# A STUDY ON THE PRICE CONTROL AND ANTI PROFITEERING ACT 2011 IN CONTROLLING THE PRICE OF GOODS

**ROSNELIM BT. YUSOFF (802293)**

**A thesis submitted to the Ghazali Shafie Graduate School of Law, Government and International Studies
in fulfillment of the requirements for the Degree of Master of Law
Universiti Utara Malaysia**

# A STUDY ON THE PRICE CONTROL AND ANTI PROFITEERING ACT 2011 IN CONTROLLING THE PRICE OF GOODS

**ROSNELIM BT. YUSOFF (802293)**

**MASTER OF LAW**
**UNIVERSITI UTARA MALAYSIA**
**APRIL 2013**

## PERMISSION TO USE

In presenting this thesis in partial fulfillment of the requirements for Master of Law degree from Universiti Utara Malaysia, I agree that Universiti Library may make it freely available for inspection. I further agree that permission for copying of this thesis in any manner either in whole or in part, for scholarly purpose may be granted by my supervisor or in her absence, by the Dean, Ghazali Shafie Graduate School of Government, College of Law, Government and International Studies (COLGIS). It is understood that any copying or publication or use of this thesis or parts thereof for financial gain shall not be allowed without my written permission. It is also understood that due recognition shall be given to me and to Universiti Utara Malaysia for any scholarly use which may be made of any material from this thesis.

Request for permission to copy or to make use of material in this thesis in whole or in part, should be addressed to :

Dean (Ghazali Shafie Graduate School of Government)
UUM College of Law, Government and International Studies (COLGIS)
Universiti Utara Malaysia
06010 UUM Sintok
Kedah Darul Aman

## ABSTRACT

Attempts to control and fix prices for goods and services by using the law had commenced since the ancient time four thousand years ago but more often than not the attempts failed to achieve their objective. Price control legislations have also been used by governments in restraining inflation and overcoming shortages of goods. However instead of curbing inflation, price controls add other complications to the inflation problem such as black markets and more shortages of the goods controlled that reflect the waste and misallocation of resources caused by the price controls themselves. This study therefore explains why our government uses the price control law to control prices of goods even though history has shown that price controls add to the problem of shortages rather than eliminate it. In addition to that this study also explains why the government abolished the Price Control Act 1946 and introduced the Price Control and Anti Profiteering Act 2011. This research is essentially a library based doctrinal research whereby the materials used are obtained from libraries, archives and other databases. These materials are used to describe events when price control laws were used to control prices of goods and their ensuing consequences. The research finds that one of the aims of price control is to prevent traders and businesses from unscrupulously charging exorbitant prices for their goods and services and thus price control can be seen to act as a safeguard for consumers against opportunistic profiteers. This research concludes that price control measures are necessary but should not be in perpetuity.

**Keywords** : Price Control, Anti-profiteering, Consumer Protection, Price Control And Anti Profiteering Act 2011

## ABSTRAK

Percubaan untuk mengawal dan menetapkan harga barangan dan perkhidmatan dengan menggunakan peruntukan undang-undang telah bermula sejak empat ribu tahun dahulu tetapi ia kerapkali gagal mencapai objektifnya. Undang-undang kawalan harga juga telah digunakan oleh kerajaan untuk mengawal inflasi dan mengatasi kekurangan bekalan barangan. Walaubagaimanapun kawalan harga hanya menambahkan komplikasi lain kepada masalah inflasi seperti pewujudan pasaran gelap dan pengurangan bekalan barangan yang dikenakan kawalan harga yang mencerminkan pembaziran dan salah pengagihan sumber-sumber ekonomi. Oleh itu, kajian ini menjelaskan mengapa kerajaan kita menggunakan undang-undang kawalan harga untuk mengawal harga barangan sungguhpun sejarah telah menunjukkan bahawa kawalan harga menambah kepada masalah-masalah kekurangan bekalan barangan dan bukannya menghapuskannya dan di samping itu juga kajian ini menjelaskan mengapa kerajaan memansuhkan Akta Kawalan Harga 1946 dan memperkenalkan Akta Kawalan Harga dan Anti Pencatutan 2011. Kajian ini pada asasnya adalah sebuah penyelidikan doktrinal di mana bahan-bahan kajian adalah diperolehi daripada perpustakaan, arkib dan pangkalan data yang lain. Bahan-bahan kajian ini digunakan untuk menggambarkan peristiwa peristiwa dan akibat-akibat yang terjadi apabila undang-undang kawalan harga digunakan untuk mengawal harga barangan. Kajian ini mendapati bahawa salah satu daripada objektif kawalan harga adalah untuk mengelakkan peniaga yang tidak bertanggung jawab daripada mengenakan harga yang terlalu tinggi untuk barangan dan perkhidmatan yang mereka sediakan dan oleh itu kawalan harga boleh dilihat sebagai melindungi pengguna daripada peniaga-peniaga yang mengambil kesempatan untuk mengaut keuntungan yang berlebihan dan tidak berpatutan. Kajian ini menyimpulkan bahawa langkah-langkah kawalan harga sememangnya diperlukan tetapi ianya tidak sepatutnya dikenakan ke atas barangan untuk selama-lamanya.

**Kata Kunci** : Kawalan Harga, Anti-pencatutan, Perlindungan Pengguna, Akta Kawalan Harga Dan Anti Pencatutan 2011

# ACKNOWLEDGEMENT

**In the name of Allah, the Most Gracious, the Most Merciful**

This thesis would not have been possible without the guidance and the help of several individuals who in one way or another contributed and extended their valuable assistance in the preparation and completion of this study.

First and foremost, my utmost gratitude to my supervisor, Associate Professor Hajjah Nurretina bt Haji Ahmad Sharif whose sincerity and encouragement I will never forget. Associate Professor Nurretina has been my inspiration as I hurdle all the obstacles in the completion of this research work.

Associate Professor Dr. Asmah Laili bt Haji Yeon, former Assistant Vice Chancellor of the College of Law, Government and International Studies, Universiti Utara Malaysia, for the insights which she had shared while teaching me Legal Research Methodology.

Puan Yus Asma bt Yusof, Senior Assistant Registrar, College of Law, Government and International Studies, Universiti Utara Malaysia who had kind concern and consideration regarding my academic requirements.

Miss Syatirah bt Abu Bakar for her patience and steadfast encouragement to me to complete this study.

The staff of the College of Law, Government and International Studies, Universiti Utara Malaysia for being accommodating to my queries.

The staff of Sultan Badlishah Library, UiTM Kedah for assisting me in obtaining the literature such as books, catalogues and journals that were needed for my thesis.

My former colleagues and staff in UiTM Kedah for the use of facilities and also for moral support.

My family especially my husband who has been giving tireless support, confidence and hope and has been waiting patiently for me to finish this thesis.

And the one above all of us, the omnipresent Allah S.W.T, for answering my prayers, for giving me the strength to plod on despite my constitution wanting to give up and give in to the temptation of abandoning the research, thank you so much Ya Allah for showing me the way.

# DECLARATION

I hereby declare that this thesis is the result of my own investigations except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degree at UUM or any other institutions.

Rosnelim bt Yusoff

Signature :……………………………… Date:………………..............

**TABLE OF CONTENTS**



**CHAPTER ONE : INTRODUCTION**

**CHAPTER TWO : LEGAL FRAMEWORK ON PRICE CONTROL IN MALAYSIA**



**CHAPTER THREE : RESEARCH FINDINGS**

**CHAPTER FOUR : RECOMMENDATIONS AND CONCLUSIONS**

## LIST OF FIGURES

# LIST OF CASES

*Liew Jee Chin v. Public Prosecutor* [1992] 1 LNS 12

*Soon Huat Hock Co v PP* [1998] 1 LNS 647

*Radex (M) Sdn Bhd v. Pacific Network Sdn Bhd* [2001] 1 LNS 187

## LIST OF STATUTES

The Price Control and Anti Profiteering Act 2011

The Price Control Act 1946

The Control of Supplies Act 1961

The Australian Trade Practices Act 1974 (now The Competition and Consumer Act 2010)

# CHAPTER ONE

# INTRODUCTION

## 1.1 Research Background

Festive seasons come and go and every time one approaches we will not fail to hear and read in the mainstream media that goods like flour, sugar, rice, poultry products, cooking oil and many others are facing shortages in supply; triggering price increases. Consequently, without fail as well, the government, in its attempt to solve the problem, uses the price control[1] legislation, as a leverage to force prices down in the face of economic pressure to push them up.[2]

The government's determination not to allow prices to rise and to protect consumers from unchecked inflation is laudable and commendable because too often the public themselves will respond to price increases by urging the government to prevent them.[3]

However, stopping the increase of inflation through the legal mechanism of price control does not solve and has never solved the problem, the prices of the goods still increase despite price control being imposed on the goods and it also leads to negative

---

[1] Price controls are governmental impositions on the prices charged for goods and services in a free market, usually intended to maintain the affordability of staple foods and goods, and to prevent, inter alia, price gouging during shortages. Price gouging is pricing above the market price when no alternative retailer is available.

[2] Editorial, "Rethinking Price Controls," New Straits Times, July 23, 2007, http://findarticles.com/p/news-articles/new-straits-times/mi_8016/is_20070723/rethinking-price-controls/ai_n44 (accessed July 23, 2007).

[3] ibid.

implications because such control will directly create artificial shortages, hoarding, profiteering, smuggling, panic buying, over consumption and black markets.[4] Apart from that the government is derided for having price control but fails to control the price.[5]

How does price control cause shortages in the supply of goods? Basically shortages in the supply of an item of goods will occur when the authority fixes its price at a level lower than it should be. Producers of the said goods will not be motivated to produce as much as the level they would have produced under free market[6]environment while purchasers on the other hand will demand more than what they would have usually done under free market.[7] Thus it is basic economics that when demand is more than supply shortages will occur and the price of the goods will increase. For example if there were less supply of sugar compared to its demand traders would try to manipulate the price of the commodity.[8]

In addition, there is always a delay in bringing the fixed prices or quantity up to date to match the current situation of the market. So, price control is inferior to free market

---

[4] Hafiz Nor Shams, "[2064] Of It's The Price And Supply Control Sweetie," The _Earthinc Reasonably Libertarian Blog, Posted on August 20, 2009, http://maddruid.com/?p=4963 (accessed August 30, 2009).

[5] AFP. "Malaysian Minister Says Price Controls A Joke," *Asiaone News,* March 26, 2008, http://www.asiaone.com/News/AsiaOne%2BNews/Malaysia/Story/A1Story20080324-55911.html (accessed August 30, 2009).

[6]A market economy based on supply and demand with little or no government control. A completely free market is an idealized form of a market economy where buyers and sellers are allowed to transact freely (i.e. buy/sell/trade) based on a mutual agreement on price without state intervention in the form of taxes, subsidies or regulation.

[7] Chong, L.S., "Product Pricing-Policies, Practices And Legal Constraints," *Malaysian Management Review*,http://mgv.mim.edu.my/MMR/8108/810806.Htm (accessed April 30, 2009).

[8]Ahmad Ahrazzuddin bin Ahmad Hamdan and Kelyn bin Bolhassan @ Haliward. Assistant Directors of MDTCC Kedah. Interview with author. Phone interview. Alor Star , Kedah, September 22, 2013.

mechanism as information disperses faster among participants of the market than those in the state responsible for the controls could react.[9]

The case against price controls is not merely an academic exercise, restricted to economics textbooks. Historical records have shown that price controls have caused disastrous effects since four thousand years ago.[10]Rulers and governments alike had been endeavouring to control the market prices of goods and services for hundreds of years before Christ, at least to the code of laws arranged, compiled and implemented by Hammurabi, the Babylonian King, around 1800 B.C. Other historical records also shows a long list of price ceilings on foods and other products administered during the reign of Diocletian[11], emperor of the then already in decline Roman Empire to suppress on inflationary force faced by the state. Surprisingly, attempts by authorities to impose and enforce price controls have usually rebounded in the long run and caused extensive social chaos among people subject to them.[12]

While the public may still think that price control is a great idea, a vibrant market place offers better protection to consumers. Competition in the open market[13] rather

---

[9] Hafiz Nor Shams, "[1623] Of Price And Supply Control In Malaysia," The _Earthinc Reasonably Libertarian Blog, Posted on April 19, 2008, http://maddruid.com/?p=1629 (accessed August 30, 2009).

[10] Thomas J. DiLorenzo, "Four Thousand Years Of Price Control," Ludwig Von Mises Institute Blog, Posted on November 10, 2005, http://mises.org/story/1962 (accessed August 30, 2009).

[11]Diocletian was a Roman Emperor from 284 A.D to 305 A.D.

[12] Jamesesz, "Price Controls : Part Of The Problems Or Part Of The Solutions," Eternity in an Hour Blog, Posted on May 6, 2008, http://jamesesz.wordpress.com/2008/05/06/price-controls-part-of-the-problem-or-part of the solution (accessed August 30, 2009).

[13]An economic system with no barriers to free market activity. An open market is characterized by the absence of regulations or practices that interfere with the natural functioning of the free market.

than state intervention to influence prices should be the preferred price mechanism.[14] In a free market economy, prices should be determined by market forces.

In 2008, Malaysia abolished price control on chicken, steel and cement, thus permitting their prices to be dictated by market forces. The move would also stop the products from being smuggled out of the country as the differences between the prices of cement and steel in Malaysia with the products in the other ASEAN countries were not too obvious.[15] To date only prices of items such as refined white sugar, RON 95 petroleum, diesel, liquefied petroleum gas, wheat flour and cooking oil and certain items under the Festive Season Price Control Scheme are still controlled by the government.[16] It is hoped that by the passing of the Price Control and Anti Profiteering Act 2011 (Act 723) price controls of the items mentioned above and items specified under the Festive Season Price Control Scheme would also be abolished.

Malaysia must rid itself of the ceiling price systems and open up the market while slowly moving towards a high income society to tackle inflation instead of relying on the archaic price control mechanism. Furthermore since Malaysia is practising free trade it is not viable to fix prices for controlled items to suppress the price of goods. A former Malaysian Minister of Human Resources, Tan Sri Dr. Fong Chan Onn, was of the opinion that had the government not implemented the price control mechanism back in the 1970s in the light of rapidly rising goods prices but put more money into

---

[14] Editorial, "Rethinking Price Controls," New Straits Times, July 23, 2007, http://findarticles.com/p/news-articles/new-straits-times/mi_8016/is_20070723/rethinking-price-controls/ai_n44 (accessed July, 23, 2007).

[15]Bernama, "Retail Licences For Chicken, Steel Bars And Cement To End July 15," The Star Online, June 22, 2010, http://thestar.com.my/news/story.asp?file=/2010/6/22/nation/20100622190734&sec=nation (accessed June 25, 2010).

[16] Portal Rasmi Kementerian Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan, "Senarai Harga Barang Kawalan," http://www.kpdnkk.gov.my/web/guest/pengguna/penguatkuasaan/brg-kawalan/harga-brg-kawalan (accessed October 10, 2011).

people's pockets instead, Malaysians would have been very rich by now. Therefore to enhance its competitiveness Malaysia must open up and liberalize its market.[17]

## 1.2 Research Problem

The Price Control Act 1946 (Act 121) was enacted to provide for the control of prices. Its successor the Price Control and Anti Profiteering Act 2011 (Act 723) improves the law on price control and creates provisions which forbid profiteering. The idea behind the Price Control and Anti Profiteering Act 2011 (Act 723) is to enable the government to fix prices of goods or charges for services and at the same time to curb profiteering activities, thereby protecting the interest of citizens. Price control legislation has long been used by the government to control prices of goods in order to curtail unnecessary inflation so that the citizens will not be burdened by increasing and changing consumer prices, which will be the case, if they are left to the free market forces of demand and supply.

However despite price control being imposed on the prices of goods, they keep increasing above the controlled price and as a consequence almost yearly Malaysians face shortages of goods like sugar and cooking oil. In addition, price control stimulates unlawful and unethical pursuits such as bribery, corruption, smuggling, hoarding and illegitimate production of goods. Apart from distorting the allocation of resources and gets rid of the services of the price mechanism which supplies a cheap way of harmonizing economic activities, price control is inefficient for achieving economic welfare goals because it benefits those who do not deserve any assistance

[17]Loh, Dominic, "Fong Chan Onn : Subsidy, Ceiling Price System Must Be Abolished," *My Sinchew.com,* October 14, 2008, http://www.mysinchew.com/node/17339 (accessed June 25, 2010).

because the actual beneficiaries who deserve a helping hand cannot be targeted as they consist of only a small minority.

Basically the issues pertaining to the price control legislation can be discussed as follows :-

### 1.2.1 Price control causes shortage in the supply of goods and increase in the price of goods

Section 5 of the Price Control Act 1946 (Act 121) restricted the movement of price. It made it an offence for any person to sell any price controlled goods at a price which exceeded the maximum price fixed by the Price Controller. Section 5 is reproduced in Section 11 of the Price Control and Anti Profiteering Act 2011 (Act 723) and Section 11 also makes it "an offence for any person to sell or to offer to sell any price controlled goods otherwise than in accordance with the prices determined by the Controller."Scarcity of goods occurs when prices of the goods are fixed lower than it should be. Manufacturers will not have the incentive to produce as much as the level they would have produced under free market condition while consumers on the other hand will demand more than what they would have normally done under free market.[18] Thus when the demand for certain goods is more than its supply, a shortage will occur and therefore the price of the goods will be pushed up.

[18] Hafiz Nor Shams, "[1623] Of Price And Supply Control In Malaysia," The _Earthinc Reasonably Libertarian Blog, Posted on April 19, 2008, http://maddruid.com/?p=1629 (accessed August 30, 2009).

### 1.2.2 Price control distorts allocation of resources

Restricting the movement of prices through legislation causes shortage of the goods. When a rigid price structure like price ceiling is imposed it disconnects prices from levels of scarcity and eliminates function of prices as signals of supply thus causing failure in pricing resources correctly which will lead to inefficient allocation of resources.[19] For example there was a severe shortage of sugar in the country in 2010. The deficiency of sugar nationwide was caused by producers reducing their production by half to keep their costs down until the government removed subsidies for sugar. The manufacturers were saying that they were not making any profit by selling sugar at the controlled price and according to the Federation of Malaysian Consumers Associations (FOMCA) the problem of scarcity was not the result of retailers hoarding sugar but the smuggling of the item out of Malaysia to other countries, especially Thailand.[20]

### 1.2.3 Price control causes illegal and immoral activities

The imposition of price control on goods under Section 11 of the Price Control and Anti Profiteering Act 2011 (Act 723) has made selling goods in Malaysia less attractive and unprofitable compared to selling them outside Malaysia. Thus, price control has triggered smuggling across the porous borders and long coastline of Malaysia.[21]Slack border security and corruption at different levels of border

---

[19] ibid.

[20] "Sugar Woes," The Star Online, June 7, 2010, http://thestar.com.my/news/story.asp?sec=nation&file=/2010/6/7/nation/6415650 (accessed July 25, 2010).

