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THE UNIVERSITY OF ZAMBIA

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STRUCTURAL ADJUSTMENT PROGRAMME: THE EFFECT ON PRICE CONTROL AND THE CONSUMER IN ZAMBIA: A LEGAL PERSPECTIVE

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STRUCTURAL ADJUSTMENT PROGRAMME: THE EFFECT ON
PRICE CONTROL AND THE CONSUMER IN ZAMBIA: A
LEGAL PERSPECTIVE.

BY

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A dissertation submitted to the faculty of Law
of the University of Zambia in partial fulfil-
ment of the requirement for the award of the
degree of Bachelor of Laws (LLB).

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(iii)

Dedicated to
My Mother and Father
Without whom I do be lost...

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I N T R O D U C T I O N

1.1 STATEMENT OF THE PROBLEM:

As a third world country, Zambia has been experiencing deteriorating economic performances and balance of payment difficulties. These problems may be attributed to the oil stocks of the 1970's, deteriorating prices for raw materials, world economic recession and protectionism in advanced western countries. To resolve these economic problems our leaders have sought advice from economic experts from advanced capitalist countries and financial institutions. African leaders have obtained varying programmes for economic recoveries for African countries. Some of these countries have been rather selective on what to implement. Tanzania for instance, took time to accept some of the recovery programmes proposed by the International Monetary Fund (IMF), the World Bank and other donor countries. Nigeria drew up and implemented its own economic recovery package and went to the IMF and the World Bank to sell its programme. While in the hope that the IMF complete package for Zambia would be like marshall plan for Europe. Zambian leaders adopted and implemented the whole programme.

Initially, the aim of such programmes is to achieve full employment, high rates of economic growth, etc. But notwithstanding the fact that approximately 46 per cent of the Zambian population live in urban areas,¹ dependent for their livelihood on the urban economy major problems have arisen. On one hand there is an over increasing price of 'essential commodities' which affects the lower income groups and on the other hand, is a problem of unemployment. To safeguard against the dangers of inflation, the Zambian leaders deliberately adopted a 'nationalist socialism.' They decided to participate in the national economic activities. It follows, therefore, that price control was one of the measures to achieve these ends.

It should be worth noting that after the adaptation of the nationalist socialism, there was an introduction of a foreign exchange auction. This was seen as the control plank of her IMF sponsored economic restructuring programme has a bold new step. Indeed, it was much more than bold, it was revolutionary. For it meant that an avowedly socialist country - even if one with a mixed economy committed to central planning and tight administrative control of foreign exchange, had suddenly done the inconceivable. It had decided to liberalise its economy and to leave the allocation of its vital foreign exchange to a market mechanism. This aroused intense interest to which blame was made for the spiralling cost of living.

In the light of the foregoing, the aim of this essay is to examine to what extent did these structural adjustment programme affect price control and see how too much impact it had on the consumer.

1.2 OBJECTIVES OF STUDY:

This paper will attempt to provide answers to some of the most important questions regarding price control and the consumer. It is offered in the hope of stimulating thought and discussion on a matter which was or still is of vital concern to Zambia, but which has now become for us one of academic interest.

1.3 SCOPE OF STUDY:

A general view of price control will be looked at and the core of the essay centres from the period of economic liberalisation in Zambia. This began in 1982 with the decontrol of prices and culminated in the introduction of a system of auctioning of foreign exchange.

It should be noted that there has been considerable written works on price control and the relevant legislations. As a point of departure, I will examine how price control has been integrated after these structural adjustment programme. Especially when President Kaunda announced that the exchange rate of the Kwacha would be fixed and that price controls would be re-introduced.²

1.4 METHODOLOGY:

We shall start by considering the historical development of price control in Zambia. The look at the conditions for the success of any new undertaking requiring a measure of acceptance by the whole community and we shall ask whether those conditions were present for Zambia's auction system. From thereon, we shall reconcile the legal framework for resolving problems related to compliance and enforcement of judicial decisions. My primary research will involve interviewing various people which will supplement my desk research which involves reading journals, newspapers and magazines.

Footnotes

- 1 Republic of Zambia, Population and Housing Census, Analytical Report Vol. III, (Lusaka, Central Statistical Office, 1981) p.58.

C H A P T E R O N E

To grasp the insights of price control in Zambia, it is of great importance that we first look at the historical aspects of this subject. In so doing, it may help us to understand or help us spell out the conditions that our economic system must meet if it is to be efficient and also show how a price control system can move the economy towards those conditions.

Furthermore, we will look at the reasons why we should have price controls and the way they are controlled. And we shall sum up this chapter by defining the consumer.

1 PRE-INDEPENDENCE PERIOD:

To understand how price controls emerged in Zambia, it is justifiable therefore, to look at what type of policy was followed before independence.

The importance of price control as a means of controlling trade and stabilising prices and wages was introduced by many countries during the Second World War. It therefore, follows that since Zambia was a colony of the British empire our legal history of price control owes its origin from the United Kingdom. The legislation relevant to the situation was the Emergency Powers Act 1939. Section 1 gave to His Majesty the powers to make by Order-in-Council such regulation:

"As appears to him to be necessary or expedient for securing the public safety, the defence of the realm, the maintenance of public order and the efficient prosecution of any user in which His Majesty may be engaged for maintaining suppliers and services essential to the life of the community."

By section 4(1) any colony under British rule could be effected by the provisions of the Act. Thus they were so extended to Northern Rhodesia by the Emergency Powers (Colonial Defence) Order-in-Council as the authority empowered to make defence regulations for the colony. It is interesting to note that in 1940, there was an amendment which also applied to Northern Rhodesia. For example, one of these regulations empowered a competent authority to provide by order,

"for regulating or prohibit the production, treatment, keeping, storage, movement, transport, distribution, sale, purchase, use or consumption of articles of any description and in particular for control the prices at which such articles may be sold."¹

It can therefore, be seen that the Order-in-Council of 1939 created the Price Control Regulations. These regulations were known as the Emergency Powers [Control of Prices and Hoarding Regulations, 1939]. Under the emergency laws Order-in-Council of 1946² certain emergency regulations were retained for future

authority originally extended to the Governor. Among the retained Legislation were those dealing with control of prices. In the light of the foregoing, price control regulations made in 1939 continued to apply even during the post-war years. And in fact the government of Northern Rhodesia had passed an Ordinance to this effect.

Up to 1947 price control regulation applied until an Ordinance called Control of Prices and Charges was passed in December in the same year.³ The Ordinance was seen to be in effect when Nyasaland, Northern Rhodesia and Southern Rhodesia formed a federation. It should be noted that a Federal Act on the Control of Goods was passed in 1954.⁴ Since price control was in the form of regulation, the Act passed was to cover, inter alia, the control of the distribution, disposal purchase, sale and the wholesale and retail prices of any manufactured or unmanufactured commodity. Other aspects for instance like export and imports regulations were being made by the Governor-General.

The 1954 Act now forms part of the current Control of Goods Act.⁵ Unlike the Federal Act this Act contains subsidiary regulations. A number of amendments have been made to replace names like Governor-General by President, Federation by Zambia. The only major difference could be that penalties section is more stringent in the current Act than in the Federal Act.

POST-INDEPENDENCE PERIOD:

After independence, there was a significant approach by the Government concerning price control policy. His Excellency the President of Zambia Dr. K. Kaunda wrote to the Regional Representation of the United Nations Development Programme where he stated that;

My Government has had under consideration for some time the need for a comprehensive policy towards wages, incomes and prices in the present stage of development in Zambia. My Government has a declared policy that wage and price increases should be restrained to encourage economic development investment, the growth of employment and equitable distribution of income. It has also stated that increases in real incomes of different sections of the community should be related to contribute to national productivity. But as yet no detailed policy has been worked out to embody these aims and the only limited legislative powers in relation to price control are at the disposal of my Government.⁶

In his letter, the President requested for an independent report on the situation and trends as regards wages, incomes and prices in Zambia together with suggestions for appropriate policies and administrative machinery.

