POLITICA DE INGRESOS

Dr. Ricardo C.J. Crespo

Los variados intentos que en la Argentina se han efectuado en materia de regulación de precios y salarios por el Gobierno, han fracasado toda vez que han implicado controles estrictos de precios y salarios. Más aún han creado sensibles inequidades a través de cambios en los precios relativos en contra de las empresas sujetas a control; a favor de y los que pueden escapar del mismo. Además, ha habido desabastecimiento de los bienes y servicios controlados; y, en importante medida, se puede presumir, que fueron los que eludieron los controles, y no los consumidores , quienes a la postre, resultarían beneficiados por dicho establecimiento de precios máximos.

Hemos creido conveniente, como una simple contribución al análisis del tema, efectuar algunos comentarios sobre la aplicación de controles en EE.UU. de América en 1971, con intención de reducir un brote inflacionario. La experiencia se fundó jurídicamente en una ley de estabilización económica (Economic Stabilization Act); y en su aplicación por el Poder Ejecutivo, siendo presidente Richard Nixon, a través de la implementación por un Consejo de Costo de Vida (Cost at Living Council), en adelante "CCV". Se anexa el texto original tomado para el estudio. (*)

Como podrá apreciarse de la lectura del original; y, especialmente de su última sección de conclusiones ("The Policy Process" - pag. 82/83), el proceso de formulación de política puede analizarse en dos niveles. Primero, el Consejo de Costo de Vida, debió articular los amplios alcances de su trabajo, conforme a determinaciones legales y reglamentarias. Fundamentalmente determinar y definir la naturaleza del congelamiento y el grado de restricción que imponía sobre la economía.

En esta tarea se avanzó con rapidez e intensidad, las políticas resultantes aparecieron como internamente consistentes y otorgaban igual tra tamiento a todos los sectores de la economía; en otras palabras "el modelo cerraba". Adicionalmente se proveían los principios generales para guiar al público en el cumplimiento del programa de estabilización. "Esta primera generación de políticas se refleja con el entusiasmo del discurso del presidente, cuando los controles fueron impuestos y la simple solución para hacer los efectivos". "Ninguna referencia fue hecha acerca de las enormes complejidades o inequidades individuales que podía general el "congelamiento". La segunda generación de política , fueron determinaciones del "CCV" al encontrarse ante casos específicos, cada uno con sus propias complicaciones políticas y cuestiones de equidad.

Los problemas técnicos fueron enormes en relación con la planta de funcionarios. Adicionalmente como también se lee en la página 83 la dificultad en sostener políticas generales uniformes crecía geométricamente en la medida que el congelamiento avanzaba.

Por último se afirma que en términos de consistencia, rapidéz y respuesta a los objetivos generales del programa de estabilización, las políticas probaron ser adecuadas a su propósito.

Condicionamiento de los Resultados:

Las conclusiones del trabajo, si bien difieren para un análisis posterior la generación de posibles problemas de ajuste o equidad, parecen concentrar las dificultades a nivel de la implementación del congelamiento, lo que está ampliamente probado a lo largo del trabajo; pero, arrojan un juicio favorable, con respecto a una respuesta adecuada de las medidas a los propósitos del programa de estabilización.

Este final "inesperado" pero importante, en términos de la experiencia argentina en materia de congelamientos nos lleva al análisis de dos tipos de condicionamientos:

I)- los del propio "congelamiento" según fue aplicado en la experiencia estadounidense en estudio; y

II)- los que emanan de los sistemas económicos diferentes de los EE.UU. de América y de la Argentina

1)- Condicionamientos propios del "congelamiento" estadounidense.

En primer lugar se trabajó a nivel presidencial de los E.E.U.U. (en Camp David) con rapidéz y "en secreto". Ello involucró que políticas específicas y regulaciones detalladas no se habían elaborado cuando el plan fue lanzado; pero, lo que a nosotros nos parece muy importante es el secreto, toda vez que no dio pie a expectativas que pudieran derivarse en "remarcaciones anticipatorias de lo que vendrá". Las discusiones del programa en Camp David con el presidente, trataron acerca de sus iniciativas económicas más importantes; dando pequeña atención a las cuestiones de detalle.

Solo 2 decisiones habián sido resueltas por decreto presidencial (Executive order 11615, Federal Register, Vol. 36 (17/8/1971):

La primera consistía en la exclusión de los productos de la agricultura, no elaborados; la segunda fue la forma para la determinación de los "techos" para salarios, precios y rentas.

La transcripción en el trabajo en análisis del apartado a) incorporado en la primera sección del decreto, nos revela la intención de "prever todo", "que nada que no deba escaparse, se escape"-, pretensión razonable de improbable cumplimiento, según lo demuestran múltiples experiencias, incluso la que analizamos ahora (1)-

Se lee en la aludida norma: "Precios, rentas, sueldos y salarios serán estabilizados por un período de 90 días desde la fecha establecida (15-8-71), a niveles no mayores que los más altos registrados en un sustancial volumen de transacciones reales de cada individuo, comercio, firma u otra entidad de cualquier clase durante el período de 30 días que terminó el 14 de agosto de 1971 (o en los 30 días inmediatos anteriores si no se registraran transacciones en el lapso que concluyó el 14 de agosto) . Inmediatamente las normas se extienden a toda forma de pagos de rentas, precios, o salarios, a quien recibe los pagos; y, a quienes los efectúan.

Una tercera disposición emanó del texto de la ley: el establecimiento no solo de un "techo" sino también de un "piso" para los salarios, que no podían ser menores que los alcanzados el 25 de mayo de 1970. Asimismo si los precios de una mercadería había declinado entre el 25 de mayo de 1970 y el día de la imposición del congelamiento, el mayor precio sería el determinante del "techo". Esta última medida protegía la posición de varios alimentos, cuyos precios habían bajado, desde el 25 de mayo de 1970.

Más allá de lo hasta ahora aquí señalado, los elaboradores de la política ("Policy maker") no tuvieron otra guía que la indicación de " suprimir la inflación", en el sentido de que tenían amplios alcances en la formulación

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(1) Estos encomillados son nuestros .

de los principios que debían regir al "congelamiento" (freeze).-

De allí que resulten de la mayor importancia, las medidas que, en ausencia de directivas específicas ha adoptado el CCV, articulando progresivamente una comprensiva, sino rígida aproximación a la política re-- querida.

Los criterios del Consejo

Son a nuestro juicio fundamentales para el análisis de la política.

1)º que el "congelamiento" debía ser estricto y sólo permitir mínimos movimientos en salarios, precios y rentas.

La tendencia hacia la "intocabilidad" refleja los objetivos estratégicos del congelamiento. Es axiomático que la economía de EE.UU. de América es altamente compleja y que todo esfuerzo para manejarla durante los 90 días del congelamiento, podrá terminar fracasando. Al menos que rigurosas políticas fueran apreciadas, significativos movimientos se producirían. Ello crearía, en el mejor de los casos, incredibilidad en el programa; en el peor, reduciría el congelamiento a una "nadería".

Consecuentemente, el objetivo operacional del congelamiento fue provocar un dramático impacto sobre la economía, poniendo un freno a cambios en precios y salarios (2)

Si las presiones bajo la "tapa" fueran irrelevantes, habría que presionar mas duro hasta determinarla. Empero, esto no significa que los controles no fueran levantados sino hubiese una amenaza de calamidad económica. Durante el curso del congelamiento se hicieron esfuerzos para aminorar el efecto del régimen sobre la oferta de bienes vitales.

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(2)- La versión en inglés es más fuerte pues en vez de usar el sustantivo "freno" emplean "tapa". (lid).-

2)- en la formulación de la política se puso celo en mantener firmemente uniformidad y consistencia.

Un congelamiento procura detener los procesos de ajuste que tienen lugar en el tiempo cuando, por ejemplo, los rentistas modifican las rentas que perciben por el alquiler de bienes, en función de incrementos en las tasas impositivas;

Aún a riesgo de algunas inequidades, dado el corto lapso de aplicación del congelamiento, se interpretó que, una severa restricción de la equidad podría ser mejor lograda tratando con uniformidad a / todos los operadores económicos. Si se produjeran casos de inequidades ellos serían mas bien el fin no querido de la ley, que la consecuencia de juicios ligeros de los funcionarios.

La "uniformidad" y la "consistencia" devinieron así en la defensa general contra alegatos de desconformidad y se eligieron en principios rectores en la formulación de la política.

2)- se dio importancia sustantiva a un requerimiento de simplicidad en la naturaleza de normas y reglamentaciones.

Aparte de otras consideraciones, la simplicidad fue una necesidad operacional que reflejó el diseño de todo el programa.

Cuando el presidente pronunció la imposición del congelamiento, puso especial énfasis en señalar que se buscaba escencialmente "consentimiento voluntario" más que una "compulsión agresiva". No solo se trataba de una necesidad técnica, sino que también se relacionaba con la relativa modestia cuantitativa del "staff" y la corta duración del congelamiento.

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Dicho consentimiento voluntario requería de la comprensión, a nivel popular de las reglas de juego; y para ello las reglas deben ser sencillas. No deberían pues enfatizar consideraciones sobre situaciones particulares; y en cambio, indicar medidas generales ("general standards") de aplicación amplia.