[21] AFP. "Malaysian Minister Says Price Controls A Joke," *Asiaone News,* March 26, 2008, http://www.asiaone.com/News/AsiaOne%2BNews/Malaysia/Story/A1Story20080324-55911.html (accessed August 30, 2009).

enforcement are making the government lose hundreds of millions of ringgit every year. A New Straits Times team, which joined several covert surveillance operations, found that agencies which were given the task to foil smuggling attempts were deliberately ignoring movements of price-controlled goods by foreigners and Malaysians. From their observations at several border checkpoints, including Bukit Kayu Hitam, Kedah; Rantau Panjang, Kelantan; Tebedu, Sarawak; and Sandakan, Sabah, vehicles were ferrying out sugar, flour, cooking oil, ST15 rice[22], RON 95 petrol, diesel and liquefied petroleum gas. These goods are heavily subsidised by the Malaysian Government. Consequently, a huge percentage of these goods do not reach Malaysians but are making smugglers and middlemen rich. These pursuits are also contributors to the periodic shortages of price-controlled items over the years.[23]

### 1.2.4 Price control interferes with the pricing mechanism

Section 4 of the Price Control and Anti Profiteering Act 2011 (Act 723) gives power to the Price Controller to determine the prices of goods while Section 41 gives power to the Minister to "establish a Price Advisory Council to advise him on issues relating to profiteering and matters relating to the prices of goods." However in reality there is always a time interval in updating the prices to match the prevailing market situation. Therefore in this sense, price control is inferior to free market mechanism as information is disseminated faster among market participants than the government

[22] Super Tempatan 15% broken subsidized rice meant only for the poor with income less than RM1,000.00 per month.

[23] Farrah Naz Karim, "Brazen Smuggling At The Borders," The New Straits Times, January 2, 2012, http://www.nst.com.my/top-news/brazen-smuggling-at-the-borders-1.26615 (accessed January 2012).

could react.[24] Thus price mechanism provides a costless way of coordinating economic activities.

### 1.2.5 Price control is inefficient for attaining economic welfare goals

Using the law to control the price of goods is not an efficient way of attaining economic welfare goals because it benefits those who do not deserve any assistance as the actual beneficiaries who deserve a helping hand cannot be targeted due to the fact that they consist of only a small minority. For example price control on cooking oil makes cooking oil in the domestic market being sold at a relatively low price compared to the market price, resulting in most consumers taking the present price for granted. Cooking oil sold in plastic packets at RM2.50 per kg is meant for those in the low socio-economic group, while the middle and high-income consumers are supposed to buy cooking oil in plastic bottles at RM3.60 per kg from supermarkets. However many failed to comprehend that the lower priced cooking oil was meant for domestic household, particularly the low socio-economic group and rural population and thus the goal of attaining economic welfare is not achieved.[25]

## 1.3 Research Questions

As such, this research is aimed to determine the following questions:-

---

[24] Hafiz Nor Shams, "[1623] Of Price And Supply Control In Malaysia," The _Earthinc Reasonably Libertarian Blog, Posted on April 19, 2008, http://maddruid.com/?p=1629 (accessed August 30, 2009).

[25] Hanim Adnan, "Cooking Oil Subsidy Should Only Be For The Needy," The Star Online, February 16, 2010, http://biz.thestar.com.my/news/story.asp?file=/2010/2/16/business/5681792&sec=business (accessed February 20, 2010).

1.3.1 Why does the government use the price control mechanism to control the price of goods?

1.3.2 How does the government use the price control mechanism to control the price of goods?

1.3.3 What are the legal issues associated with controlling the prices of goods ?

**1.4 Research Objectives**

The objectives of the research are:

1.4.1 to examine the law governing the price control of goods in Malaysia;

1.4.2 to explore the legal issues associated with the existing price control legislation;

1.4.3 To propose suggestions and recommendations for improvement in this area of law.

**1.5 Terminology**

i. **Study** – means "research i.e a systematic study or investigation of existing facts or knowledge related to any matter undertaken with the object of finding some truth or reality and legal research is a systematic study of legal rules, principles, concepts, theories, doctrines, decided cases, legal institutions, legal problems, issues or questions."[26]

[26] Anwarul Yaqin, (2007). *Legal Research and Writing (* Malaysia : Malayan Law Journal Sdn Bhd., 2007), 3.

ii. **Price Control and Anti Profiteering Act 2011(Act 723)** – "An Act to control prices of goods and charges for services and to prohibit profiteering and to provide for matters connected therewith or incidental thereto."

iii. **Anti -** against[27]

iv. **Profiteering–"**making unreasonably high profit."[28]

v. **Price control** - governmental impositions of maximum or minimum or fixed prices on goods.[29]

vi. **Controlling** - To adjust to a requirement; regulate[30]

vii. **Goods** – "means property of every kind, whether tangible or intangible, whether movable or immovable, but excludes money and choses-in-action."[31]

## 1.6 Research Methodology

### 1.6.1 Introduction

This chapter describes the process that has been adopted throughout the study as well as its methodology. In Section 1.6.2 this study reveals the research design undertaken

[27] Dictionary.com, http://dictionary.reference.com/browse/anti (accessed August 30, 2009).

[28] Section 14 of the Price Control and Anti Profiteering Act 2011 (Act 723).

[29] Section 2 of the Price Control and Anti Profiteering Act 2011 (Act 723) .

[30] Dictionary.com, http://dictionary.reference.com/browse/anti (accessed August 30, 2009).

[31] Section 2 of the Price Control and Anti Profiteering Act 2011(Act 723).

to achieve the set objectives of the study. Section 1.6.3 proceeds to explain the research methods which have been engaged to carry out the research. Section 1.6.4 illustrates on the sources of data on which this study is based. Sections 1.6.5 and 1.6.6 explain the scope and limitation of this research.

### 1.6.2 Research Design

In the academic world research in general means "a systematic study of existing facts related to any matter which is undertaken with the object of finding some truth" whereas legal research on the other hand usually refers to "any systematic study of legal rules, principles, concepts, theories, doctrines, decided cases, legal institutions, legal problems, issues or questions or a combination of some or all of them which is undertaken by various groups for a variety of reasons."[32]

According to Mahdi Zahraa legal research is a "fresh, diligent, systematic inquiry or investigation of the factual data and/or theoretical concepts of the rules and principles of a particular legal issue in an attempt to discover, revise or improve the relevant concepts, theories, principles and application."[33]

The objectives of this research are to examine the law governing the price control of goods in Malaysia, to explore the legal issues associated with the existing price control legislation, and to propose suggestions and recommendations for improvement in this area of law. The objectives of this research can be achieved by systematically studying the price control legislation in Malaysia in particular the Price Control and

[32] Anwarul Yaqin, *Legal Research And Writing (* Malaysia : Malayan Law Journal Sdn Bhd., 2007), 3.

[33] Mahdi Zahraa, *Research Methods For Law Postgraduate Overseas Students (*Malaysia : Stillglow Sdn. Bhd. Univision Press, 1998), 2.

Anti Profiteering Act 2011 (Act 723) and its predecessor the Price Control Act 1946 (Act 121) and their usage in curbing the drastic increase in the price of goods in Malaysia. Additionally relevant legal and economics concepts, theories and doctrines on price control and their applications will be examined in order to answer pertinent questions regarding the use of price control by the government to curb a drastic increase in the price of goods. Furthermore, interviews were conducted with the officers of the Department of Domestic Trade, Cooperative and Consumerism, Alor Setar, Kedah to seek information on how the government uses the price control mechanism to control the price of goods.

### 1.6.3 Research Methods

This research involves the use of more than one approaches and will be based on the following methods:

#### 1.6.3.1 Descriptive Study

Descriptive approach seeks to find out what happened. The goal of descriptive legal research is to describe facts, situations or events as they are seen or perceived by the researcher. It is to state in a systematic way what has happened.[34]

In this research events that had occurred in the past in different jurisdictions are described to tell what happened when price control was used to regulate the production and distribution of goods. Apart from that this study also explained the legal and administrative mechanism which had been designed in Malaysia to ensure

[34] Anwarul Yaqin, *Legal Research And Writing (* Malaysia : Malayan Law Journal Sdn Bhd., 2007), 15.

that goods are made available to the public at affordable prices. The legal and administrative mechanism is explained by describing the provisions under the repealed Price Control Act 1946 (Act 121) and the Price Control and Anti Profiteering Act 2011 (Act 723) which replaces the Price Control Act 1946 (Act 121).

The descriptive approach is appropriate in answering the questions why the government still uses the price control mechanism to control the price of goods when there are many criticisms of it. Using this approach, facts, situations and events are described in a systematic way to come to a plausible explanation of the reasons for the failure of the price control mechanism in the past.

#### 1.6.3.2 Explanatory Study

An explanatory approach seeks to tell why or how something happened. The goal of an explanatory approach is to answer the "why and how questions".[35] This study seeks to explain why the need arose to enact the Price Control Act 1946 (Act 121), how the price control mechanism is used to control the shortages in the supply of goods, why it has failed to carry out the function for which it was designed to do, why the Price Control Act 1946 (Act 121) was found to be inadequate and is now repealed and why there is a need to enact the new Price Control and Anti Profiteering 2011 (Act 723).

This approach together with the historical approach is an appropriate method to explain the historical development of the Price Control Act 1946 (Act 121) and the Price Control and Anti Profiteering Act 2011 (Act 723). Thus, this approach is

[35] ibid, 15-16.

appropriate in achieving objective 1.4.1 and 1.4.2 (to examine the law governing the price control of goods in Malaysia and to explore the legal issues associated with the existing price control legislation).

#### 1.6.3.3 Analytical and Critical Study

Analytical approach involves a "careful examination and evaluation of an issue in order to understand or explain it or draw inferences and conclusions from it"[36] whereas by using a critical approach the researcher "examines and judges things carefully, points to the inadequacies, drawbacks or disadvantages, expresses his or her own opinion and approves or disapproves something on some rational basis."[37]

The society is facing new challenges every day and the law confronts new problems daily. For example, in Malaysia itself, the existing law is inadequate and inappropriate to deal with the problem of shortages of goods. Thus this study seeks to carefully analyse, examine and evaluate the nature, purpose and adequacy of the law in order to understand or explain it or draw inferences and conclusions from it. This study involves an examination of rules, principles, cases, concepts and theories on price control. This approach is also appropriate in achieving objective 1.4.2 (to explore the legal issues associated with the existing price control legislation) and analyse the provisions of the price control legislation. The inadequacies, drawbacks or disadvantages of the rules, principles, cases, concepts and theories on price control

[36] ibid, 16-17.

[37] ibid, 16-17.

will be expressed rationally and suggestions will be introduced to pave a way for changes to achieve the desired result.

### 1.6.3.4 Historical Study

Where the purpose of a research or part of it is to find out the origin or trace the development of anything that has some relationship to law, the approach is termed as historical ie a study of the past. Historical approach involves an objective study of the past facts, events or institutions. The purpose of such approach may be to find out how and why certain rules, principles or institutions have come to take their present form.[38] Historical approach "enables a researcher to understand the historical development of law in any specific area in order to assess the utility or adequacy of the law as it exists now or the need, if any, for change and reform."[39]

A part of this research is to study the past facts and events pertaining to price control within Malaysia the purpose of which is to find out the origin or trace the development of the price control law. In addition the research also seeks to find out for what objective the price control law was enacted by Parliament and how and why the law on price control has come to take its present form. This approach is also appropriate in achieving objective 1.4.1 (to examine the law governing the price control of goods in Malaysia) because it enables the historical development of the price control law to be understood in order to assess the utility or adequacy of the law as it exists now or the need, if any, for change or reform.

[38] ibid, 17-18.

[39] ibid, 17-18.

### 1.6.3.5 Comparative Study

"The objective of comparative research may either be to present information, existing in two different factual contexts or to examine merits and demerits in a comparative perspective, or to compare and contrast views, ideas, values, concepts, rules, principles, theories or any other condition that has some bearing on law and its institutions."[40]

A part of this research will be dedicated towards examining the provisions of the repealed Price Control Act 1946 (Act 121) and comparing them with the provisions of the Price Control and Anti Profiteering Act 2011 (Act 723). The purpose is to bring about advancement in law so that it may work more effectively and successfully.

### 1.6.4 Data Collection

This research constitutes a library based study whereby the materials used are available in libraries, archives and other databases. The materials used in this research consist of primary and secondary sources. The primary sources that will be used are formal and authoritative records of the law, statutory provisions, subsidiary legislations, reported decisions of courts or tribunals. The secondary sources, on the other hand, consist of books, journals, legal encyclopaedia, digests of cases, indexes, official statistics, relevant documents, newspapers, websites and other library based sources of information.

[40] ibid, 18-19.

In addition, the data gathered also include interviews with the officers of the Department of Domestic Trade, Cooperative and Consumerism, Alor Setar, Kedah. The information obtained from the interviews will help to understand how the government uses the price control mechanism to control the price of goods in Malaysia. The interview method used was face to face and unstructured. The interview questions were open ended and indirect questions to obtain information on the procedures involved in regulating this mechanism.

### 1.6.5 Research Scope

"A study is conducted within a particular context and is limited in its scope. It has specific objectives and a paradigm. A study should not be of a very general nature but should be confined to a particular time period, geographical area, place, people and institution."[41]

This research is conducted to study price control and its relevance on the prices of goods. This research explains why governments around the world have from time immemorial resorted to price control to control the price of goods. By analysing the mechanism of price control this research explains why price control could not actually control the price of goods. This study also compares the Price Control Act 1946 (Act 121) with the recently enacted Price Control and Anti Profiteering Act 2011 (Act 723) in explaining the shortcomings of the Price Control Act 1946 (Act 121) and the reasons for the enactment of the Price Control and Anti Profiteering Act 2011 (Act 723).

---

[41] Anwarul Yaqin, *Legal Research And Writing (* Malaysia : Malayan Law Journal Sdn Bhd., 2007), 49-50.

### 1.6.6 Limitation of Research

Delimitation means the "drawing of boundaries around a study and showing clearly what is and what is not included.[42] This is to enable the readers to know the essential purpose of the research and the limits of the study as determined by the researcher."[43]

In Malaysia, the Price Control Act 1946 (Act 121) was used to provide for the control of prices. It is repealed and replaced by the Price Control and Anti Profiteering Act 2011 (Act 723) which controls prices of goods and charges for services and prohibits profiteering. Price control legislation together with Control of Supplies Act, 1961 are instruments to monitor the price of controlled items. For example in 2008, when price control on chicken, steel and cement was terminated by the government, it maintained control on supply of the said goods and, through licensing, the supply of chicken in the country stabilised.[44] However this research is limited to the study of price control of goods in Malaysia and not the supply control of goods because price is more superior than supply in gauging consumer behavior, for example when we go shopping for goods we tend to look for their prices rather than their supply. Since the study is about price control the relevant legislations which are going to be analysed are the Price Control Act 1946 (Act 121) and its successor the

---

[42] Keith F. Punch, *Introduction To Social Research : Quantitative And Qualitative Approaches (*London : Sage Publications, 1998), 14.

[43] Anwarul Yaqin, *Legal Research And Writing (* Malaysia : Malayan Law Journal Sdn Bhd., 2007), 50.

[44] Bernama. "Retail Licences For Chicken, Steel Bars And Cement To Be Abolished By July 15," The Star Online, June 22, 2010, http://thestar.com.my/news/story.asp?file=/2010/6/22/nation/20100622190734&sec=nation (accessed September 18, 2011).

Price Control and Anti Profiteering Act 2011 (Act 723) and the controlled price which will be studied is the ceiling price as from cases which have been examined traders tend to flout ceiling prices more than floor prices. Furthermore the Price Control Act 1946 (Act 121) only provided for price ceiling and not price floor. This study certainly faces limitations and shortcomings due to the scarcity of literature written by legal scholars pertaining to price control in Malaysia. Thus, most of the literature is obtained from the internet and from newspaper excerpts.

In addition to the above, this research is about the newly enacted Price Control and Anti Profiteering Act 2011 (Act 723). The essential purpose of the research is to explore the differences between the provisions of the repealed Price Control Act 1946 (Act 121) and the Price Control and Anti Profiteering Act 2011 (Act 723) and to explain the reasons for the enactment of the Price Control and Anti Profiteering Act 2011 (Act 723). Since the Price Control and Anti Profiteering Act 2011 (Act 723) is a new Act no court cases have been reported yet although infringement of the Price Control and Anti Profiteering Act 2011 (Act 723) has been reported in the news. As such the measurement of effectiveness of the Price Control and Anti Profiteering Act 2011 (Act 723) as compared to the Price Control Act 1946 (Act 121) is not the purpose of this study.

**1.7 Significance Of Research**

i. This study hopes to recommend and suggest solutions to the Government on how to overcome the issues with respect to the drastic increase in the price of goods.

ii. It is also hoped that consumers will be offered greater value, either by means of lower prices or by providing greater benefits and service that justifies higher prices and that shortages of goods will be eliminated when appropriate policies and legislations have been put in place by the government.

iii. It is further hoped that producers will have the incentive to produce as much as the level they would have produced under free market condition which will in turn guarantee efficient allocation of resources, competitive pricing, innovation and more choices for the consumers, when there is less government intervention in the market.

iv. Lastly it is hoped that when this research is complete it will positively contribute to the body of existing knowledge with respect to price control.

### 1.8 The Organization Of Chapters

In the contextual analysis this study will focus on the application of the price control legislation in Malaysia in controlling the prices of goods. With this in mind, the thesis is arranged as follows :-

**CHAPTER 1** : **INTRODUCTION** – this chapter sets the parameter of ensuing chapters as an interlude for an in depth analysis of the study of the price control mechanism.

**CHAPTER 2** : **LEGAL FRAMEWORK ON PRICE CONTROL IN MALAYSIA** – this chapter discusses the historical background of price control, the theory of price control, consumer protection in Malaysia, the National Consumer Policy and the price control legislations in Malaysia.

**CHAPTER 3** : **FINDINGS** – this chapter provides the answer to the research questions and research objectives raised in Chapter 1.

**CHAPTER 4** : **RECOMMENDATIONS** – this chapter proposes suggestions and recommendations to the Government based on the findings made in Chapter 3 for the improvement of the price control legislation in Malaysia.

# CHAPTER TWO

# LEGAL FRAMEWORK ON PRICE CONTROL IN MALAYSIA

## 2.1 Introduction

Price control is a legislative intervention mechanism which is used by the government to set the price of goods in a market or limit its movement. This attempt of fixing the price is also an attempt to override the market mechanism.[45] The purpose of such a move is usually to pursue certain objectives planned by the government.[46] The government can either impose a maximum price (ceiling price) on goods or services or a minimum price (floor price) without heeding the market forces. To enforce the move, penalties are usually imposed to discourage sellers from flouting the law.[47] For example the Festive Seasons Price Control Scheme in Malaysia which was originally launched under the Price Control Act 1946 (Act 121) (now repealed and replaced by the Price Control and Anti Profiteering Act 2011 (Act 723)) has the objectives of protecting consumers against profiteering by unscrupulous traders, preventing price hikes of daily used goods, making sure that goods were sold at reasonable prices and ascertaining that consumer goods are easily available in the market[48] and the Price

---

[45]Deardorffs' Glossary of International Economics, www-personal.umich.edu/~alandear/glossary/p.html (accessed August 30, 2009).

[46] K. D. Saksena, *Pricing Policy and Price Controls in Developing Countries (* London : Frances Pinter Publishers, 1986), 1.

[47] Emmanuel Tabones, "The Economic Fallacy Of Price Controls," Citizen Economists Blog, December 24, 2008, http://www.citizeneconomists.com (accessed August 30, 2009).

[48] Portal Rasmi Kementerian Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan, "Senarai Harga Barang Kawalan," http://www.kpdnkk.gov.my/web/guest/pengguna/penguatkuasaan/brg-kawalan/harga-brg-kawalan (accessed October 10, 2011).