The United Nations Development Programme undertook to finance the preparation of such a report and thus the International Labour Organisation appointed Professor H. A. Turner to be the expert responsible for the report.

One of the recommendaitons in Professor Turner's report was the establishment of a Wages, Prices and Productivity Board whose powers and function would cover the entire range of prices and wages throughout Zambia. The twofold objective of the Board's activity would be;

- a) to force productivity upward through using its powers over wages to see that these are used as an incentive to increase productivity, and
- b) to restrain price increases through directing emphasis on to the cost serving attainable through productivity increases.⁷

The Government was rather doubtful of the recommendation but in considering prices, the Government believed that it had made some worthwhile progress towards holding the price line and that this could be made to continue through enforcing and extending the provisions which were in existence at the time. After nalyising the Turner Report, the Government adopted some recommendations at the Second National Convention held in Kitwe in December, 1969. Some important aspects regarding prices were that price control was to be improved by introducing tighter legislation to enforce price control, improving the

administration of price control by establishing a more effective central agency.

It is interesting to note that although the Act was passed in its present form after independence, the main urge of price control came into full swing after the Turner report. Today, the Control of Goods Act has brought up heated arguments between the administrative role conducted by the Price Control Department and the Public.

2.2 PURPOSE OF PRICE CONTROL:

After looking at what type of policy was being followed before and after independence, it may be wise now to try and understand why we have price control.

The auxiliary purpose of price control are generally to prevent spiralling rising cost of living and profiteering. In so doing, price controls try to stop inflation which in most instances has failed. One far reaching example is that of the Nixon Administration which in 1971 inaugurated a set of across the-board price controls to stop the inflation that had been rampant since the middle 1960's. The rate of inflation had increased from slightly more than 3 per cent per year in early 1968 to 6 per cent in 1970.⁸ Tight monetary and fiscal policies had brought the rate down to 5 per cent by August 1971, but at a cost of rising unemployment. The general public, the business community and Congress

pressed the American administration hard enough to secure the enactment of controls even though the President's economic advisors argued against them. At the end of the price control experiment in 1974, the rate of inflation was higher than it was at the beginning, in 1971. There were large deficits in the federal budget and large increases in the money supply. These caused rapid expansion in demand for goods and services and led to higher inflation rates. The system of price controls failed to accomplish its purpose.

Price control regulation though they existed as early as 1940's Zambia did not consider the subject as one of strictly Government policy until 1969. This followed after the accusation of profiteering and overcharging against traders which had become and still is a National passion. This term has gained currency and points to a situation where traders make inflated profits as a result of inflated prices over the controlled price of goods under the Control of Goods Act.

It follows, therefore, that there is genuine anxiety to protect consumers especially the poorer income groups whose standard of living will actually fall unless prices are prevented from rising further.

Another justification of price control may be seen in relation to retail trading which is in the form of private enterprise. These enterprises bring in excessive profits and tend to increase income inequalities arising from price rises. The reason for this is that the public deals with the retailer directly and it is against him that public opinion has shown dissatisfaction rather than against the wholesaler and manufacturers. This is a dominant feature in Zambia thus necessitates the control of these three categories.

It may be worthwhile to note that price control became part of Government policy when the Price Board became part of the Government Department. It follows, therefore, that the aim of controlling prices was to ensure that "essential commodities" would be available at a 'reasonable' price. What is reasonable is a speculative matter and thus many considerations may be entertained. Perhaps in our case we may prefer justice to efficiency in the sense that the anxiety to protect the consumer and the alternative to maintain the underlying facts of supply and demand have to be weighed and a choice be taken. Having taken choice of a comprehensive price control system in Zambia, the consumer has to be protected. How then is this system supposed to work? This is discussed under the preceding sub-head.

2.3 MODE OF CONTROL:

The statutory limitation as to the price of goods falls under the ambit of the Control of Goods Act. The Act was made to enable the President to provide by regulation for the control of the distribution, disposal, purchasing and sale, the wholesale and retail prices of any manufactured or unmanufactured commodity or of any animal or poultry or of any such commodity, for the control of imports and exports from Zambia and for other purposes incidental and supplementary to the contents of the Act.

The Act is based on national level which means that an item like mealie meal can be sold at the same price at the place of manufacture. It can also be sold elsewhere in any part of the country. Thus where a person contravenes the Act or any regulation, section 6 of the Act comes into effect. The person is made liable to a fine not exceeding K100,000 or imprisonment for a term not exceeding 5 years or both. Upon such conviction the Court has the power to see to it that the subject matter of the contravention is seized. Through this procedure, one is able to see the mode of control of this Act, how the Government controls and regulates prices of goods.

Furthermore, there is provision for the Minister of Commerce to appoint price controllers

and inspectors to enforce the regulation made under the Act.⁹ According to section 7(1) the Minister has power to fix a minimum, maximum or specified price to any commodity. Since price control falls under the Ministry of Commerce several departments to ensure the application or operation and enforcement of the Control of goods Act have been created. The department relevant to our cause is the Price Control Department. The department deals in costs investigations for proper price fixation and has the function of enforcing price control regulations. It may therefore, be seen that this department is charged with the protection of the consumer from unscrupulous businessmen who charge high prices on items whose price are fixed by the Government. Thus the Price Control Department enforces the measures ~~provided~~ for by the Control of Goods Act through the Price Controller who heads the department and the Price Inspectors.

Footnotes

- 1 Regulation 50, Emergency Powers [Colonial Defence] Order-in-Council.
- 2 Government Notice No. 67 of Emergency Laws [Transitional Provision] Order.
- 3 Control of Prices and Charges Ordinance No. 47 of 1947.
- 4 Federal Act [Control of Goods] No.12 of 1954.
- 5 Cap 690 of the laws of Zambia.
- 6 Republic of Zambia, Report of the Second National Convention on Rural Development Incomes, Wages and Prices in Zambia; Policy and Machinery, [Lusaka, Government Printers, 1969] p.1
- 7 Ibid, p.17.
- 8 Richard Leftwich, The Price System and Resources Allocation, [Chicago, The Dryden Press, 1982] p.90.
- 9 The Control of Goods [Price Control] Regulations 1982.

C H A P T E R T W O

3.1 THE EARLY IMF PROGRAMMES:

Zambia became a member of the IMF club in 1965, when foreign exchange was granted automatically for all imports and also for payments in current transactions. It should be noted that in essence Zambia began to use the IMF facilities in the 1970s. At the end of 1971 the Zambian government negotiated for a "compensatory financing facility" (CFF) with the IMF.¹ Zambia purchased ZK13.6 million (SDR 19 million) for the purpose of supporting the falling copper prices. This was however, due to diverse external forces such as U.D.I, inability of Zambia's transport system to operate, congestion at the ports. The question of diversifying the economy was part of the IMF Package of 1975. It was hoped that this would reduce the country's dependence on copper. These measures did not achieve the intended objectives. For instance the first quarter of 1978 closed with K253 million deficit.² We are told however, that the government undertook to carry out a stabilization programme. In so doing a line of credit amounting to K323 million was received from the IMF to arrest the situation.³

In 1978-1980, the Zambian government negotiated standby facilities. As Manenga Ndulo

and others wrote; 'In March 1978, the government went back to the IMF and negotiated a comprehensive programme supported by a two year stand-by arrangement totalling ZK250.2 million. This was 177 per cent of Zambia's quota at the IMF. The comprehensive programme was also supported by ZK49 million CFF and a ZK18.4 million Trust Fund facility.⁴

The purpose of these programmes was to restore a balance of payments equilibrium, reduce the rate of inflation and create conditions for economic growth. It was hoped that these objectives would be achieved by reducing aggregate domestic demand, increasing revenues and cutting expenditures. Wage increases were limited to 5 per cent and parastatals were encouraged to charge economic prices. Although some success were made during this period, the government budget deficit increased.

