian Act in Chapter Four. Suffice it to note here that this set of regulatory rules gives the framework within which pricing decisions have to be made. It also modifies the direction of the functioning of pricing policies. The assumption being that the legal rules will have a systematic influence on social and economic behaviour.

2.9.1. Factors Influencing the Effectiveness of Legal Regulations

Whether the law will be effective, that is, whether social and economic activity will conform or comply with the law depends on many factors. Economic political and social factors may exercise a key influence on the law (Kurczewski and Frieske 1976-77: 489, Diver, 1980: 257; Mitnick 1980, Chapter 1). For example, the structure of the economy, that is the manner in which the process of production is organised - the ownership of the means of production, the mode of distribution of the products and the way in which society is stratified tell us a great deal about the effectiveness of the law. A good illustration of this point is the relatively successful observance of price controls in Poland (Kurczewski and Frieske 1976-77) and Hungary (Fortes 1970) both of which are command economies compared to the violations that we hear from Ghana (Killick, 1973: 405-426;

1978: 286-293), India (Gupta and Srivasan, 1984: 1579). These two are market-based, regulated economies, in which the economy depends on a multitude of decisions by many private parties. The effectiveness of the law, especially in price regulation, may also depend on the market structure. The two principal aspects of market structure worth noting here are the relationship between supply and demand and the geographical size of the market in relation to distribution. The latter is a function of transport and communication factors. Where there are shortages, as Galbraith correctly observes, the legal prices are unlikely to be observed. Efforts to control prices in scarcity conditions, as empirical studies in the US, the UK and African states, show (see e.g. Campbell 1971 for USA; Mitchell 1978 and Fels 1983 for the UK; Killick 1973, Bauer 1965, IMF Surveys 1972-74, for Africa) are impaired becaused both consumers and sellers may seek to satisfy their self-interest. This apparent failure of price control has thus been summed by Galbraith

> The given supply can be sold at higher prices - it can be sold because buyers, however, unhappily, would prefer to pay the higher price than to accept their alternative opportunity which is to do without. The sellers, it can readily be assumed, prefer the higher price to the lower one.......
> An incentive thus exists for a coalition on behalf of higher prices between sellers and at least some buyers (Galbraith 1980: 3-4).

Finally, and very important indeed, the effectiveness of the law may depend on the behaviour of the regulators or at least the officials employed by the regulatory agencies. Once an institution has been set up it is subject to various pressures and pressure groups which affect its operations. The manner in which it develops and operates subsequent to its establish-

ment is fashioned by a complex set of institutional relationships, hierarchies of decision-making, interest groups and the changing political and economic complexion of ruling elites in the society (Edelman 1964, Chpt.8; Mitnick 1980). Empirical studies show, for instance that officials employed by regulatory bodies will act in ways that pursue their own interests rather than those of the agency (Stigler 1971). Studies on the regulation of insurance in the Sudan and Tanzania show that civil servants look at the regulated companies as potential employers should they be dismissed from government (El Mighani 1981). This pursuit of individual ambition is one goal that weakens the effectiveness of regulatory bodies in their role as controllers. Other empirical studies show that regulators get captured by the regulated interests (the "Capture" theory). This is the conclusion made by Stigler in his studies on the regulation of the electricity industry in the USA (Stigler, 1962: 1-16; 1971: 3-21) and Bernstein in his surveys on regulatory commissions in the USA in general (Bernstein 1955). Similar conclusions emerge from studies on regulatory agencies in the UK (Baldwin, 1983: 25). According to this theory capture may occur for a variety of reasons. One, the regulators may lack independent sources of information and data and may have to depend on the regulated bodies' version of events (Posner 1969: 548-693). Second, as the regulator gets continuously involved in the affairs of the regulated, there is a tendency to develop presumptions in favour of the regulated interests or to reach decisions by compromise (Adams, 1953: 469).

This is likely to be the case where employees of the regulatory agency are assigned or permanently attached to oversee

a certain firm. Third, where the regulated interests command overwhelming importance in the economy and are well organised, they may simply thwart any restrictions which are not in their favour. Apart from the "capture" theory, there is the question of the life-cycle of the institution which also influences its performance. There is evidence to show that whilst the agency may begin by putting into effect the wishes of the government (or protecting the interests of the public), in time it falls under the influence of producer groups whose interests it comes to safeguard at the expense of either the public or the wishes of the government (Bowles,1982: 176). According to Adams regulatory agencies suffer from the effects of old age, just like human beings. Adams notes for example, that "when the evil which gives rise to a regulating agency has been somewhat alleviated, the initial dynamism disperses. There develops a slackening in energy"(Adams, 1953: 469). Jaffe goes further and concludes that the older an agency gets the less responsive it may become (Jaffe 1965). All these factors may impose severe limits on the effectiveness of the law.

2.9.2. The Administration of Legal Regulations: The Choice of Institutions of Control and Control Techniques

Regulatory controls are exercisable by different institutions using different techniques. What considerations affect the choice of such institutions depends on the constitutional and political set up of each country. At first sight I would identify four different methods of adiministering statutory controls. The first case is where the government sets up voluntary guide-posts on prices while allowing varying degrees of liberty

to firms to effect them. Examples are that of the USA during January 1973 to June 1973 when the government set up price guidelines to be adhered to voluntarily, with a threat of government action in event that they were ignored (Leftwich and Sharp 1980: 310). The controls completely broke down necessitating a mandatory scheme in July 1973. Under the latter scheme price increases on certain commodities had to be justified and approved by the government. The record was good (Samuelson 1979: 393-396; Leftwich and Sharp, 1980: 311). Voluntary guidelines is the current policy in Ghana (West Africa, London, September 2: 1800) and Zambia (The Times of Zambia, Lusaka, September 2, 1986; News from Zambia, London, September 2-11, 1986: 2). In the case of Zambia, the breakdown in the controls that led to violent riots, on December 7 to 8, 1986 were partly blamed on failure by businessmen to follow the guidelines (The Guardian, London, December 10, 1986: 8; The Financial Times, London, Wednesday, December 10, 1986: 48). The second approach is where there are general legal powers vested in the goverment to control prices when and where necessary. The exercise of the powers is vested on executive organs such as a Minister, the President and so forth. A good example is that of Kenya. The Kenyan Price Control Act 1964 (cap.504) gives power to the Minister to fix maximum prices of certain goods and services, "from time to time" by ministerial orders (Section 5(1). Implicit in this provision is the notion that the controls are not of a continuous nature. They have to be invoked only where necessary. This Act also provides that the Minister "shall not delegate to any person any of these powers", section 9. There are safeguards to the exercise of the minister's powers in that, "all orders made under section 5 shall be laid before

the National Assembly" which may pass a resolution to annul the order (Legal Notice 303 of 1964, Kenya Gazette Supplement, June 1964). The annulment of the order will not invalidate anything done under it prior to its invalidation by the National Assembly (section 8). The third case is where, as we saw in previous sections, the controls are administered comprehensively and in a tight manner by agencies which work in close connection with the government. A case in point is the planned economies of Poland, USSR and Hungary (Fortes 1970, Manove 1973). The fourth method is that of establishing independent regulatory agencies as was the case in the USA 1971-74 (Darby 1976, Leftwich and Sharp 1980), the UK in 1973-79 (Cockfield 1978, Pearce 1983) and the current situation in Tanzania (Mongi 1980, Whitworth 1982). The agencies in these countries were independent in the sense that they have their own constitution and are not normal government departments headed by a Minister. I would like to devote more attention to this fourth category because of its relevance to my study. What I would like to consider is what considerations govern its choice and how valid are the assumptions underlying its choice.

2.9.3. Assumptions underlying the choice of Regulatory Commissions

Some light on the considerations that affect the choice of independent regulatory agencies in regulatory administration can be gathered from the debates that preceded the establishment of the price commissions in the UK and Tanzania. First, let us examine the UK statement. The 1973 White Paper on the "Programme for Controlling Inflation: The Second Stage stated

> And in considering methods for implementing the policies they have looked for those which are as straightforward as possible, require the minimum of administration and allow flexibility in operation to meet different circumstances (The Programme for Controlling Inflation, cmnd 5205, 1973 para. 9).

Arguments of a similar kind were made by the sponsors of the Tanzanian legislation. Introducing the Bill to the Regulation of Prices Act, the Minister for Commerce argued:

> The government has given careful consideration to all requirements of the Act..... The commission shall be a continuing machinery, with a full-time chairman assisted by a staff of experts. It shall be independent in character, free from external control which is necessary for its proper functioning. The members will be protected and privileged in case of any action or suit just like judges. And having regard to the nature and purposes of its adjudication, the government proposes that its decisions should not be subject to review by any court. To allow inquiry into its decisions will lead to thwarting delays and will frustrate the commissions functions (Statement by Hon. H. Jamal, Minister for Commerce, Bill Supplement No.7, June 27, 1973).

From the two statements above it would seem that the choice of regulatory commissions is designed to meet the following basic conditions: First, the need to have a specialised institution - specifically designed to meet the demands of the particular regulated activity. Second, to secure speedy, cheap, flexible and understandable decision making procedures. Third, the need to obtain independence and impartiality - freedom from external control, pressures or political patronage. This element, as we shall see, is important for two reasons. For one, regulation by its very nature implies the existence of conflicting interests. In the case of prices, there is likely to be competing and conflicting interests between producers, distributors and consumers. For a second, in a situation with many political parties who hold

different views and policies independence is needed to protect the machinery from becoming a party instrument (Fels 1983). An independent agency might be able to act much more fairly than one directly controlled and managed by the government of the day. Fourth, the need to obtain continuity. That is to say that the agency must have power to plan, to promote and to adjust the regulations to changing circumstances as well as to issue orders, police and enforce the regulations. Finally, that the agency should have sufficient discretionary powers and that possible abuses of the discretionary power can be controlled by the imposition of rules, limiting standards or checking the activities of the agency with reviews of the initial decisions by higher level officials like Ministers (Davis 1969: 4, Zander, 1984).

Let us take a closer look at each of these assumptions.

2.9.3.(a) Suitability for Policy-Implementation

According to Street 1975 and Davis 1964 statutory regulations are fundamentally different from other laws in that they emanate from defined social and economic policy objectives (Street, 1975: 4-10; Davis, 1969: 4). Often the regulations are of the welfare type. In the case of price regulation, says Jordan, the driving force is the need to assert government responsibility to protect the well-being of those socially and economically weak - those whose welfare may be adversely affected by the market mechanisms (Jordan, 1972: 151). It is, therefore, of primary importance that those entrusted with the implementation of the regulations should look at the policy behind the regulations. They must take a sympathetic view of the policies. In particular, they should

operate flexibly and freely - free from the inhibitions of judicial and executive processes.

This argument has been used to discourage the use of judicial processes in implementing legal regulations. A leading proponent of this view is Jaffe who says that courts administer the law and not policy, that is to say they are not policy-orientated (Jaffe 1965). It is also thought that effective implementation of regulatory rules demands minimisation of legalism - legal technicalities and procedures. According to Street, since the object of regulation is to achieve social and economic justice, this may well require that considerations not of the letter of the law, but of the administrative policy should take paramouncy over legalism. On this point, Harry Street, a leading exponent of this argument, observes

> Ministers and top civil servant advisers frequently come to doubt whether the courts are the appropriate body to decide many of the cases. They see that many of these disputes are not merely about private rights; the public good on the one hand and the interest of the particular citizen on the other must be weighed in the balance. They look at many decisions in the courts..... and find them wanting in that they appear to disregard the social element in a problem (Street, 1975: 5).

While I agree with the view that entrusting the administration of the legal regulations to judicial-type agencies and procedures may subject the regulations to unnecessary legalism which may thwart the effort to effect the policy objectives of the statute, I certainly do not accept that courts do not administer policy. To me the distinction between law and policy is not so distinct. Behind a rule or regulation there is often a policy-

consideration and when interpreting legal rules judges overtly or covertly look at the policy behind them. Indeed, when they try to discover the intention of the legislation or the objects of the law or the mischief sought to be eliminated by the law they are invariably looking at policy considerations. In fact Lord Denning's decision in the case of Seaford Court Estates Ltd v. Asher (1949) suggests that the distinction between law and policy is illogical since in their creative role - what Lord Denning described as, "ironing out any creases" in the law, judges take on themselves the taks of ascertaining the purposes of an Act and do not remain hidebound by the dictates of formal procedures and strict rules of interpretation ([1949] 2 ALL.E.R.(C.A.)155). It is, in my view, unrealistic to assume that judges are aloof from the social and political policies in the given community. At least we saw earlier on that in Tanzania judges are of necessity required to administer the laws in accordance with the social and political aspirations of the people indicating that they must administer both law and policy (Nyerere 1973: 258; James 1976: 63).

2.9.3.(b) Specialisation

Jaffe 1965 and Wade 1982 have argued and I would entirely agree with them, that the task of administering statutory regulations is differnt from ordinary work of judicial and executive departments (Jaffe, 1965: 3-5, Wade 1982:). It requires specialised agencies - agencies equipped with the skill and expertise necessary to deal with the special problems raised by the particular regulated activity. Take the case of price regulation. The price controls deal with numerous conflicting interests - those of consumers

for low prices; of producers for high profits and those of the state for revenue. The enterprises regulated differ in size; in corporate structure; in degrees of intergration; in diversity and quality of products; in equipment, processes and costs and with changing technology and tastes. For the controls to be effective they necessarily have to be extended to every aspect of business policy; to volume and quality of output; to expenditures, earnings, pricing practices and distribution of profits. Obviously the agency exercising the regulatory powers must contain an assemblage of expertise from all the relvant disciplines needed by the controller.

The need for such an admixture of interdisciplinary expertise hardly needs any emphasis. For example, in price control, economists would undoubtedly be the most important element. But lawyers and political scientists are also highly relevant. I will endeavour to explain why.

It seems to me that while economists would tell us what in principle the control process should require of firms to ensure efficient performance, they may not be able to tell us whether the desired controls are practical, bearing in mind the political and other environmental limitations of institutions. Here we will probably need a political scientist who can give us a more realistic understanding of the regulatory process, and in particular, the degree to which the process is linked with politics. On the other hand, I think neither the economist nor the political scientist can feel comfortable with highly legalistic documents as statutory regulations. Moreover, statutory regulations usually contain matters of legal rights, legal obligations

and legal remedies - issues whose judgment require legal knowledge.

Looking at this requirement, we find that neither executive nor judicial agencies can provide the specialised expertise needed. For one, judicial agencies are ordinarily staffed by lawyers and always face the danger of excessive legalism. Lawyers are usually not technical experts in commercial and industrial matters. Frequently the issues raised by price control regulations are purely factual commercial disputes and rarely involve law. In the same view executive agencies do not contain the admixture of expertise needed. They are often staffed by people with a civil service background, ill-suited to the needs of commerce and industry.

To conclude the argument on this point, let me briefly evaluate the basic assumptions that underly the argument on expertise. First, it is assumed that the agency will beable to recruit the people with the right skills and experience. Second that, once recruited, there will be facilities provided for training and updating the skills. Third, that the agency will be able to retain the skilled personnel. Finally, that the problems handled will remain fairly the same to allow application of the expertise.

My examination of the National Price Commission's position shows that these assumptions are not realised. An examination of the distribution of employees in the departments, as we shall see in Chapter 5.8.2., shows that none of the divisions has been able to recruit the required skilled personnel. One contributing factor has been the unattractive salaries and terms of employment.

Workers are remunerated according to the civil service scheme - which are less attractive than those in the parastatal sector. Salaries and wages vary among employees such that they reflect length of employment rather than skills, education or experience. The Commission's recommended scheme of service aimed at long term retention of employees in the commission - with a clear succession (career path) plan for the workers has been on the shelves for the past five years awaiting government approval. There are no comprehensive plans to develop employees by providing knowledge and skills on the job and by sending them for both short and long courses as found in parastatals. There are no incentive or motivation schemes for employees like free transport, tea and lunch while at work, bonus at the end of the year and subsidised house rent. These factors have resulted, not only in the failure to recruit expert personnel but also in retaining labour. In the course of discussion with some employees I was told that employees, especially accountants, leave the commission in search of higher salaries elsewhere in the economy. These facts discount the notion that administrative agencies provide ideal environment for the convergence of interdisciplinary expertise.

2.9.3.(c) Independence

According to Jaffe, regulatory agencies often resemble the government. They exercise an assemblage of powers, judicial, executive and administrative. They are therefore expected to act with more autonomy than executive bodies (Jaffe 1965). Jaffe further argues that since the agencies are often given the task of resolving conflicting and competing interests, it is important that they should not be interfered with by any other organ or

should not be used to further the interests of any particular group. They should act impartially. That is why the agencies need to be established outside the main stream of government departments. But the argument about autonomy ignores that the administrative agencies have interlinkages with the government. They are instruments of implementing government policy. For example my discussions with the chairman of the National Price Commission in Daresalaam and senior departmental heads, revealed that problems often arise due to the ill defined chain of command between the Commission and the departmental Ministry and between the Commission and other interested ministers. I was told that some degree of interference exists, but of a type which in the Tanzanian environment also applies to other agencies, including the judiciary.[20]

It seems that although the Act establishing the commission envisaged an element of autonomy in its operations the specific relations it has with the government and the departmental ministry erodes that autonomy. We shall discuss this point in greater detail when we examine the legal background, competence and composition of the Commission in Chapter 4.8.1., how the notion of autonomy is being undermined. Furthermore, the notion of independence is not wholly true in view of the earlier point that an agency can be perverted by powerful interests (Eldelman 1964; Stigler 1964).

2.9.3.(d) Cheapness

Social and economic justice demands that there should be easy access by those affected by the regulations to the agencies

20. For some cases of executive interference with Judiciary, see, Martin, R.(1973) Personal Freedom and the Law in Tanzania (Oxford University Press).

set up to ensure justice is done. This is thought to be best achieved where the methods and processes adopted are simple, non-technical, informal and less rigid (Zander 1984; Whitworth 1982). One reason for favouring administrative agencies in regulatory implementation is their relative cheapness. For example, those wishing to make complaints or get redress from the National Price Commission are not required to forward their claims in any specified form. They pay no fees and can make their representations orally in writing or be represented by any person, not necessarily a lawyer. Members of the public can set the processes of the Commission in motion without any fear of huge bills. For example, if a member of the public complains about a violation of any of the statutory rules and an inquiry is made as a result of which the complaint is found to be false, malicious or unwarranted, there is no threat of costs, let alone of disciplinary proceedings. This can be compared with the situation in courts where hearings are conducted in prescribed form, complaints may not be made without reasonable and probable cause and the entire proceedings are designed in such a way that services of lawyers become indispensable. But cheapness, in my view, should not be looked at in terms of financial outlay only. We also need to look at how close to the people are the agencies: Do they really use procedures which can realistically be called cheap, taking into account the conditions of the particular society - peoples' incomes, level of literacy and communication standards? Are the control agencies ready to entertain every complaint that the ordinary consumer may make or are there any practices which make the control agencies alienated from the people? Some of these issues will become clear when I examine the enforcement of the controls in Tanzania in Chapter 5.3.

2.9.3.(e) Speed

Closely allied to the argument on cheapness, is the view put forward by Wade that adjudication through administrative agencies is speedy and efficient (Davis 1969, Wade 1982). It is thought that administrative agencies meet speedily, act expediently and cut bureaucratic procedures or red-tape. This in turn cuts delays often encountered in litigation. And this is an important consideration for business organisations for whom time means money and to whom delayed decisions could impose disastrous consequences on their firms. In court processes, for example, one often finds that disputes are settled by adhering to court lists; proceedings are held within court premises and there is always the possibility of a party seeking a long adjournment. This not only delays justice but also subjects the parties involved to unnecessary tension, anxiety and expense. But this argument implicitly assumes that speedy decision-making accords justice more than delayed decisions. It fails to acknowledge the fact that delays may be caused by the need to weigh the evidence more properly or to give the parties ample time to bring forward all the relevant facts necessary for a just and fair decision. The argument also assumes that the administrative agency will always be equipped to act expediently - an assertion which is very doubtful if we consider the evidence from studies about the resource and manpower constraints facing institutions of this nature (Mitchell 1978, Cockfield 1978, Mongi 1980).

2.9.3.(f) Flexibility and Convenience

With regard to these two conditions it is commonly thought that administrative agencies operate flexibly in that

they are not tied down to procedural formalities and technicalities such as rules on relevancy and admissibility of evidence and that hearings may be held at any time, place and date suitable to all parties concerned. In this connection we find that the Tanzanian National Price Commission has been given discretion to regulate its own proceedings (section 4, The Regulation of Prices Act 1973). We also find that the rules on admissibility of evidence are less stringent for prosecutions mounted under the provisions of that Act. For example, section 31(1) states:

> a) In any proceeding under this Act, the production by the price inspector of an original invoice or duplicate invoice purporting to have been found in possession of the seller or a copy of such invoice certified as true copy by the Price Commissioner or price inspector, shall be admissible in evidence and shall be prima facie evidence of a sale by the seller and of the correctness of all facts contained in such invoice..... and the burden of providing that any sale did not take place or that any fact contained in the original invoice or copy thereof is not what it purports to be, shall be upon the accused;
>
> b) In any prosecution under this Act, the court shall not be entitled to reject the evidence of any person or require any corroboration of the evidence given by him on the ground only that such person participated in the offence by purchasing a price controlled article at more than the maximum price, section 31(4).

Administrative processes are also said to be flexible in the sense that, unlike the courts which deal only with cases brought before them and cannot initiate inquiries or cases on their motion, an administrative body can embark on investigations of its own, can rely on its own knowledge of the facts and can choose its sources of information. In this vein, for example, the National Price Commission is empowered by the Act:

a) to conduct a review of prices on its own motion;

b) to secure, notwithstanding any written law to the contrary, access to relevant data concerning production, importation or trade of or in any goods or services from any person or firm; section 13(1)(c) and (d).

In comparison with trial-type of processes we see that a judicial tribunal would depend on the parties to the proceedings to develop the facts in controversy. The tribunal would have no independent means of investigations and could exercise little initiative in discovering relevant facts. In addition, judicial processes are tied to precedents. Most of these limitations are thought to be overcome in administrative regulatory processes (Bernstein 1955; Jaffe 1966).

The argument about flexibility and convenience, however, has been questioned by Zander who says it is more of a myth invented by advocates of the administrative processes to extol the virtues of the processes than a reality (Zander, 1984: p.42). Indeed, according to the theory of rigidification, as set forth by Bernstein 1955 and restated by Posner 1969, administrative processes develop rigidities with time. Once the evil which gives rise to a regulatory agency has been somewhat alleviated, the initial dynamism of the agency wanes. There develops a slackening in energy. Problems get handled on a routine, stand-by basis (Freedman 1975). Rigidification undermines the notion of flexibility and responsiveness which is said to exist in the administrative processes.

To conclude the discussion in this section, I would say that the question whether these advantages will obtain in

a given regulatory agency, depends on many factors. The question of expertise depends on whether the agency is manned by people who are skilled enough in that area of regulation. This in turn may depend on whether the agency is able to attract, train and retain competent personnel. The notion of cheapness depends on whether the agency is readily accessible to its clients. In the case of Tanzania, as we shall see in Chapters 4 and 5, communication, transport and locational barriers undermine the notion of cheapness. The argument on independence is only forceful if we compare administrative processes with executive ones. Otherwise, it is a question of degree - whether the agency is staffed by persons strong enough to assert autonomy. But in a situation like Tanzania, where there is a close relationship between the NPC and the government, where executive officers and senior managers of the commission depend on the Minister for employment, I think to talk of independence is to ignore the real practical situation. On balance, I should think judicial type agencies are more independent from executive interference and pressure, than administrative agencies.

CHAPTER 3

A HISTORICAL PERSPECTIVE OF PRICE CONTROL LAW IN TANZANIA: EARLIER FORMS, METHODS AND THEIR INADEQUACIES

Introduction:

In Chapter 1 we defined price control. In Chapter 2 we examined the motives. We now ask: What is the historical experience with price control in this country - how has price control developed over time? Why was a Price Commission established to replace the existing institutions?

In attempting to answer these questions we begin by looking at how price controls evolved in the precolonial period. Next we discuss some earlier forms of statutory price regulations and describe some general problems and inadequacies encountered. We end the chapter with an examination of the social forces that brought about the present control system.

It is submitted that, although the colonial period is usually regarded as the most important period for the growth of legal price controls (Kimble 1970; Mongi 1980), the period does not mark the origins of the controls. The colonial period only signifies a change in the scale and nature of the controls. Some undeveloped and unwritten norms - regulated by customs and social attitudes - already existed before the coming of colonialism to regulate the rates at which the exchange of commodities took place. But the development of these norms was interrupted, and have virtually been supplanted, with the arrival of advanced forms of exchange relations. It is also submitted that the definition

of development adopted after the Arusha Declaration in 1967 marks a critical stage in the social and economic policies - a stage which also brought changes in political thinking about the role of the market place and market principles in the economy. The period ushers in a more coherent government policy about the need for change in the role of law and legal institutions from that of maintaining law and order to the implementation of the political values of government. It is thus clear that to that extent the nature of the controls in this period would vary from the earlier periods.

3.1. The Evolution of the Controls

Marx once made some observation, which I find highly relevant here, about the development of law and legal institutions. He said:

> There is no history of politics, of law, of science, of art, of religion, etc. (Marx, Collected Works, Vol.V, 1976: 92).

Indeed, legal development cannot be explained solely within law itself. What is often considered the history of law in general, or a given piece of legislation in particular, is usually a re-counting of successive rules on a given activity, whose cause and effect are derived from the social, political and economic developments. To that extent legal analysis can only make sense and bear fruit if it is joined to a study of the social environment within which the legal norm arises and operates. The validity of this proposition is well demonstrated by the developments in price control laws, as I shall endeavour to show in this chapter, whose linkage with the development of the exchange economy is uneradicable. This can be illustrated by the changes in the motives,

forms, techniques and objectives of price control in Tanzania during the precolonial, colonial and postcolonial period - changes which reflect changes in social and political environment.

3.2. The Precolonial Period

Precolonial Tanganyika was inhabited by heterogeneous communities. Historical scholarship groups them into 120 different tribal categories (Ogot, 1974). However, these were not discrete, compact and identifiable tribes in the sense of having a markedly different culture, language or territory and political system. On the contrary one group merged imperceptibly into another. The country's varied environment supported many agricultural systems (Iliffe, 1973:6). Production was predominantly for use within the community. Whatever little exchange that took place seems to have arisen naturally as a result of the geographic differences in climatic conditions - on account of differences in soil fertility, rainfall and other climatic conditions. Although the varied environment supported many agricultural systems, from grain growing to animal husbandry (Gulliver, 1968: 431; Coulson 1982: 10) these systems had one thing in common - they depended on family labour with simple technology (digging sticks, crude hoes, axes and other hand tools) for production (Iliffe 1977). Despite similarity in farming methods there was some amount of specialisation in the agricultural systems. Specialisation was largely dictated by differences in natural endowment rather than technological advancement. For example, the Wamahenge who lived in the fertile Ruaha Valley were a diligent and skillful farmers in an exceptionally good climatic area. These produced surpluses of grain - maize, millet and vegetables which they used to barter

with their neighbouring Masai and Gogo pastoralists for meat, hides and weapons like spears and matchets. Similarly the mountain tribes of the north, the Chagga, Meru and Sambaa, had constructed irrigation schemes which enabled them to produce stable food reserves (Iliffe 1973) which they exchanged for livestock with the Masai.

It was the skilled crafts that provided the basis of economic specialisation. The most important of this was iron smelting. This art was a specialised craft among a few families. The notable groups were the Pare in the north, Bahaya of Kagera Region and Fipa in the Southern Highlands. Iron smithery was confined to distinct families or clans and the technology was strictly guarded. Other specialised crafts included pottery; bark-cloth making and mat production among the Nyakyusa and Kisii; salt produced from burning grass among the Nyiha in the West.

In terms of the role which the market place and market principles play, the precolonial societies can be grouped into three major categories: those which had no market place; those in which markets were peripheral and those with a market place and developed market principles.

3.2.1. Societies without a Market Place

An example of a Tanganyikan tribe which had no market place in precolonial times is the Sandave in the central part of the country. This people were characterised by a multi centric economy in which several transactional spheres existed. They had no fixed market place for transacting the exchange of goods.

Yet they had some well established mechanisms of bartering their products. The major element governing exchange of goods was to distribute commodities from those with surplus to those in need. Therefore exchange was governed by the notion of a gift and not a gain. For example, if one person harvested less grain - inadequate to meet the consumption needs of his immediate family - due to failure of rains, poor soil fertility or use of bad seeds, he could make up for the gap by assisting those with a rich harvest in gathering their produce and get a gift of grain bags from them. The grain given was not considered as payment for services rendered but simply as a sociable gift. There was no obligation to repay. The second mode of social distribution was through the leaders. Under this method people surrendered part of their produce to a central authority - headmen, chiefs or a king - in form of tithes, tributes. The central authority distributed them to those in need. Again there was no fixed rules of how much a person should donate to the central authority. However, there was also exchange of goods between the Sandawe based on commodities of different nature. For example grain could be exchanged for livestock. Such exchange was conducted within the context of the local social system. There were no fixed measure of values. It would be true to say that the exchange rate was accidental. What guided the participants to the transaction was a sense of reciprocity. Reciprocal treatment dominated because the people came from the same community. Of course where it was felt that goods had been exchanged at unjust rates other members of the community would protest to the offender. It seems there had developed certain standards of local tradition which could be used to judge whether a particular transaction was fair to the parties or not (Ogot 1974: 151-167).

3.2.2. Societies with Peripheral Markets

The majority of the tribes had developed some recognized market places, but had not developed concepts of market principles (Gulliver 1968). For them the market existed but only peripherally. The bulk of necessities of life were not acquired on the market. On the contrary each family was almost self-sufficient - producing its own food, shelter and clothing. Therefore, if the market were to disappear from the society, it would not cause major hardships to the people. Their basic livelihood came largely from non-market spheres of the economy.

Although there was a high degree of self-sufficiency within a family, no family could produce all of its requirements. Also there were products of craft and art whose technology and skill were the monopoly of few families. Furthermore differences in natural endownment produced differences in products from one area to another. Consequently there was considerable exchange of goods intra tribally as well as inter tribally (Marsh, 1961: 3). One form of exchange involved surplus agricultural products and the other was of specialised crafts, minerals and natural products. For example, the Fipa iron smelters exchanged iron tools for food with their Nyasa and Nyakyusa neighbours. The Pare bartered iron tools for bananas with the Chagga and livestock products with the Masai. In this inter tribal trade some institutionalised methods at which goods exchanged hands were established. The rates however did not depend on a fixed formulae. Rather they were governed by a variety of social considerations - kinship, traditional notions of justice and morality, and by the desire to use the market place as a forum for social intercourse. Most

important of all, the market was considered as a means of redressing imbalances caused by variations in the availability of certain types of goods from one area to another. As Kjekshus observes:

> The exchange provided variety in diet and disposed of perishable surpluses. Thus the traditional food market was oriented to distribution not profit. The importance of the traditional market rested, however, in the fact that women met as partners in a total economy to equalise, through exchange, the differences arising from individual production methods (Kjekshus, 1978: 14).

There were no fixed values at which goods were exchanged. The prices were not determined by costs of production. The producers did not buy their ingredients. None of the tribes involved seems to have reached the stage of establishing a universal measure of value. When the Fipa iron smiths exchanged their tools for food from the Nyakyusa the goods seem to have been exchanged at accidental but acceptable values. We should also add here that in societies in which the market was peripheral, there were no developed specialised groups of professional traders or middlemen.

We, therefore, see that in the majority of the pre-colonial societies production was not specialised. There was not a developed system of private property. The level of technology was low. As a result of undeveloped production, minimal exchange, and the lack of specialisation, production was carried out primarily for use and not exchange (Gulliver 1968). There was no demand for regulation on the market. At most, the market was loosely supervised by the age-group spokesmen as was the case with the Arusha or a council of elders drawn from different tribes involved in the trade (Gulliver 1968). But even on such instances the supervision was slight, intruding only when particular difficulties

arose (e.g. defaulting traders) rather than maintaining a continuous management or control over the market.

3.2.3. Societies with a Developed Market

Some tribes had already reached developed forms of exchange long before formal colonialism. These were the coastal people whose long contact with the Arab and Asian traders had exposed them to the exchange economy as early as the First century (Marsh, 1961: 3). The Zaramo of the coastal belt, the Yao in the South and Nyamwezi in central areas were introduced to long-distance caravan trade by Arab merchants. The spread of this trade to the interior brought profound consequences to the participants. First, caravan trade expanded the rudimentary commodity exchange and introduced new commodities - ivory, slaves, guns. Second, it introduced money as a medium of exchange. Third, it replaced 'gift exchange' based on reciprocity with the commodity exchange based on profit motive. Moreover, it introduced new forms of transport and communication - pack animals, human porters, wharfs and canoes as well as Swahili as a common language. Finally, it promoted the emergence of a specialised class of traders. This novelty had both beneficial and disruptive consequences. Among the disruptive consequences noted by Rodney are: First, it destroyed the development of indigeneous technology and manufacturing skills through the influx of new, commodities. Second, it depopulated vast areas through wars for slaves. Third, as Rodney points out "The most dynamic groups over a great area of Africa became associated with trade .... and trading groups could make no contribution to technological improvement because their role and preoccupation took their energies away

from production" (Rodney 1972).

Long distance trade also gave impetus to slave trade. Although slavery had existed for many centuries among some Tanganyikan societies, it was only with the advent of Arab and European traders that slave trade emerged (Turnbull 1977). European demands for labour in their plantations and mines in colonies like America, West Indies and Mauritius gave a massive boost to slave trade. And the consequences were obvious

> It drew from the continent human beings at their most productive ages. Worse still, it encouraged tribe to fight tribe. Finally and perhaps most importantly, any advantages that Africa derived from the contact with the rest of the world - the learning of skills, the introduction of new foods..... were more than offset by the slave trade plunging vast stretches of Africa into anarchy (Kamarck, 1971: 8).

The ultimate consequence of European arrival was a step by step extension of military and political domination that culminated in colonisation of Tanganyika first by the Germans and later by Britain.

3.3. The Colonial Period

3.3.1. German Rule

German colonisation of Tanganyika lasted from 1891 to 1916. The reasons for this colonisation, in common with the colonisation of other countries by European powers at this time, can be found in social and economic developments in capitalist states. Lenin and Mandel give a detailed analysis of these developments (Lenin 1964; Mandel 1972). The two authors say that by the late 18th century production in leading capitalist states, namely Great Britain, Germany and France, had reached a crisis

stage as characterised by excess accumulation of capital, over-production in industries, falling rates of profit and growing unemployment. This inevitably led to a search for new investment areas, sources of raw materials as well as more lucrative markets. Rivalry ensued among companies from those states as they competed for the new markets. This precipitated the two World Wars with the consequent division of the world among the capitalist powers (Mandel,1972: 441-484).

In the case of East Africa the rivalry between the Imperial British East Africa Company (IBEA) and the German East Africa Company (DEA) was settled under the Anglo German Agreements 1886-1890 (Iliffe 1973). Following these agreements, the Germans declared formal colonisation over Tanganyika and proceeded to establish an administrative apparatus. The system establishing institutions for legislation were finally constituted by a series of legal instruments issued by the German King (Kaiser). The principal law was the Protectorate Law 1886 (Extract of German Decrees, National Archives, Daresalaam). Under this law the Kaiser appointed a governor and delegated to him authority to legislate locally by way of decrees, orders, directives, circulars, or administrative memoranda. The governor appointed military officers to head administrative districts while traditional chiefs were retained at the local level (Iliffe,1973: 8-9). This system of indirect rule helped to reduce the burden on government since the chiefs were non-paid officials while at the same time it helped win the confidence of the local population.

It seems the German administrators adopted a policy of non-interference in economic affairs. Indeed throughout the thirty years of German rule only one decree was issued by the governor seeking to regulate prices. The decree of 1898 simply declared it illegal to overcharge any native or resident of the territory. Any consumer who thought that he had been overcharged could complain to the district military commander. The decree was prompted by complaints mainly from African consumers against exorbitant prices charged by Asian and Arab businessmen. The increases had been caused by shortages as a result of interruption of the flow of supplies from the Asian continent following wars fought by the Germans against Arab slave traders. The decree made it obligatory for traders to refund consumers for any price overcharge if convicted of overcharging. It provided that in passing penal sanctions against any trader

> the sum is to be immediately returned to the person injured. If the injured party is not present or difficult to find, the judge (often the district military commander) trying the case shall fix an ample period, two years, in which claims to be notified and must request the chief of the station of the locality of the injured party to issue a public notice (Circular No.118, January 8, 1898. Extract of German Decrees).

Many consumers, Africans being the majority, probably derived little benefit from this decree. For one, there was as yet no fixed maximum prices for the goods. It was left to the district administrators to determine whether there had been an overcharge in the transaction complained of. This meant that much depended on the consumer to prove his case. The majority of the consumers were illiterate and probably knew very little of the existence of this circular. Even if they had known about

it most of them would probably have found it difficult to prove they had been overcharged. For example, they would need to show that the price was unreasonable. The administrators compounded the problem by insisting that a complainant wishing to avail himself of the benefit of this decree had to show that he was commercially inexperienced or had bought the goods under pressure, deceit or fraud. There were other difficulties confronting potential claimants. There were no impartial judges to adjudicate. The district administrators exercised all functions - to apprehend, try and punish violators (Shivji, 1984: 3; Iliffe, 1973: 9). The administrators resided in towns while the victims were living in the rural areas. A major problem was the alliance between administrators and traders. The administration depended on traders to act as a political link between itself and the rural population. This naturally prevented the administration from taking any action that would antagonise them from the traders.

In sum, I would say the Germans left economic activity to market forces. In essense this meant prices were determined by traders. For these had the upper hand on the market since the necessary conditions for the operation of the market principles did not exist in Tanganyika's circumstances.

Two reasons seem to explain for this non-interference. First was the availability of goods in comparison to the level of demand. The majority of the consumers were Africans. Most of these had not yet entered the money economy. The market was to them perepheral (Rweyemamu 1973). Reliance on the market for essential goods like food, cloth or housing was confined to a

few urban dwellers (Ogot 1974). By and large supplies shipped from Asia and Europe were sufficient to meet the demand. The second was the ideology of laissez faire dominant at this time tended to discourage interference in economic activity. The 1898 decree was repealed in 1919 by the British administration (under the Defence (Control of Prices) Regulations 1919).

3.3.2. British Rule

3.3.2.(a) The Controls During Emergency Times 1916-1950

It was during the British administration that we find extensive state regulation of the economy. It is during this era that the foundations of the present price control regulations were laid.

Tanganyika passed into British administration under the terms of the treaty of Versailles signed in June 28, 1919. Under this treaty the Germans, who had been defeated by the allied forces in the First World War, were compelled to relinquish all their colonies in favour of the allied powers. Under British rule Tanganyika acquired a different international legal status. It was no longer a colony as it had been under the Germans. It was a mandated Territory under the League of Nations (Coulson 1982). This was a significant change because, unlike colonies which were treated as overseas districts of the colonial power (see Mittelman 1981 on Mozambique under the Portuguese, Fanon 1984 on French colonies), the terms of the mandate from the League of Nations imposed an obligation on Britain to prepare or nurse the territory for independence. No time schedule was fixed. The terms of reference simply stated that Britain should administer

the territory in such a manner that the material, social and moral well being of the inhabitants would be promoted. The article read

> the mandatory shall be responsible for the peace, order and good government of the territory, and shall undertake to promote to the utmost the material and moral well being and social progress of the inhabitants. The mandatory shall have powers of legislation (Laws of Tanganyika 1928, Revised, Vol.111).

British constitutional law theory drew a sharp distinction between colonies, protectorates and dominions. In the case of Protectorates and Trust territories the British government recognised that the territories would eventually get their independence. This would necessarily have meant a different approach in social and economic policy since, as stated in the terms of the mandate, there was an obligation to prepare the inhabitants for independence. The question is whether the British did make the same distinction in terms of their economic interests as they did in constitutional theory? On this point Brett has made the following observations which seem to me quite fair. He says

> any difference was one of style rather than substance. It lay in the manner in which the fundamental assumptions of colonial rule were articulated (Brett, 1973: 54).

Andrew Coulson supports Brett's views. He argues that in economic terms Britain pursued the same objectives in all its overseas territories irrespective of their individual legal status within the international community (Coulson, 1982: 29). The objectives were summed up by Baldwin, a leading conservative, in his 1929 address to the party conference where he said

> If you sum up what our ideal is to find permanent employment, you may sum up in this way: I think that is the modernisation of industry

> at home and the multiplication of markets overseas ...... And that has caused us to look once more at the development of our colonies (Brett 1973: 74).

In official thinking, the overseas territories were thus seen as areas of immense economic potential; as markets for UK manufactures; as sources of cheap raw materials and cheap labour; and as job centres for absorbing the unemployment from the colonising states.

These views were instrumental in shaping British colonial policy in Tanganyika, as in other colonies, and in modelling the socio-legal institutions that were set up during this period.

In the early days of British rule, the country was administered by a military governor. This was inevitable because the territory had just changed hands from the defeated Germans to the British and peace and stability had not yet been fully restored. Authority to legislate locally lay with the General Officer commanding the forces. Using his powers under the Supplies and Services (Transitional powers) (Colonies) order in Council 1915 the governor issued a decree, the Defence (Control of Prices) Regulations 1916 empowering military commanders to control prices in their areas of command.

On the establishment of civilian administration in 1918 authority to legislate was transferred to the civilian administration. Primary authority to legislate lay first and foremost with the British sovereign. This was provided under the Foreign Jurisdiction Act 1890. Under this Act, the sovereign could legislate by such instruments as: "Orders-in-Council, proclamations, letters patent warranty and instructions to the governor" (Laws of Tanganyika

1928, Vol.111).

Accordingly, the Tanganyika Order-in-Council 1920 was promulgated on the 22nd July 1920. It established a system of courts and prescribed the laws applicable to the territory. Article 20 of the Order-in-Council stated the applicable laws to be

> the substance of common law, principles of equity, Statutes of General Application, Ordinances and proclamations passed in and for the territory. (Laws of Tanganyika, Vol.111 1928: 6-19).

