

APPENDIX 'E'

PRICE CONTROL IN AMERICA

During the period of the second world war, the Emergency Price Control Act¹ was enacted as a temporary war-time measure "to stabilise price", "to prevent speculative, unwarranted and abnormal increases in prices" and "to eliminate and prevent profiteering, hoarding, and speculation, etc."² The Act was designed primarily to control prices of commodities, excepting agricultural commodities,³ books, magazines, motion pictures, newspapers.⁴

Powers of price-fixing were vested in the Price Administrator who was required to fix fair and equitable prices of commodities when in his judgment they rose or threatened to rise in a manner inconsistent with the purposes of the Act.⁵ At the stage of price fixing, several safeguards were provided. In fixing the prices, the administrator was required to give due consideration to prices between October 1 to 15, 1941,⁶ and consider factors such as "speculative fluctuations, general increases or decreases in costs of production and transportation and general increases or decreases in profits. . ."⁷ Every regulation fixing the price was to be accompanied by a statement of considerations involved in its issuance⁸ which could serve as a reference point for the consideration of the protests at a later stage for which the Emergency Price Control Act provided as a matter of right after the regulation had been issued. Secondly, the Emergency Price Control Act required advice and consultation with industry representatives, so far as practicable, before issuing any regulation or order, and through creation of advisory committee in cases the same was demanded by the industry concerned.⁹ The purpose of a committee, wherever constituted, was to advise on classification, adjustments and differentials that might be needed in price programme.¹⁰ The technique for obtaining information was left to the discretion of the administrator who might conduct staff investigations,

1. The Act was enacted in the interest of national defence and security and was necessary for the effective prosecution of the war.
2. S. 1(a) of the Act.
3. S. 3.
4. S. 205(j)(1).
5. S. 2(a).
6. *Ibid.*
7. 55 *Harvard Law Review* (1941-42) p. 489, f.n. 377. The discretion conferred on the administrator was held valid by the U.S. Supreme Court in *Yakus v. U.S.* (321 U.S. 414) on the ground that the Congress had stated the legislative objective, had prescribed the method of achieving it—maximum price-fixing and had laid down the standards to guide the administrative determination of both—the occasions for the exercise of the price-fixing power and the particular prices to be established. There was no unauthorised delegation of power. *Bowles v. Willingham*, 321 U.S. 503. A very good description of the operation of the whole system is to be found in Paul B. Rava, 'Procedure in Emergency Price-fixing', 40 *Michigan Law Review* 937.
8. S. 2(a).
9. 55 *Harvard Law Review*, p. 491, read with 41 *Michigan Law Review*, p. 111
10. Hall, *Government and Business*, p. 286.

industry conferences, or more formal hearings as the necessities of the problem before him seemed to demand.¹¹ The administrator thus had discretion in two respects : (1) he was the judge of time when the price of a commodity had gone up, and when to take action; (2) he had discretionary powers in fixing the prices of commodities.

Over and above the safeguards provided for in the Emergency Price Control Act, there is the due process clause in the U.S. Constitution which requires that price regulation must be reasonable. It does not mean that every producer or dealer is entitled to a profit. What it means, however, is that while a reasonably efficient dealer is entitled to a fair return of profit, a high cost manufacturer is not. So, the price should do no more than give a fair profit to the reasonably efficient producer or distributor. Passing on any specific price schedule thus requires a determination of two things : (1) What is a fair profit?; (2) Whether a particular complainant is reasonably efficient. The standard of reasonable efficiency is, however, a vague one, as a scholar has maintained : "Assuming the burden of proof to be on the complainant, the difficulty of providing conformity to such a vague standard as reasonable efficiency might be so great that price ceilings set with any degree of intelligence may be invulnerable to attack on this ground."

After the stage of price fixing, the Emergency Price Control Act provided for a remedy which was available in cases of unreasonable price fixing. It consisted in a right of protest within 60 days after promulgation of a regulation by any person subject to such regulation.¹² The administrator was required to act within 30 days, either by way of granting or denying relief, or note it for hearing or provide for submission of further evidence.¹³ The Emergency Price Control Act provided that after the protests were filed, the proceedings might be limited to filing affidavits, other written evidence, and briefs, without an oral process.¹⁴ The administrator could take "official notice" of economic data. In case the protest was denied, the Emergency Price Control Act provided for appeal to Emergency Court of Appeals constituted under the Act,¹⁵ which had exclusive jurisdiction to set aside such regulation or remand the proceeding to the administrator.