The government re-negotiated the extension of the same programme for the period 1981-1983. Zambia was still plagued by the same problems (1) the country's internal and external imbalances deteriorated, (2) the foreign exchange difficulties worsened, (3) copper prices continued to decline, (4) government expenditures increased, (5) economic prices for products from the parastatals were not actively implemented. By 1980 the Zambian economy was in a crisis. The crisis was shown

through shortages of essential commodities, empty grocery shelves and underproduction in industries. The government, therefore, negotiated a three year programme with the IMF. The IMF agreed to ZK819.4 million which was approximately 378 per cent of Zambia's quota, "to support a medium term structural adjustment programme."⁵ It may be worth noting that when the economy reached its worst, the political class decided to move away from the dependency on copper and to make agriculture the main stay of the economy. Policies were designed to improve the balance of payments position and to bring about domestic financial equilibrium. The government proposed to expand technical assistance. It also suggested to improve roads to facilitate marketing for agricultural produce. In addition, to encourage farmers the government proposed to raise producer prices.

The government further opted to improve the efficiency of operations in the industrial areas. The government adopted policies to allow economic prices and to encourage industrialists to use local raw materials in the process of production. All this failed because of budgetary constraints. Copper prices continued to tumble, the government was unable to implement its policies. Thus economic situation did not improve by the end of 1982. It was in December 1982 when all formal

price controls were revoked, with the exception of few essential commodities. At this juncture we may analyse government approach towards decontrol of prices.

The Zambian government had for a long time been controlling prices on certain essential commodities. But on 19th December, 1982 it was decided by government that the existing price control mechanism be revamped and companies be allowed to charge prices on economic basis. It should be noted that the shortage of foreign exchange due to low copper prices on the London Metal Exchange had resulted in restrictions on imports of raw materials. As a result of the shortage of raw materials, companies were operating at a loss. Therefore, to ensure that companies continued to provide necessary goods and services to save people from being declared redundant some measures had to be taken to revamp the economy. One such measure was the unpopular decision to decontrol prices.⁶ Decontrol of prices is a measure for economic pricing and not overcharging. This decision was announced by President Kaunda at Mulungushi Hall. Following the announcement, the Minister of Commerce and Industry revoked a number of statutory instruments relating to price control. For instance statutory instrument 119 of 1974, The Control of Goods (foodstuff Prices) order, Statutory Instru-

ment 167 of 1976, The Control of Goods (Beef Prices) order.

The purpose of decontrolling prices on certain goods was to allow producers to charge economic prices and by so doing save the economy of the country. One may wonder whether the decontrolling of prices was the only possible solution the government had in hand to save the economy of the country. This became a sensitive issue and there was a public outcry and this was supported by members of Parliament.⁷ Whether the decision to decontrol prices was a proper way of reviving the economy or not, is not a matter of law but one of economics. It is submitted that the government should have sought advice from Parliament on issues of decontrolling prices.

The legal implications that followed was that after having decontrolled prices on certain commodities the government was supposed to give power to charge traders who overcharged on uncontrolled goods with a view to ensuring that prices fixed by the producers are properly followed. At that particular time price inspectors had no such power and as a result consumers were left at the mercy of some traders who overcharged on essential goods.

Coming back to the IMF, for the year

1983-1984 the government appealed to the IMF for support. The IMF agreed to loan Zambia millions of Kwacha. Again the objectives of the terms of agreement between the IMF and the Zambian government was 1) to establish financial stability 2) to restructure payment for external debt and external payment arrears, 3) to stabilize the balance of payments. To achieve these objectives, the government adopted policies to restrain domestic demand and consumption expenditure. Significant adopted at this time was the outrageous decontrol of prices introduced in December 1982, interests were raised and the Kwacha was devalued by 20 per cent.

After the implementation of these policies, the economy showed some limited progress, but not sufficient to heal the besieged economy. The government again negotiated with the IMF a stand-by facility for the period 1984-1986. This was dependent on agreed policies implementation. Zambia was allowed K485.3 million for a period of 21 months. The programme focussed on controlling demand through the supply side fiscal and monetary measures. In spite of the measures, the besieged economy did not adequately improve.

To sum the economic crisis which started basically in 1974 worsened by 1984. During all

these years the government and the IMF agreed on a number of stabilization programmes which did not produce the intended results. The living standards of the Zambian people declined as inflation rate went up. It is in this light that we intend to look at the foreign exchange system; a programme of the IMF, seeing how the system affected prices and how the consumer reacted. It should be noted that from 1983, price controls had been revoked and this went on through the period of auctioning of foreign exchange. How then was the consumer going to be safeguarded?

3.2 FOREIGN EXCHANGE AUCTION SYSTEM:

In the process of restructuring the Zambian economy, the government was engaged in a belated programme of economic reform. Among the most important measures taken was the review of the exchange etc. adjustments with the objective of making them more responsive to the introduction of the foreign exchange auctioning system in October 1985.

Objectives

The objectives of the auctioning system were to:

- 1 ensure that the exchange rate is fully responsive to changes in the demand for and supply of foreign exchange;

- 2 provide foreign exchange in timely manner;
- 3 attract into the banking system foreign exchange which is currently held outside the banks;
- 4 reduce reliance on administrative mechanism in the allocation of foreign exchange, and
- 5 promote the production of a higher volume and broader range of exports.⁸

The majority of these objectives of the auctioning system were problematic. Looking at objective 2 of the system providing foreign exchange in timely manner could not be achieved because Zambia depended to a large extent, on external donations to maintain the system. The only major achievement of the system, acknowledged by the leaders in government was that it curbed corrupt practices in the allocation of foreign exchange.

Effect on Prices

The auctioning system was reluctantly undertaken because Zambia was going through a very difficult economic phase. The main factors which affected the economy arose from both external and internal developments, some of which were beyond the nation's control. The control reform that result was the devaluation of the national

currency, the Kwacha which had all along been sustained at a high official rate. In October, 1985 therefore, the system came into effect and it was accompanied with weekly currency auctions which began when the US dollar was officially worth K2.20. The system continued through 1986 up to April, 1987 when the Party and its Government decided to reverse the negative impacts of the system which was started with such determination, albeit without success.⁹ At the time of the reversion, the rate had gone up to as much as K21.00 per dollar. The system was then suspended and the Kwacha was fixed at a rate of K8.12 to 1 US dollar.

The resulting effect of the system in general and the rise in the dollar price in particular was the rise in the domestic price of imports and the drastic squeezing of liquidity. The upsurge of import prices of essential commodities and raw materials together with a sharp increase of the producer prices resulted into a doubling of the rate of inflation. It may be interesting to note that most of these goods were not subject to price controls. Therefore, prices probably were more or less market prices. However, competition among traders did not bring prices down to the vicinity of cost, because foreign exchange was scarce, and allocations for such imports considerably lower than demand. Therefore, importers

who were able to obtain forex at the official rate from the Bank of Zambia made a windfall profit as they appropriated the scarcity rent for foreign exchange, and the shortage of foreign exchange was translated into a shortage of goods on the commodity market.

The increase in the rate of inflation and indeed the rise in the cost of living for both the low-income group and the high-income group can undoubtedly be attributed to the increase in the price of essential commodities. Although the goods were in plentiful supply during auction, the prices were beyond the reach of the majority of the population. The system had eroded the purchasing power of the people and it was also contended that the system was responsible for the importation of luxury goods as against essential commodities. The imported commodities bore higher prices on them than the locally made commodities. The result in the price difference was a general "push-up" of all prices in the country.

It may be interesting to note that for more than two decades the Zambian people lived a subsidised life. The IMF programmes were introduced to reverse that Zambian model.

Some pronounced effects may now be examined. There was a removal of government subsidies on

some welfare services and on certain essential commodities was a threat to the Zambian consumer.

In an effort to depict how prices had been changing from time the auctioning system was introduced to the time the system was abolished, average prices for Lusaka are shown in Table 1,¹⁰ for selected months.