No escapa a la sencillez buscada, la posibilidad de que se produjeran inequidades y distorsiones técnicas; pero este defecto fue transformado en una virtud desde que el nivel de generalidad consistente. / con la sencillez reforzará el deseo de consistencia.

Aunque algunos errores fueron cometidos, una amplia política fue desarrollada en un corto lapso. Así, reglas para casos de considerable complejidad, pudieron ser contempladas despúes que el impacto inicial del congelamiento había pasado.

4)- La elaboración de medidas durante el "congelamiento" fue hecho con rapidez algo desequilibrante. La mayor parte de ella fueron determinadas por el C.C.V. en las dos primeras semanas de funcionamieno. Ello significó que algunas fueran propuestas por un inadecuado trabajo de los funcionarios.

El artículo en análisis prosigue con decisiones importantes de órden técnico e ilustrasimismo sobre algunos conflictosde objetivos con otras áreas del Gobierno.

Sin embargo, nuestro trabajo concluye aquí; no obstante y a raíz de haber leído la totalidad del mismo, porque, a nuestro juicio ya se han reunido aspectos que permite aproximar conclusiones referidas al caso argentino.

Además, el estudioso interesado en continuar la investigación podrá hacerlo, leyendo el original del trabajo que se anexa.

II) Condicionantes en el caso argentino

En resumen los condicionantes de la aplicación del congelamiento en Estados Unidos por 90 días, desde el 15 de agosto de 1971 fueron los siguientes:

1 - Secreto (eliminación de expectativas)
2 - Corto lapso de aplicación.
3 - Amplio aspecto de variables y sectores alcanzados.
4 - Impronta de rigidez en la aplicación, no exenta de flexibilidad frente a eventuales amenazas de calamidad económica, que no se produjo; y con referencia a algunos precios de alimentos vitales.
5 - Búsqueda de unidad y consistencia como premisas fundamentales fortalecidas con,
6 - conciencia de la limitación de medios administrativos, que al favorecer la adopción de simplicidad en la implementación del programa,
7 - facilitó el logro del consentimiento social voluntario que se necesitaba, a partir de la facilidad con que pudieron ser asimiladas las reglas del juego y
8 - Diferimiento para un lapso posterior al del "shock" del congelamiento y la adopción de normas para casos excepcionales, en que, la generalidad debiera ceder, ante la equidad relacionada con efectos no deseados, de grave posible repercusión en el sistema económico.

La experiencia argentina, salvo la más reciente , es decir, la que aplica la actual conducción económica y la"tregua" de 1979 no se refirió a cortos lapsos de aplicación. En ninguna oportunidad se cumplió el secreto, con que se rodeó el momento de la decisión de empezar; y, el aspecto de variables y sectores alcanzados no fue,ni en los hechos ni formalmente,tan amplio en el caso argentino. La disciplina en la aplicación aparece directamente relacionada con la corta duración del programa. La búsqueda de unidad y consistencia no ha procurado en la Argentina el logro de consentimiento colectivo, por lo que tampoco hubo esmero en que se asumiera, a nivel popular la convicción que facilitara el conocimiento de sencillas reglas de juego por parte de la sociedad. Finalmente, se discute de continuo, con los sectores controlados, sin que se goze por parte del gobierno y de la sociedad, en el corto lapso que depara el asombro de la sorpresa, alcance y efectividad política a nivel social, del programa lanzado. Debiera además analizarse si las excepciones que otorga la autoridad de aplicación, se relacionan con la gravedad de la aplicación de las medidas en el orden general

Buenos Aires, 9 de agosto de 1984.

(*) La experiencia fue tomada del libro "In pursuit of price stability" cuyo autor es Arnold R. Weber. The Brooking Institution - Washington,1973 . La fotocopia de la parte que se creyó pertinente fue tomada en vista de que en el libro no se menciona prohibición alguna.para hacerlo.

Setting Policy: First Principles

The strategic decision to impose a wage-price freeze was made in the context of an overall plan for dealing with current economic problems. Beyond this basic determination, however, the Cost of Living Council began its task with a nearly clean slate. Because of the short time available for planning and the secretive manner in which the new economic policy had taken shape, no specific policies or detailed regulations had been drafted when the freeze was announced. Indeed, even though the freeze went into effect on the night of August 15, the executive order which gave the program its formal legal status was not signed until late on August 16. The discussion of the program at the Camp David meeting had focused primarily on the major elements of the President's economic initiatives and had given little attention to operational details.

Only two policies had been determined by statute or executive order when the freeze commenced. The first provided for the exemption of raw agricultural products. The second policy established the general formula for determining the ceilings on wages, prices, and rents. This one sliver of detailed policy, incorporated in the first section of the executive order, stated:

> (a) Prices, rents, wages, and salaries shall be stabilized for a period of 90 days from the date hereof at levels not greater than the highest of those pertaining to a substantial volume of actual transactions by each individual, business, firm, or other entity of any kind during the 30-day period ending August 14, 1971, for like or similar commodities or services. If no transactions occurred in that period, the ceiling will be the highest price, rent, salary, or wage in the nearest preceding 30-day period in which transactions did occur. No person shall charge, assess, or receive directly or indirectly in any transaction prices or rents in any form higher than those permitted hereunder, and no person shall, directly or indirectly, pay or agree to pay in any transaction wages or salaries in any form, or to use any means to obtain payment of wages and salaries in any form, higher than those permitted hereunder, whether by retroactive increase or otherwise.[1]

A third policy, in effect, established a floor as well as a ceiling price or wage. That is, under the terms of the Economic Stabilization Act, price and

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wage ceilings could not be less than the levels that prevailed on May 25, 1970. If the price of a commodity had declined between May 25, 1970, and the date of the imposition of the freeze, the higher price was determinate in fixing the ceiling. This provision was apparently introduced in order to protect the position of various food products whose prices had dropped since May 25, 1970.

The fact that the policy makers had little guidance other than the admonition to suppress inflation meant that they had wide latitude in formulating the principles that would govern the freeze. In the absence of specific directives, the Cost of Living Council progressively articulated a comprehensive, if not rigid, approach to policy making.

First, there was a general agreement within CLC that the freeze should be stringent and should permit only minimal movement in wages, prices, and rents. This penchant for "toughness" reflected the strategic objectives of the freeze. The purpose of the freeze was not to explore or to manipulate subtle interrelations between economic variables. It is a truism to note that the American economy is highly complex, and any effort to "manage" it during the 90-day freeze period was likely to fail. Moreover, the forward nature of many commitments and transactions created a ponderous momentum in the movement of prices and wages. Unless rigorous policies were broadly applied, significant movements in prices and wages would continue to occur. At the least, this development would perceptibly impair the credibility of the freeze. At the worst, it would reduce the freeze to a watery nullity. Consequently, the operational objective of the freeze was to have a dramatic impact on the economy by putting a lid on wage and price changes.

If the pressures under the lid were unrelieved, the appropriate reaction would be to press harder rather than finding ways to vent this pressure. This approach did not mean that the controllers would be unrelenting even if economic calamity threatened. During the course of the freeze there was an effort to monitor the impact of the rules on the supply of vital commodities. Nonetheless, the Cost of Living Council accepted the dictum that for 90 days it was more important to preserve the integrity of the freeze than to rectify marginal distortions in resource allocation.

Second, the process of policy formulation was carried forth with a zealous concern for consistency. It was recognized from the outset of the freeze that such a program would be inherently inequitable for some individuals. A freeze literally seeks to stop the processes of economic adjustment which take place over time, as when a landlord raises rents to cover ments was essentially the same for wages, prices, and rent and that a common rule should be established as a matter both of fairness and of political prudence. Ultimately, the council adopted a uniform approach to labor, commodity, and rental housing transactions by promulgating a "delivered" goods and services concept. This meant that a transaction had not taken place unless the employees actually had worked at the higher rate, the rental unit had been occupied, or the goods had been shipped by the seller. This approach effectively suspended wage and rent increases scheduled to be instituted during the freeze. Similarly, most companies could not charge the planned higher prices because they had not actually shipped 10 percent of their goods at this new price in the 30-day period prior to August 15. The ban was maintained even though bills of sale specifying the higher prices had been signed before the freeze.

4. *The Definition of the Unit for Calculating Transactions.* The definition of the unit which administrators would use in calculating transactions buttressed the restraints that had been laid down when interpreting "a substantial volume of transactions." It was important to forestall any aggregation or selection of units that would raise the wage or price ceilings above the level that otherwise would be permitted by cumulating 10 percent of the transactions within a single established unit. For instance, a national retail chain might seek to raise the price of a particular commodity to the highest level that prevailed in any individual market area before the freeze even though local pricing areas had been recognized by company executives in the past.

Although the unit for calculating transactions was never comprehensively defined, the general principle adopted was to use the most limited unit that could be identified on the basis of established practices at the time that the freeze was imposed. In this manner, the unit for calculating transactions in the product market generally was limited to the individual plant or retail outlet unless it could be demonstrated that broader units such as the firm or a regional market area were traditionally employed. Similarly, the unit of transaction for the determination of wage and salary ceilings was the contractual or administrative unit defined by past practice. This might be company-wide, plant-wide, or related to particular occupational groups.