Two other devices were provided in the Emergency Price Control Act for alleviating hardship in individual cases. The first was the power given by Congress to the federal government to purchase and then sell commodities. The other was the power to pay governmental subsidies to high cost producers in order to stimulate production of goods.¹⁶

The Emergency Court of Appeals was to hear appeals from the decisions of the administrator denying a protest, provided it was filed within 30 days of the order of denial. The complaint was to be filed with the court specifying the objections and praying that the regulation, order or price-schedule protested be enjoined or,

11. *Ibid.*

12. *Parker v. Fleming*, 329, U.S. 531.

13. 41 *Michigan Law Review*, p. 124.

14. 51 *Yale Law Journal*, p. 1093, 1106

15. 41 *Michigan Law Review*, p. 124.

16. Hall, *Government and Business*, p. 286.

set aside in whole or in part. A copy of such complaint was to be served forthwith on the administrator. The court had exclusive jurisdiction to set aside any regulation protested against or remand the proceeding to the administrator. The administrator had power to modify or rescind the regulation at any time during the pendency of the proceeding in the Emergency Court.¹⁷

In reviewing orders, the Emergency Court was to decide whether or not regulation was contrary to law, arbitrary or capricious,¹⁸ on the basis of the record compiled by the administrator, which was to include the economic data and other facts of which he had taken official notice, and a transcript of such portions of the proceedings in connection with the protest as were material under the complaint. No evidence not presented to the administrator might be presented to the Emergency Court of Appeals.

An order setting the regulation aside was not effective for thirty days during which time the administrator might appeal to the Supreme Court, and if *certiorari* was granted the judgment of the Emergency Court of Appeals was suspended until final disposition by the Supreme Court. No temporary or interlocutory stay or restraining order might be granted by any court.¹⁹ If the Emergency Court of Appeals denied relief, the protestant also might appeal to the Supreme Court.²⁰

The Emergency Court of Appeals consisted of three or more judges to be designated by the Chief Justice of U.S.A. from amongst the judges of District Courts or Circuit Courts of Appeal.²¹

For the purposes of enforcing the Act, the administrator had at his disposal "civil injunction"²² (which could be granted by any federal, state or territorial court), "criminal penalties",²³ and most important of all, since the promulgation of the General Maximum Price Regulation, "licensing." A licence might be required of all persons selling regulated commodities, but the administrator could not refuse a licence in the first instance. Licences would contain no provision which could not be prescribed by regulation under other sections of the Act, and a licence might be revoked only through a judicial proceeding for revocation which could be brought by the administrator only after a second violation had occurred.²⁴ Under the exclusive jurisdiction provision of s. 204(d), the validity of the regulation involved in the licence suit might not be questioned in that suit.²⁵ Upon a second violation and after warning, the administrator might petition any State or Territorial Court of competent jurisdiction or the Federal District Court in case

17. 41 *Michigan Law Review*, p. 124; *Yakus v. U.S.*, *supra*.

18. *Denver Union Stock Yard Co., v. U.S.* 304. U.S. 470; *Federal Radio Commission v. Nelson Bros.*, 289 U.S. 266. Also, *Federal Communications Commission v. Sanders Bros. Radio Station*, 309 U.S. 470.

19. 41 *Michigan Law Review*, p. 127. This provision was made to ensure effective price control by assuring the administrator that once a ceiling was established, it was there to stay for a substantial period. The basis was clearly administrative necessity.

20. *Ibid*, p. 124.

21. U.S.C.A., Title 50, App., S. 923-24.

22. *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410.

23. *Krans & Bros. v. U.S.*, 327 U.S. 614.

24. 41 *Michigan Law Review*, p. 121. Also refer to S. 205 (f)(2).

25. 41 *Michigan Law Review*, p. 114.

the licensee was doing business in more than one State or his gross sales exceeded \$1,00,000/- annually. Upon a finding of a violation, the court might suspend a licence for a period not more than one year, subject to ordinary appeal.

The office of the Price Administrator also required retailers to display publicly the ceiling prices of all regulated commodities.²⁶

The administrator was empowered to make investigations to carry out the Act. He had the power to subpoena persons to appear, testify and produce documents etc. District Courts could order obedience to such subpoenas and punish for failing to obey such orders.²⁷

Commodity Control in England

Powers as to fixing of prices of goods were derived by the Board of Trade²⁸ under :
(1) Regulation 55A(b) of Defence (General) Regulations, 1939. S.R. & O. 1939 No. 927 (added by S.R. & O. 1945 No. 1611)²⁹;

(2) The Prices of Goods Act, 1939 (ss. 3, 4 and 5) as amended by the Goods & Services (Price Control) Act, 1941 (s. 1) and the Defence (Price Control) Regulations, 1945, S.R. & O. 1945, No. 1613; and

(3) Regulation 55(1)(a) of the Defence General Regulations, 1939, also provided for controlling prices of articles, labour, services and goods.