Control and Anti Profiteering Act 2011 (Act 723) provides for a penalty in that it makes it an offence to sell or purchase price controlled goods otherwise than in accordance with the prices determined by the Controller.[49]

Thus, this chapter discusses the historical background of price control since the very beginning of organised society where rulers and their officials have attempted to control their economies. It raises the unpleasant question of why, despite repeated failures, governments, with the apparent support of many of their citizens keep trying to impose price control on goods. This chapter will also focus on the theory of price control to show the consequences of imposing price control over or below the market price[50]. Since the price control legislation is a consumer protection law it is imperative that consumer protection be also considered in this research and thus this chapter entails a detailed discussion of consumer protection in Malaysia as well. The discussion in this Chapter is also dedicated to comparing the Price Control Act 1946 (Act 121) with the provisions of the Price Control and Anti Profiteering Act 2011 (Act 723) which replaces the Price Control Act 1946 (Act 121).

## 2.2 The Historical Background Of Price Control

Governments had attempted to control wages and prices through law since the very beginning of organized society but they had always failed to achieve their purposes.

---

[49] Sections 11 [and 12(1)] of the Price Control and Anti Profiteering Act 2011 (Act 723) provides that any person who sells [or purchases]….. any price controlled goods …….. otherwise than in accordance with the prices…….determined by the Controller ……. commits an offence.

[50]The price at which buyers and sellers agree to trade in an open market at a particular time.

Some four thousand years ago in Babylon, the Code of Hammurabi[51], the first of the great written law codes, imposed a rigid system of controls over wages and prices. The controls were explicitly recorded. A few of the Articles of the Code (the complete statutes on wages and prices) is appended below :

257.”If a man hire a field-laborer, he shall give him eight gur of corn per annum.”

258.”If a man hire a herdsman, he shall give him six gur of corn per annum.”

261.”If a man hire a pasturer for cattle and sheep, he shall give him eight gur of corn per annum.”

268.”If a man has hired an ox for threshing, twenty qa of corn is its hire.”

269.”If an ass has been hired for threshing, ten qa of corn is its hire.”

These controls may have been the reason which blanketed Babylonian production and distribution, and hampered economic progress in the empire, possibly for many centuries.[52]During the period when Hammurabi and his successors reigned historical records showed that there was a decline in trade. This was partly due to wage and price controls and partly due to the influence of a strong central government, which intervened in most economic affairs in general. W.F. Leemans describes the recession as follows: “Prominent and wealthy tamkaru (merchants) were no longer found in Hammurabi's reign. Moreover, only a few tamkaru are known from Hammurabi's time

[51]The Code of Hammurabi is a well-preserved Babylonian law code, dating back to about 1772 BC. It is one of the oldest deciphered writings of significant length in the world. The sixth Babylonian king, Hammurabi, enacted the code. The Code consists of 282 laws. Nearly one-half of the Code deals with matters of contract, establishing for example the wages to be paid to an ox driver or a surgeon.

[52] Irving S. Old, 1952, as cited in Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009), 12.

and afterwards … all … evidently minor tradesmen and money-lenders."[53]"In other words, it appears that the very people who were supposed to benefit from the Hammurabi's wage and price restrictions were driven out of the market by those and other statutes but the number of administrative documents, which today we would call bureaucratic paperwork, simultaneously increases at a precipitous rate."[54]

The professor of ancient history at the University of Cambridge, M.I. Finley, commented in his recent study, The Ancient Economy, that "just price was a medieval[55] concept, not an ancient[56] one, and this interference by the state, altogether exceptional in its permanence, was a sufficient measure of the urgency of the food problem. And when this and all the other legislative measures failed, the state, as a last recourse, appointed officials called sitonai, corn-buyers, who sought supplies wherever they could find them, raised public subscriptions for the necessary funds, introduced price reductions and rationing.[57] The result was as might be expected: failure. Despite the penalty of death, which the harassed government did not hesitate to inflict, the laws controlling the grain trade were almost impossible to enforce."[58]

The most famous and the most extensive attempt to control prices and wages occurred in the reign of the Roman Emperor Diocletian. Prices of commodities and wages of

[53] W.F. Leemans, 1950, as cited in Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009), 12.

[54] ibid.

[55]The Middle Ages i.e the period of European historyencompassing the 5th to the 15th centuries; and normally is marked from the collapse of the Western Roman Empire until the beginning of the Renaissance and the Age of Discovery, the periods which ushered in the Modern Era.

[56] The historical period before the fall of the Western Roman Empire (A.D. 476).

[57] Finley, M.I. (1973), as cited in Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009), 16.

[58] Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009), 16.

labourers reached unprecedented heights right after Diocletian assumed the throne in AD 284. Diocletian blamed the greed of merchants and speculators entirely for the inflation. To prevent inflation from occurring Diocletion fixed the prices of goods and services. The essence of the Edict[59] (an announcement of a law) could be summarised in the following words : " In his effort to bring prices down to what he considered a normal level, Diocletion did not content himself with half measures as we are trying in our attempts to suppress combinations in restraint of trade, but he boldly fixed the maximum prices at which beef, grain, eggs, clothing and other articles could be sold and prescribed the penalty of death for anyone who disposed of his wares at a higher figure." Thousands of people throughout the Empire were put to death before this futile law was finally repealed.[60]

Price control did not stop in the ancient world. With the outbreak of the First World War in 1914 the most widespread and extensive system of economic controls in history began to go into effect. Before the war was over all the major industrialized nations has enacted regulations governing production, distribution, profits, prices and in many cases, wages. After the war, one of the most respected journals in the world, The Economist, of London commented on the legacy of controls in Great Britain. They said that price was less important than supply and that if the government prevented prices from rising by artificial interference it might cut off the supplies that high prices would attract. The intervention of the government has resulted in visible

[59] Edict on Maximum Prices (301 A.D) by Roman Emperor Diocletian. It attempted to reform the Roman system of taxation and to stabilize the coinage.

[60] Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009), 23.

failures as no single branch of the trade which the government had touched showed any success.[61]

From August 15 1971 through April 30, 1974, government officials in the United States attempted to suppress the rise in prices by imposing varying degrees of controls. During this period, the Wholesale Price Index nevertheless increased at an annual rate of 12 percent and the Consumer Price Index increased at an annual rate of 7.2 percent. In contrast, during the twelve months before the start of the controls the Wholesale Price Index only increased at 3.3 percent per annum and the Consumer Price Index increased at an annual rate of 4.3 percent. For consumers, it is the inflation in food prices that is the most immediately painful. But food prices are the hardest for a government to control. Housewives' demonstrations against the high cost of beef in early 1973 induced the White House to put ceilings on meat prices. Some stock raisers held their animals off the market to wait out the controls. Others exported their cattle mainly to Canada. The morals of the story are firstly, a country cannot maintain price controls unless it is also prepared to curb exports, which in turn damages foreign markets and violates trade agreements; secondly controls create shortages. The disappearance of beef from the stores turned customers toward fish and poultry in such numbers that those were soon in shortage as well. At that point a lot of people began to fear a looming nationwide shortage of food in general. To head off a public panic, the administration was forced to drop the controls.[62]

---

[61] ibid, 54.

[62] Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009), 112.

Over the period of 1972-1974 the government of the United Kingdom operated a wage and price stabilization program which was almost identical to that in the United States one year earlier and which was largely copied from it. Conservative Party Prime Minister Edward Heath introduced this program after the inflationary monetary expansion earlier in his government and learned a lesson which even Mr. Heath now acknowledges. The policy was a major failure; it failed to stabilize prices and led only to a pressure from trade unions toward higher pay settlements which eventually toppled the government in 1974.[63]

Controls are tolerable only for very short periods, in emergencies. The Carter administration (1877-1981) knew that working down the inflation was going to take a long, long time. It relied mainly on exhortation, persuasion and increasingly on cuts in federal spending. That was not very dramatic and did not produce quick results but it was better than the alternative of price controls.[64]

It is wise to delve into the experience of countries like the United States and the United Kingdom which had implemented price controls before. They themselves had a difficulty to define the meaning of profiteering or excessive profit taking. There were criticisms in respect of the obscurity of the standard which was to be used in measuring profiteering. Did high price necessarily mean excessive profit taking? Was it net profit or gross profit to be used as standards in measuring profiteering? In the end the anti profiteering statute was abolished as it did not provide a maintainable standard of guilt and could not inform a defendant in a charge the then reason and

[63] ibid, 114.

[64] Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009), 112.

nature of the charge in executing the standardization of the prices of controlled goods.[65]

## 2.3 The Theory Of Price Control

Theories of price control have been propounded by two eminent writers on price control namely Ludwig Heinrich Edler von Mises[66] and Professor John Kenneth Galbraith.[67] Von Mises demonstrated that any price fixed by an external agency at any level other than the one determined by the free play of market forces will create conditions of excess demand or excess supply. This condition will defeat the purpose of price control and will cause secondary effects which in turn will necessitate the escalation of price controls so as to cover all production and distribution.[68] The theory is based on the assumption that there is an equilibrium price for every commodity in a free market, any substantial deviation from which in order to benefit buyers and sellers would be self defeating as it would not only fail to achieve its purpose but also cause the breakdown of the entire market mechanism and its replacement by another system involving comprehensive state control of all economic activity.[69]

---

[65] Official Website of the Parliament of Malaysia, "The Second Reading of the Price Control and Anti Profiteering Bill 2010 in the Third Meeting of the Third Session of the Twelfth Parliament, http://www.parlimen.gov.my/files/hindex/pdf/DR-13102010.pdf (accessed October 13, 2010).

[66] Ludwig Heinrich Edler von Mises (1881-1973) was an Austrian economist, historian, philosopher, author, and classical liberal who had a significant influence on the modern free-market libertarian movement. Mises was a strong proponent of laissez-faire (An economic theory from the 18th century that is strongly opposed to any government intervention in business affairs); he advocated that the government should not intervene anywhere in the economy.

[67] John Kenneth Galbraith was a Canadian-American economist. He was a leading proponent of 20th-century American liberalism. His books on economic topics were bestsellers from the 1950s through the 2000s and he filled the role of public intellectual from the 1950s to the 1970s on matters of economics.

[68] K. D. Saksena, *Pricing Policy and Price Controls in Developing Countries (* London : Frances Pinter Publishers, 1986), 35.

[69] ibid.

The other theory is propounded by Professor Galbraith in his book entitled A Theory of Price Control[70]which explained how price control actually operated during the war period and how it could be made workable and used as an effective instrument of resource mobilization and price stabilization during wartime. He concluded that that excess demand cannot be allowed to exceed the additional output to be produced and this can be realized by increasing production and restricting demand by rationing or other suitable measures.[71]

However according to Saksena[72]the theories propounded by the two writers are not actually theories but interpretations of the f price control phenomenon in the light of existing price theory. On the one hand Von Mises concluded that price control is bound to be self defeating and will ultimately convert a capitalist system into a socialist system with total state control and direction of production and distribution in all spheres and on the other hand Galbraith's conclusion is that it can be made to work successfully and achieve its objective under certain conditions.

Saksena was of the opinion that price control is needed because the current market price is considered as unfair to a section of consumers or producers and to be creating certain distortions in the structure of production and relative prices and causing resources misallocation. The prevailing price of commodity may be so high that a large number of consumers who are in great need of it cannot afford to buy it at that

---

[70] J.K Galbraith, Theory of Price Control, 2nd edn, Cambridge, Mass., Harvard University Press, 1980.

[71] K. D. Saksena, *Pricing Policy and Price Controls in Developing Countries (* London : Frances Pinter Publishers, 1986), 40.

[72] ibid, 42-43.

price or so low that a large number of producers find it unprofitable. These high and low prices may need to be regulated in the interests of the economy. Price control is resorted to when in the judgment of the policy makers the price determined by the free play of market forces is either too high or too low. Price control is a declaration of lack of faith in the power of the market mechanism due to several imperfections and disequilibrating factors under dynamic conditions, to allocate scarce economic resources and create a pattern of prices, production and distribution which may be in the best interests of the community and the individual comprising it or consistent with the social and economic philosophy, principle, priorities and programmes adopted and being pursued as principal policy parameters.[73]

However in general, price control may not be a sound economic policy because when prices are controlled the laws of supply and demand are ignored. This will usually lead to shortages or unnecessary surpluses.[74]

---

[73] K. D. Saksena, *Pricing Policy and Price Controls in Developing Countries (* London : Frances Pinter Publishers, 1986), 210.

[74] Emmanuel Tabones, "The Economic Fallacy Of Price Controls," Citizen Economists Blog, December 24, 2008, http://www.citizeneconomists.com (accessed August 30, 2009).

### 2.3.1 Price ceiling


**Figure 1 : The demand and supply curve when a ceiling price is imposed on goods.**

The graph above shows the demand and supply curve when a ceiling price is imposed on goods.[75]The vertical axis represents the price of the goods, while the horizontal axis represents the quantity of the goods. The "S" line represents the supply curve i.e. the quantity that producers are willing to supply at any given price. From the graph, it can be seen that as the price goes up, producers are willing to produce and supply more of a good to the market. The "D" line represents the demand curve i.e the amount that consumers are willing to buy at any given price. It can be seen from the graph that as price goes up, people are less willing to consume a particular good, or equivalently, less people are able to afford a particular good. In either case, demand falls as price rises. The prevailing equilibrium price occurs at p* that is the intersection of "S" and "D" at which demand exactly meets supply.

[75] Lawrence Low, "Differences In Hyperinflation: Germany vs. Zimbabwe," Your Portal to the World Blog, March 25, 2009, http://econsguide.blogspot.com/2009/03/differences-in-hyperinflation-germany.html (accessed August 30, 2009).

How does price control cause shortages in the supply of goods? Shortage occurs when prices are set lower (P ceiling) than it should be (P*). Producers will not have the incentive to produce as much as the level they would have produced under free market condition while consumers on the other hand will demand more than what they would have normally done under free market.[76] Thus when the demand for certain goods is more than its supply, a shortage will occur (qd-qs) and therefore the price of the goods will be pushed up.

### 2.3.2 Price floor

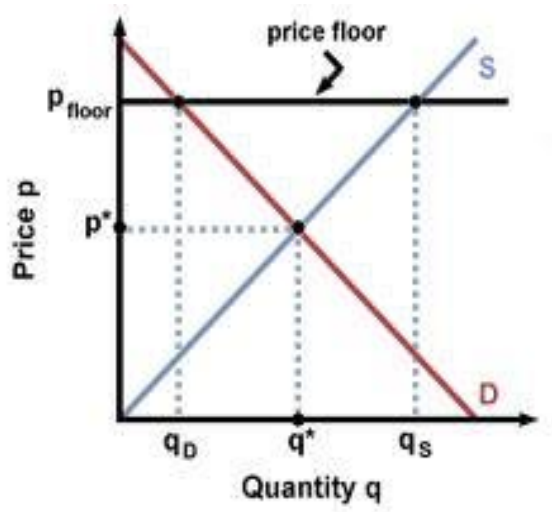


**Figure 2 : The demand and supply curve when a floor price is imposed on goods.**

How does price control cause surpluses in the supply of goods? Base on the above graph[77] surpluses occur when prices are set higher (P floor) than it should be (P*). Consumers find they must now pay a higher price for the same product. As a result,

[76] Hafiz Nor Shams, "[1623] Of Price And Supply Control In Malaysia," The _Earthinc Reasonably Libertarian Blog, Posted on April 19, 2008, http://maddruid.com/?p=1629 (accessed August 30, 2009).

[77] Ismail Saleh, "Kurva Permintaan, Floor Price, dan Ceiling Price," January 20, 2011, http://izmll90.blogspot.com/2011/01/kurva-permintaanfloor-price-dan-ceiling.html (accessed August 30, 2011).

they reduce their purchases or drop out of the market entirely (qd). Meanwhile, suppliers find they are guaranteed a new, higher price than they were charging before. As a result, they increase production (qs). Taken together, these effects mean there is now an excess supply (known as a surplus) of the product in the market (qs-qd).[78]

## 2.4 Consumer Protection In Malaysia

Since the end of British colonial rule, high priority to consumer welfare and protection has been given by the Malaysian government to its citizens as part of its national development agenda. In the early years of independence agriculture was the basis of Malaysia's economy. The poor made up a large number of the population, i.e about seventy per cent and they lived in rural areas. Therefore consumer welfare at that time focused on providing basic needs such as shelter, food, access to water, sanitation, health and education. The need to control price and inflation was reflected in early consumer protection laws such as The Price Control Act 1946 (Act 121) and the Control of Supplies Act 1961 to ensure access to the bare necessities.[79]

The modernisation programme was carried out in the 1970s by the Malaysian government. This programme was accompanied by capital intensive economic development. This development pattern gave birth to a new breed of consumers who were urban-based and middle class. These urbanized and middle class people had increased incomes. Consequently there was a corresponding and dramatic increase in the consumption of goods and services. As a result new grounds and situations in

---

[78] Wikipedia the Free Encyclopaedia, "Price Floor," http://en.wikipedia.org/wiki/Price_floor (accessed August 30, 2009).

[79] Josie M. Fernandez, "Protecting Consumers," The Malaysian Bar Website, August 15, 2007, http://www.malaysianbar.org.my/echoes_of_the_past/protecting_consumers.html (accessed October 25, 2011).

businesses and pattern of consumption where established norms and standards for goods and services were missing. Realizing this, the government took several measures to protect consumers such as introducing consumer protection statutes, enhancing institutional capacity to ensure enforcement of consumer protection laws, and acknowledging the importance of the United Nations Guidelines for Consumer Protection 1985. However, the pinnacle of it all was the creation of the Ministry of Domestic Trade and Consumer Affairs or MDTCA (now known as The Ministry of Domestic Trade, Cooperatives and Consumerism or MDTCC) in 1990 that gave a major boost to consumer protection and welfare in Malaysia. With the birth of a ministry which was established to protect consumers, more human and financial resources were made available to improve consumer welfare and protection in the globalization era.[80]

### 2.4.1 The development in consumer protection

Some of the milestones in the development of consumer protection and welfare in Malaysia in the last 50 years include the enactments of consumer protection laws, consumer policy, redressal mechanism, governance, ethics and self-regulation, consumer rights, consumer education and consumer organization. This development will be discussed in detail below:-

[80] ibid.

**(a)** ***Consumer protection laws***

Some consumer protection laws such as the Price Control Act 1946 (Act 121) and the Medicines Act 1956 were introduced by the colonial government before independence. Since achieving independence, the government has recognized the need for specific enactments to provide better protection to consumers. Today, there are more than 30 statutes that have elements of consumer protection incorporated into them. Some of these statutes such as the Control of Supplies Act 1961, Hire Purchase Act 1967, Trade Descriptions Act 1972 and the Direct Sales Act 1997 are enforced by the MDTCC.

**(b)** ***National Consumer Policy***

Apart from enacting new laws to protect consumer rights the government also acknowledged that national development policies must integrate with consumer policies to improve quality of life. The National Consumer Policy (NCP) was launched on the 26$^{th}$ day of July, 2002. The NCP's focus is the formulation of national economic and social policies based on enhancing consumer welfare and raising Malaysians' quality of life.

The National Consumer Policy aims to promote a balance of rights and obligations among and between consumers, suppliers/manufacturers and the Government in carrying out their respective roles in promoting sustainable consumption among consumers and suppliers/ manufacturers towards achieving the Country’s vision in securing the prosperity and welfare of the consumers in the era of globalization while preserving the national sovereignty and religious principles.