In the case of teachers, the individual teacher was considered to be the unit of transaction because the scheduling and nature of his or her activities are usually determined by the terms of an individual contract. In addition, the use of this extremely narrow unit of transaction blocked efforts to win

higher wages for all teachers in a particular school district on the grounds that a few had started to work at higher salary levels there in the weeks immediately preceding the imposition of the freeze. As indicated elsewhere, the consequences of this ruling were extremely controversial and precipitated complicated legal proceedings in various state and federal courts. Nevertheless, the technical definition of the unit of transaction in this case was consistent with the political judgment that so large and visible a group as teachers should not be insulated from the freeze because of the unique nature and timing of the employment relationship.

A special unit-by-unit rule was applied to rental housing. Under this provision, each apartment was considered a unit in its own right for purposes of defining the appropriate base period and ceiling price. This interpretation was highly restrictive and meant, for example, that if a landlord had raised the rental on nine out of ten apartments in an apartment complex before the freeze, this would not provide a legal basis for increasing the rent in the remaining, tenth apartment. In effect, the actual rent that was paid on the apartment in the base period preceding the freeze became the applicable price during the freeze.

This stringent approach to the determination of rental transaction units reflected several considerations. First, there was an appreciation of the keen political sensitivity to increases in rent. Although rent constituted only 5 percent of the consumer price index, this charge was a substantial proportion of the monthly expenditures of those who did not own their own residences. Second, the unit-by-unit rule had been applied during World War II. Third, the formal justification for this principle was the contention that each rental unit was distinctive and therefore constituted a separate "product." The unit-by-unit rule was subjected to legal challenge in the courts but was upheld in several cases.[4]

5. *The Definition of Allowable Pass-Through of Cost Increases.* The freeze had its most forceful effect on those enterprises which incurred rising costs before price adjustments could be made and in cases in which the price of uncontrolled items such as raw agricultural products had risen after August 15. The obvious effect of these increases in costs was to narrow profit margins. Anguished petitions for relief were soon forthcoming

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If the pressures under the lid were unrelieved, the appropriate reaction would be to press harder rather than finding ways to vent this pressure. This approach did not mean that the controllers would be unrelenting even if economic calamity threatened. During the course of the freeze there was an effort to monitor the impact of the rules on the supply of vital commodities. Nonetheless, the Cost of Living Council accepted the dictum that for 90 days it was more important to preserve the integrity of the freeze than to rectify marginal distortions in resource allocation.

Second, the process of policy formulation was carried forth with a zealous concern for consistency. It was recognized from the outset of the freeze that such a program would be inherently inequitable for some individuals. A freeze literally seeks to stop the processes of economic adjustment which take place over time, as when a landlord raises rents to cover ments was essentially the same for wages, prices, and rent and that a common rule should be established as a matter both of fairness and of political prudence. Ultimately, the council adopted a uniform approach to labor, commodity, and rental housing transactions by promulgating a "delivered" goods and services concept. This meant that a transaction had not taken place unless the employees actually had worked at the higher rate, the rental unit had been occupied, or the goods had been shipped by the seller. This approach effectively suspended wage and rent increases scheduled to be instituted during the freeze. Similarly, most companies could not charge the planned higher prices because they had not actually shipped 10 percent of their goods at this new price in the 30-day period prior to August 15. The ban was maintained even though bills of sale specifying the higher prices had been signed before the freeze.

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5. *The Definition of Allowable Pass-Through of Cost Increases.* The freeze had its most forceful effect on those enterprises which incurred rising costs before price adjustments could be made and in cases in which the price of uncontrolled items such as raw agricultural products had risen after August 15. The obvious effect of these increases in costs was to narrow profit margins. Anguished petitions for relief were soon forthcoming

4. The leading case was *United States* v. *Lieb*, 333 F. Supp. 424 (W.D. Tex. 1971). The status of the unit-by-unit rule was affirmed by the Temporary Emergency Court of Appeals, 462 F.2d 1161 (1972), TECA having been established to handle cases arising under the stabilization program. The Lieb case involved a suit initiated during the freeze.

many businessmen, particularly those who processed agricultural products or who fabricated basic steel products. In the latter case, the prices charged for many product lines had been raised shortly before the freeze.

Again, the disposition of the policy makers toward "toughness" and uniformity of treatment determined the policy concerning the issue. Because of the relatively short duration of the freeze and the overriding objective of putting the brakes on price increases, a general policy was adopted denying any application for a cost pass-through. Requests for the lifting of a price ceiling because of cost increases would be considered only on the basis of "gross inequities" as provided by the Economic Stabilization Act.[5] In practice, no private firm ever met the test of a gross inequity even though bankruptcy threatened as a consequence of the increase in costs.

Some relief from the pressure of increased costs was afforded in certain categorical circumstances reflecting governmental actions or well-established pricing and wage practices. Firms could pass on the increased price of an imported good that was sold in its original form if such an increase was attributable to the imposition of the import surcharge. However, the surcharge could be passed through only on a penny-for-penny basis and could not be incorporated in the base for the calculation of percentage markups. Also, if the imported product was transformed in any way or became a component of another product, the increased cost could not be passed through. Rents could be increased in accordance with a fixed formula if convincing evidence was presented that a significant investment had been made in capital improvements before or during the freeze.[6] Insurance rates could also on the basis of predetermined formulae linking rate changes to actuarial experience, but the higher rates could not be justified by increases in administrative costs. In the wage area, some analogous pass-throughs were blessed by permitting wage increases if there was

5. P.L. 91-379 (August 15, 1970), sec. 202. The administrative definition of a "gross inequity" is discussed in Chap. VI.

6. The following criteria were applied to rent increases for improvements: "(1) The capital improvement must equal at least three months' rent (with a minimum of $[illegible]0) on items that would be classified as capital improvements by the Internal Revenue Service. (2) If condition (1) is met, the unit may be treated as a new apartment, with rent to be no higher than the rent charged on comparable apartments in the market area, subject to the limitation that the monthly rent may not increase by more than 1½ percent of the amount spent for capital improvement." OEP Stabilization Program Guideline 3.17[illegible].

a bona fide promotion, if an employee had completed prescribed educational requirements or an apprentice program, or if increased contributions for fringe benefit programs were paid to cover higher costs without a change in the benefit levels.

Overall, the basic policies governing the freeze imposed formidable restraints on upward price and wage movements during the freeze. The concept of a transaction and the determination of the base period sharply minimized the discretion of most businesses in their wage and price decisions. The general prohibition of cost pass-through meant that no weight would be given to changing economic conditions. The exceptions made to these rules provided for only limited adjustments, and they had to be based on demonstrable historical practices. Other special circumstances, such as an increase in costs because of higher taxes, because of safety or ecological standards imposed by the government, or because of rising prices for raw materials, were all explicitly disallowed as a basis for exception. For 90 days the economy would function within the narrow boundaries defined by these fundamental policies.

VI

Setting Policy: Second Principles

The policies formulated by the Cost of Living Council were not self-effectuating. Rather, they established general guides to administration in particular cases. It is axiomatic that the American economy encompasses a complexity of special circumstances that cannot be accommodated by broad statements of policy. As the 90-day period progressed, the problems of interpretation and administration became increasingly varied, if not arcane, and complex reasoning often became necessary to preserve the overall integrity of the basic policies. Whereas in the first month of the freeze the Cost of Living Council had to determine the extent to which seasonal factors would modify the basic policy governing the definition of the base period, by the middle of October the CLC staff was giving sober consideration to whether or not Halloween candy adorned with a special wrapper met the requirements of the seasonality rule. And once a policy was adopted permitting the limited pass-through of an import surcharge, the council had to decide whether the added dollar volume of sales permitted by this pass-through could be used in calculating salesmen's commissions or rental charges for retail stores which were based on sales volume.

As an administrative reality, it was impossible to formulate and apply policies only at the general level; inevitably, the momentum of controls and the cumulative occurrence of special situations forced the policy makers and staff to give attention to the trees in order to preserve the forest. It is true, of course, that the fate of the Republic or even the outcome of the battle against inflation did not hinge upon whether or not Halloween candy qualified under the seasonality rule or whether cucumbers are a raw or processed agricultural product. But for those who produced and sold Halloween candy or cucumbers, these decisions had a profound financial effect and warranted serious attention. Unlike other macro-economic policies, controls must give consideration to specific cases and the due process that this implies.

Definition and Identification

The first set of administrative problems involved questions of definition and identification. Although the operational concept of a "wage" or a "price" was broadly conceived from the outset, specific cases soon proliferated that were not obviously covered by the existing definitions. When one university was blocked from giving a scheduled salary increase, it offered to provide faculty members with interest-free loans instead. These interest-free loans were subsequently ruled to be wages and therefore could not be extended under the terms of the freeze.

Equally exotic cases arose on the price side. One firm was proscribed from raising the deposit or down payment on the purchase of a commodity on the grounds that this action constituted an increase in price. More controversial was a determination that municipal charges for water and sewerage services were a "price" and therefore could not be increased during the freeze. Local practices in defraying the costs of such services varied widely. In some municipalities, the costs were paid from general tax funds; in other cases, individual charges were made for services on the basis of use.