Under this Order-in-Council the Governor issued the Price Control Ordinance 1920. The price control proclamation was issued under emergency powers as part of defence measures to restore law and social economic order following the end of the First World War. During the war Tanganyika in common with many other countries, suffered from acute shortages due to disruption of foreign trade. Import deliveries were infrequent and irregular. The Germans had blockaded the east coast during 1914/15 thus closing the colony to external trade. Trade in the territory was severely affected by war. With the exception of a few shipments of foodstuffs for the consumption of the civil population, obtained by sea from the British colony of India, Tanganyika had to depend on supplies from neighbouring territories with cargoes conveyed by dhows. The trading position of the territory was further hampered by the existing German currency which was not accepted as legal tender in the other British colonies of Kenya, Uganda, Malawi and Zambia. Agriculture had almost ground to a standstill. Locally-grown foodstuffs were requisitioned for troops.

The blockade and lack of shipping facilities meant that the few essential commodities available could be sold at exorbitant prices. Legislation was necessary to control prices in such an abnormal economic situation.

Briefly that was the socio-economic context under which the Control of Prices Ordinance 1920 was passed. It is appropriate to analyse the content of the law, the machinery that it set up to control prices and the extent to which it was possible to solve the problem.

The ordinance consisted of ten clauses. Under the first clause the governor delegated powers to district administrative officers to fix maximum prices for their districts (section 1). An administrative officer could also by public notice

a) restrict the sale and delivery either by wholesale or retail, or

b) restrict the movement of any merchandise in his district; Section 2(a),(b).

Any person found selling, delivering or exporting from a district any commodity under control without a written permission from the administrative officer committed an offence. The penalty was a fine not exceeding Sh.1500.00 or imprisonment not exceeding six months or both. In addition, depending on the seriousness of the offence, the merchant could have his licence revoked. In Karioki s/o Gachohi v. R[1950] the East African Court of Appeal held that the Traders Licencing Ordinance (cap.279) conferred discretionary powers to the court to make a licence cancellation order, in addition to any other lawful punishment imposed under the Price Control Ordinance. Under the 1920 Ordinance the district

administrators could fix and publish the maximum prices from "time to time", section 3. They could also restrict the number and nationality of traders allowed to import or deal in specified commodities, section 2. Implicit in these provisions is the fact that the controls were ad hoc. The controllers could intervene any time they thought it necessary. It was an offence to "offer for sale or purchase any article at a price exceeding the fixed maximum", section 4. The ordinance also made it illegal for any person, "having possession or control in the course of trade or business of any article for which a maximum price had been fixed to hoard or attempt to hoard or refuse to sell the same upon tender of the maximum price fixed or impose any condition in respect of the sale", section 5.

Clause six empowered the administrative officers to call any trader to "produce his books of account or other trading records for inspection". Clause seven authorised administrative officers or such other persons they might authorise to, "enter into or upon any shop, store or other premises of any trader for the purpose of obtaining any information he may require in relation to any imported food stuff or other merchandise", section 7. Clause Eight exempted from control merchandise for military consumption. Clause Nine was a general penal provision. It read

> Any person who contravenes, or attempts to contravene, refuses to comply, obstructs, or produces false statements shall be liable to imprisonment not exceeding six months or fine not exceeding one thousand five hundred shillings, or both."

It is now appropriate to examine how these regulations were enforced. It was comparatively easy to control prices through ad hoc administrative orders during this time. Several factors

made this possible. The demand for imported consumer goods was low, restricted to a small fraction of the population. Import and retail trade was in the hands of a few businessmen. This made the task of policing simpler. Moreover, the increases in prices that occured this time were caused by a few identifiable factors such as transport, freight, shipping and insurance. Price increases were not complicated by factors that are found in modern economies like wage pressures, capacity underutilisation, government expenditure and so forth. Some considerable measure of price stability was achieved after the imposition of these controls. In a 1940 report from the Member of Finance and Commerce it was acknowledged

> The controls have been so affective that we would have liked to preserve them in peace time. But the draconian provisions of Defence Regulations cannot stand the criticism of international opinion (Statement by Member for Finance and Commerce, Hansard, March 1940).

Price stability was assisted to a significant extent by the importation of goods facilitated by Tanganyika's agricultural and mineral exports, especially the export of sisal for which Tanganyika was in the lead and diamonds (Coulson 1982).

However, it could be argued that the effectiveness of the 1920 Price Control regulations in curbing unnecessary and unjustified price increases was reduced by a host of interconnected factors: One factor was the lack of a formal enforcement machinery. This was a shortcoming in the law itself. As noted above, there was no adequate and independent enforcement staff. All functions - of determining the maximum prices, publishing them, inspection, apprehension and prosecution of offenders, lay with the administrative

officer. The administrators did not have the resources in terms of sufficient manpower, transport or money to carry out all these functions. There were only twenty District administrative officers in an area of 364,900 square miles and a population estimated at seven million (Coulson 1982, p.10). Second, the absence of detailed rules and provisions to guide and control the exercise of the powers of administrators meant they had wide discretion. They had discretion to establish standards and procedures to be adhered to by businessmen, to dispose of cases of disputes and to revoke licences. The administrators exercised important functions in the process of law: quasi legislative and quasi-judicial as well as administrative and managerial. These were formidable powers linking the process of law with the process of economic regulation. Third, great reliance was placed on voluntariness from and cooperation from traders and consumers for compliance. For example, Kimble 1970 notes of the reluctance of District administrative officers to prosecute violating traders (Kimble, 1970: 15-25). Two reasons accounted for this attitude. One being that the traders were an important political ally to the colonial administration. They provided a mechanism through which the administration got informed about the popularity or resistence to its policies. The other being the concentration of powers which made it impossible for an aggrieved party to appeal. The only organ of appeal was the High Court. Finally, even if prosecuted the traders, as we shall see, often got acquitted on one or other technicality of the law. As a result, there was virtual immunity from penalties for violation. Some examples of cases decided during this time will help illucidate these points.

The Ordinance stated that the administrative officers "may from time to time fix and publish maximum prices for the sale of any foodstuffs or other merchandise", section 3. It did not lay down the factors that would be taken into account in fixing the prices. No procedure of making the orders was prescribed. No method or language of publication was specified. The question of the adequacy of the publication of the orders and the procedures led to difficulties in the prosecution of offenders. This is demonstrated by the cases of Takars Hirji v. R [1950] and Mwangi Githigi v. R [1950] in which these two aspects were tested befored the courts.

In Takars Hirji v. R., the appellant had been charged and convicted in the subordinate court for selling maize at a price in excess of that fixed by the District Commissioner for Maswa District. There was nothing to show that the price-fixing order had been displayed by the relevant body to bring it to the notice of the appellant. The order was, however, referred to in the court by the prosecutor, but no certificate was filed as to its contents. The trial magistrate took judicial notice of the administrative acts of making such price control orders and convicted the appellant. The conviction was quashed on appeal on two grounds: First, that there was no acceptable proof that the order had been made; and second, that the notice had not been duly published. Hamlyn, Ag.J. held: "It is an essential requirement of the law that the maker of the order shall display to the public notice of what regulations he has made," and further that "Delegated legislation affecting the subject without his knowledge must be duly published. The Magistrate is not entitled

to take judicial notice of matters within his personal knowledge without proper proof by admissible evidence."

There was another ground on which the conviction in this case could have been quashed. That is failure by the administrator to disclose to the affected party the relevant evidence on which he had fixed the prices.

In Mwangi Githigi v. R. [1950] the issue concerned the method of publishing the price control order. The initial order fixing fees or service charges, for a hair-cut was published in the government Gazette. A subsequent order which fixed lower charges was not published in the same government Gazette. The accused was charged with contravening the amending order. It was held that "since the amending order was not published in the same medium as the original order, no conviction could be sustained."

The problem of prosecuting offenders was particularly great where the price control order had been signed by a person other than the District Commissioner himself.

In the case of Shamji Harji v. R. [1941], the appellant was convicted of selling goods at an excessive and unjustified price. The price control order was not signed by the governor, instead it was signed by the financial secretary of the colony on behalf of the governor. The court accepted that the order was valid in this case and upheld the conviction. In upholding the conviction the court seems to have taken into account the

the status of the person who signed the order. Obviously, a person, such as the Financial Secretary of State is one who could exercise the functions of the governor. The law did not intend the governor to exercise all the powers personally. To hold so would slow down the business of government. It is doubtful, however, if a similar liberal interpretation would have been accorded to orders signed by the secretary to the District Commissioner. There is a general rule that subdelegation to subordinate staff of rule-making powers must be within the law. Strict proof of the legal authority to subdelegate is needed (Bayne 1969, Wade 1982: 719). In this context the holding in Shamji's case seems of limited authority - an exception to the general principle on subdelegation.

The provisions regarding hoarding and conditional sale imposed a formidable burden on the prosecutors. The case of R. v. Dharamsi Jesang [1945] is a good example of the technicalities involved. The accused was charged with hoarding in that he had stored in his premises goods not in his "normal course of business". The goods in question included bag loads of sugar of which there was severe shortage in the open market. The accused was acquitted on two grounds: one, being that he was not a licenced businessman and hence there was no dealing in the goods; the other was that no offer to purchase the goods had been made. The judge went on to hold that for a successful prosecution for the offence of hoarding, the prosecution need to simultaneously establish the following elements: (i) that the person charged was carrying on the business of selling the goods in question, (ii) that he had such goods in stock, (iii) that an offer to purchase the

goods or some of them had been made, and (iv) that he had refused to sell them. The ordinance itself gave no definition of hoarding. But it seems to me the interpretation put by the courts on this provision defeated the object of the legislature, which was to curb hoarding. By imposing a condition that hoarding could only be committed first and foremost, by a person whose business was to trade in goods, the law allowed traders to hoard in premises of their friends, family members or even their own premises, not normally used for trade. It also seems illogical to require that there be an offer to purchase, as one of the essential conditions for the commission of the offence. By its very nature, "hoarding"[1], implies hiding of goods. Nobody would be expected to offer to purchase hidden goods.

The regulation giving administrators powers to order any trader to "produce his books of account or other trading records for inspection", was equally vague. This prompted the High court to hold that no offence could be committed if the inspecting officers failed to specify their requirements. This was the holding in the case of R. v. Jagjinan Patel where the interpretation of this rule arose. The apppellants had been convicted of "failure to keep books of account or other records appropriate to their business". The charge alleged that the appellants failed to produce their stock-books when required to do so by the price controller. Instead they had submitted a cash-book and an invoice-book. The conviction was quashed and appellants were acquitted. The appellate court decided that the keeping of a separate stock book was not necessary provided a trader kept records; and that

1. The Longman Dictionary defines a "hoard" as an often secret supply, e.g. of money or food, stored up for preservation or future use (Longman Family Dictionary 1984 (Chancellor Press) p.330.

it was up to the prosecution to prove that the price controller's requirements as regards the production of books were made clear and to show in what ways the records produced could not satisfy the requirements of price-controller.

The stock-books in Patel's case were required by the price controller to monitor the movement of respondent's stocks of goods. Cash books and invoices would not reflect, for example, how much of the item was in stock or from where was it imported.

Legal technicalities apart, there were numerous other problems, connected with measures, weights, standards and quality that rendered evasion of the Price Control Ordinance easy. One device of evasion was short weighing. Many commodities were being sold by measure rather than by weight. The instruments used to measure were tins, cans and mugs. One mug or can could weigh anything between 15 to 30 ounces, depending on the way it was filled. For example, a 15-ounce tin designed for cooking oil would be used to measure salt, sugar, karosene or cotton wool. The traders erroneously thought that a tin of a given size would weigh the same irrespective of the nature of the commodity. Obviously the same tin full of salt would weigh more than one filled with cotton wool. When the government introduced and tried to enforce the use of special standardised tins and cans, which, when filled with grain, gave the correct weight, the marketeers devised new ways of evasions. They cut round pieces of wood of the same colour as the cans or tins and fitted them as shelves some inches up the bottom of the mugs, tins or cans. When the authorities stopped this, the marketeers switched to beating up the bottom of the

tins or cans. And when this was also stopped, they switched to another method. They cut down the tops gradually and over a long period of time so as not to be immediately noticeable. The effect of all these shrewd practices was that none of the measuring tins bore any relation to the original sizes (Report on Tanganyika 1940-47, London, HMSO, p.47).

Then the government tried to halt the practices by legislating on compulsory use of weighing scales under the Weights and Measures Ordinance. The marketeers resorted to scratching out the figures on the scales or using broken weighing stones. This they did despite the court holding that possession of a defective weighing instrument for use in trade was an offence per se.

This was the holding in Attorney General v. S. Patel [1939] where possession of a weighing stone, with a piece broken off, was held to be wrong per se since the stone could be used by an unsuspecting employee.

Despite all those shortcomings, the Price Control Ordinance 1920 remained unaltered, and unamended until 1943 when the Defence (Price Control) Regulations were passed. This was followed by the Defence (Price Control) Regulations Consolidation Order 1946.

Before analysing changes introduced into the law by these amendments, it is appropriate to sketch out, briefly, the developments on the socio-economic scene that necessitated these changes.

Between 1920 and 1939 there was considerable stability and growth in the economy. This was a period when the colonial administrators adopted much more actively development-orientated policies in an effort to intergrate the territory's economy into that of the metropole. Sir D. Cameron, the governor of Tanganyika, acknowleged that

> The first object of the Government is to induce the native to become a producer directly or indirectly, that is to produce or assist in producing something more than the crop of local foodstuffs that be requires for himself and his family (Document No.215/121/148 dated August 5, 1926, National Archives, Daresalaam).

Two sets of policies were pursued towards that objective. One set of policies related to inducing peasants to produce enough food crops and cash crops for export. The other set, related to encouraging settlers to invest in Tanganyika, where, with the help of cheap African labour, they could produce raw materials needed by industry in the metropole.

As regards the first set, peasant-cultivation of sisal, rubber, coffee and cotton was encouraged. New crops were propagated in areas where the climate was suitable. A start was made with public health facilities to control diseases. Schools were built by the government with Missionary schools taking the lead. Above all, restoration of peace and order provided the minimum of public security necessary for development.

As regards the second set of policies, all German property - plantations, mines, banks - was expropriated. These were auctioned to British nationals. The German nationals were not allowed to bid.

All land within the territorial boundaries of Tanganyika was declared government property. Land under occupation by Africans was treated as being occupied under "Deemed Rights of Occupancy". It could be revoked any time by the Governor in the "public interest". People could only possess limited interests in land, termed "leases", granted by the government for period of varying duration. This law ensured that fertile land could be available to the government for distribution to those who could develop it. In some areas Africans, lacking in resources and skills, were pushed to the marginal land under this law.[2] Railways and roads were constructed. This made access to the hinterland possible and boosted agriculture.

For those companies or persons wishing to invest in mining or plantation agriculture, but who lacked resources, loans and grants were made available by Britain under the East African Loans Act 1926.

To ensure a constant supply of labour to the mines and plantations, the poll and hut tax system was retained. In addition, the Master and Native Servants Ordiance 1923 was passed to regulate the terms of service. Under this Ordinance an employee was obliged to "carry out the service he has agreed to perform". The law introduced a ticket (called 'kipande' in Swahili) system of work whereby a workman guaranteed to complete a specified number of

2. This is shown clearly by the Meru Lands Case 1957. In that year the government moved 3000 Meru from their land and replaced them with Europeans. The Meru appealed to the United Nations, but the British ignored its resolutions. The best general account of this case is, Liebenow, J.G. (1963) "Responses to Planned Political Change in a Tanganyika Tribal Group", in American Polit. Sci. Rev., Vol.50, 442; Iliffe, J. (1972) "Tanzania under German and British Rule" in Cliffe, L. and Saul J.S. eds. (1972), Socialism in Tanzania, (East African Publishing House) pp.8-24 at p.19.

pieces of work to be determined by the employer (Lawrence, 1971: 112). At the time of signing the contract, the workman would not know the nature of the work. The work was payable on the basis of 30 days, but most workmen took longer to complete the work. As a result they were not paid for the extra days spent. At the end of the work some of the workmen returned home with only a few possessions more than they took away with them (Coulson, 1982: 45). A workman who, for one reason or another, gave up the employment could be arrested by the employer and charged with a criminal offence - "decoying".

To facilitate the exploitation of resources, Britain invested in infrastructural services - harbours-construction, communications, road and rail transport and provided finance for military and administrative expenditure.

Efforts were also made to organise African farmers in the productive and distributive trades into cooperative ventures under the Cooperative Societies Ordinance 1932. Expenditure on African-orientated agricultural support services was increased.

Consequently, the period 1920-1940 was one of relatively stable economic position. Supply and demand conditions rarely changed so rapidly as to bring about sudden and sharp increases either in retail prices or in the profit margins of traders. There were no substantial short period fluctuations in the conditions of supply of imports. Fluctuations in demand did occur. But such fluctuations were often small, depending on small changes in the flow of money incomes. Elasticity of supply of goods was

relatively high and increased supplies of imports were readily forthcoming. And whatever rise in the prices of imports did occur, these were part of the general rise in the prices of these commodities and did not result in significant increases in the profits of traders. Again such increases in the prices of imports were on the whole gradual and they did not impose serious strain on the community. There was thus a slackening in the demand for strengthening the price control regulations. This recovery was interrupted by the Second World War.

After the Second World War there arose frequent, rapid and substantial changes in the supply and demand for goods in the country. These changes brought about discontinuous and sharp increases in prices. There was a sharp contraction in supply caused by the closure of some of the sources of supplies; by high costs of supply due to war or shipping restrictions; by longer and delayed delivery for imports and by the drafting of the actively-productive force into the military. Black marketeering, hoarding and sharp increases in prices became rampant (Kimble 1970).

A report of the Committee on Rising Prices in 1946 showed widespread profiteering. The report notes

> Goods were being sold at exorbitant prices whenever there was a slight shortage and that one man had made 75,000 rupees in two days from a canteen business in Tabora because the (government) troops did not get their ration in time (Hansard, March 21, 1946: 189).

The Committee concluded that there was an urgent need to strengthen price controls so as to protect the consumer and the community

in general.

Accordingly, regulations were drafted. The Defence (Price Control) Regulations Order 1946 were then presented to and got approval of the Legislative Council. Explaining the reasons for the order the Member of Railways, stated the reasons and objectives as

> To give statutory power to the existing price control orders and to give the government powers that would be necessary if circumstances arise in which it becomes essential to extend the controls and concluded that the "measure is essential for the defence of the economy during the times through which we are passing at present" (Hansard, March 1946: 560).

The regulations introduced two measures: one, was the imposition of a freeze on all prices to the level prevailing on or immediately before the outbreak of the war (i.e. August 1939); and two, the establishment of a regulated system of distribution. When a committee was set up in 1947 to examine complaints of rising prices it noted that the prices had not been publicised and compliance depended very much on cooperation from traders. It said prices continued to rise because sellers had also switched to products with new brand names, new styles or relabelling of products to make them slightly different from those sold on the date when the freeze came in force (Report by Hon. Wakefield, Hansard, June 1947).

In 1948, the Defence (Price Control Consolidation) Order was proclaimed. It broadened the scope of products covered by price controls; established the profit-margin system of pricing and required all shopkeepers to display price lists. A detailed schedule set up the percentage margins which could legally be

added to the costs of the goods at various points of sale to arrive at prices. For example, the wholesale, subwholesale, and retail margins for clothing, bedding, drugs, chemicals, foodstuffs and furniture, were fixed as follows:

First seller margins	7½% - 30%
Second seller margins	2½% - 10%
Third seller margins	2½% - 10%
Seller to Final consumer	10 % - 25%

Under this price-fixing methodology, the cost of the product was first calculated and then the permissible profit margin was added to arrive at the maximum selling price. All traders were required to mark the prices: on the containers, or on the item or by affixing a price tag.

The profit margin system of fixing prices had several disadvantages. First, the base period (i.e. August 1939) was particularly good for merchants. Many of them were already selling goods at unusually high profits. Secondly, it is unlikely that the schedule of profit margins was based on detailed knowledge of the trade in the diverse commodities covered. Thirdly, the wide range of the permissible margins covered wide opportunities for profit in individual products. Fourthly, when the landed costs of imports on the domestic market rose due to local factors, the importers received windfall bonuses from the automatic corresponding rise in the margins. This was the case where there had been no rise in costs at the source of supply for the commodity. Furthermore, control by margins removed the traders' incentive to reduce costs or look for cheaper sources of supply. On the other hand, the system offered temptation to traders to fiddle with invoices in attempt to inflate the cost figures.

The 1948 regulations established the office of the Price Controller. The Price Controller was an appointee of the Governor. He was not an executive officer. The Price Controller could be appointed for a specific product or range of products. His functions were exercisable under the "general and special directions of the Economic Control Board". S. 3(4), Price Control Regulations 1948.

The Price Controller was empowered to fix wholesale and retail prices of any goods "irrespective of the cost to the seller of the goods sold, or by prescribing that the sale price shall not exceed the price at which they cost the seller..... plus a stated sum or a stated percentage of that cost price" S.4(1)(f).

Thus in fixing prices, the Price Controller was not bound to adopt the costs as submitted by a merchant. He could depend on his knowledge. In practice, however, the Price Controller would not fix prices below their costs, since otherwise there was a danger that the commodity might not be forthcoming. The section was largely meant to prevent traders from challenging the prices fixed by the controller on grounds such as failure to disclose information on the basis of which prices had been fixed; or the prices being unreasonably low compared to costs and also as an incentive to cost effectiveness.

The Price Controller had discretion to publish the price-control orders in the "government Gazette or in such other manner as he may consider necessary to bring the matter to the

notice of the public". S.4(1). The courts put a restricted interpretation on this provision. They held that although there is "no statutory obligation on the price controller to publish orders, it was incumbent upon the crown to prove that prices had been fixed by the price-controller and by what means the controller apprised the public and those affected by his orders". This was the holding in Jesang Popat v. R. [1949]. Thus where the price controller fixed the prices and displayed them at the District headquarters, the publication was held inadequate, as was in Gulabchand s/o Ramji v. R. [1950]. To forestall the unhappy results that might have arisen from the holding in Gulabchand's case, an amendment was made to the section in 1949 which read that the "list of prices fixed shall be displayed at such places in the territory as the price controller may consider necessary to bring the matter to the notice of the public and such prices, shall, when so displayed, be deemed to be sufficient notice to all persons"...S.4(1)(3).

In the case of Abdulla Kanji v. Rex [1950], the accused was charged with profiteering, in that he had sold maize at a price greater than the maximum controlled-prices fixed by the price controller for the area. The list of controlled prices was not displayed anywhere near the appellant's premises. Sheridan, C.J. held that under the new provisions of the price control law

> "the display or non-display of the price control order was immaterial to the commission of the offence" since "the publication of the price list did not depend on the display of the list at the trader's premises".

With regard to the keeping of records, the 1948 Price Control regulations were more specific than the corresponding provisions in the 1920 Ordinance. The 1948 regulations required every manufacturer, producer or trader, to keep such books of accunts or other records as would clearly show:

a) his stock of goods on hand;
b) a reference to source of supply of the stocks;
c) the cost, quantity and quality of the goods;
d) expenses incurred in carrying them;
e) a detailed record of cash sales to customers.

This provision not only remedied the inadequacies in the law consequent upon the decision in R. v. Jagjiwan Patel [1948], but also helped price controllers to get the information needed to fix prices and monitor distribution.

Appeals by persons dissatisfied with decisions of the Price Controller lay to the Appeals Committee, whose decisions were final.

Not much can be said in general terms about the finality of the decisions of the Appeals Committee due to the lack of decided cases. But Clause 27(2) providing that the decisions of the Appeals Committee "shall be final" tended to restrict judicial review. It should be noted that the thrust of the regulations during the war period was to extend executive discretion. The regulations were couched in a manner that restricted judicial review. The courts resisted this legislative tendency. Through the device of interpretation they could always find ways of reviewing the acts of the price controllers. For example, the courts did entertain appeals from decisions of price controllers if the decision was based on improper or inadmissible evidence: Takars

Hirji v. R. [1950]; or offended the rules of natural justice as was in the Sheikh Brothers v. Members of Control Hotels; or failure to observe procedural requirements as regards publication as was in Mwangi Githigi v. R. [1950], or where there had been a subdelegation as was in R. v. Mitha [1960].

Despite this judicial attitude, the finality clause was by no means completly ineffective. It still acted as a deterrent to potential plaintiffs. This is reflected by the small number of cases reaching the courts from appeals against the decisions of the price control administrators.

Several problems arose in the course of implementing the Defence (Price Control) Orders 1948. One problem was that of translating the provisions of the orders into workable and effective regulations. For example, sellers were required to fix prices on the basis of those which they had charged for the "same or similar commodity" on or before August 1939. There was no definition of what constituted "similarity" in commodities. Was it to be determined by the use to which the commodity is put? Or by its content or quality? If it were to be determined by the use, would a change in style or design, that substantially affected the use, render a product dissimilar to others where their chemical composition was the same? The interpretation of this provision was brought to the test in the case of R. v. J.H. Gidoodmal [1944]. The appellant had sold "Van Heusen" shirts at the same price as English or American shirts, on the ground that they were similar. The court held that the words "similar or like" in the regulations did not mean identical, but meant

substantially similar in quality.

If a seller possessed a new commodity for which there was no similar product under the above definition, he was instructed to peg his price to that charged by the most closely competitive seller of goods of the same class. S.2(1) Defence (Price Control) Regulations 1948.

It is clear that maximum prices of goods could not easily be determined from the rules prescribed in the regulations. Changes in style, grade or specifications automatically put the determination of maximum ceiling prices into the subjective considerations of the traders. When faced with the pricing of items that they did not handle in August 1939, many traders resolved their doubts by deciding that they could not find similarity nor a closely competitive seller. In this way they were allowed to set prices by the cost-plus method. The traders were given a formula on which they could set prices on the basis of costs and a permitted margin. The formula often gave room to continuous escalation of prices as costs rose. To stop this, it was provided that once price-ceilings had been fixed on the basis of the formula, the prices remained fixed and could not be altered without the approval of the price controller, (S.3).

Evasion of the controls became frequent as soon as suppliers and sellers discovered that by simply switching styles or making minor changes to their products they could escape readily from the price-freeze. By concluding that the modified item was not similar to the August 1939 product, traders could then be

left free to fix prices that were higher without being brought to book. A good summary of the evasion is that given by Tanganyika Trade Report for 1950. It observes

> New brands of manufactured foods appeared daily on grocers shelves at ever-increasing prices. In clothing the style alone was enough to make the item new. Where style was stable new names were put on familiar products (Annual Trade Reports 1950, para.21).

To curb this tendency the government took action to institute remedial measures through complementary measures such as strengthening controls over distribution, vigorous enforcement and exhortation.

The price freeze technique also suffered from problems of enforcement. A price freeze, in conditions of excess demand over supply, perpetuated black markets. Administratively, the resources of the price controllers were stretched to the maximum. The vagueness of the legal rules meant the controllers had the task of constantly working out guidelines for the pricing of new commodities. On the other hand, the controls were resisted by traders who saw in them a restraint on opportunity to earning super profits. For the conditions in the market were clearly shifting in their favour.

Immediately after the war there were demands to relax the controlls. The wartime emergency regulations were scheduled to expire in December 1951. But renewed pressure to dismantle the controls began as early as 1950. In the course of the Legislative Council debates of that year, the Member for Finance and Economics pledged that government policy since the war had been to reduce actual control as much as possible as the controls were no longer necessary (Tanganyika Legislative Council Debates, Hansard, 1950,

29th Session, para. 241). Two reasons seem to account for this demand. One was the administrative factor. The other was international opinion - freedom of commerce. With regard to the first, experience had shown that enforcing the controls could only be effective where there is either full cooperation of consumers or a very large enforcement staff or control of distribution. Unfortunately these conditions did not obtain in the colony, as I am afraid in practically every other colony.

Full cooperation from consumers could not be relied upon since there was no organised consumer class. There was, and indeed there still is, no consumer organisation behind which consumers could exert influence as an organised pressure group. The majority of individual consumers, due to deficient knowledge and lack of means, were ill equipped to exercise their rights on the market.

With regard to a large enforcement staff, the government was in a usually difficult position. No competent personnel could be recruited locally. And since the controls were seen as temporary there was no incentive to open local training institutions. Recruitment from overseas was expensive. Control of physical distribution was equally difficult to effect. The territory was large with too many points where goods entered. There was also transport and communication barriers which made it difficult to police.

Apart from the administrative bottlenecks, it was strongly held that the retention of wartime controls was an affront to freedom of commerce. In the words of a leading member of the

legislative council, the controls were "indefensible to criticism of international opinion" (Hansard, 1951, para. 118).

Demand for decontrolled prices were further enforced by the steady economic recovery in the colony facilitated by the boom in mineral and agricultural exports. Tanganyika was the world's leading exporter of sisal which was in demand by shipping companies. It also exported rubber, coffee and cotton. Gold, diamonds, tin and cobalt were the principal minerals exported. Consequently, the import capability was enhanced. From 1949 the government began speedy decontrol. The price control ordinance was rarely invoked during this period. The paucity of control orders stands as clear testimony. By early 1950 there were only 30 items officially subject to control in the schedule. In practice, says Kimble, none of them was controlled (Kimble 1970). This can be compared with 50 classes of goods under control in 1946 (Legislative Council Debates, Hansard 1951: 120).

However, the policy move towards decontrol was shortlived. An interplay of several factors combined to revive the controls in 1951. Let us examine these factors. These were: the outbreak of the Korean War 1949-53; expansion of government expenditure; publication of the cost of living report 1950 and the drought 1949.

The Korean War interrupted the smooth flow of goods from Asia where a substantial amount of imported goods came from. The commodities affected by the war were textiles, leather goods, baby foods, household utensils and other imported foods.

The launch of the first Five Year Development Plan and the grant of substantial wage increases to civil servants in 1948 under the recommendations of the Holmes Commission increased government expenditure by a substantial amount. The drought of 1949 impaired local food production and led to a terrible famine (commonly known as "kinjala" in Kiswahili i.e. year of famine).

As a result of these developments there was a significant build up of inflationary pressure by 1951. A select committee was set up to examine the cost of living among African manual workers. When the committee was first mooted there was a big movement among dock, railway and plantation workers in rousing public opinion about the cost of living. The report on cost of living was produced in 1950. This report and the details are so good and the suggestions were so comprehensive that the government was left in no doubt that controls had to be reintroduced.

The select committee mentioned several instances of what had contributed to the cost of living. First, they established that the wage increases granted to workers were minimal and were not enough to pay for the cost of living. They found that while the price index of goods consumed by urban dwellers had gone up by 40% between December 1948-1949, the figures of salaries and wages had risen by 4% only. A similar result could be derived from the general cost of living index compiled by the statistical department. While the general price index rose by 18% between 1949-50 per capita incomes had risen by 10% only. The second aspect was rent. There was no rent control and, to borrow the words of the committee itself "there seemed to be no end to the

rise in rent". Landlords raised rents every time there was a wage increase irrespective of the state of the premises. The third was prices of fresh foodstuffs and vegetables. The government did not control prices of these commodities. The problems brought by lack of control were bluntly summed up by the committee:

> The recent rise in coconut prices is very high indeed. Laymen who do not know the cost of producing coconut can certainly not understand how all of a sudden such big rises can take place and be justified (Legislative Council Debates, Motion of Price Control Bill, Hansard, 1951: 241).

Another point is that there seems to have been no coherent government policy on agricultural prices. In some cases prices were guaranteed whereas in others prices were allowed to fluctuate. It was difficult for consumers to find how some of the prices were fixed. Take the case of maize which was an essential item in the family budget. While the retail price to the consumer was Tsh 5.00 per tin the producer did not get more than fifty cents per tin. The difference between the two prices was quite substantial.

3.3.2(b) The Controls in Peace Time 1950-61: Changes in Policy and Institutions of Control

The committee recommended the reimposition of price controls. The committee found that there was a link between rising prices and labour unrest especially in sisal plantations and urban areas. Introducing the Second Reading to the Price Control Bill 1951 the Member for Finance did not specifically mention this fact. But there is no doubt he had this in mind when he said

> Hitherto price control has been effected by emergency legislation. It has been government policy since the war to reduce control of prices. Unfortunately world conditions are

> such that it will not be possible to do without price control and it looks as if at the moment price control will have to be increased in scope rather than the opposite (Price Control Bill 1951, 2nd Reading, Hansard, August 29 1951).

The publication of the report on rising costs of living among manual workers which blamed the problem on rising consumer prises was instrumental for the reimposition of price controls in 1951.

There were several differences between the earlier ordinances and the 1951 ordinace. First, unlike the earlier orders and ordinance, the powers of the price controller were this time limited to goods and services declared by the schedule. In the earlier legislation the necessity of control varied from time to time according to whether there was shortage of supply. That shortage of supply could be territory-wide or purely local. Second, there were detailed rules on the price-fixing methodology for imported, locally manufactured good and retail sales. The idea was to link prices to cost. The methodology was called "cost-price". The government's reasons for changing from the control of traders' margins to the "cost-price" rule were that control by percentage margins was a disincentive to traders to cut costs. Since traders were guaranteed profit irrespective of costs the consumer could be unfairly made to shoulder the burden of costs which were avoidable. Also, the percentage margins method offered temptations to traders to tamper with invoices to inflate costs. Moreover, the system of ad hoc controls was considered undesirable. It could lead to discriminatory and arbitrary decisions (Statement by Member of Finance, Hansard, August 29, 1951).

A new system of fixing maximum prices was legislated under the 1951 ordinance for imported, locally manufactured goods and retail sales.

In the case of imported goods, the "cost-price" was constituted by, "the free on board price at the port of shipment plus charges actually and necessarily incurred on shipping, freight, insurance, commission, import duties, handling and wharfage, clearing and forwarding and railage or porterage charges necessarily incurred", section 2(1) Price Control Ordinance 1951.

The price controllers had power to disallow any cost item if they thought it had been unnecessarily incurred by the importer. The duty was on importers to guard against unnecessary costs. This provision was a big improvement compared to the 'cost-plus' rule in earlier legislation (i.e. under the 1948 regulations).

For locally-manufactured goods the "cost-price" would comprise: the cost of "material plus wages and salaries, fuel and power; rent, rates and taxes incurred on the premises; plant and machinery maintenance incurred in the manufacture of that unit and duties", section 3. Again the costs had to be at a rate acceptable to the price controller; section 3(2).

In the case of retailers (where goods changed ownership by sale for the second or subsequent time) the "cost-price" to the seller consisted of "the net price paid for the unit plus the costs of transport ordinarily incurred on such unit plus cost of packing together with loss (if any) due to breakages

in transit", section 4. It seems to me that the 1951 Ordinance had a very rigorous cost criteria to guard against inefficiencies.

The Principal Secretary to the Ministry of Commerce became the price controller. This took away the Governor's powers to appoint ad hoc price controllers. The idea was to equip the government with continuous price control powers.

A National Price Control Advisory Board was also set up. It consisted of representatives from different sections of the society: the Chamber of Commerce (for whites), the Indian Merchant Chamber, the African Retail Merchants; one Liwali (chief), the Confederation of Labour and two members of the Legislative Council (to represent consumers). In the provinces, Regional Price Control Advisory Boards were established to advice the regional administrators. Some of the more stringent provisions in the preceding regulations were dropped. Those omitted included the provision which required traders to preserve their books of account for a fixed period; the rule compelling traders to give notice before ceasing to carry on business or ceasing to deal in price-controlled goods; the rule compelling traders to trade in essential commodities and also the regulation which made it criminal for traders to store price controlled goods in any place other than licenced premises.

Overall, most of the provisions in the earlier legislation were retained. Some new provisions were enacted. The most significant ones were those which aimed at improving and strengthening the enforcement machinery. These were: Clause 4 which made it compulsory

for all traders (not just those supplying price controlled goods) to issue purchase receipts or invoices to customers. The object of this requirement was to enable the price controllers collect the necessary information in case any product came under their investigation. (There is no such rule under the Regulation of Prices Act 1973.) There was also an incidental advantage in such a requirement in that where a large amount of cash trading had taken place there would be some records of that transaction and this acted as a safeguard to revenue.

Clause 20 was another important addition. This clause empowered the price controller to certify as to what he considered to be the true cost-price where there was a dispute. Similarly, where a price overcharge had been alleged, but no proof was forthcoming, the controllers certificate as to what he considered to have been the amount of overcharge was admissible in a court of law as proof of the facts stated. Above all, a certificate of a price controller could be used as evidence, sufficient to sustain a conviction on a charge of contravening the controlled prices. An authority to that effect is the cae of Jesang Papat v. R. [1949]. In this case the appelant had been convicted of selling goods at prices above those fixed, and published by the price controller. There was no evidence that the order had been published and publicly displayed as required by the rules. The price controller issued a certificate confirming the existence of the order and the fixed price. The price certified was lower than that charged by the appellant. It was held that the certificate of the controller constituted sufficient proof of the matters certified.

Clause 16 of the regulations imposed restrictions on the power to delegate authority for issuing control orders. For example, no junior officials could sign the control orders. That is not to say that the powers could not be exercised by persons other than those named in the Act. There is authority in the case of Shamji Harji v. R. [1941] for the proposition that a price control order signed by the Secretary of the territory on behalf of the governor is valid and that the courts must take judicial notice of all laws and orders having the force of law ([1941] L.R.K. 77 (H.C.)). Therefore delegation of powers is permissible to some extent. Clause 16 introduced another important element in that the price controllers could only validly issue orders after consultation with and approval of the relevant Minister. There was no such safeguard in the earlier legislation.

Clause 19 abolished the controllers' powers to conduct searches without a search warrant. Now a search warrant was essential. But exception was made in that if the controllers reasonably believed that the delay in obtaining a search warrant would defeat the purpose of the law such as giving an opportunity to traders to interfere with evidence e.g. removal of goods under investigation, they could conduct a search without a search warrant. In practice, however, the exception became the rule. Inspectors could always justify a search carried out without a search warrant on one or another reason (Legislative Council Debates, Prices of Goods Bill 1951, Hansard, 21 March 1951).

The recommendation of the Select Committee on initiating a policy of full physical control of the distribution of selected

consumer goods was rejected by the Legislative Council on the grounds that such control could only be effective where there is a very large enforcement staff - a resource which was not easily available locally and that the costs of implementing such a policy were prohibitive (Legislative Council Debates, Hansard, September 13, 1951).

With these amendments the Price Control Ordinance 1951 was passed to replace the Price Control Ordinance 1920. A number of control orders were issued under the 1951 law covering a variety of incidental matters. These related to the procedures of publishing and bringing to the notice of the public the control orders. According to the case of Mwangi s/o Githigi and Another v. R. [1950], the price controllers had a duty to cause notice of the orders to be given to all persons who in their opinion ought to have such notices ([1950] L.R.K. 72).

Other subsidiary legislation made under this ordinance covered the cost-price pricing system; the use of imperial measurements, etc.

In conclusion we may note that the 1951 Ordinance relied heavily on administrators for implementation. An important aspect of this price control law was the wide discretionary powers it conferred on the administrators. The Price Control Ordinance 1951 conferred on the controllers powers, which according to the words used, were limitless. Section 5 is a classic example of that wide discretion. It read:

> The controller may from time to time by order published in the Gazette or displayed in a prominent position in the district headquarters of the district to which such order applies, prescribe the type of packing, weight, size, quality and the processing and ingredients of any goods manufactured in Tanganyika (Price Control Ordinance 1951).

When a statute does not indicate any limits on the power, the courts are rendered incapable of controlling its exercise. The courts can only limit the exercise of a particular power within the boundaries set by the statute granting the power. Since in the common law tradition courts are required to find the meaning of a piece of legislation from the words used in the legislation itself, it would be difficult to see how they would be able to place limits on the exercise of a power which is plainly limitless.

The other marked feature of the price control legislation and administration during this period was the lack of formal machinery; the absence of detailed rules and provisions and reliance on voluntariness and cooperation. All powers under the Ordinance - of issuing control orders, apprehending and prosecuting violators and adjudication, were concentrated in the hands of administrators. And the courts, it seems, were prepared to entertain this anomaly under the pretext of giving priority to law and order. The case of Masumbuko s/o Marida v. R. [1950], is instructive. The appellant had been convicted of selling meat with bones at a price in excess of the maximum fixed for the area. The price order was not published nor displayed. The prosecution was conducted by a District officer. The trial magistrate took judicial notice of the administrative acts of making such orders and convicted the accused. On appeal the conviction was upheld. The judge regretted that the magistrate

had not recorded that there had been no formal proof of the order and that a District officer had been permitted to conduct the prosecution but considered these infringements not enough to quash the conviction.

Now this decision is obviously questionable in the light of the principles enumerated in an earlier case on similar facts in Takars Hirji v. R. [1950]. Here the court held that where the price of an article has been controlled by a local order and a contravention of that price restriction is alleged, there must be acceptable proof of the making of the order. Although the decision in Takars Hirji [1950] did not specify what would constitute acceptable proof, I think it would have been sensible to require that the maker of the order should display to the public what orders he had made. No magistrate or court is entitled to take judicial (or rather official) notice of a legal order whose existence has not been established. At least the court should have insisted evidence should be laid before it to show that the notice fixing the price of meat of that grade had been duly displayed. It is paradoxical to note that although such principles were well-established in other common law jurisdictions, some judges in Tanzania chose to ignore them.

We should also note that enforcing the control orders was difficult. For one, the government had no specialised agency for the control task. The controls were ad hoc. Also there was lack of cooperation from traders and consumers. Traders resorted to devices such as substandard measurements and lowering of quality to evade the controls. Consumers were not an organised group

and could not easily be mobilised to assist in enforcement due to deficiencies in education, mobility, communication. It is only a small section of the literate urban community who benefitted from the controls. This is probably why only a few cases reached the courts during this period.

On the other hand, there was no mandatory duty on the administrators to enforce their control orders. Much dependend on the enthusiasm of individual district administrators. The position was therefore that virtually all enforcement, either under the general controls of the principal ordinance or in relation to specific local orders, was undertaken by few administrators. This is borne out by few prosecutions in respect of price controls and probably a few hundred cautions meted throughout the country. The main regret is that the majority of administrative officers paid little regard to the plight of consumers. The law, according to Martin, was left to be observed or unobserved as traders wished (Martin,1974: 114).