The National Consumer Policy focuses on the efforts of three parties, namely self-protection among the consumers and the suppliers/manufacturers and the government involvement through increased levels of effective consumer protection. This can be achieved by creating a harmonious environment to promote a balance of rights and responsibilities between consumers, suppliers/manufacturers and the Government to improve consumer laws, trade practices, education, health, public utilities and other related areas.

The Objectives of the National Consumer Policy are as follows:-

**i) Enhance consumer welfare and well-being**. The main objective of the NCP is to improve the welfare and well-being of consumers to become responsible consumers capable of exercising the right of consumers to choose and speak, to enhance the consumers' negotiating power, to assist consumers in obtaining sufficient and correct information and to achieve a balanced trade between consumers and suppliers/ manufacturers.

**ii) Enhance socio-economic well-being of society.** The NCP also aims to establish and ensure the socio-economic well-being of the members of society through responsible trade practices based on the rights and interests of consumers i.e the right to basic needs, the right to choose, the right to obtain information, the right to compensation, the right to safety, the right to voice out opinions, the right to consumer education and the right to live in healthy environment.

**iii) Improve the practice of sustainable consumption.** Another objective of the NCP is to enhance the practice of sustainable use in managing limited resources to ensure the consumers' economic and social wellbeing.

Sustainable use encourages prudent spending in addition to wise and reasonable use of natural resources and basic amenities like water and energy. Sustainable use also preserves the well-being and welfare of the current and future generations of consumers.

In general the NCP ensures the best level of consumer protection, promotes fair trade practices, makes sure that continued consumer education is given a priority by the public and private sectors, intensifies efforts towards sustainable consumption practices and harmonizes the relationship between and among the consumers, suppliers/manufacturers and the Government.

**(c) *Redressal mechanisms***

The government has also established a number of institutional mechanisms for aggrieved consumers to seek redress:

A) The Tribunal for Consumer Claims. This is the most active entity of the Consumer Protection Act 1999. The tribunal receives more than 5,000 claims annually.

B) The Small Claims Court set up in 1987 which restricts claims to a maximum of RM5, 000.00.

C) The industry-initiated Ombudsmen Schemes for Banking and Insurance for example, the Financial Mediation Bureau.

D) The Tribunal for Homebuyers Disputes.

**(d)** ***Governance, ethics and self-regulation***

The government in the last forty years has also emphasized that businesses have a social and moral responsibility to consumers. They have to ensure that consumers obtain fair and safe deals in the marketplace. In addition to the many laws that govern businesses, the government has therefore promoted the practice of self-regulation within the business community through the adoption of codes of practice and ethics for various businesses and professional bodies. They are:

- The Malaysian Business Code of Ethics;
- The Malaysian Communications and Multimedia Content Code;
- The General Consumer Code of Practice for the Communications and Multimedia Industry Malaysia;
- The Direct Selling Association of Malaysia Code of Conduct; and
- The Malaysian Code of Advertising Practice.

**(e)** ***Recognition of consumer rights***

"Malaysia recognizes the eight rights of consumers which are the right to basic needs, the right to safety, the right to information, the right to choose, the right to representation, the right to redress, the right to consumer education and the right to a healthy environment.[81] Malaysia is one of the few countries that celebrate a National

[81] Portal Rasmi Kementerian Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan, "Hak-Hak Pengguna," http://www.kpdnkk.gov.my/web/guest/pengguna/hak-pengguna (accessed March 3, 2012).

Consumer Day. To mark the day, which falls on the 26th day of July, the MDTCC gives awards to effective consumer organizations, school consumer clubs, consumer rights advocates and to fair price companies."[82]

**(f) *Consumer education***

The most effective tool in consumer protection is consumer education. Education helps to develop skills to enable consumers to function as socially-responsible consumers. The programmes for consumer education range from the formal education system to non-formal channels. In the Malaysian school syllabus, consumer-centred topics are incorporated into various subjects. At the tertiary level, consumer law and consumer education are offered as subjects. Non-formal consumer education activities include the establishment of school consumer clubs, seminars, and publications and multimedia material produced by the MDTCC and consumer groups. Seventy per cent of secondary schools have set up consumer clubs.[83]

**(g) *Consumer organizations***

In a newly independent nation, outside of labour issues, citizens need avenues to articulate their concerns about the quality of their daily lives. One of the earliest forms of consumer organising in the country was the establishment of rate-payers' associations in major towns which provided urban services and public amenities. The government recognised it needed to address growing consumer concerns in a fast-urbanising nation. A two-page government circular issued on March 4, 1965 urged all

---

[82] Josie M. Fernandez, "Protecting Consumers," The Malaysian Bar Website, August 15, 2007, http://www.malaysianbar.org.my/echoes_of_the_past/protecting_consumers.html (accessed October 25, 2011).

[83] ibid.

state secretaries to involve district officers to form consumer organisations. This resulted in the formation of the Selangor Consumers Association (1965), the Consumers Association of Penang (1969), and the Federation of Malaysian Consumer Associations (FOMCA) (1973). FOMCA is a national non-governmental organization that is voluntary, non-profit, non-political and civic-oriented. It is the umbrella body of registered consumer associations in Malaysia. FOMCA, founded on the 10th of June 1973, links the activities of consumer associations in Malaysia as well as at the international level and works towards strengthening consumer protection through lobbying, networking, representation, campaigning and education.[84] FOMCA defends the rights and interests of consumer in relation to food, housing, health care, sanitation, public transport, education, public policy, human rights and the environment.[85]Today, there are 25 consumer associations, 14 of which are FOMCA affiliates. The government engages with consumer organisations on policy formulations, consumer education activities and in addressing consumer concerns.[86]

## 2.5 Price Control Legislations In Malaysia

Subsidies and price controls are imposed on a lot of essential items by the government to keep the prices low and affordable especially for the low-income citizens. Prices of those items have been kept below market prices to keep the cost of living low. In Malaysia, legal constraints to product pricing take the form, by and large, of, *inter alia*, price control on 6 items and price control on selected items during festival

---

[84] The Official Website of FOMCA, "FOMCA's Profile," http://www.fomca.org.my/v3/index.php/about-fomca (accessed March 6, 2012).

[85] Portal Rasmi Kerajaan Malaysia, "Consumer Rights," http://www.malaysia.gov.my (accessed October 25, 2011).

[86]Josie M. Fernandez, "Protecting Consumers," The Malaysian Bar Website, August 15, 2007, http://www.malaysianbar.org.my/echoes_of_the_past/protecting_consumers.html (accessed October 25, 2011).

periods only. The 6 items which prices are controlled by the government are white sugar[87], RON 95 petroleum[88], diesel[89], liquefied petroleum gas (LPG)[90], flour[91] and cooking oil[92]. The prices of these goods were controlled under the Price Control Act 1946 (Act 121) (now repealed and replaced by the Price Control and Anti Profiteering Act 2011 (Act 723)).

The Price Control Act 1946 (Act 121) was one of the earliest consumer protection legislation which was enacted by the colonial government in Malaya to control prices and inflation, to avoid economic hardships after World War II and to ensure access to the bare necessities. It was the British who introduced the Price Control Act in 1946 (Act 121) after the World War 2 during the British Military Administration. It is understood that the reason was to curb excessive profiteering on basic necessities such as food item especially during the post-war period when there was scarcity of food.

The government needs to control the prices of consumer goods especially daily used goods by using legislations to prevent traders from arbitrarily increasing the prices of those goods. If the prices of the said goods are determined by the market it is feared that the people of low or moderate income cannot afford to buy the goods.[93]

---

[87]RM2.30 per kg for coarse white sugar and RM2.40 per kg for granulated white sugar (however the price of sugar has been increased to RM2.50 per kg since the announcement made by the Prime Minister in the Budget 2013).

[88] RM1.90 per litre.

[89] RM1.80 per litre.

[90] RM1.90 per kg.

[91] RM1.35 per kg.

[92] Pure olein in plastic bottle RM3.30 per kg, mixed olein in plastic bottle RM3.60 per kg, plastic package RM2.50 per kg.

[93] Ahmad Ahrazzuddin bin Ahmad Hamdan and Kelyn bin Bolhassan @ Haliward. Assistant Directors of MDTCC Kedah. Interview with author. Phone interview. Alor Star , Kedah, September 22, 2013.

The Price Control Act 1946 (Act 121) was first enacted as the Price Control Ordinance No. 26 of 1946 and came into force in Peninsular Malaysia on 1 October, 1946. Thereafter it experienced no fewer than 40 amendments and was subsequently revised in 1973 vide Act 121 which took effect from 17 September 1973. The Price Control Act 1946 (Act 121) was passed to provide for the control of prices. It is now replaced by the Price Control and Anti Profiteering Act 2011 (Act 723) which came into force on 1st April 2011.

### 2.5.1 The Price Control and Anti Profiteering Act 2011 (Act 723)

The Price Control Act 1946 (Act 121) remained in force until it was repealed by the Price Control and Anti Profiteering Act 2011 (Act 723).[94] However, **Section 63(3)** of the Price Control and Anti Profiteering Act 2011 (Act 723) provided that "all regulations, rules and orders made under the Price Control Act 1946 (Act 121) shall continue to be in operation and have effect as if they had been made under the Price Control and Anti Profiteering Act 2011 (Act 723) until replaced or revoked by any regulations, rules and orders made under the Price Control and Anti Profiteering Act 2011 (Act 723)."

#### 2.5.1.1 The Background

The Price Control and Anti Profiteering Act 2011 (Act 723) is "an Act to control prices of goods and charges for services, to prohibit profiteering and to provide for matters connected therewith or incidental thereto." The Bill was introduced for the

[94] Fong Chan Onn, "Caught In Middle Income Trap," The Star Online, February 7, 2010, http://thestar.com.my/news/story.asp?file=/2010/2/7/focus/5614419&sec=focus (accessed October 30, 2011).

second reading during the Third Meeting of the Third Session of the Twelfth Parliament on 13 October 2010 by the then Minister of Domestic Trade, Cooperatives and Consumerism, Dato Sri Ismail Sabri bin Yaakob. The purpose of the Price Control and Anti Profiteering Act 2011 (Act 723) is to "enable the Government to determine prices of goods or charges for services and at the same time to curb profiteering activities thereby protecting the interest of consumers."[95] The Bill was based on the Australian Trade Practices Act 1974 (now the Competition and Consumer Act 2010) which also has provisions on anti profiteering. However the Australian government only uses the mechanism of anti profiteering on goods when there is a change in the system of taxation by giving power to the Australian Competition and Consumer Commission[96] to monitor the prices of those goods for a certain period before and after the implementation of the said Australian Trade Practices Act 1974 (now the Competition and Consumer Act 2010).[97]

The New Price Control and Anti Profiteering Act 2011 (Act 723) took effect on the 1st of April 2011 and under the new legislation, the Ministry of Domestic Trade, Cooperatives and Consumerism will be able to prevent unreasonable profiteering by traders which they could not do before as there was no law that enable the Ministry of Domestic Trade, Cooperatives and Consumerism to take necessary actions against

[95]Official Website of the Parliament of Malaysia, "The Second Reading of the Price Control and Anti Profiteering Bill 2010 in the Third Meeting of the Third Session of the Twelfth Parliament, http://www.parlimen.gov.my/files/hindex/pdf/DR-13102010.pdf (accessed October 13, 2010).

[96]The ACCC is an independent statutory authority formed in 1995 to administer the Trade Practices Act 1974 (now the Competition and Consumer Act 2010) and other Acts. The commission has seven members, including the chair and two deputy chairs all of whom are full-time. Members of the ACCC are appointed by the Governor-General for terms of up to five years. Appointments are made after the majority of state and territory jurisdictions support the selection.

[97] Official Website of the Parliament of Malaysia, "The Second Reading of the Price Control and Anti Profiteering Bill 2010 in the Third Meeting of the Third Session of the Twelfth Parliament, http://www.parlimen.gov.my/files/hindex/pdf/DR-13102010.pdf (accessed October 13, 2010).

traders who mark up their prices arbitrarily and irresponsibly. Although the Price Control Act 1946 (Act 121) existed before this to control the prices of goods, the Act was limited in its application in that the government had to fix a maximum price for a certain good and had to gazette the price first before it became a controlled price. Since there were a multitude of goods and services in the market it was impossible and impractical for the government to gazette all the goods for which the prices have increased dramatically.

The Minister explained that the price increase phenomenon which is occurring in Malaysia is caused by economic factors such as the demand and supply of goods and the increase in suppliers' cost, among others. However he further said that there also exists an excessive and illogical increase in the prices of goods due to profiteering by irresponsible traders and this phenomenon has negatively affected the consumers. In 2009 there were 2885 reports from consumers regarding prices of goods and services and in 2010 until the month of October a sum of 2420 reports regarding price increase have been recorded by the Ministry. Thus as a Ministry which is made responsible for consumer protection, those reports have been analysed and studied and the result was the birth of the Price Control and Anti-Profiteering Bill 2010. The Minister also explained that the 9th Malaysia Plan has expressed the importance of the country's development and strong economic growth by maintaining a low inflation rate and stable prices of goods in order to increase the standard of living of Malaysians. This can be achieved by monitoring the movement of prices, avoiding excessive increase in the prices of goods and preventing unhealthy trading practices.[98]

---

[98] Official Website of the Parliament of Malaysia, "The Second Reading of the Price Control and Anti Profiteering Bill 2010 in the Third Meeting of the Third Session of the Twelfth Parliament, http://www.parlimen.gov.my/files/hindex/pdf/DR-13102010.pdf (accessed October 13, 2010).

The Price Control and Anti-Profiteering Act 2011(Act 723) reforms the law on price control and enacts provisions relating to prohibition on profiteering. The Price Control and Anti-Profiteering Act 2011 (Act 723) was the Price Control Act 1946 (Act 121) which was amended to include anti-profiteering elements ahead of the implementation of the Goods and Service Tax (GST) as the Government fears that businesses may raise prices excessively after GST is implemented[99]and knowing how businesses work, a tax being imposed would mean that prices would increase. So assuming that a bottle of mineral water costs RM1.00 including sales tax, and GST amounts to 2%, maybe a price hike of 2% is acceptable but if the price was increased by 10%, the 8% profit increase cannot be justified.[100]

The Price Control and Anti Profiteering Act 2011 (Act 723) would also protect the appropriate pricing of non-controlled items such as food and beverages. An example of excessive profiteering is, when a 'mamak' restaurant marks up its price for fried noodle to RM15.00 to make it the same as the one charged by hotels. This is considered as excessive profiteering in the sense that there are big service differences at both places. Where most hotel restaurants provide air-conditioning, free Wi-Fi, better quality and standard of food and cozy ambiance which customers are willing to pay for the extra services, 'mamak' restaurants only provide basic food outlet facilities, thus making it inappropriate to price their dishes the same as those in hotels.[101] The government will take into consideration factors such as the quality of

---

[99] Jeeva Arulampalam, "The Competition Act and Anti-Profiteering Act to Change the Way Business is Conducted," The Star Online, April 23, 2011, http://biz.thestar.com.my/news/story.asp?file=/2011/4/23/business/8515215&sec=business (accessed September 18, 2011).

[100] ibid.

[101] Salena Pail, "Price Control And Anti-Profiteering Act Takes Effect," The Borneo Post, April 2, 2011, http://www.theborneopost.com/2011/04/02/price-control-and-anti-profiteering-act-takes-effect/ (accessed September 18, 2011).

the business premises, the content of the product, the packaging and such other relevant factors in determining whether prices are inappropriate or not. Other examples of profiteering would be like increasing the price of face masks excessively during an epidemic (for example during the recent H1N1 outbreak) and selling iced water for RM1.00.[102]

## 2.6 Examining The Price Control And Anti Profiteering Act 2011 (Act 723)

The Price Control and Anti Profiteering Act 2011(Act 723) is divided into 8 parts and has a total number of 63 sections compared to the Price Control Act 1946 (Act 121) which only had 30 sections. **Section 1**[103], **Section 2**[104]and **Section 3**[105] of the Price Control and Anti Profiteering Act 2011 (Act 723) are under **Part I** which is the Preliminary Part.

Unlike the Price Control Act 1946 (Act 121), the Price Control and Anti Profiteering Act 2011 (Act 723) clearly defines the meaning of "this Act" to include "any subsidiary legislation made under this Act."[106] This is in line with the decision of Richard Malanjum JC (as he then was) in the case of ***Liew Jee Chin v. Public Prosecutor***[107] where he held that "where a statute gives power to an authority to make regulations, a breach of the regulations so made is an offence against the provision of

[102] Tommy Lee, "Price Control Act Goes Into Effect," The Star Online, April 1, 2011, http://thestar.com.my/news/story.asp?file=/2011/4/1/nation/8393045&sec=nation (accessed September 18, 2011).

[103]Short title and commencement.

[104]Interpretation.

[105]Appointment of Price Controller, Deputy Price Controller, Assistant Price Controller etc.

[106] Section 2 of the Price Control and Anti Profiteering Act 2011 (Act 723).

[107][1992] 1 LNS 12.

the statute.” Accordingly any subsidiary legislations made under the parent Act “should be read as though it is a provision in the Act itself.”“Consequently, in the event of any breach of any of the provisions of the subsidiary legislations, it is an offence against or a failure to comply with the provisions of the Act itself and thereby punishable under the Act.”

Additionally, the meaning of “goods” is widened to include “property of every kind, whether tangible or intangible, whether moveable or immovable”, but “excludes money and choses-in-action.” While the Price Control Act 1946 (Act 121) interpreted “price controlled goods” to include only “goods in respect of which maximum prices have been fixed”[108], the Price Control and Anti Profiteering Act 2011 (Act 723) on the other hand extends the meaning of price controlled goods to incorporate the goods in respect of which “maximum or minimum or fixed prices have been determined by the Price Controller.”[109] The word “charge” which was not mentioned in the Price Control Act 1946 (Act 121) is added into the Price Control and Anti Profiteering Act 2011 (Act 723) to mean any “amount of money or any form of consideration given in exchange for any services.” The Price Control and Anti Profiteering Act 2011 (Act 723) also takes into account the electronic era in which we are presently living by incorporating the word “electronic” which carries the meaning “the technology of utilizing electrical, optical, magnetic, electromagnetic, biometric, photonic or other similar technology.” The word “price” which is defined as “any amount of money or any form of consideration given in exchange for any goods” replaced the definition of maximum price in the Price Control Act 1946 (Act 121). The Price Control and Anti

[108] Section 2 of the Price Control Act 1946 (Act 121).

[109] Section 2 of the Price Control and Anti Profiteering Act 2011 (Act 723).

Profiteering Act 2011 (Act 723) also defined "supply" to mean "any supply by whatever means including through electronic transactions and in relation to goods supply" includes "resupply by way of sale, exchange, lease, hire or hire purchase of the goods and in relation to services supply means the provision by way of sale, grant or conferment of the services." Other definitions which are added are "Minister" which carries the meaning "the Minister charged with the responsibility for domestic trade and consumer affairs", "authorized officer" which means "any public officer authorized under S**ection 3(6)"**[110], "Controller", "Deputy Controller" and "Assistant Controller" are "the persons appointed under **Section 3"**[111], "service" means "anything done including the granting, assignment or surrender of any right or the making available of any facility or advantage, but excludes supply of goods or money", "charge-controlled services" means "the services in respect of which maximum or minimum or fixed charges have been determined under **Section 5"**[112], "premises" is expanded to include "any place, stationary or otherwise, established or set up by any person, whether such place is with or without enclosure, and includes vehicles, aircrafts, ships and any other vessel."