Price control which was governed by Regulation 55A(b) was by the 1954 (No. 9) Order applicable only to fuels, iron and steel scrap, potatoes, milk, bread and welfare foods, and medical supplies.³⁰

26. Hall, *Government and Business*, p. 286.

27. Ss. 201 and 202.

28. Previous to 1939 law, price fixing was governed by the Profiteering Act, 1919.

29. These regulations derive authority from s. 1(1) of the Emergency Powers (Defence) Act, 1939. According to this provision, His Majesty could, by Order-in-Council, make such regulations as "appear 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 war. . . and for maintaining supplies and services essential to the life of the community. Under that provision, a very large body of Orders-in-Council and orders made pursuant to Orders-in-Council were made for the defence of Great Britain including, in particular, orders for the control of the price and proper distribution of the food. S. 2 of the Defence of India Act and S. 1 of the English Emergency Powers Act, contained words identical as far as they are relevant, viz., "for maintaining supplies and services essential to the life of the community. S. 2 of the Defence of India Act provided for the Governor-General-in-Council to make such orders as to him "may be necessary or expedient." S. 2(2) went into a little more detail. Rule 81(2) of the orders in question carried out the purposes of that section.

30. C. K. Allen, *Law and Orders*, p. 85.

The Prices of Goods Act, 1939, provided³¹ that a price regulated goods could be sold only below or at the permitted price which was to be calculated by adding to the basic price the amount of any permitted increase.³² The manner of calculating the basic price and the permitted increase was provided in ss. 3 and 4 respectively, but the Board of Trade was also empowered³³ to fix the basic price (without a reference to s. 3), and the date at which the basic price so fixed was to be ascertained for the purposes of computing the permitted increase under s. 4, in relation to any price regulated goods.

The Goods and Services (Price Control) Act, 1941,³⁴ empowered the Board of Trade to fix maximum prices for goods. Also, the Board of Trade could, instead of specifying the maximum price to be charged, direct that the price should be computed in such manner and by reference to such matters as might be provided by the order or direction.³⁵ Sale above a price so fixed was made penal.³⁶ Also, refusal to sell price-regulated goods, or denial possession thereof, or the offer of such goods subject to any conditions other than a requirement for payment was an offence except where disposal of stocks was regulated by a licence made under the Act.³⁷

Power to amend the Goods and Services (Price Control) Acts, 1939 to 1943³⁸ under a Defence Regulation was given to the executive by the Supplies and Services (Transitional Powers) Act, 1945.³⁹ Power to extend the operation of an existing Defence Regulation was also conferred upon the executive by the said Act.⁴⁰ But any such order to extend or to amend was required to be laid down before the Parliament, either House of which could disapprove of the same within 40 days.⁴¹ The Supplies & Services (Extended Purposes) Act, 1947, and the Supplies & Services (Defence Purposes) Act, 1951, extended the ambit of purposes for which the said powers could be made use of by the executive.

Provisions of the Supplies & Services (Transitional Powers) Act, 1945, Supplies & Services (Extended Purposes) Act, 1947, and Supplies & Services (Defence Purposes) Act, 1951, "taken together, probably represent the high water mark of governmental powers in the whole history of English legislation. In their economic aspect, it is clear that the phrase "in a manner best calculated to serve the interests of the community" gave *carte blanche* to executive discretion."⁴²

The Prices of Goods Act, 1939, applies to "price regulated goods", *i.e.*, to goods of a description defined in any order made by the Board of Trade.⁴³ Thus, the

31. S. 1 of the Prices of goods Act, 1939.

32. *Ibid.*

33. Calculations were to be made by persons involved in a business transaction concerned.

34. S. 1(1) of the Goods & Services (Price Control) Act, 1941.

35. S. 1(4) of the Goods & Services (Price Control) Act, 1941.

36. S. 1(6) *Ibid.* The penalty was provided in s. 1(7) See also s. 7 of the Prices of Goods Act, 1939.

37. S. 9 of the Goods & Services (Price Control) Act, 1941.

38. They included the Prices of Goods Act, 1939, also.

39. S. 2.

40. S. 1(i)(a).

41. S. 4.

42. C. K. Allen, *Law and Orders*, p. 70.

43. S. 2.

potential application of the Act was unlimited as the Board of Trade was empowered to apply it to any goods, or classes of goods, to which the board, in its unfettered discretion, thought that it ought to be applied.⁴⁴

English Law relating to price control provided for five safeguards, three of which were effective before the stage of price fixing and the other two were available after the fixation of price. Those used before the stage of price fixing were: (i) consultation with the Central Price Regulation Committee; (ii) formula to be used in fixing prices and (iii) parliamentary control over an order of price fixing. Those available after the fixation of price were: (iv) notification regarding the effect of a regulation order and (v) appeal against the order.