3.4. The Independence Period 1961-1967

The trends in price controls instituted between 1961-67 can best be appreciated if we examine the nature of the social-economic relations obtaining in the economy on the eve of independence and the attempts that were made by the political leadership to readjust inequities inherited from the arrangements constructed in the past. In this regard we need to examine: First, the forces that were instrumental in pushing for changes; second, the nature of the economic and political conflicts that emerged after independence and the manner in which they interacted to produce the

legislative response that characterises this period.

It will be argued that although the main stimulus for the current law lay in the unusually inflationary pressures of the 1970-72 period, the long term or basic cause lies in the socialist policy adopted since February 1967. Socialist ideology has one of its basic principles a belief in social and economic control. It will be shown, for example, that while the controls imposed between 1961-1967 emerged chiefly in response to specific needs as they arose, little attempt being made to formulate a comprehensive and coherent policy designed to control the general price level, a clearer policy, with distinct objectives was adopted in 1973.

3.4.1. The Social Context 1961-67: The Search for Readjustment within the Inherited Patterns of Economic Operations

On the eve of independence in 1961 Tanganyika is said to have inherited a thriving capitalist economy (Rweyemamu 1973, Coulson 1982). The impressive economic growth recorded successively during the first five years of independence are cited as evidence of that (Acharya 1982). It is said for example, that the annual rate of growth in the total GDP averaged 5 per cent between 1961-1966; agricultural production grew at 3 per cent; gross domestic investment at 15 per cent and gross domestic savings at 17 per cent (Acharya 1982: 120).

What is important to note is that the economy was controlled and managed by foreign business interests (Shivji 1976). That is to say, political independence, and indigenous political leadership

for that matter, had not brought with it economic independence. For economic independence to exist, there has to be effective national ownership, control and management of the economy - the sort of situation where there is effective public control over the key sectors of the economy like manufacturing, commerce, banking, transport and agriculture as well as a diversification of external economic links. More importantly, economic independence requires the establishment of a firm local industrial structure leading to a self-generating and self-sustaining growth. These conditions did not exist in Tanzania (Rweyemamu 1973). On the contrary, the thrust of policy during the first five years of independence was to maintain and preserve colonial ties. Such a policy was considered necessary for three main reasons: The first was the belief that good relationship with the former colonial powers would help bring about political stability and economic development. Thus military links and economic ties with the UK and West Germany were firmly kept. This relationship was expected to create the conditions necessary for the second aspect - the attraction of foreign investors. It was then assumed that the combined effect of political stability and foreign investment would establish in the territory conditions needed for economic growth. This would give the government a guaranteed and easily collectable revenue from local industries which would forestall the political risks of increased taxation on the people.

The policy documents outlining the economic development strategy for 1961-1966 heavily reflect this thinking. The government's three year development plan 1961-1963 (derived from the World Bank Report 1960 and the Arthur D. Little Report 1961) assumed

that the impulse to economic development would come primarily from foreign investors and that all that was needed was to create a local environment hospitable to foreign interests. Thus the Foreign Investments Protection Act 1961 was passed guaranteeing the security of foreign investments from nationalisation. Moreover, the Development plan left foreign investors to operate freely without even regulating ownership patterns, production techniques, pricing, or product mix. On top of that, the government established the Tanganyika Industrial Development Corporation (the predecessor of the modern National Development Corporation) to serve as an agent through which foreign investments could be channelled to private enterprises. It was hoped that the corporation would promote the emergence of an indigeneous capitalist class (Coulson 1982).

As a result of these policies we see that the institutional arrangements inherited on independence were preserved. Because of historical links, British firms had a dominant influence. Domination of the economic and social institutions by the UK was further enhanced by habits and acquaintances; commercial, educational as well as other semi-institutionalised heritages which made local firms continually biased towards Britain for exports and imports. The Commonwealth preferential system of trade and the sterling exchange facility which converted the shilling into the pound tended to confine trade links to Britain (Rweyemamu 1973).

On the political front, the control of the state machinery was handed over to a local petty bourgeois group comprising the

educated elite, small businessmen, chiefs and the military (Shivji 1976). This class of political rulerswas economically weak as it constituted, what Fanon has described as an, "undeveloped middle class with practically no economic power". Consequently it continued to rely on the "mother country to defend its interests" and is thus a "client class in the service of imperialism" (Fanon 1984: 120). The main preoccupation of the political leaders in the immediate post-independence period was consolidation of political power.

Legal institutions inherited from the colonial structures were also preserved. In the constitutional sphere, the Independence Constitution 1961, embodying the Westminster system of parliamentary democracy an independent judiciary and a system of checks and balances between organs of the state was retained. The continued application of the law enacted during the colonial period was ensured by Article 5 of the Republic Act 1962. The existing law as defined in that article included: "the substance of common law; the doctrines of equity and Statutes of General Application in force in England on August 22, 1920" so far as these were appropriate to the local circumstances (Juidicature Act 1962). Hiller and Sawyer say the common law applicable was English common law (Hiller and Sawyer 1971) and not local law. Also, in practice, English law was taken as applicable in all circumstances. The proviso limiting application to local circumstances was in most cases redundant. It is significant to note that although the content of English law applicable has now diminished to a considerable extent due to local legislation and localisation of judiciary, the influence of English decisions has not altogether ceased. For one

the reception clause

has been left intact by each of the constitutional amendments since independence. The fifth amendment 1984 has preserved the reception clause (The Constitution, (Consequential Transitional Provisions) Act 1984, Article 5(1)). Moreover, other conduits like use of English texts and manuals; statutes modelled on English law and personnel trained in English institutions make the influence of English law unavoidable.

These economic, social and legal arrangements, says Shivji, put Tanzania in a neo-colonial situation (Shivji 1984). According to Mamdani, the essential characteristics of a neo-colony is a state of dependency on, and domination by economic interests in the imperialist centres. Mamdani argues:

> How again are we to understand an independence which leaves the key-economic life lines of a country in the hands of imperialist interests, which leaves intact the instruments of colonial repression and leaves the colonial army untouched simply changing its title from Kings African Rifles and gives them national titles. Such an economy is a neo-colonial economy. Such a state is a neo-colonial state (Mamdani 1982: 22).

This situation was not acceptable to some radical elements especially in the ruling party (TANU), the trade union and youth organisation to whom independence carried the promise of a better future for the majority. The government came under increasing pressure and criticism for its failure to bring about rapid African-isation of the economy; to create more employment opportunities; to develop backward areas and improve the social welfare of the workers. The dissatisfaction with government policy on these matters assumed a confrontational approach when a group of radical Parliamentarians disagreed openly with the Prime Minister over

the slow pace of indigenisation of the economy and the civil service (Rweyemamu 1973, Wambali 1985: 32). At the same time harmony within the government was threatened as the six Parliamentarians who had taken the government to task were stripped of their party membership and lost their seats in parliament. It seems these disgraced members had support from radical elements in the trade unions and the army. For their dismissal was followed by an attemptd coup and nationwide labour strikes.

The trade unions had three grievances against the political leadership. First, the wage differentials that existed between categories of employment and between the private and public sector (Acharya 1982). What annoyed the leftists most was the emergence of a class of senior civil servants who were accorded the salary structure inherited from the Europeans. A characteristic of the salary structure was that it bore no sensible relationship to the average standard of living. Kamarck points out that the salary gap between the top civil servant and that of an unskilled labourer in the same government department in 1964 was 90:1. The gap for similar categories of employment in USA and the UK was 5:1 (Kamarck 1971: 74). Senior civil servants also enjoyed other privileges like housing allowances, car subsidies and access to credit facilities from financial institutions which enabled them to enter into property earning activities. These privileges were attacked by trade union and political party activists who argued that the new leaders had just stepped into the shoes of the colonial masters grabbing privileges for themselves and were doing nothing to evolve policies that would cater for the real needs of the majority. According to Babu (an ex-cabinet minister) the privileges which

the new political elite established for themselves had little to do with improving their efficiency. Babu argues

> these unheard of privileges of every kind were all designed to instill subservience among the people. And the new rulers topped it off with enormous state powers, easily open to abuse in the hands of political novices. These were the things that contributed to the widening gulf between the leaders and the people; and the less they understood the real needs of the people and gradually evolved policies which had no relevance to the masses (Babu 1981: 6).

These social and political pressures set the tone and tempo of the legislative responses of this period. To contain opposition the government strengthened executive powers and tried to weaken trade union autonomy.

The first target in the governments move was to weaken the Westminster type of Parliamentary democracy. First, there was an increase in the number of Parliamentarians whose election lay directly or indirectly in the hands of the President. According to Shivji the proportion of members appointed to those democratically elected was 2:3 (Shivji 1984). But even among those elected, the President's influence in their ultimate nomination was immense. For the President was also Chairman of TANU. He could influence the National Executive Committee which had the final say in vetting Parliamentary candidates.

Parliament also lost its sovereignty to the executive when the then Prime Minister declared that "Parliament belongs to TANU" and the notion that "Parliament is supreme is an unacceptable colonial hang over" (Hansard 1968: 2534). Of course many experts on the constitution were surprised by this anouncement and were

prepared to dismiss it as a piece of political sloganeering at that stage. For all purposes the Interim Constitution 1965 made clear demarcations between the scope of government and that of the political party. But the final nail in the coffin of Parliamentary sovereignty was hammered in 1977 when an amendment to the Constitution instigated by the party declared that the "Party (CCM) is supreme and all organs of state" must conduct their activities in line with party policies (Article 3(2), Constitution 1984). The long term implications of this provision on the operations of Parliament and the judiciary are yet to be seen. But there can be no doubt that the political party is determined to stamp its authority on all state institutions.

To reduce areas of conflict the government also rejected any suggestion that it legislate a Bill of Rights into the Constitution[3]. The government's explanation was that such a Bill was no guarantee that the rights proclaimed would actually be uphead. On the contrary such Bill according to the Government's view would invite conflicts between the executive and judiciary and would block rapid implementation of government programmes. As an alternative to such a charter the government's view was that adequate safeguards existed in the judiciary:

> the rule of law is best maintained not by formal guarantees in a Bill of Rights.... but by an independent judiciary administering justice free from political pressure (Report on Establishment of One Party State, 1965: 30-32).

Clearly one can question whether such an independent judiciary does exist within the political framework of this country, as

3. The position has since then changed. A Bill of Rights was legislated into the Constitution 1984, Articles 12-26, Part III, by Act 15, 1984.

I am afraid of developing countries, as a whole. Take the case of judicial appointments. All appeal and high court judges are appointed by the President, with advice of the Judicial Service Commission. The members of the commission are also Presidential appointees. In these circumstances it is difficult to avoid the instinctive inference that preference will be given to those sympathetic to government policies. The president has also power to remove judges. But since removal is subject to stringent constitutional procedures, reassignment to non-judicial functions is a device commonly used to get rid of less compliant judges (Peter 1980). It should be added that direct executive interference of the judiciary is not an unknown phenomenon. In Lesinoi Ndeinai v. Regional Police Commander (Arusha) [1979] a High Court judge complained publicly about executive interference to try to force him to make a decision favourable to the government. President Nyerere himself personnaly dismissed a magistrate in Mwarnza (Martin 1974).

On the trade union front, the government introduced a series of laws to break the power of unionists. It was firmly believed that the trade union structure as influenced by the British experience, was undesirable. With a total loss of 417000 man days through stoppages (i.e. four times higher) in 1962 compared with 113000 man days lost in 1961 and a threat of more strikes coming the government acted swiftly, but harshly, to curb trade union autonomy. The most notable laws were: the Regulation of Wages and Employment Act 1961 which gave the government power to prescribe minimum wages and determine wage increases in the civil service; the NUTA Establishment Act 1964 which abolished all independent trade unions and established one union under

the supervision of the party; the Trade Union Act 1965 which placed union funds under government control and the Permanent Labour Tribunal Act 1967 which removed the right to organise and take industrial action and instituted a system of compulsory arbitration.

With these laws trade union autonomy ended and workers had lost their spokesman. Opposition and radicalism on university campuses was dealt a blow in 1970 when student unions were abolished. All student activities are conducted under CCM-Youth - the youth wing of the party. Above all, graduates from colleges and other institutions of higher learning have to undergo one year of compulsory military service where they are taught, among others, party ideology and socialist ethics.

It was clear that the government would find it difficult to convince the public about the justification for its harsh measures without taking corresponding action to improve their welfare. Accordingly programmes to redress imbalances and inequities in the inherited political, social and economic patterns were initiated. The objective here was to achieve short term changes. The principal reforms included: the Africanisation of the economy - a process which saw simple school teachers becoming managers or top civil servants; expansion of employment; more equitable redistribution of public expenditure and public investment in health, education and social services. A housing programme for low income workers was started by establishing the National Housing Corporation in 1962. The aim was to accelerate the construction of low cost housing and social centres. Health and medical services

in government hospitals were made free. The provision of health centres in every village and clean water became state responsibility. Education was made free at all levels. Subsidies to the agricultural sector as well as to basic consumer goods were instituted.

These measures inevitably led to an unprecedented growth in public expenditure and earnings. The impact was partly reflected in the acceleration in the price level. There can be no doubt that the measures generated imbalances in the existing economic variables - that is between money supply, the volume of production, the level of employment and state budget. The imbalance caused by changes in the relationship between these variables caused distortions in the price level.

3.4.2. The Incomes, Wages and Prices Policy 1967-1972

By 1967 it became clear that there was need to have a clear and comprehensive policy that would constitute a blueprint for wages, incomes, prices, productivity and investment programmes. The tensions generated by the policies pursued between 1961 and 1966 were threatening to throw the political situation into chaos, especially the labour strikes, the attempted military coup 1964 and student protests. The government also faced pressure from the powerful business community for not taking action to curb trade union militantism.

The government sought assistance of the ILO in formulating a policy that would accommodate these various interests reasonably. The ILO entrusted its mission to Professor H. Turner, a Cambridge University economist, who had undertaken a similar assignment

from the Zambian government. Professor Turner's assignment by the ILO seems to be a natural choice. He had published a leading article on the question of 'Price, Wages, Incomes and Productivity' and their interlinkages. The findings of that paper seemed to contain solutions relevant to the problems facing many developing countries at this time on the above issues (see Turner, H. (1966), Incomes, Wages, and Price Policies, ILO Reports Series 70).

The terms of reference given to Turner by the government were: "to advise the government in the formulation of a national policy in regard to incomes, wages and prices" (Government Paper 3, 1967: 1, hereinafter referred to as the 'Turner Report'). The terms went on to emphasize that the policy must, "give due consideration, on one hand, to the requirement of economic growth and the national plan; and on the other to the desirability of making sure that the present restraints on money incomes and future increases in incomes made possible by economic growth are shared equitably among different groups" (Turner Report 1967: 2).

From a reading of these guidelines, the mission was required to work out a policy that would strike a balance between the need to raise productivity; to keep the price level stable, to keep money incomes in line with increases in real national output and to maintain an equitable distribution of social and economic welfare, without jeopardising the country's social and political strategy of development. This last condition was a serious limitation since, as the mission complains in its report, it "prevented us from broadening our scope of inquiry into the

political and administrative practicability of our policy proposals" (Turner Report 1967: 2). This remark by the mission suggests that the policy proposals they put to the government were not properly evaluated in terms of their viability within the context of Tanzania.

In the course of their inquiry the mission found out that there were wide disparities of income between various groups in the economy. Income inequalities existed between manual and skilled labour; between people of similar qualifications in different enterprises; between employees in the same department; between workers and peasants as well as between public and private sector employment. Moreover, they found that there was no clear cut government policy to bridge these gaps. In addition, the report noted that there was no relationship between pay policies and productivity. For example, while wages had risen by 80 per cent between 1961-1966, labour productivity had risen by 15 per cent only in the same period.

On prices, the report established that there had been a fast increase in consumer prices between 1961-67. These fast increases had been caused mainly by increases in labour costs, in prices of raw materials and in transport and energy costs. But the report also pointed out that the percentage increase in the price level bore no sensible proportion to the mild increases in the costs recorded by those factors suggesting that some elements of a non-economic type might have aggravated the situation. This was interpreted as meaning that unscrupulous traders were raising prices (Kuuya 1975, Curry 1978).

In the peasant sector, the Turner report concluded that by 1967 peasant producer-prices had fallen in real terms below their 1961 level. It noted that peasants were being paid less for their produce compared to the money the marketing boards were making from the same products by way of administrative and marketing deductions - a conclusion also shared by studies from other sources (Temu 1971). Furthermore, it was pointed out that peasants were paying more for industrial products than workers did for peasant produce, thus tilting the urban-rural terms of trade in favour of urban dwellers.

On the basis of these findings, and with a view to redressing the imbalances, the Turner report put forward several recommendations. The most relevant ones for purposes of our study were those touching on wages and prices.

On wages, and incomes, the report recommended a period of restraint except where increases could be justified by particularly compelling reasons. It urged that all wage increases should be linked to productivity. But even where productivity had increased, a wage increase should not exceed 5 per cent per annum. The report recommended a system of compulsory notification of all proposed pay increase claims.

With regard to prices, the report suggested a piece-meal approach. It proposed a restricted regulatory framework whereby there would be legal control of prices of, "monopolistic enterprises or of items of normal requirements for low income groups" (Turner Report 1967: 94). Any suggestion for comprehensive

price controls was completely discouraged. The report warned:

> It would seem best to proceed first in a way which does not involve great administrative operations; and which attempts to enlist the cooperation of buyers as far as possible (ibid. 94).

Looking at the recommendations on wage controls and those on prices one can notice a clear imbalance in the author's approach. They seemed to take a tough line to wage increases and a rather soft stand on price controls. I find it hard to explain the rationale for this difference. Both wages and prices are linked since they have a direct impact on each other.

Suffice it to note that the Turner report could by no means offer adequate solutions. For one, it was based on inadequate data and information. For example, the mission was given four months within which to present its findings. I doubt whether such a time would be enough to collect adequate and detailed information on all the social and economic aspects mentioned above, especially considering the fact that the mission was undertaken by foreigners. For the other, the authors of the report relied solely on government sources for information. Their primary sources like the Bureau of Statistics; the Ministry of Commerce and Industries and other government agences have been severly criticised for keeping outdated, incomplete, inconsistent and unreliable information by World Bank staff (World Development, 1981: 167-170). Overall, the report did not address itself to basic issues like the changes in the social and political environment brought by the Arusha Declaration; the nature of social stratification; the level (low) of economic information; the weaknesses in the consumer class (unorganised, illiterate, poor and immobile) and the nature of production. All of these elements needed to be properly evaluated

against their proposals on a limited price regulatory system.

Nevertheless, the government accepted most of the recommendations and incorporated them in Government Paper 4, 1967. It took immediate action to put into effect the recommendation on wage restraint. A law was passed to establish the Permanent Labour tribunal (under the Permanent Labour Tribunal Act 1967). The function of the tribunal was to examine particular pay claims and productivity behaviour and advise the government on whether or not such pay increases should be granted. Enterprises were required to register productivity targets with the tribunal at the beginning of every year. The registration of such productivity targets has always been a contentious issue. It is possible, for example, for employers to register a target far higher than employees can achieve and thereby effectively block any wage increase. It is also possible to register a target which can easily be surpassed. On the other hand, a target can be exceeded by occurence of unexpected circumstances. A typical case was that of the Bank of Tanzania in 1980. The employees surpassed their targets by several hundred per cent due to increased government borrowing to pay for war. When the employees demanded a pay increase, in addition to bonuses, the nation was outraged and the employees were condemned for exploiting the public.

Surprisingly, the recommendation on controlling prices even on its moderate terms was completely ignored. Instead the government opted for a casual approach. As an interim measure the government set up an interministerial task force called the National Price Control Advisory Board. It comprised representatives

from trade industry, parliament, the party, the State Trading Corporation and the goverment. Its main duty was to create conditions favourable to sustained economic growth by monitoring increases in wages and prices.

Noticeably absent in the Task Force were consumer representatives. The fact that this important partner had been left out of the team was hardly acknowledged at all, still less regarded as an affront to society. Particularly so since there was already a movement in Daresalaam, especially among house wives, through the women's organisation (U.W.T.) in rousing public opinion about the cost of living. But since then the movement seems to have deteriorated into rather what one might call ineptitude because very little has been done by this group except to publish a few views and articles in the papers (Sunday News, Daresalaam, December 29, 1985).

The specific role of the board was to act as adviser to the Ministry of Commerce on the consumer items that needed to be brought under control. Presumably the control was exercised under the provisions of the Price Control Ordinance 1951. The board set up some defined criteria on price increases. Firms were permitted to increase prices where: (a) business could not restrain or absorb increased costs; (b) receipts were inadequate to maintain efficiency and undertake investment; (c) output per employee could not rise fast enough to keep pace with justifiable rises in pay; (d) there had been unavoidable increases in non-labour or capital costs which could not be absorbed, and (e) if the enterprise was not able to secure sufficient capital (Green 1980). The government would refer cases to the board and use

the delaying powers under which price settlements could be delayed for up to six months to maintain a stable price level.

In some cases the board managed to promote legislation to control the prices of specific commodities. These included: the Soft Drinks Act 1968 which fixed the prices for soft drinks; the Sales Tax (Prevention of Price Increases) Acts 1969 and 1970 which prevented traders from automatically transferring the burden of taxation on to consumers unless the criterion set above was satisfied; the Textile (Prices Stability) Act 1970 prescribing maximum prices for selected textiles and the Locally Manufactured Goods (Prices) Act 1972 which controlled the prices of some industrial products. Meanwhile the prices of certain basic items of low-income earner's consumption (maize meal, sugar, salt, bread, rice) were controlled by individual marketing boards (Temu 1971). The pricing policy for such items was regulated by statutory rules in the Acts establishing the specific commodity boards such as the National Milling Corporation Act 1968 which handled and controlled the prices of grain.

The prices of export commodities considered vital sources of foreign exchange earnings were placed under the Economic Committee of the Cabinet which fixed prices in consultation with the relevant marketing boards and the cooperative societies. Among the crops falling within cabinet control were coffee, cotton, tea and sisal.

Public corporations rendering services in transport, shipping, banking, communication, water and electricity, were empowered to fix charges for their services subject to approval

by government. Local price control committees were set up in each province to control prices of fresh produce - meat, fish and vegetables. In some instances, price increases were halted through direct administrative intervention of political leaders. An example is the case of meat and coconut prices in Daresalaam in the Christmas of 1968 when the Regional Commissioner ordered these goods to be sold at pre-Christmas level (Kimble 1970).

What we find in the 1961-67 period is, therefore, a dispersal of price control powers and the mushrooming of control agencies.

In conclusion we may say that the Turner report 1967 laid the foundations for the modern wages, incomes and prices policy in Tanzania.

3.4.3. The Arusha Declaration 1967: Social and Economic Control

In February 1967 a competely new development came. President Nyerere formally declared socialism through the Arusha Declaration in a very unexpected manner. The public did not know in advance and there was no public debate on the relevance of socialism to Tanzania. It can be taken from the mass support that the declaration received that there was no opposition to this declaration. One authority has suggested that the reason for the lack of prior public debate was to forestall any possibility of foreign interests sabotaging the policy (Martin, 1974: 48).

The Arusha Declaration's major propositions were: nationalisation of basic wealth (hitherto mainly under control of foreign

imperialist capital) - industry, commerce, banks, insurance, foreign trade and infra structural sectors. On the whole it concentrated on attacking private ownership of the major means of production, the establishment of a predominantly state-ownership and a controlled private sector. The policy was given effect by a series of pieces of legislation commonly known as the nationalisation laws 1967. In passing these laws, Parliament had barely any more than a purely formal role in enacting what the party had worked out behind closed doors. In such a short period members could not have considered, let alone, debated the details of the Acts involved. This position illustrates the weakening in the position of Parliament (Martin 1974).

With this declaration came the process of structural transformation of the economy. First, came the change in the type of ownership of the means of production between the private sector and the public sector - with a high degree of concentration in public sector. Second, there was an increase in the direct role of the state in the economy, both as a producer and consumer - a role acquired in its capacity as owner, manager and administrator of the nationalised industries. The economic role of the state also expanded through its control of import procurement, distribution, purchase of agricultural products and provision of infrastructural services. Third, there were attempts to assert economic independence - to diversify the relations of the domestic economic sectors to the international economic system. Trade relations with socialist countries were improved.

These changes brought disequilibrium in the economy with profound consequences on the price level. First, although the state sector had been transformed into a dominant sector it was incompetent. It had not been adequately prepared to face the challenging job of running the economy. This was clearly seen in the State Trading Corporations. Studies conducted in the State Trading Corporation - which was largely blamed for the shortage in consumer goods and rising prices, showed that the corporation had been created with a weak financial structure. It had been started without equity capital. Its sole shareholder, the Treasury, floated it without capital. It was left to commence its operations by inheriting assets and liabilities of nationalised businesses. Most of the owners of the nationalised enterprises had managed to transfer their assets out leaving the corporation to inherit the liabilities. A report by McKinsey, an American consultancy firm, found the management of the state trading corporation sorely lacking and inefficient (The Economist Intelligence Unit 1972: 7). The corporation's accounting records were described by Cooper Brothers (UK Ltd) as in a mess. A Parliamentary probe committee concluded that the corporation had no experience in export and import trade. For example, there were stocks of unsaleable goods worth Tsh 700,000.00, and quantities of one item had been imported to the value of Tsh. 60 million enough to last ten years. This suggested a lack of market research. The problems of the corporation were compounded by government policy which insisted that the corporation should offer cheap services regardless of profit. Second, there was a near collapse in private capital investment caused by abandonment of projects in progress, flight of foreign currency, lack of reinvestment and price speculation.

Third, there was a breakdown in the distribution network caused by direct sabotage of production and transport as those who stood to lose in the changes tried to hit back by interfering with the distribution system by hoarding of commodities and to a significant extent, blocking imports. In most cases the state enterprises continued to depend on sources established by the former owners of the businesses for imports. Where the owners happened to be subsidiaries, the holding companies could easily interfere with the supply.

The state sector also faced other problems. One was failure to establish a functional unity within itself. The other was its inability to control and guide the dwindling, but strong, private sector, especially in construction, road haulage and retail trade.

The inefficiencies of the public sector together with other constraints imposed by the economic and political environment both internally and externally, resulted in a completely different type of economic behaviour with immense influence on the inflationary spiral. The situation was aggravated by other policy measures such as disruption in peasant production caused by the villagisation programmes, escalation in government expenditure and to a significant extent by adverse weather (Kuuya, 1975: 8; Curry, 1978: 16).

The degree of imbalances generated in the economy by these developments were partly seen in the rise in consumer prices as well as the cost of living index. From Table 2 it is clear that the level of prices in general, and for specific commodities

TABLE 2: Retail Price Index of Goods Consumed by Minimum Wage Earners in Daresalaam (July 1969: 100)

YEAR	ALL ITEMS	FOOD
1966	93.0	98.2
1967	95.4	99.9
1968	98.9	101.3
1969	100.0	100.0
1970	103.7	103.3
1971	107.4	108.5
1972	118.6	120.1
1973	129.3	135.1
1974	169.0	177.2
1975	248.5	265.8
1976	306.7	328.0
1977	358.4	386.3
1978	418.7	463.1
1979	437.3	473.0
1980	669.2	560.1
1981	815.3	888.5
1982	1007.0	1061.0
1983	1184.0	1162.0
1984	1220.0	1207.0

SOURCE: Central Statistical Bureau Daresalaam.

in particular began to acquire a persistent upward swing in 1968 gained acceleration in the 1970's and showed no signs of abating throughout the early part of the 1980's. For example, the retail price index for food consumed by minimum wage earners in Daresalaam rose sharply. From a bare 93 points in 1966 it shot up to 129.3 in 1973. The index of prices for food also rose sharply from 98.2 points in 1966 to 135.1 in 1973. The cost of living index also went up rapidly. Statistics for middle grade civil servants show that the cost of living for goods and services consumed in urban centres went up from 96.0 points in 1966 to 225.7 in

1976. For high income earners the cost of living rose from 90.8 points in 1966 to 113.0 in 1973.

Statistical evidence also shows that there are significant differences between the inflationary tendencies before 1966 and those after. While the price rises that occured before 1966 were relatively infrequent and small in magnitude those after 1966 have been rapid and remarkably longer. Also the causes were quite different. If we examine the inflationary trends over the recent past the following subperiods and the causes of the inflationary pressures emerge:

From 1961-1966 there was relatively low inflation estimated to be 5% on annual average. Prices were stable (Green 1980). From 1967-1972 we find a high build up of inflationary pressure. Prices rose rapidly and quite frequently. The period 1961-1964 coincided with the first Five Year Development Plan. The plan necessitated massive public expenditure in infra-structural and social services - road and communication network; education and health; the end of the sisal and coffee boom (whose prices began to plumet); and the break down of diplomatic relations with major western investors - Britain in 1965 and West Germany in 1966 (Hoskyins 1968: 446). This knocked off a substantial inflow of economic aid. It also coincided with nationalisation. The uncertainty in the atmosphere for foreign investment created by nationalisation laws reduced the inflow of foreign capital. By 1971/73 inflation had accelerated. This was compounded by the oil price rises of 1973 which meant more expenditure on oil. Then followed devaluation of the shilling in 1974. The situation

was worsened by the inefficiencies of the State Trading corporation which became the focus of condemnation by Parliament and other agencies (Hansard, April 25, 1972: 296; Economist, Intelligence Unit, June 1972). The period covering 1974-78 saw unusually high inflation. The contributing factors were a decline in peasant production caused partly by forced removal into new village settlement to speed up the building of socialism, the abolition of cooperative societies in 1976 and their replacement by costly crop authorities, the breakdown of the East African community in 1977 which necessitated huge investments in transport and communication to provide services hitherto provided by the community using facilities located mainly in Kenya. From 1979 to date the upward trend persisted. There was no significant reduction in prices. In general the period was characterised by a sharp decline in prices of primary commodities (Helliener 1983); the war with Idi Amin 1978 and 1979; floods in 1979 followed by drought 1980/81 and to a significant measure, economic mismanagement (Nyerere 1986, Budget Speech 1986/87, para.41; UNCTAD Report 1984, Document TD/B/1027, p.210).

The degree to which the rising prices eroded the incomes of various sections of the community is clearly shown by the cost of living index. The losses of incomes in real terms varied from one group to another, but in all cases they were substantial. For example, between 1968 and 1971 the real value of the income of the minimin wage earner fell drastically from 100.00 points in 1969 to 93.0 in 1971 despite wage increases. The incomes registered a substantial increase in real terms between 1972 and 1974. This period coincided with the imposition of price controls in September

1973 in particular their vigorous and enthusiastic enforcement and wage increases granted in July 1974. However, there was a steady decline in real earnings after 1976. This was probably due to escalation in consumer prices caused by scarcities and ineffectiveness of the price control organs: For the top salary earners, the official government policy since 1967 was a freeze on salaries. At the same time income tax was made progressive and duties on consumer luxuries were raised. Assuming that they consumed most of the commodities classified as luxuries - beer, cars, fridges, cigarettes and wines - the tax duties on these ranged from 30% on beer to 500% on television sets under the Sales Tax Act 1969. As a result of the salary freeze, income tax and taxes on luxuries, the real value of incomes and hence standard of living declined steeply. For example, their incomes lost by 20% between 1968-1972 and then by 79% between 1968 - 1980 (Table 3).

TABLE 3: Indices of Real Disposable Income for Different Categories of Income (1969: 100)

Year	Minimum Wage Earners	Average Wage Earner	Middle Grade Civil Servants	Top Salaried
1968	90.0	97.0	95.0	102.0
1969	100.0	100.0	100.0	100.0
1970	96.0	103.0	102.0	93.0
1971	119.0	99.0	105.0	88.0
1972	109.0	102.0	106.0	75.0
1973	135.0	133.0	96.0	67.0
1974	103.0	108.0	91.0	56.0
1975	83.0	104.0	68.0	44.0
1976	71.0	98.0	64.0	39.0
1977	61.0	86.0	58.0	33.0
1978	58.0	72.0	57.0	30.0
1979	63.0	65.0	45.0	26.0
1980	70.0	69.0	37.0	21.0

SOURCE: Semboja, J. "Taxation, Government Activity and Inflation" (Daresalaam E.R.B. Papers 1984).

Although the statistical evidence suggests that all categories suffered a reduction in real earnings it would be misleading to think that all individuals in these groups suffered to the same extent.

Some groups managed to cushion themselves by negotiating for higher wages and bonuses. Others like pensioners were helpless. Their benefits are fixed by law and rarely get reviewed to adjust with inflation. In fact the benefits paid by the National Provident Fund and Parastatal Pension scheme are fixed. Economically and politically powerful groups had more than one way of cushioning themselves. One, they could run businesses - like city buses; retail trade; estate development through members of their families (Semboja 1984). Others, especially senior officers in the parastatals tried to recoup their losses by exploiting gaps in the official system. One common ploy used by parastatal managers to compensate for the fall in real income caused by the rise in the level of prices and cost of living, was to accumulate night allowances. They could make official trips up country - spending an increasing number of days outside their working stations to accumulate per diem allowances which, according to Rwegasira, are neither taxed nor accountable except by showing the number of days that one has been away from his station (Rwegasira 1980). Others still used public resources - government cars, tractors, employees and other property for private business. In some cases, managers simply indulged in corrupt practices - the existence of numerous agencies like the anti corruption squad under the Prevention

of Corruption Act, the Committee on the Leadership Code Act 1973 and the Permanent Commission of Enquiry, seem to have had little deterrent effect (Sunday News, Daresalaam, February 6, 1986; Africa Events, London, September 1986: 45). As probable indications of corruption and other malpractices one could cite how critical managerial decisions such as choice of investment projects; purchase of machinery; award of management contracts; award of government tenders and the distribution of essential scarce commodities were made on dubious criteria. The most naked examples of such dubious deals, with disastrous consequences on the nation, were the purchase of obsolete aeroplanes by the state-owned airline, Air Tanzania Corporation, to launch international flights in 1980 (Africa Contemporary Record 1980-81: B325). The aircraft purchased from a Palestinian businessman, were declared not airworthy by the International Air Travel Association (IATA) and were not allowed to fly out of Gatwick airport after their inaugural flight there. The other case is the nationwide shortage of stationery and educational material from the shops of the Tanzania Elimu Supplies Ltd., who were the sole importers of the items amidst abundance of the same items in private shops. In both cases, the government was forced to dismiss the top managers of the parastatal concerned and overhaul their management structures. It is reasonable to assume that these undesirable practices were partly motivated by the desire to compensate for the loss of earnings brought about by increases in the price level.

The government, aware of the hardships brought about by the escalating prices, commissioned two studies in 1972. The first was carried out by a Select Committee of Parliament, under

the chairmanship of Hon M. Baruti (Hansard, April 25, 1972).

The study by Parliament was very thorough and detailed in identifying problems and solutions. The other study was by the Bank of Tanzania with participants from government and parastatals.

At the outset, the Select Committee saw the need to consult widely with all those who might be affected by its recommendations, both in the public and private sector. It advertised publicly for submissions, and wrote to educational institutions, organisation and government departments and agencies requesting them to make submissions. Some members of the Committee also travelled to major cities where scarcities of consumer goods were reported to be more acute and the price level unusually higher. These were: the Coast, Arusha, Mbeya, Mwanza, Mtwara, and Kilimanjario regions. Meetings were organised with a wide range of representatives of trade, industry and consumer institutions. Submissions were received from 148 leading retailers, 35 individual consumers, the State Trading Corporation, cooperative societies, marketing boards, industries and the National Milling Corporation. On the basis of the submissions which it received, the Committee published a report which presented the major issues which it saw as important and tabled it before the National Assembly (Hansard, April 25, 1972).

The Committee pointed out several shortcomings in government policy in the trade and pricing areas. First, it noted that there were widespread scarcities in certain basic consumer goods. Some of the shortages were purely caused by inefficiencies in the

State Trading Corporation. For example, goods were stockpiled at the headquarters of the corporation in Daresalaam while its branches in the regions were empty. Also there was lack of communication between the corporation's departments, nepotism, corruption and poor accounting records (Hansard, April 25, 1972: 297). The Committee recommended decentralisation of the corporation into specialised companies to enhance efficiency.[4] Second, the Committee noted that there was no comprehensive national policy in pricing to ensure that "prices of goods and services were compatible with and conformed to the principles of socialism and the political, economic and social aspirations of the people" (Ibid. 298). The pricing policy and its administration, the committee observed, "had encountered many changes which have at times been confusing, inefficient, or both".

In reply to the Committee's observations, the Minister stated that the government had already established an expert group to advise the government on the reorganisation of the State trading corporation and on the creation of an agency that would regulate prices on a national basis and would provide for their orderly variation when necessary. The agency, said the Minister, would ensure that prices comply with our policy of socialism (Hansard, February 21, 1973).

The expert group referred to was headed by the Bank of Tanzania. Its members were drawn from the government, Treasury, Industry, State House, the Ideological College, and the Ministries

4. This was effected through the State Trading Corporation Dissolution Act 1973. Several specialised companies were carved out of the State Trading Corporation.

of Agriculture, Commerce and Cooperative Societies. The terms of reference for the expert group's task were broadly adopted from the Select Committee. The expert group (called Interministerial Task Force) conducting a review of reorganising state trade and devicing an appropriate price control agency was required:

i) to examine the extent to which efficiency in the State Trading sector could be improved;

ii) to recommend changes in the pricing area which will have the effect of achieving government objectives including the prevention of unduly rapid or frequent variation in prices; ensuring fair prices for basic essentials; maintaining fair relationships among incomes and providing circumstances conducive to a healthy and orderly development of industry and commerce in rural as well as urban areas;

iii) to examine and report on the appropriateness of current policies and procedures for determining prices and recommend changes if necessary having particular reference to:

a) the proportion of production costs to be borne by producers and consumers (including the possibility of full cost recovery);

b) the basis upon which maximum prices should be fixed bearing in mind inter alia matters of distributional equity and ways of encouraging industrial efficiency;

c) what criteria can be adopted in fixing prices (whether priority should be given to consumers in particular areas);

d) the need for a permanent advisory or coordinating agency;

e) the need for administrative simplicity.

In conducting its enquiries the Task Force was also required to consider the implications on relations with foreign firms including modifying the controls to accommodate the operations of foreign firms.

The Task Force was given four months, February - May 1973, to report. The Task Force commissioned a number of research studies on particular issues. This was important because very

little information was available on questions such as the causes of the inflationary spiral - the relationship between government activity and price inflation and the influence of external factors. Some members of the Force also travelled overseas to principal trading partners and to some other countries which had imposed price controls to study the systems in those countries.

The Task Force was able to compile a list of about 1000 consumer items with the recommended maximum prices for each item. The items were picked from the 1968 household budget survey. It is possible that by 1973 the relative importance of these items in the consumer's budget had changed due to factors such as tastes or changes in the composition of the population or availability of the goods. In June 1973, the first comprehensive list was published under the Price Control Ordinance 1951. Copies were circulated to all institutions and Regional Commissioners were given responsibility for enforcement.

The success of the Task Force in working out this list was seen by many people as a clear indication that the controls could be undertaken on a large scale. What many observers did not realise was that much of the success was due to the country's ability to import more consumer goods to meet shortfalls in domestic production - an ability that was made possible by a temporary rise in prices of coffee and tea in the world market as a result of bad weather in Brazil. Brazil was the major coffee exporter.

Nevertheless the inspiration from the Task Force's success prompted the government to introduce legislation to establish

a permanent body to control prices of all commodities and services listed by the Task Force and add on the list should need arise. In the course of drafting the Bill the price control laws and agencies of several countries were studied. Among those referred to were that of Yugoslavia (socialist), Sweden (welfare), Ghana, Trinidad and Tobago (developing socialist-orientated) and the United Kingdom. The objective was to examine how other nations had attempted to deal with similar problems.

In June 1973 the Regulation of Prices Bill was introduced in the National Assembly. The Bill went through all stages in one day. The writer could not trace any debates by members on the provisions of the Act. It is probably one of those tabled to the House under a certificate of urgency.

The National Price Commission came into being on September 1, 1973. Its chairman had played no part in the formulation of the policy and indeed knew nothing about it other than what he had read in the newspapers. But some members of the Task Force were appointed to serve in the commission.

A close analysis of the Act shows that most of the statutory provisions are in pari materia with the UK Counter Inflation Act 1973 indicating heavy borrowing from the latter. This is evidenced not only by the arrangement of the provisions but also by their actual content. Moreover, many administrative documents - instruction manuals used by the UK agency, are used by departmental staff at the National Price Commission. It seems rather paradoxical that reliance was placed on the UK model.

No reasons were given for rejecting the socialist models. The Ghanian model, to me the closest to the Tanzanian environment, was rejected probably because it had fallen into disrepute (Killick 1978) and had been partly responsible for the downfall of Kwame Nkrumah, its political architect.

It is submitted that the appropriateness of the UK model to the Tanzanian environment is highly debatable. There can be no doubt that there are vast differences between the social and political environment of the UK and Tanzania that make uncritical adoption of the institutions of one economy to another inappropriate.

In conclusion we note that price controls between 1961-1972 emerged chiefly in response to specific needs as they arose, little attempt being made to formulate a comprehensive programme designed to control the general price level. Consequently there were numerous agencies in one way or another regulating prices of specific commodities. These included the Ministries of Agriculture, Trade, Cooperative Societies, Crop Marketing boards and the Office of Price Controller. Of these only the Ministry of Agriculture and that of Trade were agencies whose principal function was price control. In this regard the role of others was relatively minor and on the whole they relied on the office of the Price Controller for price management. Second, we find that the changes in the structure of the economy - a large public sector enterprise - brought about by the adoption of socialist ideology also called for establishment of social-legal institutions that would facilitate the building of socialism. In this respect, price control was needed not only to deal with the immediate problems of controlling

inflation but of shaping the role of prices to serve social needs so as to bring about the development of the people. The profit motive was replaced by social considerations. The autonomy of the price mechanism was replaced by a government agency that would shape pricing policies to cater for social demands.

CHAPTER 4

THE REGULATION OF PRICES ACT 1973: THE ADMINISTRATIVE AND LEGAL FRAMEWORK

Introduction:

In Chapter 3 I have outlined the social background to the Regulation of Prices Act 1973. In this Chapter I will examine in detail its legislative and administrative framework, focussing on the statutory rules, the agencies for implementation and the way in which they operate.

