

Law and markets

Improving the legal environment for agricultural marketing

139

Food
and
Agriculture
Organization
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the
United
Nations



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for agricultural marketing

by
Cormac Cullinan

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Preface

Good law is essential for the effective functioning of marketing systems. Inappropriate laws can distort and reduce the efficiency of the market, increase the costs of doing business and retard the development of a competitive private sector. The need for agricultural marketing to be conducted within a supportive regulatory framework is now increasingly recognized. The end to central planning in some countries and moves towards marketing liberalization in many others emphasises the importance of this fact.

This publication has been prepared by Cormac Cullinan of *EnAct International*, United Kingdom. By exploring a topic which has been much neglected in the past, it aims to provide policy-makers and law-makers with the necessary tools to evaluate the impact of existing law on marketing systems and to identify changes needed to achieve desired policy goals. Although it is primarily aimed at those interested in agricultural marketing, the approach adopted and the methodology outlined for analysing the various effects of laws should also make this publication very relevant to specialists in other fields of agriculture who are concerned with the impact of the regulatory framework on their work.

Chapter 1 provides a brief statement of the purpose of the publication. This is followed by an analysis of the role of the state in relation to marketing and how this has changed (Chapter 2) and of the role of law in relation to agricultural marketing (Chapter 3). Chapter 4 discusses in more detail how laws affect the functioning of agricultural markets, while Chapter 5 considers briefly the various institutional aspects relevant to the topic. This is followed in Chapter 6 by a discussion of the practical aspects which can be taken to improve laws affecting agricultural marketing, emphasising that good law should increase transparency, reduce compliance costs, reduce regulatory costs and increase both compliance and enforcement. Chapter 7 presents a methodology for analysing and reforming regulatory systems and this is followed by a discussion of how to implement any reforms which may have been identified (Chapter 8). Conclusions are presented in Chapter 9.

Executive summary

Purpose and scope

Law is essential to any national agricultural marketing system. An inappropriate legal framework can distort and reduce the efficiency of the market, increase the cost to the participants and severely stunt the development of a healthy private sector. Despite this, programmes to reform agricultural marketing systems have often been based on an inadequate understanding of the relationship between law and the way in which marketing systems function.

The purpose of this study is to improve the effectiveness and efficiency of domestic agricultural marketing by providing policy and law-makers with the necessary theoretical framework, practical tools and guidance. The study is deliberately focussed on domestic agricultural marketing systems, although some of the legal issues that arise in connection with international trade are mentioned where relevant.

This study argues that:

- the nature of the legal framework within which agricultural markets operate has a fundamental effect on the functioning of the agricultural marketing system;
- laws must be analysed within their social context in order to understand the use of law as a development tool; and
- by using the methodologies and approaches advocated in this study, it should be possible to analyse the impact of laws on the functioning of agricultural marketing systems (see Chapter 7), and to identify the changes that could be made to the regulatory framework in order to achieve the desired policy goals (see Chapters 6 and 8).

The role of the State

Chapter 2 discusses how perceptions of the proper role for the state to play in agricultural marketing systems have changed. State intervention had long been justified by reference to the inherent volatility of markets for agricultural produce. In many countries this led to a high degree of state involve-

ment, usually via state-controlled marketing boards. In the 1980s support for the liberalization of agricultural marketing gained force, particularly under the influence of structural adjustment programmes of the World Bank, and by the late 1990s the vast majority of developing countries are now committed to marketing by the private sector. The importance of not equating the development of laws and regulations on agricultural marketing with state intervention in the market is emphasised.

The significance and role of law in relation to agricultural marketing systems

Chapter 3 discusses how law functions as part of an agricultural marketing system and its use as a tool for developing agricultural marketing.

The role of law in relation to agricultural marketing systems is multi-faceted, but for the purposes of this study, law can be regarded as having the following three main functions:

- 1 Enabling functions, which provide the essential legal framework for the marketing system. Rules performing this function include those that: establish property rights; enable the establishment of legal entities such as co-operatives; and govern contracts, exchange, and security (e.g. rules allowing movable goods such as grain to be pledged as security for a loan).
- 2 Economic regulatory functions, which seek to promote, guide and discipline the operation of markets. These functions may be performed by a wide range of laws, including laws dealing with competition, uniform weights and measures, food-quality standards and tax.
- 3 Constraining functions, designed to restrict the operation of the market in some way, in order to avoid socially undesirable consequences. Typical examples of this are found in laws dealing with environmental and consumer protection (e.g. laws establishing maximum residue limits for pesticides in foods).

Chapter 3 also draws attention to the fact that using law as a development tool is not straightforward, and the effects produced are heavily influenced by the context in which rules are used, particularly by factors such as the institutional framework and legal culture. This implies the need for caution when making general recommendations about the best way to improve legal frameworks.

Legal rules may also be classified on the basis of how they operate. For example, a distinction may be made between:

1. Regulations that establish a structure for market interactions but rely on the market to articulate preferences (e.g. by creating rights to transfer ownership of stored grain by transferring certificates of title to the grain).
2. Regulations that regulate conduct and so do not rely solely on the market to determine preferences.
3. Regulations that attempt directly to specify the result or outcome.

This classification gives a general indication of the extent to which a legal mechanism attempts to substitute political decision-making for the decisions of the market. For example, rules that specify an outcome (Category 3) are intended to override market decisions, rules in Category 2 to modify market decisions and rules in Category 1 to facilitate the operation of the market. Furthermore, it would be expected that the cost of enforcing rules in Category 3 would be higher than for Category 2 and for the costs of enforcing Category 1 rules to be the lowest.

Relating this classification to the previous one based on the functions of the laws, legal rules that serve an enabling function would, generally speaking, relate to structure (Category 1) and would have low enforcement and compliance costs. Rules with an economic regulatory function would mainly prescribe conduct (Category 2) but may also seek to prescribe results (Category 3).

Identifying areas requiring legal reform

A huge number of laws can have an effect on the functioning of an agricultural marketing system: it is therefore useful to narrow the focus. This can be done by concentrating on those areas in which specific legal obstacles prevent the development of agricultural marketing (e.g. insufficiently developed laws may prevent the establishment of inventory credit systems). Once the known problem areas have been analysed, those areas of law that would typically have the greatest impact on a domestic marketing system can then be examined.

Chapter 4 discusses in more detail how laws affect the functioning of agricultural markets, while Annex 1 sets out various questions and potential sources of legal rules that may be useful in identifying the relevant rules.

Institutional aspects

Chapter 5 discusses the important effect which institutional frameworks have on the functioning of regulatory frameworks. It considers some of the difficulties involved in transforming public sector bodies such as marketing boards, the role of private-sector organizations, and the importance of dispute-resolution mechanisms.

Improving regulatory frameworks

Chapter 6 contains a discussion of the practical measure that can be taken to improve regulatory frameworks for agricultural marketing. It recommends that, in general, legal reform initiatives should aim:

- to increase legal certainty and transparency;
- to reduce compliance costs;
- to reduce regulatory costs; and
- to increase compliance and enforcement.

The Chapter contains a discussion of specific measures that can be taken to achieve these objectives, and of the relationship between various factors affecting the degree of compliance with a law.

A methodology for analysing and reforming regulatory systems

Law is one of the primary determinants of market performance and can be a powerful tool for implementing policy. If there is no evaluation of how rules function and of the impact they have, rational policy development is not possible. Chapter 7 sets out a methodology for analysing relevant laws in a particular socio-economic context. This is based on the recognition that the legal, institutional and economic aspects of a regulatory system for agricultural marketing are inseparable. It is intended to give policy-makers and lawyers a framework for identifying the key features of the regulatory system to enable them to make informed decisions about how to improve its functioning to meet specific policy objectives. The Chapter also seeks to identify the economic implications of a rule in terms of cost to the participants (compliance costs) and costs to the state or other authorities in implementing and enforcing the law.

Since it may not always be possible to conduct a full evaluation of the legal framework for agricultural marketing, a method of conducting rapid evaluations using a few key indicators is set out in Chapter 7 (Box 13). However, from the perspective of policy and law-makers wishing to improve agricultural marketing systems, gaining an understanding of the conceptual

basis inherent in the approaches suggested in Chapter 7 is more important than a detailed analysis of all relevant laws (which would, of course, be useful).

The process of regulatory reform

Chapter 8 deals with the process of initiating reform of the legal framework for agricultural marketing. The importance of managing the transition in accordance with an overall strategy is emphasised. The Chapter also includes a discussion of the optimal level of regulation.

General Guidelines for improving the legal environment for agricultural marketing are set out in Box 14 (see page 67).

Conclusions

Chapter 9 concludes that policy-makers should beware of over-simplistic models based on the mistaken belief that fewer rules mean more efficient markets. Those drafting laws need to find ways of moving away from highly prescriptive legislation designed to maximize state control, towards legislation designed to enable efficient private sector involvement. However, the greater degree of freedom for the private sector resulting from legal reforms may also increase the potential for market manipulation and thus create a need for new and more sophisticated regulatory mechanisms.

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Chapter 1

Introduction**PURPOSE AND SCOPE**

Law is essential to any national agricultural marketing system. Laws establish the framework of property, contractual and other rights that form the foundation for markets and are the primary means of regulating the behaviour of participants in markets and the consequences of their actions. Furthermore, legal reform is one of the key tools available to policy-makers wishing to reform agricultural marketing systems. Yet programmes to liberalize agricultural marketing, that may involve sweeping legal reforms, are often based on an inadequate understanding of the relationship between law and the functioning of marketing systems.

An inappropriate legal framework can undermine the prospects of achieving desired policy objectives, introduce unnecessary distortion and reduce the efficiency of the market, increase the cost to the participants, and severely stunt the development of a healthy private sector. Despite the potential for legal rules to both improve and harm agricultural marketing systems, many initiatives to strengthen agricultural marketing pay surprisingly little attention to the legal aspects. This is perhaps because the effects of laws, though they may be significant, are often difficult to quantify.

The purpose of this publication is to increase the likelihood of initiatives to improve the effectiveness and efficiency of agricultural marketing being successful, by providing policy and law-makers with the necessary theoretical framework and practical tools and guidance. It aims to equip those involved to understand how laws function in this context, how to identify the kinds of legislative changes that should be made in order to achieve the objectives of the reform programme, and how to design and implement appropriate legal reforms.

This study is deliberately focussed on domestic agricultural marketing systems, although some of the legal issues that arise in connection with international trade are mentioned. It is important to appreciate that international competitiveness and trade issues can have an influence on programmes to reform domestic agricultural marketing systems, particularly since the estab-

lishment of the World Trade Organization. For example, in the Philippines the desire to build an internationally competitive agricultural sector was one of the main factors motivating reforms to the agricultural marketing system. In 1995 the Government established the Congressional Commission on Agricultural Modernization which has subsequently recommended the amendment of laws that subsidize interest rates on loans to small farmers. The reforms also included replacing quantitative import restrictions on basic foods such as rice with tariffs (under the Agricultural Tariffication Act). These reforms are likely to have a substantial impact on the domestic marketing system. Furthermore, the nature and extent of measures to encourage agricultural production (e.g. allowing members of Farmers' Co-operatives to import capital goods at preferential tariff rates and to have access to cheap fertilizers and pesticides) was constrained by a desire to remain within WTO rules (Villasis, 1997).