T A B L E 1

Average Prices and Movements

Commodity	Prices October 1985	Prices June 1986	Prices November 1986	Prices Development
	ZK	ZK	ZK	
B/Meal (25 kg)	19.78	19.45	19.15	-31.20
R/Meal (25 kg)	15.32	15.59	14.85	- 3.00
Bread (800g)	00.90	01.87	02.58	186.67
Chicken (1 kg)	6.74	9.74	11.66	71.70
D/Kapenta (1 kg)	8.92	16.71	15.35	71.70
Eggs (1 unit)	2.75	3.60	4.96	80.36
D/Beans (1 kg)	3.26	5.02	4.38	34.36
Brisket (1 kg)	6.50	8.16	10.63	63.50
O/Mince (1 kg)	6.90	8.25	9.43	36.67
Cooking Oil (2.5 Lit)	17.57	15.78	21.11	20.15
Rape (1 kg)	1.79	1.98	00.96	-46.37
Tomato (1 kg)	1.23	2.55	2.01	63.40
Onion (1 kg)	1.53	4.65	1.72	12.40
Candles (1 x 6)	9.00	7.57	7.28	-9.11
F/Salt (1 kg)	1.39	1.99	5.42	89.90
Charcoal (1 bag)	7.75	12.00	12.00	54.80
Sugar (1 kg)	2.18	3.40	4.25	94.95
F/Milk (750 ml)	00.62	00.81	1.37	120.97
Detergent (Surf)	2.35	4.37	6.85	191.49
B/Soap	1.21	1.68	3.28	171.07
B/Tea	2.45	2.65	3.13	27.76

B/Meal	: Breakfast meal
R/Meal	: Roller meal
D/Kapenta	: Dry Kapenta
O/Mince	: Ordinary Mince
F/Salt	: Fine Salt
F/Milk	: Fresh Milk
B/Soap	: Bath Soap
B/Tea	: Brookbond tea

Table 1 extracted from the Prices and Incomes Commission Survey show which commodities had subsidies withdrawn. The price of maize meal, the staple food of the majority of Zambians did not go up. The Commission reported the basket of essential commodities accounted for 55 per cent of the total expenditure for low income groups. It further observed that the cost of the commodity basket had gone up by 53.50 per cent. It concluded that the consumer spending K100 on the basket of essential commodities prior to auctioning has to pay K154 to buy the same basket. For the majority of consumers whose wages have remained static since October 1985, could only buy 65 per cent of what was bought prior to the auctioning.

Are some what different view cleared when the government completely withdrew subsidies on breakfast mealie meal. It should be noted that to ensue easier and cheaper life for all Zambians without distruction, the government subsidised maize meal from the early days of independence. To keep prices of maize meal low, the government paid the millers of maize

meal. The IMF proposed that producer prices be raised from K35.00 to K70.00 for a 90 kg bag of maize. In addition, the government was required to remove subsidies on maize meal. The millers, therefore, decided to charge economic prices. The Millers Association of Zambia (MAZ) announced the new prices of mealie meal. Table 2 shows the new mealie meal prices.¹¹ The reactions to the massive increase on mealie meal prices were spontaneous and violent among the workers, the urban poor and the peasant.¹²

T A B L E 2
MAZ MEAL PRICES

Unit	Retail Price	% Increase	Wholesale Price
B/Meal (25 kg)	42.70 (19.15)	120	41.70 (19.25)
B/Meal (50 kg)	82.00 (37.32)	120	81.00 (36.50)
R/Meal (25 kg)	14.85 (14.85)	No change	14.95 (14.50)
R/Meal (50 kg)	28.77 (28.77)	No change	NA

B/Meal : Breakfast Meal is the refined maize mealie meal

R/Meal : Roller meal is the less refined maize mealie meal.

The two national newspapers, the government decision to remove the subsidies and the massive price increases of the staple food "the most inhuman any government could take." This in the long run, it was the consumer who got the worst out of the auctioning system. This can be seen when the workers took to the streets on the Copperbelt and other urban centres in what was described

as food riots. Sixteen people died in the riots. Under the pressures from the workers, the unemployed and the urban poor, the government reversed the prices of maize meal.

The consequences of the auctioning of foreign exchange were numerous but the worst as noted has been the eroding of the buying power of the consumers, thus dismantling the social welfare structure while the community fixed prices of commodities in anticipation of the weekly floating exchange rate, the increases of workers' wages were restrained. Whatever wage increases were granted to alleviate the effects of the erratic price increases.

With effect of the 1st of May 1987, the period of economic liberalisation in Zambia which begun in December 1982 with the decontrol of most prices and culminated in the introduction of a system of auctioning of foreign exchange in mid-October 1985, has come to an end. President Kaunda announced that the exchange rate of the Kwacha would be fixed and more important for this paper is that price controls would be re-introduced. A general price freeze was ordered and Zambia's break-off from the IMF was announced.¹³

Notwithstanding the pertinent question as to whether a controlled economic system would work better under the circumstances, it has to be admitted even by those who think that a market-oriented economic system is superior to a controlled or planned economy,

that the phase of liberalisation in Zambia brought about a number of serious problems. The problems became so serious over time that the package was no longer sustainable from a social and political point of view. Where people are starving, where an economy does not serve the people any more, it has lost its justification. Zambia was about to reach this point.

It therefore, follows that the auctioning system had failed with all its efforts towards economic liberalisation. A number of reasons may be justified. The most important ones are:

- a) Copper prices declined further during the auction period, which made adjustment in a basically shrinking economy more difficult. Debt services obligations worsened the supply situation of foreign exchange even more.
- b) Inflow of donor funds was insufficient and irregular, as the time between commitments and disbursements was at best several months.
- c) High inflation persisted during the auction period. Although an initial sharp increase of prices was expected, inflation did not stop there, but went on at an accelerated rate at the beginning of the second year of auctioning. Some say, the inflation was caused by auctioning. Others claim that the auction system was no more than a fan belt

whereby inflation caused by monetary expansion was translated very quickly into further devaluation of the Kwacha and subsequently rising prices.

- d) The Government never really seemed committed to the whole liberalisation exercise. This was serious, because potential investors cannot be expected to invest unless they are certain that the present policies, the present set of relative prices and the (real) exchange rate will persist for such a period of time that they can eventually recover the invested funds.
- e) It was generally felt that the auction system had a very negative effect on incomes, particularly on the real incomes of the lowly paid wage earners and of the urban employed.

Thus in the light of the foregoing the most important reason for discounting the process of liberalisation probably was inflation and this in turn had diverse effect on prices which resulted in consumers paying heavily. In this light, we had the urban poor tending to rely on the black market supplies more heavily than the rich who were able to drive around and look for places where goods were available at the official price and they bought large stocks to last over the coming

period of shortages. The poor tended to have limited access to transport, and they had to buy very small quantities which were only available from small marketeers any way. In the long run, it appears that the poor sections of the population and those who had profited from illegal activities which were possible in the presence of exchange restrictions and direct or indirect price controls were the main losers.

It is in this instance that we feel that justice had been denied, in that sense that no price control mechanism was readily available to stop the injustice of hiking prices indiscriminating. The auctioning of foreign exchange offered an escape from the dilemma of devaluation. But in turn made things worst by allowing our local currency to have found its own level through the market system. The only solution now being a sound price control mechanism which was to take effect after the auctioning system. Has the mechanism got that legal backing in line with the so-called new economic recovery programme?

OBSERVATION

When government passed an Act to control prices, it did so after consulting members of Parliament. This was required with a view to get the mandate from the people through their representatives. It may be interesting to note that when the government decided to decontrol prices, Members of Parliament were not consulted. All what happened was that after the

President had announced decontrolling of prices on certain commodities, the Minister of Commerce and Industry exercised powers contained in Regulation 7 and 8¹⁴ of the Control of Goods (Price Control) Regulation and revoked some statutory instruments relating to price control. For instance, the Control of Goods (Foodstuff Prices) Order,¹⁵ The Control of Goods (Price Control) (Traditional Beer Prices) Order,¹⁶ The Control of Goods (Price Control) Matches Order,¹⁷ etc.