4.1. Overall Scheme of the Act

The Act sets up a system of price controls intended not merely to resolve a temporary problem but also to respond to the requirements of a changing social-economic situation. It establishes a National Price Commission and related agencies, as a permanent machinery to control prices (Section 3,6 and 8). The commission is under obligation to exercise its powers to ensure the provisions of the Act are implemented (Section 7).

The Act formulates the principles to be applied by these bodies and lays down detailed statutory guidance. It provides for an effective enforcement machinery and prescribes rules to facilitate the prevention, prosecution and punishment of offenders (Section 16,17,18,19,20 and 26). It is reasonable to assume that the provisions of the Act are obligatory on all persons in so far as they apply to them. All those concerned with the determination of prices should have regard to them (Sections 20 and 21).

The Act, like preceding legislation on the subject (e.g. the Price Control Ordinances 1920 and 1951), does not regulate the price of every commodity or service in the country. It covers only those items specified in the control orders. The orders are issued annually by the commission by notice given to sellers and consumers in the government Gazette. The orders may be revised, varied, or replaced with fresh orders by the NPC without need for fresh legislation. The government has so drafted the Act as to avoid the need for fresh legislation in that

> Where in the opinion of the Minister, it is in the national interest that the prices of any goods or services, or class of goods or services be controlled on a national basis... or that the prices of any goods so controlled be reviewed he may direct the Price Commission to determine or review such prices......, section 9(2).

The Act, in common with previous legislation, does not impose a blanket prohibition on all forms of price increases to render them automatically illegal. It does however, unlike earlier legislation, stipulate in detail the allowable costs, that is the costs that firms can recoup through consumer prices (Section 12(2)(a)). Unlike previous legislation, the Act has no time limit. Also, in contrast to previous legislations, the control agencies are not merely advisory. They exercise an assemblage of powers: quasi-legislative and quasi-judicial as well as administrative and managerial functions.

4.2. Structure of the Provisions

The Act is divided into eight parts. Part I is a definitional one, containing the definition of key words and phrases as used in the context of the Act. Part II establishes

the National Price Commission at the national level (the NPC), Assistant Price Commissioners at the regional district and town levels and Regional Price Control Advisory Boards, defines the powers and functions of these organs and makes provision for the principles applicable in the exercise of the controllers' functions. This Part also stipulates the goals to be pursued by the controllers (in Sections 6 and 12(1)(a) to (i)) and lays down the criteria to be adopted. The object of the rules in this part is to limit the manner in which the commissioners exercise their discretion. This Part, furthermore, provides for the principles to guide the determination of interwholesale, and interretail prices so as to prevent price increases being made on the series of such transactions (Sections 8 and 12(2)(a) to (f)). Part III provides for methods of enforcement. It prescribes the procedures of publication (Section 16), the marking and display of both price-controlled and non-controlled, goods (Section 17, 17A), the keeping of records and books of account (Section 18) and supply of invoices (Section 19). Part IV prescribes methods of packaging, labelling and weighing (Sections 20A, 21). Wide powers to enter premises, inspect documents and obtain information are conferred on the controllers (Section 18). There is no limit to the amount of information which a controller can demand provided it is required for purposes of implementing the Act. In particular, price controllers can examine, among others, books of accounts; invoices; balance sheets; profit and loss accounts and inventory records. These powers support the point made in Chapter 2.9.3.(e), i.e. that administrative agencies are not bound by procedural technicalities and formalities, as judicial bodies, when it comes to methods of gathering relevant evidence.

The commission is empowered to issue regular listings of price controlled goods and the maximum prices for each. Traders are compulsorily obliged to display those lists in their shops. The method of display is prescribed in the Act. With effect from January 11, 1974 all traders are required to display prices of price controlled goods in blue or black ink, and those of non-controlled items in red (G.N.21, January 11, 1974). The marking must be, "on the goods or on any container in which they are exposed or offered for sale or a price ticket securely attached to the goods or container and the figures must be clearly visible and legible to customers" (Section 17(1) and G.N. 22, January 11, 1974). All transactions in which there is a price overcharge are valid for all legal purposes (Section 20).

Part IV stipulates the varius contraventions of the Act that will amount to offences and the appropriate penalties. The penalty may be a fine, imprisonment, or both, depending on the nature of the offence, frequency of violation, seriousness of the damage and to a large extent discretion of the court (Section 27).

The rest of the principal provisions simply assist in the mechanics of administration.

4.3. Virtues and Deficiencies in the Legislation

What improvements does the Act introduce over previous legislation on this area? What gaps or weaknesses does it leave open? An answer to the first question will help tell us why the previous legislation needed replacement; while that to the second,

may enlighten us on areas that require rectification.

4.3.1. The Virtues

The principal improvements sought to be introduced by the new legislation were: First, the range of goods, and hence firms brought under control, was extended compared to those under previous legislation. Second, the consolidation of control orders. Under previous legislations (the Price Control Ordinances 1920 and 1951) the control orders were scattered among local administrative officers and government departments. This led to the existence of numerous control orders issued under different legislations covering the various industries. Under the present law, the Commission has virtually all the control powers. Where the powers are conferred on other authorities the Commission is invariably consulted, and sometimes the control orders are issued in its name. For example, hotel charges fixed by the Hotels Board; taxi fares fixed by the Transport Board and prices of chemicals fixed by the National Chemicals Corporation are issued in the name of the Price Commission. Third, an improvement in the machinery for enforcement. The absence of such a provision in the old Acts was their greatest defect. There was no general mandatory duty to enforce imposed. Although the district administrators had permissive powers the use of the powers, certainly by those authorities, was negligible. Fourth, is the addition of a modern regulation-making machinery. The procedure under the 1920 and 1951 Price Control Ordinances which made not only the making, but also amendment of an order to control prices rely on Parliamentary inquiries and scrutiny was clearly too imcompetent for modern needs. It was considered that any new law should include such powers to

make regulations for appropriate specific purposes (The Regulation of Prices Bill 1973, Statement of Objects, Bill Supplement No.7, dated June 29th 1973). There is obviously practical need for such provision in all legislation of this type to enable control to keep pace with trade practice, so as to gear the controls to the changes of commerce. This supports the notion of the need for flexibility which the former laws so expressly lacked.

4.3.2. Deficiencies

Some clauses in the Act raise problems of interpretation and compliance. Section 17(1) requires traders dealing in price controlledgoods to "mark in plain figures in Red the prices at which they are offered for sale", and all non-controlled goods must have prices marked in blue or black and the price marked shall be the one at which the item is exposed or offered for sale", Section 30(1) (G.N. 21, November 1, 1974). The provisions are apparently clear. In practice however, traders put a different interpretation. According to studies by Nditi, for price controlled goods, traders adhere to the marked prices. But for non-controlled items they do not (Nditi 1985). Here they seem to follow the principles enunciated in the well known English case of Pharmaceutical Society of G.B. v. Boots Chemists [1953]. In that case the Court of Appeal held that the display of goods with prices marked on them does not amount to an offer to sell. It is an invitation to offers[1]([1953] 1 Q.B. 401 (CA)). My observations of the behaviour of traders and consumers in Daresalaam confirm this view. Prices for non controlled goods are dictated orally on request. The marked prices never seem to bind anybody. Instead, customers

1. The rule was considered beyond argument in Fisher v. Bell [1961] 1Q.B. 394.

and traders enter into negotiations, making offers and counter offers, that is bargaining freely, until an agreed price is reached. There is one major danger in this practice. Traders tend to pitch the initial offer at a higher price so that the agreed price, which may appear lower to the customer, leaves the trader with a big profit margin. To remedy this situation, the Act could provide that all prices marked on a product shall bind the seller. The other problem is about compensating victims of price overcharges. Section 20 states:

> Any person who sells any price controlled goods at a price or charge which exceeds the maximum price or the maximum service charge shall be guilty of an offence.

The penalties (as stipulated in Section 26) consist of a fine or imprisonment. There is no provision that requires the price-controllers or courts to order a refund to victims. The Price Commission does not order refunds. The courts can use their general powers to order compensation to victims of criminal offences under Section 176 of the Criminal Procedure Code.[2] There is authority that these powers can be used to order a price refund in the decision of R. v. Gulabkhan Haji Walimohamed [1946] E.A.C.A. 89. In some jurisdictions, notably the USA, this has been done quite successfully. The leading case is Re Antibiotics Antitrust Actions (333 F. Supp. 317 [S.D.N.Y. 1971]). In this case consumers the world over were adjudged to have been overcharged by the monopolistic drug company supplying tetracylene. For those still using the drug, the company was ordered to sell at a low price for a period enough to compensate for the amount overcharged until then. For those institutions and governments who could substantiate their purchases for that period, compensation was

2. Cap. 20, Laws of Tanzania.

ordered. The price which should have been charged by the company, by taking into consideration the price prevailing for similar products, was worked out. Then the price actually charged was determined. The price differential was the amount owed to the claimants. Still in other cases the company made offers of compensation to the affected to be distributed on an agreed formula by the claimants (for more information, see Bartsh 1978). The task of organising and effecting the compensation where violation is on such a large scale is obviously enormous. But in the case of Tanzania it should be possible because the consumers are registered with shops. The other alternative is to order an immediate refund as and when a complaint is proved true.

Section 21, which enables the controllers to insist on specific particulars like labelling, quality specification, details of weight, size and chemical composition, to be included on the labels, containers or packets, as the case maybe, does not specify what action to be taken to deal with misleading descriptions. The price controllers should have power to order their immediate removal.

There is no provision in Part III of the Act, as indeed in the entire Act, to prevent traders marking up prices on goods already in their shops when a new price increase, on similar goods, is announced. This leads to speculative hoarding and artificial shortages, especially on dates close to the annual price reviews as goods go underground to await a new higher price. The phenomenon of empty shelves on the eve of price reviews and abundant supply on the morning of the increases which has become common in the country

is indicative of that. In some jurisdictions, particularly the UK, it is an offence for any person to give a false indication that a price is equal to or less than the price at which such goods or goods of the same description were previously sold or offered for sale. The provisions of the Trade Descriptions Act 1968 which could be relevant in our case states, "if any person offering to supply goods of any description gives, by whatever means, any false indication to the effect that the price at which the goods are offered is equal to or less than (a) the recommended price; or (b) the price at which the goods or goods of the same description were previously offered by him or is less than such a price by a specified amount, he shall be guilty of an offence" (Trade Descriptions Act 1968, Section 11(1), UK). Traders there try to comply with this provision by indicating on the products, both the recommended retail price or old price and the new price side by side.

With these remarks in mind let us look at the scope of the Act.

4.4. Field of Application

The Act is the principal instrument for controlling practically the prices of all goods and services in the country since the Act empowers the Commission to control prices of "any goods and services supplied on the domestic market" (Section 8(1)(a)). For legal and practical reasons, as we shall see, the Commission have never been able to exercise all the powers. Limitations on their scope of activity have been imposed by the express exclusion of some commodities from their jurisdiction and by

resource constraints. For example, the prices of the following commodities are not within their jurisdiction

i) Producer prices for export commodities. Because of the sensitive nature and their overall importance to the economy, the prices of all major exports are determined by the Economic Committee of the Cabinet in consultation with the Marketing Boards, Cooperative Societies, Ministry of Agriculture and Bank of Tanzania. Crop marketing boards have also power to fix prices of certain by-products of the crops they handle (see, The Coffee Marketing Board Act 1984, section 4(2)(f); and the Cashew nut Marketing Board Act 1984, section 4(1)(c).

ii) Prices of fresh foods - meat, fish and vegetables. Due to perishability and seasonal fluctuations in supply, the prices of these commodities are left to the market forces of supply and demand on each individual market. However, some bodies have been set up to monitor seasonal price variations and supervise the pricing of these products to prevent chaos in the market. Such bodies include the Kariakoo Market Corporation in Daresalaam and District Development Corporations in other urban centres.

iii) Service charges and rates for all public utilities. Transport, water, electricity and telephone rates are fixed by the boards of directors of the parastatals running these services. The Price Commission is consulted by some and only given the rates by others. The Commission have no influence over the decisions of the management boards and have to accept the rates and use them as part of the inputs in consumer prices.

iv) All prices and service charges for goods subject to international agreements. Included in this group are air fares, shipping and freight charges.

v) Insurance premiums, bank rates and interest charges are fixed by the relevant financial institutions. The Bank of Tanzania and the Treasury then examine the rates in the light of the profit margins earned by insurance and banking corporations. The Bank and Treasury may consider what corrective action is necessary to bring the rates into line with government fiscal policies.

The excluded categories contain some important items. For example, a great deal of public concern centres on prices

of fresh foods, rent and transport rates. An analysis of the Commission's working papers for 1984-1985 indicates that it is the prices of the excluded commodities which constitute the main reason for seeking price increases for consumer goods. In approximate percentage terms, about 80% of the price review applications gave increased transport and electricity charges as the main cause.

Despite these exclusions, the Commission does still have a large number of items under its jurisdiction. As of September 1985 the control list covered about 2000 items (Price Control List, September 12, 1984). These include: manufactured, intermediate as well as finished goods; locally produced as well as imported and of several processed basic food stuffs such as milk, sugar, bread, butter and cooking oils (Price Control Order, September 12, 1984, pp.1-87). According to the chairman of the Commission, the goods covered have been carefully selected and account for about 60% of the total expenditure in the ordinary household consumer's budget (Personal Interview, March 1985). The products specifically mentioned in the control list are: food and beverages; household articles; construction materials; textiles; farm implements and pharmaceuticals (Price Control List, September 12, 1984).

On the whole the Act provides the potential for a very comprehensive control system. It covers many other activities related to the controls such as distribution of goods, quality and standards, weights, measurement, packaging and labelling.

4.5. The Administrative Structure

Primary responsibility for the implementation of the Act has been placed on the National Price Commission, the Assistant Price Commissioners and the Price Control Advisory Boards. Let us see how these bodies operate.

4.5.1. The National Price Commission: Composition, Structure and Organisation

The NPC consists of a Price Commissioner, who is the chairman and its chief executive officer, plus, not less than seven and not more than ten other members (Section 3(b)). The chairman is appointed by the President (Section 3(a)). The other commissioners are appointed by the Minister (until 1982 Minister for Trade, but since then Minister for Finance). At present there are nine commissioners drawn from the University of Daresalaam, the Party (CCM) headquarters, the Party (CCM) Ideological College, Kivukoni, the State House, the Treasury, the Ministry of Commerce and Industries, the Ministry of Agriculture and two Parliamentarians. It is usually the Permanent Secretaries or heads of these institutions who sit in the commission. The chairman makes recommendations for national price structures to the commissioners who then proceed to determine prices (Section 6(a)). The commissioners are not bound to follow the recommendations of the staff of the commission and may reject, modify or demand for more explanations. A good example is the case of prices of edible oils, which were rejected in the review period beginning October 1984[3] (Commission Working Paper No.148, October 1984). The commission regulates its own

3. The staff were asked to investigate why the price sought was so high (Working Paper No. 148, October 1984).

procedures (the Schedule, S.5(1)). Decisions are made by a majority of the members present and voting. In event of equality of votes, the chairman has a casting vote in addition to his deliberative vote. A quorum is constituted by the chairman and five other members.

The chairman has served continuously since the inception of the NPC. The other commissioners have been changing from time to time especially because of shifts in departmental ministries responsible for the commission. There are no formal qualifications for appointment.

At the regional level the Regional Development Directors are the Assistant Price Commissioners, (Section 7(2)). At the district level, the District Development Directors are the Assistant Price Commissioners. In addition, every City Municipal and Town Director is an Assistant Price Commissioner for his locality (Act 2 of 1981). There are no price commissioners at the ward or village level. However, the wards and villages are represented in the regional, district or town price control advisory boards by their chairpersons.

Strictly speaking, the Assistant Price Commissioners do not fall within the administrative structure of the NPC. They are not regional branches of the NPC. The officials are not employees of the NPC, not answerable to it and not controlled by it. They are answerable to the Prime Minister's office.

However, we can discern an ill-defined relationship between the NPC and the Assistant Price Commissioners. For example,

where the NPC has fixed prices which seem unrealistic to the circumstances of a given district, it can direct the Assistant Price Commissioner to adjust the prices to accommodate local costs (Section 10(5)). The NPC may review prices fixed by Assistant Price Commissioners if requested by an aggrieved party (Section 10(4)). In this way the NPC acts as an appellate body for the decisions of Assistant Price Commissioners. Otherwise, the Assistant Price Commissioners perform the same functions as the NPC in respect of goods not controlled nationally like fresh fruits, fish, meat, taxi hire charges and hairdressers' fees. They are required to follow the same principles as the NPC.

One problem in coordinating the activities of the NPC and regional price controllers is that the officials are accountable to different departmental ministries. For example, the NPC is answerable to the Ministry of Finance, Planning and Economic Affairs (Budget Speech 1986/87, para. 120). However, some of its employees are seconded from other institutions. For example, the head of the cost accounting department is an employee of the Ministry of Trade. District and town directors are under the Prime Ministers Office. Regional and District Trade Officers, who are price inspectors, are under the Ministry of Trade. No serious conflict or stalemate has yet arisen. This has been partly avoided by the closeness with which these officials work together. Also the regional political leaders coordinate the functions of all these officials in the regions. But problems are likely to arise where local traders wish to challenge the decisions of local controllers. It is not clear to which Minister they should send their complaint. There is need to define the position on this point.

4.5.1. Staffing

The NPC has a total staff of 960. Most of them are recruited from the civil service. Some of them are full time employees of the commission, others are seconded from ministries. There is a wide mixture of professionals - economists, accountants, sociologists, lawyers and management scientists. There are no engineers or chemists. The staff are organised into two major departments: the Imports and Locally manufactured goods departments. Each department has the following divisions.

The Administration and Finance Division consists of generalists concerned with internal administration, public relations, general policy information and liaison with the departmental ministry. Its members are seconded from the departmental ministry and are therefore strictly speaking not employees of the commission.

The Statistical division is responsible for collecting data and information on costs of raw materials; trends in prices of inputs on the local and world market; cost structure in firms; and keeps records of production trends in firms. For data on local prices they rely on data collected by other sources. Many institutions collect statistical information from different firms, at different times, for a range of different reasons and frequently using different definitions. The leading sources include, holding parastatals; the Central Statistical Bureau; the Audit Corporation; the banks; independent researchers and from data in questionnaires. For data on prices on world markets, the statisticians use established publications like the Financial Times; the Economist and the

Times. The availability of these publications is not always regular. Where this leaves an information gap the statisticians use their forecasts or projections. At most these forecasts are guesses whose accuracy is questionable.

The third is the Cost Accounting division. This branch is responsible for financial analysis; scrutinising costs and allocating costs between joint products. It is staffed with two academically well qualified accountants. The two are its only staff. It, however, gets assistance from the Statistical personnel. This division constitutes the nerve centre of the Commission. Its function is to examine financial statements, balance sheets, returns on investment, profits and inventory records. It determines the allowable costs. It also prepares the Commission's working papers with recommendations whether or not a firm should be awarded a price increase. The recommendations are not binding on the Commissioners. On a number of occasions, the commissioners have rejected, modified or called for a revision of the recommendations (Working Papers on "Edible Oils", No.148, October 1984; on Soft Drinks, No. 120, August 1984).

The other division is Transport. Its function is to assess rates and charges for transport, shipping, freight and cartage. It also recommends how much of the transport factor should be borne by consumers and enterprises.

The final division is the Legal and Inspectorate. It is the biggest branch since every member of the Commission invariably belongs to it. It is responsible for policing and enforcing the

maximum prices; detecting and apprehending violators; reviewing the regulations and coordinating with regional enforcement agents and the police.

4.6. The Functions of NPC

4.6.1. Fixing of Maximum Prices

The main functions of the Commission are three: to fix maximum prices; to enforce them and to act as government adviser on prices.

Here we will examine the price determination processes for locally manufactured goods; imported goods and retail prices. Enforcement will be examined in the next chapter since it is an aspect important enough to deserve detailed examination.

4.6.2.(a) The Principles Applicable

The general principles relating to prices - what costs should go into the consumer price, are those in sections 2(1) and 12(2). Section 2(1) defines "Price" as "what a purchaser pays" as determined by the "net costs of production plus incidental expenses". Section 12 enumerates in detail the costs at every point - manufacturing, wholesale and retail levels. The object of these provisions is to demarcate the cost-elements that can lawfully be recouped through consumer prices.

One problem raised by these provisions is whether the costs stated are exhaustive or whether they are only indicative (illustrative) of what is and what is not permissible.

A similar provision in the UK Counter Inflation Act 1973 gave rise to similar problems. Its interpretation by the UK authorities may help throw some light on possible ways of solving the problems. Sir Arthur Cockfield, who chaired the Commission, interpreted this provision to mean that the duty of the commission is to ensure that the cost elements given by enterprises as a justification for a price increase fall squarely within the four corners of the rule. The Commission, he said, "cannot reject an application because it thinks that in social or economic terms it would be wrong to approve an increase; or because the Commission feels that on general grounds the costs are unjustified or that they could be avoided with ordinary diligence. The Act is a legislative instrument and the function of the Commission is to administer it" (Cockfield 1978: 3).

The UK Commission's view shifted in favour of industry. Once a firm could establish that the costs were within the terms of the Act, they discharged their burden. The Commission would not question how they were incurred.

The NPC has not adhered to such a restricted view. It considers that the costs specifically named are not exclusive, nor do they give an automatic right to compensation by way of consumer prices. That the costs are not exhaustive is obvious. For example, the enumerated costs do not cover cases where an increase is necessary to compensate a firm for pre-production expenses, or to encourage investment, or to prevent it from bankruptcy. The latter consideration is particularly important where protection of employment is the priority. Also, the provisions

of the Act do not indicate how price reductions should be made to adjust with changes in quality or size which normally imply a fall in costs.

The National Price Commission has set itself the following guidelines: First, prices may not be increased unless there is an increase in total costs per unit. Where there is an increase in total costs per unit, only those increases allowed by the Act will be taken into account. Firms must show that the costs were necessary or unavoidable. A cost increase will be regarded as permissible if it has been incurred for one of the following: Labour; raw materials; rent; fuel and power; interest charges; bought-in-services (transport, storage and insurance) and equipment. In the case of labour the standard allowable costs are: wages and salaries; payment to pension funds; training; subsidised services (meals, transport, health care) and insurance contributions (Working Paper No.148 of 1984). Cost increases arising from increased pay are only allowed to the extent that they are consistent with government income policies, e.g. minimum wage legislation, awards by the Permanent Labour Tribunal. Second, price reductions should follow whenever there is a fall in the allowable costs. In addition, price reductions will be ordered where a firm has exceeded its profit margin reference level. Third, the commission will modify its policy if necessary to boost investment. Before it can depart from the policy it has to be shown that if the increase is granted the investment will take place (the enterprise must produce evidence of the specific investment plans); that the firm is unable to raise funds from any other source and that the increase is necessary to cover costs likely to arise from the investment. These conditions

are alternatives and not cumulative. Firms can convince the NPC by showing, for example, that without an increase in prices there will not be an adequate return on investment or inadequate minimum of earnings necessary to enable the firm to remain in business. Finally, where the costs are joint, they will be allocated to products either in proportion to the volume of production, or to the value of sales, or time taken, or any other basis which represents a fair and consistent distribution as established by standard accounting practices (Mongi,1980: 115-125).

It is significant to note here that although the provisions of the Act, which I shall discuss in a subsequent section, and the NPC's guidelines seem to insist on cost efficiency, a number of factors undermine the attainment of this goal. One is the general escalation in the costs of industrial production - of fuel, transport, power, raw materials and so forth, for which the firms are not responsible. The other, is social costs for which no appropriate method of evaluation is provided. The articles of incorporation of the Friendship (Urafiki) Textile Mill contain the following social objectives, which the auditor's report says are partly responsible for its financial losses in recent years: Social welfare (subsidised drinks in the worker's canteen), travelling subsistence, entertainments, uplifting sports standards in the mill, Party (CCM) meetings expenses, gifts (Tanzania Audit Corporation, Report 1982). Third, the need to achieve other broader social and economic objectives such as preserving employment, providing services and goods at uneconomic rates in high cost areas. These may call upon the NPC to tolerate costs otherwise not permissible by the law.

4.6.3. The Factors to be Taken into Consideration

The overall objective of the Act is to establish a price structure, which, in the language of the Act, will ensure

> that prices of goods and services in Tanganyika are compatible with and conform to the principles of socialism and the political, economic and social aspirations of the people (Section 6(b).

Towards this objective the Act lays down criteria for price determination. By adhering to these standards, it is assumed, the objective will be realised. The criteria are:

4.6.3.(a) The Need to Determine Reasonable Price Structures on a National Basis and to Provide for their Orderly Variation when Necessary, Section 6(a)

This provision does not define what a reasonable price structure would be, nor does it lay down any criteria for reasonableness. According to a senior legal adviser to the NPC, a reasonable price structure is one which is fair both to consumers and producers (Personal interview with Miss Rose Mafuru, March 1985). It is a price that enables producers to recover their costs of production and secure a reasonable, not excessive, margin of profit. For example, if the price fixed by the NPC falls below that of the cost of production, it cannot be described as reasonable. It will not be in the consumer's interests either if the price fixed were so grossly inadequate as to threaten the production of the item. What this rule prohibits is the making of exorbitant and unconscionable profits. To ensure prices are reasonable, the commission applies the "cost-plus" pricing formula (Section 12(2)) and limits profit margins to a maximum of 30 per cent (Section 12(5)). This margin is considered a sufficient margin to give

firms, operating efficiently, an adequate return on investment.

Despite the apparent clarity in defining a reasonable price structure, there seems to be a lot of difficulty in satisfying this requirement. This is because consumers tend to associate reasonableness with cheap prices while suppliers would want higher prices. In the final analysis reasonableness must depend on social economic and political circumstances. For example, while some people may doubt the reasonableness of charging the same price for an item to a person in a low cost area, like Daresalaam, as a person in a remote up country village, the government considers this to be fair (Budget Speech 1986/87, para. 121).

4.6.3.(b) The Need to Ensure Availability of Commodities and Services Essential to the Community, Section 12(1)(a)

The Commission is required to give top priority to the control of essential goods. That is to say control must begin with those items identified as essential. By looking at the periodic household budget surveys compiled by the Central Statistical Bureau, the NPC has been able to pick the basket of basic commodities. This section can also be interpreted as requiring the Commission to keep prices of such commodities as low as possible. This can be gathered from the government policy which insists that every person should have access to basic needs like food, clothing, water, housing, health and education (ILO 1982: 2, The Constitution 1984, Article 9(1)(g)). The Commission has deviced several techniques to achieve this goal. One is that it fixes lower prices on basic consumer items - food, textiles, soap, sugar, shoes, cooking oils, milk, fuel, tyres, tubes, medicines, building and construction

materials. For one, these items constitute the basic necessities for every citizen. Because the demand for them is inelastic they are potentially a fertile ground for traders to earn monopoly rent and indulge in other undesirable social practices like price discrimination.

To ensure a reasonable supply of these commodities at fair prices the government has instituted a number of legislative measures. The leading Acts are: The Duties and Taxes (Prevention of Price Increases) Act 1970 which prevents traders from raising prices of goods already in their premises when new tax and duty increases are announced. The Act forbids sellers, wholesalers and retailers from taking into account new taxes - excise and customs duties, sales tax, export tax and consumption taxes, consequent upon increases imposed, unless such tax is actually payable (Section 3(1)). The Locally Manufactured Products (Price Stability) Act 1972 forbids traders and manufacturers from raising prices of specified products, manufactured locally on or after June 15, 1972 at a price higher than the one prevailing on that date, without written consent from the price controller (Sections 4(1) and 6(1)). The products covered are tubes, tyres, hoes, pangas, ploughs and similar implements used in agriculture (The Schedule to Locally Manufactured Products Act 1972). The Finance Act 1985 abolishes import duties on soap, fabrics, cooking oils, baby foods, wheat flour and on all ingredients used to produce these commodities. Above all, the Regulation of Trade Act 1980 establishes the machinery to ensure the orderly distribution and trade in all essential goods. Under this Act, the Minister for Trade can declare any product or service as a controlled

item if "he is of the opinion that it is necessary or desirable to do so in public interest", (section 3).[4] The public interest here is presumably that of maintaining equitable distribution and availability especially in conditions of shortages (Statement of Minister for Trade, Budget Speech, 1980/81, Hansard, June 1980). Other measures instituted in the effort to ensure availability of essential commodities at reasonable prices include transportation of the commodities using vehicles owned by state trading corporations and cooperative societies to keep down costs and rehabilitation of industries producing essential commodities to raise production levels (Budget Speech 1986/87, para. 122; Regulation of Trade Bill 1980, 1st Reading, Hansard, April 16, 1980). The combination of these measures, it is hoped, will achieve this goal. In this sense the activities of the price controllers are to me only one and not the decisive factor in attaining this objective.

4.6.3.(c) The Need to Avoid Unduly Rapid and Frequent Variations in Prices, Section 12(1)(b)

This requirement has two main dimensions. First, to halt frequent variations or increases in prices. Second, to limit the margin or rates of price increase (Statement by the Minister for Trade, June 30, 1980).

The first requirement is met by the legal regulation which restricts applications for the review of prices. It provides that the prices of locally manufactured items shall be reviewed

4. The Regulation of Trade Act 1980 as read together with the two orders: The Regulation of Trade (Confinement of Goods) Order 1981, and the Regulation of Trade (Control of Sale of Specified Goods) Order 1980.

once in a year - between the first day of January and the last day of February in any calendar year. And the prices of imported items can be reviewed twice in each calendar year. The period between March and April and that between September and October are the periods during which applications for review of prices of imported goods may be made (G.N. 143 of 1979). The Commission does not entertain applications for price reviews outside these periods unless it is satisfied that special circumstances exist to warrant the review (Mongi 1980).[5] Applications outside the official review period are inevitably due to frequent changes in world market prices of inputs to domestic industries or changes in prices of local inputs. In order to minimise the frequency of such applications, the Commission uses a system of contingency reserves. When a price increase is approved during the regular reviews the increase is deliberately made larger. So, initially profits will be larger enabling the firms to build up a contingency reserve. When cost of production subsequently rise the firm uses the surplus to cushion itself against losses. Only after the reserve is exhausted is the firm allowed another price increase (Mongi 1985 Personal interview, March 1985). In this way the price controls avoid frequent variations in prices.

To avoid rapid increases, the Commission, as a rule, passes increased costs to consumer prices only as a last resort, after exhausting several other methods of covering increased costs without increasing prices (Whitworth 1982). The most commonly

5. Prior to 1979 prices of imported goods were reviewed every three months while the Commission could review prices of local manufactures more than once a year if it was "satisfied that special circumstances exist", section 14(1). Political concern at the frequency of price reviews resulted in the present restrictions (Speech by Minister of Trade, 1980-81 Budget Session, Hansard, June 1980 p.7).

used methods are: First, the manipulation of margins at various levels of handling the goods, i.e. margins at the wholesale, subwholesale and retail levels. An example is how the Commission handled an application for an increase in the price of imported salt in 1984. Bearing in mind that salt is an essential commodity, the Commission resolved to maintain the same price to consumers but at the same grant the request for an increase in the importer's price. At the same time it reduced the margins given to packers, wholesalers and retailers. The importers margin was retained at 10%; the packers margin was reduced from 20 to 17 per cent; the distributors' (wholesalers) margin was reduced from 11 to 9 per cent and the retailers margin was also brought down to 15 per cent from 20 per cent (Price Control Order, September 30, 1984). Second, is by reducing the chain of handling agents. A good example is the case of cement. Here the Building and Hardware Corporations and the Regional Trading Corporation were de facto effectively extinguished when the Commission managed to persuade the Government to allow users to buy directly from the manufacturing firms (Budget Speech 1986/87, June 20, 1986). As a result these State Corporations wound up business with considerable loss of jobs. But consumers got relief. They can now buy directly from the firms at reduced costs. The principal limitations in using these methods to avoid the frequency and incidence of price increases are two: One, as we shall see later, is the cost-plus pricing rule, which to me seems to stand in the way of the Commission's efforts in fulfilling this goal. The other is the external environment. When costs of inputs increase, considering the dependent nature of domestic production (see an excellent discussion on this point by Clark 1978 and Coulson 1982) then costs of production

are bound to rise and ex-factory and retail prices must increase too. It is difficult to see how the Commission can guard against these factors.

4.6.3.(d) The Need to Prevent the Income of Peasants and Workers from Being Affected Adversely by Unnecessary and Unjustified Price Increases, Section 12(1)(d)

The notion that some price increases are unnecessary and unjustified is often encountered in the country. President Nyerere publicly complained that the prices charged by some private importers are not wholly justifiable: "They are shockingly high. I am not convinced that they could not be lowered without traders incurring losses" (Daily News, July 5, 1985). The Daily News has aptly summed up the concern:

> Of late we have all witnessed manufacturers and traders often raising prices of goods with no justifiable reasons, much to the suffering of consumers and the economy. We are convinced most goods can be sold at cheaper prices without traders incurring losses (Daily News, Daresalaam, August 14, 1985:1).

Since its establishment the NPC has been subjected to strong pressure to prevent unnecessary price increases. To achieve this goal, the NPC has evolved a number of techniques. Some of these techniques are derived from the provisions of the Act others have been devised by the NPC itself.

The main statutory provisions in this regard are those regulating costs that can be passed into consumer prices and those giving the NPC the unrestricted access to relevant data concerning production and distribution of any goods, not just price-controlled goods (Sections 12(2) and 13(1)(d)).

The Act lists the factors that need to be considered in determining the price structure (in Section 12(1)) such as the cost of production of the product, taxes, transport charges and the rate of turnover. Section 12(2) provides specific guidelines on the "necessary" costs. Essentially it states that in setting maximum prices, for domestically-produced items, the controllers should take into account all the costs of producing and supplying the goods including taxes, duties and other levies plus a margin in relation to turnover and the capital employed (Section 12(2)(a)). For imported goods they should take into account the cost (i.e. landed) of importing and clearing plus a margin in relation to turnover and the capital employed (Section 12(2)(b)). These points will become clearer when we look at the process followed by the commission in evaluating applications for price reviews. Suffice it to note here that the commission only accepts cost which are necessary for production and supply. To check on fictitious or inflated costs the NPC looks at the firm's efficiency in the use of its capital and other resources (labour, raw materials) in the production formula. If efficiency in the use of one factor of production has declined (as revealed by an increase in the value of that factor in the production formula) the firm is put to strict proof that the expenditure was necessary and justified. A lot of control is exercised here as a result of cost data accumulated over the years for the various firms.

Another part of the Act which facilitates the attainment of this objective is the provisions of sections 13(1)(d) and 27(1). These empower the controllers to enter and inspect any premises and to secure, "notwithstanding any written law to the

contrary, access to relevant data, concerning production, importation or trade of or in any goods or services from any person", (Section 13(1)(d)). Using these powers the NPC requires each producer to supply information, through a questionnaire, on the costs of production during the previous year of operation, supported by invoices and other relevant documents detailing the costs. The data are examined by the controllers, the documents are verified and comparisons are made with previous year's data. Finally, the prevention of monopolistic and oligopolistic pricing at ex-factory, wholesale and retail level, which we discussed earlier on, also attains this goal. By these methods, the price controls do to a certain extent prevent unnecessary costs from being passed to consumers and hence prevent unnecessary price increases. This is particularly significant in Tanzania where in recent years, with the cutting back in the imports of consumer goods, only a rapid increase in prices in the absence of the controls, could bring supply and demand into equilibrium if the market were left to determine prices. Pressure for private gain by trading companies would have pushed prices unnecessarily high. But as a result of the controls we find that despite the quantity demanded being greater than the quantity supplied for many of the goods, consumers pay lower prices than what would otherwise have been the case (Rice,1979: 101; Singh,1986: 427).

4.6.3.(e) <u>The Need to Maintain Fair Relationships among the Incomes of Different Sectors of the Community, Section 12(1)(e)</u>

This goal presumably concerns income distribution. To see how price controls can contribute towards a fair income distribution in society, we need to know the income distribution

policies of the economy in general. Scanning through available documents and policy statements one clearly finds that the policy objective is greater equality in income. In the Act, for example, the controllers are required to ensure, "prices are compatible with and conform to the principles of socialism...." (section 6(b)). In the Constitution of the United Republic there is a call for "human equality" and "an even distribution of the nation's material wealth; the prevention of exploitation of one person by another and the prevention of wealth accumulation by private individuals in amounts grossly disproportionate with socialist ideals" (Article 9(c) Part II and Article 12(1) Part III, Constitution 1984).

From these provisions, the goal of price control is to either ensure that the distribution of real income will become more even or it will not become more uneven on account of the controls. Looking at its practices the NPC seems to pursue its income distribution objectives in three ways: First, by concentrating control on goods commonly consumed by low-income groups. What the Commission does is that where a firm produces a range of products or services, it awards the firm a relatively low profit margin on products consumed by low income groups thus keeping prices down and awards high profit margins on the less essential goods thus permitting their prices to increase. Assuming the hypothesis that people with higher incomes buy a higher percentage of the luxury goods is valid, this method operates to make distribution of real income more even. Second, the NPC usually fixes prices which are uniform throughout the country. In this way the relatively favoured urban dwellers who live close to

the supplies subsidise their rural counterparts. Third, manufacturers and wholesalers are responsible for the distribution of their products to regional centres. The NPC adds a "pan territorial freight allowance" to the ex-factory prices so that transport costs are shared equally by all consumers irrespective of where they live (Price Control Order, September 12, 1984: 76). This policy is likely to encourage sellers to divert their sales from up country markets to low cost, urban areas. To curb this, sellers are closely supervised to ensure that they deliver goods to regional centres in prescribed quantities as required by the Regulation of Trade Act 1980.

4.6.3.(f) The Need to Preserve and Promote the Competitive Position of Local Products in the Domestic Market as well as in Foreign Markets, Section 12(1)(c)

This regulation raises the question of what techniques the Commission uses in promoting the competitiveness of local products? One could ask whether there is any competitive market in the economy at all?

We pointed out earlier on that in strict terms there is no sector of the economy which is fully competitive in the sense of there being a large number of sellers and buyers offering various similar and easily substitutable commodities on the market. There are usually very few domestic producers of a given product in Tanzania (Rice,1979: 98). Competition with imports is restricted by quantitative import restrictions as well as shortage of foreign exchange. And because of the combination of the small size of the domestic market for manufactured goods, the need for economies of scale, government import controls and the importance of keeping

a balance of payments equilibrium, permitting competition from imports is not viable. As a result, says Rice, this provision has little relevance to the current functions of the commission (Rice, 1979: 103).

Assuming that there was competition in the domestic market, then this requirement would entail two things: The first, is that the Commission should fix prices at a level which will attract more firms into an industry. If the prices are so low as to discourage new entrants then those already in business might opt out and this would affect consumers. The other possible interpretation is that the Commission should not fix the prices of imported goods at a level whose effect is to price-out local firms from the market. In any case the ability of local products to compete would not ordinarily depend on price controls. I think the best way to achieve this would be to use other policy instruments. For example, setting up a realistic exchange rate, giving export subsidies, imposing import duties and import controls to prevent dumping, easing sales tax and improving labour legislation. Or the government may make special provision to all firms in export business to purchase local inputs at reduced prices from local suppliers. A case in point is the Bukoba Coffee Plant which has been granted special permission to buy raw coffee from the Coffee Marketing Board at a reduced price so that it can sell processed coffee on overseas markets at competitive prices (Bates, 1984: 23).

4.6.3.(g) The Need to Ensure the Continued Ability of the Government to Finance Development Programmes and Recurrent Expenditure, Section 12(1)(f)

This requirement requires the Commission not to hamper

government revenue needs. This interpretation emerges from express provisions in the Act and from some events that have actually taken place. By an amending provision enacted in June 1975 it is stated that the, "Price Commission shall vary price structures where such changes become necessary because of tax changes or Government decisions", (Section 16A, G.N. 26, June 27, 1975). At the same time, the President "may give the National Price Commission or an Assistant Price Commissioner directions as to the performance by it or him of its functions under this Act and all such directions shall be given effect to accordingly" (Section 2(4)).

To fulfill this objective - to ensure it is not hampered, the following measures have been instituted. First, the Price Commission is supplied with tax rates by the government. A fixed percentage is given to the Commission (e.g. 50 per cent on a kilo of cement or 500 per cent on a litre of beer at the ex-factory price with effect from July 1, 1985). The tax rates are issued through legislation such as the Finance Acts; the Sales Tax Act 1969 and the Duties and Taxes Act 1970. These taxes are automatically passed into consumer prices (Mongi 1985) with very little, in fact none at all, absorption by enterprises by way of reduced profits. It is rare for the Commission to ask the government to reconsider its tax rates so that prices to the consumer may be reasonable. In its role as adviser to the government on prices policy the Commission has such an opportunity (Government Paper 1, 1981 para. 64). Apart from the tax statutes, government revenue needs may be realised through the Commission by direct Presidential orders. One such case was in October 1978 when the

President ordered the Commission to increase prices of basic commodities: sugar, petrol, textiles and soft drinks as well as those of beer, spirits and cigarettes to raise money for the war with Idi Amin of Uganda. In addition, two other organs have sometimes used the Commission to generate funds. First, government ministers, and second the political party (CCM). In April 1981 when it became clear that government expenditure would exceed revenue and the traditional sources of income would not generate enough money to bridge the gap, the Minister for Finance directed the Commission to raise prices of several consumer goods (Hansard, April 1981: 10). In February 1982, in totally different circumstances, the Minister for Agriculture, who was also chairman of the National Sugar Corporation (SUDECO) ordered the Commission to raise prices of sugar on account of increased costs of production. A Select Committee of Parliament set up to investigate the activities of the Sugar Development Corporation found that the increase was unnecessary and unjustified. The costs had been caused by inefficiency of management, the purchase of decrepit go-downs and dubious contract payments to private hauliers. The Committee recommended a reduction of the price to its previous level. The government refused to order the reduction on the ground that consumers were already used to the new prices. Instead, it ordered the sacking of the Minister concerned and senior executives of the Sugar Development Corporation (Africa Contemporary Records 1981-82, B 278; Daily News, Daresalaam, February 2, 1982). In February 1985 the political party (CCM) ordered the Commission to increase prices of textiles produced by local firms. The increase was for an indefinite period. The aim was to raise funds for the prestigious party headquarters in the new capital, Dodoma

(Daily News, Daresalaam, February 6, 1985). Similar orders have been made by Assistant Price Commissioners in the provinces and districts in respect of prices of goods and services under their control. The aims for which the money is to be spent vary from province to province and district to district. In Ruvuma Region, the regional authority needed the money for a complex sports stadium, in addition, to a District party head office. In Kilimanjaro Region, the money raised will be used to build a modern party complex containing premises for renting. The order in February 1985 was issued by the Party chairman in his capacity as President of the United Republic. It was an exercise of his legal powers but certainly for questionable motives. What the politicians do in these cases is simple. Suppose the NPC fixes the price of a shirt at Sh. 50.00. in its annual review. The Party (CCM) chairman will instruct them to put the price at Sh. 55.00. per shirt. Since all firms will have indicated their annual production targets they will be required to remit to the party a sum of money calculated by the total volume of production times five shillings. The case is the same with the regional authorities. Once the prices have been adjusted to the local costs, the authorities instruct the distributors, often State Trading Companies, to raise the price, say by two shillings for every piece of soap. The distributors will pay the money calculated in the same manner as above, and pass to consumers. The control system is thus used for political purposes.