Box 1: Difficulties arising from an inadequate legal framework, Moldova

Since becoming an independent state, Moldova, like many countries in transition, has been, and is still, undergoing a process of continuous and rapid economic and legal reform. It is expected that many of the problems identified below will be addressed in the course of the on-going reform process, and they are only cited as examples of the negative impact on the development of agricultural marketing that can be caused by an inappropriate legal environment.

Barriers to Participation in the Market

- Individuals may only be founders of one sole proprietorship and individuals or legal persons may only participate as partners in one limited or general partnership (Government Resolution No. 1050 of 11 November, 1997). In practice, business people use a number of methods of circumventing this law.
- The Government Resolution on State Monopolies provides for the creation in some circumstances of a "state monopoly" by giving a limited number of entities the exclusive right to participate in a particular economic activity. However, the law does not stipulate the criteria that the state body must apply in deciding which applicants should be granted a state monopoly. This lack of transparency has enabled the authorities to use the legislation to artificially restrict the number of entrants to markets.

State Participation in the Market

- The State of Moldova purchases large quantities of agricultural commodities and this has a significant impact on the functioning of the market as a whole.

For example, the State simply issues a Government Decision stipulating the quantity of wheat to be delivered to State grain elevators by each region and producers are not entitled to sell wheat to other buyers until they have fulfilled their obligation to deliver wheat to the State. The Decision states that the purchasing prices will be determined by negotiation in each contract. In practice the State fixes the purchase price without negotiation and in most cases does not pay for the wheat in cash but simply reduces the seller's historical debts to the State by the amount of the purchase price.

Legal Uncertainty

- Some communist-style Government Decisions are still being passed. For example, a Decision relating to the 1997 sugar beet harvest requires private farms, sugar processing factories and transport companies to begin harvesting, transporting and processing beet on specific days.

Limited Enforcement

Government rules governing trade at bazaars, at which large quantities of agricultural produce are traded, have not been adequately enforced. A 1997 survey at five agricultural markets revealed that, in practice, most of the provisions of these rules, the Domestic Trade Rules and the Law on the Protection of Consumer Rights, were being violated. Food was sold without documents certifying their quality; perishable food was sold under unhygienic conditions and unapproved scales were routinely used (92% of visitors to the market complained about traders giving short weight). In addition, an illegal agricultural wholesale market had been spontaneously created on the pavement of one of the busiest streets in Chisinau, despite the absence of stalls and in contravention of laws on sanitation.

Restrictions on profits and advertising

A number of Government Resolutions establish procedures for calculating the prices of "socially important goods" such as dairy products, sugar and flour, and restrict the amount of profit that may be made on the sale of these goods to between 10 and 15%. Revenue from selling at prices in excess of these limits is confiscated and an equivalent fine is imposed. Government Resolution No. 340 of 2 June 1993 severely limits the amount of advertising cost that may be included in the calculation of the price of a product and consequently the balance must be borne by the enterprise. This makes it difficult to develop much needed new markets for agricultural products.

(Source: Juncu and Checoltan, 1997).

IMPROVING AGRICULTURAL MARKETING SYSTEMS

Many developing countries and countries in transition are heavily reliant on domestic agriculture to provide food and employment for a large part of the population and as a source of export earnings. Consequently, the performance of the agricultural sector has a strong influence on overall economic performance and a direct impact on the well-being of a country's people. The performance of the agricultural sector is, in turn, heavily dependent on the functioning of the agricultural marketing system. Where, for example, a complex regulatory system creates unnecessarily high transaction costs, this may simultaneously result in farmers receiving low prices for their produce (which will reduce the incentive to increase agricultural production), and in higher food prices for consumers.

The term "agricultural marketing system" as used in this study refers to business activities leading to the production of agricultural produce on the farm and associated with its movement to the consumer or manufacturer. It includes the marketing of agricultural inputs (e.g. fertilizers) to farmers, as well as the initial processing and packaging, handling, transporting, assembling, storing, wholesaling and retailing of agricultural products. In addition to the physical dimension of the marketing system (which involves processes like transport and storage), there is also an intangible dimension, which includes trade finance, marketing infrastructure, and the legal, administrative and macro-economic policy framework.

Legal reforms, particularly in the context of market liberalization programmes, are usually intended to improve the efficiency and effectiveness of a marketing system. Whether or not a reform programme is effective depends largely on the extent to which it achieves its policy objectives. An effective marketing system should provide outlets and incentives for increased production: if the agricultural marketing system is inadequately developed, efforts to increase agricultural production are likely to be negated. Typical objectives include increasing rural incomes and ensuring affordable supplies of basic foodstuffs to urban areas. However, particularly in the past, marketing policies were sometimes designed to achieve other objectives, such as extracting surplus from agriculture in order to finance state investment in other sectors.

Even where a marketing system is *effective* in achieving its main objectives of bringing produce from farmers to consumers, it will still often be possible to make the system more *efficient*. Legal reform can play an important role in this regard by, for example, removing unnecessary restrictions and

thereby reducing the costs of complying with the law (compliance cost), and by establishing a sound legal framework for marketing which will reduce uncertainty in the market.

A legal framework that is clearly understood and is implemented in a consistent manner will help participants in the market to predict more accurately the consequences of their actions and the actions of others, and so reduce risk and improve the efficiency of the marketing system. However, it is also important to be aware of the limitations of the law as a tool for market reform and consequently this study also discusses the circumstances under which legal reform is likely to succeed or fail and some of the factors that influence the success or otherwise of legal reforms.

Chapter 2

The role of the State in agricultural marketing

THE ERA OF THE MARKETING BOARD

The volatility of commodity prices has been one of the main justifications for state intervention to control or direct the functioning of agricultural markets, often by the establishment of marketing boards and various legislative controls to achieve a single, government-controlled, marketing channel for key commodities. For example, the world-wide depression in the 1930s, which resulted in low world prices for agricultural commodities and the financial ruin of many farmers, led to the enactment of the Maize Control Act of 1931 in Southern Rhodesia (today Zimbabwe) and in 1935 to the establishment of a Maize Board in South Africa. Government intervention in marketing elsewhere has been justified on the basis of other development objectives. These have included: achieving self-sufficiency (the main reason for the creation of marketing boards in Botswana and Lesotho in the 1970s) and facilitating the extraction of surplus from agriculture in order to finance state investment in other sectors (such as by commodity export boards in East and West Africa).

By the 1960s there was significant public sector involvement in the agricultural markets of the majority of developing countries. This typically took the form of a marketing board that had a legal monopoly, or a stabilization fund (*caisse de stabilization*) which purchased crops through a system of licensed agents. The effectiveness of this public-sector intervention varied. In many countries regulatory controls had the effect of creating parallel markets on which crops, particularly food crops, were traded at prices which reflected the underlying supply and demand. In Mali, even during the socialist regime of the Modibo Keita government (1960 to 1968) when private trade was repressed, the official grain marketing agency OPAM handled only 20 to 40 percent of total grain marketed in the country. Since only about 15 percent of total production was marketed, this effectively meant that only three to six percent of total production was traded at official prices (Staatz, 1989, p. 207 citing Humphreys, 1986, p. 5).

THE GENESIS OF MARKET LIBERALIZATION

By the end of the 1970s, many sub-Saharan African countries were in prolonged economic recession and had growing fiscal deficits. This led them to approach international organizations such as the International Monetary Fund and the World Bank for support. The World Bank and others identified the high level of state intervention in agricultural markets as one of the main factors causing stagnation in agricultural production and increased dependence on food imports and aid. The Bank also took the view that the poor performance of the agricultural sector in many African countries was exacerbated by the fact that government policies had an urban bias. In particular, over-valued exchange rates and food subsidies were used to keep consumer food prices low. These factors, together with the poor performance and high cost of export marketing boards in many countries, had the effect of taxing the farmer and acted as a disincentive to increased production.

In the 1980s, the World Bank responded to requests for assistance from developing countries by introducing policy-based lending described as “structural adjustment”. Structural adjustment policies are long-term, growth oriented, “supply side” policies, which are intended to facilitate commercial activity and increase production in order to sustain, and eventually raise, living standards (as opposed to stabilization policies, which are intended primarily to reduce demand). The central structural adjustment strategy that has been adopted is market liberalization. This strategy is based on a perception that government interventions in the market introduce distortions and inhibit the development of a healthy private sector, and should thus be removed.

Liberalization of agricultural markets usually involves:

- liberalizing prices (e.g. removing controls on producer and consumer prices, allowing interest rates to rise to market-determined levels, adjusting exchange rates and abolishing subsidies);
- promoting the private sector (for example, improving access to finance for commodity traders and marketers, and improving market information, transport and storage);
- reducing the role of government (for example, by privatizing or contracting out key functions, closing public enterprises and limiting the mandate of parastatals);
- introducing measures to increase the efficiency of the remaining state-owned enterprises; and
- removing quantitative and administrative controls on trade (e.g. removing quotas on crop purchases and movement, abolishing licensing arrangements, and removing restrictions on internal and international movement of produce) (Kydd and Spooner, 1990, pp.10-12).

Structural adjustment policies have been criticised for being based on abstract, theoretical models of “the market” which are far from reality. For example, Bryceson (1994) argues that structural adjustment programmes are based on the assumption that integrated national markets exist, which in the case of Tanzania was incorrect (See also Raikes [1994] and Gould and Von Oppen [1994]). The danger of setting the attainment of an abstract notion of the market (based on perfect competition and equilibrium) as a goal for developing economies is that it very easily leads to the view that market distortions are a consequence of state intervention. This then leads to policy recommendations that the state should withdraw from markets as a matter of principle, a view for which the World Bank in particular has been criticised (see Gould and Von Oppen, 1994, p. 11). In any event, since states have always been involved in setting the basic rules under which markets operate, it is an over-simplification to understand market liberalization as simply “getting the government out of the market”. It involves a process of redefining property rights, including the relative roles of the private and public sectors, and is therefore a broader concept than privatization (see Staatz *et al*, 1989, p. 716).

Although a discussion of the details of this debate is beyond the scope of this study, it does draw attention to three important issues. Firstly, although the role of law in agricultural marketing is linked to that of the state, it should not be equated to it. Therefore, reducing the role of the state in markets does not necessarily imply an equivalent reduction in laws. The degree of legal intervention in the functioning of agricultural markets may be reduced but new policies may also create a need for new or amended laws, particularly to provide an environment that is supportive of private-sector initiatives.

Secondly, there is ample evidence to indicate that market “distortions” do not emanate solely from state interference and may simply be reflections of the realities of the societies in which the markets exist. If this is so then it also means that the “distortions” cannot be removed by simply doing away with the regulations or other mechanisms of state intervention. In fact, the removal of certain regulatory controls can also have negative impacts on the functioning of an agricultural marketing system.