From a certain angle, it is true that the Minister had delegated powers to take the course he did. It is however, submitted that these powers were not properly exercised because take such a move, the Minister did not take into account the effects such measures would have on the consumer, especially those in the lower income group.

Another notably fact is that the Act does not provide provisions under which the Minister's decision can be challenged by members of the public. It is, therefore, rather difficult for anyone to change his power. Regulation 7 and 8 confer powers on the Minister to fix maximum prices on certain controlled goods. The Act is however, silent as to the purposes for which he can exercise such powers, so it appears to be open to him to determine why in what manner and

for what purpose he should exercise his powers. It follows, therefore, the provision under which the Minister exercised his powers gave him powers to fix maximum prices on certain commodities and not to decontrol prices. It can, therefore, be submitted that the powers exercised by the Minister to decontrol prices did not take into account other matters such as low incomes of people can be regarded as ultra vires and as such the action could have been brought to the Court of law. The only problem is that who would have loci standi since this affects the whole nation as a whole.

Footnotes

- 1 Ndulo M and Sakala M; Stabilization Policies in Zambia 1976-1985, paper presented for Industrial Labour Organisation, Geneva, Switzerland, 1983, p.3.
- 2 Republic of Zambia, Office of the Prime Minister, National Commission for Development Planning, (Lusaka, Governemnt Printers, 1978) p. 19.
- 3 Ibid, p. 20.
- 4 Op cit Ndulo M. p.11
- 5 Ibid, p.19
- 6 Zambia's Economic Strategy, 1982.
- 7 Times of Zambia, February 9th, 1983.
- 8 Times of Zambia, October 7th, 1985.
- 9 Times of Zambia May 1, 1987.
- 10 Price Information Bulletin No.3 1986 and Price Watch Vol.2, No.5, 1987.
- 11 Times of Zambia, December 5, 1986.
- 12 Times of Zambia, December 6, 1986.
- 13 Kaunda K, New Economic Recovery Programme, (Lusaka, Government Printers, 1987) p.4.
- 14 Chapter 690 of the Laws of Zambia
- 15 Statutory Instrument No. 119 of 1974.
- 16 Statutory Instrument No. 12 of 1980.
- 17 Statutory Instrument No. 118 of 1980.

C H A P T E R T H R E E

4.1 GOVERNMENT POLICY AFTER THE AUCTIONING SYSTEM

President Kaunda celebrated 1st May, 1987 by announcing that Zambia was breaking with the IMF and instituting its own economic recovery programme.¹ The move was criticised by the international donor community but had become almost inevitable for a government which since the December 1986 Copperbelt riots had been increasingly divided within itself over continuing accommodation with the IMF. The disturbances substantially strengthened the influence of some members of the United National Independence Party (UNIP), which had long opposed the free market policies recommended by the Fund. Dr Kaunda tacitly acknowledged the political motivation behind the decision when he said that as a result of following the IMF path, "we are witnessing a situation where our social fabric is slowly disintegrating, sowing seeds of unrest and undermining the spirit and unity of the nation. This situation can not be allowed to continue."²

The collapse of the auction system reflected a combination of factors, for instance, there was lack of faith in the long term future

of the system after so many minor and major alterations. A near 30 per cent growth in money supply in 1986, which meant that there was plenty of Kwacha.

It was against this background that Dr Kaunda announced on May 1 in a 75 minute television address what appears to be a definitive break in Zambia's 4 year old and frequently problematic, IMF sponsored economic restructuring programme. This would be replaced the President explained by a self-help strategy focusing on "growth from our own resources" and "austerity," which also recognises the need to protect the poor and vulnerable members of our society.

Dr Kaunda was not alone in his view that Zambia's profound economic problems needed a fresh approach. With not a few members of the donor community sympathetic to the view that the traditional IMF or World Bank sponsored stabilisation formula was only partially succeeding. Zambia is considered in such circles to be a prime example of the need in particular for a more flexible attitude to debt rescheduling to release funds for productive investment.³ Dr Kaunda provided his own solution and announced the resources which the Party and its Government had decided upon in the New Economic Recovery Programme. It should be noted that the government's "do it yourself" recovery strategy appears to be a less a new

approach than a straight reversal of most of the key policies of the IMF years.

One of the important elements outlined by Dr Kaunda which is of essence to this is the aspect on prices. As of May 1, a price freeze was to apply to all products pending the re-introduction of price controls. Furthermore, manufacture of industrial goods and producers of agricultural commodities would be responsible for recommending the maximum wholesale and retail prices of their products in conjunction with the Prices and Incomes Commission. In the case of imports, other than capital equipment, the importer and the Prices and Incomes Commission would also recommend the maximum wholesale and retail price.⁴

It follows therefore, that the Prices and Incomes Commission was to play a very important role in ensuring that the policies on price control succeed. In this light, having talked much from an economical angle, we may now look at the legal aspect of the Prices and Incomes Commission. In this regard, we will see what type of statutory powers it has been conferred. Furthermore, to see whether they have used these powers effectively.

4.2 THE PRICES AND INCOMES COMMISSION:

When the decontrol on certain essential commodities was made, in his address to the UNIP National Council on 19th December, 1982, President Kaunda stated that Prices and Incomes Commission was to be responsible for keeping all prices under constant review and make recommendations to the Minister regarding any exorbitant prices.⁵ In this light, we examine the role of Prices and Incomes Commission in Zambia.

THE ESTABLISHMENT OF THE COMMISSION:

As a result of a report submitted to the Zambian Government by the United Nations Economic Commission for Africa in 1963/64, the Prices and Incomes Commission was deemed to be necessary. As noted in the earlier chapters, the Zambian Government invited Professor Turner in 1968 to advise the Government on Prices and Incomes Policy. It was recommended by Professor Turner that there was a need for the Government to restrain wages and prices increases in order to encourage economic development. Following the recommendations, the Government decided that a central body be established to be responsible for devising and supervising Government policy on wages, prices and incomes.

Following this decision in 1981, an Act of Parliament was passed which established the Prices and Incomes Commission.⁶ It may be interesting to note that the Prices and Incomes Commission has status of a body corporate with perpetual succession and a common seal, it is capable of suing and being sued in its corporate name and has power to do all such acts and things which are necessary for, or incidental to, the carrying out of its duties and functions.⁷

COMPOSITION OF THE COMMISSION:

The Commission comprises of the Chairman and two Deputy Chairmen, who are full time members and they are appointed by the President on such conditions as, he thinks fit, and not less than five but not more than ten other members who may be full-time or part-time members. The other members of the Commission are appointed by the Minister, on such terms and conditions as he thinks fit. These other members are to hold office for a period of three years, but they are eligible for re-appointment.⁸

FUNCTIONS OF THE COMMISSION:

The functions of the Commission as laid down in the Act are to:-

- a) formulate, and recommend for the approval of the Government, a Comprehensive prices and incomes policy;
- b) supervise the execution and implementation of prices and incomes policy as approved by the Government;

- c) recommend for approval of the Government minimum wage levels and minimum conditions for service, and supervise the execution and implementation of the recommendation relating thereto as approved by the Government;
- d) investigate and report to the Government such particular cases or general issues as are likely to affect any current or future prices and incomes policy;
- e) recommend for the approval of the Government price levels for any controlled goods, services, products or commodities, including price levels of Agriculture produce and livestock;
- f) supervise the administration and implementation of price control;
- g) examine and ratify collective agreement; and
- h) do all such things as the Minister may direct in writing in order to give effect to the execution and implementation of Government approved prices and incomes policy.⁹

A minor amendment was made to section 10 of the Prices and Incomes Commission Act to avoid internal conflicts between the same organs of Government which are supposed to co-operate with each other. It was submitted in Parliament that section 10 of the Prices and Incomes Act, in defining the functions of the Commission used the words 'supervise the execution and implementation' in paragraphs (b) and (c)

and the words supervise the administration and implementation in paragraph (f). The implication was that these words were likely to mislead some people in believing that the functions of the Commission include the responsibility to superintend the functions of certain other Ministries or departments of Government. This was not the intention of the Turner Report nor indeed that of the Prices and Incomes Commission Act. The responsibility of the Commission was to implement and to assess the effectiveness of the Government with suitable recommendations and not to make the policies themselves. The making of policies was to remain the responsibility of ministries and other Party and Government agencies.