The Cost of Living Council adopted a literal approach to determining whether or not a price was involved. Where a fee for the service was charged, this was considered to be a price and could not be increased. On the other hand, if the services were financed through taxes, taxes could be raised to cover increased costs or to generate additional revenues. Although some philosophical argument could be made that taxes constituted a form of a price, a "price" was presumed to exist for purposes of the stabilization program only in relation to the specific purchase of a good or a service and only where the incidence of the charge was to an individual or corporate user. This distinction was not easily perceived by the public, and throughout the freeze the Cost of Living Council received a steady stream of complaints calling for the application of the freeze to taxes.

In a similar case, the state of Pennsylvania had passed a law requiring all persons who purchased liquor to have an identification card. A flat dollar charge was to be paid for the identification card. A complaint was lodged alleging that the institution of a charge for the identification card constituted the imposition of a price where no charge had been made in the past. The Cost of Living Council staff backed out of this corner by classifying the identification card as a "license" designed to regulate the consumption of alcoholic beverages by particular classes of the population rather than a "price" for a service. Thus taxes and license fees were outside the scope of regulation, while fees charged for specific services were subject to limitation.

Ambiguities had to be resolved in the rental area also. For example, owners of cooperative or condominium apartments usually pay monthly charges to cover costs associated with the general maintenance of the building. In many instances, these monthly charges were scheduled to increase during the 90-day period. If these charges were viewed as comparable to rent, the increases clearly could be prohibited by the terms of the freeze. However, the particular form of ownership in a cooperative or condominium meant that these maintenance charges were, in effect, operating costs incurred by the individual owners. Consequently, they were exempted from the freeze. More subtly, when the condominium was managed by an agent, the agent's charges levied on the owners of individual apartments were frozen, whereas the charges incurred for maintenance services could be increased. In strictly economic terms, the distinction between maintenance services and management services is difficult to defend, if not to fathom. Nonetheless, this distinction bowed to the legal niceties of the situation while assuaging condominium owners who inevitably believed that they should receive the best of both worlds.

The difference in the rules applicable to prices and rents lent considerable significance to rulings on whether a charge was identified as a price or a rental fee. As noted above, prices were subject to the 10 percent rule in determining a substantial volume of transactions, while the rent ceilings were established on a unit-by-unit basis. Both analytically and administratively, the problem of deciding which rule applied was particularly troublesome if lodging was intertwined with other services. This issue arose in two important categories of cases: charges for hospital rooms and charges for room and board as part of college tuition.

Analytically, some part of the total charge for a hospital room goes for the room itself, and another part is related to the medical services and overhead associated with the room. It was technically possible to segregate the housing costs from the medical costs and to apply the rental rules to the former and the rule governing prices to the latter. Any penchant for purism was quickly overwhelmed, however, by the predictable administrative difficulties. In addition, estimates of the distribution of costs clearly indicated that a preponderant proportion of the charge for a hospital room was for medical services rather than lodging. Accordingly, hospital room charges

were classified as a price and therefore were covered by the applicable rules.

The problem of dealing with college room and board charges was complicated by the Cost of Living Council's earlier ruling on college tuition. It will be recalled that colleges generally were permitted to raise tuition even though the educational services had not been delivered. Here the reasoning was that through the conveyance of a deposit a transaction had been completed before the new school year commenced. The Cost of Living Council glumly recognized that it was bound by a policy that was awkward at best and inconsistent with the general transaction rule. This unease was accentuated when trying to distinguish between room and board fees in dormitories operated by the educational institution and the rents charged for student housing units operated by agents or private owners. Under the rules applicable to residences in general, the rents could not be raised if a unit had not been occupied at the higher rate. However, if dormitory fees were treated like tuition charges, the payment of a deposit would have been sufficient to consummate a "transaction," thereby permitting the higher rate to become effective. After considerable bureaucratic writhing, the CLC staff attempted to straddle the issue. If the dormitory or housing facility was operated by the college or university and if a deposit had been provided by the student before the freeze, then the higher charge could go into effect. If the housing unit was owned or operated by a private party, then the unit-by-unit rule governing other rental properties was applicable. Intellectually, this distinction made little sense; but it did serve to preserve a narrow consistency with the initial ruling concerning tuition and preserved any goodwill that had been created with college administrators through the earlier determination.

An analogous problem arose in determining the status of "points" charged for obtaining a mortgage. Under this widespread practice a flat charge, based on a percentage of the mortgage, was levied on the borrower. Numerous complaints were received that lending institutions had raised the percentage rate for these charges. If the points were viewed as a price, they were frozen at pre-existing levels; if they were considered to be a component of the actual interest on the loan, they were exempted. In this case, the council staff followed obvious economic logic and classified such points as interest outside the scope of controls.

In addition to the extremely detailed problems of trying to disentangle joint products or services, the Cost of Living Council had to make almost metaphysical judgments concerning certain phenomena that were easily understood in principle but extremely abstruse in application. For example, council regulations specified that when a "new product" was offered for sale the ceiling would be determined by the price "realized on the same or comparable product or service by the most nearly comparable competitor."[1] A parallel concept was used in dealing with new apartments and family housing units.

Though this principle was simple in concept, its administrative feasibility was determined by the definition of a "new product." After a wide search of the literature and consultation with industry representatives, the CLC staff affirmed that "a product or service is new if it is substantially different from other products or services in purpose, function, or technology or if its use results in a substantially different outcome."[2] Obviously, so abstract a definition would have to be refined as it was applied to specific cases. Nonetheless, the council was anxious to promulgate some standard in order to prevent systematic evasion of the price ceilings by allegations that a particular product was new or significantly different from established products. Because of the short duration of the freeze, few cases of this nature arose, and the ambiguity in the definition was not rigorously tested or revealed.

Even where definitional problems were minimal, the process of administration frequently was complicated by questions of identification and data collection. In this respect, at an early stage of the program, the Cost of Living Council ruled that futures contracts in commodities markets should be subject to the freeze. Even though this decision could hardly be justified in economic terms, the step was taken to defend the administration against charges that "speculators" were free to reap profits during the freeze. Following this decision, CLC ruled that the ceiling price for futures contracts would be determined by the spot prices that were in effect at the individual exchanges for the particular commodity during the 30-day base period prior to August 15, 1971. Once this net was cast, the problem of implementation was formidable. First, it had to be determined whether there would be separate prices for individual traders or for the exchange in general. Second, responsibility for computing the ceiling price had to be assigned. Third, if no spot prices were available for the base period in the particular commodity at the individual exchange, what futures prices would be applicable?

1. OEP Economic Stabilization Circular 102 (October 20, 1971), sec. 402(2).
2. *Ibid.*, sec. 401(1).

Ultimately, operational answers were given to all of these questions. The ruling was passed down that the ceiling price should be calculated on an exchange-wide basis by the exchange itself; and if base period spot prices were not available, the futures price that prevailed on the date nearest the beginning of the base period should be used to determine the ceiling. But as the program progressed, it was clear that the problems of obtaining, classifying, and organizing the data were so great that no one was quite sure what the actual ceiling price should be in an individual case. Like the emperor's clothes, a fabric of regulations was spun out no matter how vaporous the cloth might be.

Problems of Implementation

The difficulties of identifying the ceiling price for futures contracts was indicative of a broader problem of administration. The comprehensive coverage of the freeze dictated that the policies be equally comprehensive in scope. But in many instances it soon became obvious that effective control was a practical impossibility because of the nature of the commodities under consideration or technical problems of enforcement beyond the capabilities of the existing staff. Thus commodities sold at auction or subject to competitive bids were formally included in the freeze. Explicit rules covering these cases were duly promulgated for the guidance of the public. However, the tenuous nature of this action was illustrated by the rule stating that the ceiling price of a work of art was the price for the most "comparable work" sold in the base period. Nonetheless, the Cost of Living Council sought to maintain the public fiction that such commodities were subject to regulation. The general strategy was to create sufficient restraint, if not uncertainty, so that the sellers would have a bias in favor of the status quo and lower prices rather than higher prices. It was almost an act of whimsy when, in response to an impassioned plea from the American Philatelic Society, the council solemnly stated that the price of used stamps bought and sold by collectors was subject to the price freeze and could not be increased. Obviously, no effective measures could be taken to enforce this stricture.

In some instances, this combination of rigorous policy formulation and administrative evasion could not be sustained, and specific decisions had to be made to resolve problems posed by the initial policy judgment. For example, although the communications and entertainment media had been exempted from previous ventures in price control, they were covered by the 1971 stabilization effort. In particular, the freeze was imposed shortly before the onset of the new television season when the networks were in the process of determining the applicable advertising rates. To implement the freeze, a judgment had to be made whether the ceiling for advertising rates was related to specific time periods or to individual programs as priced in the fall of 1970. In practice, advertising rates reflected the expected audience size, which depended on both the time slot and the attractiveness of the specific program. Because the popularity of a new program was uncertain, the rate charged for it would ordinarily be influenced by the time slot. On the other hand, a program with demonstrated drawing power might command high rates in various time periods.