Thirdly, trade liberalization is likely to have an impact on other public policy objectives, particularly on self-sufficiency in food production, food security and national economic self-reliance. Removing tariffs and restrictions on the international movement of produce is likely to make a developing country more dependent on buying from, and selling to, foreign markets, and hence more vulnerable to fluctuations in exchange rates and in foreign markets, particularly where these affect staple foodstuffs and economically significant commodities.

POLICY FRAMEWORKS FOR AGRICULTURAL MARKETING TODAY

Today most developing countries have adopted national policies committed to the liberalization of their domestic agricultural marketing systems, although the legal frameworks have often not been amended to give full effect to these policies. For example, in the Philippines, as noted earlier, a Congressional Commission on Agricultural Modernization was established in 1995. As a result of its findings agricultural policy is now focussed on providing an appropriate environment within which the “enterprising tiller” can exercise the right to choose what technology to use, what crops to grow and to whom to sell the produce to receive the highest return. The Government seeks to minimize intervention in the functioning of agricultural markets and to amend or repeal legislation that is inconsistent with this principle. However, as Villasis (1997) indicates, a number of legal provisions that are contrary to this policy are still operative.

The Nepal Agricultural Perspective Plan, which has been implemented since the 1997/98 fiscal year, provides that: “Acts and Rules should be conducive to promoting markets with the full participation of the private sector.... The improvement and orientation of the marketing system should be geared towards achieving the Government policy of market liberalization and encouragement of an efficient and competitive private sector, particularly in the organized sub-sector of agriculture” (National Planning Commission, Government of Nepal, Concept Paper of the Ninth Plan (1997/98 – 2001/02), Kathmandu, July 1997).

The gap between policy statements regarding market liberalization and the realities of the legal framework are often most noticeable in countries in transition. In these countries, as indicated in Box 1, the legacy of Communist ways of thinking means that, despite the enormous amount of legal reform being undertaken in a short space of time, laws setting prices and the amount of profit that may be made by market participants often co-exist with public policies committed to market liberalization.

Chapter 3

The role of law in agricultural marketing systems

INTRODUCTION

A general understanding of the role of law, how it functions and some of the ways of using the law as a tool for social change is essential before embarking on a more detailed consideration of specific means of improving the legal environment for agricultural markets. It is particularly important to understand that law is part of a larger regulatory system and is inseparable from the political and economic aspects of the societies that give rise to it.

The term “law” is used here to refer to the rules of the formal legal system applicable in a country, predominantly expressed in legislation, that is, in written laws enacted by the Parliament, National Assembly or other superior legislative organs, or by other institutions or officials with delegated legislative authority. The term also includes other binding and legally enforceable rules arising from other sources, such as the decisions of judges in common law jurisdictions.

LAW AS A TOOL FOR DEVELOPMENT

In the 1960s and 1970s law was seen as central to development and “development law” emerged as a specialist area of study, particularly in the United States. Modernisation theories at the time saw development as a linear process, from traditional backwardness to mass capitalist consumption (see Rostow, 1960). Developing a country’s legal system along Western liberal lines was believed to be an essential component of this process of economic development. The corollary of this was the assumption that local law hinders development. Furthermore, since changing state law was seen by those involved in development as one of the most powerful tools for achieving social and economic change, failure was often attributed to inadequate law (implying a need for a new and better state law) or the result of the negative influence of local law customs.

However, the results of many early development law initiatives were disappointing. One of the reasons for this, as Von Benda-Beckmann has pointed out, is that the initiatives were based upon incorrect assumptions that legal

structures and rules directly cause or determine social actions and consequences. This is often not the case. For example, studies in many countries have found villagers responding not to the law on the statute books, but to the version of the law that is communicated to them by bureaucrats and planners. The villagers' reaction to this "local model" of the law (which may be very different from the actual law) was conditioned by how they expected the law to be applied on the basis of previous experience (rather than what the bureaucrats said) and by existing local customs and laws (Von Benda-Beckmann, 1993).

This also points to the fact that the effectiveness of law as an agent for social transformation is inextricably linked to the institutional structure of a society and to the interaction of political and economic forces within that society. As Waelde and Gunderson point out in their discussion of legislative reform in transition economies:

"The fallacy is in thinking that legislation *per se* without (or rather than) an economic policy backed by social and institutional change, can be the lever for change. Laws become effective by social forces and pressures interested in and working for implementation. Without a proper institutional setting, the law will remain a fig-leaf, pretending action without changing social reality" (Waelde and Gunderson, 1994, p. 360).

This point is particularly well illustrated by the situation in many of the countries that were formerly part of the Soviet Union and are now in the process of radically reforming their political and economic systems. In many such countries in transition legislative reform to improve agricultural marketing is taking place within a much larger process of legal reform intended to restructure and rebuild an entire legal system. In the case of countries wishing to join the European Union this reform process is further complicated by the need to ensure that legislation conforms to European Community legislation. The speed and scale of the legal reform process in these countries has created a multitude of difficulties, including conflicts and inconsistencies between different laws. It is likely that it will take many years before the institutional structures and social forces have developed sufficiently to enable the laws to be implemented and enforced effectively.

Therefore, it is important to be aware of the fact that a particular law is likely to produce different results in different countries and to be alert to the

dangers of seeing law as an essentially neutral tool which can be applied to produce predictable and consistent social and economic results. This does not mean that law is ineffective in producing social change, or that it should not be used, but rather that it must always be understood as part of a wider socio-economic regulatory system in a particular area or country.

HOW LAW FUNCTIONS IN RELATION TO AGRICULTURAL MARKETING

The role of law is multifaceted, but for the purposes of this study it is convenient to group the functions which laws perform in relation to agricultural marketing into three categories:

- enabling functions, which provide the essential legal framework for the marketing system (e.g. establishing property rights, rules about economic behaviour, currencies, and negotiable instruments such as cheques) without which markets could not function;
- economic regulatory functions, which seek to promote, guide and discipline the operation of markets (e.g. laws dealing with competition, uniform weights and measures, product-quality standards, and tax); and
- constraining functions, often designed to restrict the operation of the market in some way in order to avoid what are perceived as socially undesirable consequences (e.g. environmental and consumer protection legislation).

It is important to note that a particular legal mechanism may perform more than one function. For example, the imposition of product-quality standards could perform both economic regulatory and constraining functions.

Enabling functions

The involvement of the state is necessary to establish an appropriate regulatory framework for agricultural markets. Indeed, a regulatory framework which establishes basic legal rules governing the transfer of property rights through trade and liability for default, etc. is essential for the existence and development of markets. As Shaffer points out “Regulation is not a means of dealing with market failure, without regulation in the broader sense there would be no market” (1979, p. 722).

Probably the most fundamental enabling function of law in this context is the definition of ownership and the establishment of rules to protect it, such as the prohibition of theft. By creating and enforcing ownership, law defines

the relationship of persons to goods, who can trade and what can be traded. This is essential to enable goods to be transferred to the mutual benefit of buyer and seller.

Usually state law also performs a variety of other enabling functions, including establishing rules governing: agreements (contracts), the sale of goods (e.g. whether ascertaining the quality of the goods is the sole responsibility of the buyer or whether a seller has some duties in this regard); contractual and other liability, and legal tender (i.e. broadly speaking, what is recognized as money). In many developing countries there are laws performing these basic enabling functions but this is not necessarily the case in countries in transition, as many such rules were not required under communism and so did not develop. Laws that perform enabling functions provide the foundations for marketing systems and consequently do not have as high a profile as those that directly govern the functioning of agricultural marketing activities. While it is often unnecessary to review all such laws in analysing the legal environment for agricultural marketing, it is important to be aware of the impact which apparently unrelated areas of the law can have on agricultural marketing. Three such areas, which are often relevant, are laws governing contract, establishing how legal personality is created, and relating to security for the performance of obligations.

Laws of contract allow the evolution of commercial transactions beyond direct barter exchanges. Although it is not absolutely essential for contracts to be enforced by the state (for example, in some circumstances social customs and reputation serve as effective sanctions), the effectiveness of markets is greatly enhanced where the state provides courts to adjudicate on contractual disputes, as well as mechanisms for enforcing the courts' decisions.

Legal mechanisms for granting a group of individuals recognition as a legal entity, entitled to assume rights and obligations in its own right, have also been central to the development of commerce. A classic example is the limited liability company, which limits the financial risk of shareholders to the amount of their investment in the company and so encourages entrepreneurs to take risks and facilitates the raising of capital.

The financing of agricultural trade has been identified as a major obstacle to increasing returns to farmers and the development of the agricultural sector. One of the ways of overcoming this problem is to allow farmers to use stored crops such as grain as security for loans (inventory credit). Certain legal principles are essential for the establishment of a system of inventory credit. For example, there must be legal recognition that security interest may be created in movable property such as grain. In addition, the effectiveness of a system of inventory credit will be heavily dependent on whether or not

various other legal rules are present, such as laws which allow grain to be bought and sold by transferring warehouse receipts (i.e. recognition of warehouse receipts as negotiable documents of title). These issues are discussed more fully in Chapter 4, which discusses laws affecting access to finance, credit and capital.

Economic regulatory functions

A significant amount of legislation affecting agricultural marketing is designed to support the proper functioning of a market (e.g. by prohibiting price fixing by cartels) or to alter the benefits and costs of certain actions in order to promote some activities and inhibit others (e.g. by the application of taxes). This category spans a very wide range of regulations including: competition laws, laws relating to uniform weights and measures, product grading standards, and price regulation (see Chapter 4). It should also be noted that other, non-legislative legal instruments, such as unwritten market rules and standard contracts adopted by market authorities or trading associations, may also serve to regulate the economic functioning of markets.

Constraining functions

Many laws regulating economic activities have the effect of constraining the market. However, it is useful to consider separately those laws which are introduced with the intention of limiting the operation of markets in order to attain some other social goal such as environmental or consumer protection. Such laws may take various forms and include rules that restrict the use of inputs (e.g. hazardous chemicals), prohibit the trading of certain goods (e.g. protected species of plants and animals), place restrictions on the import and export of plants and plant products to limit the spread of pests (e.g. plant quarantine or plant health legislation), or set standards to protect consumers (e.g. maximum residue limits for pesticides in foods).

Chapter 4

Laws affecting the functioning of agricultural markets

INTRODUCTION

The previous chapter drew attention to the dangers of examining legal rules in isolation from the social, economic and political context. In addition, the way the law is “received” by market participants may be very different from the law on the statute books. The response of participants in the market will be determined not so much by what the law actually stipulates but by how it is conveyed to them and interpreted by officials, and how it is implemented and enforced.

Despite the high levels of uncertainty associated with predicting the actual socio-economic impact of a regulation, it is possible to identify various types of legal provisions, the absence or presence of which is likely to have an impact on the functioning of an agricultural marketing system. For the sake of convenience, the various legal provisions discussed in this Chapter have been grouped according to what their primary or intended effect on the market is likely to be. For example, is the primary impact on: participation in markets, on commodities traded, on the market place, on production costs, on supply, on prices, on practices that manipulate the market, on access to finance, credit and capital, or on the nature of the transactions in the market?

