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CRISIS CARTELS

Contribution from the Philippines

-- Session III --

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CRISIS CARTELS: AN OVERVIEW OF THE PRICE ACT: ITS PURPOSE AND MECHANISM

-- Philippines --

1. Introduction

1. The Philippines's Price Act of 27 May 1992 hews closely to the concept of crisis cartels. Instead of organizing or sanctioning the fixing of prices or rationing of production and production during shortages, it provides for a mechanism of price stabilization of basic necessities and prime commodities during emergency situations and like occasions.

2. While doing so, it still recognizes the right of private business to a fair return on investment at the same cracking down on hoarding, profiteering and cartels. Emergency situations include periods of calamity and widespread illegal price manipulation.

2. Coverage

3. "Basic necessities" are defined by enumeration and includes rice, corn, bread, fresh, dried and canned fish and other marine products, fresh pork, beef and poultry meal, fresh eggs, fresh and processed milk, fresh vegetables, root crops, coffee, sugar, cooking oil, salt, laundry soap, detergents, firewood, charcoal, candles and certain drugs.

4. On the other hand, "prime commodities" covered include fresh fruits, flour, dried processed and canned pork, beef and poultry meat, dairy products not falling under basic necessities, noodles, onions, garlic, vinegar, patis (*a local shrimp-based sauce*), soy sauce, toilet soap, fertilizer, pesticides, herbicides, poultry, swine and cattle feeds, veterinary products for poultry, swine and cattle, paper, school supplies, nipa (*dried coconut leaves*) shingles, sawali, cement, clinker, galvanized iron sheets, hollow blocks, plywood, plyboard, construction nails, batteries, electrical supplies, light bulbs, steel wire and all drugs not classified as essential drugs.

5. Exclusions from these lists made by made for basic necessities and prime commodities which may be deemed as nonessential goods or luxury goods but may be reinstated during occasions of acute shortage in the supply of the basic necessity or prime commodity to which the excluded type or brand used to belong.

3. Price controls and price ceilings

6. A regime of automatic price control is mandated which freezes the prices of basic necessities in an area at their prevailing prices when:

- it is proclaimed or declared a disaster area or under a state of calamity;
- it is declared under an emergency;

- the privilege of the writ of *habeas corpus* is suspended in that area;
- it is placed under martial law;
- it is declared to be in a state of rebellion; or
- a state of war is declared.

7. If the prevailing price of any basic necessity is excessive or unreasonable, a price ceiling may be imposed. Price control shall be in effect for the duration of the condition that brought it about but not for more than sixty (60) days.

8. Mandated price ceilings may also be imposed on any any basic necessity or prime commodity if any of the following conditions warrants:

- the impendency, existence, or effects of a calamity;
- the threat, existence, or effect of an emergency;
- the prevalence or widespread acts of illegal price manipulation;
- the impendency, existence, or effect of any event that causes artificial and unreasonable increase in the price of the basic necessity or prime commodity; and
- whenever the prevailing price of any basic necessity or prime commodity has risen to unreasonable levels.

9. The determination of the reasonable price ceiling considers the following factors:

- the average price, in the last three (3) months immediately preceding the proclamation of the price ceiling, of the basic necessity or prime commodity under consideration;
- the supply available in the market;
- the cost to the producer, manufacturer, distributor or seller including but not limited to:
 - the exchange rate of the peso to the foreign currency with which a basic necessity or prime commodity or any component, ingredient or raw material thereof was paid for;
 - any change in the amortization cost of machinery brought about by any change in the exchange rate of the peso to the foreign currency with which the machinery was bought through credit facilities;
 - any change in the cost of labor brought about by a change in the minimum wage; and
 - any increase in the cost of transporting or distributing the basic necessity or prime commodity to the area of destination.
- such other factors or conditions which will aid in arriving at a just and reasonable price ceiling.

4. Buffer fund

10. A "butter fund" is set up as a contingent fund in the budget of the implementing agency which shall not be used in its normal or regular operations but only for purposes of the Price Act.

5. Price Coordinating Council

11. A Price Coordinating Council shall (1) coordinate the productivity, distribution and price stabilization programs, project and measures and develop comprehensive strategies to effect a general stabilization of prices of basic necessities and prime commodities at affordable levels; (2) report to the President and to Congress the status and progress of these programs; (3) advise the President on general policy matters for promotion and improvement in productivity, distribution and stabilization of prices of basic necessities and prime commodities; (4) Whenever automatic price control of basic necessities is imposed, it shall cause the immediate dissemination of their prevailing prices or the price ceilings imposed.

6. Illegal Acts

12. It shall be unlawful for any person habitually engaged in the production, manufacture, importation, storage, transport, distribution, sale or other methods of disposition of goods to engage in the following acts of price manipulation of the price of any basic necessity or prime commodity:

- **Hoarding**, which is the undue accumulation by a person or combination of persons of any basic commodity beyond his or their normal inventory levels or the unreasonable limitation or refusal to dispose of, sell or distribute the stocks of any basic necessity or prime commodity to the general public or the unjustified taking out of any basic necessity or prime commodity from the channels of reproduction, trade, commerce and industry.

There shall be *prima facie* evidence of hoarding when a person has stocks of any basic necessity or prime commodity fifty percent (50%) higher than his usual inventory and unreasonably limits, refuses or fails to sell the same to the general public at the time of discovery of the excess.

- **Profiteering**, which is the sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth.

There shall be *prima facie* evidence of profiteering whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or dilluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month.

- **Cartel**, which is any combination of or agreement between two (2) or more persons engaged in the production, manufacture, processing, storage, supply, distribution, marketing, sale or disposition of any basic necessity or prime commodity designed to artificially and unreasonably increase or manipulate its price.

There shall be *prima facie* evidence of engaging in a cartel whenever two (2) or more persons or business enterprises competing for the same market and dealing in the same basic necessity or prime commodity, perform uniform or complementary acts among themselves which tend to bring about artificial and unreasonable increase in the price of any basic necessity or prime commodity or when they simultaneously and unreasonably increase prices on their competing products thereby lessening competition among themselves.

7. Penalties

13. Penalties are laid out for acts of illegal price manipulation [imprisonment for five (5) years to fifteen (15) years and a fine of P5,000 pesos to P2,000,000 pesos] and violation of price ceiling [imprisonment for one (1) year to ten (10) years and a fine of P5,000 pesos nor more than P1,000,000 pesos] or both.

REFERENCE

Republic Act No. 7581, The Price Act.