The formula adopted by the Cost of Living Council allowed the networks a measure of discretion to take account of the fact that the complementary effects of a particular program and a particular time slot on the expected audience could not be precisely determined. The network was given an option in choosing the ceiling for advertising rates; if the program had played previously, the ceiling could be either the rate charged for the same program during the base period or the rate charged for the same time slot during the base period, which could be modified by the seasonality rule when applicable. Each network or station had to use either the "program" or "time slot" approach consistently in setting the rate schedule for established programs. For new programs, the ceiling on advertising rates was set by the rate charged for the time slot last season.

Perhaps the most consequential problem of implementation involved the seasonality rule. The application of this policy presented no administrative difficulties in well-defined, traditional cases such as Labor Day rates for hotels and the introduction of new automobile models. In other situations, however, eligibility for the seasonality rule was not clear. The status of apparel was particularly ambiguous. Again, the timing of the freeze had a direct impact on the prices that could be charged for new fall and winter apparel coming on the market in August and September. New fashions could qualify for the seasonality rule, but practice in the industry was sufficiently varied so that a blanket ruling could not be made. Moreover, with the introduction of the fall and winter styles taking place continuously throughout the freeze, it was not possible to handle the problem in a once-and-for-all manner. Consequently, except for dealing with a few flagrant cases, only limited efforts were made to refine and apply the seasonality rule rigorously to the apparel trade. Both the incidence of consumer complaints and movements in the apparel component of the consumer price index indicated that the inability to sharpen the application of the seasonality rule resulted in price increases that probably exceeded the amounts that would have been permissible under a strict interpretation of the policy.

The variety and complexity of collective bargaining practices also necessitated dexterity in the implementation of the general policies concerning negotiated wage increases. Under the transactions rule, a wage increase was permissible under a collective bargaining agreement if the agreement had been reached prior to August 15. As a practical matter, the collective bargaining process did not always lend itself to a definitive judgment of when an agreement was actually "reached" for purposes of the stabilization program. In the telephone industry, for example, an agreement was reached between the Communications Workers of America and major components of the Bell Telephone System on Monday, July 13. The agreement could not be formally ratified until a referendum vote of the union's members had been taken. The results of the referendum were not announced until after the freeze had been in effect. In another case, the Screen Actors Guild had negotiated an agreement with the motion picture firms in July 1971. However, the agreement was not formally approved by August 15 because a mail poll of the members, who were dispersed throughout the world, was necessary.

In each situation, a formal determination had to be made whether, in fact and in law, the agreement had been "reached" and was in effect prior to August 15. The Cost of Living Council used a rule of reason such that if a new contract had been agreed to by negotiation but had not been technically ratified, it was considered to have been reached. Following this approach, the wage increases negotiated by the Communications Workers and the Guild were approved.

Problems of Adjustment and Equity

In addition to problems of technical interpretation, the process of policy implementation was conditioned by questions of adjustment and equity. Although the theory of the freeze posited an unremitting approach to possible price or wage increases, this position was impossible to sustain on a comprehensive basis. Even the most inflexible administrator was forced to concede the need for adjustments because of past economic events or overwhelming inequities. At the same time, there was little disposition to approve those changes in business practices which could be construed as efforts to circumvent the general policies governing the stabilization program.

The limits of the freeze were tested in determining the extent to which prices, wages, and rents could increase in accordance with established formulae. In the insurance industry, rates normally were adjusted on the basis of actuarial experience. Many employees were covered by compensation plans whereby earnings fluctuated with output, sales, or profits. And in some public housing units, rents could be increased in accordance with changes in the tenant's income.

As an extreme application of the freeze, any wage or price increases under the operation of these formulae could have been proscribed. This alternative was rejected on the grounds that the price or wage was fixed by the formulae and that as long as the formulae were unchanged the freeze had not been violated. The decisive consideration was the knowledge that a flat ban on formula-related increases would effectively render inoperative incentive plans which tied compensation to output. Accordingly, insurance premiums could be increased on the basis of actuarial experience, but no upward adjustments could be made because of increases in administrative costs. Similarly, earnings were permitted to rise under the normal operation of incentive, commission, and profit-sharing plans as long as the formulae and the base wage rates were not modified. In one unusual case, gold miners in Idaho were entitled to a bi-weekly bonus based on fluctuations in the price of gold. This practice was permitted to continue.

A different approach was taken where increases were linked to the completion of service requirements, probationary periods, or apprenticeship training programs. In some situations workers receive substantial wage increases upon completion of certain stages of apprenticeship or following a probationary period of employment. Many employers also provide for "step increases" based on longevity of service. The latter practice is especially prevalent among teachers and government employees in general. As a general matter, the Cost of Living Council rejected the notion that the passage of time alone or the completion of service constituted an acceptable basis for wage increases. This position had been taken in dealing with deferred wage increases scheduled to take effect during the freeze, and the principle was extended to cases involving individuals. A distinction was made, however, between wage increases related to simple service requirements and those linked to completion of an apprentice program or the earning of an advanced college degree, as was the case in many educational

systems. Here, completion of the program or attainment of the degree was viewed as a proxy for a promotion or an increase in productivity, and the wage raise was permitted.

Probationary increases fell between the two principles. On the one hand, wage increases were given after the completion of a prescribed period of time and were not directly related to the completion of any formal training program. On the other hand, it was recognized that a probationary period served as the occasion for intensive on-the-job training and evaluation of the new employee by the employer. These two considerations were arbitrarily balanced by allowing probationary increases when the probationary period did not exceed three months. If the period exceeded three months, the increases were viewed as analogous to longevity increments; up to that time, greater weight was given to the training and evaluation aspects. Whether or not these rulings were defensible on a theoretical level, they did provide a practical basis for permitting some adjustments that otherwise would have been foreclosed by the general policies of the freeze.

The effort to preserve a logical and uniform structure of rules also faltered when the implications of these rules were manifestly onerous or inequitable. As noted previously, the council had stated that scheduled raises in wages or benefits could not take place during the freeze. This economic blackout had a heavy impact on individuals whose status during the freeze would determine the flow of benefits at the conclusion of the freeze. Pension benefits for an employee are frequently fixed by the level of earnings of the employee at the time of his retirement. In the normal course of events, many workers reached retirement during the 90-day period. If a wage increase scheduled for sometime between August 15 and the retirement date of the employee was blocked by the freeze, the wage base for the calculation of the employee's pension would be reduced accordingly. The economic impact of this action on the individual worker would, of course, far transcend the freeze. In addition to this egregious situation, some benefits, ~~such as medical~~ insurance, could be elected only once a year. If an employee was denied the right to exercise this option, another twelve months would have to pass before the opportunity was available again.

When these circumstances came to light through inquiries and complaints, the existing rules were hastily modified, and cases decided under the old rules could be reopened. Employees could accrue increases in benefits during the freeze where election was limited to particular dates. Similarly, the higher wage rate could be used as the basis for calculating an employee's pension even though this rate did not become effective until the freeze had ended.

The effort to maintain consistency precipitated an even greater outcry from the affected parties when the general policies were applied to the operation of vacation plans. Using the "time is not enough" criterion, CLC ruled that employees who became eligible for additional weeks of paid vacation because they met specified length-of-service requirements during the freeze could not exercise this right because it represented an increase in compensation. The purity of the principle involved was incomprehensible to the normal worker; and those who presumed to understand it found it to be grossly inequitable. After the council staff was assailed by a barrage of complaints and several rounds of reconsideration, this rule was relaxed to permit eligible employees to take the additional vacation time.

The pressures to modify or relax the general policies were most acute where collective bargaining was involved. The effect of collective bargaining was to accentuate equity considerations while formalizing practices that otherwise would be hard to validate. One of the more contentious issues dealt with by the Cost of Living Council had to do with the status of retroactive wage increases. When a labor contract expires in collective bargaining, the employees often will continue to work as the result of an agreement that any wage increase subsequently negotiated will be retroactive to the expiration date of the contract. Similarly, there may be an agreement to pay retroactively even if negotiations break down at some point and a strike takes place.

When the freeze was imposed on August 15, these circumstances existed in several cases. That is, the bargaining agreement had expired prior to the freeze. A new agreement reached during the freeze provided for retroactive pay at the increased wage rates back to the date of the contract expiration. Under normal practice these higher rates would, of course, be paid, but the cases referred to fell within the time boundaries of the freeze, and this practice ran afoul of the council's policies because under existing rules transactions had not taken place at the higher wages in the base period. Moreover, some council members feared that permitting retroactive increases to continue throughout the freeze period would open the door for systematic evasion. These arguments were countered by the contention that retroactivity was a highly constructive practice in American industrial relations and contributed significantly to the maintenance of industrial peace.

The issue came to the full Cost of Living Council as a narrow question of whether or not a higher wage that was retroactive to a date prior to

August 15 would be permitted to continue in effect during the freeze. The council formally considered the question on four different occasions, and the solution decided upon was awkward at best. The council specified that wage increases could be applied retroactively for the time before August 15 (but not for the time after August 15) if it was demonstrated in specific instances that retroactivity was a past practice and had not been agreed to in order to offset the effect of the freeze. Thereafter, through the duration of the freeze, the wage rate in question would be reduced to the level that was in effect before the retroactive increase was added. Ironically, this proposal was actively supported by the Secretary of Labor and opposed by other members of the council even though the consequences of the decision were nonsensical or disruptive in the context of American industrial relations.