However, this grouping should not obscure the fact that the legal provisions discussed could be serving enabling, economic regulatory and/or constraining functions as reviewed in Chapter 3. In fact the main function of most of the laws discussed in this Chapter is to regulate economic activities in markets, but this discussion also covers laws which primarily have enabling or constraining functions.

It is also important to recognize that a single rule may have multiple effects, not all of which were intended. These effects need to be factually determined rather than merely deduced on the basis of market theory.

LAWS REGULATING PARTICIPATION IN MARKETS

The right to participate in a market (i.e. legal access to the market) may be affected by a variety of legal factors ranging from property rights in natural

resources to trading licences, as well as non-legal factors, typically based on caste or tribe, gender or economic considerations. The reasons for regulating who may participate in a market vary, and may include: a desire to improve quality (particularly where the export of agricultural commodities is involved), controlling or taxing economic activity, protecting nationals against foreign competition, or securing economic advantage for a particular special interest group.

Licensing regimes often provide a useful way for authorities to exert a degree of control over participants in the market in the public interest, and to collect useful information for statistical analysis and planning. However, establishing a licensing system can have negative effects if the system is subverted by particular interest groups for other purposes. For example, the number of licences issued may be restricted for the purpose of repressing unlicensed traders, who are then obliged to bribe officials in order to continue operating. Furthermore, a licensing system can be used as a mechanism for enabling the state or individual bureaucrats to effectively tax participants. The imposition of onerous application fees or conditions will also have the effect of increasing the compliance cost of participants.

Involvement in agricultural marketing or trading is frequently regulated by means of a system of registration and/or licensing of various participants such as wholesalers, retailers, and warehouse operators. For example, in the Philippines, market participants must register their business and obtain a Mayor's permit from the local municipality. Depending on the nature and location of their business, they may also be required to obtain sanitary and zoning permits and a licence to sell certain commodities, such as rice, sugar, coconuts and certain other foods. The granting of licences is usually dependent on the applicant fulfilling various prerequisites, complying with regulations and paying licence fees. (Box 2 describes the licensing system that operated in Senegal in the 1980s.)

LAWS APPLICABLE TO THE COMMODITIES TRADED

Governments frequently impose a variety of restrictions on the trading of agricultural commodities and certain inputs, such as fertilizers and pesticides, in an attempt to achieve a range of objectives. These may include the improvement of produce standards, the protection of public health and the standardization of packaging and labelling, particularly for export.

Controls on the marketing of strategic commodities

Restrictions on the marketing of certain strategic crops, such as staple food crops and major export crops, were frequently imposed as part of a larger sys-

Box 2: The former licensing regime, Senegal

Formerly there was a government monopoly on the assembly of paddy rice whilst merchants who assembled millet, sorghum and maize were required to be licensed wholesalers. In order to obtain a licence, wholesalers were required:

- to present evidence of a bank balance of at least FCFA 3 million (US \$1 = about FCFA 430 in 1985);
- to have certified storage facilities; and
- to keep regular accounting records.

In addition to being licensed, traders were required to obtain an annual authorization to handle a specific commodity, which required certification of a bank balance of at least FCFA 5 million.

Research indicated that:

- many wholesalers were unlicensed (only 58 percent for example had wholesaler licences);
- the requirement for certification of a minimum bank balance on a particular date served as a temporary liquidity constraint and as a barrier to entry into the grain trade but did not provide any real security that the wholesaler would be in a position to meet any subsequent financial obligations;
- participation in the market, the potential market outlets for farmers and the available liquidity in the system was limited by licensing rules (to the extent that they were enforced), by virtue of the fact that a wholesaler's licence was required to purchase grain directly from farmers (even for small merchants making small purchases) and a wholesaler's or retailer's licence was required to transport 200 kg or more of local grain across regional boundaries; and
- about 54 percent of wholesalers paid "fines" during the 4 to 6 months after the licensing of the 1984/85 harvest and in 65 percent of cases an "arrangement" was worked out and no receipt was issued for the fine.

(Source: Newman, Saw, and Ndoye, in Abbott, J., 1993, pp. 225-235).

tem of state control. In Malawi the sale of certain listed crops, which were defined as "smallholder agricultural produce", was closely controlled under the Agricultural Act No. 11 of 1987. These crops (primarily maize, groundnuts, pulses, and varieties of tobacco other than those grown on estates) were

produced by farmers on land held under customary tenure. On the other hand, burley and flue-cured tobacco produced on land held under freehold or leasehold title (estates) could be sold at auction, allowing producers to receive export parity prices. Marketing liberalization programs in many countries, including Malawi, have led to many such restrictions being eased or abolished. However, in several countries governments have retained powers to impose controls on the marketing of strategic agricultural commodities during periods of crisis (see Box 6). Countries have, in the past, been cautious about liberalizing the marketing of crops that are economically or politically important and gradual liberalization has usually been preferred. For example, in the Philippines, where rice marketing is controlled, the Government has allowed the private sector to import limited amounts of premium, fancy and glutinous rice since 1996 (Villasis, 1997).

Controls on quality

One of the most common ways of attempting to improve the quality of produce offered for sale is to introduce standards or grading requirements when the produce enters the marketing system. However, official controls on quality at the point of first sale are often impossible to implement due to lack of trained staff and shortages of grading equipment.

Where trading is in the hands of the private sector, traders have developed standards which govern the prices paid to producers and in some countries traders have developed very sophisticated unofficial standards. This suggests that education of farmers and traders rather than official controls may be most effective in ensuring produce standards. However, it may still be appropriate for legislation to penalise producers and traders who misgrade or adulterate produce and for this to be enforced by government inspectors.

In relation to produce for export, the case for rigorous state inspection and verification of standards is stronger because of the importance of maintaining a country's reputation for its produce in foreign markets. Inspection by state authorities may also be necessary to comply with the phytosanitary and officially recognized grading requirements applicable to international trade.

Packaging and labelling

In many countries, it may be impractical to specify and enforce detailed rules relating to the packaging and labelling of domestically marketed agricultural produce, but this is extremely important in relation to inputs such as pesticides and, to a lesser extent, fertilizers. The labelling of fertilizers and pesticides should enable their quality to be ascertained by the purchaser. In the case of pesticides, clear labelling in accordance with internationally accepted guidelines is essential for health and safety reasons.

Box 3: Establishing national grading standards, Philippines

In the Philippines the National Food Authority (NFA) has established National Grain Standards, which were incorporated into the NFA Rules and Regulations on the Grains Business with effect from 1 January 1998. Previously the private sector used a system of grading rice that differed from the government standards. After holding public hearings and consultations with those affected, new standards were developed which harmonised private-sector practices with international practice. Among other things the new National Grain Standards set standards for grading, milling, packaging and labelling of rice and maize and enforcement mechanisms, including regular monitoring by officials, and sanctions for non-compliance. In the case of rice, monitoring and enforcement is facilitated by requiring the mill to pack rice in sacks that are colour coded to identify the quality of rice that they contain, and then holding retailers liable if rice is sold to a consumer from an incorrectly colour-coded sack.

The Introduction to the National Grain Standards emphasises the fundamental importance of the standards as a basis for establishing an efficient and dynamic grain marketing system. Establishing the standards:

- reduces the opportunities for unfair competition, price manipulation and other unscrupulous trade practices;
- facilitates harmonization with the emerging global free-market economy; and
- enables innovative programmes to be established including the Grains Inventory Financing Technique (GIFT) and the Farmers' Grains Exchange Programme (FGEP). (See Box 8).

(Source: Villasis, 1997).

LAWS AFFECTING THE MARKET PLACE

In some countries where there was a high degree of state involvement in agricultural marketing, and particularly where a state-controlled single channel for key commodities existed, the trading of such commodities was often illegal unless it occurred in certain specified markets. More often, town planning legislation and municipal bye-laws regulate the siting of markets. Since markets need to be easily accessible to consumers, such laws can have an impact on the operation of a particular market.

Rules regulating the dates, times and frequency with which markets are held can also have an important impact and any proposed alterations should be discussed with market participants to avoid any unintended negative effects. As the experience of Ethiopia suggests, using law to regulate conduct in order to improve economic efficiency (i.e. attempts to prescribe efficient conduct) is likely to be ineffective and may even reduce economic efficiency (see Box 4). If a practice really were inefficient there would be a strong economic incentive for change and for the change to occur without legislation unless obstructed by special interest groups or unless there were more powerful social reasons for retaining the status quo.

Box 4: Regulating when markets are held, Ethiopia

In the eastern part of the Weleta region of Ethiopia, local administrators rescheduled all markets to occur once a week on Saturdays or Sundays, instead of twice a week. This was intended to increase agricultural production by increasing the amount of time farmers spent working on their farms. Instead, the overall effect of the policy was probably negative. In particular, the evidence suggests that:

- the availability of consumer goods declined and marketing costs increased since vehicles and traders could only service a single market instead of up to seven markets (one per day);
- fewer buyers were present at each market and farmers would have to wait a full week before trying to sell produce again, resulting in a decline in prices received;
- since price information could not be passed from one market to another during the week, price co-ordination was hampered, leading to more drastic price fluctuations and surpluses or deficits of particular products on a given market because there was no market signal prompting the movement of products from a surplus area to a deficit area.

(Source: Franzel, Colburn, and Degu, 1989).

If a market place is to function effectively and provide a secure environment conducive to trade, it is important that it functions in accordance with a clear set of rules. In smaller, informal markets these may be unwritten customary rules, but in larger markets it will normally be necessary to formulate specific regulations governing a variety of matters. These typically include rules relating to: the allocation of stalls, the types of produce that can be sold,

the location of selling space for different commodities, specific hours for undertaking various activities, the collection of revenue and the maintenance of hygiene. Since these rules must be tailored to the requirements of particular markets, the local authority or committee responsible for administering the market should formulate them in consultation with market administrators, staff and users of the market. This will help to ensure that the rules enjoy widespread support and are appropriate to the needs of users.

In some cases the market place may be most affected by laws that control the movement of goods to and from the market (see Box 5).

Box 5: Restrictions on transporting goods to market, Kathmandu

In Nepal, the Vehicle and Transport Management Act, 1992 requires agricultural goods to be transported in registered goods transport vehicles, although this is not observed in practice. However, in order to bring fresh produce to the Wholesale Market in Kalimati in Kathmandu, traders and farmers may have to pass through up to 24 Village Development Committee checkpoints at which various advance payments of income tax and duties (octroi) have to be paid as well as payments to police. This system increases the price of commodities and creates considerable delays with the result that the quality of perishable goods deteriorates and it is difficult for vegetable farmers to get their produce to market early enough to get a good price. However, the system persists because octroi is one of the main sources of revenue for municipalities and is relatively easy to collect. Although traders that take goods through a municipality are legally entitled to claim a refund of the octroi paid when they take the goods out of the area, this is seldom done as it would result in further delays. In a survey of the wholesalers in the Kalimati Fruit and Vegetables Wholesale Market, 95 percent of the respondents cited multiple payment of octroi as one of their major problems.

(Source: Mathema and Sharma, 1997).