It is significant to stress here that there is no authority under the Act to raise prices for purposes other than those stated in Section 12(2). But in the political arrangements of Tanzania,

where the political party (CCM) is said to be supreme (Article 3(2) of the Constitution 1984, No.5) anything done in the name of the party seems to be beyond question. Also senior officials seem to be allowed too much power to the extent of abusing them or exercising powers not legally vested in them.

4.6.3.(h) The Need to Provide Circumstances under which Local Manufacturing, Processing, and Service Industries are Able to Maintain Efficiency and Expand Business, Section 12(1)(g)

The key factors under this goal are "efficiency" and "business expansion", which are interrelated. Business expansion normally follows efficiency. Let us examine the meaning of "efficiency" as employed under this Act, the criteria the Commission uses to measure efficiency and the adequacy of the NPC's efficiency appraisal techniques.

4.6.3.(h)(i) Methods used by the Commission to Judge Efficiency

"Efficiency" as used in this Act, according to Rice, does not mean the "efficiency of allocation of resources in the economy" but simply "the efficiency of production of the plant" (Rice, 1979: 103). Viewed from this perspective, the role of the price controllers is to see that the costs of production, in terms of real resources used to produce a given product, fall over time, that is firms should be able to produce the same output with a lesser expenditure of labour, capital, fuel and raw materials (Rice, 1979: 103). The commission's manuals do not define efficiency. However, we can infer the criteria they use from their working papers (e.g. Nos. 116, 120, 148, 153 August to October 1984) which reveal certain standard techniques of assessing efficiency. These

papers concerned the review of prices for soft drinks (coca cola, pepsi cola, mirinda), Yuasa Car batteries, edible oils and fats and bed sheets and pillow cases, respectively. The first step, in all cases, consisted of a financial analysis. This involved looking at the profit and loss accounts of the firms for that product at the level of prices fixed over the preceding year. If the firm earns a profit at the prevailing price, then it is taken to be operating efficiently. So, the first criterion is profitability. The second stage was analysis of the costs of raw materials. The production formula for each product states the proportion of each type (in money terms) of raw materials needed. If less of a given resource has been employed in producing the same or more quantity of a given product, then efficiency in the use of that resource is said to exist. Efficiency in the use of raw materials is also judged by the amount of local raw materials, compared to imported components (Working Paper 16, September 1984 for car batteries). The policy here is to encourage more utilisation of domestic resources to conserve the use of foreign exchange. The third stage, is analysis of the marketing and distribution system. The commission looks at the volume produced in relation to the size of the market, the nature of distribution (whether handled by private businessmen or public firms), forms of transport and communication employed as well as the record of the firms as regards compliance with government policy on controlled distribution. Fourth, the commission examines capacity utilisation. They compare the installed capacity to actual capacity used. Here there is a standard rule that a firm will be considered efficient if capacity utilisation reaches 80 per cent of the installed capacity (Section 12(5)). According to studies many

firms never attain this level[6] (Wangwe 1977, UNCTAD Report 1984, Africa Contemporary Record 1981-82, B272). Fifth, the commission look at the administrative and managerial structures of the firm. Attention is focussed on selling and administrative overheads per unit product. Where there are many firms supplying a product, the commission compare performances between them. Sometimes, performance comparisons are made with firms producing similar products in neighbouring states. A good example is that of cement. Since most of the firms in the East African States produce Portland cement, presumably under similar patent and technological licencing arrangements, the performance of the cement firms is compared with those in Kenya and Mozambique.

With regard to trading firms, the commission uses two techniques to instill efficiency. First the NPC (through the costing department) tries to ensure that costs used to justify price increases are actually incurred. The cost delineating procedures provided in the Act, if strictly enforced are adequate to ensure that costs included in prices are not created out of thin air (Section 12(2)). The Commission permits all labour costs to be included in the cost-price. The aim is to give incentive to firms to use more labour intensive methods to absorb the growing labour force. But not all capital costs can be passed to the cost-price. Only the interest costs can be automatically included (Whitworth 1982). The second technique is the fixing of percentage profit margins at each stage of distribution or sale. For example, the margins for a bottle of coca cola fixed in September 1984 were: (added to wholesale price) 15 per cent retail margin in stores; 20 per cent in hotels and 25 per cent in consumer

6. On the extent and reasons for capacity underutilisation, see, Wangwe, S.M. (1977) "Factors Influencing Capacity Utilisation in Tanzania's Manufacturing", Vol.1, International Labour Review 115.

cooperative societies (Working Paper No.116, August 1984). The object of controlling the margin mark up is to give traders incentive to use economies of scale in transport and storage. By transporting and stocking in bulk the fixed and semi-fixed costs would be spread more thinly over the products. Retailers are forbidden in principle to include in the cost-price expenses on account of renting buildings, air conditioning and maintaining large inventories without the permit of the commission (Rice, 1979: 98). It has been suggested by Whitworth 1982, that a better method of incorporating incentives to retailers to cut costs would be to fix an absolute, and not a percentage profit margin, which would remain in force for several years. This is thought would force the traders to reduce unit overhead costs so as to obtain a high margin (Whitworth,1982: 484). It is clear that the commission's efficiency appraisal techniques seem to omit certain important aspects. For example, efficiency in satisfying consumers (redressing complaints), in punctuality in the delivery of goods, quality of services; in the choice of technology, that is exploiting new technological and production processes; in the training of personnel and in the departmental arrangements. These are matters which the government has called upon all industries to consider seriously (Governemnt "Policy on Productivity, Incomes, Wages", Paper 1, 1981, para.6).

4.6.1(h)(ii) Methods used to enable Firms Expand their Business

The cost-plus pricing formula permits firms operating reasonably efficiently to make surpluses which can be used to expand their businesses. Other methods include the profit margins given to traders; price increases specifically given to enable

a firm to raise money for investment - a point we shall see in detail in a later section and the pan territorial freight allowance given to all distributors of a given commodity. The freight factor means if a firm has the majority of its clients in the urban areas it will be able to raise enough money to subsidise its operations in rural, high cost areas.

It seems to me the question whether the controls give incentives to enterprises to expand business should not be confused with the real question which is whether the investments actually do take place. Do the firms actually use the money to expand business? According to Rice, despite the accommodation which the controls have made to induce firms to generate money for investment all indications are that investments are stagnating. The shortages in basic essentials like cooking oils, some textiles, beds, mattresses, soap, detergents, bread and stoves are evidence of that (Government Paper No.1, 1981: 4-5). A critical factor in determining investments is who makes the investment-decisions and what are his priorities when making the decisions. In those sectors in which private investments are dominant, as is the case with most of the commodities cited above, investors may have withheld investments not necessarily because the controls leave no profit for them but because they feel they could maximise profits if the controls were removed. In contrast, in those sectors in which the state is the investment-decision maker, as in the case of shoe production, cigarette and tea leaves processing, shortages are minimal.

4.6.4. A Point in Conclusion

To conclude the discussion on the goals placed on the price controls the appropriate question would be to ask: How effective are the Commission's methods and approaches in attaining these goals? This in turn raises a number of other questions: How clear and consistent are the goals? Are these goals the kind that would ordinarily be achieved by price controls? Is the Commission adequately equipped in terms of resources, skills and manpower to deal with the problems that arise in the course of pursuing those goals? What adverse effects is the Commission likely to cause to firms in pursuing the goals? How are possible conflicts in the goals resolved and in whose favour?

I will attempt to comment briefly on some of these issues in the light of the Commission's performance. First, on the definition of essential goods, goal 12(1)(a). Although a lot of essential goods have been brought under control of the Commission, there are a number of basic consumer goods that have not been covered. Those not under control includes products of the Tanzania Shoe Company, a major shoe producer; Sunflag Ltd., producing T-shirts; Ubungo Garments producing uniforms and garments; African Metals Ltd., producing aluminium buckets, pans, crockery and Tanganyika Enamelware Co. Ltd., producing enamel products. On the other hand, non-essentials, like tape recorders, records, refrigerators, sarees are controlled (Price Control List, September 12, 1984). The basket of "essential" and "non-essential" goods will require constant adjustment to conform with changes in living standards. With regard to halting rapid and frequent variations in prices, goal 12(1)(b) the policy is that a large once for

all annual increase is preferrable to small periodic increases. My view is that when the annual increases are made the margin seems so big that people find it hard to believe they are genuine (Daily News, Daresalaam, July 1985: 1) let alone to adjust their expenditures. The fact that they can tell when the increases will come with reasonable certainty does not yet seem to prepare them for the big increases at all. The flood of complaints found in the newspapers immediately price increases are announced suggests that more research needs to be done on the relative merits of one big price increase compared to periodic small increases.

As far as preventing unjustified costs from passing into consumer prices is concerned, goal 12(1)(d), I would say much depends on whether the Commission's costing staff will be able to detect costs inefficiently, negligently or artificially included in the firm's application for a price increase. This in turn depends on several factors. It depends, for example, on the competence of the costing staff. Italso depends on the working relationship between the enterprises and the Commission. Some of the considerations here would be whether the enterprises are prepared to tell the Commission about areas of operations in which they are weak or inefficient or whether they are willing to remedy inefficiencies brought to their attention by the Commission. My impression is that they are not. For one, many firms tend to inflate costs (Mongi 1980). For the other, to reduce chances of critical reports the data the enterprises submit always give as good an impression on the validity of costs as necessary to convince the commissioners that all the costs have been actually and necessarily incurred. Some enterprises I contacted agreed

that this was a common practice. They argued that the practice is a business ploy because of the public relations effect (the public will frown at inefficient managers) of the reports when they are published; and also because the management sees it their duty to minimise the chances of their applications for price increases being rejected on grounds of inefficiency. With the firms determined to force the Commission to accept their version of costs, the Commission's task becomes even more demanding. And experience shows that sometimes the firms manage to get away with it. A few examples will help illustrate this point. According to the 1982/83 reports of the National Development Corporation, several of its subsidiaries were granted price increases during 1982-83 to cover shortfalls in revenue. For example, the Friendship Textile Mill which was partially closed due to shortages of imported inputs, water and energy interruptions and the breakdown of machines as well as a protracted go-slow among employees, continued to keep in employment the entire work force. The firm produced only 24m. metres of cloth instead of the 28m metres installed capacity. The price increase was granted to cover loss of revenue from the 4m metres. The oil refinery (TIPER) suspended production during the early part of 1983 due to lack of crude. It continued to keep in employment and pay the workforce throughout the period of stoppage. On resumption of production prices of fuel were raised. Surely these cases show that part of the price increase covered elements of cost-inefficiency. This is contrary to the spirit of the Act. Yet, it is an illustration of the discrepancy between the rules in the "black letter law" and the practice. For in all the above cases the political and social environment favoured keeping employees in their jobs.

The establishing of fair relationships among incomes, goal 12(1)(e) would imply that the controls should alter the distribution of income between manufacturers, retailers and consumers; and also that between agricultural and industry. Due to failure to enforce controls at the retail level especially in rural areas (Whitworth, 1982: 477; Rice, 1979: 106) the controls redistribute income from the poor to the rich traders. It is also submitted that if the objective is to maintain a fair balance between incomes in the agricultural and industrial sectors the logical conclusion is that the Commission is perhaps not the appropriate institution. It has no control over agricultural prices.

To sum up we can say that the goals in this part of the Act are in many places ambiguous, or silent or simply susceptible to no clear cut interpretation. The Commission has tried to develop a coherent and consistent set of guidelines. It has worked out policy to guide the exercise of its discretion. For example, it has determined the priorities and the relative weight to be given to each goal. It has devised some methods and techniques employed in pursuing these goals. Some of these methods are effective while others are not.

4.7. The Price Commission and Price Determination

The NPC applies different methods for fixing ex-factory, wholesale and retail prices. I propose to examine each in that order.

4.7.1. Fixing the Prices for Locally Manufactured Goods

The law governing the fixing of maximum prices for locally manufactured goods is contained in section 12(2)(a). The section regulates the maximum ex-factory prices. The prices are formed by a simple process of adding up costs - the 'cost-plus' formula. The section provides that in fixing maximum prices for the sale of goods by the manufacturer, the cost price shall include, "the direct costs of production, the general overhead expenses, the normal wear and tear of capital assets, the cost of holding stocks of goods and materials, a margin in relation to turnover and the capital employed, the level of excise duty, sales tax and other similar duties payable by or collected from the manufacturer".

Taken literally this section seems to allow firms to recover every cost item no matter how wasteful, improper or avoidable it may have been. But such a construction would contradict the terms of section 12(1)(c) on preventing unjustified increases and those of section 12(1)(g) on instilling business efficiency. The commission's task is therefore to identify what costs are genuine and estimating what their level should be if the firm were operating efficiently. To carry out this task the Commission considers efficiency to be optimal where a firm utilises 80 per cent of the installed capacity, section 12(4). Second, it sends a detailed questionnaire to every firm whose products are controlled.

The questionnaire seeks to obtain information and data on costs of production giving a breakdown of each cost element, substantiated by invoices and other relevant documents. The information is then closely scrutinised by the statistical

and costing departments to ensure that it is consistent with data on the audited records (audited by external auditors). The data is then compared with that of previous years questionnaires to see areas in which changes have taken place and the possible causes. Wherever possible intra firm comparisons are made.

A rough indication of how unit costs are estimated can be gathered from the commission's working papers (Working Paper 153 of 1984) on prices of locally produced bed sheets. The unit costs are divided into three major headings: Direct costs of material, overhead costs; and costs of labour. The direct costs of material vary in proportion to increases in production. All direct expenses of labour, material and others constitute 'prime costs'. All indirect costs of material, labour, rent, electricity are overhead expenses. Overhead expenses cover fixed and semi-fixed costs. Overhead costs increase with, but not directly proportionate to the volume of production. Prime costs are directly allocated to the product. Indirect costs are apportioned to each product on equittable basis - according to anticipated sales volume, product weight or machine and labour time used in production. The commission usually accepts the firm's preferred basis of allocation of joint costs.

The computation of direct costs is facilitated by the production formula for the product. Each firm must specify the production formula i.e. the physical quantities of raw materials required in the production of a given quantity of output. The formula also stipulates the amount of labour needed. The costs of labour may fall under direct or indirect costs depending on

the firm's accounting methods. All wages and salaries incurred in the manufacture of the item are direct costs. Wages paid for handling of goods from the production floor to warehouses and distribution centres are also direct costs.

The costs of materials that become part of the finished product are direct costs. The costs are verified by suppliers invoices or purchase orders. The Commission also counterchecks the prices quoted with those published in papers like the Economist, the Times and the Financial Times. In addition, the Commission gets expert advice from institutions like the banks, the Marketing Development Bureau and the General Superintendance Company, a Swiss firm commissioned by the government to monitor importers.

Once the costs of raw materials and labour are established, they are multiplied by the physical quantities in the production formula. The sum total gives the prime costs. And when this is divided by total output, the costs per unit are established.

The next step in the cost delineation exercise is to determine unit overhead costs. This is done by estimating: (a) the total overhead costs per a given period (based on actual costs incurred in the recent past as reflected in the firm's loss and profit account), and (b) the volume of production (as given in the firm's estimates of production and provided the estimates are consistent with recent performance). Finally all the costs are added up - the direct, overhead and unit costs. A profit margin is added to the costs to arrive at the ex-factory price.

The law provides that the profit margin given must be in relation to the turnover and capital employed, section 12(2)(a). There is no definition of the term "capital employed", or the nature of the relationship between the level of profit margin to the turnover. Once again it is for the Commission to define these terms bearing in mind the need to strike a balance in all the goals enshrined in the Act.

According to the Commission, capital employed consists of the "net-fixed assets valued at historical costs less depreciation plus current assets; minus current liabilities averaged over a year" (Mongi 1980: 720). By valuing the fixed assets at historical (rather than replacement) cost, the Commission only allows a firm to earn a return on capital actually employed in the business and not on capital gains resulting from the revaluation of the assets. As a result of adopting this definition we find that: First, where a firm has to purchase new machinery at a higher cost to replace existing ones, it will be forced to raise most of the funds from external sources as opposed to retained profits. Since borrowing from external sources is not always possible the Commission exercises its discretion to allow a price increase to enable firms in such a situation satisfy their needs of funds for investment. Second, all loans taken out for a period exceeding a year are treated as part of capital. Those taken for less than a year are considered as current liabilities. Third, current investments for future production, e.g. capital work in progress, are excluded from the definition.

In determining a reasonable rate of return on capital employed the Commission looks at the special circumstances facing each industry. But no firm can be permitted more than 30 per cent rate of return. Any local firm earning a pre tax rate of return exceeding 30 per cent per annum will be presumed to have abused its position on the market, section 13(5).

After computing the turnover on investment a return on sales is worked and added to the costs of production. To this are added taxes and these cumulatively make up the maximum ex-factory price for a given product.

4.7.2. Some Observations

It is clear from the description of the method used to fix prices above that the task facing the Commission is enormous. It requires competent and adequate personnel. Moreover, it requires data and information which is accurate and detailed. The question is whether the Commission is adequately equipped for this task. On the personnel side, I found that as of December 1985, the Commission had been able to recruit only two qualified cost-accountants. One of them is an expatriate. Most of the staff in this section had to learn the subject on the job. Given the magnitude of the task involved in identifying what the firms costs actually are and given the heterogeneous nature of firms under the Commission's jurisdiction, I find the Commission inadequately equipped to carry out this function competently.

The second problem is defining "allowable" costs. The Commission makes an allowance for "unavoidable wastage".

There are, however, no guidelines as to what levels of wastage would be considered unavoidable. So far the Commission relies on the firm's experiences in the past. But this approach can lead to mischief if proper scrutiny is not made. A good illustration is the case of the Sugar Corporation. In 1982 the National Sugar Corporation (SUDECO) obtained a price increase to cover, inter alia losses on account of unavoidable wastage. Press reports revealed that a lot of sugar lay spoiled in the corporation's warehouses due to poor storage and exposure to rains. A special Parliamentary team was set up to investigate the allegations following a private members motion that the government had no justification in allowing the prices to go up. The team found out that the losses had been caused by negligence by the management for purchasing descrepit go-downs. And concluded that these losses were avoidable (Daily News, Daresalaam, February 19, 1982).

The third problem relates to the methods of allocating costs to products produced jointly but which are sold on the domestic and overseas markets, or where a firm uses the same equipment and labour to produce price controlled and non-controlled products. The Commission has devised four techniques to overcome this problem. One technique is apportionment of costs in direct proportion to the wage bill. This technique is employed for enterprises where labour is paid by the piece of work done. The assumption being that money spent on wages will vary in direct proportion with output. But this is not always true. The money cost of labour spent on different products may not necessarily vary in direct proportion to the time taken to produce that product. The other technique is apportionment by the percentage of cost of raw materials

used for each product. The third is allocation by the amount of machine-time spent on each product. The fourth, is allocation in proportion to the amount of prime costs. This method, however, does not distinguish between variable and fixed costs incurred on each product. It is arbitrary.

One other problem is that of delays in submitting data or enterprises not submitting any data at all. This is a very common problem to institutions set up to control industry. The audit corporation's experiences illustrate this problem very well. In the 1982/83 accounting period, the corporation got accounts from 280 enterprises only compared to its 400 clients. Out of the 280 only 85 submitted auditable records. The others had haphazard, inaccurate or poor accounting systems for which the auditor could not form any opinion. The Commission, as we noted earlier, relies on audited accounts for its decisions.

Where enterprises do not submit data or accounting records the Commission sets the prices of their products at the same level as those of the most efficient firm in the industry. This may, of course, cover elements of cost-inefficiencies in some enterprises. Alternatively, the Commission postpones price reviews until it gets acceptable data. This necessitates price reviews outside the time laid under the Act.

4.7.3. Fixing Prices for Imported Goods

The methodology for fixing prices of imported goods is regulated by section 12(2)(b). The prices are determined by the gross margin technique. Under this rule, the costs of production

at the point of export are first identified. To this are added local costs of distribution. Thus when the goods whch have been imported change ownership by way of sale for the first time in the territory, the cost price to the seller consists of the "free on board price at the port of shipment, plus the following charges in respect of such unit: insurance, freight; the landing, handling and clearing charges; the customs duties and similar taxes payable by the importer; inventory, carrying and storage costs and a margin in relation to the turnover and the capital employed".

Buying agent's commission and shipping agent's fees are determined by the rate customarily charged by the importers agents on like or similar goods. In most cases the function of the Commission is only to specify the profit margin at each point of distribution. The NPC has no effective or detailed control as is the case with locally manufactured goods. It is left to the importers to compute and compile the price and forward it to the NPC for announcement. The role of the NPC is purely one of legitimising. A good illustration is the guidelines issued by NPC to the Agricultural and Industrial Supplies Company, importers of machinery, agricultural inputs and consumer durables like refrigerators and deep freezers. The importers of refrigerators are directed to arrive at the retail prices by summing up: "the CIF value, customs duty, sales tax, wharfage and handling charges (but excluding demurrage charges), clearing and forwarding charges, bank charges, superintendence levy and transport from port to depot go down" (Price Control List, September 12, 1984: 88). From this a margin of two per cent was calculated for the pan territorial equalisation fund. The total of all this forms the

basis for calculating the various margins that will be awarded to the importer 17%, the wholesaler (Regional Trading Companies) 13% and retailer 15% in order to set the maximum prices at each level.

The NPC exhorts importers to make sure that the costs are carefully and properly established. Regulating prices of imported goods seems to be an area where the NPC's authority is minimal. It was probably felt that since most of the firms involved in this activity are state-owned and are few in number, they could be left to set prices on their own. Their public ownership would be enough to ensure that they protect the interests of the public. It was also felt that the pricing of goods in this area is too complex and would be enormously expensive and well beyond the Commission's capability. For instance, the NPC would have to obtain information on price quotations for every imported product (e.g. for every model of an imported dress) and from every potential supplier to compare prices. One problem would be whether the quotation should be sought from a country which produces dresses or one where dresses are freely imported. The other problem would be whether such information will be freely available. Would the cost of obtaining it be worth the trouble? Suppose the firms from which quotations are sought realise that the Commission is simply seeking information and has no intention to place any order, will they supply the information? Furthermore, effective control over imported goods requires cooperation. Only through intergovernmental cooperation would the Commission be able to find out how much, say, Kenya is paying to import a particular model of a tractor, would require the existence of some international

body which collects information on world prices and disseminates the information freely to interested parties.

Since July 1984, the government adopted a policy of liberalising the importation of some specified goods. The objective of this measure was to enable businessmen, with their own foreign exchange savings, to assist the government to import basic consumer goods to alleviate shortages (Daily News, May 7, 1985). Among the list of decontrolled items are textiles, machinery, commercial vehicles, soap and detergents and cooking oils.

While the government's decision was welcomed by all sections of the community, the dangers that it poses do not seem to have been realised by those who have commented favourably for this decision (Sunday News, Daresalaam, December 29, 1985). One noticeable problem is that importers sell cheap imported commodities at the same price as locally manufactured commodities. The reverse is equally true. Local manufacturers sell cheap local commodities at the same price as those of expensive imported substitutes. The second problem is that local firms, which are subsidiaries of foreign multinationals, are allowed to siphon out of the country a lot of profits through transfer pricing. The subsidiaries as we noted earlier, are often engaged in assembling and last-stage processing of intermediate inputs purchased from the parent company for resale on the local market. As such, they act as marketing agents for the parent company in a captive market since competing imports are kept out by import controls and the industrial licencing system (Whitworth 1982). Since the invoices that the subsidiaries forward to the importer to substantiate the costs of the inputs are supplied by the holding multinational

companies there is no guarantee that the prices reflected in those invoices are the correct prices or are based on the "arms-length" transactions. Indeed, there is ample evidence, in the Commission's records, showing that in the invoices tendered by some companies the cost of importing components is higher than the cost of importing finished goods. This in my view is an indication of over-invoicing in the prices of components. A third problem is that companies may sell a product (for which they hold a licence to manufacture locally) cheaply imported from their subsidiaries located in a neighbouring country rather than manufacture it on the domestic scene. This may in the long run wipe out local manufacturing and stifle the development of industrialisation in the country. Some realisation of the problems posed by import liberalisation and decontrolled price structures for imports is indicated by President Nyerere. Nyerere argues that the initial period of experimentation with the liberalisation policies shows there is a need to review and restrict the concession made. He remarks:

> Although the objective of the arrangement was to entice individuals who might have siphoned hard currency out of the country to plough it back, allowing the relaxation to continue under the same terms amounted to sanctioning unlawful practices (Daily News, Daresalaam, July 5, 1985: 1).

The unlawful practices referred to are presumably those relating to unconscionable prices of imported goods and transfer pricing.

4.7.4. Retail (or Consumer) Prices

The law relating to the determination of the price that the ultimate consumer pays, is contained in section 12(2)(d). It requires retail traders to take into account:

> .....the relevant manufacturer's, importer's, wholesaler's and subwholesaler's maximum price in relation to such goods, the cost of transport to the point at which the retail price applies, the inventory carrying and storage costs and a margin in relation to the turnover and the capital employed.

Price control at the retail level presents a difficult problem to the Commission. The Commission has to deal with numerous traders differing: in the size of their business; in the diversity and quality of products they handle; in the location of the establishments; in costs; in market structures and in the price-structures. The retail sector is characterised by a high degree of market domination. Almost all the firms are monopolistic or oligopolistic. They are predominantly organised along family lines, using family labour. This raises the question of quantifying cost of services rendered by family members. The Act lays down six factors which traders should take into consideration in fixing retail prices (Section 12(2)(d)); but it does not say in what priority. Each trader thus deals with cases as he thinks fit. It is here that the task of Assistant Price Controllers and local price control advisory committees come into play. The National Price Commission's control of prices to ultimate consumers takes two forms: (i) the fixing of maximum prices which apply pan territorially; and (ii) control of profit margins after manufacture (as the goods pass through the various distributive outlets). The profit-margin is set at a level which enables a trader to recover the costs of distribution and selling. Selling and distribution overheads consist of variable costs (i.e. those which vary directly with the quantity or value of the articles sold) and fixed costs (i.e. those that are incurred irrespective of whether the product is sold or not). Expenditure on variable costs is added to the cost

of manufacture of the product. Expenditure on fixed costs is apportioned on the products sold. The apportionment must be carried out equitably, on the basis of either an estimated rate per article or volume of sales, or a percentage in work costs. The retail profit margins are prescribed in two forms: in the form of stipulated percentages (say 5 per cent on the costs of bringing the commodity to the consumer), or in the form of a fixed sum per a given quantity or volume of goods (say, twenty shillings on every ton of sugar). The profit margin technique has certain disadvantages.

One disadvantage is that it gives no incentive to traders to reduce costs by adopting cost-efficient trade practices. A trader is allowed to recoup all costs of distributing the commodity and is guaranteed a profit margin. One area of concern where traders tend to be inefficient is transport. The tendency to order goods in small quantities obviously adds to costly transport since the same volume of traffic in small loads is more costly to handle than bulk transport. The other is that the implementation of the profit-margin would require traders to hire qualified personnel such as cost, management, and financial accountants. Due to the limited availability of such personnel and the expenses of hiring them, many small traders simply don't employ any. It is only the large corporations which can afford them. The third disadvantage is that it is administratively expensive to implement. The traders have to continually engage with the price controllers in debates as to what should, and what should not, constitute a permissible cost item. Furthermore, there is the expense incurred by traders trying to find loopholes in the system so as to evade it; let alone the cost of bribing the price-controllers to try

to convince them to accept the traders version of the subject matter. A further disadvantage is that, in view of high demand compared to supply for most of the items under control, the controlled prices are not followed by traders. The tendency is for traders to charge the price that the buyers are willing to pay on each occasion. The fact that the system of control over retailing is different from that applying to manufacturing has some important repercussions. It makes it difficult, if not impossible, for the National Price Commission to give clear guidance about the effect of its decisions on individual retail prices.

The great majority of the traders have to operate the Act themselves and are only subject, in greater or less degree, to subsequent scrutiny by the Price Commission. In this respect they are expected to follow the policy spelled out in the Act (Section 12(2)(d)).

Despite spelling out the policy on price increases examination of applications from the trading enterprises reveals a considerable number of misinterpretations or misunderstandings of the Act. For example, one such common misunderstanding of the Act is that many enterprises overlook the fact that if total costs have increased less than the allowable costs, any price increase must be limited to the amount justified by the increase in total costs, or the benefits of reduced costs must go to the consumer in for form of reduced prices. Where there is a fall in costs of production, either due to increased productivity of labour or to the fall in costs of inputs, consumers are denied the benefits of reduced costs because once maximum prices have

been prescribed the tendency of the enterprises is either to continue charging the same price or looking for price increases. Traders look at the prescribed maximum price as the legal one to be charged even when conditions under which they are trading call for reduction. The second noticeable misinterpretation is that businessmen assume that every cost incurred in the course of their business is an allowable cost, and that the allowable cost item spelled under section 12(2)(d) of the Act are only illustrative. That is not correct at all. In fact the cost items specified in the Act are exhaustive. Any item not specified cannot be included in the price, save with the express consent of the Commission. Therefore cost items such as entertainment, donations and demurrage charges, which the majority of businessmen currently pass to the consumer, are not permissible. Thirdly, some businessmen assume that evidence of losses in recent past automatically justifies a claim to raise prices. That is an erroneous view. The law is concerned with current losses. Finally, most enterprises anticipate cost increases in their applications. Again this is a contravention of the spirit of the Act. Prices may not be increased in anticipation of cost increases except with the express permission of the Commissioner. And the Commissioner should not grant a price increase which takes account of future cost increases, unless the increased costs are known as both to date and amount.

In conclusion, we note that the nature of price fixing processes depend on the kind of business. The prices of manufacturers are only permitted to rise if there is an increase in total allowable costs. Allowable costs are categorically stated in the Act. Retailers and wholesalers are allowed to increase prices without regard

to costs, provided they do not exceed the profit mark up. It was not considered feasible to apply the allowable costs to retailers and wholesalers because they stock large numbers of different commodities and cannot easily quantify the costs applicable.

4.8. Procedures and Methods of Inquiry

There are three main procedures for obtaining the information and data necessary in fixing the maximum prices: the pre-notification of proposed price-increases; regular reporting by enterprises to the Commission and record keeping, subject to spot-checks by the Commission.

All business enterprises, subject to control, are required to apply to the Commission for any price increase. The application must be made in advance, in a prescribed form and must be justified. The Commission has issued a data sheet. The layout of the data sheet is meant to facilitate the collection and sorting out of the information. Once the data sheet are submitted to the Commission the staff try to identify the key points, assemble the necessary information and evaluate it. Investigations are centred on the particular firm applying for an increase and not the whole industrial sector.

The investigations follow one standard format. First, there is a general summary. Then a section describing the "General Background", the "Market Structure and Competition", and "Pricing". Then follows a section on the firms operations describing "Financial Operations" (i.e. margins, cash flow, rate of return and the like); finally, there is a section on "Conclusions and Recommendations".

During the course of a reference for a price review, the Commission maintains contact and consultation with interested parties: the government, and the enterprise concerned. Such consultation enables the Commission to inform the parties of the issues involved to get their view points, andalso to obtain detailed knowledge of the enterprise. The enterprise management may be heard. The nature of the hearing is not specified. All contacts are made in private. There are no public inquiry procedures.

The main source of information are the records and reports of the enterprises, submissions by the management and the Commission's own studies. The financial data that the Commission collects from the enterprise, for purposes of fixing prices, centres on four main aspects: The first, is the costs of production (including unit costs) broken down into components such as costs of labour, material and fuel. Second, is on capital employed and profit margins. Third is on current prices of the product. And fourth, is on the quantity of production; volume of sales and price indices of the components.

To prevent abuses inherent in cost-plus pricing, the Commission uses the following methods to investigate efficiency. One, is comparisons of costs, performance and management practices made between similar firms in the same industry. Comparisons are made in their invoices if the firms are using the same raw materials. Managers may be called upon to explain any discrepancies or variations in productivity. Obviously, this method ignores differences in location, type of technology used and market structure of the firms compared. Another method is comparisons with firms

producing similar goods or services in another industry or another country. The other, is comparisons made within the same firm over a chosen period of time.

The efficiency audits carried by the Commission are, however, limited in their scope. They do not go into the details of the issues. For example, the efficiency studies do not probe into efficiency in labour deployment; capacity utilisation; appraisal of investments; marketing practices or utilisation of plant and machinery.

Apart from the question of efficiency audits, there are other areas of concern raised by the Commission's methods of investigation. One area relates to a fundamental question of justice. The Commission does in practice, sit as a judge. But unlike most other judicial tribunals, it is not required to define the charge against the enterprise; nor to allow a cross-examination of the evidence it takes; nor even to allow the presence of the parties or to allow an appeal during, or after, the various stages of its process. If the Commission reaches an erroneous conclusion, there is little that the enterprise can do. The enterprise does not know the Commission's conclusions before they are announced, and it has no opportunity before that to discuss them with the Commission. The Commission, under the Act, is the only competent authority to hear appeals from its own decisions (Section 15).

These deficiencies in the Commission's hearing procedures do evidently raise a lot of concerns for those firms whose products

are subject to price controls. Take the case of the price freeze that takes place during investigations. There is no provision for the grant of an interim price increase order during an investigation into the application for a price increase. If the Commission's investigations conclude that the increase is justified, it is not possible to sue the Commission for damages or recovery of revenue lost during the investigation. In strict legal terms, the freezing of prices during the period of investigations amounts to presuming the guilt of the enterprise concerned, until it can prove innocence. For it implicitly assumes that there is no justification in the proposed price increase unless the enterprise establishes a clear case. Yet, the damage to the cash flow, on account of a price freeze, when costs are increasing, could be critical to the enterprise and may lead to a failure to meet the enterprise targets.

Delay in making decisions, is another point of concern. There is no specified time limit within which the Commission must complete its investigations. Delay results in considerable losses of revenue to the enterprises. It acts as a break on their freedom of reaction needed to respond to market forces. A factor which has made the effects of delay so serious in recent years is simply inflation. Often the enterprise's costs rise after the submission of the application, but before the announcement of the award. By the time the prices fixed are published the enterprise will inevitably continue to make losses for reasons quite outside its control unless either the Commission allows the inclusion, in the price fixing formula, of an allowance for future inflation, or the costs submitted by the enterprise are

exaggerated and this is not detected by the Commission. There are strong indications that the Commission does make an allowance for the effects of inflation on costs. But this is seldom announced. It would be embarassing to the government for anything precise to be stated publicly.

The other aspect of concern is the absence of systematic and continued communication between the Commission and the management of the enterprises concerned. After receiving the data from the enterprises, the latter are largely ignored in the crucial stages of evaluating the data; interpreting the information and coming to conclusions. This raises a fundamental question of justice. The enterprises are denied the right to a fair hearing on aspects that constitute the most elementary principles of natural justice.

There is, as in previous price control regimes (e.g. Price Control Ordinance 1920 and Price Control Ordinance 1951) no consumer representation in the inquiries. This according to the Price Commissioner, is not a shortcoming in its legal processes, nor is it an oversight on the part of the legislature. The consumer's interests are taken care of by the spirit of the Act which is geared at fair prices to consumers, but within the political environment of the country. Fairness to consumers is enshrined in the country's policy and Constitution which has proclaimed absence of exploitation of one person by another. Moreover, all the Commissioners, who make decisions on the amount of prices, are consumers themselves. They will always put the consumers interests in the forefront (Nditi, 1985: 2). This last argument

is debatable. It assumes that the Commissioners' perceptions of consumer interests are congruent with those of the consumers. That may not be necessarily the case always. The very fact that the Commissioners are bureaucrats, appointed by the government seems to me to be a strong indicator of the interests that they are expected to safeguard.

An analysis of the Commission's practices, as a machinery for consumer-protection, reveals some fundamental weaknesses in its structure, terms of reference and composition. The terms of reference conferred on the Commission under section 6 do not specifically mention the word "consumer"; and there is no statutory provision in the entire Act which mentions the concept of "consumer protection". A casual reference is made to the consumer in section 13(1)(b) which provides the Commission with powers to hear appeals from its own decisions or from decisions of allied agencies: "the Price Commission shall have power to receive and view applications in respect of prices from any user or consumer....".

There is no real effective consumer influence upon the Commission. The Commission is not in touch (in the absence of machinery for consultation) with the consumers whom it is supposed to represent and protect. And yet we should note that there is a strong case for such representation. The case arises from the removal of consumer sovereignty as a result of the creation of public monopolies, and from the lack of consumer power over the producers of these goods and services. There are no established consumer equivalent of the Chamber of Commerce (spokesman for traders interests). There are no consumer consultative councils

to provide consumer representation in the running of the public monopolies - to sit in the boards of the enterprises. This gap must be compensated for in some other way. The limited experience of other countries who have big public corporations may help. Many countries have instituted devices such as advisory committees, directorates of consumer affairs, public relations officers or appointments of consumer representatives on the boards of the enterprises.

In France the situation has been more developed. The governing bodies of French public corporations are formed with equal representation of workers, consumers and the state. This assemblage of diverse interests has lead to problems in forging a coherent policy and efficient management in some of the enterprises there.

In the United Kingdom, the nationalising statutes set up special machinery for representing the views of consumers. The precise titles of these institutions vary from industry to industry. They are titled as "Area Consultative Councils" in water and electricity industries; or "Advisory Council" in air transport; or "Consumers Councils" in the coal and gas industry (National Consumer Council, Report No.1, 1976: 14-52).

The principles on which all these consumer organs are constituted in the United Kingdom are the same. They are statutory in character and their members are appointed by Ministers in consultation with the representatives of the interests concerned. Their functions and powers include obtaining information from

industries, bringing consumer complaints and opinions before the enterprises. They publish their views and make annual reports to the Ministers. However the scope of their powers is limited by their terms of reference and other practical difficulties. For example, details of working costs of the enterprises are not disclosed in full by the enterprises. Excepting such limitations, the councils are useful. They can appeal to the Ministers on behalf of consumers, to have price increases blocked. They provide a forum for the expression of consumer complaints and grievances. They act as a consumer watchdog.

A further basic weakness with the Price Commission is that it has a dual role to play - representing consumers to the enterprises and enterprises to the consumers. It is important, in my view, that the consumers interests be given more weight. This element of divided loyalties raises a problem of how much can the Commission act as an independent and unbiased machinery. All indications are that it is becoming increasingly a staunch protagonist of the enterprises than of the consumers.

The other weakness is the information gap. The Commission does not consult consumers. Public opinion is only sought with the objective of providing information to the government so that they may increase their position in the Commission. It does not publish the reasons for its decisions. Where it does, the information is brief and selective. It does not explain how it arrives at the decisions on the level of th maximum prices for individual commodities. This deprives the consumers of a vital element (i.e. information) necessary for effective representation. Lack of

information disables consumers from commenting on the issues that touch upon them. This also acts as restraint to judicial review of the discretion of the Commission.

An efficient and effective system of consumer representation should at least meet certain minimum basic conditions. First, it must be representative of, and in touch with, the ordinary consumer. To do that it must be close enough to the locality to have real contact and communication with the consumers. At the same time it must be close to the enterprises to be able to influence them on matters of consumer welfare. This aspect is all important in view of the fact that consumer protection is not restricted to escalating or unjustified price increases only. It also incorporates product or service quality, design, performance, safety from hazards and additives, promptness in deliveries and redress of consumer grievances. Furthermore, there should be an element of democracy in the structure of consumer representation to ensure that the machinery itself is responsive to the needs of consumers in a given industry. The present structure of consumer protection in the Commission and its allied organs is neither comprehensive nor democratic. For example, the National Price Commission has no regional or local branches. All its activities are carried out from the capital city in Daresalaam. Only occasionally it sends it members to hold public talks in the regions. And even then the talks will be held in the regional or district headquarters. The vast majority of the consumers have no access to it. Equally, the Assistant Price Commissioners are the regional or district Development Directors. These are the senior administrators in their districts. They dwell in urban

centres and are not easily accessible to the rural population, which constitute the bulk of the ultimate consumers. The fact that they exercise powers that embrace executive, legislative and judicial functions tends to alienate them from the people.

Secondly, the machinery must be independent of the public authorities it is set up to advise and criticize. This is necessary to avoid capture. What is required is an independent institution whose members are experienced in fields like production, finance, marketing, procurement and administration. It should have its own research facilities capable of investigating all industries. Its main duty would be to develop arguments supporting or criticising the policies and attitudes of the enterprises in the light of consumer interests. The machinery should be able to exert effective influence in the decision-making process of the enterprises. Wherever necessary, the body should use outside expertise or consultancy in areas in which its resources are lacking. External expertise will also bring to it the wide practical experiences accumulated by others in different occupations or specialised areas. Currently the Price Commission does not involve outside consultants in its activities.

There is another area of specific concern. That is the scope and quality of investigations of the Commission. The general impression one gets from the records and working papers is that there is no specific focus, say on a particular aspect of the business enterprise on which the inquiries concentrate. The inquiries tend to roam over wide areas of business activity. Consequently, a lot of major issues that would require detailed

scrutiny are glossed over or treated in a partial fashion. Some of the notable issues which are casually treated by the Commission are efficiency of the managers, the correctness of the data; utilisation of labour, exaggerated costs, capacity underutilisation, propriety of investment decisions; to mention a few. These areas have consistently drawn criticism from audit institutions in their reports, especially the Tanzania Audit Corporation Report 1983, the Coopers and Lybrand Ltd Report 1982 and the Comptroller and Auditor Generals Report 1984.