The equivocal position of the Cost of Living Council toward established bargaining arrangements contrasted noticeably with the firm reaction to changes in business practices which might result in price increases. Whether these changes were attempted in innocence or as an adaptation to the limits imposed by the freeze, the council's response was to restrict the firm to past practice or to direct compensating adjustments if the change resulted in price increases. For example, complaints were received during the freeze that some retail outlets had discontinued the use of trading stamps. The trading stamps were determined to be "things of value," and their discontinuance raised the net price to the customer. The council ruled that retail outlets could discontinue trading stamps if the value of the stamps was passed on to the customers in the form of lower prices in either of two ways. They could reduce the prices of all goods sold by the value of the stamps, or they could deduct the value of the stamps at the cash register from the prices of those items for which trading stamps would have been given. The value of the stamps was assessed at the market value at which they could be redeemed and not at the cost to the retailer.

Other firms attempted more complex changes in pricing methods to compensate for restrictions dictated by the freeze. In the meat packing industry some firms purchase carcasses and break them into various cuts for sale to retailers or the final customer. Normally, the particular cuts are priced individually. Because shifts in demand for the different cuts occur, the price ratios between the cuts are altered periodically in order to maximize the sales value of each carcass. When the freeze was imposed in the summer, the demand for steak—and the resultant price—was at a seasonal peak. Other cuts, such as roasts, were relatively lower priced because of similar seasonal factors. After Labor Day the demand for steaks usually decreases, and prices soften; while the demand for roasts increases, and prices move upward. As the freeze progressed, these shifts in demand started to take place, but the price ratio between steak and roasts could not be changed because of the ceiling price that had been established for roasts during the base period when the demand for this cut was slack. Consequently the sales value per carcass was reduced.

Some processing firms reacted to this constraint by seeking to expand the pricing unit from individual cuts to a whole carcass. In this manner, the firm could use the decline in the price of steaks as an offset for an increase in the price of roasts, thereby maintaining the total revenue derived from the carcass. This modification of pricing methods was prohibited by the council. Those firms that sold beef by the individual cut during the base period could not shift to sales by the carcass during the freeze. Those firms that had priced and sold on a carcass basis during the base period could continue this practice.

Similar efforts were made to aggregate the unit of transaction in order to provide wide discretion in determining the ceiling price. The American Telephone and Telegraph Company (AT & T) bases advertising rates for the Yellow Pages on the number of telephones in a designated geographical area. The resultant rate schedule is highly detailed, nationwide in application, and revised continuously. However, each company in the system administers the rate schedule in its area and arranges publication of the Yellow Pages on its own initiative. As the freeze commenced, a new, higher rate schedule had been introduced by some of the individual companies in the system. AT & T explored the possibility of applying the new rate schedule throughout the system on the grounds that it had been introduced by particular companies. The council staff replied that, since the established unit for determining a substantial volume of transactions was the individual company rather than the system as a whole, the higher rates could not be extended to the units of the system that had not yet modified their schedules.

The most severe economic pressure was exerted on those firms that were caught between an increase in the price of raw materials, on the one hand, and the policy prohibiting the pass-through of costs, on the other. Where the margin between cost and price was narrow, profits were squeezed, and some companies might be forced to maintain a price that was below cost. This economic pincer was felt in many sectors of the steel fabricating industry. As noted previously, the large steel companies had raised the price

of basic steel immediately before the freeze in response to the substantial wage increase that had been negotiated with the United Steelworkers of America. In almost all cases, the steel fabricators had not had time to reflect this increased cost in their prices before August 15. The prohibition of cost pass-throughs meant that the additional cost of the basic steel components would have to be absorbed by the fabricator.

Some of the fabricators sought to extricate themselves from this predicament by shifting the incidence of the cost to their customers. Normally, the fabricator bought the steel from the basic steel producers and quoted a price to the customer that included the cost of the raw material and the fabrication operation. After the price of steel was increased, some fabricators informed their customers that they would charge only for the fabrication but that the customer would have to purchase the steel and supply it to the fabricator. The consequence of this proposed arrangement would be to shift the higher cost of the steel to the final customer. The customers reacted to the obvious arithmetic of this change and filed a complaint with OEP. After consultation with the council staff, OEP informed the fabricators that they could elect to stop selling any product, but if they continued to sell, they had to provide the fabricated steel under the same arrangements as in the base period. Most of the fabricators apparently chose to absorb the cost while abiding by OEP's ruling.

Conflict with Other Government Policies

The most recurrent problem in the conduct of the freeze was the conflict between the stabilization policies and other public policies, such as the minimum wage and agricultural price support programs, that increased wages or other costs and thus exerted upward pressure on prices. As a legal matter, the Justice Department indicated that the Cost of Living Council had the authority to modify the application of these policies. But this alternative was infeasible in many cases and in other situations would probably entail greater political costs than the administration could be expected to bear. Within the framework of severe restraint, the general reaction of CLC was a mixture of principle and pragmatism.

Both the federal government and most states have adopted minimum wage laws. No extensions in coverage or increases in the minimum were scheduled under the federal statute. In Maine and Connecticut, however, the state minimum wage was scheduled to be raised during the 90-day period. The council permitted these increases to take effect because they reflected a general social judgment concerning minimum income standards for the labor force.

A different approach was taken to statutes governing the minima for workers in specific industries or occupations. As a result of the controversy ensuing from President Nixon's suspension of the Davis-Bacon Act, mentioned in Chapter I, the major construction unions had agreed to participate in the Construction Industry Stabilization Committee (CISC), the tripartite body set up under the authority of the Economic Stabilization Act. With the formation of CISC, Davis-Bacon was reinstituted. Hence the applicability of the Davis-Bacon Act was a highly sensitive issue in both economic and political terms.

CLC reacted to this situation by adopting a position which gave effect to the operation of Davis-Bacon while preserving some semblance of wage discipline. Wage increases resulting from the application of the prevailing rate concept were allowed during the freeze. The technical justification for this decision was that the wage rate applied to a particular occupation and the prevailing rate survey conducted by the Department of Labor was merely a lagged method of certifying the existence of a rate that was already in existence. But in making the determinations the Department of Labor could use only those wage rates in effect in the base period prior to August 15. Presumably, this prevented the use of Davis-Bacon as a lever to further increase construction wages during the freeze. In fact, the Secretary of Labor and Cost of Living Council were placing the greatest reliance on the effectiveness of CISC to limit construction wage increases.

A less tolerant policy was adopted toward increases in state-prescribed minima for specific occupations. In several states, the legislature establishes a minimum salary level for certain occupational groups, especially teachers. Shortly before the freeze, a few states had enacted laws raising the minima for all school districts. The salary increases required by the higher minima were blocked by CLC. The distinctions between the position taken on Davis-Bacon and the state occupational minima were somewhat strained but did have credibility. First, CLC already had ruled that increases for state and local government employees could not take effect even when they were authorized by legislative bodies. Second, the Davis-Bacon Act used a prevailing rate concept which extended existing wage levels. Raising the entire salary structure for an occupation could not be construed as maintaining an existing level. It was recognized that in many cases employee organizations sought to interpret minimum-pay laws so as to gain a general wage increase.

On a related matter, the council did permit adjustments in wages where the increases were necessary to remedy illegal practices. For example, both the federal government and various states have equal pay laws banning wage discrimination based on sex or race. If it were found that an employer had paid a lower, discriminatory wage to women in the same job classification as men, the wages of women could be raised without violating the freeze.

In contrast to the rule of reason applied to statutory wage increases, little flexibility was shown when compulsory changes in production methods resulted in higher costs for the businessman. Cost increases arising from government regulations were treated as being no different than any other cost increases. The basic policy denying the pass-through of costs was considered to be so critical to the success of the stabilization program that adjustments were allowed only in unique or severe circumstances that could be distinguished clearly from other petitions for relief. Many employers had incurred additional costs because of the requirements of the Occupational Safety and Health Act of 1970 and various anti-pollution statutes. Under CLC rules, price increases to cover the additional costs were denied. For example, when a public utility contended that it had to use more expensive, higher-quality coal to meet the standards of a state anti-pollution law, this circumstance was not considered a sufficient justification for superseding the general prohibition of cost pass-throughs. The request was rejected.

The freeze also conflicted with public financing requirements. The city of Los Angeles had floated a bond issue to finance an improvement in the municipality's sewerage system. The prospectus for the bond issue stated that use rates would be increased to finance the improvement, and buyers had purchased the bonds on this expectation. The increase in rates was scheduled to take effect after August 15 and was blocked by an OEP ruling, later sustained by the council. It was recognized that this action might pose a major problem to the city and, indeed, could precipitate a lawsuit by the bondholders. Nonetheless, a hardline position was adopted in the expectation that rates could be raised on November 14.

Perhaps the most vexing problem of balancing the stabilization program with the objectives of other government programs involved agricultural price supports and related subsidies. Under some support programs, prices could be increased on the basis of predetermined formulae. In other instances, the combined effect of the freeze and a support program was to compress profit margins or to create windfalls for individual producers. While the Cost of Living Council initially responded to the domestic raw sugar was raised to the same level as imported sugar. However, this action had little or no effect on retail prices, because the higher prices already prevailed for imported raw sugar. This case involved the only modification of a CLC ruling in response to explicit political pressures over the entire course of the freeze.