LAWS AFFECTING PRODUCTION COSTS

Laws that affect the costs of agricultural inputs such as fertilizers and fuel may have an indirect but significant effect on agricultural marketing. These may occur in various ways, including:

- regulating the price of imported inputs such as diesel;
- imposing duties on imported inputs;
- restricting, or charging for, the use of water;

- taxing sales of fertilizers and other inputs;
- imposing licensing requirements which are excessively complex (for example, in the past in some states in India, fertilizer wholesalers and retailers were required to obtain separate licences for each product they sold in an attempt to ensure that the seller had adequate knowledge of products that could be harmful to human health, or to crops if not properly applied) (Abbott, 1986, p. 176);
- restricting who may import agricultural inputs.

LAWS AFFECTING SUPPLY

Legal regulations can exert a significant effect on the supply of produce to markets in a number of ways, including through the imposition of controls on:

- the movement of produce, which restricts the ability of traders to move goods from surplus areas to deficit areas (these may include restrictions on the importation and export of commodities);
- the storage of produce, which affects the ability of traders to regulate supply to the market over time;
- the type or volume of commodities traded; and
- where, when, and with whom, commodities may be traded.

Restrictions on the movement of commodities such as grain are sometimes imposed during emergencies (see Box 6) or for reasons of national or local food security. From a regulatory perspective, such legal restrictions are likely to be difficult and expensive to enforce. There are likely to be strong, economic incentives to move produce to areas in which prices are higher, in contravention of the law. This would be coupled with the need for a high level of state enforcement since officials would be required to inspect all movements of goods to ensure compliance. In such circumstances, widespread attempts to circumvent the law can be expected and this will also create opportunity for rent-seeking behaviour by officials and others. An example of this was the widespread practice, which emerged in several African countries when such restrictions existed, of setting road blocks to extract payment from the drivers of vehicles carrying goods, in return for allowing the vehicle to pass. Other examples of laws affecting trade flows include prohibitions on flows between neighbouring countries (e.g. flows of rice between Guinea and Mali are illegal) and indirect restrictions imposed by bureaucratic requirements (for example, in the Congo trade permits are only issued for a single region, and this severely restricts interregional trade).

Box 6: The regulation of agricultural marketing during periods of crisis

In many countries the authorities are given special powers to intervene in the agricultural marketing system during emergencies. This is an example of the recognition by governments that in certain emergency situations the public policy objective of ensuring adequate supplies of affordable food is more important than maximising the economic efficiency of the market or protecting the economic rights of traders. Furthermore, in true emergencies the unusual conditions are likely to distort the operation of markets and create opportunities for certain market participants to make abnormal profits at the expense of consumers. However, it is important to recognize that safeguards should be built in to ensure that such powers are only used in real emergencies and not merely to intervene during normal market fluctuations. These safeguards could include defining guidelines to be followed in deciding whether or not a crisis exists or requiring that interventions be confined to areas where the crisis exists and that they cease once the crisis is over.

In **Nepal** the objective of the Essential Commodity Control Act, 1961 is to make legal provision for the imposition of “strict control over essential commodities in time of necessity.” The Act grants the Government wide powers to control and regulate production, distribution and trading of essential commodities in specific places. These include powers to require licences for the storage, distribution, transportation, production, trade or consumption of these commodities, to fix buying and selling prices, to prevent hoarding, and to fine and imprison offenders and to confiscate goods if orders issued by the authorities are not complied with. The term “essential commodities” is defined widely to include staple foodstuffs, as well as inputs considered essential to daily life, such as cotton, wool and clothing, kerosene, petrol and diesel, iron and iron goods, certain construction materials, means of transportation and spare parts, medicines and “any other commodities prescribed by His Majesty’s Government as essential commodities from time to time”. The powers provided for in the Act may be used if the Government feels it “necessary or reasonable... in order to increase distribution of certain commodities or maintain the flow of distribution or keep balance of distribution or to provide commodities at a cheaper price.” This gives the Government a wide discretion as to when to use the powers and they were used extensively during periods of scarcity and artificial shortage in the 1960s and 1970s. Mathema and Sharma are of the opinion that the use of these powers made the situation worse, and point out that although the powers have hardly been used since the restoration of a multiparty democratic system in 1990, the Act is counterproductive because it is perceived by the private sector as being contrary to the Government policy of economic liberalization and hence as a potential threat.

Box 6, continued

In the **Philippines** the marketing of commodities is only restricted in emergency situations (which are usually confined to certain areas of the country) and the situations in which the authorities may resort to the use of emergency powers is limited by the legislation. The Price Act provides for the creation of a Price Coordinating Council that determines and imposes a price ceiling on any basic necessity or prime commodity if this is warranted because of the existence of any of the following conditions:

- the threat, existence or effects of a calamity, an emergency, or any event that causes an artificial and unreasonable increase in the price of a basic necessity or a prime commodity;
- widespread acts of illegal price manipulation; or
- unreasonably high prevailing prices for any basic necessity or a prime commodity.

Although the Act gives the authorities wide powers and the penalties for contravening it are severe, Section 2 makes it clear that the Act is not intended to deny legitimate businesses a fair return on investment but rather to protect consumers during emergencies.

(Sources: Mathema and Sharma, 1997 and Villasis, 1997).

The reform of laws regulating international trade, particularly in order to liberalize international trade, can also have a significant impact on the supply of commodities to domestic markets. For example, the Agricultural Tariffication Act in the Philippines replaced quantitative import restrictions with tariffs on all agricultural products except rice. This was enacted in response to WTO commitments.

Restrictions on the movement of commodities usually form part of a larger system of state control of agricultural marketing and so should not be examined in isolation. Attempts to suppress private trade and to control inter-regional movements of agricultural commodities have generally been unsuccessful. For example, when attempts were made to suppress private trade in Tanzania in the 1970s, the evidence suggests that the percentage of maize and rice handled by parallel markets was always more than 40 percent, and often more than 70 percent, of the total volume traded. However, traders on the

parallel market had to bribe officials to get past road blocks, which imposed additional financial costs as well as the costs associated with the risk of confiscation and prosecution. This inevitably increased the prices paid by urban consumers for food (Thomson and Terpend, 1993, p. 8, citing Gordon, 1989 and Maliyamkono and Bagachwa, 1990).

Box 7: The regulation of interregional trade in the 1980s, Ethiopia

During the 1980s Ethiopia developed an elaborate system for purchasing and distributing a proportion of peasant production. This was motivated partly by the ideological belief that state intervention was necessary to curtail exploitation of the peasantry and consumers by intermediaries, and partially by the pragmatic need to increase the supply of grain to urban areas. In 1976, the Agricultural Marketing Corporation (AMC) was established and farmers in surplus producing areas in Ethiopia were required to deliver set quotas to the AMC at fixed prices. The AMC was responsible for moving grain between regions but other state organizations could also obtain permission to do this.

Interregional trade regulations applicable to private traders varied from area to area. In areas where the AMC considered that it had sufficient capacity to handle grain surpluses the interregional private grain trade was suppressed by removing trading licences (in 1983 1,103 grain merchants in Gojam lost their licences and in 1986 a further 342 merchants in Arsi lost their licences). On the other hand, in areas where the AMC did not have sufficient capacity, private traders were allowed to operate but were required to sell to the AMC a substantial proportion of their purchases. There was also a general restriction on individuals transporting more than 100 kg of grain and a transport tax would be levied on quantities of less than 100 kg if the transporter was suspected of being a small trader.

The overall effect of these regulations was generally thought to be negative. In particular, the regulations had a negative effect on:

1. Producers in surplus areas who were unable to sell their grain in deficit areas.
2. Consumers in deficit areas who had to pay a higher price for grain.
3. The national interest, since by restricting the ability of coffee growers to purchase cheap maize and teff from neighbouring areas, there was a shift from coffee production, which earns foreign exchange, to maize production, which aggravates soil erosion.

(Source: Franzel, Colborn and Degu, 1989).

There is evidence to suggest that the removal of restrictions on the movement of agricultural produce can have a marked positive effect. For example, studies in Mali have shown that the removal in the early 1980s of the legal monopoly enjoyed by the *Office Malien des Produits Agricoles* (OPAM) on the grain trade and of the restrictions on grain transport within Mali, had a significant beneficial effect on private sector marketing (Staatz, Dione and Dembele, 1989). Removing the legal restrictions enabled merchants to take advantage of economies of scale, since they could now openly transport grain in 30-tonne trucks instead of clandestinely in small trucks of about one tonne, which were previously necessary to avoid detection and minimize losses in case of confiscation. Furthermore, the reduction in risk resulted in a reduction in the risk premiums which merchants could demand. One Bamako merchant noted that the reduction in risk was the major factor in reducing his average net margin on a 100 kg sack of millet from CFAF 1,500 to CFAF 200. Studies also revealed a marked increase in the number of new entrants into grain marketing (a 1985 survey in four major cities revealed that 39 percent of grain wholesalers had entered the trade since liberalization); an increase in the number of both wholesalers and retailers; diversification by existing large general merchants into grain; and a move among existing grain merchants towards larger and more specialised operations (Staatz *et al.*, 1989).

Quantitative restrictions on commodity movements may also be linked to licensing. For example, in Senegal traders dealing in more than 200 kg of grain had to obtain a licence and authorization to deal in certain grains. Traders who do not have the requisite licence are forbidden to transport loads of more than a certain amount, which prevents them taking advantage of economies of scale.

Laws can also be used to establish mechanisms which the private sector can take advantage of in order to improve the supply of commodities to markets. The Philippines has established a number of mechanisms in this regard (see Box 8). However, it is important to appreciate that for such systems to function properly a number of supporting laws and rules must be in place, including grain standards, and standard contracts dealing with matters such as the quantity and quality of the commodity, delivery schedules and payment schedules.

PRICE CONTROL

In the past, many states intervened in agricultural marketing by directly regulating the prices for agricultural commodities paid to producers and/or paid by consumers. In many countries official marketing channels operated a sys-

Box 8: Rice Marketing Programmes, Philippines

The National Food Authority (NFA) in the Philippines has established a number of programmes to assist organizations and co-operatives of rice farmers and to increase the efficiency of the marketing system.

Farmers' Incentive Rice Purchase Program (FAIR)

This scheme entitles farmers' co-operatives to purchase rice equivalent to between 25 percent and 100 percent of the total quantity of palay (paddy) they sold to the NFA in any year, to enable the farmers to survive between harvests.

Farmers' Option to Buy Back (FOBB)

Farmers are given the option to buy back the palay they sold to the NFA within the previous six months in order to enable them to benefit if the price of palay increases beyond the Government buying price.

Farmers' Grain Exchange Programme (FGEP)

Farmers' Co-operatives may deposit a certain quantity of palay in any Government warehouse and, subject to availability, withdraw the equivalent quantity in the form of rice from any NFA trading centre in the country. The scheme functions much like automatic teller machines and reduces farmers' processing and distribution costs while simultaneously enabling farmers to take advantage of better prices in other areas.

(Source: Villasis, 1997).

tem of pan-territorial and pan-seasonal pricing. However, since many maize producing areas were far from the main centres where maize was consumed, maize had to be transported over long distances and transport costs often exceeded the producer price of grain. One of the problems facing policy-makers is that dismantling a pan-territorial pricing system is likely to cause considerable problems to producers, especially those in outlying areas, until new cropping patterns are established.