This problem seems to be accentuated by two other related factors. The first being the involvement of some investigations by the NPC into areas of business and industrial activity in which the NPC have little knowledge. The second is the Commission's apparent unwillingness to enlist the assistance of outside consultants and experts.

An aspect of final concern relates to confidentiality of the information which enterprises provide to the NPC. The information firms disclose to the NPC obviously touches on issues of vital importance to the protection of the commercial welfare of the firms involved. Matters like costs, profits, manufacturing processes, and research into new products may be of benefit to competitors. It could be argued that such information should be made more available to the public to elicit efficiency and competition. In my view, it is more important for the protection of the firms concerned, to exercise greater caution and selectivity on the type of information that is disclosed to outsiders. It seems the main safeguard on this point is the civil service back-

ground of the majority of the Commission's staff who share a tradition of wariness in disclosing information (Mongi 1980).

4.9. A Critique of Cost-Plus Pricing

Proper pricing is an important ingredient of satisfactory operation of the economic system (Dorfman 1965; Samuelson 1979). There appears, however, to be no agreed definition of what proper pricing is. There is still considerable debate among economists and leading political economists about this subject. Adam Smith, for example, perceived of proper pricing in the following terms:

> The real price of everyting - what everything really costs to the man who wants to acquire it, is the toil and trouble of acquiring it (Adam Smith, the Wealth of Nations, Vol.2).

His view still finds support among modern economists. Take the UK White Paper 1967, which set out guidelines on the pricing policies for public corporations. It stated that the, "aim of pricing should be that the consumer should pay the true costs of providing the goods and services he consumes in every case where those can sensibly be identified" (The Economic and Financial Obligations of Nationalised Industries, Cmnd.3434, 1967).

These statements have been taken by economists to mean that prices should be determined according to long run marginal costs (Crosland, 1950: 51).

The merit of marginal cost pricing is said to lie in its efficiency in allocating economic resources - land, labour, capital and raw materisl (Rees, 1983: 13; Samuelson 1979). Accordingly, all other pricing formulae like full cost pricing, average cost, cost-plus or break even, which do not lead to optimal allocation

of resources, are deficient (Leftwich, 1985, Chapter 3).

The main weaknesses and problems of cost-plus pricing are: distortion of economic activity (Rice 1979), a disincentive to costs, and failure to prevent transfer pricing (Whitworth 1982).

4.9.(a) Distorts Allocation of Resources

One of the inherent disadvantages in cost-plus pricing is the tendency to misallocate resources. This happens because an industry may persist in the production of a commodity that does not command a high demand on the market since the firm producing the product is guaranteed of recoupment of all of its costs of production. The argument here is that cost-plus pricing is insensitive to market indicators (consumer responses). Resources may go into the production of goods whose priority is not wanted by consumers. An example of this would be the case of indigo cloth (black textiles commonly called 'kaniki' in Swahili) in 1984 which the government ordered to be produced by local textile firms so that peasants could get some clothing material at cheap prices. The firms produced and sold them to the Regional Trading Companies. So the firms were able to recover their costs of production. But the Regional Trading Companies had difficulty in selling the textiles to consumers since the peasants, for whom the material had been specifically made, were not impressed by its quality. To solve the problem the Regional Trading Companies decided not to sell other essential items like sugar, soap or cooking oil to consumers unless they agreed to purchase a given quantity of the unwanted textile.

The argument on resource allocation should not, however, be stretched too far. In a country with a large element of administrative allocation of resources, as is the case with Tanzania, it has little force in practice.

4.9.(b) A Disincentive to Cost-efficiency

The other disadvantage with cost-plus pricing noted by Rice 1979 and Backman 1963, is that the formula results in there being (a) little or no incentive to business firms to cut costs; (b) an incentive to lower efficiency. Another disadvantage related to these two, is that cost-plus methodology can easily result in prices being higher than the market will permit or lower than the market is willing to accept in relation to the value offered (Backman, 1963: 25). It has been suggested by Rice that the persistent shortage of commodities like cooking oil and sugar is an indication that the price is lower than what the market is willingto clear. If left to react to the market forces, prices would have been higher than the present level (Rice 1979) and this would have curtailed excess demand. Such an argument would be valid only if one assumed that there is enough supply of these items to meet normal demand. Statistical evidence shows that this is not the case. Production of many commodities has declined over the years, as we shall see in Chapter 6. Thus even if demand were the same (assuming no increase in population, or incomes) there would be shortages. What the critics of cost-plus often assume is that every cost incurred by a firm will be passed into the price of the product. This notion is rejected in our case for two main reasons. First the Act itself prescribes the cost items that can lawfully be passed into prices.

Second, the Commission try to examine the propriety of each cost item in the individual firms seeking a price increase (see Chapter 4.7.).

4.9.(c) Transfers Monopoly Profits or Scarcity Premia from Manufacturers to Traders

Another criticism of cost-plus is that it has a tendency to transfer monopoly rent or profits from manufacturers to traders or black marketeers (Backman 1963). This may happen where there is a shortage of supply for the commodity in relation to actual demand. Instead of the scarcity premium created by demand pressure going to the manufacturing firms, as would be the case if the market were to determine prices, the manufacturers get only what is determined by the cost-plus price. This leaves traders or black marketeers to benefit from the scarcity premium (Whitworth 1982: 482). This in my view is a question of enforcing the formula. So far the control of costs permitted into prices is much stronger at the manufacturer's level than at the retailer level (Nditi 1985). Consequently, retail traders do benefit from the monopoly rents than the manufacturers.

4.9.(d) Failure to Prevent Transfer Pricing

Cost-plus pricing as practiced by the NPC assumes that manufacturers purchase their intermediate inputs at arms length prices (Mongi 1980). Firms verify their materials costs by supplying the NPC with their suppliers' invoices. However, we noted earlier on (Chapter 2.3.) that a number of multinationals have established subsidiaries which assemble products locally to avoid exclusion from the Tanzanian market arising from import restrictions. These

subsidiaries assemble inputs purchased from the parent companies. As such local agents of the multinational operate in a captive market since imports, for instance in the case of radios and dry cells produced by Philips (T) Ltd., National Panasonic (T) Ltd., or heavy duty trucks assembled by Tanzania Motor Corporation (a subsidiary of SCANIA) are prohibited. Since the invoices that are sent to the price controllers by these subsidiaries are supplied by the parent companies there is a possibility that the prices they show are not 'arms-length' prices (Whitworth 1982: 483). With the relatively high rate of profit tax such firms may well prefer to take their profits in the form of above normal prices in the inputs sold to the subsidiaries rather than declare them in the country. Cost-plus thus fails to prevent multinationals from transfer pricing their profits out of Tanzania. This is because cost-plus assumes that the product is fully produced locally.

Accepting that all the weaknesses of cost-plus outlined above were valid, there seems little doubt that there is no economic rationale for maintaining this methodology. What other justifications are there for its continued employment?

Apart from the purely economic considerations there seems to be some political and social advantages in cost-plus pricing. These too should not be ignored. I would go along with Backman's views that "pricing is an art and not a science. It cannot be reduce to mathematical formulas or be split into factors which when fed into a computer will produce the right price" (Backman, 1963: 25). What Backman basically argues is that a price fixer, be it the firm itself or a public agency, must consider

other matters of vital concern to the community - legal, political, administrative practicability and public relations, when fixing the price. He should not close his eyes to these factors and try to confine himself to the purely commercial aspects only. I find this argument very apt to the Tanzanian situation.

First, political stability is an important objective. Second, fairness is an essential consideration. Here the major consideration is then not only that the NPC should be seen to control prices, but also the techniques employed should be seen as fair. The perception of the ordinary members of the community of what is "fair pricing" may not be the same as that of an economist. The Tanzanian public is likely to perceive prices which permit manufacturers to recover fully the costs of production plus a controlled profit margin as fair as if the pricing were left to the forces of the market.

In terms of administrative practicability, cost-plus pricing is easy to understand and apply. All those involved in the price-formation processes seem to have little difficulty in comprehending the methodology. This is an advantage acknowledged by proponents of the methodology (Mongi 1980, Whitworth 1982) as well as its critics (Rice 1979). Bearing in mind that those responsible for the administration of the rules at present are not adequately equipped for the task - as seen in the manner in which the price control agencies are staffed, with people not well trained for the task; or businessmen who are self-employed and not competent in cost-accounting implementing the formula - simplicity and clarity in the methods become an important consideration.

All indications are that the NPC is quite pleased with the results achieved by cost-plus pricing so far. This comes out clearly in the remarks of a senior consultant with the NPC, who observes

> Cost-plus pricing is easily understood by price controllers, businessmen and consumers because of the simplicity of the principles involved. Many firms (even those whose products are not subject to control) fix their prices on a cost-plus basis. They have little difficulty providing relevant information and cost data when called upon (Whitworth 1982: 486).

The point made by those who defend the methodology is that its use is not based on economic considerations, but rather on practical considerations taking into account the political, social and economic objectives of society, the local environment, the managerial as well as administrative questions (Nyerere 1980; Mongi 1980).

One important observation which may be made in conclusion about the price fixing processes is that the procedures are not as simplistic as they appear from my analysis of the statutory provisions regulating them. As I have pointed out here and there, the question of who actually takes the decisions and on what basis (i.e. where does the focus of decision-making lie in practice) is largely political. To understand why prices of particular commodities behave the way they do - why do prices go up at particular periods of the year; what sort of justifications are given for the increases - we need to look at the forces at play within the political environment. Unfortunately such analysis is sometimes difficult because the actual processes at work are not always disclosed to the public. What the public are told is the end result of what may have been long political pressures. In this respect I would argue that while it is true that the concrete decisions such as an announcement that the price of sugar is

being raised by so much per kilogramme, are made by the National Price Commissioner, the de facto decision-makers, as the Price Commissioner suggested to me, are the government Ministers and civil servants in the various sectors of industry (Mongi 1985).

4.10 Alternatives to Cost-Plus Pricing

There are various alternative pricing formulae, which if adopted, could overcome the problems encountered in cost-plus pricing. The alternatives include: average cost pricing, pricing according to what the market would bear, imported-substitute pricing and marginal cost pricing.

4.10.(a) Average-Cost Pricing

Here the total costs would be distributed equally across all units which share those costs. However, this would lead to subsidisation among units. Also, it would ignore the cost differentials involved in serving consumers in different markets.

4.10.(b) Pricing According to What the Market would bear

Under this alternative, prices would be fixed according to what consumers are prepared to pay. This rule can be applied in a scarcity market where consumers who can afford to pay higher would be given preference. But such an approach contradicts other objectives such as social justice - income and wealth distribution, equality and prevention of uncompetitive practices. It may also be an incentive to artificial shortages. Firms may withhold supplies so as to obtain higher prices.

4.10.(c) Imported Substitute Pricing

In his recommendations to the NPC, Rice suggested that prices of local products should be set at the same level as those of imported substitutes (Rice 1979). The recommendation was rejected by the government on the ground that there would be a lot of practical difficulties in implementation. One difficulty is the different cost-structures facing domestic compared to overseas producers. The other is that imports come from many countries: Which country's products should be used to determine prices of local commodities?

4.10.(d) Marginal Cost Pricing

The formula favoured by economists is that of determining prices on the basis of marginal costs (Samuelson 1979; Leftwich and Eckert 1985). Under this formula, prices are determined by the marginal cost of producing the item. A marginal cost is the extra cost involved in producing and supplying one more unit of the product (Samuelson, 1979: 452-453). A firm should produce until its marginal revenue from the last sold unit equals its marginal costs of production. The price should be the equilibrium price at which total output can be sold at the market. But marginal cost pricing has its own difficulties.[7] It may be difficult, for example, to obtain a marginal cost estimate (Rees, 1979: 5), or a marginal revenue estimate (Samuelson, 1979: 451-455), let alone an estimate for the way the market will react to the extra output. Samuelson, 1979, Leftwich and Eckert, 1985, and other economists, however, demonstrate that marginal-cost pricing is the most sound

7. For some of the difficulties encountered in estimating a marginal cost, see, Reid, G.L. ed. (1973), The Nationalised Fuel Industries, London: Heineman Educational Books.

pricing formula from the perspective of economic and efficient allocation of resources. Also, it comes very close to making consumers pay the true costs of providing the goods and services (Samuelson, 1979: 453-457).

CHAPTER 5

The Law and Practice

Introduction

In the preceding Chapter I examined the price-fixing procedures. In this Chapter an attempt will be made to examine the machinery established to ensure compliance and observance of the controlled prices. I shall first examine the enforcement agencies. Then I shall look at the style, methods and techniques employed. Finally, I will assess the adequacies of these mechanisms.

Enforcement is probably the aspect that is of greatest concern to consumers. When people complain about the ineffectiveness of the law, they usually refer to weak or no enforcement rather than shortcomings in the rules. Their view of the law is often gathered not from what the government says or the content of the regulations, but from the behaviour of law enforcers.

First, let me begin with the enforcement agencies.

5.1. The Machinery

The power to enforce the controlled-prices rests primarily in the Price Commissioner, Assistant Price Commissioners, price inspectors and police officers of or above the rank of Assistant Inspector, Section 27(1).

Price inspectors may be appointed by the Price Commissioner for a period of fixed duration, or they may be authorised by a price commissioner or senior Police Officer for a specific assignment. In the latter case, authority must be in writing

Section 27(1)(a). Although the Act restricts the powers to police officers of the rank of Assistant Inspector and above it would seem that ordinary police officers can enforce the provisions of the law under the general powers vested in them by, and subject to the requirements of the Criminal Procedure Act 1985 (Section 14). In the same vein, other persons authorised to exercise powers of police officers - like members of the people's militia, the national service and vigilante groups do enforce the controls. Apart from these agencies, there are a host of other organs who enforce other provisions of Part V of the Act. For example, quality and standards are enforced by the Bureau of Standards; weights and measuring instruments by legal metrologists from the Ministry of Trade. Finally, I would say, the members of the public themselves are also an important enforcement agent. Through their public vigilance, complaints to the police, press and party officials, the public facilitates detection of violations and apprehension of offenders.

5.2. Two Styles of Enforcement

An investigation into the Commission's enforcement methods and processes reveals that there are two distinct styles. The first may be categorised as the penal approach and the other as the conciliatory one. Each approach as wel shall see, aims at a specific class of violators and each seems to have its own logic.[1] I will attempt to explain these approaches and the rationale behind each.

1. For a fuller discussion of these enforcement styles, see Scholz, J.T. (1984) "Cooperation, Deterrence and the Ecology of Regulatory Enforcement", Vol.18, No.2. Law and Society Revue. 179-224.

5.2.1. Penal Style

The penal approach is governed by several penal rules in the Act. Examples are those rules which expressly prohibit certain forms of behaviour or conduct and those which impose compulsory obligations such as the rules forbidding: the sale of goods above the fixed prices (section 20); the marking and display of prices (section 17(1) and 30(1); the compliance with specified standards (section 21) and keeping of records (section 18). Breach of any of these provisions leads to penal sanctions.

Penal enforcement comprises three stages: detecting the violation, determining the rule contravened and applying the appropriate sanction.

The rationale behind penal enforcement, says Baldwin, is to ensure deviant persons find it in their interest to comply with the law (Baldwin 1983).

This strategy is adopted mostly in violations by individual traders as opposed to business organisations. The purpose is to deter the bad individual. Most of the individuals involved in contravening the controlled prices are merchants of adversity who move in to take advantage of scarcities on the market. Their actions are, therefore, unlikely to be continuous. Their conduct is momentary. Merchants of opportunity have no fixed occupation, no business address and lack reliable supplies. Frequently they are found on markets that are unofficial (on the pavements on roads) or move from street to street. Their behaviour is unpredictable. As such a penal response, says the Price Commission,

is the most appropriate form of dealing with them. They, like hard core criminals, need a harsh treatment to deter them and others from engaging in undesirable social conduct.

To implement this strategy the price inspectors are under instructions to visit periodically all shopping areas and market places, keep routine checks on shopkeepers, make close surveillance on vendors and hawkers, investigate all suspicious deals, set traps where necessary and strictly enforce the letter of the law. The price inspectors never hesitate to prosecute individual price violators, no matter how trivial or minor the violation may be (e.g. an overcharge of a few cents). The courts response to individual violators is equally strict.

Of course limited inspectorate and prosecutorial resources dictate some degree of selectivity in the prosecutions. But even in such selection, the overriding objective has always been to maximise the deterrent effects on violators.

The indiscriminate manner in which individual violators are dealt with is illustrated by the fact that in 1983 the number of suspects netted in the price swoops overcrowded the remand prisons so much that visiting justices of the peace had to plead with police authorities not to detain petty criminals (Daily News, Daresalaam, April 20, 1983; Africa Contemporary Record 1982-83, B 278).

5.2.2. The Conciliatory Approach

The conciliatory (or compliance) style is applied mostly to corporations. The Price Commissioners, as we shall see, do recognise that violations among corporations are bound to happen and are likely to be repetitive in nature. This is due to the poor economic conditions prevailing in the country which make it impossible for firms to comply strictly with the letter of the law (Mongi, 1985).

Enforcement against firms, as we shall see below, takes a very conciliatory tone - seeking to remedy breaches without forcing the company out of business. I think the adoption of the conciliatory approach to corporations is conditioned by two main factors: First, there is the monopolistic nature of the corporations; and secondly, the nature of the regulatory framework.

With regard to the first, we may note that since the majority of the corporations operate in an uncompetitive environment the enforcers are constrained from taking any action which might push the firm to withdraw items from the market. Disappearance of goods from the market will not only cause hardship to the corporations but also to the consumers. As between the two options, seeing withdrawal of goods and tolerating the violations, the Commissioners prefer the latter. Common sense dictates the latter option. With regard to the second factor, the rules are designed to secure voluntary compliance by corporations. This is evidenced by those provisions which only lay down broad guidelines as to the standards and criteria to be followed by business

organisations giving them discretion to apply those standards in individual circumstances. For instance, the rules lay down guidelines of a general nature as regards: costs (section 12); quality and quantity (section 21); measures, packaging and labelling (section 21), and other like requirements. But the Act leaves a lot of leeway to the corporations to decide how to comply in individual cases. The Commissioners can only enforce these provisions through cooperation with the firms concerned. It is not surprising, therefore, to find that emphasis is put on the need to provide circumstances under which a continuing and harmonious relationship between the enforcers and the corporations can be established.

How this conciliatory approach is operated in practice can be summed up in the following case study of the Regional (government-owned) Trading Corporations. The case shows how violating corporation were given the benefit of doubt when wrong-doing is suspected; how explanations are sought from the corporations before any punitive action is taken, let alone contemplated, by the Commissioners. It further demonstrates, how legitimate reasons for non-compliance are accepted when warranted by circumstances (economic or political), and the way technical violations are overlooked, especially if trivial. It also shows the extent to which generous abatement terms and periods are granted to offending public corporations and the extent to which prosecution is rarely considered against them, except as a matter of last resort.

In 1984 the Regional Trading Companies in Kigoma and Rukwa regions were reported to the National Price Commissioner for selling cooking oil to consumers at prices above those fixed by the Commission. The reports were filed by the trading officers of those regions. The two companies admitted the violation, but defended their actions on grounds of economic necessity. The argued that the manufacturer of the oil, the Morogoro Vegetable Oil Company (MOPROCO) had sold to them at prices above those fixed by the Price Commission and had refused to meet costs of delivery from the factory to the trading companies. Under the Act, prices of cooking oil are pan territorial (Price Control List, 1984: 2). The manufacturer is given an allowance to cover costs of distributing the commodity to the state trading companies in the provinces in the ex-factory price allowance. Since the regional trading companies had personally collected the oil from the producers, they had adjusted the territorial prices to cover these costs. The oil producers, MOPROCO, also admitted contravening the provisions of the price control order. But MOPROCO defended their conduct. They argued that the illegal increase was necessary to cover increased costs due to the rise in prices of inputs (tin containers and sunflower seeds). The increase in costs had taken place after the prices had been fixed. The Commissioner was in a dilemma. All three corporations had genuine reasons. He did not punish any of the corporations. Their explanations for violating the rules were accepted as legitimate. Instead, the Commissioner, negotiated on behalf of the trading companies, to compel the manufacturers to comply. The trading companies were warned not to raise prices in future without the consent of the Commission. That was the end of the

matter (Nditi 1985: 8-10). The consumers were completely overlooked. No remedy was granted to them.

Two interesting points are raised by these cases: one is about the chain of violations by public corporations; the other is the extent to which the authorities, in an unprecedented mood of tolerance, turn a blind eye to an open violation of the controls at a time when, and on a commodity for which, effective enforcement is needed most.

All violators involved in this case were state-owned companies. They are all monopolistic in the supply and retail sale of the oil. One explanation for the chain violation is that the companies were simply abusing their monopoly power by exploiting consumers through monopoly rents. Another explanation could be that the prices fixed by the Commission were unrealistic in the circumstances - the controled price being below the market price.

The disturbing aspect of this is the precedent established by these cases. It almost amounts to licencing the corporation to break the law and get away with it. It also amounts to blessing the instinctive resort to price-increases whenever a corporation is in financial difficulties. It was certainly possible for the Commission to explore other ways for the corporations to absorb their additional costs through other ways than raising prices. Also the NPC could have ordered a refund of the overcharge to the affected customers to the extent that the illegal increase was higher than the actual costs of supplying the oil.

The second case of violations, cited by Nditi, is that involving firms in the soap and detergent industry and those in bread-making. All the firms in these industries were reported to the Price Commission in 1984 for omitting packaging, labelling and for selling underweight bread and substandard soap, by standards officers (Nditi, 1985: 4). Toilet soap and bread, for example, were sold unpacked and unlabelled. The consumer could not tell what brand of soap he was given, nor its chemical composition, nor its measurements. At most, the consumer could rely on his sense of smell or colour to judge the product. The case was the same with bread, the health risks notwithstanding.

Firms in these industries justified their conduct on the ground that they could not afford packaging material due to government import restrictions. The material or their inputs, were not available locally. Again the Price Commission accepted those explanations as legitimate. It granted them a generous abatement period. It allowed them to continue to sell their products, soap and bread, unpacked until such a time as the economic situation improves to allow the importation of packaging materials. Curiously enough, the prices of these commodities were not reduced to reflect the reduced costs on account of non-packaging, labelling, wrapping and other like expenses.

While it is easy to accept the Commission's attitude as one imposed by economic imperatives, it is hard to justify the degree of liberalism it accords to the corporations. With establishment of the Mufindi pulp and paper mill it should be possible to require traders to wrap articles in ordinary paper (Africa Contemporary Record 1981-1982, B 287).

To sum up the observations in this section, we can say that the enforcement of the rules against corporations assumes a flexible, cooperative approach and not a penal one. Such a style is inevitable. It is in part, a recognition on the part of the Commission, that applying the abstract legal rules to complex, real life situations requires a degree of flexibility. Flexibility necessitates the use of legal and extra-legal methods - methods that combine negotiation, persuasion, advice and compromises between the law enforcer and the violators. Detection and proof of the violations is necessarily not so much for the application of the formal sanctions. It is much more important as a means of monitoring compliance and enhancing prevention with the minimum of costs.

5.3. The Techniques Employed

The principal techniques employed in the enforcement process are: inspection, public complaints, prosecution, judicial review, parliamentary supervision and executive directives. The initiative and activation of the enforcement machinery originates from two sources: by the activities of the enforcers in inspecting and arresting violators; and from public complaints.

Studies by Nditi show that, except for a few areas, like routine inspections and periodic swoops, in the majority of cases, the enforcement machinery is set in motion by public complaints (Nditi, 1985: 5). This is as one would expect. The consumer is the first price-inspector and has more at stake if the controls are ignored. It would be true to argue that even in cases where the initiative against wrongdoers comes

from the officialsthe consumer is still indispensable in his role as a witness in almost every case.

It is pertinent to observe here that the mere breach of the controls does not by itself lead to the penalisation of the violator. To get this result, someone must take the initiative and activate the enforcement process by detecting, arresting and prosecuting the offender. This is the role of the inspectorate functions of the price controllers and members of the people's militia.

5.3.1. Inspection

The Act imposes a duty on price-controllers to inspect shop-premises and market-places, to ensure that controlled-prices are observed (section 27) and that other provisions of the law are complied with. The Price Commission has appointed 963 persons (as of December 1985) to carry out inspectorate functions (NPC Report 1985).

Their duty is to: conduct routine inspection of trade premises, to ascertain prices; check accounts books; and verify weighing and measuring instruments, among others. This total number of inspectors gives an average of 48 price-inspectors for each region; or 10 for each District. In relation to the number of licenced retailers the average is 100 shops per one inspector. A detailed breakdown of the figures shows that the inspectors are not evenly distributed (see Table 5 below).

The names of persons to be appointed as inspectors are proposed by Regional and District Price Advisory Committees

and forwarded to the Chairman for approval. Apart from those specifically appointed, all police officers, of or above the rank of Assistant Inspector, have powers of inspection (section 27(1)). Most of the police officers of this rank contacted showed little interest in price control enforcement. Some considered themselves to be too senior to walk in the streets and shopping areas. Generally the police seem to give a low priority to price inspection work.

The main methods used by price inspectors are three: Firstly, they carry out routine inspection of retail premises, market places and other shopping areas to check the observance of prescribed prices, the keeping of records and use of proper measurements. Secondly, they use trap purchases - buying from a suspected violator posing as an ordinary customer. This is a familiar technique where complaints of violation have been received but no proof is forthcoming. Thirdly, is by taking samples of the commodity for verification of quality and standards with the Tanzania Bureau of Standards or the government chemist.

TABLE 4: Regional Distribution of Price Inspectors 1984/85

(excluding police officers)

Region	Appointed	Cards Surrendered	Cards Revoked	Region	Appointed	Cards Surrendered	Cards Revoked
Arusha	51	2	4	Morogoro	48	3	1
Coast	35	-	1	Mtwara	33	-	-
Daresalaam	102	28	5	Mwanza	45	2	-
Dodoma	37	-	1	Rukwa	28	1	-
Kagera	36	-	-	Ruvuma	32	-	1
Kigoma	40	-	1	Shinyanga	43	-	-
Kilimanjaro	60	3	0	Singida	35	-	-
Lindi	28	-	1	Tabora	44	1	1
Mara	60	-	1	Tanga	89	10	-
Mbeya	38	1	-	Tringa	32	1	1
TOTAL		34	14			18	4

Source: National Price Commission, March 1985

The main object of inspection is to ensure compliance with the rules at the minimum cost. It is considered that patrols and unannounced swoops deter potential violators and are thus preventive. The familiar mobs (of price inspectors: comprising leaders, policemen, peoples militia and party leaders) found in the streets of Daresalaam and other urban centres are a product of this policy.

The effectiveness of inspections in deterring violations and detecting and apprehending violators cannot be overstretched. It is limited by several factors: The task requires sufficient resources in manpower, equipment, finance and inducements to motivate the enforcers. Test and trap purchases require money. The Commission is not given funds for that. The argument being that trap purchases cannot be made by ordinary currency. It would be difficult to prove whether the money given is the trap money where the trapper forgets the serial number of the note. Thus the Commission has to use police (dummy) notes. Lack of funds has also made it difficult for the Commission to conduct tests for quality and safety of products on sale. The Commission has no laboratory facilities for verifying the standard and safety of commodities.

The most instructive example of how the Commission is disabled from enforcing standards and quality is the 1983 case of Cassava flour in Daresalaam. In June 1983 the Commission was unable to determine the cause of widespread diarrhoea among residents of Daresalaam city caused by consumption of flour distributed and milled by the National Milling Corporation (Nditi,

1985: 10). Consumer allegations that the flour was mouldy and unfit for consumption were dismissed as speculative. The government issued a threat of criminal proceedings against anyone heard spreading rumours or speculating about the causes of the diarrhoea. The investigation into the problem was stifled. The Commission's inspectors have no calibration instruments. Moreover, it has no competent personnel to undertake a thorough verification of measuring devices. Those assigned to this department complained that the work requires such a big range of equipment to be carried around that neither the vehicles available nor the present staff could do it. By December 1985 the Commission's head office in Daresalaam had only five employees with some training in calibration. The area that suffers most from the Commission's weak inspections is inspection of product standards and quality. Effective inspection here would require knowledge and expertise in: the technology employed; in product mix; chemical composition and processing. The Commission is lacking in most of these areas.

5.3.2. Public Complaints

The easiest method of public access to the Commission is public complaints. A member of the public can complain to the Commission, Assistant Price Commissioner or any price inspector about a violation or suspected violation of any of the provisions of the Act. There is no prescribed procedure for lodging a complaint. It seems any of the following methods would suffice: by a letter; through the phone; or verbally. In addition complaints can be made through the press or local party officials, who in turn will channel them to the controllers. This makes complaint the principal method through which the public can participate in

the enforcement of the Act. According to Cranston, complaints enable members of the public to contribute towards the effective administration of regulations in more than one way. First, the public become the main mechanism for setting the processes of the Act in motion. Second, they assist in enlightening or educating the controllers on areas where the Act is weak and therefore help to improve the effectiveness of the law. Third, they give legitimacy and credibility to the continued existence of the control organs. This point is absolutely right. For example, the NPC through the departmental ministry has always justified its existence by claiming that it has dealt with more complaints than the previous year (Budget Speech 1986/87, Daily News, Daresalaam, June 20, 1986: 3). The same argument is used by the Commission to justify demands for increased expenditure.

The important point here is: How often do consumers complain? How far are their complaints taken seriously and effectively investigated?

There are no accurate figures showing the number of complaints recorded by controllers on an average annual basis. But looking at the number of people brought to the criminal courts every year for the violation of the various statutory provisions of the Act we can safely conclude that there are relatively fewer people who complain compared to the scale of violation reported by researchers (Shimwela, 1984; Nditi, 1985) and newspaper commentaries (Uhuru, Daresalaam, October 19, 1984; Daily News, Daresalaam, August 14, 1985, p.1.). The NPC's records show that between 1977-1984 the price inspectors recorded about 5020 complaints nationwide

(National Price Commission, Regional Price Inspection Reports 1977-84). These are the recorded figures. They do not, as we shall see, include the countless occasions where a caution may have been given to offending traders (see Table 6 below).

Several factors may have contributed to the low rate of consumer complaints. I learned during field study in the districts that consumers, especially in rural areas, never complain formally about violations of the price regulations. They simply grumble in private. The reasons for this attitude are probably many and varied. Staff of the Commission interviewed attributed the small number of complaints to the self-sufficiency of consumers. Rural people depend less on shops for the acquisition of their basic needs like food and housing (ILO, 1982: 257). Their reliance on the shops is less frequent than urban dwellers and the incidence of their exposure to exploitation by profit-seeking traders is relatively less. The other reason could be that market transactions between rural people tend to be conducted by non-use of conventional measurements. For example, rural people measure fresh food-grains, vegetables by heaps rather than weighing scales. They frequently barter their produce rather than use money. This inevitably prevents them from noticing certain types of infringements.

While this may explain the relative dearth of complaints from rural communities, it hardly sounds convincing for the small number of complaints received from the urban people. So what could be the reasons for the relatively small number of people complaining formally to the controllers. Cranston has catalogued a number of possible causes, some of which I find relevant to

the Tanzanian situation (Cranston, 1979: 55). He says one reason why consumers may not complain to a consumer protection agency, is ignorance and uncertainty. Consumers may not know about the existence of a legal price, or a price controller. Where they know about its existence they may still be uncertain as to what type of complaints the agency deals with and how to take the complaint there. I suspect this could be one of the prime causes of the small figure of consumer complaints. It should be pointed out that although some consumers in Tanzania may be aware that there are government prices for certain items very few know that there are a National Price Commission or regional price controllers responsible for issuing and enforcing such prices. For most of them the existence of these agencies is something they may have heard or read in radio and newspapers. The Commission is largely to blame for this state of affairs. They have not publicised their services widely enough. A limited number of visits and seminars have been held by senior officials in some regions but these have been confined mainly to regional centres. The impression I got from discussions with leading members of the NPC is that there is very little possibility of extending these visits to the district centres, still less to the villages in the foreseeable future. The officers argued that greater publicity will only further increase the demand for the commission's services and would add more strain to the already overworked staff. The government has made publicity one of the major areas of attention to improve the performance of the NPC (Budget Speech 1986/87 para.123). The other factor is that consumers have a limited perspective which prevents them from complaining about certain types of infringements. For example, consumers may not easily recognise

that they have been adversely affected by an unlawful trade practice such as an incorrect quantity, a substandard product or misdescribed goods. Some consumer offences are complex and their harmful effects may take time to manifest. An example is that of food additives or medicines. The adverse effects in these items are not manifest until after use over a long period of time (Cranston 1984).

Another reason why consumers may not complain formally is the cost of complaining. Studies by Cranston show that where a large number of consumers are mildly affected by a violation, no one may suffer sufficient loss to make him complain because the benefits of doing so are so small compared to the expenses involved (Cranston 1984). A typical example in the Tanzanian case would be villagers who have been overcharged by a shopkeeper by a shilling or two above the controlled price. The costs of complaining, both financial and social may be so disproportionate that each individual victim may regard the violation as trivial. The potential complainant in this case will have to weigh the costs against the benefits - the costs of making a journey to the headquarters of the price controller, of paying for hotel accommodation and meals, of being subjected to bureaucratic procedures and of a possible retaliatory action from the shopkeeper.

The prohibitive costs of complaining emerged as a leading factor which discourages consumers from launching formal complaints against traders violating this Act. For example, when I asked some consumers why they chose to tolerate or ignore what I saw as open infringements; the majority of the consumers said that it was a troublesome and very unpleasant experience to contact

the police. Many of them simply hate the idea of finding themselves in the witness box as prosecution witnesses just to be bombarded by questions from defence lawyers. Others said they saw no point in complaining because they would not be refunded the money if the violator is convicted. But most important is the fear of social repercussions facing those who dare to complain. For instance, they frequently face the possibility of being shunned away or even boycotted by the rest of the shopkeepers. This seems to be a real problem. Two reasons have aggravated this problem. Take the coupon or consumer registration system. Under it consumers may purchase certain goods from shops where they have been registered only. The commodities covered are those essentials - sugar, cooking oil, rice, soap, which are also scarce. If the shopkeeper decides on retaliatory action against a consumer whom he considers a troublemaker, which is often bound to be the case of those who complain to the price controllers, the alternative for the consumer is to transfer to another shop. The problem is that there may be no other shop nearby or the traders may have communicated with each other and thus refuse to accept such a customer.

Finally, consumers may lack the information necessary to launch a complaint. For one, the average consumer is not given all the product information. For the other, he is not well-equipped to protect himself against subtle violations or other violations associated with prejudicial trade practices. In case of overpricing that takes the form of misdescription of goods, substandard quality or underweight, the violation is obviously concealed. In case of supermarket mispricing, the consumer cannot protect himself because he is not in a position to check the actual prices charged

against those marked on the goods. Where the goods are weighed or measured with every purchase, consumers are not in a position to assess whether retailers have made the appropriate measurement. In a situation of shortages, consumers would be too overjoyed with the sight of the scarce commodities to bother about such details.

All these factors limit the effectiveness of the complaints mechanism as a technique of enforcing the Act.

5.3.3. Prosecutions

Once a violation has been detected the controllers have to decide what action to take. Among the options open to them are: to issue a warning; to give advice on how to abate (e.g. where to get wrapping material); to compound the offence or to mount a prosecution. In choosing these options the controllers exercise extensive discretionary functions. How is the discretion exercised in practice? By whom are decisions actually made? What factors are taken into account when deciding whether or not to prosecute? Are there any uniform policies laid down for all controllers? What safeguards exist to ensure that decisions are not made arbitrarily or are influenced by improper pressures or are simply dictated by extraneous circumstances such as personal attitudes, administrative convenience, are some of the issues that need to be looked at here.

First, who decides whether or not to bring a criminal prosecution. A rough guide on the choice of the various options - advice, warning, fine or prosecution to be taken by price

inspectors against persons found violating the regulations, can be gathered from the NPC's annual reports 1977-84. From those reports it appears that, an advice will be used where the contravention is detected for the first time (first offender), or trivial in nature or is unintentional. In such cases, the price inspector may advise the violator to refrain from future breaches or on what remedial measures to take to avoid the same. A problem that arises with this option is whose view of triviality do we adopt? Take the case of consumers overcharged by say a penny on a kilogramme of sugar. Seen from the perspective of each individual consumer the overcharge is certainly small and can be ignored. But the amount of money accrued to the seller will be large. Do we say the offence is one of overcharging a penny or pence (which may run into hundreds of pounds)?

A fine, on the other hand, may be imposed immediately where the violator readily admits his guilt and is willing to stop further violation. The power of price inspectors to impose a fine is confined by the Act. Where the price overcharge in a single transaction exceeds Tsh. 100.00 (about £1½) the inspectors cannot impose a fine. They must open criminal proceedings in a court, section 33. Where there has been a serious or persistent breach but the evidence available is not sufficient to sustain a criminal prosecution, an inspector may issue a caution or severe reprimand.

What is important to remember about these options is that they do not constitute a hierarchy of responses that the inspectors ought to adopt in succession. On the contrary, the

individual price inspectors are free to invoke any of the responses to individual cases. Generally, any single violation would be sufficient to warrant a prosecution.

Once we recognize that individual enforcers exercise extensive discrimination, the question that naturally arises is: How often are offenders allowed to escape prosecution? I am afraid there are no accurate figures to prove this point. We know how many people are brought before the criminal courts every year. Rather more than 5393 persons were arrested for contravening maximum prices between 1977-84. Only 282 of those were prosecuted over the same period. This is rather a small number of the total. The rest of the violators were either warned or reprimanded.

These statistics shed some rough idea of how discretion has been used by the price controllers.

TABLE 5 : Number of Cases Compounded, Prosecuted and Cautioned 1977-84 (excluding Daresalaam)

Year	Convicted	Acquitted	Fined	Cautioned
1977	95	9	724	68
1978	48	0	897	47
1979	1	9	655	22
1980	17	15	478	18
1981	24	23	1155	25
1982	24	1	529	7
1983	0	0	308	1
1984	5	1	182	3
TOTAL	214	58	3528	191

Source: Regional Price Inspection Reports 1977-84, the National Price Commission, Daresalaam.

Key: Fine includes cases compounded
Convicted and/or Acquitted means Cases sent to court

5.3.3.(a) Prosecution Policy

Two competing views were expressed in response to the question whether violators of this law should, as a matter of principle, be prosecuted or not in all cases. According to the Commission, its officers are under instruction not to rush every case to the police for prosecution. Officers should first try to ensure compliance by using powers conferred on them - by administrative sanctions. Especially so where the breach is committed by an organisation, or is minor or by a first offender or the violator admits his guilt and undertakes to remedy it (Mongi, 1980: 97-120). The chairman argued that indiscriminate prosecution may be counter-productive. First, it could create the impression that the controllers are failing in enforcing the rules through available administrative procedures. This would be a reflection of weakness on their part and would strengthen the case of those calling for the Commission's abolition. Second, such a policy would flood the courts with cases. This is demonstrated by the situation in Daresalaam, where a special magistrate's court (City Magistrate) has been assigned to deal with violations of city bye-laws. Price control violations top the list of court cases in this court. My examination of the criminal register shows that 60 per cent of the cases brought by council officials to this court involved violation of price controls. By allowing price inspectors to dispose cases without resort to courts the controllers reduce the burden on what the Law Reform Commission has described as overburdened courts (Law Reform Commission 1977). Moreover, the powers conferred by the Act are discretionary.

Their exercise requires flexibility. The circumstances giving rise to one violation may not necessarily be the same with other violations, though of a similar nature committed by another person in a different part of the country. Finally, too vigorous prosecution may alienate the controllers from trade and industry. Such isolation will undermine other objectives of the rules whose implementation depends on voluntary compliance from trade and industry. The need to maintain trust, good will and cooperation demands selective prosecution.

These views are more or less shared by magistrates and an academic researcher on this area. Nditi, who has researched on consumer protection, argues that the thrust of this law is to secure compliance by voluntariness. This is implicit in section 8 and 12 which give firms discretion on how to comply with the rules on individual cases (Nditi, 1985: 3). Magistrates at Kivukoni Court, probably the busiest court in the country, supported selective prosecution. The Senior Resident Magistrate stressed that this law should not be used to prosecute over petty and trivial breaches. She insisted that the decision to prosecute should depend on factors such as seriousness of the offence, frequency of occurence, damage suffered by consumers, class of offender or wilfulness of the breach. In her view, prosecuting authorities should try to distinguish between violations committed under economic compulsions or pressures and those out of sheer villainy, between those by wealthy people and petty hawkers. And they should also find out whether the petty hawker is acting on his own or as an agent of the rich man. (Personal interview with Mrs Lyamuya, March 1985.)

But consumers had an opposite view. They called for prosecution of all violators. And there are strong reasons for this approach. First, it will limit the discretion of the controllers. Second, it will remove suspicions of discrimination or favouritism. When people feel that they are treated differently for similar offences suspicions, rumours and unwarranted allegations are bound to be raised. For instance, where violating traders are netted and fined or warned, people often suspect that corruption or bribery has taken place. When I asked some people what were their reactions to traders released from police custody in Kimara, Daresalaam, I was puzzled to hear that none of the interviewees thought this to be legal. On the contrary their familiar retort was typically one of dismay and deep suspicion - many simply thought the police had taken bribes from the traders. The familiar Swahili saying "Wamekula nao" (i.e. they eat together what they loot from us) was the classic answer I got. Such feelings, however erroneous or ill-founded they may be demonstrate declining public confidence and belief in the way the controllers discharge their duties. What matters to the people in the street is not that justice is done but that they see it being done. A general policy of prosecution will help to demonstrate to the people that violators are treated equally, that the public is protected and the law is being enforced. It became very clear to me that common people associated enforcement of the Act with prosecutions and were ignorant of and unwilling to accept the other methods of dealing with violators. There is another advantage in adopting a policy of prosecution. Legal proceedings, especially the arguments by the prosecution and defence counsels, and the rulings by the judges, help to stimulate public awareness in the law and identify areas in which reform may be necessary.