The Prices of Goods Act, 1939, had specified⁴⁵ that it was the duty of the Central Price Regulation Committee, among other things, to give advice and assistance to the board in the discharge of their functions under this Act. Whether this can be interpreted as a duty of the Board of Trade to consult the committee before fixing the price is a question. But the Goods & Services (Price Control) Act, 1941, in clear terms provided that the Board of Trade was not to make any order of price fixing except after consultation with the Central Price Regulation Committee.⁴⁶ None of the above Acts gave any indication as to the composition of the committee and its constitution was left in the hands of the Board of Trade.⁴⁷

The formulae for calculating the permitted price was provided by the Prices of Goods Act, 1939, although under certain circumstances which were not specified and were left to the determination of the Board of Trade, the board was given a power to specify basic price and the date at which the basic price so fixed was to be ascertained for the purposes of computing the permitted increase for calculating the permitted price.⁴⁸ This limit on discretion, though little, made the price regulation in most of the cases a sufficiently objective thing. But it was removed by the Goods & Services (Price Control) Act, 1941, which gave to the Board of Trade power to specify permitted prices or prescribe the manner of calculating it.⁴⁹ The ambit of discretion was broadened by the 1941 Act.

The Prices of Goods Act, 1939, did not provide for any parliamentary control of price fixing. But the Goods & Services (Price Control) Act, 1941, provided⁵⁰ that every order made under the Act, which included all price-fixing subsequent to commencement of the Act, was to be laid before Parliament, either House of which could resolve to annul the order within 40 days of the date of so laying it.

After the fixation of price an important safeguard was provided by the Prices of Goods Act, 1939,⁵¹ which required a notice to be published by the board "in such manner as they think best for informing persons appearing to the board to be affected," specifying the effect of the price fixing order. This provision was untouched by the 1941 Act.

44. Butterworth's Emergency Legislation Service, Statutes' Supplement No. 18, 2nd Ed. (Commodity Control) p. 117.

45. S. 8(4) of the Prices of Goods Act, 1939.

46. S. 17(1) of the Goods & Services (Price Control) Act 1941.

47. S. 8(8) of the Prices of Goods Act, 1939.

48. Ss. 3(4) and 5 of the Prices of Goods Act, 1939.

49. Ss. 1(1) and 1(4) of the Goods & Services (Price Control) Act, 1941.

50. S. 17(2) and (3).

51. S. 5(2).

Within 14 days from the first publication of any such notice, any person appearing to a referee appointed under the second schedule to the Act of 1939, to be representative of traders in, or buyers of, goods of the description to which the order applied, might appeal against the order in accordance with the provisions of the said second schedule⁵² by giving notice of the intention to make appeal. On such appeal, the referee had power to direct the revocation or variation of the order as he might think fit and the board was compelled to give effect to any such direction to the referee. The referee had power to compel the attendance of witnesses and non-attendance was a punishable offence.⁵³ The referee who was to be a member of the legal profession was to be appointed by the Lord Chancellor, to hear and determine all appeals against orders or against orders varying such Orders. Term of office and other conditions of office were to be determined by the Lord Chancellor. Also, a deputy could be appointed on occasions he could not work. Three panels, each consisting of six persons, experienced respectively in finance or accountancy, trade and buyers of the price controlled goods were to be appointed by the Board of Trade, and the referee, for the purposes of each appeal, was to obtain the assistance as assessor of one person from each of the said panels (having regard to the nature of particular appeal in appointing an assessor). The Lord Chancellor was further required to make rules regarding procedure of such appeals.⁵⁴

The power to make any order, rule or bye-law comprised a power to vary or revoke it.⁵⁵ For the purposes of enforcement of provisions of the Act, the following provisions were made:

- (i) The Board of Trade might prescribe price control marks;⁵⁶
- (ii) The Board of Trade was empowered to make order requiring such steps as might be specified in the order to be taken to bring the controlled price to the notice of persons to whom the goods are offered for sale in the course of the business;⁵⁷
- (iii) The Board was required to appoint a Central Price Regulation Committee and local price regulation committee for the purposes of enforcement;⁵⁸
- (iv) The Board was required to appoint inspector also;⁵⁹ and
- (v) The Board was empowered by order to require the furnishing of prescribed invoices.⁶⁰

(1) The Board might require price control mark to incorporate a statement of the maximum price to be charged for the goods to which it applied.