Additionally, pan-seasonal pricing for crop sales practised in most African countries, meant that outside of the harvest season the price incentive was insufficient to encourage private sector trading and storage in rural areas.

In some countries, legislation is used to establish floor prices for key commodities. For example, in Swaziland the Ministry of Agriculture and Co-operatives annually sets a floor purchase price for maize. Originally this was

set at a fairly high level in an attempt to stimulate production, but the price level was later reduced as the higher floor prices resulted in the distortion of maize meal prices, which negatively affected food security for low-income households.

Fixing or controlling prices is perhaps the clearest example of the use of legislation and other regulatory mechanisms to intervene in the market in order to ensure that the allocation of goods occurs on the basis of socio-political objectives rather than on the basis of preferences expressed by the market. Such legal rules may be characterized as an attempt to prescribe a result as opposed to affecting the structure of the market or regulating conduct within the market.

In the absence of legislation, the prices of commodities could be expected to fluctuate significantly in response to changes in supply and demand. Fixing or controlling prices can therefore create significant economic incentives for traders to circumvent the law. Coupled with the ubiquitous nature of markets, this points towards the likelihood of very high associated regulatory costs. Indeed, experience shows that maintaining a regime of price controls or price fixing involves an elaborate institutional infrastructure (usually centred on a state marketing board); an array of ancillary rules to avoid circumvention of official prices (e.g. restrictions on movements of grain and strict licensing and reporting requirements); and a large number of officials to monitor and enforce the system.

Such regulatory systems are usually motivated by a desire to achieve certain social objectives and accordingly should not be evaluated solely on economic grounds but also in relation to those objectives. Nevertheless, the high cost of even partial implementation of price control policies inevitably raises the question as to whether the benefits claimed for such policies outweigh the costs. The costs would include regulatory costs, compliance costs and any consequential negative effects. For example, several consequential costs have been attributed to the system of quotas and fixed producer prices enforced by the Agricultural Marketing Corporation in Ethiopia in the 1980s. These include: decreased farmer incomes due to the low prices paid by the AMC; reduced incentives to increase production (particularly if this involved using purchased inputs such as fertilizers); distorted production patterns as farmers sought to increase production of crops which were not subject to AMC control, and reduced incentives to supply clean, high quality grain as the official prices were not quality-sensitive (Franzel *et al*, 1989).

LAWS REGULATING MARKET MANIPULATION

Harriss-White has pointed out that “regulation is.... a necessary response not

only to market failure but also to market success” (1995, p. 587). Markets, and particularly markets that are largely unregulated, also provide an opportunity for economically or politically powerful participants to manipulate the functioning of the markets to their advantage. Such rent-seeking behaviour is facilitated by the fact that many agricultural marketing systems in developing countries are characterized by a pyramid structure. Although there may be fierce competition between many buying agents at the lowest level, there are only a few large merchants at the top of the pyramid. Markets dominated by a few players also provide opportunities for the establishment of cartels and collusion in price setting.

In Madagascar, state bodies and local authorities adopted a number of anti-competitive practices to resist the process of liberalizing rice marketing. Local authorities restricted the numbers of traders’ licences they issued, while state marketing companies tried to use a policy objective of providing buying stations for producers in each producing area as a pretext for establishing regional monopsonies. For example, in the province of Antsiranana, zoning arrangements were instituted which allocated one region (*Fivondronana*) to each state trading firm and even companies with warehouses and buying facilities in the zone were prevented from buying in the zone if it had been allocated to another company. Fertilizer distributors also tended to form cartels, with each distributor monopolising the import and marketing of a particular fertilizer (Berg, 1989, p. 722). In Mali, despite liberalization of rice imports in the mid-1980s, an oligopoly soon dominated the imported rice trade, with the result that decreases in the world price for rice were not passed on to consumers (Terpend, 1989, in Thomson and Terpend, 1993).

Effective legal control of anti-competitive behaviour presents formidable challenges to even the most advanced legal systems. Even where there are sophisticated laws in place to prohibit such practices, it is notoriously difficult to obtain the necessary evidence to secure a conviction. Consequently many countries rely on an administrative body, such as a competition board, to investigate complaints and to take disciplinary action. However, the tendency to suspect cartel-like behaviour even when it does not exist needs to be avoided.

Theoretically, it should be possible to reduce the economic incentives to engage in anti-competitive activities by using a state agency as a buyer and seller of last resort. If, for example, traders colluded to push the retail price of grain to artificially high levels, the state agency would sell from its stocks of grain and conversely it would buy if collusion among intermediaries kept the prices paid to farmers at artificially low levels. This approach was adopted in Malawi during the process of privatizing agricultural trading. The role

of the state Agricultural Development and Marketing Corporation (ADMARC) was cut back but it retained a role as a buyer of last resort to reduce the possibility of collusion among traders and to ensure that smallholders would have adequate access to markets. In fact, ADMARC was unable to effectively guarantee a minimum price by functioning as a buyer of last resort because the liberalization program also involved the elimination of markets where less than a certain volume of output was purchased. This resulted in the closure of about 125 ADMARC buying points in outlying areas (Christiansen and Stackhouse, 1989).

This illustrates one of the difficulties inherent in liberalizing agricultural marketing systems: reducing state domination of the system in order to increase efficiency may simultaneously increase the opportunities for powerful participants in the market or for powerful newcomers to manipulate the market to their own advantage. In other words, there is a real prospect of deregulation allowing existing structures of economic power to reinforce themselves rather than being swept away by the operation of the market (see Harriss-White, 1995, p. 593). Although this may still be an improvement in countries where large, unregulated parallel markets have always operated, for regulators it creates new challenges to develop effective regulatory mechanisms to control such anti-competitive behaviour. Stringent measures to control official corruption may also be required in situations where the creation of new opportunities for the private sector to profit also increases the temptation for officials to seek bribes.

LAWS AFFECTING ACCESS TO CREDIT AND CAPITAL

One of the most significant barriers to the promotion of private sector involvement in agricultural marketing is the lack of access to trade finance for traders and to credit for producers. The significance of this issue has been heightened in recent years by the liberalization of agricultural marketing systems in developing countries and countries in transition. Formerly, agricultural marketing systems tended to be dominated by government marketing boards and parastatals, which had access to the necessary finance to purchase and store crops. In the wake of liberalization private traders have been expected to take over these functions, but in some cases lack of finance available to traders, particularly in the case of food crops, has increased the storage burden on farmers and reduced storage levels, to the detriment of inter-seasonal price stability.

This problem can perhaps be addressed by the promotion of “inventory credit” which allows stored crops to be used as collateral for loans. For example, in the Philippines an inventory credit system based on the use of a

Box 9: Controlling market manipulation, Philippines

In the Philippines the oligopolistic nature of the rice and wheat markets creates the conditions under which established traders can allegedly buy at a high price and sell at a low price for a period, and manipulate long-established credit-marketing linkages with farmers, in order to drive new entrants out of the market. The 1991 Price Act prohibits “any person habitually engaged in the production, manufacture, importation, storage, transport, distribution, sale or other methods of disposition of goods” from engaging in hoarding, profiteering, or from participating in a cartel in order to manipulate the price of any “basic necessity or prime commodity” (which covers a variety of basic foodstuffs and agricultural produce). In order to make it easier to secure a conviction the Act also indicates what facts will be regarded as proof that a crime has been committed in the absence of any evidence to the contrary. For example, when two or more persons or business enterprises competing for the same market and dealing in the same basic commodity perform uniform or complementary acts which tend to bring about artificial or unreasonable increases in the price of any such good or they simultaneously and unreasonably increase prices on their competing products, thereby lessening competition among themselves, this will be regarded as *prima facie* evidence of the existence of a cartel.

(Source: Villasis, 1997).

warehouse receipt (“quedan”) as collateral for bank loans, has been operating since the 1970s. The programme is now administered by a parastatal attached to the Ministry of Agriculture under the Quedan and Rural Credit Guarantee Corporation Act of 1992 and has led to the development of a range of other mechanisms (see Box 7). Inventory credit for agricultural produce is already widespread in Latin American countries and in some Asian countries but in many other parts of the world this approach is hardly ever used. In many African countries, for example, credit is raised primarily through informal systems based on family and social ties.

In some countries the major obstacles to inventory credit are the established business practices of commercial banks which impose restrictive conditions for access to finance and credit (for example, requiring real estate as collateral) and the lack of credit arrangements tailored to the particular needs of the agricultural sector. In the Philippines, the Government even passed a law requiring banks to set aside 25 percent of their funds available for loans for agricultural and agrarian-related purposes. However, banks are still reluctant to lend all these funds because they consider the risks to be high and

farmers are often unable to supply all the paperwork required by the banks (Villasis, 1997). In such cases, educational initiatives aimed at the banking sector, coupled with some form of government underwriting in the early stages to reduce the risks to lenders, may be sufficient to encourage private sector banks to develop more innovative credit approaches.

In many countries legal obstacles may prevent the development of credit arrangements. Such obstacles range from the absence of fundamental principles (e.g. allowing the pledging of movable property) to legislative restrictions on the parties eligible for credit or the terms on which credit may be offered. For example, section 79 of the General Banking Act in the Philippines provides that lenders must commence repaying loans within three years, which means that financing orchards and other crops that take longer than three years to bear is extremely difficult. A careful analysis of the applicable legal regime (including a review of the laws and procedures relating to the sale of goods, secured transactions, and warehouse and credit regulations) is an essential prelude to developing credit programmes, including inventory credit. (For a more detailed discussion of the legal issues involved with inventory credit, see Coulter and Shepherd, 1995, particularly Annex 2.)

The removal of rules that give public-sector bodies preferential access to credit can play an important part in making credit available to the private sector. Restraining the availability of credit to the state sector in Malawi may have been an important factor leading to renewed private borrowing. In Tanzania, the introduction in 1990 of a rule that public bodies should obtain credit on commercial terms had a dramatic effect. It led to credit to finance grain purchases being withheld from the National Milling Corporation and co-operative unions because they were no longer seen as commercially viable enterprises. This left most of the grain trade in the hands of the private sector (Thomson and Terpend, 1993, p. 7 citing Kottering and van der Geest).

LAWS REGULATING TRANSACTIONS BETWEEN PARTICIPANTS

Contractual rights and obligations

One of the primary enabling functions performed by law is the establishment of a legal framework which allows individuals and corporate legal persons to enforce rights and obligations arising from agreements (contracts) through the judicial system. The principle that individuals should be free to make binding agreements with anyone else concerning almost anything (“freedom of contract”) and the principle that the state would uphold these agreements without altering their content (sometimes referred to as “sanctity of contract”) were fundamental to the emergence of industrial capitalism in Europe in the nineteenth century. A well-developed framework of contract law is not

essential where transactions are conducted face-to-face and the goods and the price are exchanged simultaneously. However, unless appropriate rules are developed to regulate transactions that are complex, long-term and/or involve many parties, economic development will be hindered. Indeed, the absence of a proper legal framework has been identified as a reason why the booming “second” or “shadow” economy that developed outside the official system in the Soviet Union in the 1970s and 1980s, was not able to develop into a more advanced form of capitalism (Waelde and Gunderson, 1994, p. 358).