**Part II** comprises **Section 4** until **Section 10** and provides for the determination of prices and charges. **Section 4**[113]states that "the Controller may, with the approval of the Minister, by order published in the Gazette, determine the maximum, minimum or

[110] Section 3(6) provides that the Minister may authorize any public officer to exercise all or any of the powers under this Act or any regulations made under this Act.

[111] Section 3(1) provides that the Minister may appoint, from among public officers, a Price Controller, such number of Deputy Price Controllers and such number of Assistant Price Controllers and other Officers as may be necessary for the purposes of this Act.

[112] Section 5 provides that the Controller may, with the approval of the Minister, by order published in the Gazette, determine the maximum, minimum or fixed charges for any services, any particular class or classes of services and any unit or quantity of any services.

[113]Power of the Controller to determine prices of goods.

fixed price for the manufacturing, producing, wholesaling or retailing of any goods, any particular class or classes of goods and any unit or quantity of any goods which may include charges for any service in relation to the supply, delivery, repair, maintenance, packing, carriage or storage of such goods" and **Section 5**[114] allows the Controller to "determine the maximum, minimum or fixed charges for any services, any particular class or classes of services and any unit or quantity of any services." The stark difference between these provisions and the corresponding provision of the Price Control Act 1946 (Act 121)[115] is that the Price Control Act 1946 (Act 121) only provided for the determination of maximum prices of goods and charges for services, not the minimum or fixed price. This means that the Price Control and Anti Profiteering Act 2011 (Act 723) allows the fixing of not only price ceiling but also price floor the provision of which was missing in the Price Control Act 1946 (Act 121). Hence, instead of having the power to determine only the ceiling price the Price Controller may now, with the approval of the Minister of Domestic Trade, Co-operatives and Consumerism, determine the maximum, minimum or fixed price for any goods or services. The Price Control and Anti Profiteering Act 2011 (Act 723) makes it an offence to sell and purchase not only above the maximum price but also to sell and purchase below the minimum price. "Where prices or charges are determined by the Price Controller, such prices or charges would include all government taxes, duties and any other related charges", and businesses are not allowed to impose higher prices or charges just because of taxes such as GST. "A list of the prices or charges must also be displayed in a conspicuous position so as to be easily read by anyone intending to purchase such goods or services." The Price Control and Anti

[114]Power of the Controller to determine charges for services.

[115] Section 4 of the Price Control Act 1946 (Act 121).

Profiteering Act 2011 (Act 723) also sensibly gives the Price Controller "the power to determine different prices and charges for different geographical areas in respect of like or similar goods and services."

The Price Control and Anti Profiteering Act 2011 (Act 723) also adds a new provision in **Section 10** entitled "price marking[116] order" which provides that the Minister "may impose requirement that goods or services which are to be supplied to consumers be marked with or accompanied by any information concerning the prices of the goods and charges of the services if he thinks that it is necessary or expedient."

**Section 11** until **Section 13** are constituted under **Part III** of the Price Control and Anti Profiteering Act 2011 (Act 723) and provides for offences under the Price Control and Anti Profiteering Act 2011 (Act 723). **Section 11** and **Section 12** make it an offence to sell or purchase any price controlled goods otherwise than in accordance with the prices or charges determined by the Controller. Thus, under the Price Control and Anti Profiteering Act 2011 (Act 723) "anyone who sells or purchasers any price-controlled goods or services inconsistent with the prices or charges determined by the Price Controller commits an offence." It can be seen that "anyone who purchases, for whatever reason be it for his own consumption or as a trader, any price-controlled goods or services at prices different from those determined by the Price Controller commits an offence unless he can prove that he had no knowledge of the price-controlled goods or services, and that he acted in good faith in acquiring the goods or services at that price. "

[116]Placing the retail price on a package using labels, stamps or other means.

**Section 13**[117] provides that a person who imposes conditions other than conditions of requiring immediate payment, prescribing time of payment and mode of delivery of price controlled goods or requiring a deposit for container of goods is committing an offence. The difference from the Price Control Act 1946 (Act 121) is that the Price Control Act 1946 (Act 121) only provided that it was an offence for any person to sell or purchase any price controlled goods which exceeded the maximum price fixed by the Price Controller. This was due to the fact that the Price Control Act 1946 (Act 121) only concerned the maximum price and not the minimum or fixed price.

One important element which is missing in the Price Control and Anti Profiteering Act 2011 (Act 723) is the requirement of a licence. The Price Control Act 1946 (Act 121) made acts by traders offences if they failed to obtain licences, for example, selling price controlled goods without licence, failing to display licences to sell controlled goods, removing price controlled goods from licensed business premises and storing controlled goods in unlicensed business premises. The Price Control Act 1946 (Act 121) had a specific definition for “licensed business premises” to mean “premises in which any person is authorized by licence issued by the Price Controller to sell any price controlled goods.” In the Price Control and Anti Profiteering Act 2011 (Act 723) however the word licence is totally missing and only the word “premises” is defined to mean “any place, stationary or otherwise, established or set up by any person, whether such place is with or without enclosure, and includes vehicles, aircrafts, ships and any other vessel.” This means that the Price Control and Anti Profiteering Act 2011 (Act 723) has abolished the provisions pertaining to

[117] Illegal conditions.

licences under Section 6[118], Section 7[119], Section 8[120] and Section 27[121] of the Price Control Act 1946 (Act 121) due to the fact that they are no longer relevant and appropriate and also to reduce red tape and to facilitate traders.[122]

**Part IV** of the Price Control and Anti Profiteering Act 2011 (Act 723) which is comprised of **Section 14** until **Section 17** are brand new and are provisions on anti-profiteering. **Section 14**[123] provides for the offence of profiteering[124] and defines "profiteer" as "making profit unreasonably high." The mechanism to determine whether or not profit is unreasonably high is left to the Minister who may prescribe different mechanism to cater for different situations.[125] In formulating the mechanism the following matters, among others, may be considered; tax, the supplier's cost, conditions of demand and supply, geography and product market.[126]

This is the most important amendment to the old price control legislation. The offence of profiteering was missing from the provisions of the Price Control Act 1946 (Act 121). Under the Price Control and Anti Profiteering Act 2011 (Act 723), "it is an offence for any person who, in the course of trade or business, makes unreasonably

---

[118] Licenses to sell price controlled goods.

[119] Offence to sell price controlled goods without a licence.

[120] Seller to display licence and list of prices.

[121] Revocation of licences.

[122] Official Website of the Parliament of Malaysia, "The Second Reading of the Price Control and Anti Profiteering Bill 2010 in the Third Meeting of the Third Session of the Twelfth Parliament, http://www.parlimen.gov.my/files/hindex/pdf/DR-13102010.pdf (accessed October 13, 2010).

[123]Offence to profiteer.

[124] Any person who, in the course of trade or business, profiteers in selling or offering to sell or supplying or offering to supply any goods or services commits an offence.

[125] Section 15(1).

[126] Section 15(2).

high profit in selling goods or services", and this is not restricted to price-controlled goods or services. Therefore, when there is a shortage of supply of goods, especially during festive seasons or when there is an increase in petrol or commodity prices, none of which may have any tangible impact on the cost of the goods or services, anyone who unreasonably increases prices of goods or services, would commit an offence under the Price Control and Anti Profiteering Act 2011 (Act 723). The Price Control and Anti Profiteering Act 2011 (Act 723) also allows the fixing of price floor the provision of which was missing in the Price Control Act 1946 (Act 121).

The Ministry of Domestic Trade, Co-operatives and Consumerism will prescribe the mechanisms to determine when profit would be deemed unreasonable. The Ministry is teaming up with the Malaysian Institute of Economic Research, Institute of Strategic and International Studies Malaysia as well as other organizations to formulate these mechanisms.

There is only one section under **Part V**, that is, **Section 18**[127] which provides the penalty for the crime of profiteering under **Section 14** and also the offences under **Section 11**[128], **Section 12**[129] and **Section 13** . Under **Section 18**"a body corporate who commits any offence under **Section 11**, **Section 12**, **Section 13** or **Section 14** shall, on conviction be liable to a fine not exceeding RM500,000.00 for the first offence and not exceeding RM1,000.000.00 for the second and subsequent offence and a person who is not a body corporate who commits any offence under **Section 11**, **Section 12**,

[127]Penalty.

[128]Offence to sell price controlled goods, provide charge controlled services, etc, otherwise than in accordance with prices or charges determined.

[129]Offence to purchase price controlled goods or obtain charge controlled services, etc, otherwise than in accordance with prices or charges determined.

**Section 13** or **Section 14** shall, on conviction be liable to a fine not exceeding RM100,000.00 or to imprisonment for a term not exceeding 3 years or to both for the first offence and to a fine not exceeding RM250,000.00 or to imprisonment for a term not exceeding 5 years or to both for the second or subsequent offence." When compared to **Section 22** of the Price Control Act 1946 (Act 121) [130] it can be seen that the Government is very earnest in imposing punishment for profiteering because the penalty is increased as much as twenty fold on a body corporate and about tenfold on any person other than a body corporate. The Price Control Act 1946 (Act 121) only imposed on a body corporate who was convicted a penalty of a fine not exceeding RM25,000.00 for the first offence and not exceeding RM50,000.00 for a second or subsequent offence while on any person other than a body corporate the Price Control Act 1946 (Act 121) imposed a fine not exceeding RM15,000.00 or to imprisonment for a term not exceeding 2 years or to both for the first offence and a fine not exceeding RM25,000.00 or to imprisonment for a term not exceeding 5 years or to both for a second or subsequent offence upon conviction.

In short, for specific offences of selling or purchasing price controlled goods above or below the fixed prices and the offence of profiteering, if the offence is committed by a company, "it will be liable to a maximum fine of RM500,000.00 and, for a second or subsequent offence, up to RM1,000,000.00 A director or CEO of a company may also be charged severally or jointly with the company unless he can prove that the offence was committed without his knowledge, consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence." If the offence is committed by an individual, "he is liable to a maximum

[130] Penalties.

fine of RM100,000.00 or to imprisonment for a term not exceeding 3 years or both and, for a second or subsequent offence, to a fine of up to RM250,000.00 or to imprisonment for a term not exceeding 5 years or both.” For other offences under the Price Control and Anti Profiteering Act 2011 (Act 723) , for a body corporate the penalty is a fine not exceeding RM100,000.00.00 for a first offence and for a second or subsequent offence the penalty is a fine not exceeding RM250,000.00. For a person who is not a body corporate the penalty is a fine not exceeding RM50,000.00 or imprisonment for a term not exceeding 2 years or to both for a first offence and for a second or subsequent offence the penalty is a fine not exceeding RM100,000.00 or imprisonment for a term not exceeding 5 years or both.

Since penalties for offences have been increased, the court which has the jurisdiction to hear offences under the Price Control and Anti Profiteering Act 2011 (Act 723) has also been elevated to the Sessions Court. The Price Control Act 1946 (Act 121) gave “jurisdiction to a First Class Magistrates’ Court to try any offence under the Price Control Act 1946 (Act 121) and to impose the full punishment for any such offence” but the Price Control and Anti Profiteering Act 2011 (Act 723) provides that a Sessions Court “shall have jurisdiction to try any offence under the Price Control and Anti Profiteering Act 2011 (Act 723) and to impose full punishment for any such offence.”

**Part VI** of the Price Control and Anti Profiteering Act 2011 (Act 723) concerns investigation and enforcement and is divided into 3 Chapters. Chapter 1 comprises of **Section 19**[131] and **Section 20**[132] and is related to investigation and complaints which

[131] Investigation by Assistant Controller.

[132] Complaints to Assistant Controller.

are not provided for under the Price Control Act 1946 (Act 121). The Price Control and Anti Profiteering Act 2011 (Act 723) "gives power to the Assistant Controller to conduct an investigation if he has reasonable grounds to suspect that any offences is or will be committed" under the Price Control and Anti Profiteering Act 2011 (Act 723).[133] Investigation can also be conducted by an Assistant Controller on "any person who has committed or is committing any offence under the Price Control and Anti Profiteering Act 2011 (Act 723) upon a complaint by a person and the complaint shall specify the person against whom the complaint is made and details of the alleged offence."[134] Thus it can be seen that the Price Control and Anti Profiteering Act 2011 (Act 723) is not only reactive but also proactive because it allows investigation when the Assistant Controller has reasonable suspicion of an offence. Chapter 2 provides for a comprehensive Information Gathering Powers which are not available under the Price Control Act 1946 (Act 121) and is comprised of **Section 21** until **Section 27**. **Section 21**[135] provides that "if the Assistant Controller in carrying out an investigation has reason to believe that a person has any information which is relevant to the discharge of his powers and duties under the Price Control and Anti Profiteering Act 2011 (Act 723), that person shall provide true, accurate and complete information to the Assistant Controller."**Section 22**[136] gives power to the Assistant Controller "to take and retain possession of any document which is obtained during the investigation."**Section 23**[137] gives the Assistant Controller "access to books, records,

[133] Section 19 of the Price Control and Anti Profiteering Act 2011 (Act 723).

[134] Section 20 of the Price Control and Anti Profiteering Act 2011 (Act 723).

[135] Power of the Assistant Controller to require provision of information.

[136] Assistant Controller may retain documents.

[137] Access to records.

accounts, documents, computerized data and anything for the purpose of performing his functions under the Price Control and Anti Profiteering Act 2011 (Act 723)."**Section 24**[138] makes it "an offence for any person to disclose or make use of any confidential information with respect to a particular enterprise or the affairs of an individual obtained under the Price Control and Anti Profiteering Act 2011 (Act 723)."**Section 25**[139] provides that "privileged communication between a professional legal adviser and his client is protected from disclosure."**Section 26**[140] makes it "an offence for a person to provide false or misleading information to the Assistant Controller during his investigation."**Section 27**[141] makes it "an offence for a person to defraud the Assistant Controller or to obstruct his investigation by destroying or tampering with any book, record, account, document, or computerized data." Chapter 3 provides for Powers of Search and Seizure and comprises **Section 28** until **Section 40**. **Section 28**[142] gives power to the Assistant Controller to "access any places or premises of business for the purpose of collecting or monitoring the prices of goods or charges for services."**Section 29**[143] gives "power to the Magistrate to issue a warrant authorizing any Assistant Controller named in the warrant to enter the premises to search for and seize any evidence."**Section 30**[144] concerns the power of entry and search and seizure without warrant which is given to the Assistant Price Controller "if he has reasonable cause to believe that by reason of delay in obtaining a search

---

[138] Confidentiality.

[139] Privileged communication.

[140] Giving false or misleading information, evidence or document.

[141] Destruction, concealment, mutilation and alteration of records.

[142] Access to places or premises.

[143] Power to enter into premises with search warrant.

[144] Power of entry and search and seizure without a warrant.

warrant under **Section 29** the investigation would be adversely affected or evidence is likely to be tempered with." Under **Section 31**[145] any Assistant Controller exercising his powers under **Section 29** or **Section 30**"shall be given access to any recorded information or computerized or digitalized data whether stored in a computer or otherwise." Tipping off is made an offence under **Section 32**[146] of the Price Control and Anti Profiteering Act 2011 (Act 723). "A person who discloses to another person information which is likely to prejudice an investigation by an Assistant Controller commits the offence of tipping off" under **Section 32**. **Section 33**[147] provides that "a search warrant issued under the Price Control and Anti Profiteering Act 2011 (Act 723) shall be valid despite having any defect, mistake or omission in it and anything seized under such warrant shall be admissible in evidence in any proceedings under the Price Control and Anti Profiteering Act 2011 (Act 723)." Under **Section 34**[148]"all things seized by the Assistant Controller shall be listed and a copy of the list shall be delivered to the occupier or if the premises searched is unoccupied the list shall be posted on a conspicuous part of the premises."**Section 35**[149] provides for the forfeiture or release of the seized goods. The order shall be made by the court in which the prosecution is held. "The court shall made the forfeiture order if it is satisfied that an offence under the Price Control and Anti Profiteering Act 2011 (Act 723) has been committed although no person is convicted. If there is no prosecution the seized goods is deemed to be forfeited at the expiration of 1 calendar month from the date of

[145] Access to recorded information, computerized data etc.

[146] Tipping-off.

[147] Warrant admissible notwithstanding defect.

[148] List of things seized.

[149] Forfeiture of goods.

seizure unless the goods are claimed by the owner before the expiration date. If the owner claims the goods he must give notice to the Assistant Controller to say that he is the owner and the goods are not liable to forfeiture. The notice shall be forwarded to the Controller who may direct that the goods be released or direct the Assistant Controller to refer the matter to the court for decision. The court shall summon the owner and examine the matter and if it is proved that an offence has been committed the goods shall be forfeited and shall be delivered to the Assistant Controller and be disposed of in accordance with the Controller's directions but in absence of such proof the goods shall be released to the owner."**Section 36**[150] provides for the release of the seized things to the lawful person if the things are not required for the purpose of any proceedings or prosecution. **Section 37**[151] provides that "if seized goods are of perishable nature or where custody of seized goods involves unreasonable expense and inconvenience the goods may be sold by the Assistant Controller". **Section 38**[152] prevents anyone from claiming costs or damages unless seizure was made without reasonable cause. **Section 39**[153] makes it an offence to refuse or obstruct access to premises or refuse to give information to the Assistant Controller. **Section 40**[154] gives "power of investigation to the Assistant Controller similar to that of a police investigation under the Criminal Procedure Code regarding seizable offences[155]."

[150] Release of things seized.

[151] Seizure of perishable goods.

[152] No cost or damages arising from seizure to be recoverable.

[153] Obstruction.

[154] Power of investigation by police officer.

[155] Seizable offence means an offence for which a police officer may ordinarily arrest without warrant according to the third column of the First Schedule of the Criminal Procedure Code.

Unlike the Price Control Act 1946 (Act 121), the Price Control and Anti Profiteering Act 2011 (Act 723) gives extensive power of investigation and enforcement to the Assistant Controller to conduct proactive and reactive investigations, gather information, carry out search and seizure and to do any act which is necessary for the due administration of the Price Control and Anti Profiteering Act 2011 (Act 723). Twenty two sections, from Section 19 until Section 40, are dedicated to the investigation and enforcement chapter alone whereas the Price Control Act 1946 (Act 121) only provided for the power of investigation and enforcement under Section 12, Section 14 and Section 15 and where the Price Control Act 1946 (Act 121) was silent with regard to the power of investigation and enforcement the law had to be found under the Criminal Procedure Code. For example Section 17 of the Price Control Act 1946 (Act 121) stated that "prosecution for offences against the Price Control Act 1946 (Act 121) may be conducted by the Price Controller, the Deputy Price Controller, an Assistant Price Controller or any police officer not below the rank of Sub Inspector or by such other person as the Public Prosecutor or the Price Controller with the Public Prosecutor's consent may appoint. If the prosecuting officer had fallen under the last category then consent to prosecute would have to be obtained." Unlike the Price Control and Anti Profiteering Act 2011 (Act 723), the Price Control Act 1946 (Act 121) did not clarify whether the offences committed thereunder were seizable or non seizable offences and thus it fell upon the Court to make such determination. For example in the case of ***Liew Jee Chin v. Public Prosecutor***[156] the offence of failing to affix labels, tags or marks on a scheduled goods i.e 157 rolls of cloth of various colours and types which were displayed for sale thereby contravening

[156] [1992] 1 LNS 12.