School lunch prices posed an equally convoluted set of circumstances.. During the 1970–71 school year, some schools provided lunches free or at a reduced price to students. This practice was made possible because of subsidies provided by Congressional action. For the school year 1971–72, however, the administration announced that funds available for subsidies would be significantly reduced and eligibility requirements tightened. Some school administrators reacted to this change by maintaining the low price for needy students while raising the price for all other students. The higher price violated the Cost of Living Council's rules. The fact that the price increase was caused by a reduction of the subsidy was disregarded because subsidies were considered as cost factors and an increase in cost caused by a termination of a subsidy could not be passed on.

This ruling caused immediate consternation among school administrators and, within the administration, in the Office of Management and Budget. In reducing the expenditures for school lunch subsidies, OMB expected that the subsidies could continue for the needy students through the additional revenues generated by charging higher prices to the other students. With this alternative blocked, the only remaining option was to replace the subsidy with local funds—a prospect with predictable political consequences. The problem dissolved—to the relief of everyone but OMB officials—when Congress rode to the rescue and provided appropriations for school lunch subsidies that were at approximately the same level as in 1970–71.

Exceptions

Once specific policies were determined, the affected parties could petition for an "exception," or a waiver of the applicable regulation in particular cases. This right was implicit in the section of the Economic Stabilization Act which stated that "orders and regulations may provide for the making of such adjustments as may be necessary to prevent gross inequities."[3] Over the course of the freeze, 2,435 requests for an exception

3. P.L. 91-379 (August 15, 1970), sec. 202.

were received by the regional offices of OEP.[4] Of this total, 49 percent of the requests involved prices, 33 percent wages, and 18 percent rents.

As in other policy areas, statutory guidance for exceptions was extremely limited. Relief could be granted "to prevent gross inequities," but this concept lacked both precision or any amplifying legislative history. As it turned out, over 75 percent of the non-wage requests for exceptions involved situations in which costs had increased before the freeze and the business was precluded from raising prices. This category of cases had by implication been abstractly considered when CLC promulgated the general policy barring cost pass-throughs. In principle, as a result of that general decision, a cost increase clearly did not qualify as a "gross inequity" unless other considerations were present. In this respect, the most powerful claim for an exception was the allegation that, unless an increase in prices was permitted, the petitioner would be forced into bankruptcy.

The binding case concerning the weight to be given to an allegation of impending bankruptcy as a basis for finding the existence of a gross inequity was decided by the full Cost of Living Council. On August 2, 1971, the Kentucky Transport Corporation had agreed to a new labor contract which increased hourly wages from \$3.97 to \$5.19. On August 13, A & P, Kentucky Transport's sole customer, agreed to an increase in rates to cover the higher labor costs. The agreement was filed with the Interstate Commerce Commission to become effective on August 22, 1971. Because of the imposition of the freeze, the company was caught in a situation in which wages had been increased but the rates it charged A & P were frozen at the existing level. The company alleged that, unless the rate increases that had been negotiated with A & P were allowed to go into effect, it faced imminent bankruptcy.

At the request of OEP, IRS investigated the case and reported that though Kentucky Transport appeared to be well managed, it operated on a narrow profit margin, and the allegation of impending bankruptcy was real. Much of the company's difficulty arose from the fact that it had reduced rates in February 1971 in the expectation that certain economies would be realized, but they had failed to materialize. OEP and the CLC staff recommended that an exception be granted; however, the request was denied by the full council. The denial reflected the contention (1) that Kentucky Transport had contributed to its own economic difficulties and

4. OEP also reported receiving 1,508 requests for exceptions. Many of these requests probably duplicated those submitted to the regional offices, but the exact number is not known.

(2) that by accepting inefficiency as a contributing factor to a determination of a gross inequity a major breach in price control would be created. Impending bankruptcy per se, therefore, was not allowed as a justification for an exception. Instead, the petitioner had the burden of proof in demonstrating that he had not contributed to his difficulties and that all other alternatives had been exhausted. As a footnote to the case, Kentucky Transport avoided bankruptcy when it was granted a loan by A & P on favorable terms.

With this tough line laid down in the Kentucky Transport case, only *five* exceptions were granted during the freeze, and they involved governmental bodies exclusively. For example, in Texas, the state was permitted to put into effect a paid insurance plan when it was shown that many of the employees had canceled individual policies in the expectation that they would be covered by the new plan. Cresco, Iowa, to cite another example, was given permission to raise water and sewerage rates when IRS reported that the town was already in default on bonds to build a new sewage disposal plant.

In handling the other cases, the hard line prevailed. The Ford Motor Company was denied a request to equalize the price of domestically produced Pintos with those produced in Canada and shipped to U.S. dealers. Under CLC rules, the price of the Canadian Pinto could be higher to reflect the cost of the import surcharge. The state of Hawaii was also turned down when it requested relief for the prices of certain consumer goods shipped from the mainland during the course of a prolonged longshoremen's strike. Because the strike had blocked the regular shipping channels, the state government had chartered two ships at higher costs to carry foodstuffs, animal feeds, and paper products to the island from Vancouver, Canada. A special survey by IRS showed that, since only a few shortages had developed, it was not necessary to defray the higher costs to insure an adequate supply of essential goods. Overall, it was apparent that the exceptions route was not an easy way out of the freeze.

The Policy Process

Notwithstanding diversions forced by the pressure for immediate decisions, the process of policy formulation essentially went forth in two stages. First, the Cost of Living Council articulated the broad principles that would determine and define the nature of the freeze and the degree of

restraint imposed on the economy. This task was carried out with considerable speed, and, by and large, the resulting policies were internally consistent and afforded equal treatment to different sectors of the economy. In addition, they provided the necessary general principles to guide the public in complying with the stabilization program. This first generation of policies reflected the enthusiasm stimulated by the President's speech when controls were imposed and the simple resolve to be effective. No attempt was made to comprehend or deal with the enormous complexities or individual inequities that could be created by the freeze.

In the second wave of policy determinations, the Cost of Living Council was forced to cope with specific cases, each with its own complications, political pressures, and questions of equity. The technical problems alone were formidable with the limited staff available. In addition, the difficulty of sustaining uniform general policies increased geometrically as the freeze progressed. By the end of the 90 days, the Cost of Living Council was almost running out of thumbs to plug the dike. Nonetheless, in terms of consistency, speed, and responsiveness to the overall objectives of the stabilization program, the policies proved to be adequate to the task. If they engendered significant problems of further adjustment or equity, these would be left to Phase II.

published and August 15. This truncated base period applied to both wages and prices. Indeed, the treatment of wages determined the treatment of prices. For example, if wages had increased by 10 percent on August 13, this higher ceiling was maintained for the duration of the freeze. If this adjustment of the base period had not been permitted, there was a strong likelihood that wages would have to be rolled back because a "substantial volume of transactions" had not taken place at the higher rate during the normal 30-day base period. Although the same principle was extended to changes in published prices, the rule did not always provide additional room for price movements; for if goods had not actually been shipped at the higher price, then bona fide "transactions" had not taken place under the government's definition. As indicated previously, this rule afforded some relief for the steel industry, which had raised prices following the negotiation of a substantial wage increase with the steelworkers union on August 1, 1971. OEP analysts estimated that about 60 percent of the steel products on which published prices had been increased in the two weeks prior to August 15 actually qualified for a higher ceiling price. The remaining commodities had not yet been marketed and so did not figure in a "substantial volume of transactions." For these, the applicable ceiling was governed by the earlier, lower price.

The third modification of the rule applied in those cases in which particular goods had not been produced or sold during the standard 30-day period. This situation was most likely to arise in the production and sale of specialized parts or commodities sold on a sporadic basis to industrial customers. Under these circumstances, the base period was slipped back in 30-day increments until a period was reached when the good had been sold. The price that prevailed at the time constituted the ceiling price. In one extreme case, a large manufacturing firm had to calculate back two years before the date of the freeze—when the last transaction in a specialized commodity had taken place—to establish a base period.

The Definition of a "Substantial Volume of Actual Transactions." The definition of a "substantial volume of actual transactions" probably had the most decisive effect on the nature of the freeze. Within any specified base period, the actual ceiling price would be determined by defining the acceptable "transactions" for this purpose. Because transactions involving the same category of goods or services often took place at different prices and the term "transaction" was itself imprecise, the definition posed important conceptual and technical problems.

The substantiality test adopted by the Cost of Living Council was relatively liberal. It stated that 10 percent of the transactions that took place within the base period qualified as "a substantial volume."[3] This rule was adopted from past experience with controls during the Korean War and permitted the firm to use the highest prices charged during the base period for determining the legal ceiling.