CONSULTATIVE COUNCIL:

In allowing representatives from interested groups a provision was made in the Act¹¹ allowing the establishment of a Consultative Council on Prices and Incomes which is composed of representatives of organised labour, employer, organisations, farmers, consumers and members of the general public who have experience of and can show capacity, in dealing with matters relating to prices and incomes. It follows that whenever the Commission formulated policy, and made recommendations to the Government, the Commission was required to submit such policy matters to the Consultative Council on Prices and

comes for its consideration and comments which are supposed to accompany the recommendations.

The functions of the Commission, therefore, seemed to be advisory rather than executory. It's without doubts that Members of Parliament argued that the functions of the Commission and that of the Council were the same thus resulting in duplication of work. If the policy formulation could be done only by the Commission, there was no need to have a Council to do the same work.¹²

At the time the Commission was established, prices of most of consumer goods were controlled by the Governemtn and with this in mind one of the Commission's functions inter alia was to recommend for the approval of the Government price levels for any controlled goods.¹³ Whenever there was a need to increase prices, it was the duty of the Commission to advise the Government how such changes would be effected. It follows that when the decontrolling of prices was announced by the Government, it meant that the Commission could no longer participate in recommending price levels on such goods because all decisions of fixing prices on decontrolled goods were to be made by the producers themselves and not the Government.

This shows that the function of the Commission to formulate price policies had been taken away because producers had been vested with powers to fix

their own prices. It follows, therefore, that the Commission could not review such prices. It would be interesting to note that from the list of functions of the Commission there is no where, where the Commission vested with powers to review prices. It is unbelievable how a machinery which when introduced by Parliament was not vested with powers of reviewing prices could now exercise such powers.

It may be interesting to note that the President may give to the Commission such general or specific directions with respect to the discharge of its function as he may consider necessary.¹⁴ It may well be that the directives imposing a duty on the Commission to review prices may have been more justifiable under this section if the President had used it. In fact, the President under this section has discretionary powers in which he may direct the manner in which the Commission can carry out the functions specified in the Act and not to do any other act, not mentioned in the Act.

4.3 OBSERVATION:

So far, having looked at price control in general, the structural adjustment that ensued as a result of IMF recommendations, and the effects on price control, and the subsequent government policy that followed it would be important to reconcile all these aspects together.

EVOLUTION OF PRICE INTERVENTION POLICY:

The Zambian economy first experienced legislated intervention on pricing policy that is disregarding producer fixation with the enactment of the Control of Goods Act of 1966. This was to be followed by an amendment of the initial Act (1966).¹⁶

The Price Control Act was passed in order to quote, "...enable the President to provide by regulation for the control of distribution, disposal, purchase and sale and the wholesale and retail price of any manufactured or unmanufactured commodity or of any animal or poultry or of any class of any such commodity, animal or poultry for the control of imports into and exports from Zambia."¹⁷

Contravention of any laid down controls on prices rationing and matters pertaining to such therefore become punishable under the law and penalties existed in terms of fines or and imprisonment.¹⁸ The most common offences committed by manufacturers and wholesalers are those of failing to comply with lawful orders specified under the regulations, such as failing to issue invoices, failing to mark goods etc. Regarding penalties a maximum fine of K2,000 or maximum term of imprisonment of six months or both. The list of goods subject to price controls was wide-ranging, covering almost all foods, beverages and tobacco. This list of price controlled goods was to grow with the

passage of time to include among others furniture, motor vehicles and spare parts, wood products, pharmaceuticals etc.

PROCESS OF PRICE CONTROL:

The procedure that was employed during this period was that submissions were made to the Price Control Department of the Ministry of Commerce and Industry.

Since profiteering in Zambia has become widespread especially due to the shortage of consumer goods, traders have found ways of evading price controls. Thus Price Inspectors were appointed to check for legal purposes, the implementation of price controls.¹⁹ Price Inspectors are given wide powers to exercise when conducting their function of checking prices on controlled goods.²⁰ Such powers include the powers of search, seizure and removal of commodities and business documents related to any particular transaction. The inspector has power also to remove or seize without payment any specimen or sample of controlled goods which a trader has in his possession. The books and premises of registered manufacturers can be subject to inspection at any time during working hours.²¹ Where such books, documents or goods are seized from any trader, an Inspector doing so shall issue a receipt in respect of anything seized under the regulations. The reasons for issuing such receipts is to avoid or prevent unfounded claims from traders.

The purpose of the Control of Goods Act to provide such powers to Inspectors is to enable them to obtain relevant evidence in any case under consideration. It should be noted that the powers conferred on Price Inspectors are limited to some extent. The Act does not provide the manner under which an Inspector can obtain or seize any commodity or document where the owner involved refuses to hand them freely to an Inspector. Thus in most cases, police assistance has to be brought in.

CONTROLS REINTRODUCED:

In May 1987, there was a complete policy reversal which saw the invocation of the price freeze, simultaneously with the introduction of price controls, on a wide range of goods and services. There was one fundamental change this time, and this was the incorporation of the Prices and Incomes Commission (PIC) fundamentally an Economic research institution, as the Central Institution in the implementation of the new Price Control Policy.

OBJECTIVES:

Since the Price Control Department still existed, the involvement of the PIC at this stage was due to the rationale that the previous rigidities with which price controls were implemented should be avoided. Hence greater flexibility was hoped for.

During the duration of the IMF regime, price levels had been rapidly changing due to the accompa-

nying reform policies such as foreign exchange auctioning which led to the rapid depreciation of the Kwacha. Against this background, it had become necessary to reintroduce price controls.

LIBERALISATION PERIOD AND INFLATIONARY EFFECTS:

During the period when the internal and external economies were liberalised, there was at the same time considerable rises in the cost of production of firms, Money supply was at the same time growing significantly owing to the existence of an expansionary monetary policy, coupled with a growing government budget deficit. Undoubtedly negative structural shifts were emerging and hence there was no doubt that further reforms were required. Of particular worry was that the rapid fall in the Kwacha's purchasing power and the value of real incomes. Thus in May 1987, administrative controls were introduced on price covering as earlier mentioned all products.

THE PRICE FREEZE AND PRICE CONTROLS:

As may be known by now, the price freeze was instituted as a Presidential directive. The PIC has no legal basis for its implementation. Events over the preceding months after the announcement strongly suggests that the price freeze has not been fully understood by some members of the business community despite it having been in force for some time.

Basically this may be attributed to the fact that this is the very first time that a price freeze has been instituted in Zambia. The essence of a price freeze is that, prices for products and services remain at the levels that were displayed and ruling on the particular date at which a price freeze is instituted. This is done, as in the Zambian case to stop further instabilities as the currency is revalued, thus justifying price reductions for imported products and as a consequence of imported input costs going down.

Later as prices are controlled on selected products or as the list develops or contracts the freeze should be lifted. This should however, be under conditions. These conditions are analysed in the preceding chapter to see what type of changes can be made.

Footnotes .