In the former Soviet Union severe limitations were imposed on the principle of freedom of contract, for example, by creating the crimes of “speculation” (reselling purchased goods at a profit) and “parasitism” (living off unearned income). Under communism the role of contract between individuals was greatly diminished and in many countries in transition a significant amount of legislation is now needed to rebuild the basic framework of contract law. A proper discussion of this complex task is beyond the scope of this study and, accordingly, this Chapter concentrates on situations in which at least a basic contractual framework exists.

Although many legal systems uphold the principle of the sanctity of contract, it is common to find legislation that effectively changes the contracts agreed on by the parties, by adding implied terms or by decreeing that the courts will not uphold other provisions. These legislative interventions are usually intended to achieve one or more of the following objectives:

1. Increase certainty by clarifying the legal effects of a specific type of contract.
2. Prevent abuses arising from the unequal bargaining position of market participants, for example, by protecting illiterate people and children from exploitation.
3. Protect market participants from being defrauded by unscrupulous sellers or from buyers that don't pay.

A typical example is the Sale of Goods Act of Guyana. This Act protects buyers by requiring that every contract for the sale of goods be interpreted as if it contained provisions (“implied terms”) promising that the goods will conform with their description or the sample provided (depending on the nature of the sale); that the goods are free from any hidden defects, and that they are fit for their purpose (subject to certain qualifications).

The Consumer Act in the Philippines goes very much further and not only provides that certain terms contrary to the Act will not have legal effect (e.g. terms that seek to exclude warranties for defective goods) but also holds sup-

pliers liable for defective goods and services. It also prohibits a range of activities that may harm the interest of consumers. These include:

- selling products that are unsafe or that do not comply with applicable standards;
- selling goods that are mislabelled or the label or packaging does not comply with applicable standards;
- selling food that is adulterated (which is defined very widely);
- engaging in any sales acts or practices that are deceptive (e.g. using concealment, or fraudulent misrepresentation to induce someone to enter into a sale agreement);
- engaging in any sales acts or practices that are unfair or unconscionable in that the seller induces the consumer to enter into a grossly one-sided agreement by taking advantage of a consumer's physical or mental infirmity, ignorance, illiteracy, lack of time or the general conditions of the surroundings;
- the use of incorrect weights and measures; and
- advertising in a misleading manner.

In the context of agricultural marketing, the existence of a clear framework governing transactions gives the parties a point of reference and can serve as an important bargaining tool. Furthermore, the knowledge that the State will assist in enforcing contractual commitments (though at a price) is particularly important in creating certainty in commercial transactions. Indeed, as Waelde and Gunderson point out:

“The essence of capitalist investment is the ability of individuals and companies to plan ahead, assume and rely upon contractually formulated commitments in a legal, fiscal, institutional and regulatory environment that is as predictable and stable as possible” (1994, p. 351).

Standard form contracts

In many commercial situations where similar transactions are routinely concluded, comprehensive standard forms of contract which cover all the relevant issues have been prepared to facilitate transactions and to clarify commonly used terms and conditions. Standard contracts are widely and effectively used in international trade, such as the international grain trade, and have the effect of greatly increasing certainty and reducing the possibility of

misunderstanding. Usually, the contracting parties need only agree on the relevant standard form to be used, the specific details of the transaction (e.g. quantity and quality of goods, price, and date of delivery) and on any deviations from the norm (additional or “rider” clauses). Other issues, such as the consequences of default, which party bears the risk of loss, damage or delay, dispute resolution, etc. are usually covered by the standard terms. The contract will usually also stipulate a mechanism for dealing with disputes. This is often commercial arbitration, which has the advantage of allowing non-legal experts in the field to be included in the tribunal. Experienced arbitrators will also often take account of any earlier decisions on the same standard clauses, thus promoting consistency.

In agricultural marketing the private sector can make an important contribution to facilitating trade and increasing certainty by having good standard forms prepared for those types of transactions which occur frequently and are important enough to warrant a written contract. These should always be prepared on the basis of widespread consultation to ensure the standard form is appropriate and easily understood, and with the assistance of a commercial lawyer.

Standard form contracts are easier to use where quality standards have been established that enable buyers and sellers to accurately and easily define quality by reference to the appropriate standard. In fact, standard form contracts and quality standards are essential to enable the development of more sophisticated marketing mechanisms such as those made available to rice farmers’ co-operatives in the Philippines (see Box 8).

Chapter 5

Institutional issues

The effect of the institutional structure in determining how a law is implemented and enforced has been emphasised in Chapter 3. It follows, therefore, that it is important for any initiative aimed at strengthening the legal environment for agricultural marketing to pay close attention to the institutional structures for implementing and enforcing the law.

This Chapter concentrates primarily on developing countries rather than countries in transition. In the latter the reform or creation of agricultural marketing institutions is a small part of an enormous challenge to redefine the entire realm of the public sector. This is a complex matter which cannot be adequately discussed within the scope of this study. General statements made in this Chapter may thus not always be appropriate to countries in transition.

PUBLIC-SECTOR ORGANIZATIONS

As discussed in Chapter 2, central government departments, and public-sector organizations, such as state-controlled marketing boards, have historically played a dominant role in agricultural marketing. In many countries market-liberalization policies have led to a reassessment of the role of government in agricultural marketing, which has resulted in the need to redefine the role of public-sector organizations. The scope of the activities of public-sector organizations is generally defined by the legislation that established them and by the other legal documents that form the constitution of the body. This means that it is necessary to re-evaluate the appropriateness of the legal structure of such organizations in the light of new policy objectives. This is often done only slowly. For example, Shepherd and Farolfi report that liberalization of the coffee industry in Tanzania left the Coffee Board with a set of regulatory and information functions but without any statutory power to back them up (FAO, 1999, p. 17).

Any institutional review should take a holistic approach and look at the entire range of organizations involved, in order to identify any unnecessary overlaps, jurisdictional conflicts and gaps. Inevitably, a number of different government ministries or departments will have responsibility for various

aspects of the marketing system but, wherever possible, unnecessary fragmentation and dispersion of responsibility should be avoided as it is likely to hamper the organization of an effective agricultural marketing system. Indeed, Shepherd and Seidler suggest that it is usually desirable to create a professional marketing unit with wide responsibility (FAO, 1990, p. 50).

From a legal perspective, consideration should be given to using mechanisms that will promote the involvement of all relevant parts of the public sector in formulating policy: for example, by requiring the establishment of inter-departmental committees with wide representation. Implementation and enforcement functions are usually best performed by specific organs of government with specific mandates. However, implementing agencies should be involved in the policy-making process to ensure that policy is continuously developed on the basis of practical experience rather than theory or ideology.

The fundamental nature of the transition from a state-dominated agricultural marketing system to one in which the market performs the functions of buying, selling and price determination has been referred to earlier. The process may be difficult and those involved in reorganising public sector institutions or redefining their roles should not lose sight of the fact that it is people that ultimately make institutions function and laws effective. Without the necessary human capacity (as well as financial and other material resources) the objectives will not be achieved. Furthermore, having enough people with appropriate experience may be insufficient as it may also be necessary to re-train officials who have spent years operating a state-dominated marketing system. Some observers have suggested, for example, that the lack of such training for officials was one of the critical points to emerge from early experiences with privatization in Malawi (Christiansen and Stackhouse, 1989, p. 737). Similar problems have also been noted in Eastern Europe and the former Soviet Union.

The credibility of any programme which brings new laws into force or reforms existing laws will be severely undermined if public institutions do not have the necessary capacity effectively to implement and enforce the laws for which they are responsible. If the necessary institutional capacity is insufficient, serious consideration should be given both to restructuring the regulatory framework to make it more appropriate to existing conditions and to delaying or phasing in the introduction of the legal reforms. This will enable the institutional capacity to be built up before the law comes into force. In this regard, it is often useful to give the Minister (or other appropriate body or official) the power to bring different provisions into effect on different dates and, where appropriate, to set different dates for different areas of the country or different commodities. This allows implementation to be

phased in, enabling regulators to concentrate their efforts on the most important issues first and then to extend the scope of their regulatory regime as capacity increases and the main problems are brought under control. However, care should be exercised in applying different rules in different regions, as this may distort the functioning of the market.

The advantage of the approach outlined above is that the complete text of the legislation is enacted and published, even though not all provisions are brought into effect immediately, and this gives stakeholders an advance warning of reforms. This has the advantage of reducing the uncertainty associated with the change and giving affected parties a period in which to adjust their activities so that they are in a position to comply with new rules when they come into force.

PRIVATE-SECTOR ORGANIZATIONS

Private-sector organizations, such as business or traders' associations and producers' co-operatives, form an important part of civil society and can play a significant role in the functioning of an agricultural marketing system. Such organizations can fulfil a wide variety of functions, ranging from providing a political voice for their members to serving as forums for making social and business contacts and disseminating information.

Private-sector organizations, particularly traders' associations, can play a number of important roles including:

- providing specialist legal advice to their members, so promoting communication and clarification of the law;
- participating in the formulation of public policy and legislation as a representative of the interests of their members;
- providing services necessary for the smooth functioning of the regulatory framework which would otherwise have to be provided by government; for example, certifying documents and the quality of produce, and providing dispute-resolution mechanisms such as arbitration; and
- implementing public policy, including regulatory functions in some cases.

Encouraging the establishment of a hierarchy of business associations is often attractive to governments as it is seen as a fair and efficient way of organising co-operation between government and business. Indeed, to a degree, establishing privileged relationships between government agencies and certain business associations is necessary to create stable arrangements for consultation between the state and various interest groups and to involve them in implementing public policy, for example in relation to new legis-

lation. However, a study by Moore and Hamalai of business associations in developing countries concludes that governments should be wary of attempting to structure the organization of business associations to ensure that all sectors are represented by a single, "responsible" organization. The authors note that experiences in a range of countries suggest that state initiatives to organize the wide variety of overlapping business associations that typically arise (motivated by what they describe as "state corporatist tendencies") are likely to produce disappointing results. Furthermore, they caution that despite the fact that "[T]he marriage of business associations with political-cum-economic liberalization would indeed seem to be a match made in heaven ... Business associations are not simple, malleable instruments for social engineering." (Moore and Hamalai, 1993, p. 1895).

This is borne out by the experience of the National Food Authority (NFA) in the Philippines which attempted in 1992 to introduce an arrangement whereby large associations of rice millers would take responsibility for ensuring that their members complied with the rules and regulations issued by the NFA and would issue certificates of good standing to these millers. The NFA, in return, would only deal with, or grant benefits to, millers holding these certificates. The scheme was abandoned after complaints that it would force millers to join these large associations, which was contrary to the "freedom of association" provision in the Constitution (Villasis, 1997).