Order 3(1) of the Price Control (Indication of Price by Retailer) Order 1997 was held to be a non seizable offence and therefore did not require a consent to prosecute from the Public Prosecutor whereas in the case of ***Soon Huat Hock Co v PP***[157] where the accused was charged with failing to affix a label containing the name and address of the wholesaler on 22 cans of pork luncheon meat as required by Order 3(1) of the Price Control *(*Labelling by the Manufacturer, Importer, Producer or Wholesaler*)* Order 1980 the Court held that the offence was a seizable offence and thus required a consent to prosecute from the Public Prosecutor. The Price Control and Anti Profiteering Act 2011 (Act 723) however has dispensed with this requirement of having to categorize an offence as either a seizable offence or a non seizable offence as Section 40 of the Price Control and Anti Profiteering Act 2011 (Act 723) [158] has clarified that all offences committed under the Price Control and Anti Profiteering Act 2011 (Act 723) shall be seizable offences and that no prosecution for or in relation to any offence under the Price Control and Anti Profiteering Act 2011 (Act 723) shall be instituted without the consent of the Public Prosecutor.[159]

**Part VII** is constituted of **Section 41** until **Section 53** and is related to the Price Advisory Council. In the Price Control Act 1946 (Act 121) only one section is dedicated to the establishment of the Advisory Council and it is named the National Advisory Council for Consumers' Protection instead of the Price Advisory Council. This National Advisory Council may be appointed by the Minister to advise him on matters such as the fixing or control prices of any goods, the displaying of marks or

---

[157][ 1998] 1 LNS 647.

[158] Any Assistant Controller investigating any commission of an offence under this Act, may exercise all or any of the powers in relation to police investigation in seizable cases given by the Criminal Procedure Code.

[159] Section 56 of the Price Control and Anti Profiteering Act 2011 (Act 723).

labels, the maintenance of stockpile and any other related matters. The members of the Council would be representatives of business, government and other organisation. Under the Price Control and Anti Profiteering Act 2011 (Act 723) "the Price Advisory Council may be established by the Minister to advise him on the issues relating to profiteering and any other matters relating to the prices of goods and charges for services.""The Council shall consist of the Chairman who shall be the Secretary General of the Ministry responsible for domestic trade and consumer affairs or his representative, 4 members representing the Government to be appointed by the Minister and not more than 6 other members to be appointed by the Minister who have experience and knowledge in matters relating to business, industry, commerce, law, economics, public administration, fair trade, competition, consumer protection or any other suitable qualification as the Minister may determine." Their appointment shall be for "a term not exceeding 2 years and they may be reappointed after their term has expired."**Section 43**[160] provides for the temporary exercise of the functions of the Chairman where "the Chairman is unable to perform his function or when there is a vacancy in the office of the Chairman." Under **Section 44**[161]"the office of the member of the Council shall become vacant when any member dies, resigns or his term of office has expired." Under **Section 45**[162]"the appointment of a Council member (except the Chairman) may be revoked by the Minister if his conduct has brought discredit to the Council, if he has become incapable to carry out his duties properly, if he is convicted of an offence involving fraud, dishonesty or moral turpitude (contrary to community standards of justice, honesty, or good morals), if he

[160] Temporary exercise of functions of Chairman.

[161] Vacation of office.

[162] Revocation of appointment.

is convicted of an offence relating to corruption, if he convicted of an offence under the Price Control and Anti Profiteering Act 2011 (Act 723), if he is convicted of an offence punishable with imprisonment for more than 2 years, if he is adjudicated a bankrupt, if he is of unsound mind, if he has become incapable of managing his affairs and if he absents himself from 3 consecutive meetings of the Council without obtaining leave from the Chairman."**Section 46**[163] provides that "a Council member (except the Chairman) may at any time resign his office by a letter addressed to the Minister and **Section 47**[164] states that the Minister may appoint another person to fill the vacancy for the remainder of the term for which the vacating member was appointed.""A Secretary to the Council and such other officers as may be necessary shall be appointed" under **Section 48**[165]"to assist the Council and they shall be paid such allowances as the Minister may determine."[166]"The Council shall meet as and when necessary as determined by the Minister[167] and they may invite any person to attend the Council's meeting to advise on any matter under discussion but shall not be entitled to vote."[168] Although **Section 42** implies that the membership of the Council shall comprise of at least 6 members **Section 52**[169] states that "acts done or proceedings taken shall not be questioned on the ground of a vacancy in the

[163] Resignation.

[164] Filling of vacancy.

[165] Secretary to Council and other officers.

[166] Section 49 of the Price Control and Anti Profiteering Act 2011 (Act 723).

[167] Section 50 of the Price Control and Anti Profiteering Act 2011 (Act 723) .

[168] Section 51 of the Price Control and Anti Profiteering Act 2011 (Act 723).

[169] Validity of acts and proceedings.

membership or a defect in the constitution of the Council." Under **Section 53**[170]"the Minister is given the power to make necessary regulations relating to the Council."

Hence, instead of establishing the National Advisory Council for Consumer Protection to advise him on the "fixing or control of prices of any goods, the displaying of marks or labels, the maintenance of stockpile and any other relevant matters", the Minister may now establish a Price Advisory council to "advise him on issues relating to profiteering and any other matters relating to the prices of goods and charges for services." Where the Price Control Act 1946 (Act 121) was silent, the Price Control and Anti Profiteering Act 2011 (Act 723) was very thorough in providing for the membership, the term of appointment, the exercise of functions, the vacation of office of members, the revocation of appointment, the resignation, the filling of vacancy, the appointment of a secretary and officers, the payment of allowances, the meetings and the validation of proceedings of the Council. This calls to mind the words of W. F. Leemans that "the number of administrative documents, which today we would call bureaucratic paperwork, simultaneously increases at a precipitous rate".

In addition to that, the Price Control and Anti Profiteering Act 2011 (Act 723) is also specific in naming the members of the council to be the Secretary General of the Ministry of Domestic Trade, Cooperatives and Consumerism, four government representative and not more than six other members who have experience and knowledge in matters relating to business, industry, commerce, law, economics, public administration, fair trade, competition, consumer protection or other suitable

[170] Regulations relating to the Council.

qualification. According to the Minister of Domestic Trade Cooperatives and Consumerism, following the enforcement of the Price Control and Anti Profiteering Act 2011 (Act 723), a 10-member Price Advisory Council, to be headed by the ministry's secretary-general Datuk Mohd Zain Mohd Dom, will be set up. Comprising six members from the public, non-governmental organisations and industries, and four government officials, it will decide on a mechanism that will determine what is deemed as profiteering or making unreasonably high profits. It will take into consideration the operational costs of the traders like taxes, suppliers' costs, supply and demand conditions and geographical locations or product market circumstances.[171]

**Part VIII** is the final part in the Price Control and Anti Profiteering Act 2011 (Act 723). It consists of general provisions and comprises **Section 54** until **Section 63**. **Section 54**[172] provides that "a Sessions Court shall have jurisdiction to try any offence under the Price Control and Anti Profiteering Act 2011 (Act 723) and to impose full punishment for any such offence." This is a major change from the provision of the Price Control Act 1946 (Act 121) where a First Class Magistrates' Court "shall have jurisdiction to try any offence under the Price Control Act 1946 (Act 121)." This change has to be made as the punishments for offences under the Price Control and Anti Profiteering Act 2011 (Act 723) has been enhanced as to bring them out of the jurisdiction of the Magistrates' Court. Under **Section 55**[173] a new provision has been

---

1.1 [171]*Francis C.Nantha, "Anti-Profiteering Act Applies From Tomorrow,"* The Malay Mail, *March 31, 2011, http://www.mmail.com.my/content/68201-antiprofiteering-act-applies-tomorrow (accessed may 5, 2011).*

[172] Jurisdiction to try offences.

[173] Reward for information.

introduced whereby "the person who gave information leading to a conviction involving a fine may be rewarded for the information given and the reward may be paid using a proportion of the fine paid by the convicted offender." Before an offender is prosecuted consent from the Public Prosecutor must be obtained.[174] For an offence without an express penalty, a general penalty is provided under **Section 57**[175]. "For a body corporate the penalty is a fine not exceeding RM100,000.00 for a first offence and for a second or subsequent offence the penalty is a fine not exceeding RM250,000.00. For a person who is not a body corporate the penalty is a fine not exceeding RM50,000.00 or imprisonment for a term not exceeding 2 years or to both for a first offence and for a second or subsequent offence the penalty is a fine not exceeding RM100,000.00 or imprisonment for a term not exceeding 5 years or both."

Under **Section 58**[176] offences committed under the Price Control and Anti Profiteering Act 2011 (Act 723) may be compounded by the Controller with a written consent of the Public Prosecutor. The Controller does this by "making a written offer to the suspect to compound the offence upon payment to the Controller of an amount not exceeding 50% of the amount of maximum fine for that offence to be paid within a specified time." The offer may be made after the offence has been committed but before the institution of a prosecution and if the amount offered is not paid within the prescribed time prosecution will be instituted against the offender. Where the offence has been compounded no prosecution shall be instituted and any things seized may be released subject to any term and conditions by the Controller.[177] Under **Section 59**[178]

[174] Section 56 of the Price Control and Anti Profiteering Act 2011 (Act 723) .

[175] General penalty.

[176] Compounding of offences.

[177] Section 58 of the Price Control and Anti Profiteering Act 2011 (Act 723)

if a body corporate commits an offence "its office bearers[179] may be charged severally or jointly in the same proceedings with the body corporate. If the body corporate is found guilty of the offence the office bearers shall be deemed to be guilty of that offence unless he can prove that the offence was committed without his knowledge and he had taken all reasonable precautions and had exercised due diligence to prevent the offence from being committed." The doctrine of vicarious liability is applicable to the act, omission, neglect or default of any employee or agent. Under **Section 60**[180] the Minister has the power to make any regulations to carry into effect the provisions of the Price Control and Anti Profiteering Act 2011 (Act 723). The Public Authorities Protection Act 1948 shall apply to any proceedings against the Controller, Deputy Controller, Assistant Controller, Chairman and members of the Council and their employees and agents in respect of any neglect or default done or committed in good faith. The Controller, Deputy Controller, Assistant Controller or any authorized officer shall not be prosecuted for anything done in carrying out into effect the Price Control and Anti Profiteering Act 2011 (Act 723). By **Section 63**[181] the Price Control Act 1946 (Act 121) is repealed but the persons who were appointed under the Price Control Act 1946 (Act 121) shall continue to be officers under the Price Control and Anti Profiteering Act 2011 (Act 723) as if those persons had been appointed under the Price Control and Anti Profiteering Act 2011 (Act 723). "All regulations, rules and orders made under the Price Control Act 1946 (Act 121) shall

---

[178] Offences by body corporate.

[179] Director, chief executive officer, chief operating officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any affairs of the body corporate or was assisting in such management.

[180] Power of Minister to make regulations.

[181] Saving and transitional.

continue to be in operation and have effect as if they had been made under this Act until replaced or revoked by any regulations, rules and orders made under this Act and any inquiry, trial and proceedings done, taken or commenced under the Price Control Act 1946 (Act 121) immediately before the commencement of the Price Control and Anti Profiteering Act 2011 (Act 723) shall be continued or concluded under and in accordance with the provisions of the Price Control Act 1946 (Act 121)."

## 2.7 Summary

In Malaysia economic sectors are extensively regulated by the government. As an example, price controls are imposed for the distribution of essential products (e.g. rice, sugar) to stabilize prices in the country.

It has been reported that the Price Control and Anti-Profiteering Act 2011 which was enforced since April 1st. 2011, has in many ways prevented businesses from increasing prices according to their whim and fancy. With the introduction of the Act, action could be taken against traders who indiscriminately raised prices and who engage in profiteering, especially during the festive seasons and in times of crisis. However, not all price increases have the element of profiteering as traders will be asked to produce the facts and figures to the government first before any charge can be imposed on them. Under the former Price Control Act 1946 (Act 121), the government needed to fix the ceiling price and gazette it before action could be taken against traders who sold their goods above the ceiling price but with the Price Control and Anti Profiteering Act 2011 (Act 723), action can be taken against traders who arbitrarily raise their price at any time of the day.

This Price Control and Anti Profiteering Act 2011 (Act 723) originates from the previous Price Control Act 1946 (Act 121) which was amended to include anti-profiteering measures. Those measures are created as the ministry had been receiving complaints on profiteering activities by businesses. The decision was made to enforce the Price Control and Anti- Profiteering Act 2011 (Act 723) to ensure that businesses did not increase prices excessively or indiscriminately in the wake of the Goods and Services Tax (GST) which will be imposed sometime in the future.

Since the Price Control and Anti Profiteering Act 2011 (Act 723) was enforced, enforcement officers from the Ministry's enforcement unit had visited more than 5,000 premises. The Price Control and Anti Profiteering Act 2011 (Act 723) was used for the first time in Penang when three fishmongers accused of profiteering, were each served with a notice. The three fishmongers were given three days to justify the increase where they were required to give detail explanation on the production costs, the price of raw materials, labour, transport and rental. The information from any investigation will be forwarded to the Price Advisory Council, which will then determine if there has been price increase by more than what is allowed.

Price control is anti-competition because the controlled price does not reflect the actual market price.[182] It is an interference by the government with the free play of market forces to achieve certain objectives which may otherwise not be achieved. In the real world all economies are mixed, having some features of both the capitalist and the socialist thus the concept of perfect competition does not exist in the real world. The imperfections of competition may give rise to several distortions in the

---

[182] Melati Mohd Ariff, "Cooking Oil Shortage : A Crisis Looms?," Bernama.com, May 07, 2007, http://www.bernama.com.my/bernama/v3/printable.php?id=260344 (accessed August 30, 2009).

production pattern and to inequities in the distribution of income and may cause inefficient use of scarce resources or their deliberate underutilization, quantitative restriction of output and its qualitative deterioration. These imperfections may necessitate interference with the market mechanism including direct price controls.[183] For example in 2007 when the price of crude palm oil increased in the international market producers of cooking oil cut down on their production especially the one kilo packets to avoid losses after they failed to obtained consent from the Ministry of Domestic Trade, Cooperatives and Consumerism to increase the price above the controlled price.[184] However it can be seen that price control in this situation failed because when shortages of an essential item like cooking oil surfaced there were reports that some traders had increased the price of the one-kg packs to RM2.80 from the ceiling price of RM2.50.

The Price Control and Anti Profiteering Act 2011 (Act 723) is not anti-business or intended to stop people from making profit although it will certainly have an impact on businesses. Its actual aims and purposes are to prevent greedy traders and unscrupulous businesses from charging exorbitant prices for their goods and services. The enactment of the Price Control and Anti Profiteering Act 2011 (Act 723) should be welcomed as a safeguard for consumers against opportunistic profiteers. However prices should only be determined after thorough consideration of the impact on stakeholders.

[183] K. D. Saksena, *Pricing Policy and Price Controls in Developing Countries (* London : Frances Pinter Publishers, 1986), 9.

[184] The one-kg packs of cooking oil are normally purchased by the lower-income earners especially those residing in the rural areas as they are much cheaper compared to the cooking oil sold in bottles.

# CHAPTER THREE

# RESEARCH FINDINGS

## 3.1 Introduction

The objectives of this research are threefold. Firstly, the study will examine the law governing the price control of goods in Malaysia. Secondly, it will explore the legal issues associated with the existing price control legislation and finally the study will propose suggestions and recommendations for improvement in this area of law. This third objective will be dealt with in the following Chapter 4. However, before embarking into the first objective, this study will explain why our Government uses the price control mechanism to control the price of goods.

## 3.2 Why Does Our Government Use The Price Control Mechanism To Control The Prices Of Goods?

Price control had been used by governments all over the world since time immemorial to deal with the problem of inflation. In Malaysia it was introduced by the British Administration under the Price Control Act 1946 (Act 121) in the aftermath of World War II to control prices of goods, to reduce inflation so that the public in general could gain access to the bare necessities and to avoid economic hardships. Historically, Malaysia had a prudent financial and economic management in general. The government relied on subsidies and price control in a limited and selective way.

However when Tun Dr. Mahathir became the Prime Minister the government became more radical with its price control experiment as it was fascinated with price control due to its ambition of attaining zero inflation. It is a fact that stability, savings and investment are all undermined by inflation and severe inflation makes a mockery of most families' financial plans. Most working people feel there is no way they can protect their budgets against this kind of attack on the money as it is invariably true that inflation reduces the purchasing power of consumers. Tun Mahathir's government held the view that it is the purchasing power of what is earned that counts and an inflationary situation will diminish the purchasing power; only when there is zero inflation will an increase in income result in an increase in purchasing power. Hence prices of goods like petrol, diesel, liquefied petroleum gas, steel, cement, flour sugar, condensed milk, bread, chicken and cooking oil were controlled.

However, to date only the prices of refined white sugar, RON 95 petroleum, diesel, liquefied petroleum gas, wheat flour and cooking oil remain controlled by the government. In addition to these goods the government also controls the prices of goods under the Festive Season Price Control Scheme. The goods which prices are controlled under this scheme vary according to the requirements of the festival being celebrated. For example the goods which prices are controlled during Hari Raya may not be the same as the goods which prices are controlled during Chinese New Year Celebration or Deepavali Festival.

## 3.3 How Does The Government Use The Price Control Mechanism To Control The Price Of Goods?

Under the Price Control Act 1946 (Act 121) which was the main legislation that regulated the prices of goods and services before the Price Control and Anti Profiteering Act 2011 (Act 723) was passed, it was the Price Controller with the approval of the Minister who fixed maximum prices for the sale of any goods or of any quantity of any goods and he had the power to fix different prices for the same goods in different areas. Thereafter "any person who sold any price controlled goods or purchased any price controlled goods at a price which exceeded the price fixed by the Price Controller shall be guilty of an offence" under the Price Control Act 1946 (Act 121).

There is no specific guideline to ascertain the criteria of goods which prices need to be controlled. Usually the goods which are to be controlled are goods which are used daily by consumers, for example sugar. The price of sugar began to be controlled by the Government during the nation's experience of the sugar crisis in 2006-2007 when there was shortage in the sugar supply. The act of controlling the price of sugar had to be taken to prevent traders from trying to raise the price indiscriminately. In addition, the control was needed to prevent traders from hoarding the said goods which could lead to a reduced supply. If there were less supply of sugar compared to its demand traders would try to manipulate the price of the commodity. During the sugar crisis, monitoring and inspection of all premises selling sugar were carried out and reports were delivered on a daily basis to the Minister. If shortage of sugar occurred the Ministry would direct suppliers who have stocks to supply sugar to the areas with sugar shortage. Sugar is to remain as a controlled goods and the government does not give any indication as to the duration of control because it involves a long-term agreement with the manufacturers and suppliers of the raw materials used to produce sugar, particularly from overseas. With respect to goods which are controlled under the Festive Seasons Price Control Scheme, the criteria for control are that the goods are highly demanded during the festive seasons as being the main ingredients for the main dish which are to be served during the festivities. The duration of control of these goods is fixed by the Minister and varies according to the festival being celebrated. Usually the implementation period is before, during and after the festival, for example for Hari Raya Aidil Fitri 2013 the period of implementation was 17 days commencing from 26 July 2013 until 11 August 2013.[185]

However the Price Control Act 1946 (Act 121) only made it an offence an act which was committed in respect of price controlled goods, for example selling and purchasing controlled goods above the maximum price fixed by the Price Controller, selling price controlled goods without licence, failing to display licence to sell controlled goods, failing to display price list of controlled goods etc. Thus if the goods were not gazetted as price controlled goods the government had no legal rights to take any action against any traders for selling their goods at excessive price. This can be seen in the case of ***Radex (M) Sdn Bhd v. Pacific Network Sdn Bhd***[186] where the Court found that fixing of the maximum price under the Price Control Act 1946 (Act 121) was to be made by the Price Controller with the Minister's approval and the maximum price must be published in the Gazette before it could come into operation under the Price Control Act 1946 (Act 121).