It was the definition of a "transaction," however, that had the most profound impact on the permissible upward movement of wages and prices. The overriding problem in defining a transaction was how to classify those increases in prices and wages which were scheduled to take effect sometime during the freeze. At the outset of the freeze, many agreements already had been reached providing for wage hikes during the 90-day period, rent increases, or the delivery of goods at prices higher than those that had prevailed during the base period. In many instances, legal documents, such as leases and collective bargaining agreements, had been signed, and these cloaked the commitments with the "sanctity of contract." If these commitments were viewed as completed transactions, it was clear that significant increases in prices, rents, and wages would occur and severely undermine the credibility, if not the economic effectiveness, of the stabilization program. On the other hand, the fact that these agreements had been reached in good faith prior to August 15 presented a special claim for a permissive policy. Thus the definition of a "transaction" was a critical element that would determine whether the freeze would set its own glacial pace or be carried forward by the momentum of previous events.

To a large extent, the problem of dealing with future commitments had been resolved inadvertently by the Cost of Living Council. During the first week of the freeze, CLC considered the status of deferred wage increases. This issue was especially pressing because many unions and employers had negotiated contracts as much as two years before August 15, 1971, that provided for wage increases to become effective during the freeze. The Cost of Living Council decided the deferred wage increase issue independently of the related price and rent issues and determined that such increases would not be permitted during the freeze. In the following two weeks, a clamor arose from landlords and businessmen to permit scheduled rent and price increases to go into effect. Renters and buyers were equally insistent that the implementation of these scheduled increases would provide windfalls to a few and would discredit the program.

Belatedly, the council recognized that the problem of future commit-

3. Economic Stabilization Regulation 1, August 20, 1971.

or quality would be difficult to detect or to control, this policy was formally enunciated to provide a basis for action against any violators who might be identified. In fact, the policy was invoked in a few cases where firms that had been caught with rising costs attempted to mitigate the pinch of the price freeze by withdrawing established services.

A net price was used in determining the applicable ceiling. This meant that promotions, allowances, and other discounts were included in calculating the effective ceiling price. No weight was given to published prices or to the normal pricing practices of the firm. If a firm was engaged in a promotional campaign in the base period preceding the freeze, the effective transaction price had to be used in determining the ceiling price. In some instances, particularly the wholesale groceries trade, the ceiling price was at or below cost because heavy promotional campaigns had been in effect during the 30 days prior to the freeze. Despite a concern that this approach might dry up the supply of certain goods, there is no evidence that such a shortage occurred on a widespread basis. Apparently, most wholesalers continued to provide the commodities at the promotional price in order to retain the goodwill of their customers.

Rent was treated in the same manner as prices. The rent ceiling assumed the maintenance of services and also took account of any allowances or discounts. As noted below, the definition of rents became even more restrictive when it was linked to the unit-by-unit rule which, in effect, established a separate ceiling price for each rental unit rather than categories of units in a multiple-unit residence.

2. *The Definition of a Base Period.* The definition of a base period was a critical factor in setting the limits of the actual price and wage ceilings. Generally, the shorter the base period for the calculation of the ceiling, the more likely that the ceiling would reflect extreme conditions such that the standard might be excessively high or excessively low in terms of "normal" market conditions. In the initial draft of the executive order instituting the freeze, the base period was set at one week. This period was expanded to 30 days to encompass a wider range of prices for those commodities that were characterized by significant short-term fluctuations.

The determination of the length of the base period was made by top officials at the Camp David meeting. They recognized that the duration of the base period would have a significant impact on the ceiling prices that were applicable to two major industries, steel and autos. In the case of steel, the industry had initiated a substantial price increase for many products in the two-week period between the effective date of the new labor agreement

with the United Steel Workers on August 1 and the commencement of the freeze on August 15. The automobile industry, on the other hand, was scheduled to introduce new models with higher prices in the month following the imposition of the freeze.

Administration officials rejected any suggestion that the base period be adjusted to minimize the impact of the freeze on these industries. However, the automobile industry subsequently obtained a measure of relief under the terms of the seasonality rule which provided an alternative to the low ceiling that would be established by end-of-the-model-year prices that prevailed in August. The steel industry also gained some latitude as a consequence of a ruling that where a price had been raised within the base period, the determination of whether or not a substantial volume of transactions had taken place would be measured from the date on which the price had been increased. This rule was applicable to wage increases as well and reflected the Cost of Living Council's lack of authority and disposition to induce widespread rollbacks of wages or prices.

The 30-day base period definition was subject to modification in three sets of circumstances. First, under the "seasonality rule" the ceiling price for a product with demonstrated seasonal characteristics could be determined either by the price that prevailed during the 30-day base period or by the price that prevailed at the time the relevant seasonal event last occurred. To qualify under the seasonality rule, a seller had to demonstrate that the price or wage under consideration underwent a distinct fluctuation at a specific, identifiable point of time and that such fluctuations had taken place in each of the past three years.

Within the period of the freeze, the seasonality rule was most applicable to hotel and resort rates during the Labor Day weekend, wages for seasonal agricultural workers, and the ceiling price for 1972 automobiles. Under the terms of the seasonality rule, for example, automobile manufacturers and dealers could select as a ceiling price either the price that prevailed in the 30-day period prior to August 15, 1971, or the price that was charged for the equivalent models when they were introduced in the fall of 1970. This rule had economic credibility because, in fact, new automobiles generally commanded higher prices at the beginning of the sales year than at the end, and the price of hotel accommodations did rise during peak periods of demand.

As a second modification of the basic rule, when there had been an increase in published prices within the regular 30-day period, the new base was defined as the period between the time that the new price list had been the costs of increased taxes, a producer of finished products increases prices to cover increased labor costs, a company raises wages to maintain traditional relations with wages in other firms, and so on. All such decisions based on technical factors or venerable considerations of self-interest and equity would be transformed into social or even moral questions if they were dealt with during the freeze. Instead, CLC adhered to the view that during a short period of severe restraint equity could best be achieved by treating all of the economic participants uniformly. If inequities were engendered in individual cases, they represented random occurrences based on the economic unit's status on August 15 rather than any frail administrative judgment. The fact that the freeze was scheduled to last only 90 days and enjoyed public acceptance made this dialectical approach feasible. "Uniformity" and "consistency" became the general defense against allegations of unfairness and the guiding principles of policy formulation.

3 Third, the policy makers gave heavy weight to the need for simplicity in the nature of the rules and regulations. Aside from any inherent advantages, simplicity was an operational necessity in the overall design of the program. When the President announced the imposition of the freeze, he stated that primary reliance would be placed on voluntary compliance rather than aggressive enforcement. This approach was a technical necessity as well as a bureaucratic strength. The absence of an extensive field staff and the short duration of the freeze meant that voluntary compliance was the only realistic means. Voluntary compliance, in turn, was largely dependent upon public understanding of the rules of the game. Other things being equal, the more simple the rules, the greater the public understanding and presumably the greater the extent of voluntary compliance. In practice, this implied that the resultant policies were less likely to take account of the special circumstances that might exist in particular industries or sectors of the economy. Simplicity meant that there would be general standards applicable across the board rather than differential categories of policies that reflected special circumstances. To the extent that this approach was followed, inequities or technical distortions might result; however, this defect was transformed into a virtue since the level of generality consistent with simplicity was clearly reinforced by the desire for consistency.

4 Fourth, policy making during the freeze proceeded with what by normal government standards was giddy speed. Most of the major policies were determined by the Cost of Living Council in the first two weeks of the freeze. This rapid pace meant that some of the policies were formulated on the basis of inadequate staff work. On the other hand, the need for speed and comprehensive guidance to the public put a premium on general rather than specific policies. Although several missteps were made, a broad policy framework was developed in a short period of time so that rulings could be made in individual cases of considerable complexity once the initial shock of the freeze had passed.

Against this background, the character of the freeze was determined by the disposition of five key issues. These decisions dealt with technical matters such as the definition of the base period and the economic unit to which the ceiling prices applied. Together, the resultant policies constituted the linkage between the strategic objectives of the freeze, the terms of the Economic Stabilization Act, and permissible market behavior.

1. *The Definition of Wages, Prices, and Rent.* In the administration of the freeze wages, prices, and rent were defined in the broadest possible terms to insure comprehensive coverage and to minimize the extent to which the program would have a differential impact on different sectors of the economy. In this manner, the operational definition of "wages" included all forms of compensation. Because they constituted elements of labor cost, all types of fringe benefits were encompassed by the freeze. Similarly, "wages" was interpreted to mean any system of compensation rather than only the general level of wages. Therefore merit and longevity increases, job evaluation plans, profit sharing, and other incentive arrangements all fell within the scope of the freeze. The sweeping language of the pertinent OEP regulation stated:

> "Wages and Salaries" includes all forms of remuneration or inducement to employees by their employers, including but not limited to: vacation and holiday payments; bonuses; layoff and supplemental unemployment insurance benefits; night shift, overtime, and other premiums; employer contributions to insurance, savings, or other welfare benefits; employer contributions to pension or annuity funds; payments in kind, job perquisites, cost-of-living allowances, expense accounts, commissions, discounts, stock options, payments for deferred compensation, and all other "fringe" benefits.
>
> In addition, there may be no changes in working conditions which result in more pay per hour worked (for example, a schedule which shortens the work week without a proportionate decrease in pay).[2]

The definition of a "price" was equally broad, explicitly incorporating a price-quantity-quality relationship. Although subtle variations in quantity

2. OEP Stabilization Program Guideline 4.0814.