5.3.3.(b) Problems of Prosecuting

Prosecution as a method of enforcement is limited by a number of factors. The principal limitations relate to manpower, financial and other resource constraints. Limitations are also imposed by procedural and legal technicalities. In addition, social and personal factors reduce the effectiveness of prosecutions.

5.3.3.(b) (i) Manpower Resources

First let us examine manpower resources. Prosecutions under the Act are conducted by police officers of or above the rank of Assistant Inspector or persons appointed by the Director of Public Prosecutions. As regards police officers, who constitute over 90 per cent of the public prosecutors, the rank of inspector can be reached through various ways other than educational qualifications. The basic qualification for joining the force is secondary education. Once in the force promotion depends on a combination of qualities like length of service, bravery, outstanding performance, dedication to duties and passing professional examinations (Police Force Acts 1965-1972). Although the police do appoint officers with legal training to act as public prosecutors this is not always the case. Some of the prosecutions are conducted by officers without background training in law. Moreover, the officers are responsible for other police duties. They are therefore not in a position to devote adequate and careful attention to detailed preparation of the prosecution cases.

Prosecution needs financial resources. Money is needed in witness expenses, preparation of reports, and trap-purchases. There are indications that the competence of prosecutions is

hampered by lack of finance. For instance, 20 per cent of prosecution cases at Kivukoni Court were withdrawn during 1982/84 for want of prosecution witnesses. My analysis of the reasons for withdrawal shows that in 60 per cent of the charges withdrawn the prosecutors could not get hold of the witnesses because of lack of funds to pay for travel or to send vehicles to collect witnesses.

5.3.3.(b) (ii) Procedural Formalities

Bureaucratic procedures are a constraint to prompt prosecutions. This is caused by division of powers between investigating authorities and prosecuting agencies.

The initial detection and investigation of crimes under the Act is carried out by price inspectors. These are men from junior ranks in the Commission. These then prepare reports and forward them to senior officials. The correspondence between junior and senior officers takes quite a long period even when they happen to share offices in the same floor or sit on adjacent tables. This is because communication between them has to be transmitted through the mailing clerk. After scrutiny by senior officers, the case is then remitted to the police for prosecution. The police may again decide on further investigations. This will take another round of weeks before the case is finally brought to the court. These bureaucratic procedures cause other problems. One being delay. What makes delayed prosecutions problematic to prosecutors are consequences of such delay. Delay may cause witnesses to forget the events. The memory may become shaky or incoherent. Or the witness may get frustrated that no action is being taken. And since the star witnesses are invariably victims

of the crimes, frustration may force them into a non-cooperative mood. Moreover witnesses may migrate, change address or even die before the case opens.

5.3.3.(b) (iii) Hostile Social Environment

The major effect on prosecution witnesses which delayed prosecutions cause or prosecution witnesses generally suffer, are criticism and public ridicule that is brought on them. I discovered that people who complain about violations are subjected to severe social pressure and tension. For example, traders always act in solidarity. They put pressure on complainants to withdraw their allegations threatening to deny them supplies of essential commodities. There are cases of witnesses refusing to testify for the prosecution for fear of criticism from neighbours or being ridiculed. In one instance I witnessed a shopkeeper refusing to sell a customer his share of the rationed goods because this customer would never stand any overcharge, direct or indirect and was generally the leading critic of the trader. The trader was commonly known to violate the established rationing procedures. The trader said to the customer:

> You can take your ration card to your police and party masters. Look for another shop. But I tell you nobody in this area is going to admit you. That is the reward of your conduct

The customer's conduct was obviously that expected from any dutiful citizen. Another good illustration is that of the University Cooperative shop. In 1983 the shop manager was reported by party (CCM) leaders to the police for selling beans above government prices. The manager argued that the increase was necessary to cover costs. He had ordered the commodity from a private trader

after failing to get supplies from the National Milling Corporation. The dealer got supplies directly from peasants in up country areas. This increased the costs. The police arrested the manager and opened criminal charges. Meanwhile the shop was closed to facilitate investigations. Residents on the University campus had no alternative shops for obtaining rationed goods. The residents began putting pressure on the complainants to withdraw their allegations. I got conflicting views on why such a relatively well-informed community behaved like that. Some of the residents thought the manager had behaved properly to save them from scarcity. And since the money from the overcharges went into the shop's fund there was no improper motive on the manager. Others thought the manager was involved in suspicious deals and stood to benefit from his relations with the trader. Still others thought it was a matter of envy. The shop manager commands more respect among professors than the Vice-Chancellor, or party chairman for that matter. The party leaders just wanted to get rid of this particular individual.

In the end, the complainants refrained from testifying for the prosecution. The police withdrew the charge for lack of witnesses.

5.3.3.(b) (iv) Availability of Evidence

The decision whether or not to prosecute will largely depend on availability of evidence. The evidence must be credible.

Usually corroboration is necessary. Many prosecution cases collapse because of lack of evidence. And in cases of overcharging, obtaining sufficient evidence is a headache to prosecutors. Where the purchaser is not in possession of receipts, truthfulness alone may not be enough to convince the court. The case of Mohinlal Chandra v. R. [1980], Criminal App. 213 of 1980 is instructive. In the trial court, the appellant was convicted of the offence of selling a piece of soap above the maximum price. It was alleged that he had sold a five bar piece for Sh. 50/= instead of the government price of Sh. 17/=. The prosecution did not produce any purchase receipts. Also the government order fixing the price was not produced. The magistrate relied on his knowledge of the price which the defendant never disputed. The prosecution brought several witnesses who had bought soap from the appellant at the inflated price on that date. But none of the buyers had a purchase receipt. In the course of the prosecution a price control inspector purported to produce a number of invoices found among the appellant's books showing that the pieces of soap were sold at above the prescribed prices. The invoices were not legally produced in the sense of being made court exhibits. He only showed them to the magistrate and took them away. On appeal the conviction was quashed on the following grounds: First, no order fixing the maximum price had been produced. Second, the trial magistrate was not entitled to rely on his personal or common knowledge of the controlled prices. Third, although section 31(1) allows an invoice to be prima facie evidence of the sale to which it relates at the price which it sets out, it does so only upon the production of the invoice by a price inspector. Production must be in the manner recognised by legal procedure (i.e. the invoice must be a court

exhibit). Fourth, the evidence of the alleged victims on record showed inconsistencies in the amount each was overcharged.

It is important to appreciate the circumstances under which this contravention took place. Soap was scarce on the market. That is why the trader hid the commodity, sold it at inflated prices and issued no receipts. Even if he had issued purchase receipts the chances are that he would have recorded the official and not actual price charged. I find it hard to understand the High Court ruling that magistrates are not entitled to rely on their personal knowledge of the government prices. Decisions of this nature are likely to complicate the prosecution of offenders.

5.3.3.(b) (v) Proof of Mens Rea

Whether knowledge of the maximum price is necessarsy to prove a charge of contravening the provisions of the Act, placing a maximum selling price on goods, is a question that has been determined by the courts in a series of cases. Section 20 reads

> Any person who sells or lets on hire any price-controlled goods or renders any price-controlled service at a price or charge which exceeds the maximun price, ... shall be guily of an offence.

A similar provision in the Price Control Ordinance 1920 was interpreted by the court as meaning that knowledge of the maximum pirces is essential before a person could be convicted for contravening a price control order, and that the duty to prove knowledge is upon the prosecution. The prosecution does not discharge its burden by merely establishing the existence of the order. It has to prove that "such order, after having been properly made,

has also been generally notified to the public". This was the holding in Jesang Papat v. R. [1949]. The accused was charged with selling whisky at a price in excess of the controlled price. The defence was that the appellants were ignorant of the maximum price. It was established that they had been arrested a few hours after a maximum price order had been broadcast on radio. On appeal the conviction was quashed. The appellate court said in the circumstances of the country it was unreasonable to assume that the appellants knew of the price order. The ruling in Popat's case was followed in subsequent cases. In Takars Hirji v. R. [1950], the order fixing the maximum prices for maize was displayed in the premises of the District Commissioner. The appellant was charged with contravening that order. He pleaded ignorance of the order. The appellate court held that the maker of the order must display it to the public in a prominent position as would bring it to the knowledge of the public and that it was unsafe, in the circumstances of this case, to assume the accused was aware of the maximum prices ([1950] T.T.L.R. 341). It would appear from these cases that knowledge of the maximum prices is an essential ingredient of the offence of selling at above the maximum price.

Courts in the UK have adopted a different approach. In R. v. Philip Jacobs [1944] the Court of Appeal held that it was not necessary for the prosecution to prove that the appellant knew the maximum permited price of the articles sold, "The offence is to sell at the wrong price and in so far that was done, the offence was committed" ([1944] I All E.R. 485 (CCA)). In this case the appellants were charged with conspiracy to sell price-

controlled goods in excess of the controlled price. The defence was that the appellants were ignorant of the maximum price. The trial judge directed the jury that if they were satisfied that the appellants were engaged in the sale concerned, it was not necessary, in order to find them guilty of the crime charged, to find that they knew the correct maximum price of the commodity sold.

The authority in Philip Jacobs' case seems to be more in line with the cardinal principle of criminal responsibility which places a duty on the citizen to know the law. It states

> Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence (Section 9, Penal Code, Cap.16).

5.4. Parallel Actions to Assist in Effective Enforcement of the Controlled Prices

In order to assist in effective enforcement of the controlled prices the government has established statutory agencies to control quality, standards and measurements of the products as well as to supervise the distribution and physical movement of goods. All of these measures have a bearing on the prices. It was apparent that without such complementary measures prices could easily be violated through indirect techniques in size or short weighing. We shall attempt to examine these measures and see how effective they are. First, let us look at the Weights and Measures Act.

The Regulation of Prices Act, it will be noted, empowers the Price Commission to regulate the, "packing, weight, size, quality, processing or the ingredients thereof" of any product (Section 21). Under this provision, the NPC is expected to:

a) Promulgate standards for goods - these would cover enforceable standards in regard to things as material quality, performance, design and safety;

b) Require the marking of price per unit quantity on specific goods. Experience in the field of weights and measures, and food and drugs enforcement which constantly throws up light in relation to the sale of goods the interplay of the three factors: price, quantity and quality (Nditi, 1985) clearly shows that a statement of price per unit quantity would be of great use and convenience to consumers and would make fraud difficult. This requirement would be most useful in respect of commodities which are weighed, measured or counted from bulk and specific instances are the marking of salt, beans, meat or fish products with a statement of price per kilogramme when exposed for sale in bulk.

c) Require the informative labelling of goods. This is necessary in respect of pre-packed goods. The NPC is expected to make it mandatory for sellers of prepacked goods to ensure that the ingredients are clearly marked; that they should bear true designations and that the name and address of the packer should be stated.

However, the burden of the functions on these matters has been eased on the NPC by laws which establish specialised bodies to take care of those functions. Some of the leading Acts

in this regard are: the Weights and Measures (Metric Units) Acts 1978 and 1982, the Standards Act 1975, the Food (Control of Quality) Act 1977 and the Pharmacy and Poisons Act 1967.

The Weights and Measures Act 1982 makes it compulsory for some goods to be packed and sold in specific metric units and quantities only. The Act repeals the imperial system of measurements and replaces it with the metric system (Preamble, the Weights and Measures Act 1978). Among the goods to be sold in specified metric units are foodstuffs, drinks, textiles, fuel, electricity and medicines. The Act empowers the Minister for Trade to appoint weights inspectors whose duty is to protect consumers by enforcing correct measurements (sections 15 and 16). The inspectors carry out this function through regular inspection and surprise visits to shops, trading premises and markets. The inspectors are supposed to check measuring instruments used in trade by every person at least once in every calendar year to assess and certify the standards of weighing and measuring scales.

A trader foundwithout proper instruments can be prosecuted, fined or imprisoned or can have his licence revoked. In the case of A.G. v. Jethabhai Patel [1953] the East African Court of Appeal held that the possession of a defective weight for use in trade, in that case a weighing stone with a piece broken off, is wrong per se and that it amounts to a false and unjust weight ([1953] E.A.C.A. 24 (U). There is also an authority for saying that a trader possessing a defective measuring instrument for use in trade or business can have his licence cancelled, as was in the case of Karioki s/o Gachohi v. R.[1950]. Yet mere

neglect to ascertain defects in the instruments - defects which would have been found out by making reasonable examination of the weighing instrument, does not per se warrant the revocation of a licence: Jiviben d/o Mepa and Two Others v. R. [1952]. Since the power to revoke a licence can only be exercised by the grantor the inspector's powers are limited to recommending action to the business licencing boards. In ordinary circumstances traders without proper weighing and measuring instruments are not supposed to carry out trading. But this requirement would greatly inconvenience trade in rural areas. As a result the number of people trading without weighing instruments is likely to remain high in the foreseeable future.

5.4.1. Factors Limiting Enforcement of Weights and Measures

Several factors limit effective enforcement of weighing and measuring standards. Firstly, there is a manpower and other resources shortage. As of July 1985 there were a total of 66 weights and measures officers only throughout the country. These consisted of a Commissioner, an Assistant Commissioner and a few Principal Inspectors at the Head Office in Daresalaam. Each of the 20 regions had one Regional Inspector, about two senior inspectors, an assistant inspector and about five weights and measures officers. These 66 officers have to inspect over 64,000 licenced shop-premises (Regulation of Trade Bill 1980, Economist Intelligence Unit, 1978: No.1). This gives an average of over 900 shops per inspector. Note that the shops exclude other businesses like butchers, petrol pumps, green grocers and many other businesses. Secondly, the inspectors are not provided with transport and working facilities, like inspection kits. Financial constraints

make it difficult for the government to import them. In any case the quantity of calibration devices that are required for the inspection is hard to obtain. Fourthly, when it comes to commodities like vegetables, fruits and others whose units vary so much in size that it is difficult to standardise them sellers sell them in heaps. Sellers using heap-measurements normally register changes in prices by varying the size of heaps rather than altering the prices charged. The difficulties of standardising the quality and quantity of some commodities means price-control can be aided by measures and weights only where the product is capable of standardisation.

Fifthly, the type of weights and measures stipulated by the law are not easily available. Under the Imports Confinement Order 1981, the state owned, Agricultural and Industrial Supplies Company, is the sole importer of weighing and measuring instruments (G.N. 96 of 1981). Due to shortages of foreign exchange the company has been unable to import sufficient quantities to meet demand.

A sixth factor, is ignorance and customs which people find hard to discard. After many decades of using the imperial British system of units and other traditional forms of measurements, traders and buyers find it a little difficult to switch to the metric system. The bother of learning the new system, let alone acquiring the new instruments are added disincentives. In the rural areas people mostly use the banned measurements like tins, bushels, gallons and the foot, instead of kilogrammes and metres, as required by statute. Conservatism is further evidenced by the fact that even after the government ban on imperial measurements

and their non-availability in the shops, people have resorted to producing them locally. Local blacksmiths manufacture bushels and 'pishi' or 'kibaba' (one 'pishi' is 4 litres and a 'kibaba' is a litre) modelled on the outlawed ones. Similarly, carpenters manufacture rules graduated in inches. Obviously, the accuracy of these locally-produced instruments is questionable. But there can be no doubt that these measurements are likely to continue being used unofficially for some time to come in future. Finally, the provisions of the Act relating to display of measuring and weighing instruments are technically weak. For example, there is no legal requirement that a seller should weigh any goods at every sale or on demand by the consumer,[2] Section 19(2).

Judging by the number of consumer complaints in the national newspapers, violation of price controls through short weights and measures are a common phenomenon. A recent empirical survey by Nditi singles out butchers who fiddle with weighing scales to read more than the actual weight of the meat sold; and bakeries not caring about prescribed weights of bread (Nditi, 1985: 8). Violation of weights is committed even by a leading public corporation to whom the government has made available all the necessary weighing instruments - the National Distributors Corporation. This public corporation has the sole monopoly in distributing food for Daresalaam city. Commodities like sugar and maize meal are distributed to retailers in gunny bags. Inspection by standards officers show a continuous breach by the Corporation. Further evidence of shortweighed and measured goods by this

2. Section 19(2) requires traders to supply consumers an "original invoice containing a description sufficiently exact to identify the goods and the quantity sold".

Corporation come from retail shopkeepers who refused to handle commodities distributed by this Corporation and it was only intervention by the Minister for Trade that saved the situation (Africa Contemporary Records, 1983: B279). My personal observations at the stores of the Corporation in Ilala and Kinondoni District noticed that the weighing machines are not used by the Corporation's employees. One explanation given was that the urgency of the task of packaging and distributing food in time makes the reweighing of every bag impossible. The other, was that since the bags are of the same standard size they would weigh more or less the same when filled with food. This dispenses with the need for cross-checking the weight. The shortweight that retailers complained of was attributed by the corporation's officials to pilferage and unavoidable losses ordinarily expected in the course of distribution and not to shortweighing or measurements at the point of packaging.

My observations at the corporation's premises discount these arguments. First, the manner in which employees fill and seal the bags does not conform to standards. The room that is left to facilitate the sealing of each bag is entirely the decision of the person sealing. Much depends on the whims of the employee. Moreover, the gunny bags used are worn out. The holes leave ample opportunity to dishonest employees to pilfer substantial amounts of commodities like sugar, wheatflour or beans. As a result retailers pay government prices for underweight bags. To recover the losses they are forced to raise prices on consumers.

I also noticed that retailers use defective scales or fiddled with them so that they read less. It is not uncommon to see them using broken weighing stones. Moreover, some traders use outlawed units like the "foot" or "tin" making it very difficult for the consumer to know whether he is getting the right equivalent of metric units or not.

5.4.2. Enforcement of Quality, Standards and Descriptions

As far as consumer protection is concerned, the quality of the commodities is perhaps a matter of interest far greater than the level of prices. And Parliament has legislated extensively on this area. Various statutory bodies have been established to enforce product standards to ensure consumers get goods of approved quality. Such bodies have been set up specifically for certain types of goods or services or for quality control in general. The most important institutions are: the National Food Commission set up under the Food (Quality Control) Act 1977 to control food standards. This Commission has powers: (a) to regulate the importation, manufacture, labelling, marking, storage and substances used in the manufacture of food; and (b) to prescribe minimum standards of quality in respect of food (Section 5(1)). Other specialised institutions for specific products are the National Chemical Industires which regulates quality of chemicals. For general quality control there is the Tanzania Bureau of Standards. In addition, statutes establishing public corporations require them to produce goods or services of a prescribed standard. The Muhimbili Medical Centre Act 1976, for example, requires the corporation to supply medical services of a "kind normally provided by consultant and teaching hospitals", section 4(g). Since there

are no comparable institutions the presumption is that the services must conform to those of similar institutions elsewhere. Similarly the Railways Corporation Act 1977 enjoins them to provide services "efficiently, economically and with due regard to safety", section 10(1)(a). Parliament therefore attaches great importance to quality of services. In this vein, the Regulation of Prices Act empowers the Commission to prescribe quality, size and processing standards for price-controlled items, section 21. The Commission has not exercised this function due to lack of expertise. Instead it employs the services of the Bureau of Standards. Under the Declaration of Standards Notice 1984 the bureau has issued the standards for commodities like edible oils, food additives, soap, toothpastes, soft drinks, beer, textiles (Governmen Notice 56 of 1984). These compulsory standards have been adopted from those internationally recognised. But the goods covered are only a small fraction of the range of products that require control.

Labelling is another important area relevant to price control. Quality and quantity description helps buyers to have a clear idea of what he is buying and whether it is worth his money. Many products are not labelled nor described (Nditi, 1985).

5.4.3. Controlled Distribution of Essential Goods

Fixing maximum prices without controlling distribution often does not achieve observance of the fixed prices. Indeed this has been one of the weaknesses for many consumers not getting the goods at controlled prices. The government has taken the following measures: First, it has established control over the distribution of scarce commodities. Second, it has instituted

a system of consumer registration. Third it has issued coupons or ration cards.

Let us examine the legal position as regards distribution.

5.4.3. (a) Distribution System: How it is Implemented

The two major Acts governing distribution are the Regulation of Trade Act 1980 and the Imports Control (Confinement) Order 1981. The Regulation of Trade Act empowers the Minister for Trade to regulate or control the acquisition and sale of any goods "where in his opinion it is necessary or desirable to do so in public interest", section 3(1). Under this law, the Minister can designate the goods to be controlled and specify the names of dealers authorised to handle such goods, section 3(3). The Ministerial order containing the list of controlled goods and the designated dealers is Government Notice 150 of 1980.

Under the Imports Control Order 1981 the minister has restricted the importation and distribution of specified products to certain companies only (Government Notice 96 of 1981).[3] Once goods have been brought under control it is an offence for a person, other than an authorised dealer to possess the goods for purposes other than his normal consumption.

To assist in the enforcement of orderly distribution three measures have been instituted. First, the keeping of inventory records. Every primary producer or importer of rationed goods

3. For example, Agricultural chemicals by the Agricultural and Industrial Supply Corporation (AISCO), baking powder, butter, cheese, cooking oil by the General and Food Corporation (GEFCO), air conditioners, tubes, radios, irons, watches, bicycles, sewing machines by the Household Supplies Company (HOSCO).

is required to keep a periodic account of the stock and transactions in such goods. Second, there is periodic audit of producers and traders. The ration boards conduct routine audits of dealers. Each trader in controlled goods is accountable for the manner in which he acquires and distributes the goods. Finally, government party leaders and vigilante groups (from the people's militia force or youth leagues) give escort to distribution vehicles to ensure that goods are off-loaded at the designated stations and in the quantities specified. At these stations the dealers are not allowed to sell the goods to consumers until headmen representing all the households entitled to the goods are present. It is the headmen who decide how much should go to a given family. Any contravention of the established distribution machinery is considered as an economic sabotage within the provisions of the Organised Crimes Control Act 1984 (Schedule to the Act). The burden of proof shifts on the suspect to establish innocent possession. The penalty is severe - seven to fourteen years imprisonment with hard labour.

The dealers authorised to handle controlled goods are state trading corporations, public institutions, cooperative societies and selected businessmen. All manufacturers and importers must sell their products to these institutions. These in turn sell to the Regional Trading Corporations. Each company has set up branches in the villages or group of villages. At the village level, villagers nominate the shopkeepers who will handle the goods. At each point of distribution party and government leaders are actively involved in supervision. Moreover, the government has established a network of depots throughout the country which act as reservoirs.

To illustrate how the system works in practice let us take the case of sugar. Sugar is produced by three firms, located inland - Tanganyika Planters in Arusha, Kagera in Bukoba, and Mtibwa in Morogoro. All the firms send the sugar to the Sugar Development Corporation headquarters in Daresalaam. The Corporation distributes to Regional Trading Companies, institutions and industries. The trading companies sell to cooperative shops or village shops as the case may be. The shops then sell to consumers according to amounts indicated in the ration cards. The Sugar Development Corporation can import sugar in event of shortage. Each institution in the distribution channel is permitted to recover costs of administration and distribution. The chain of agents obviously escalates prices. But the system has its advantages. First, it prevents discrimination. Consumers who live close to the factories have no better access than their counterparts in remote areas. Second, it is equitable. Third it ensures orderly conduct of trade in and availability of scarce commodities. Fourth, it gives government effective control over a major economic activity - internal and import trade. Fifth, it plugs loopholes which would otherwise have given traders unlimited opportunity for windfall gains in scarcity conditions. Above all, it has created more jobs.

5.4.3.(b) Rationing of Goods in Short Supply

For a number of commodities considered very basic, but in short supply, the controls have been supplemented by rationing per head per day. The object of rationing is to ensure equitable access by every person to the basic necessities of life. Among the goods currently rationed are sugar, cooking oils, maize meal,

petrol and soap. If the fixed prices were not supplemented by rationing distribution would be inequitable. Distribution would be made either on the basis of first-come-first-served principle; or more would go to those for one reason or another are favoured by the trader or simply through the black-market. In the first case, customers would be subjected to hardships and inconvenience such as waiting in long, uncertain and demoralising queues. In the second, favoured customers might purchase goods in excess of their requirements and engage in black-marketeering. In the third situation, employed people would suffer most. Since they do not have time to stay in the queues they would be the natural victims of black-marketeers.

Rationing applies to a few specified commodities only. It does not apply to all price-controlled items. It takes two forms: the regular ration card and the permit. A permit is a one-time authorisation. Permits are required for the purchase of consumer durables like cars, television sets, refridgerators, gasoline, tyres. Persons who wish to acquire these items have to convince the ration boards of their definite needs.

The coupon (card) is used for basic items of household consumption like sugar, soap, beans. Every head of the family is issued with a card containing details about the size of the family, place of residence, headman and shop registered with. The headman, the tencell party leader, distributes the coupons. He ensures that every family gets its share of the goods. If there is not enough to go around allocation is on rotational basis. The amount given to each family varies with the size of

the family. When goods are rationed, a family is given a quantity enough to satisfy five members. There is no provision for guests.

5.4.3.(c) Standards of Eligibility

The regulations do not specify the criteria for distribution or rationing. We can infer this from the practices.

For goods that require special permits, applicants need to convince the boards of the special needs. As usual with law, certain categories are exempted. Senior government officers, executives in parastatals, foreigners, army chiefs do not require permits. Even when they are not expressly exempted by the law, the ration boards act softly and favourably with them. For others, they have to prove genuine need for the goods. Considerations such as nature of employment, status, influence or friends in the boards play a vital role.

In the case of household consumer goods, the control agencies do not possess discretion. The practices are standard. Once the basic family allotment has been endorsed in the card it cannot be varied to accommodate subsequent changes in individual consumption habits or the presence of a visitor. The allocation does not take into account special categories like babies or the sick in the family.

Institutional users like hospitals, schools and restaurants are given priority in distribution. Industrial consumers like bottlers, confectioners, are given quantities enough to satisfy their needs. The government of course has an interest in the

activities of industry. The criterion of eligibility for institutional and industrial users is their historical use. Extra amounts are generously provided on proof of increased demand for their services.

5.5. Some Problems in Enforcing Distribution and Rationing

There are at least five main problems involved in rationing and distribution: the criteria for allocation; the level at which allocations are defined; interference with the distribution system; the black market and administrative issues involved in the allocation process.

5.5.1. Criteria for Allocation of Goods

It will be seen from the standards of eligibility that the criteria for the allocation are many, particularly when it includes criteria which are not legitimate. The problem is what would be the most acceptable criteria. The more widely acceptable criterion is the allocation according to needs. But the concept of "needs" is not always easy to define. Urgent needs as in the case of hospitals and basic needs do not pose major problems. But beyond such levels the concept becomes difficult to define and operationalise in relation to the rest of the consumers. A second criterion is allocation according to merit. This criterion is easy to operationalise. I would not dispute that priority in the allocation of sugar should go to babies or the sick. But one can certainly question the use of political merits as the basis of distribution. Finally, there are informal methods of allocation which are not only socially undesirable but also forbidden and criminal. Such methods are those based on personal links with the allocator; return of favours done to the allocator

and corruption. Indeed, the government has condemned the use of such illegitimate methods (Sunday News, Daresalaam, October 24, 1983). Yet they are still prevalent (Africa Contemporary Record 1982-83: B279).

5.5.2. Administrative Issues

Distribution and rationing require a large and expensive administrative machinery. Many party and government officers are involved in monitoring the physical movement of goods and supervising in the distribution points. This imposes a heavy shift of manpower and financial resources from ordinary business of government to the controls. On the other hand traders frequently complain that the system imposes additional work, slows down business and necessitates hiring more workers. These expenses reduce the profits that they are expected to earn on controlled goods. Consumers too complain about the long and uncertain periods it takes to get the goods (Rice, 1979; Sunday News, Daresalaam, December 29, 1985).

5.5.3. Interference with Distribution

One of the most pressing problems is violation of the procedures laid down for the distribution of goods both by unscrupulous traders and irresponsible officials (Africa Contemporary Records 1982-83: B278). Traders violate the procedures directly and indirectly. They bribe the allocators to get more goods or jump the queues. Some traders appointed to sell the goods to consumers divert them to more lucrative outlets than the selling points. Others divert the goods to more profitable uses. For example, instead of selling sugar to consumers, they will use it to make cups of tea. This is because a pound of sugar spent

on making and selling tea yields more money than the one sold directly to a consumer.

5.5.4. Black Marketeering

With respect to a number of the important commodities under control, the operation of distribution and rationing, especially in the rural areas, has broken down. The upsurge of the black market is a clear indication. In these secret and illegal markets the control goods are more abundant than in the established shops (Whitworth, 1982; Shimwela, 1984). But the goods sell at several times than the government prices. The black marketeers (popularly know as Walanguzi, i.e. racketeers or "Fat Goats" in Swahili) are a common phenomenon both in rural and urban areas despite tough laws aimed at cracking down on them like the Economic and Organised Crimes (Control) Act 1984 and the Human Resources Deployment Act 1983. The black marketeers operate to evade all the established machinery for the acquisition and sale of basic commodities. The black market is largely the brain child of merchants. It is sustained by the unsatisfied consumers. It is boosted by dishonest officials who supply it with the controlled goods. This apparent interference with the controls says Galbraith, is a phenomenon found in many places where controls are imposed in a situation faced with shortages because

> The given supply can be sold at higher prices. It can be sold because buyers, however unhappy, would prefer to pay the higher prices than to accept their alternative opportunity which is to do without. The sellers, it can readily be assumed prefer the higher price to the lower one. Thus if the price increase is arrested by authority, the action runs not only against the interest of those buyers who are not able to satisfy all or substantially all of their wants at a fixed price. An

> incentive thus exists for a coalition on behalf of higher prices between sellers and at least some buyers. This coalition is based on an equally rational interpretation of immediate self interest on both sides (Galbraith, 1980: 3-4).

The question is where do the black marketeers obtain their goods? With the type of extensive controls that we have seen above it would be difficult to understand how goods leak to the illegal market. While no satisfactory answer was given to me by regional authorities responsible for allocating and distributing the controlled goods, a hint on the possible causes of the problem came from the Prime Minister, E. Sokoine, who told Parliament:

> The black marketeers have built up such a relationship with leaders of the distribution bodies that it is impossible to distinguish them (Africa Contemporary Records, 1983: B278).

The Prime Minister's statement clearly suggests dishonesty on the part of some public officers. It also proves ineffectiveness of the government in disciplining its officers and enforcing its policies. Who else is better placed to stamp out corruption or irresponsible officers than the government?

The black market has generated other anti-social and criminal practices. One, being banditry. As the black market business became lucrative it ceased to be the domain of ordinary traders. Criminal gangs moved in introducing deadly and unprecedented methods - seizure of goods on transit at gun point, hijacking of vehicles ferrying the goods, spurious manufacture (Ergas, 1983). The other was economic sabotage. The black marketeers indulged in speculative hoarding, of money and goods, disruption of distribution, sale of adulterated goods and counterfeiting.

It is interesting to note that some of the people involved in the black market were men of substantial means and political power - politicians, senior police officers, party cadres, civil servants and parastatal managers (Africa Contemporary Records 1983: B279). Accounts by Green speak of government and parastatal employees resigning government employment to enter trade where they use their extensive influence and connections with the rationing and distribution agencies, in which they had formerly served, to acquire goods and sell them on the black market (Green, 1980). President Nyerere expressed his dismay on the rate of "young people leaving public service sector employment on flimsy or dubious grounds such as health or family problems just to be netted in the swoops against racketeers. They are at the helm of black marketeering" (Nyerere, Address to the Nation, April 5, 1983). It is some of this anti-social practices which prompted the passage of the Economic Sabotage (Special Provisions) Act. Explaining the purposes of the Act, President Nyerere, its principal promoter said:

> This Act is designed to be periodically invoked to operate whenever it is felt that acts of economic sabotage are too rampant to be tolerated by society. The Act will be a permanent weapon of the nation in the war against saboteurs, racketeers and other anti-social elements. The treatment with abhorence of acts of that nature should be a permanent and ordinary feature of the national ethic (Statement of Objects, the Economic Sabotage Act 1983).

The Act covers all offences under: the Regulation of Trade Act 1980; the Imports Confinement Order 1981; the Prevention of Corruption Act 1971; the Exchange Control Ordinance (cap 292) in addition to hoarding, possession of excessive liquid currency, occasioning loss to specified authorities, possession of goods

suspected to have been stolen and theft by postal workers (The Schedule, The Economic Sabotage Act 1983).

In conclusion we can say that there is a general unity between the Price Control Act, the Weights and Measures Acts, the Food Act and the Standards Act. The four enforcement services have, by their nature and administrative problems, an identical purpose. They exist to impose basic correctness in the essential attributes of goods on sale so that the consumer is protected from cheat, unfairness and hazard. Each of these laws share a common purpose and common charateristic of enforcement. The functions of the agencies established by these laws often operate upon the same goods, the same traders, the same premises. But the difficulty of the present situation is that although all these agencies are clearly facets of the same service - public protection, they have grown up in disparate and disjunctive way. They are guided by different government departments variable in their comprehension of problems, variable in expertise, outlook, understanding and probably resource endowment as well.

For the sake of consistency, uniformity and coordination, it would be better if some of the services could be offered by one or two agencies than the current duplicity of control agencies which can cause stalemate, inaction or confusion when it comes to locating responsibilities, say for control of food quality. Shall we hold responsible the agencies with general powers, like the NPC, or those with specific powers like the Food Commission?

5.6. Measures to Combat Contravention of Distribution System, Black Markets and Other Anti-social Practices

To curb the wave of criminal and other social conduct outlined above, the government introduced the Economic and Organised Crime (Control) Bill in August, 25, 1983. The rationale for the Act as stated by the Minister for Justice, was to

> make provision for the control and eradication of certain crime and culpable non-criminal misconduct through the prescription of modified investigation and trial procedures and the provision of enhanced sanctions and new remedies (Ibid.).

The Bill was passed with uncharacteristic speed and urgency. There was no opposition to it, nor any meaningful debate in the National Assembly, to say the least. Its chief sponsor was President Nyerere himself. But the initial groundwork to the Act probably began early in March 1983. The then Prime Minister made a public attack against black marketeeres blaming them for economic hardships facing consumers and promised stern government action. The Prime Minister lashed at rumours that the government was deliberately allowing the racketeers to operate freely and at the damaging inference that the government was on leave. In April 20, 1983 President Nyerere announced measures to crack down on economic and social vices. He announced that police raids had unearthed massive hoarding of currency, huge stocks of hidden goods and had exposed organised crime aimed at discrediting the government. It is on this occasion that he revealed his intention to move for this legislation. He made it clear that he had strong reservations about criminals escaping from justice by exploiting loopholes in the existing system. The Act would avoid such legal technicalities as facilitated escape by suspected criminals. He warned:

> For those of you who are accustomed to notions of legality, especially our brothers in the bench and bar, we seek their forgiveness. They will not find it comfortable this time. But I am afraid these are matters that may not be appropriate for the courts. Our actions may seem harsh. I believe we are justified and the people will support us (Radio Broadcast, April 5, 1983).

Indeed the people gave the Act overwhelming support through demonstrations, congratulatory messages and comments in the newspapers.

The Act establishes an economic tribunal presided over by the High Court judge. The judges are appointed by the President from existing members. The tribunal sits with two lay members. Experience shows that the laymen are picked from those with a distinguished career in politics or civil service. There are no formal educational requirements except that they must be "literate members, aged between 30-60 years, responsible and reasonable members of the community" Section 5(1).

All questions including the guilt of the accused are decided by majority votes. Legal representation is not allowed. There are no appeals to the Court of Appeal. But one can appeal to the President. The tribunal is not bound by rules of evidence. It has broad powers to "order seizure and confiscation of property used, obtained or involved in the commission of the scheduled offences". For purposes of this law an organised crime is broadly defined as any "offence or non-criminal conduct which is committed in combination or from whose nature a presumption may be raised that its commission is evidence of the existence of a criminal racket in respect of acts connected with or capable of producing

the offence in question", Section 2.

Thus a mere accusation of violating the scheduled acts or a suspicion of the same is sufficient to warrant a conviction by the tribunal.

The Act validates searches, property seizure and arrests made by party personnel, vigilante groups, people's militia and the police, without search warrants. The Act was applied retrospectively. This was intended to cover those netted by police swoops conducted before the passage of this law.

The reasons for short-circuiting standard legal procedures were probably two: First, the difficulty of obtaining sufficient and admissible evidence. Most of the offences covered are surrounded by concealment, stealth or bribery and other transactions. Second, to avoid the possibility of suspects being freed on legal technicalities.

But the drastic measures - a dracoman law, harsh penalties, by-passing of standard legal procedures supplemented by a hostile campaign designed to mobilise public support for the action, were short-lived. Most of the people arrested were subsequently released by a special committee set up to review individual cases. In one case involving the ex-Regional Commissioner for Kilimanjaro, President Nyerere invoked the Detention Act 1962 to have him back in jail following public discontent of his release by the tribunal. Obviously his detention under the Preventive Detention Act 1962 is questionable. For that law applies to offences against

national security and not ordinary crimes (Martin, 1974: 87-93). Moreover, the appointment of High Court judges to chair the tribunals watered down the rigors of the Act. The judges insisted on legal fairness and would not allow political expediency to dictate the outcome of the cases. The judges had an upper hand in determining the outcome of the cases. They guided the proceedings, summed up the submissions to the laymen to form their opinion. I would say the judges charted out the final decision. It cannot be said that the judges abandoned their orthodox judicial attitudes simply because they sat on those tribunals. The most important blow to the Act was a change in government policy that came in July 1984. The government legalised most of the practices forbidden by the Act. For example, people were allowed to import some of the confined goods and sell them at non-controlled prices, to possess and use foreign currency within the country. This decriminalisation posed a dilemma. Hardly a year ago, in a nervous and overactive response to racketeering, the authorities had dragged people from their homes and streets, and thrown them into detention centres for possessing confined goods and foreign currency. Now it had legalised those practices. One problem was what to do with those still awaiting trial. For, when they committed the offences this law may not have been there. After their arrest came the law and was made retrospective. But by the time of the trial the acts are no longer criminal. To me this was a real problem - socially and politically.

It could be argued that since the Act was retrospective those still awaiting trial should be released where it is shown

that the acts are now lawful. This however, will leave those already convicted feel that they were unlucky to be tried first. The public will think the laws are unruly. Maybe those in jail should also be set free.

One other problem which trials before the economic tribunal raises in relation to other laws is the question of double standards. The ordinary laws covering offences transferred to the tribunals were not repealed. For example, a person selling goods at above the controlled prices or selling substandard goods could still be tried by ordinary courts under the Regulation of Prices Act (sections 20 and 21). Possession of foreign currency is still governed by the Exchange Control Act (cap 292). There were therefore two separate competent authorities with jurisdiction over these offences. In practice the Office of Public Prosecutors enjoyed an advantage. Where they were satisfied that the evidence gathered was adequate they took the cases to ordinary courts. And where the evidence was weak they turned the cases to the tribunals.

This practice is, in my view, unfair. First, the evidential burden in the tribunals is upon the accused to prove his innocence. Often, the law establishing the tribunals presumes the guilt of the accused. In the courts the burden is on the prosecutor and the standard is high - beyond reasonable doubt. One can easily see a situation arising where a person is condemned to jail by the tribunals in circumstances which the courts would set him free. Finally, the penalties are stiff in the tribunals than the courts. A person convicted of the offence of possessing stolen

goods would get a maximum imprisonment term of seven years. The minimum would be anything less (section 311, Penal Code). For the same offence the maximum penalty in the tribunals is fourteen years imprisonment and the minimum is five, with hard labour plus confiscation of the property to the state.

5.7. The Sanctions

The price controllers apply two types of sanctions: administrative and legal.

5.7.1. Administrative Sanctions

Administrative sanctions are not provided for by the Act. But they are the most frequently used. These include a warning issued verbally or in writing; verbal threats, public exhortations to traders to refrain from violations, withdrawal of licences and withholding of supplies. The withdrawal of licences and withholding of supplies requires coordination between the price controllers and licencing or distribution agencies. Where the controllers have found a serious and persistent breach of the controlled prices, they inform the licencing or distribution body about the matter and ask them to take the necessary measures. This is done in exceptional circumstances where the trader neglects warnings from the controllers. The application of such cross-sanctions does not raise difficulties. Since the regional or town directors head the administration and chair licencing and distribution authorities the controllers can obtain such action easily. These are the severest and most effective sanctions since they affect the livelihood of the trader. They are the ones feared most.

5.7.2. Legal Sanctions

The Act provides two types of sanctions fines and imprisonment, or both, section 26. Where the amount of price overcharge in one transaction does not exceed Tsh. 100/= the controllers can compound the offence. Anything exceeding that becomes a court case. This explains why over 80 per cent of the offenders are fined. The other factor influencing the decision to impose a fine is the willingness of the offender to admit violation. From the statistical figures more than 5393 people were booked for contravening maximum price orders in the provinces (excluding Daresalaam) between 1977-84. But of these 3773 were fined by the controllers and 292 were taken to courts. There are no reliable statistics showing the number of those given a warning on the spot.

In connection with fines the question is how deterrent are they? How often are the controllers willing to impose maximum fines? How do traders feel about the fines given? Are their feelings the same for other penalties like imprisonment?

The Act provides that the maximum fine for the breach of any provisions shall be Tsh. 5000/= (i.e. £100). It is interesting to note that prior to 1981 the penalty was more severe. The maximum fine was Tsh. 50,000/= (i.e. £1,000). An amendment of 1981 drastically reduced the penalty (G.N. 2 of 1981). A perusal of the Commission's records shows that on the whole the fines were extremely small. The Table below illustrates this.

TABLE 6: Total Amount of Fines 1977-84 for Overcharging (excluding Daresalaam)

Region	No. of Offenders Fined	Total amount Tsh.
Arusha	263	239,900.00
Coast	52	20,650.00
Dodoma	583	491,820.00
Iringa	279	137,150.00
Kagera	168	43,215.00
Kigoma	157	106,000.00
Kilimanjaro	335	126,680.00
Lindi	39	11,367.00
Mara	210	140,700.00
Mbeya	170	36,050.00
Morogoro	196	184,255.00
Mwanza	455	411,550.00
Rukwa	402	205,150.00
Ruvuma	417	79,965.00
Mtwara	73	57,600.00
Singida	314	18,840.00
Shinyanga	628	506,574.00
Tabora	451	175,857.00
Tanga	201	121,970.00
TOTAL	5393	3,381,293.00

Source: National Price Commission, Daresalaam.