[185]Ahmad Ahrazzuddin bin Ahmad Hamdan and Kelyn bin Bolhassan @ Haliward. Assistant Directors of MDTCC Kedah. Interview with author. Phone interview. Alor Star , Kedah, September 22, 2013.

[186][2001] 1 LNS 187.

Because of this, the Government recognized the need to improve and bring the law up to date to deal with the realities of the modern world. Thus the government repealed the Price Control Act 1946 (Act 121) and replaced it with the Price Control and Anti Profiteering Act 2011 (Act 723). The Price Control and Anti Profiteering Act 2011 (Act 723) reforms the law on price control and enacts provisions relating to prohibition on profiteering. Under the said legislation the government is now able to determine prices of goods or charges for services while simultaneously having the power to curb profiteering activities to protect the interest of consumers. The reason to include anti-profiteering measures was because the government received many complaints from the public pertaining to profiteering activities by businesses but was powerless to take any legal action against profiteers under the old price control legislation because there was no provision on anti profiteering in the old price control legislation. The anti profiteering measures are also included in the Price Control and Anti Profiteering Act 2011 (Act 723) to ensure that businesses do not raise their prices unnecessarily and excessively after the government has implemented the proposed Goods and Services Tax (GST) as a replacement for the prevailing sales and services tax.[187]However, since plans to execute the GST was delayed the Domestic Trade, Co-operatives and Consumerism Ministry has yet to define what constitutes "unreasonably high profits" under the Price Control and Anti Profiteering Act 2011 (Act 723). Had the GST been implemented at about the same time as the Price Control and Anti Profiteering Act 2011 (Act 723), it would have been easier to

[187]Ahmad Ahrazzuddin bin Ahmad Hamdan and Kelyn bin Bolhassan @ Haliward. Assistant Directors of MDTCC Kedah. Interview with author. Phone interview. Alor Star , Kedah, September 22, 2013.

calculate “unreasonably high profits” as the government would have had benchmarks for calculations.

### 3.4 The Legal Issues Associated With The Existing Price Control Legislation

This section will focus on the findings of the second objectives, that is, the legal issues associated with the existing price control legislations. In examining the Price Control Act 1946 (Act 121) and the Price Control and Anti Profiteering Act 2011 (Act 723) as mechanism of price control in controlling the price of goods, this research finds that major improvements have been made under the Price Control and Anti Profiteering Act 2011 (Act 723). Nevertheless, this study also finds that there are weaknesses and/or loopholes that can be considered and corrected for further improvements as discussed below :-

#### i) The Price Advisory Council is not independent

Having looked at the constitution and function of the Price Advisory Council it can be said that it lacks independence in that it is influenced by the government. Firstly, the Council itself is established by the Minister of Domestic Trade and Consumer Affairs. Secondly, the Chairman of the Council is the Secretary General of the Ministry of Domestic Trade, Cooperatives and Consumerism while the Deputy Chairman is appointed by the Minister. Thirdly, if the functions of the Chairman cannot be performed by either the Chairman or the Deputy Chairman, it is also the Minister who may appoint any member of the Council to perform the functions of the Chairman. Fourthly, the letter of resignation as a Council member must be addressed to the Minister. Fifthly, it is the Minister who may rescind the appointment of members of the Council. Sixthly, allowances payable to Council members are determined by the Minister; and lastly the Council "shall meet as and when necessary as determined by the Minister". Therefore the Price Advisory Council is not an independent body as it seems to be influenced by the government.

### ii) Too much comprehensive power in the hands of the government

Besides, it can be seen that the Price Control and Anti Profiteering Act 2011 (Act 723) gives too much power to the government in the sense that now they can take an action whether proactive or reactive against any trader whom they believe has made unreasonably high profit in selling any goods and providing for any services. Whereas under the Price Control Act 1946 (Act 121) prices which were controlled were only those of specific goods which were regarded as basic necessities and moreover they were listed and gazetted. This comprehensive power will necessarily result in negative implications on the economic and market scenario, for example even though the prices of goods and charges for services are put on tight control but if there aren't any goods to be supplied or no services to be provided or adequate supply of goods and services are not maintained, black markets will start to mushroom and consumers will look to these black markets to obtain their required needs and they will end up having to pay high prices for those goods and services. This direct intervention where the government itself is able to dictate the ceiling price is actually an extreme method and an overzealous manner of fixing the prices of goods or charges of services to forbid profiteering as the end result is something which the government strives to prevent in the first place.

### iii) No working formula to ascertain unreasonable profit

Another matter which has not been foreseen is the mechanism of ascertaining what highly unreasonable profit means. It is something which is elusive the formula of which is hard to determine as goods and services may vary drastically from one to the other. It is not easy to say that a certain level of percentage of profit is proper for all goods and services. A 30% profit for example may be fit and proper for some goods and services but may not be appropriate for other goods and services. The bottom line is that the government is going to find it hard to fix the prices of goods and services so as to ensure that no traders are enjoying unreasonably high profit at the expense of consumers.

Prescribing the mechanisms to determine when profit would be deemed unreasonable is one thing but choosing which goods and services to be subjected to the mechanism is another. How would the government know which goods and services have been provided at unreasonable prices and charges? Is the Price Control and Anti Profiteering Act 2011 (Act 723) only applicable to small traders? Would the government link companies be subjected to the Price Control and Anti Profiteering Act 2011 (Act 723) as well if they provide their goods and services at exorbitant prices? And how would the public know whether prices and charges for goods and services are reasonable or not. These questions cannot be answered just by looking through the Price Control and Anti Profiteering Act 2011 (Act 723). Until July 2011 since the Price Control and Anti Profiteering Act 2011 (Act 723) was implemented, the Ministry of Domestic Trade, Cooperatives and Consumerism’s enforcement unit had visited more than 5,000 premises and 46 notices were issued to businesses for increasing prices unnecessarily. The Price Control and Anti Profiteering Act 2011

(Act 723) was used for the first time when three fishmongers in Penang, accused of profiteering, were each served with a notice. The three fishmongers, among 46 businesses that were issued with the notice, were given three days to justify the increase where they were required to give detail explanation on the production costs, the price of raw materials, labour, transport and rental. The information from any investigation will be forwarded to the Price Advisory Council, which will then determine if there has been price increase by more than what is allowed. However, no one has been charged yet as the Price Advisory Council is still looking into the details submitted by the 46 businesses which were served with the notice.[188]

### iv) The Act does not differentiate buyers

Since the Price Control and Anti Profiteering Act 2011 (Act 723) does not differentiate between a buyer who buys price controlled goods for self consumption and a buyer who buys the said goods as a trader to resell the goods thereafter, all buyers, no matter what their intention is in buying those goods, will be committing an offence if they buy price controlled goods above the price determined by the government. Such a buyer will be subjected to unnecessary hardship by a piece of legislation which was originally passed to protect consumers but which is now beginning to persecute consumers.

---

[188] Bernama, "Price Control, Anti-Profiteering Law Deters Irresponsible Traders," The Borneo Post Online, July 14, 2011, http://www.theborneopost.com/2011/07/14/price-control-anti-profiteering-law-deters-irresponsible-traders/ (accessed September 18, 2011).

# CHAPTER FOUR

# RECOMMENDATIONS AND CONCLUSION

## 4.1 Introduction

The following sections of this chapter will provide recommendations based on the findings of objectives one and two of this research.

## 4.2 The Price Advisory Council Should Be Impartial

It can be seen clearly that the Price Control and Anti Profiteering Act 2011 (Act 723) is more devoted to giving power to the Ministry to establish some primary posts for example the posts of the price controller, the deputy price controller, the assistant price controller under **Section 3** and the Price Advisory Council members under **Sections 41-53**. So as to avoid the perception that our government is still practising the policy of protectionism, it is essential to review whether the selection of persons by the Minister to hold these posts is appropriate. Since the government has been at pains to put the country at par with other countries which have good consumerism policy by passing statutes like the Competition Act 2010 to revive a competitive scenario or a scenario of non intervention it seems that the government is backtracking by passing the Price Control and Anti Profiteering Act 2011 (Act 723). Hence it is suggested that power should be given to Parliament to appoint proper persons so as to avoid conflict of interest especially when government linked companies which are being reviewed. It is recommended that in order for the Price Control and Anti Profiteering Act 2011 (Act 723) to be accepted and observed by the small and medium sized industries, the private sectors and consumers in general, the Ministry must also ensure that the government linked industries will not be excluded from the provisions of the Price Control and Anti Profiteering Act 2011 (Act 723). The era of government knows best is over and the government must walk the talk to garner the adherence of the law by the public. The Price Advisory Council should not be made up of government servants to protect impartiality.

### 4.3 Government's Comprehensive Power Should Be Reactive Not Proactive

The Price Control Act 1946 (Act 121) only gave power to the government to control the prices of only certain gazetted goods which are mostly basic necessities. The Price Control and Anti Profiteering Act 2011 (Act 723) has given a comprehensive power to the government.[189] The government can now control the prices and charges of all goods and services which are going to be offered. Even though the intention of the government is good it is afraid that such comprehensive control will result in negative side effects to the general economy when usually it is the market forces of supply and demand which determine the prices. It is recommended that even though the government has such power it is not to be exercised in an overzealous manner. The government should only use the power when there is a complaint by the consumers that there is excessive profit taking by traders even though the Price Control and Anti Profiteering Act 2011 (Act 723) allows an Assistant Controller to commence an investigation "when he has reasonable grounds to suspect that any offence is or will

[189] Section 14 – Any person who, in the course of trade or business, profiteers in selling or offering to sell or supplying or offering to supply **any** goods or services commits an offence.

be committed” or when he has received a reasonable complaint from a person.[190] If there is no such complaint then the government should let the market forces determine the prices of goods and services. In its enthusiasm to protect the consumers, traders and service providers may be made victims which will hinder the economic growth and development of the country.

### 4.4 Government Intervention Should Be Kept At The Minimum

It goes without argument that the best stance to take is to let the market decide the prices of goods and services and not to take too strict an action in regulating the prices However if the introduction of the Price Control and Anti Profiteering Act 2011 (Act 723) was made in anticipation of the implementation of the goods and services tax then the government has to enforce the Price Control and Anti Profiteering Act 2011 (Act 723) for a certain amount of time before the goods and services tax commences to ensure that it is not harmful to execute the new tax system without an assurance that there is a legal mechanism to curb excessive profit taking by traders. There are many considerations that must be made. This is because eventually a government in spurring its macroeconomics targets of growth and development, employment and also inflation control must also be responsible in taking care of the micro economic aspects like the determination of price of goods. Malaysia itself is not strictly adhering to the practice of the liberal classic based on the open economy or free market as propounded by Adam Smith and David Ricardo because if this is so then everyone will have the right to individual private property unhindered by any government intervention. The economy of Malaysia is rather a mixed economy whereby there is a

[190] Section 19 and Section 20.

certain amount of *laissez faire*[191] which gives freedom of interaction in the market with a spate of government intervention to uphold social justice. This should be so because the ideal view that the market is perfect is an erroneous assumption. Whatever form the intervention may take it should not perpetuate itself and should only take place within a short period of time, for example the anti profiteering provisions under the Australian Trade Practices Act 1974 (now the Competition and Consumer Act 2010) which the Australian government only uses when there is a change in the system of taxation.

If the prices of goods are strictly regulated black markets will usually sprout mainly when there is no supply or no adequate supply of the goods concerned because consumers will still be buying at higher prices especially when the goods are considered as necessary for them. Thus the best way is not through government intervention in controlling the prices of goods but through self regulation where healthy competition is allowed. If there are many traders or manufacturers participating in selling or producing a certain kind of goods then there will certainly be healthy competition which will necessarily benefit the consumers who will have more choices in selecting the goods which are available in the market. No one person or a group of individuals or a cartel should be allowed to control a certain kind of goods.

[191] An economic doctrine that opposes governmental regulation of or interference in commerce beyond the minimum necessary for a free-enterprise system to operate according to its own economic laws.

### 4.5 Price Control Should Not Be In Perpetuity

Thus in this sense it is wise that price control of certain necessities must go on eventhough there is no shortage. The government's effort in combating inflation and reducing it to zero was propounded by its concern with the rise in prices of essential needs of the average citizens which will lower their purchasing power to make it unworthwhile to have more money only to be able to buy less goods. To achieve this end the government thought that it would be far better if the prices and the income remain static rather than fiddling with the value of the currency or interest rate. More money does not mean more wealth. It is the purchasing power of what is earned that counts. In an inflationary situation purchasing power will diminish. Only when there is zero inflation will an increase in income result in an increase in purchasing power.

However towards the end of the 20th century our economic landscape had undergone a tremendous change. Business and trades have become global and complex. In a sophisticated economy like ours, people have to interact and exchange goods and services constantly. The division of labour is so precisely expressed that every household depends on trade and commerce merely to survive. The Price Control and Anti Profiteering Act 2011 (Act 723) has actually widen the coverage of the goods in which traders could profiteer. Before the Price Control and Anti Profiteering Act 2011 (Act 723) came into force traders would only be found guilty for selling gazetted price controlled goods, now however traders could be committing offences if they are found to have been making unreasonably high profit in selling or providing for any goods or services. This wider power given to the government may hamper the business community as a whole. Therefore it is suggested that any rational system of price control has however to aim not at perpetuating itself or unnecessarily increasing its coverage but at creating conditions where the basic cause of control namely scarcity of the commodity subjected to price control is removed so that the control which is always irksome and involve administrative cost can be lifted as quickly as possible.

### 4.6 Competition Should Be Encouraged

The government had been making a lot of decisions to oppose the inflationary effects. The perpetual increase in the price of oil price and the persistent growth in the demand and supply of goods had caused every consumer product to inflate and the government in power tried hard to counter all the negative ripple effects of those factors. One of the measures that the government took was to control the prices of goods. Is this the correct move?

Inflation is a stressful subject for the government as it can destroy a person's self respect. Inflation damages the conservative social values which are essential to the country's future. Stability, savings and investment are all undermined by inflation. Severe inflation makes a mockery of most families' financial plans. Most working people feel there is no way they can protect their budgets against this kind of attack on money. It erodes the sense of trust on which an economy and a society rest, and it makes people cynical about the chances of attaining any social goal more ambitious than mere survival. The government can get short-sighted, ineffective, and often counterproductive especially in making policies in countering inflation. But before taking any measures to counter inflation the government needs to ask whether that inflation had been caused by the ever increasing “supply and demand” or is it just merely speculation.[192]

In Malaysia’s problems of food shortages (flour, cooking oil, milk, sugar and rice), the increase in the prices was driven by the market forces factor of either an increase in the production cost or when supply was lower than demand. None of it was contributed by speculative actions. By adopting the price control measures, the government had gone against the market forces which had then precipitated a chain reaction of ceaseless new troubles such as scarcity, products of low quality and stagnating future development.

It is not that market should be totally free, but it should be left as flexible as it can be. If prices of goods are not free to fluctuate in accordance with their demand and supply then there is not going to be any driving force for the producers to find methods of seeking profits with low cost of production. There will be no innovative breakthrough and the economy will leave to stand still just for the sake of surviving. That will prevent future progress as the government will then be required to pump more money for subsidy that will never end.[193]

Using the price control measures especially to stem the food price hike is akin to creating a moral hazard of its own. This is because citizens regard price control as a

[192]Speculation is the practice of engaging in risky financial transactions in an attempt to profit from short or medium term fluctuations in the market value of a tradable good such as a financial instrument, rather than attempting to profit from the underlying financial attributes embodied in the instrument such as capital gains, interest, or dividends. Many speculators pay little attention to the fundamental value of a security and instead focus purely on price movements.

[193]R. Thillainathan, *Malaysia’s Experiment With Zero Inflation And Price Control (Kuala Lumpur :* Malaysia Institute of Economic Research, 1996), 5-6.

form of safety net and the bigger the safety net is, the greater the recklessness which people, businesses, or government will tend to behave. Leaving the price to be controlled by the market rather than by the government is the way to nurture a competitive way of doing business. Although competitive markets create winners and losers and are therefore stressful it must be borne in mind also that the competitive market is the way to produce wealth and it does produce wealth more than the systems of government controlled market, and that's where the focus should be.

Nowadays the world economy has become too globalized, complex and interlinked. Our policy-making process must evolve in response to that sophistication. By enforcing price control measures whenever we are having problems of price hike or shortages of food products, it was like a Spanish literature of Don-Quixote attacking windmills.[194] The idea is well-intentioned but misguided.

Section 4 until Section 10 of the Price Control and Anti Profiteering Act 2011 (Act 723) provide for the determination of prices and charges of goods and services. The Price Controller may determine the prices of any goods and services by taking into account the supply, delivery, repair, maintenance, packing, carriage or storage charges, the area in which the goods and services are traded and the taxes, duties or any other charges imposed by the government. However how exactly will the government determine the prices and charges of the goods and services even though those criteria are taken into account? How many goods and services the prices and

[194]The Ingenious Gentleman Don Quixote of La Mancha is a novel written by Miguel de Cervantes portraying the idea of a man taking on a problem which is unreasonable, irrelevant futile and unlikely to achieve anything of any use. By attacking the windmill Don Quixote is fighting a battle he cannot win. It is pointless endeavour. It asks the question why fight something which is established, would it not be better to accept the situation?

charges of which will be determined by the Ministry? Brand and quality of the goods and services may differ enormously although their use and function are the same. Maybe the way those goods and services are offered are at variant; for example through direct contact with the consumers, through online sale, through mail order etc thus incurring different cost of production. This will bring a tremendous difficulty to the government to ascertain the prices and charges for those goods and services, more so if the price increase is triggered by the increase in the price of petroleum which is determined by the world price. Hence it is proposed that the market need to be the one who should set the price, and it will prompt the required production that later will allocate products according to demand and supply.

### 4.7 Controlled Prices Should Be Dispersed Efficiently

Another problem facing price control is the dispersion of information regarding prices of goods. In order for traders and consumers to abide by the controlled price, they must be aware of the prices fixed by the government. How does the government ensure this awareness? It is not an easy task to do as not everybody has access to this information. Not only that, we don’t even know which goods and services are controlled by the government. Of course the government can disseminate the information through the mass media, through booths opened at shopping complexes, through fliers and the like but nothing beats information which is obtained through the free market which is faster and more efficient. If the price is left to be fixed by the price controller a lot of time would have passed before a price is finally fixed as they have to take into account any tax imposition, the supplier’s cost, supply and demand conditions etc and then when the controlled price is eventually released to the public, that price may not reflect the price thought to be reasonable by the government any more, perhaps due to changes in circumstances. So, price control is inferior to free market mechanism as information is disseminated faster among participants of the market than the government could react.