- 1 The Economist Intelligence Unit No.3 - 1987 P.5.
- 2 Ibid, p.5.
- 3 Ibid, p.11.
- 4 K. Kaunda; New Economic Recovery Programme
(Lusaka, Government Printers, 1987) p.7.
- 5 Address by His Excellency the President
Dr K.D. Kaunda at Mulungushi Hall, 19th
December, 1982.
- 6 Republic of Zambia, Parliamentary Debates
Second Session (Lusaka Government Printers,
1981) p. 3675.
- 7 Section 4 of Prices and Incomes Commission
Act No. 9 of 1981.
- 8 Section 5 of Prices and Incomes Commission
Act No. 9 of 1981.
- 9 Section 10 of Prices and Incomes Commission
Act No. 9 of 1981.
- 10 Republic of Zambia, Parliamentary Debates
Third Session (Lusaka, Government Printers,
.1981) p. 656.
- 11 Section 19 of Prices and Incomes Commission
Act No. 9 of 1981.
- 12 Republic of Zambia, Parliamentary Debates
Third Session, (Lusaka, Government Printers,
1981) p. 657.
- 13 Section 10(e) of Prices and Incomes Commission
Act No.9 of 1981.

- 14 Section 12 of Prices and Incomes Commission
Act No.9 of 1981.
- 15 Vol. XIII, Cap 690 of the Laws of Zambia
- 16 Statutory Instrument No. 87 of 1982.
- 17 Regulation 3(1) of Control of Goods Act,
Chapter 690.
- 18 Regulation 17 of Control of Goods Act,
Chapter 690.
- 19 Regulation 3(2) of Control of Goods Act,
Chapter 690.
- 20 Regulation 6 of Control of Goods Act,
Chapter 690.
- 21 Regulation 7 of Control of Goods Act,
Chapter 690.

C H A P T E R F O U R

5.1 LAW REFORM

Any price control system faces a number of problems in ensuring that prices fixed by the government are properly followed by traders. Such problems are caused by traders who specialise in various methods of evasion. It is under this chapter that some suggestions will be made to ensure that there is maximum application of the law. It should be noted that much more should be done at present to ensure that there is uniform quality, correct description and exact quality of goods sold. Not all traders ignore the law as some traders are quite responsible and very much anxious as the public to stamp out such abuses and to improve the general image of retail trade.

5.2 THE PRICE CONTROL DEPARTMENT:

It is submitted that for any given law to have effect, one should get to the grass-root level, that is from where it is supposed to be implemented. It follows that if any weaknesses can be spotted, there would be considerable change in the actual implementation of that law.

The task the Department was charged with in the 1966, of controlling and stabilising prices in the economy has continued up to today. The Department administers Chapter 690 of the Laws of Zambia the Control of Goods Act, Price Control Regulations by:

- a) Advising the Minister of pricing matters.
- b) Enforcing Government controlled prices.
- c) Advising Government on shortages and suggesting remedial measures.
- d) Monitoring of price trends on uncontrolled goods.
- e) Enforcing of Statutory Instruments passed.
- g) Issuing of Import and Export Permits.¹

PROBLEMS OF THE DEPARTMENT:

The Department faces numerous difficulties in its operation. The most important drawbacks are as follows:

Personnel

There is insufficient manpower and this has resulted in the ineffectiveness of price control. Under the establishment of the Price Control Department, there are nine senior Price Inspectors, twenty-nine Price Inspectors and sixty-four Assistant Price Inspectors throughout the country. When one compares the number of shops in the country, the figure is definitely small. It therefore, follows that since some traders are not frequently visited by Price Inspectors, they are

more likely to overcharge than those who are frequently visited.²

Transport

Lack of transport facilities for the officers to be mobile is one other constraint which has hindered progress. The Government is unable to provide vehicles as they "claim" due to lack of funds. This again means that the traders who are not visited by Price Inspectors, can charge any prices they feel will earn them more profit within a short period.

SUGGESTIONS FOR IMPROVED PERFORMANCE:

To maximise performance of the Department, the following are suggested:

- a) Allocation of adequate funds.
- b) Provision of dependable vehicles.
- c) Provision of office and staff accommodation.
- d) Provision of adequate manpower.

The following paragraphs indicate some legal powers presently enforced by price control and some suggestions of change may be made.

Weights and Measures

This is one of the specialised methods of evading price control. It is one area where control has proved difficult in the past. This involves goods that are sold by the bag for instance mealie meal, sack or tin. The consumer who buys may believe he has a bargain but the low

price may simply be due to short-weight. It should be interesting to note that certain goods only are allowed to be sold in quantities accepted as lawful.³ Some goods like bread and which are in specified quantities but nevertheless sold are not included.⁴ Such provisions do not apply under the Control of Goods (Price Control) Regulation Act Chapter 690 of the Laws of Zambia. The problem would be easily solved if such provisions were introduced and the Control of Goods (Price Control) Regulation Chapter 690, be extended to other goods where they appear to be more appropriate.

Display of Prices

It is contended that trader must comply with the law in that there should display of the prices at which such goods are offered by him for sale to the general public.⁵ In order to evade price control, these traders simply remove the price tags showing prices and place them down next to the particular item. The best way, therefore, that these regulations help the consumer, would be the idea of labelling. This change would be that all goods offered for sale shall be labelled as to grade, quality, price and place of origin. Even though there has been some recent changes in the business community, this should be made a mandatory requirement. Such a provision if included in the Act, would enable the purchaser to have a clear idea of what he is buying, and at the same time

may avoid some problems that take place between the trader and the consumer. It should however, be noted that this price labelling requirement can be subject to evasion if it is not combined with quantity control, since it is hard for customers to compare prices if they refer to different quantities. Therefore, there should where possible, be specified in terms of standard quantities.

Licensing

Another aspect of price control lies in the powers vested in the Licensing Authorities.⁶ The Act deals with the law relating to the licensing of certain trades and businesses and to provide matters incidental to or connected with the foregoing. Provisions are made relating to procedure and rules to be applied by the licensing authorities when considering whether or not to issue a licence to a trader.⁷ The powers of Licensing Authorities under this Act are of preventative measures only. The following case can illustrate this point.

In Comas Chandaeka,⁸ the applicant had applied for a trading which was refused by Luanshya Municipal Council. The applicant then applied for relief in the form of orders of certiorari and mandamus against the refusal of Luanshya Municipal Council to grant him a trading

licence under the Trades Licensing Act. The court granted the application on grounds that the respondents had failed to prove that the issue of a trading licence to the applicant would be contrary to any of the provisions provided under the Act.

It is, therefore, clear that the Licensing Authorities have powers to refuse to grant a trading licence to a trader if they consider that granting of such a licence would be contrary to the provisions of section 15 of the Act.

The provisions of Chapter 707 have not been applied to traders who have contravened Price Control Regulations that is those who overcharged on controlled goods because such traders were provided for under the Control of Goods (Price Control) Regulations Chapter 690. It follows, therefore, that the ideal change would be that the Licensing Authorities should exercise powers given⁹ not only to refuse granting trading licences, but also to revoke any trading licence if the holder of such a licence is found overcharging on any commodity whether such commodity is controlled or not, because any trader who overcharges is considered to be operating against public interest.

REMARKS

In our present legal system, law is being used in ways and towards ends that are unprecedented. The legal apparatus is being asked to intervene in

areas of social, economic and personal life that have hitherto been handled by other agencies in other ways. These employments of law have achieved only a small part of what had been hoped for from them. The machinery of law is put to work but all too often its efficiency is disappointingly low. This is an abuse of the legal apparatus and shows lack of understanding of the notions of law and exaggerates its powers.

It can be further observed that the successful operations of law are heavily predicated upon such factors as customs, economic morality and a lot of other factors. In the light of the foregoing, the second suggestion of law reform is presented.

5.3 FROM PRICE CONTROL TO PRICE MONITORING:

This aspect of law reform has been under consideration by the Prices and Incomes Commission (PIC) and all the relevant material was drawn up and extracted from the PIC.

PRICE MONITORING:

In order for PIC to achieve high levels of operational efficiency, it must be recog-

nised that across-the-board price controls are difficult if not impossible to effectively and efficiently implement. In terms of their impact on the stimulation of new investments and economic growth, price controls can also be seen to have negative effects. Conversely, however, price controls may be necessary given certain economic circumstances. To weigh the conditions under which price controls may be desirable, we have to take into account the type of existing legal and market structures.