Assuming that the fines were the same for every offender, we find that on the national average they were mild. They averaged less than Tsh. 1000 (i.e. £15) - half of the prescribed maximum. We also find that the regional variations are wide. In a small percentage of the regions, Coast and Lindi, the controllers imposed high fines averaging the maximum. In the rest of the regions the controllers were lenient. This attitude of the price controllers requires some explanation.

One possible reason for the leniency is the restrictions in the Act which limit maximum fines to Tsh. 5000/=, section 33. The second is the policy of the controllers not to impose the maximum penalty for the first offenders. According to the National Price Commission the maximum penalty is reserved for subsequent or hardcore criminals. To invoke the maximum penalty to first offenders will exhaust the latitude of discretion for punishing subsequent breaches. The controllers are liberal to impose any fine below the maximum. This policy is in line with the general judicial policy on sentencing (Slattery, 1974).

Once it is recognised that discrimination is exercised on such an extensive scale in fining a question arises: Are there any guidelines to control the exercise of the discretion by controllers to prevent abuses? I am afraid none exists. Much depends on the circumstances of each case and on the personal characteristics of each controller. If the officer who detects the violation does not want to impose a fine he may simply ignore the violation, or give a verbal warning. Such decisions may well depend on the officer's temperament, ideological leanings, commitment to the job and social background.

In connection with sanctions, it is also important to examine those imposed by the courts and see whether they would in any way be more deterrent than those of the commissioners?

Unlike the commissioners, the courts can impose a fine, an imprisonment or both, section 26. If we go by the general sentencing policy of the courts it follows that since a fine

is the punishment named first it must be considered before jail (Slattery, 1974: 20). Jail is an alternative to be invoked in case of persistent breaches or failure to pay fine. This policy is strictly followed in sentencing. For instance, out of 250 people convicted of hiking prices by Kivukoni Magistrates Court during 1983-84 only 23 persons were imprisoned. And only after failing to pay fines. The jail terms did not exceed six months. In terms of fines, those imposed by the magistrates were equally trivial. None exceeded Tsh. 2,000/=. The penalty of imprisonment most feared by businessmen is seldom invoked.

This method of lightly dealing with offenders has brought two consequences. First, the non-deterrent sanctions encourage violations. Some authors say that there is a strong relationship between the severity of penalties and the rate in the frequency of violations (Mitnick, 1980; Hawkins, 1980; Sholz, 1984). Second, it has made traders feel least threatened. For one the fines are small. The traders find the costs and opportunities of disobeying far less than the gains. A number of traders interviewed gave me the same impression - that it pays to disobey this law. Asked why they indulged in such criminal practices a trader denied categorically:

> We are not criminals. It is not a crime, it is pure business shrewdness (i.e. to sell above the fixed prices). Only that you must have your money for fines ready. And we have never refused or failed to pay fines!

The chairman of the Daresalaam Chamber of Commerce was equally supportive:

> I don't think jail is good for us. Ah! we are not robbers. Jail is for thieves and gangsters. We do not force anyone to buy at those prices. They are free to refuse.

It is clear from these statements that the busines class consider the sanctions least threatening to them.

That being the case I think there is need for the penalties to be raised; for the authorities to recommend jail sentences; to take action more quickly when accusations of violations are made and to take tougher action.

5.8. Some Observations

In sum judging by the experience so far enforcement of the controls has not been effective. There hardly appears a major published report by the controllers without complaining about inadequate enforcement. The Minister for Finance conceded in his statement to the National Assembly when he said

> The enforcement of price controls, Mr Speaker, has always been a very difficult matter. It is indeed difficult to enforce today even in the small number of goods currently under control (Budget Speech 1985/86, Uhuru, July 27, 1985: 3).

The Daily News lamented in its editorial of August 14, 1985, about unjustifiable price increases that are causing "suffering to consumers and the economy as a whole", and argued that "many goods could be sold at prices cheaper than those charged without traders incurring losses" (Daily News, Daresalaam, August 14, 1985). A study by ILO 1982 and 1983 examined the enforcement of the controls and concluded that it was sorely inadequate. Far from protecting consumers, it had created opportunities for corruption, smuggling, hoarding and boosted the black market (ILO, 1982: 15).

Tanzania is not unique in this predicament. Scanning through the available country literature one finds similar problems in other countries with price controls. Ghana (Killick, 1973) and Papua New Guinea are facing similar problems (Papua New Guinea, Law Reform Commission Paper 17 of 1981). British and American experiences suggest that formidable problems were encountered on enforcing the controls and there was no absolute success (Mitchell, 1978; Eliot, 1979). But what makes Tanzania's, and other countries in the third worlds problems particularly acute are shortages of goods, manpower and financial resource constraints and inadequate policing. These are aggravated by dishonest and corrupt tendencies among enforcers (Sunday News, Daresalaam, February 1986: 1).

My observations on the extent to which the controls were being enforced during the month of December 1985 revealed the following:

5.8.1. Scarcities in the Market Dictate Prices

The price list issued in September 1985 was a dead letter. The prices on the market, especially in the villages, were much higher than those fixed by the government. Let us take a few examples. The listed prices for half a litre of beer were Sh. 26/=. In Daresalaam hotels it was selling at Sh. 45/=. Up country it was as high as Sh. 70/= in Mbeya and Ruvuma, and Sh. 100/= in Mwanza. The trend was the same for other goods. The prices were dishonoured from the word "go". When I compared the prices actually charged with the fixed prices in the areas I visited I found that in none of the cities were the controlled prices observed. Practically every person evaded the controls. Consumers knowingly paid prices higher than the fixed ones.

5.8.2. Enforcers Tolerating or Ignoring Violations

In a number of cases the law enforcers seem to lack the will to enforce. The folowing description from the authors of Africa Events will illustrate the point. It shows how in Daresalaam the price controllers turn a blind eye to violations:

> Hawkers have their wares - where red beans, rice, sugar, wheat - are spread out in loose mounds on the ground on either side of the road. Here rice sells five times the official price. Small racketeers depots replenish the hawkers' supplies. Some of the bags bear foreign marks indicating that the local source is the government distribution (Africa Events, London, November 1985: 63).

That being the situation the question that arises is why do the controllers ignore offenders when the rules are flouted so openly? Could it be a case of silent conspiracy, as the authors suggest, between government officers and black marketeers to allow freedom of the market? Indeed that seems to be the case. When asked to explain this apparently unwelcome development President Nyerere answered diplomatically

> Politically it is better to see the goods in the markets, the high prices notwithstanding. At least there is a positive effect about it - the psychological satisfaction. When people complain about high prices you tell them to work harder, get more money so that you can afford the goods. What would you tell people when the shelves are empty? (Sunday News, Daresalaam, December 29, 1985: 3).

The President's message is clear. The sight of goods flowing in the markets is a political tactic. To many it conveys the illusion of plenty which helps to curb political unrest. But the argument on high prices being an incentive to work is questionable. Where wages are controlled by state, the prices are so high and unemployment is rising it is difficult to see how the incentive argument operates. The only people with incentives

to work harder will be the racketeers.

5.8.3. Uncooperative Consumers

Of late consumers seem to have lost confidence in the NPC and have become uncooperative. Two examples demonstrate that. First, they are prepared to pay higher than the government prices and do not complain. More disturbing is they conceal violators. For example, when the inspectors go to the streets consumers inform traders to close their shop premises or fix price labels on their goods to avoid arrest. In some cases consumers have conspired with traders to beat inspectors (Uhuru, Daresalaam, August 5, 1985). The Price Commission believes that traders pay people to beat his men (Chairman's Report, Uhuru, Daresalaam, August 5, 1985). Consumers contacted said the inspectors were being molested because they were not taking action against traders. The consumers think the inspectors are in the pay of racketeers and profiteers. These allegations and counter allegations reflect declining confidence in the controllers. The Commission has been forced to dismiss irresponsible officials (Mongi, 1985; Mafuru, 1985). There is need to restore public confidence.

5.9. Judicial Review

So far we have considered one side of enforcement - that against violators. To complete the picture we also need to look at enforcement against the law enforcers. This is an important point to consider. For one, consumers need to know what action is open to them where the Commissioners fail in their duties or act in a manner prejudicial to their interests. So is the case with businessmen. This point draws us into examining judicial review of the actions of administrators.

I will note go into the details of the principles governing review. This is well covered by existing studies (Bayne, 1969: 343; Wade, 1982). I will therefore limit myself to the application of these principles to the agencies under discussion.

The principles governing the circumstances in which the East African courts have been asked to review the decisions of administrative agencies follow closely those developed by the English courts in a series of decisions. The leading case is that of Anisminic v. Foreign Commission [1969]. East African cases have adopted these principles and academicians from institutions in that region have welcomed them (Bayne, 1969; Kiapi, 1972; Martin, 1974). In Amir Junia and 15 others v. Tanzania Harbours Authority [1980] and in I.M. Mohana v. University of Daresalaam [1977] the High Court held that the decisions of administrative authorities will be nullified if they are found to be ultra vires. The circumstances which can occasion an ultra vires decision, says de Smith, are many and varied. These include where the agency fails to exercise its power in some way - such as subdelegation; acting under dictation of some other body; misapplying a policy or misconstruing the scope of its discretion. The authority may also be challenged if it acts in excess of its authority; pursues improper purposes; takes into account irrelevant considerations or acting unreasonably (de Smith, 1980). In addition, it should be remembered that the law on this area is still developing. The House of Lords indicated in the case of Re Racal Communications [1980] that the circumstances that may call for review are developing upon case to case and the present categories are not exhaustive ([1980] 2 All ER 634).

Due to the dearth of decided cases, it is not easy to demonstrate how these circumstances would bring the decisions of the Price Commission under review. What one can say is that there have been cases in which some of the decisions of the Commission could be challenged. We have mentioned cases where Ministers have ordered the Commission to raise prices unjustifiably. We have seen how the President did the same. Above all we saw the party using the Commission to raise funds. These occasions could be a subject of review.

Three important legislative practices however severely limit the ability of the courts to control the NPC's decisions. First, the provisions of section 15 which seem to exclude the jurisdiction of courts. It reads, "No decision of the Price Commission or an Assistant Price Commissioner made or purporting to have been made pursuant to any provision of this part shall be subject to review by any court on any ground whatsoever". The Part referred to covers sections 3 - 14. Those sections contain the important provisions on price fixing; criteria for price determination; the costs permissible; price reviews and the Commission's power to hear appeals from assistant controllers. In the case of Re Marles Application [1958] the East African Court of Appeal held that where specific words are used to exclude the jurisdiction of the courts, it must be taken that Parliament intended to deprive the citizen of access to the courts and the courts are bound to give effect to such words ([1958] E.A. 153). However, it has been held in other jurisdictions that an exclusionary clause of this type is only sufficient to protect from review acts which are prima facie within the scope of the power granted (Anisminic

v. Foreign Compensation Commission [1969] IAll E.R. 208 (H.L)). Where the limits of power are exceeded, or the power is exercised improperly there cannot be protection from such a clause. On this principle it could be said, for example, since section 12(2) of the Regulation of Prices Act lays down the circumstances under which a price increase can be made, in a case where the Commission orders increases for reasons not apparently covered by these sections, it could be argued that the Act does not give the power to make such an order. The decisions in question therefore would be open to judicial review.

The other limitation is section 9(2) which provides that the Minister may direct the Commission to determine or review prices if in the "opinion of the Minister it is in national interest that the prices be reviewed". And the Commission shall proceed to do so in accordance with the provisions of this Act. From this clause it would appear the question of whether the circumstances or state affairs warrants a price review is a subjective matter for the discretion of the Minister. East African cases indicate that the courts will be extremely wary of reviewing the exercise by the Minister of such discretion (Re: Ibrahim [1970] E.A. 162; Uganda v. Commissioner of Prisons [1966] E.A. 514). The English courts on the other hand have consistently held that even in such cases the discretion conferred on the Minister is not without limits and that a judge may enquire whether any objective basis existed for the exercise of the Ministers discretion (Padfield v. Minister of Agriculture [1968] 1 All E.R. 694). A similar progressive view has been adopted by one High Court judge in Tanzania. In the case of I.M. Mahona v. University

of Daresalaam [1977], Justice Kisanga, quoting the principle in Anisminic's case with approval, said the clause that the decision of a Minister "shall be final and conclusive" only applies "where there has been a real decision and not merely a purported or inoperative decision. The court will inquire whether the procedure prescribed was followed and the circumstances justifying the decision existed". ([Civil Case 83 of 1977 (H.C.)] unreported). This case involved a Minister's decision to order dismissal of an employee without giving him a hearing and was nullified by the court despite the finality clause. The point is this approach by the judge is more progressive compared to that of the Court of Appeal. There is yet a further limitation. That is the grant of powers, which according to the words used, seem limitless. For example, section 9(1) reads as follows: "The Price Commission may from time to time determine and review.... price structures on a national basis", and section 16 says "The Price Commissioner may publish such list in such manner as will, in the opinion of the Price Commissioner, ensure the contents thereof coming to the notice of the members of the public who are likely to be affected thereby". It is difficult to see how the courts would be able to place limits on the exercise of such powers.

It is necessary to remark here that what renders the exercise of powers by the Commission difficult to challenge in courts is not so much the exclusion clauses but the attitude of the government. In most cases, as we have seen, the government gives too much protection to public officers even when some of their actions are contrary to public expectations. Finally, it must be remembered that the courts depend on the individuals

to bring specific complaints before them. A host of financial, historical, geographical, cultural and legal barriers prevent people from making use of the courts to get their rights or remedies against unjust decisions of administrative bodies. For one, people are unaware that there are legal limits on the power of government and its institutions. Also they have little idea, or none at all, how such limits may be enforced. For the few that know, the costs of enforcing the rights through the courts, are needless to say, prohibitive. In addition legal technicalities naturally discourage such action. First, the potential plaintiff needs to possess an appropriate standing to sue (locus standi). For example, a person seeking an injunction to prevent the Commission from acting illegally or improperly will have to show that the decision affects him more than the general public. Presumably firms or traders would find that quite easy. But the injunction may still be refused because the statute provides another equally good remedy - an appeal to the Commission (to review its decisions, section 13(1)(b)). That seems a bit strange. How can a person sit in judgment of himself? Moreover, the court can refuse to issue an injunction if the order cannot be enforced or will cause inconvenience to the government. The alternative remedy is a declaration. There seems to be no strict requirements for this order. For the law provides: "No action or proceedings shall be open to objection, on the ground that merely a declatory order is sought and the court may make binding declarations of right whether any consequential relief is or could be claimed or not" (Civil Procedure Act 1966, section 7(2)). But a declaratory judgement may end up in an empty right. For such an order only declares the correct legal position. It does not require any party to

do anything. Disregard of declaratory orders does not amount to contempt of court. Obedience to such orders depends on the respect which the parties pay to court rulings (Wade, 1982: 500). This is a major weakness because unless society has built a strong tradition to the rule of law, judicial orders may be flouted publicly. In Tanzania, as I am afraid in many other developing countries, such tradition is lacking. Instances where executive and administrative authorities disobey court orders are quite common. Two cases illustrate this. And since the cases involve Habeas Corpus - probably the most important constitutional safeguard against abuses by executive organs, the cases cast serious doubts about government compliance with non-obligatory orders like a declaration.

In Att. Gen. v. Lesinoi and Another [1979] the government indirectly refused to enforce a court order to release detainees. The refusal was by conduct. The government kept on transferring the prisoners from one jail to another to render them inaccessible to the order. A similar ploy was employed in Re: Application by Massawe [1979]. The Chief High Court judge protested openly against this attitude of the government. He warned: "The freedom of a just man is worth little if court orders can be so arrogantly flouted" (per Muzavas, J.K. [1979] Law Reports of Tanzania 18).

In view of this attitude of government, there is little reason to expect that decisions of the Commission declared unjust will be changed. Indeed we have already mentioned the price of sugar declared unfair by Parliament but ordered to continue by the government in 1980.

It is interesting to note that in many common law jurisdictions measures have been taken to modify the rigors of the rules on remedies so as to enable the citizen to pursue his rights in the courts without inhibitions. In the UK the rules on locus standi were relaxed in 1977. Now the courts can entertain applications for judicial review if the applicant has a sufficient interest (Supreme Court Rules, Amendment 3, 1977 Rule 53). The House of Lords has indicated that the courts are "ready to control by way of review the actions of tribunals set up by statute to ensure justice is done" (Weekly Law Reports, December 1984: 1186). And to be exact, as Lord Scarman declared, the ancient restrictions no longer apply. What matters now is whether the issue is "justiceable and the nature of the case is suitable for review" (Reg. v. Envir. Secr. ex p. Notts. c.c. ([1986] 2 W.L.R. 1).

Surely when courts in other countries, especially those in the common law family, are shaking off ancient restrictions it is a sign that there is something wrong with the law. It is an indication of a genuine need for change. There is no point why the legislature and courts in East Africa should not take similar measures.

To sum up the arguments in this Chapter, we note that there are many factors which prevent effective enforcement of the regulations. The NPC's resources, manpower and financial are limited. Its methods and techniques are weak in many respects. Consumers have been ignored in the enforcement machinery as a result little cooperation is forthcoming. But what makes enforcement more difficult is the poor state of the economy. Most of the

price controlled goods are in short supply (Government Paper 1, 1981 para. 61; Budget Speech 1986/87 para. 120). Because of shortages, cheating, profiteering and corruption enforcement is likely to be difficult (Africa Contemporary Record (1982-83: B278; Sunday News, Daresalaam, February 2, 1986: 1; ILO 1982).

CHAPTER 6

THE IMPACT OF THE CONTROLS

Introduction

We have seen the reasons for the establishment of the control system, the way it operates and the problems encountered. The ultimate conclusions of the study must take the form of an appraisal, by way of general conclusions, of the effects of the controls. The obvious question is: Do the controls work? The best way to elicit answers to this question would be to ask: What has been happening to inflation? Do people get the goods at controlled prices? Are the controlled items available? If all three questions are answered in the affirmative then beyond doubt the controls are working, and effectively too. If one or two of these central problems have been growing worse, especially if all three have, then they are not working. In that case further questions would have to be asked: Are those the only reasons why control did develop in the first place? Why has it persisted? Why today is it almost popularly accepted as worthwhile? Are there any other viable effective alternative remedies to price control in the circumstances of Tanzania?

Several country studies provide detailed answers to these questions, using - as Whitworth has suggested - various indicators to assess the impact of the controls. The range of indicators include: economic welfare (Rice, 1979); inflation (Shimwela, 1984); provision of basic human necessities (ILO, 1983); foreign exchange earnings and balance of payments equilibrium (Ndyeshebola, 1980); political unity and stability (Nyerere,

1986) and cost and benefit analysis of operating the controls (World Bank, 1982).

From these studies I find that the price controls are normally looked at from two, essentially conflicting, standpoints. There are those who set out to prove that price controls do not work in general and are not working in Tanzania in particular. Inevitably these choose indicators, criteria and information that supports their case. A typical example would be the World Bank Report 1982, the ILO Report 1982 and Rice 1979. On the other hand there are those who argue that the controls work.That the fact that they have not worked in other societies does not mean that they would not work in Tanzania (Nyerere, 1980, 1986; Mongi, 1980; Whitworth, 1982). In my view the dispute between these conflicting views cannot be reconciled unless we all have the same perception of what "working" means, and we use the same criteria to judge the effect of the controls. We need to have some objective criteria and ideally that criteria should be the objects for which the controls were established. Otherwise to speak about whether an institution is "working" always begs the question: Working for whom? Or, from whose point of view? Or, to what extent? An institution may be working but not producing the expected results. Yet it is working even if the consequences are adverse to those it was supposed to serve.

To assess the performance of the controls I shall attempt to summarise: First of all its effects on inflation. Second, I will examine its impact on the social and political order. Then I will look at its consequences for the people. Finally,

I will look at the lessons it sheds on the relationship between law and social order.

6.1. On Inflation

To find out to what extent the controls have managed to hold down the inflationary spiral we need to know what has been the trend in the inflationary rates before and after the imposition of the present controls and see how much of this has been caused by the controls. With regard to the first point, the figures on the annual rates of inflation below illustrate the situation.

TABLE 7: Annual Rates of Inflation 1972-85

1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
26.5	10.5	19.4	26.4	16.9	11.6	11.6	13.8	30.3	25.6	30	27.1	30.0	40.0

Source: Bank of Tanzania, Operations Report (various), Daresalaam.

The annual rates of inflation are calculated by the percentage increase in the Consumer Price Retail Index. It will be seen from this table that the inflationary trend has registered an upward trend since the 1970's. The reasons for this upward swing were outlined in detail in Chapter 3.

It has been suggested that by conventional standards for developing countries there is little price inflation to worry about in Tanzania (Green, 1980: 57; Singh, 1986: 427). This view seems correct if one compares the country's annual rates of inflation with those of other countries, both developed and developing

as well as those of the world taken as a unit together, as the table below shows.[1]

TABLE 8: The Rates of Inflation in Various Countries 1973-1979

	TANZANIA	AFRICAN STATES	OTHER DEVELOPING	INDUSTRIALISED	WORLD IN GENERAL
1973	10.5	9.3	21.5	7.5	9.4
1974	19.4	19.0	31.5	12.7	15.2
1975	26.4	16.9	26.2	10.8	13.4
1976	16.9	18.1	28.2	7.9	11.0
1977	11.6	22.8	29.1	7.9	11.3
1978	11.6	18.4	24.6	6.8	9.6
1979	13.8	21.0	29.0	9.0	12.0

Sources: (i) Budget Speech 1986/87, Daily News, Daresalaam, June 20, 1986 pp.1-2;
(ii) Ndyeshobola, A.A. "An Overview of Inflation in Tanzania: Causal Factors and Propagating Mechanisms" in Rwegasira, S.P. ed. (1980) Inflation in Tanzania (Institute of Finance Management, Daresalaam) pp.7-36;
(iii) M.F. Financial Statistics Rates of Inflation for Various Countries 1973-1979.

It appears from the table above that compared to other African countries, Tanzania's annual rates of inflation are moderate. By standards of the other developing countries the situation could be categorised as mild. Certainly, as Singh points out, they are negligible compared to the sky-rocketing inflations of the Latin American dimensions (Singh 1986: 425-427). On the whole they are in line with the trend in the general World inflation rates.

1. Figures compiled by Semboja, 1984 and the ILO, 1982, show the rates of inflation to be slightly higher than those in this table, see ILO (1982) "Basic Needs in Danger: A Basic Needs Orientated Development Strategy for Tanzania" (ILO Office, Addis Ababa): Semboja, J. (1984) "Taxation, Government Activity and Inflation" (Daresalaam, Economic Research Bureau, Unpublished.)

There are several ways in which the price control may have contributed to this moderation in the inflationary pressure. First, because the percentage of essential commodities under control is greater than those not controlled (Mongi, 1980; Whitworth, 1982) and because the controls are effectively administered at the ex-factory and wholesale level (Rice 1979, Lipumba, 1984) the controls have certainly created a downward pressure on prices. According to surveys carried out by the government (Government Paper 1, 1981 para.62) and those by the NPC (Mongi, 1980) the controls have held down inflation in two ways: One, the authors argue that in the inflationary conditions prevailing in the economy manufacturers would always want to increase prices to maximise profits. And since the majority of the enterprises operate in a monopolistic market structure the opportunity for monopoly pricing is quite ample. The fact that they must apply to the NPC before they can effect price increases and that the NPC reviews those prices only once or twice a year has the effect of slowing them down (Rice, 1979). Second, in the Commission's view, also supported by surveys carried out by the Tanzania Advisory Group[2] that without the price regulations the level of price increase in most of the price controlled goods would have been much worse. Especially with the cutting back of imports in recent years caused by shortage of foreign exchange, the consumer goods available cannot satisfy the expansion in internal demand in an economy whose supply side is weak. Only a rapid increase in prices could bring supply and demand back into equilibrium if the market were left to determine prices. The Tanzania Advisory Group estimated

2. The Group was set up by the World Bank in agreement with the government, to break down the deadlocked negotiations between them.

in 1983 that if the prices of the 2000 items currently under control were decontrolled, the price of each of the items would go up by not less than 100 per cent over their current levels (Africa Contemporary Records, 1983). Both Mongi and Whitworth hold similar views. They point out that the profit margins earned by some enterprises on some goods prior to the imposition of the controls were as high as 200 per cent (Mongi, 1980: 120; Whitworth, 1982: 481). Since the imposition of the controls local manufacturers are not allowed to earn a pre-tax rate of return on investment of more than 30 per cent per annum (section 12(5), as amended by Act 2, 1981). Any firm which has earned more than a 30 per cent rate of returns[3] per annum for a sustained period is assumed to have abused its monopoly position and should therefore have its profit margins reduced.

It is significant that the high profit margins made by firms prior to the controls were not solely caused by costs of supplying the products, but simply because the quantity demanded was greater than what was available (Rice, 1979; Whitworth, 1982). In those circumstances the pressure for private gain created by shortages sent prices escalating frequently and rapidly (Green, 1980). Now that there are restrictions and ceilings firms have apparently been prevented from maximising profits by setting higher prices. The net result has probably been lower prices.

Further evidence that the controls have had an anti inflationary effect comes from recent experiences with decontrols.

3. A pre-tax Rate of Return on Investment of 30% per annum is considered by the NPC high enough to encourage investment. But since company tax is currently 50 per cent of profits, the firms in practice get 15 per cent annual rate of return on investment (The Income Tax Act, 1973, the Schedule).

In July 1984 the government decontrolled the prices of some of the goods. The reasons given were two: The first, was to enable the NPC to concentrate its efforts on fewer goods so as to improve its performance (Government Paper 1, 1981, para.64). The other, was to enable individuals with their own private foreign exchange to import the goods or supply those services which the government and the parastatal sector are not able to supply in sufficient quantity (Sunday News, Daresalaam, December 29, 1985). Those supplying the products were allowed to determine prices, taking into account the costs actually incurred in procuring the products. After a few months of decontrol the prices of the decontrolled items attracted strong criticism from consumers, the government and the press as prices soared. The Minister of Planning told Parliament in October 20, 1984 that the prices of 200 items decontrolled in July 1983 had registered an average increase of about 50 per cent over a period of one year. The same products had a price increase of 30 per cent only (i.e. an annual average of 3 per cent) during the 10 years of price control. In the case of meat the increase was much bigger. Prices rose by 30 per cent within three months of decontrol. The Minister said that this increase was twice as much as what the NPC had granted meat traders in the whole of 10 years of price control (Uhuru, Daresalaam, October 29, 1984). The Minister went on to point out that the controls have also contributed to price stability in an indirect way. They create attitudes and behaviour necessary for price stability among both consumers and traders. He said that in times of scarcity the belief that prices will go up further stimulates spending hysteria which in turn curtails savings. It also leads to speculative hoarding and creates artificial

shortages. The imposition of price controls promotes the propensity to save as it restores confidence in the ability of the economy to maintain a stable price level. This confidence acts to reduce purchases in excess of actual needs. Consequently, there is a moderation in the inflationary pressures. It would follow from these accounts that the controls have had a restraining influence on inflation.

6.2. Do Consumers Get the Goods at Controlled Prices

This is an important question in determining whether the controls protect the economically weak groups. To answer this question I compared the retail prices for some basic necessities in ten urban centres between the controlled prices and what consumers actually paid. The official or controlled prices are derived from the National Price Commission and the Central Statistical Bureau. The market prices are constructed from various sources such as the monthly data of the Marketing Development Bureau, a U.N. sponsored body attached to the Ministry of Agriculture, compiles monthly prices for various food stuffs; reported cases from the Central Police Station in Daresalaam, Court files and academic surveys by Semboja, 1984 and Lipumba and Mbogoro, 1984. These sources were supplemented by my own observations during fieldwork. The results are reflected in Table 10 below.

It is clear from this table that in all cases consumers were charged prices above those fixed by the controllers. The market prices were relatively higher for commodities whose demand is relatively inelastic like maize flour. This implies that if the rate of inflation were measured by a retail price index of

TABLE 9: Official and Market Prices for Selected Commodities in Ten Urban Centres 1973-1983 (in Shillings per kilo)

COMMODITY		1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
Maize (flour)	Official	0.80	1.25	1.25	1.75	1.75	1.75	1.25	2.50	2.50	3.70
	Market	3.70	4.90	3.90	5.10	4.50	4.10	3.60	3.00	3.10	6.00
Sugar	Official	3.00	3.00	5.00	5.00	6.00	8.50	10.00	7.00	17.00	17.50
	Market	14.00	11.80	15.50	14.50	11.60	12.30	13.40	12.50	25.00	35.00
Rice	Official	1.65	2.00	4.00	4.00	3.50	3.50	5.35	5.35	6.35	7.50
	Market	7.70	8.00	12.60	11.60	9.10	8.10	9.50	8.00	10.50	15.00
Wheat (flour)	Official	1.50	2.40	3.75	3.75	3.75	3.75	3.85	6.35	6.35	7.50
	Market	7.70	9.50	11.50	10.90	9.50	8.50	8.50	11.00	12.50	16.00

Key: Official = Government Price   Market = Market Price

what consumers actually pay, assuming the controlled goods constitute a major percent of the inflationary indicators, the inflationary rates in Table 8 would probably be higher.

6.9. On Promoting Industrial Output

To promote production the controllers, as noted in Chapter 4.6.3.(g), allow firms to make a profit margin sufficient to enable them earn the minimum necessary to meet their activities and investments. Despite this provision the economy has experienced a steady decline in output in recent years (Budget Speech 1985-86 para.36, Lloyd's Bank Group, Country Report 1985). Output of goods under price control, as well as those without, has fallen. The table below illustrates the extent of the decline for selected products.

It is clear from Table 10 that with a decline in per capita availability of goods, even if incomes were static and the population were the same, demand would be high and this would have an impact on prices.

TABLE 10: Commodity Production Levels in Selected Industries 1966-1982

Commodity	Unit	1966	1969	1972	1975	1978	1982
Batteries	'000 cartons	-	-	-	-	312	210
Beans	'000 tons	-	-	34.6	31.6	30	28
Beer	'000 litres	15,816	33,140	64,823	69,000	59,015	51,000
Canned Meat	Metric tons	9,310	6,988	4,878	5,056	n.a.	n.a.
Cement	Metric tons	146,910	167,632	236,956	266,000	1,100,000	369,000
Cigaretttes	Metric tons	2,049	2,137	2,923	4,649	5,500	4,700
Cooking Oil	'000 tons	-	-	-	-	60	23.9
Fertilizers	-	-	-	-	17,035	13,400	13,700
Garments	Million pcs	-	-	-	-	1.5	0.4
Maize	'000 tons	-	-	-	300	213	105
Petroleum	Metric tons	463,143	626,403	763,083	731,000	750,000	669,000
Rice	'000 tons	-	-	-	26	245	12.7
Shoes	'000 Pairs	1,490	2,200	2,457	2,700	1,400	2,900
Soap	'000 cartons	-	-	-	-	56	25
Textiles	'00sq.metres	14,315	46,260	74,136	84,344	200,000	103,500
Wheat	'000 tons	-	37.0	37.8	36.5	35.0	28.0

Sources: Africa Contemporary Record 1976]77, B345; Annual Surveys of the Economy 1982, Ministry of Planning, Daresalaam; Government Paper 1, 1981.

What is not clear is how much of this decline could be attributed to price controls. The World Bank and ILO reports say that the controls are partly to blame for favouring managed over free markets and basic needs instead of external growth which stifle investments especially in the private sector (World Bank Report 1980, ILO Report 1982). The government, on the other hand, denies that the controls have anything to do with declining output. According to Government Paper No.1, 1981, which contains a comphrehensive survey of the causes, the main factors are:

a) Lack of skilled and trained manpower.

b) Inefficient management and marketing systems.

c) Deterioration in Labour relations - caused mainly by lack of political awareness by workers to recognise that there can be no workers' rights without obligations. Workers have been demanding better terms when their productivity in output per man hour has fallen.

d) Personal clashes among parastatal managers.

e) Dishonesty and corruption among some employees.

f) Lack of proper incentives in the pay structure, as a result of which hard working employees and lazy and negligent workers are treated the same.

g) Shortage of foreign exchange for importing raw materials, spares and machinery.

h) Frequent interruption in the supply of fuel, water, energy.

i) Limited investments and lack of appropriate technology.

j) A rapid decline in the terms of trade facing primary exporters.

It appears from the governments view price control is not one of the causes for the fall in industrial output. But the Director of the National Productivity Council, the chief adviser to the government on policy matters regarding Productivity, Incomes and Prices (established under the National Productivity Council Act 1981, No.20, section 4) says the controls affect productivity. The Director cites the case of the price of maize flour which sells cheaper than raw maize (Shimwela, 1986: 7). As a result firms have little incentive to expand production. Instead they resell the maize to consumers.

6.4. On the Redistribution of Money Incomes

We noted in Chapter 4 that the controls are regarded as an important instrument for an equitable distribution of money incomes. The objective is to use the controls to limit accumulation of wealth by businessmen through unfair pricing practices in the scarcity conditions (Government Paper 1, 1981, para.4). To see whether the controls are achieving this objective we have

to examine what is happening to the consumers and traders in this regard.

There is no statistical evidence to show how much traders have benefitted at the expense of consumers as a result of the failure of the controls. But several studies would lead one to conclude that traders have made a substantial gain. First, studies by Rice in 1979 show that the controls are only effective up to the district level. Once the district authorities allocate goods to retail traders there is no control over the prices that consumers pay (Rice, 1979: 110-116). Second, an empirical study by Semboja reveals that the exclusion of basic services like transport charges for private bus owners, rent, fresh foods, from control and that of certain consumer goods, especially those which are close substitutes for the controlled items, has contributed to windfall gains to those supplying them (Semboja, 1985). Third, studies by Green in 1980, show that government and parastatal employees were leaving public employment to enter private trade. Many resigned public employment on flimsy grounds such as family problems. Using their contacts and influence over the state trading corporations, these officials became very successful businessmen (Green, 1980). Fourth, and most important of all, during police raids mounted in the campaign against economic saboteurs under the Economic and Organised Crimes (Control) Act 1984, some traders were found with vast sums of cash, in local and foreign currency, and huge stocks of basic commodities hidden in their homes. This prompted Nyerere (ex-President) to lament in bewilderment

> We have millionaires in our midst; they are our uncles and their names are the same as ours. This is strange (for a socialist country!). But it is a good thing because it helps us

> better to understand the meaning of capitalism. We used to have a radio programme called 'Capitalism is savagery!' We think it is a joke! But capitalism is a mysterious disease - It is a disease of greed and disease that has no end (Africa Contemporary Record 1982-83, B284).

These events, taken together with the point made earlier in Chapter 6.3 (Table 10), that consumers do not get goods at the controlled prices, show that the controls have not halted the accumulation of money incomes by traders at the expense of consumers. The redistribution of money incomes in favour of traders is reinforced by other practices. For example, the rich live close to the distribution centres, have better access to suppliers; can hire others to queue for them; have more flexible working hours and better information and contacts with the allocators. So they buy the goods at controlled prices and resell them to their less fortunate cousins (Africa Contemporary Record, 1982-83, B278; Sunday News, Daresalaam, December 29, 1985). The money obtained is used to expand the activities. The situation we get is, in the words of a popular christian parable, one in which, "To him that hath shall be given, from him that hath not shall be taken away even that which he hath". Or, as a journalist with Africa Events describes it, "that of water trickling from the desert to the ocean or big fish swallowing the small ones" (Africa Events, London, November 1985: 67).

6.5. <u>On Social Differentiation</u>

What has been the effect of the controls in evening out social differences? The question I wish to consider here is: How far do the people feel that they are treated equally by the controls.

We noted earlier on that the controls were also seen as a mechanism for advancing social equality (section 6(b)). One would expect that the controls would ultimately wipe out social distinctions such as: "bosses and servants", or "urban and rural" or "employed and jobless" in the implementation of the controls. Unfortunately that does not seem to be the case at the moment - at least not when it comes to access to the controlled goods.

What we find in the distribution of price controlled goods is that access has become a function of ones status, employment, residence, wealth and contacts with the distributors. So that getting access to the controlled items largely depends on these factors. It seems the controls tend to sharpen social distinctions. The controls are putting everyone in the social group he belongs to. Even in institutions, access to goods depends on the position one occupies. In the common shops status and influence determined largely by income will be the main factor.

The extent to which the controls sharpen social differences is amply demonstrated by the type of expressions which have arisen. These expressions describe the privileged and under-privileged position which some groups occupy in relation to the controls. For example, people point mocking fingers at shops in military barracks and police shops, where soldiers buy goods at ex-factory prices and supplies are regular, as 'Duka la wenyewe' - meaning the 'shop of the men' (i.e. the real holders of state power). Shops in universities and other institutions of higher learning are called 'Duka la wasomi' - meaning the 'shop for the educated

elite'. Within the institutions themselves when rationed goods are distributed, the command is often 'anza na bosi' - meaning 'set aside enough for the boss'. In shops where common people get their goods, frequently characterised by inadequate and uncertain supplies, people call them 'Duka la kaya' - literally meaning 'the shop of the ten household' or of the 'commoners'. These Swahili expressions neatly sum up the people's reactions - their displeasure with the manner in which the controls treat them. It seems to me the controls which were honestly conceived to reduce social differences are having an opposite effect. They tend to sharpen social differentiation.

6.6. Facilitating Access to Basic Needs

One area in which price control policy in general has had remarkable success is in facilitating access to basic needs. The provision of basic needs is the central focus to Tanzania's development strategy. On the proclamation of the Arusha Declaration in 1967, President Nyerere said that the purpose of all social economic and political activity must be the development of 'Man' (Daily News, Daresalaam, February 5, 1967: 2). Since then this theme has been reiterated in all policy-papers as well as in the Fifth Amendment to the Constitution 1984. The government's intentions in this area have been matched by concrete action. And by all accounts the results have been remarkable. Weaver and Kronomer cite some of the achievements in this field as: an increase in adult literacy from 10% of the population in 1960 to 73% in 1980, making Tanzania the leading state in adult literacy in Africa (ILO, 1983) and an increase in primary school enrolment from a bare 25% of the school age population in 1961 to almost

95% in 1980 (World Development 1980: 840). Other achievements include the growth in life expectancy from 35 years in 1960 to 51 years in 1980; the existence of health centres in 35% of the villages - centres which never existed in 1960; the provision of free and clean tap water to about 40% of the population and village shops in 75% of the villages (World Development, 1981: 167).

There are two ways in which price controls contribute to these developments. First, by enabling the government to use the control system as a mechanism of collecting revenue to supply some of these social services. Second, in so far as the controls work efficiently - as in the case with some commodities like pharmaceuticals, salt, maize meal, shoes; and people get regular supplies through government agencies as in the case of water, electricity, air and rail transport, books and other educational material, the welfare of the majority is promoted. But statistical figures are sometimes misleading. People do not drink or eat taps and village shops. My own observations during field work discount some of the successes catalogued above. I found that while structures like schools, water pipes, health centres lay in the villages their efficiency is poor. Many schools lack basic equipment like chalk-boards, desks, exercise books and above all, teachers. Clinics without medicines or medical staff; idle generators awaiting fuel and empty shelves in the shops are a common village phenomenon. President Nyerere has acknowledged these problems. He once said, "I do get disturbed when I discover that schools are without desks, chairs or other basic equipment" (Africa Events, London, November 1985: 64). But he is far from

dissatisfaction, "At least the existence of the facilities serves as a symbol of good socialist intentions", he concludes (Ibid.).

To conclude the argument in this Chapter I would say that judged by the indicators that seem most relevant to consumers - the prices that they actually pay and availability of the controlled goods and the stability of their money incomes, the controls are not effective.

SUMMARY AND CONCLUSIONS

Given Tanzania's political orientation and programme, price control is likely to remain a significant government policy for the foreseable future. The alternative, that is regulation by the market, is not a suitable solution in the highly uncompetitive environment facing the economy. Recent experiences with the controls reflect some important lessons on the relationship between law and economic regulation. One immediate lesson is the discrepancy between law and the practice. In most cases people have not been getting goods at the controlled prices (ILO, 1982: 26). Economic forces operating behind demand and supply could not be deterred by the regulations. This implies that price control without economic reforms are meaningless. The key to success lies in developing a healthy economic environment. These are also the lessons from other developing countries like Ghana (Killick, 1978) and Burundi (IMF Surveys 1968-72, vol.5,p.389). The other lesson is that in purely economic terms the controls seem to show little by way of measurable gain. Why have they been allowed to persist then? The major reason is probably their contribution on the social and political front. Tanzania's social and political stability, according to an ILO Report, is partly due to its price control policies. The report notes that although

> Consumers are not receiving goods at controlled prices so that their real incomes are much less, nonetheless price control has had a stabilising effect on social and political fronts (ILO Report 1982: 19).

In the same vein the former President, Nyerere, told the IMF that if he were to sign an agreement with them on the condition that the controls be dismantled, "People will take to the streets.

I will have riots. And I will lose everything" (Daily News, Daresalaam, November 24, 1984 p.1). This shows that in determining the desirability of an institution one should not limit oneself to rigid economic criteria such as the amount of money which consumers have saved as a result of the controls or whether the controls can pass a cost and benefit analysis. One has to look at the overall role of the institution in the social, political and economic life of the society.

Apart from these achievements, the National Price Commission has made a significant contribution in regulatory administration. For example, when it was set up in 1973, the NPC was entrusted with establishing and operating an entirely new organisation and discharging a new and complex assignment. The statutory rules, as discussed in Chapter 4, were in most places ambiguous or silent, or in some cases susceptible to no clear meaning. The Commission had virtually no precedents to rely on. Over the years it has built a body of knowledge and expertise to enable it to conduct a far more positive system of regulation.

The Commission's practices shed some useful experiences in the exercise of discretionary powers. One such aspect is the variety of procedures used in determining prices of different products - the types of considerations they take into account. In some cases, political and governmental interests predominate. In others, consumer welfare has loomed large.

In conclusion, I would argue that the past record of comparative failure points to the urgent need to set in hand

the institutional reforms necessary to reform the economy so as to create correspondence between the economic structures and the control system. This is necessary if this well-intentioned piece of legislation is to succeed.

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