However if price really needs to be controlled then there is a need to evolve a system which makes short term adjustments in prices to changing costs of major raw materials and inputs automatic. The desirability of making frequent small changes in prices in response to short term changes in costs of essential inputs instead of large changes at long intervals needs to be stressed. The price fixing body may determine the major raw materials and other inputs for each price controlled industry and evolve a suitable price adjustment formula, keeping in view factors like their proportion to total cost, the degree of their substitutability in the short term, the price elasticity of demand for finished products etc. and also the offsetting factors which might cause a reduction in costs. They can then closely monitor movements in their prices and take action as soon as they have changed to the extent warranting a corresponding change in the prices of the price controlled commodities concerned, according to the formula evolved by them. The entire process should be computerized. Producers could be asked to adjust their prices accordingly as soon as notification is given and inform the government immediately.[195]

### 4.8 Price Control Should Be Reviewed As It Also Benefits The Rich

Apart from distorting the allocation of resources and dispenses with the services of the price mechanism which provides a costless way of coordinating economic

[195] K. D. Saksena, *Pricing Policy and Price Controls in Developing Countries (* London : Frances Pinter Publishers, 1986), 60.

activities, price control is inefficient for attaining economic welfare goals because it benefits those who do not deserve any assistance as the actual beneficiaries who deserve a helping hand cannot be targeted as they consist of only a small minority. Anyway this small minority can be helped through more efficient and less inequitable ways[196] for example issuing coupons and vouchers to those who are needy. Controlling the price of goods is also a form of subsidy because it forks out the subsidy to everybody whether they need it or not as not everybody needs to pay at low price.[197] For example, one of the goods which price is still controlled by the government is cooking oil. Most consumers in Malaysia take the present price of cooking oil for granted after a subsidy on cooking oil was introduced in 1995 which resulted in the cooking oil being sold at a relatively lower price than in other ASEAN countries. Many consumers failed to understand that the subsidy was meant for domestic household, particularly the low socio-economic group and the rural population. Those in the low socio-economic group consumed cooking oil sold in plastic packets at RM2.50 per kg, while the middle and high-income consumers would buy in plastic bottles at RM3.60 per kg from supermarkets.

It is only recently that the government is aware that the subsidy has been badly abused by the non-target groups. For example, those sectors which are involved in manufacturing food have been buying the subsidized cooking oil in large amounts when supposedly they should be buying cooking oil at market price packed in 17kg

---

[196] R. Thillainathan, "Critical Review Of Price Control And Subsidies In Malaysia," *Centre for Policy Initiatives*, June 28, 2008, http://english.cpiasia.net/index.php?option=com_content&view=article&id=566:a-critical-review-of-price-control-a-subsidies-in-malaysia&catid=170:Dr.%20R.%20Thillainathan&Itemid=169 (accessed April 30, 2009).

[197] Melati Mohd Ariff, "National Price Council : Acid Tests Awaits," Bernama.com., February 04, 2008 http://www.bernama.com/bernama/v3/printable.php?id=312075 (accessed April 30, 2009).

tin or in bulk. Although they bought the subsidized cooking oil unfortunately many did not pass the subsidy to consumers as there is no reduction in the price of fried food.

In addition, price control encourages illegal and immoral activities such as bribery, corruption, smuggling and illicit manufacture.[198] There have been reports that in border states price controlled and subsidized cooking oil for domestic household consumption have been smuggled to neighbouring countries. This has led to the non-target groups obtaining cheap cooking oil at half price. If the subsidized cooking oil reached only the intended domestic households, the subsidy would only amount to RM400 million per year and if the price of cooking oil were left to be determined by the open market and were only subsidized for the needy group (urban and rural poor), it would only cost the government RM40 million annually and not an enormous sum of RM1.3 billion in 2009.[199]

"Local cooking oil subsidy should be for the needy (urban and rural poor) and not for the wealthy (middle and high-income group), the greedy (who wants to make more profit) or other countries (by smuggling). The government should seriously be reviewing the cooking oil subsidy be it a complete removal of the subsidy or a reduction in the quantum of the subsidy."[200]

---

[198] R. Thillainathan, "Critical Review Of Price Control And Subsidies In Malaysia," *Centre for Policy Initiatives,* June 28, 2008, http://english.cpiasia.net/index.php?option=com_content&view=article&id=566:a-critical-review-of-price-control-a-subsidies-in-malaysia&catid=170:Dr.%20R.%20Thillainathan&Itemid=169 (accessed April 30, 2009).

[199] Hanim Adnan, "Cooking Oil Subsidy Should Only Be For The Needy," The Star Online, February 16, 2010, http://biz.thestar.com.my/news/story.asp?file=/2010/2/16/business/5681792&sec=business (accessed July 14, 2011).

[200] ibid.

### 4.9 Conclusion

Price Control and Anti-Profiteering Act 2011 (Act 723) which came into force on the 1st of April 2011 "reforms the law on price control and enacts provisions relating to prohibition on profiteering." The purpose of the Price Control and Anti Profiteering Act 2011 (Act 723) is to enable the Government to determine prices of goods or charges for services and at the same time to curb profiteering activities of essential goods by unscrupulous traders, thereby protecting the interest of consumers. The government hopes that once the Price Control and Anti Profiteering Act 2011 (Act 723) is passed licences under the Festive Season Price Control Scheme would be abolished. As at Hari Raya Puasa 2011 this remained to be seen as the Government had set ceiling prices for 20 household items under the Hari Raya 2011 festive season price control scheme to prevent any profiteering during Hari Raya.

While the Price Control and Anti Profiteering Act 2011 (Act 723) will have an impact on businesses, it is not anti-business or intended to stop people from making profit. What it aims to do is to prevent greedy traders and unscrupulous businesses from charging exorbitant prices for their goods and services. The enactment of the Price Control and Anti Profiteering Act 2011 (Act 723) should therefore be welcomed as a safeguard for consumers against opportunistic profiteers. However, as it gives the Price Controller broad powers that will have a direct effect on the citizens, prices should only be determined after thorough consideration of the impact on stakeholders. The success of the Price Control and Anti Profiteering Act 2011 (Act 723) in achieving its objective is therefore very much dependent on its implementation.

On the other hand, price control measures need not necessarily have a statutory basis or legal sanctions. Prices can also be regulated on the basis of an informal understanding or arrangement with the industry but a statutory basis makes enforcement easier. Statutory controls may be unavoidable if price control is coupled with a compulsory levy and procurement. Legal provisions may also become necessary to prohibit unhelpful practices on the part of producers or traders.[201]The Price Control and Anti-Profiteering Act 2011 (Act 723), may in many ways deter businesses from increasing prices indiscriminately. With the introduction of the said Act 723, action could now be taken by the Ministry of Domestic Trade, Cooperatives and Consumerism against traders who indiscriminately raised prices. Through the legislation, as mentioned above, the Ministry aims to rein in irresponsible traders who engage in profiteering, especially during the festive seasons and in times of crisis. However, since not all price increases have the element of profiteering, traders would still be able to escape punishment by producing facts and figures to disprove profiteering. Thus the best way to do business may not be to control the price but to let the market determine the price. In the words of Pelatiah Webster, "Trade, if let alone, will ever make its own way best, and like an irresistible river, will ever run safest, do least mischief and do most good, suffered to run without obstruction in its own natural channel."[202]

---

[201] K. D. Saksena, *Pricing Policy and Price Controls in Developing Countries (* London : Frances Pinter Publishers, 1986), 213.

[202] Pelatiah Webster, *Political Essays(* New York : B Franklin, 1969), 65-66.

## REFERENCES


AFP. "Malaysian Minister Says Price Controls A Joke," *Asiaone News,* March 26, 2008, http://www.asiaone.com/News/AsiaOne%2BNews/Malaysia/Story/A1Story20080324-55911.html (accessed August 30, 2009).

Albert Bolles, "The Financial History of the United States," Appleton & Co., New York, 1896, as cited in Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009).

Anwarul Yaqin, (2007). *Legal Research and Writing (* Malaysia : Malayan Law Journal Sdn Bhd., 2007.

Bernama, "Price Control, Anti-Profiteering Law Deters Irresponsible Traders," The Borneo Post Online, July 14, 2011, http://www.theborneopost.com/2011/07/14/price-control-anti-profiteering-law-deters-irresponsible-traders/ (accessed September 18, 2011).

Bernama. "Retail Licences For Chicken, Steel Bars And Cement To Be Abolished By July 15," The Star Online, June 22, 2010, http://thestar.com.my/news/story.asp?file=/2010/6/22/nation/20100622190734&sec=nation (accessed September 18, 2011).

Cassey Lee, "Competition Policy In Malaysia," *Working Paper Series of Centre On Competition and Regulation,* Paper No.68 (June2004), http://www.competition-regulation.org.uk/publications/working_papers/WP68.pdf (accessed August 30, 2009).

Central Intelligence Agency, "The World Fact Book : East and South East Asia : Malaysia," https://www.cia.gov/library/publications/the-world-factbook/geos/my.html (accessed September 18, 2009).

Chong, L.S., "Product Pricing-Policies, Practices And Legal Constraints," *Malaysian Management Review,*http://mgv.mim.edu.my/MMR/8108/810806.Htm (accessed April 30, 2009).

Deardorffs' Glossary of International Economics, www-personal.umich.edu/~alandear/glossary/p.html (accessed August 30, 2009).

Dictionary.com, http://dictionary.reference.com/browse/anti (accessed August 30, 2009)

Editorial, "Rethinking Price Controls," New Straits Times, July 23, 2007, http://findarticles.com/p/news-articles/new-straits-times/mi_8016/is_20070723/rethinking-price-controls/ai_n44 (accessed July 23, 2007).

Emmanuel Tabones, "The Economic Fallacy Of Price Controls," Citizen Economists Blog, December 24, 2008, http://www.citizeneconomists.com (accessed August 30, 2009).

Emmanuel Tabones, "The Economic Fallacy Of Price Controls," Citizen Economists Blog, December 24, 2008, http://www.citizeneconomists.com (accessed August 30, 2009).

Farrah Naz Karim, "Brazen Smuggling At The Borders," The New Straits Times, January 2, 2012, http://www.nst.com.my/top-news/brazen-smuggling-at-the-borders-1.26615 (accessed January 2012).

Finley, M.I. (1973), as cited in Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009).

Fong Chan Onn, "Caught In Middle Income Trap," The Star Online, February 7, 2010, http://thestar.com.my/news/story.asp?file=/2010/2/7/focus/5614419&sec=focus (accessed October 30, 2011).

Francis C.Nantha, *"Anti-Profiteering Act Applies From Tomorrow,"* The Malay Mail, *March 31, 2011, http://www.mmail.com.my/content/68201-antiprofiteering-act-applies-tomorrow (accessed may 5, 2011).*

Hafiz Nor Shams, "[1623] Of Price And Supply Control In Malaysia," The _Earthinc Reasonably Libertarian Blog, Posted on April 19, 2008, http://maddruid.com/?p=1629 (accessed August 30, 2009).

Hafiz Nor Shams, "[2064] Of It's The Price And Supply Control Sweetie," The _Earthinc Reasonably Libertarian Blog, Posted on August 20, 2009, http://maddruid.com/?p=4963 (accessed August 30, 2009).

Hanim Adnan, "Cooking Oil Subsidy Should Only Be For The Needy," The Star Online, February 16, 2010, http://biz.thestar.com.my/news/story.asp?file=/2010/2/16/business/5681792&sec=business (accessed February 20, 2010).

Hartford Financial Services, "Inflation," http://www.higbank.com/index.php?option=com_content&view=article&id=189&Itemid=199&lang=en (accessed September 18, 2011).

Irving S. Old, 1952, as cited in Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009).

Ismail Saleh, "Kurva Permintaan, Floor Price, dan Ceiling Price," January 20, 2011, http://izmll90.blogspot.com/2011/01/kurva-permintaanfloor-price-dan-ceiling.html (accessed August 30, 2011).

J.K Galbraith, Theory of Price Control, 2nd edn, Cambridge, Mass., Harvard University Press, 1980.

Jamesesz, "Price Controls : Part Of The Problems Or Part Of The Solutions," Eternity in an Hour Blog, Posted on May 6, 2008, http://jamesesz.wordpress.com/2008/05/06/price-controls-part-of-the-problem-or-part of the solution (accessed August 30, 2009).

Jeeva Arulampalam, "The Competition Act and Anti-Profiteering Act to Change the Way Business is Conducted," The Star Online, April 23, 2011, http://biz.thestar.com.my/news/story.asp?file=/2011/4/23/business/8515215&sec=business (accessed September 18, 2011).

Jeffrey R. Hummel, "Death and Taxes, Including Inflation: the Public versus Economists," Econ Journal Watch 4, no. 1 (2007), econjwatch.org/file_download/139/2007-01-hummel-com.pdf(accessed April 30, 2009).

Jim Cox, *Price Controls.The Concise Guide To Economics* (Los Angeles : Nash Publishing, 2005).

Josie M. Fernandez, "Protecting Consumers," The Malaysian Bar Website, August 15, 2007, http://www.malaysianbar.org.my/echoes_of_the_past/protecting_consumers.html (accessed October 25, 2011).

K. D. Saksena, *Pricing Policy and Price Controls in Developing Countries (* London : Frances Pinter Publishers, 1986).

Keith F. Punch, *Introduction To Social Research : Quantitative And Qualitative Approaches (*London : Sage Publications, 1998).

Lars E. O. Svensson, "Escaping From A Liquidity Trap And Deflation: The Foolproof Way And Others," *Journal of Economic Perspectives* 17 (2003) :, 145-16.

Laurence M. Vance, "The Myth of the Just Price," Ludwig von Mises Institute Blog, April 22, 2008, http://mises.net/story/2918 (accessed August 30, 2009).

Lawrence Low, "Differences In Hyperinflation: Germany vs. Zimbabwe," Your Portal to the World Blog, March 25, 2009, http://econsguide.blogspot.com/2009/03/differences-in-hyperinflation-germany.html (accessed August 30, 2009).

Lee Wei Lian, "High-Income Job Bar Set At RM3,000," The Malaysian Insider, January 18, 2011, http://www.themalaysianinsider.com/malaysia/article/high-income-job-bar-set-at-rm3000/ (accessed September 18, 2011).

Loh, Dominic, "Fong Chan Onn : Subsidy, Ceiling Price System Must Be Abolished," *My Sinchew.com,* October 14, 2008, http://www.mysinchew.com/node/17339 (accessed June 25, 2010).

Ludwig von Mises, "Defense, Controls And Inflation," Ludwig von Mises Institute Blog, April 22, 2008, http://www.mises.org/quotes (accessed August 30, 2009).

Mahathir Mohamad, "National Summit in Achieving Zero Inflation," *Koleksi Arkib Ucapan Ketua Eksekutif.*, mhtml:file://F:\Koleksi Arkib Ucapan Ketua Eksekutif.mht (accessed April 30, 2009).

Mahdi Zahraa, *Research Methods For Law Postgraduate Overseas Students (*Malaysia : Stillglow Sdn. Bhd. Univision Press, 1998).

Melati Mohd Ariff, "Cooking Oil Shortage : A Crisis Looms?," Bernama.com, May 07, 2007, http://www.bernama.com.my/bernama/v3/printable.php?id=260344 (accessed August 30, 2009).

Melati Mohd Ariff, "National Price Council : Acid Tests Awaits," Bernama.com., February 04, 2008 http://www.bernama.com/bernama/v3/printable.php?id=312075 (accessed April 30, 2009).

Official Website of the Parliament of Malaysia, "The Second Reading of the Price Control and Anti Profiteering Bill 2010 in the Third Meeting of the Third Session of the Twelfth Parliament, http://www.parlimen.gov.my/files/hindex/pdf/DR-13102010.pdf (accessed October 13, 2010).

Official Website of the Parliament of Malaysia, "The Second Reading of the Price Control and Anti Profiteering Bill 2010 in the Third Meeting of the Third Session of the Twelfth Parliament, http://www.parlimen.gov.my/files/hindex/pdf/DR-13102010.pdf (accessed October 13, 2010).

Pelatiah Webster, Political Essays, (New York : B Franklin, 1969).

Peter Van Doren and Jerry Taylor, "Time To Lay The 1973 Oil Embargo To Rest," CATO Institute Website, October 17, 2003, http://www.cato.org (accessed August 30, 2009).

Portal Rasmi Kementerian Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan, "Senarai Harga Barang Kawalan," http://www.kpdnkk.gov.my/web/guest/pengguna/penguatkuasaan/brg-kawalan/harga-brg-kawalan (accessed October 10, 2011).

Portal Rasmi Kementerian Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan, "Hak-Hak Pengguna," http://www.kpdnkk.gov.my/web/guest/pengguna/hak-pengguna (accessed March 3, 2012).

Portal Rasmi Kerajaan Malaysia, "Consumer Rights," http://www.malaysia.gov.my (accessed October 25, 2011).

R. Thillainathan, "Critical Review Of Price Control And Subsidies In Malaysia," *Centre for Policy Initiatives,* June 28, 2008, http://english.cpiasia.net/index.php?option=com_content&view=article&id=566:a-critical-review-of-price-control-a-subsidies-in-

malaysia&catid=170:Dr.%20R.%20Thillainathan&Itemid=169 (accessed April 30, 2009).

R. Thillainathan, *Malaysia's Experiment With Zero Inflation And Price Control (Kuala Lumpur :* Malaysia Institute of Economic Research, 1996).

Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009).

S. Sothi Rachagan and Susheela Nair, "Consumer Protection Law in Malaysia," Law and Paneir Blog, Posted on October 12, 2008, http://paneir.blogspot.com/2008/10/consumer-protection-law-in-malaysia.html (accessed March 3, 2012).

Salena Pail, "Price Control And Anti-Profiteering Act Takes Effect," The Borneo Post, April 2, 2011, http://www.theborneopost.com/2011/04/02/price-control-and-anti-profiteering-act-takes-effect/ (accessed September 18, 2011).

"Sugar Woes," The Star Online, June 7, 2010, http://thestar.com.my/news/story.asp?sec=nation&file=/2010/6/7/nation/6415650 (accessed July 25, 2010).

Thayler Watkins, "Episodes of Hyperinflation: Rome," Department of Economics, San Jose State University, San Jose, 22 April 2008, http://www.sjsu.edu/faculty/watkins (accessed August 30, 2009).

"The Executive Summary of the International Intellectual Property Alliance 2004 Special 301 Report Malaysia," February 13, 2006, http://www.iipa.com/rbc/2004/2004SPEC301MALAYSIA.pdf (accessed August 30, 2009).

The Official Website of FOMCA, "FOMCA's Profile," http://www.fomca.org.my/v3/index.php/about-fomca (accessed March 6, 2012).

Thomas J. DiLorenzo, "Four Thousand Years Of Price Control," Ludwig Von Mises Institute Blog, Posted on November 10, 2005, http://mises.org/story/1962 (accessed August 30, 2009).

Tommy Lee, "Price Control Act Goes Into Effect," The Star Online, April 1, 2011, http://thestar.com.my/news/story.asp?file=/2011/4/1/nation/8393045&sec=nation (accessed September 18, 2011).

W.F. Leemans, 1950, as cited in Robert L. Schuettinger and Eamonn F. Butler, *Forty Centuries of Wage and Price Controls : How Not To Fight Inflation* (Washington DC : The Heritage Foundation, 2009).

Wikipedia the Free Encyclopaedia, "Price Floor," http://en.wikipedia.org/wiki/Price_floor (accessed August 30, 2009).