52. S. 5(3), (4) and (5) of the Prices of Goods Act, 1939.

53. S. 16(3) of the Prices of Goods Act, 1939.

54. Second Schedule of the Prices of Goods Act, 1939.

55. Defence (General) Regulation No. 98.

56. S. 1(ii) of the Goods & Services (Price Control) Act, 1941.

57. S. 1(3). *ibid.*

58. S. 8 of the Prices of Goods Act, 1939 and S. 11 of the Goods and Services (Price Control) Act, 1941.

59. S. 12 of the Goods & Services (Price Control) Act, 1941.

60. S. 13, *ibid.*

61. *Halsbury's Statutes of England*, 2nd ed., Vol. 26, p. 301.

Requirements as to the occasions on which the mark was to be applied and the manner in which it was to be applied, the further application or use thereof on its becoming obscure or severed from the goods and the removal of or other interference with price-control marks could be provided for.

(2) It was the duty of the local price regulation committee for any locality to enforce the provisions of the Act. An opportunity of making representation was to be given to any person alleging a contravention of the Act.⁶² An opportunity to make representation, and if so requested by him, of being heard, was to be given to the alleged offender also, and if after that the committee was of the opinion that a prosecution ought to be instituted, it was to report the alleged contravention to the Central Prices Regulation Committee who, if they were of the same opinion, were to request the board to institute proceedings accordingly.⁶³ The prosecution was not to be instituted except by the board upon request made to them as aforesaid, but the Director of Public Prosecutions was empowered to institute a prosecution in case the local committee had failed to report to the central committee, or the central committee had failed to request the board or in case he was so requested by the board.⁶⁴ A price regulation committee had power to call for information or accounts or books and other documents relating to business.⁶⁵ The composition of central or local committee was left to be determined by the board.⁶⁶ Local price-regulation committee was also required to keep under review the prices at which goods were being offered for sale in its locality and if necessary to make a representation to the central committee.⁶⁷

(3) An inspector appointed for the purpose of enforcement of the Act was given powers in respect of entry, inspection, calling for production of accounts books or other documents or other necessary information relating to business.⁶⁸ Any obstruction to the inspector in the exercise of his powers was made penal.⁶⁹

(4) By order,⁷⁰ the Board required an invoice to be furnished within seven days of the delivery of the goods, and to show the name of, and the address of the principal place of business of the seller, the name of the buyer and the address to which the goods had been or would be sent, a sufficient description of the goods and the quantities thereof, the price of each item, any discount allowed, any delivery charges, the date of sale of each item and the date on which invoice was furnished. Invoices so furnished were required to be preserved for 12 months. A buyer failing to get an invoice according to these provisions was required by notice in writing to demand such invoice and in case of failure, to notify the local committee accordingly. Also, the buyer was required to preserve the invoice for 12 months. Contravention of any of these provisions was made penal.⁷¹

62. S. 8(2) of the Prices of Goods Act, 1939.

63. S. 8(5), *ibid.*

64. S. 8(6), *ibid.*

65. S. 8(7), *ibid.*

66. S. 8(8), *ibid.*

67. S. 11(2) of the Goods & Services (Price Control) Act, 1941.

68. S. 12(2), *ibid.*

69. S. 12(3), *ibid.*

70. The Price Controlled Goods (Invoices) Order, 1943. S.R. & O. 1943 No 604, Art. 4.

71. S. 13(4) of the Goods & Services (Price Control) Act, 1941.

For the purposes of enforcement, the Board was also empowered to require maintenance of such books, accounts or other records as might be specified.⁷² Also, the Board had power to call for examination any books, accounts or other documents or any other specified information relating to business.⁷³ Failure to comply with these provisions was penal.⁷⁴

The Board had also powers to issue licence for resale otherwise than by retail, of price controlled goods,⁷⁵ and to register persons carrying on business of second-hand goods.⁷⁶ Provisions were made for appeal from refusal or cancellation of a registration relating to business in second-hand goods and for application for the purposes of any such appeal.⁷⁷

72. S. 14(1), *ibid.*

73. S. 14(2), *ibid.*

74. S. 15, *ibid.*

75. S. 4, *ibid.*

76. S. 3(1), *ibid.*

77. S. 3(2), *ibid.*