There are three fundamental aspects of price monitoring.

Notification Procedure

The PIC is duly informed on intended price increases by the firms. This aspect incorporates the submission of costs structures and changes in the cost of various factors of production and inputs.

Discussion and Investigation

Where the price controls and the price freeze apply, negotiations have to be undertaken after or when submissions are made. The PIC can also institute investigations or studies on particular sectors or products groups or a specific product in order to determine the precise conditions under which production, distribution and retailing exist. The aspect of negotiations in this light is

intended to further the concept of 'moral persuasion,' particularly on the non-controlled products.

Information

Presently the PIC releases for the general public a quarterly publication through the national newspaper that attempts to inform the consumer on issues of prices and relevant issues.

The PIC through the Price Market Monitoring System (PMMS) intends to be releasing an additional periodical report for various State Institutions, including Cabinet Office and Parliament. There will be intended for decision making purposes.

Market Monitoring

The existing market structures have a direct influence on the price levels. The higher the degree of competition, the more prices will be influenced downwards. The dominance of monopolies in most cases is seen to be inefficient. This inefficiency applies, ultimately to the pricing structure. It is apparent that this is an area of our economic development in which not only no legislation exists in order to counteract undesirable market structural formations, but if anything monopoly control of the economy has grown to dominate all economic sectors.

Investigations by PIC will dwell not only on price aspects but also be broadened to market

structures and what legal attention required.

PRICE CONTROL AND PMMS:

As the constraints within which price control have to be implemented are recognised and as the competitive situations within which firms operate increase, a transition between the two states of economics becomes a natural process. The across the board price controls one to be relaxed progressively. However, the limitations of the monopoly structure in the economy will continue to be closely monitored. PMMS is to become more and more influential as a means of price regulation, monitoring profit margins and market structures.

Against this background, the development progression in the construction process of the PMMS at PIC since January, 1988 can be presented.

PMMS CONSTRUCTION:

The construction of this system has been through the initiation of the Price Information and statistics Department of the Prices and Incomes Commission. The system is envisaged to be legally implemented in January 1989. The laid down objectives of the system are:

- a) To maintain a broaden and intensified price and market monitoring system;
- b) To cover the development of prices of goods and services in all steps of manufacturing

- and distribution;
- c) to notify the government and inform the general public of the price movements in the monitored sectors of the economy;
 - d) to notify the government of the movement of the level of prices calls for any special attention and action; and
 - e) to collect all such information to be used in making appropriate policy recommendations as the situation so demands.

REMARKS:

The system may be seen as the most relevant tool which would ultimately provide the Commission with current data concerning the development of prices and other market conditions within all sectors of the Zambian economy. The output of the system would be used to supply the government with relevant information concerning the state of the economy at the micro as well as the macro levels. Such outputs will also be used to supply consumers with relevant information concerning prevailing prices and market conditions on individual markets.

Although the PMMS pre-supposes an intensified focus on the actual development of prices, it will also be the instrument to be employed in identifying existing market inefficiencies that distort the formation and development of prices. This will therefore, enable the Commission to submit recomme-

ndations for the consideration of the government concerning specific actions like legislation to be passed. This in turn will help improve market performance within individual sectors of the Zambian economy.

FUTURE OF PMMS

Undoubtedly, as economies become more complex and bearing in mind, our social objectives we require an approval which is more scientific in nature. What is required are systems and methodologies that allow for flexibility, rather than instil rigidity into decision making process. It is contended that if the PMMS is given leval bakcing it will take into account most aspects required in determining price structures which will facilitate an appropriate means for formulating sustainable and sound pricing policies.

At this point, one might be tempted to ask the question, "Will price control policy as administered through the PMMS described above work?" In response the only probable answer would be Yes as long as the Prices and Incomes Commission is given some legal backing in implementing the Price and Market Monitoring System, there would be some notable changes in our economic se up.

5.4 CONCLUSION:

In this paper, I have tried to reveal the nature of problems encountered by policy of price control in Zambia. This has been in relation to the introduction of a foreign exchange auction as the central plank of the IMF economic restructuring programme. Undoubtedly, it has been shown that the restructuring programme has had effect on price controls and on the consumer. In this perspective, a legal analysis has been made to try and provide answers to some of the important questions in relation to price controls which could be of vital concern to Zambia.

Looking back at the Zambian experience, in the absence of a policy statement by the government, the Liberalisation package in general and auctioning of foreign exchange in particular was an experiment. It appears that the impact on income distribution together with inflation which got out of control were considered to be the main reasons for ending the experiment.

As pointed out to restructure the Zambian economy the IMF and its advanced capitalist member states and lending institutions agreed to support the auctioning system. The Zambian government on its part undertook to liberalize the economy and reduce government expenditure.

Thus the government decontrolled prices and decided to withdraw subsidies. Besides this, there was the revocation of all formal price controls with the exception of few essential commodities (maize meal, candles, wheat flour, bread. This in a sense, signifies that the main legislation that existed to protect the consumers had been taken away. It follows therefore, that the government did not take the legal implication of revoking price controls into consideration. What I have tried to show in the paper is the type of price control that can be used in our ever worsening economy. If the suggested measures in Chapter four can be adequately applied, some effective change is bound to occur. In essence, the suggestions of Price Controls to Price Monitoring would be a very helpful tool in our economic development. In its operation, price controls on the majority of commodities would be operated administratively through the Price Marketing Monitoring System instead of employing rigid statutory instruments.

There are however, some more prospects available for effective action of price control in protecting the consumer. Suggested measures if applied effectively can help to even out short-term fluctuations in prices and reduce price variations between consumers in spite of the risks and difficulties which may be encountered by traders and consumers.

It is submitted that there is need for price control despite the fact that it has not worked

that well. In the current and continuing period of price inflation it is understandable that public leaders and spokesmen of consumer interests in Zambia should advocate for improvements in price control.

Footnotes

- 1 Republic of Zambia, Ministry of Commerce and Industry Annual Report, (Lusaka, Government Printers, 1987) p.9.
- 2 Ibid p.8.
- 3 Section 19 of Weights and Measures Chapter 697 of the Laws of Zambia.
- 4 Section 19(3)(c) Chapter 697 of the Laws of Zambia.
- 5 Regulation 3 of the Control of Goods (Display of Prices) Order, Chapter 690 of the Laws of Zambia.
- 6 The Trade Licensing Act, Chapter 707 of the Laws of Zambia.
- 7 Section 15 of the Trade Licensing Act, Chapter 707 of the Laws of Zambia.
- 8 S.J.Z No. 29 1969.
- 9 Section 15(1)(e), The Trade Licensing Act, Chapter 707 of the Laws of Zambia.

References

- 1 Leftwich, R; The Price System and Resources Allocation (Chicago, The Dryden Press, 1982).
- 2 Kaunda, K., New Economic Recovery Programme (Lusaka, Government Printers, 1987).
- 3 Ndulo, M and Sakala M; Stabilization Policies in Zambia 1976-1985, paper presented for Industrial Labour Organisation, Geneva, Switzerland, 1983.
- 4 International Labour Office Report to the Government of the Republic of Zambia on Incomes; Wages and Prices in Zambia, 1969.
- 5 Republic of Zambia, Ministry of Commerce and Industry, Annual Report, (Lusaka, Government Printers, 1987).
- 6 Republic of Zambia, Office of the Prime Minister, National Commission for Development Planning (Lusaka, Government Printers, 1978)
- 7 Price Information Bulletin No.3 - 1986.
Price Watch Vol.2 No.5 - 1987.
- 8 International Labour Office Report to the Government of the Republic of Zambia on Incomes, Wages and Prices in Zambia, 1969.

The Newspapers:

Times of Zambia

Zambia Daily Mail