DISPUTE RESOLUTION

Where there is a clear legal framework, which is implemented and enforced in a consistent manner, participants in the market "bargain in the shadow of the law" in the sense that their activities are conditioned by their knowledge of the likely legal consequence of different courses of action. For example, if there are clear rules enforceable in court that establish the right of a party to recover compensation for losses suffered as a result of another party's non-compliance with a contract, this will reduce the commercial risk to all contracting parties. These rules will also create a disincentive to default on commitments and mean that the actions of all parties should be more predictable.

However, the phenomenon of parties "bargaining in the shadow of the law" will be undermined if administrative and judicial processes do not provide a relatively easy sanction in the case of non-compliance. For example, default by some of Zambia's cotton industry outgrowers, who received free inputs from one company only to sell their cotton to another company, continued despite a 1995 Act expressly forbidding such practices (FAO, 1999, p. 36). In such cases, participants will need to seek other means of securing compliance (e.g. by invoking social pressures) or require a higher premium

to undertake the transaction in order to compensate for the increased risk of loss if the other party defaults. Therefore, strengthening the institutional structure for adjudicating contractual disputes is an essential part of strengthening the legal environment.

Box 10: Alternative dispute resolution mechanisms, Philippines

In the Philippines, the Government has attempted to reduce the number of cases brought before municipal and higher courts by strengthening the Barangay Adjudication System. Complainants approach the Barangay (the smallest political unit in the Philippines) which assists the parties to resolve the dispute amicably, and only if this fails will the matter be taken to court.

Furthermore, in some public markets disputes between buyers and sellers are referred to a complaints centre. If the relevant market code has been contravened, the market authorities may impose punishments on market participants, including fines, the suspension of trading licences and, as a last resort, ejection from the market.

The Consumer Act also prescribes simple procedures which consumers can use to enforce their rights without recourse to the courts. For example, if a product that is under warranty is defective the buyer can present the warranty card and the defective product to the seller who must immediately honour the warranty.

(Source: Villasis, 1997).

Alternative dispute resolution (ADR) mechanisms often arise where formal legal procedures are inaccessible, slow and/or expensive. These mechanisms may range from informal dispute adjudication by respected members of a market, to formal arbitration procedures. As far as the proper functioning of an agricultural marketing system is concerned, for most disputes it is not essential that a representative of the state such as a magistrate or a judge should decide disputes. The most important thing is that participants in the system have easy access to dispute resolution procedures that they believe will generally result in fair and independent decisions. Provided a dispute resolution mechanism enjoys legitimacy in the eyes of the disputants and is accessible, there is no reason why it cannot be provided by a private sector trade association or Chamber of Commerce rather than by the state. However, such procedures are only effective when all the parties to a dispute agree to

resolve their dispute in this manner (either in advance in the contract, or after the dispute has arisen). Furthermore, the courts must always be available to those who wish to enforce their legal rights. For example, a court may be required to compel parties to submit to the decision of the court, or to enforce the decisions of other tribunals if a disputant who agreed to submit a dispute to such a tribunal then refuses to accept its decision.

Chapter 6

Improving regulatory frameworks

INTRODUCTION

A process of improving the regulatory framework for agricultural marketing should include the steps listed below:

1. Identify the policy objectives as clearly as possible.
2. Analyse the existing legal environment to gain a proper understanding of how it functions (see Chapter 7).
3. Identify the areas in which reform is desirable and capable of being implemented.
4. Formulate a strategy for implementing the change within the wider framework of the agricultural marketing reform programme (which may involve several phases).
5. Implement the strategy in conjunction with other elements of the marketing reform process and actively manage the process of change to minimize uncertainty.
6. Monitor and evaluate the effects of the change by conducting further analyses of the regulatory framework and take corrective action when required.

This Chapter begins by discussing how to identify the policy objectives (i.e. step 1) and then discusses practical measures for achieving four of the most common (and important) objectives of legal reform programmes, namely: to increase legal certainty and transparency, to reduce compliance costs, to reduce regulatory costs and to improve compliance and enforcement.

IDENTIFYING THE POLICY OBJECTIVES

In order to evaluate an existing legal framework or proposed reforms it is necessary first to identify the policy objectives that the law is, or was, designed to achieve and to evaluate whether these are still valid. Thomson and Terpend (1993, pp. 17-18) identify a number of questions to be considered in order to develop a satisfactory policy framework for private sector

participation in agricultural markets. These include deciding: what role the state should play in augmenting private market performance to provide food security; to what extent, if any, incentives can be provided to the private sector to encourage commercialisation of remote areas; and whether or not commodity processing can be privatised and what implications this would have for trading patterns and market structure.

Such policy decisions will help clarify the precise policy objectives that will guide the process of legal reform. However, it is helpful to consider specifically identifying and adopting certain broad policy objectives of direct relevance to improving the legal environment for agricultural markets. In particular it would be beneficial to most reform initiatives to aim:

- to increase legal certainty and transparency;
- to reduce compliance costs;
- to reduce regulatory costs; and
- to improve compliance and enforcement.

INCREASING CERTAINTY AND TRANSPARENCY

All good law should be “certain” in the sense that its meaning should be clearly ascertainable and understandable, so that people can modify their behaviour accordingly and not be penalised subsequently for actions which they believed to be lawful at the time. In the context of agricultural marketing, the risks to participants can be significantly reduced if there is a clear legal framework which is known and understood by all and which is implemented and enforced in a consistent manner.

The importance of certainty for the operation of agricultural markets is illustrated by the findings of a survey of traders in Mali. The traders ranked uncertainty (arising primarily from demand and supply instability, regulatory uncertainty and the unenforceable nature of contracts) as the second most important barrier to entry into the cereal trade (Staatz *et al*, 1989, p. 703). Some of the negative effects associated with a lack of regulatory certainty in Senegal are described in Box 11.

Closely allied with certainty is the issue of transparency. This term refers to the degree to which the workings of a regulatory system are clear and “visible” to those affected by it. Making a regulatory system more transparent can help reduce the possibility of corruption and increase the predictability of administrative decision-making, by making officials more accountable to the public. This creates greater certainty about how a law will be implemented and reduces the risk to those affected by it. For example, a licensing procedure that requires a licence to be granted if certain clear criteria are met, that

also requires reasons to be given for any refusal of a licence as well as providing for a right of appeal, is more likely to produce decisions that are consistent with the purpose of the law than a procedure which does not stipulate qualifying criteria clearly and gives officials a wide discretion as to whether or not to grant a licence.

Certainty and transparency can be increased by:

- involving stakeholders in the preparation of legislation;
- drafting clear laws;
- establishing clear criteria to guide the exercise of administrative discretion;
- providing rights of appeal against administrative decisions in appropriate cases;
- ensuring that any changes in the law are communicated clearly to all affected parties well in advance of being implemented; and
- monitoring the implementation and enforcement of the law to ensure consistency.

REDUCING COMPLIANCE COSTS

Reducing compliance costs should have the effect of encouraging private sector involvement in the agricultural marketing system by reducing the costs of participation. However, in many cases, considerations other than minimising compliance costs must be taken into account. For example, in the setting of application fees for licences a balance will usually have to be struck between recovering administration costs and reducing compliance costs.

Wherever possible, attempts should be made to reduce compliance costs by increasing the efficiency of an agricultural marketing system, for example by streamlining bureaucratic processes. This may be achieved in a variety of ways, such as by:

- improving systems of communicating the law to those affected by it;
- reducing the number of authorizations required for activities, particularly where this involves many government bodies;
- publicising the criteria which will be used in deciding whether or not to grant authorizations; and
- abolishing unnecessary conditions for obtaining authorizations.

REDUCING REGULATORY COSTS

Any system of regulating agricultural markets is likely to cost the state money but this should be more than compensated for by the benefits to the

Box 11: The effects of regulatory uncertainty, Senegal

Senegal has a long history of state involvement in the marketing of agricultural products. In 1980 the *de facto* national grain and oilseeds marketing board, ONCAD, was abolished but the state continued to restrict the categories of persons permitted to participate in certain marketing functions (e.g. as first handlers purchasing directly from producers or purchasing from such first handlers). Merchants who assembled millet, sorghum and maize were required to have a wholesale licence and to obtain an annual authorization (*agr  *) to handle a specific commodity. Over a six-year period, from 1979/80 to 1984/85, there was a significant level of regulatory uncertainty as a result of the following factors:

- The administrative regulations (*d  cr  ts*) specifying the categories of participants permitted to engage in the various levels of marketing activity were often published well after the harvested grain had begun to move into the markets. The impact of this was increased by the fact that the categories of participants permitted changed significantly during this period. For example, at the beginning of the period only authorised licensed wholesalers were allowed to purchase from the first handlers but by the end of the period this function could also be performed by the Food Security Commissariat (CSA) and rural development agencies.
- The roles of public and parastatal entities and co-operatives were varied considerably and their roles were not always clearly defined.
- Senegal set "official" prices at the producer, wholesale and retail level for locally produced millet, sorghum and maize but it was not clear whether this was intended to be a fixed price or a floor price. In the 1983/84 season the CSA simply withdrew from the market when the market price exceeded the floor price while in the 1984/85 season there were seizures of grain traded at above the official price.

The regulatory uncertainty had a number of negative effects on the functioning of the marketing system:

It meant that traders did not know in advance if participation in the market would be legal (which inhibited planning) and if they did decide to trade before the regulations for that season had been announced they ran the risk of incurring fines or having their goods seized.

Private wholesalers kept books of account based on official prices rather than actual market prices since the margin that they were allowed to charge was based on

official prices. This defeated the main purpose of keeping accounting records but was done to create the appearance of compliance with the law.

Traders spent a lot of time finding out what the applicable regulations were, negotiating "understandings" with officials and being checked by various officials (on average 4.2 times a week).

The general regulatory uncertainty helped create an environment in which regulations were ignored (for example, only 58 percent of the wholesalers sampled were licensed) and/or enforcement officials were corrupted to enable trade to continue.

(Source: Newman, Sow and Ndoye, Regulatory Uncertainty, Government Objectives and Grain Market Organization and Performance: Senegal, in Abbott, J. (ed.), 1993, pp. 225-236).

society of a well-regulated marketing system. Nevertheless, the ability of most governments to provide an adequate regulatory system will be constrained by financial and human resource limitations. In many cases this results in poor implementation and enforcement which has negative effects on certainty and ultimately on the functioning of the entire system of governance for agricultural markets. Wherever possible this should be avoided by designing any regulatory reforms in such a way that regulatory costs are kept as low as reasonably possible without jeopardising the proper functioning of the regulatory system.

In relation to Nepal, Mathema and Sharma commented that almost all the Acts they reviewed were enacted without giving adequate consideration to the implementation and enforcement mechanisms or to logistics and human resources and that mass awareness campaigns were negligible. Consequently it was not possible to implement many Acts effectively. This comment would be true of a great many countries and indicates the importance of considering these issues prior to passing new laws. In many cases a rough estimate of the regulatory cost may be obtained by estimating what proportion of the total budget of the implementing or enforcing agency would need to be devoted to a particular law or group of laws. Calculating the number of officials that will be involved in enforcing the law, the proportion of their time that will be devoted to the task, and the resources they will need (e.g. vehicles, offices and computers) will give an indication of this figure.

IMPROVING COMPLIANCE AND ENFORCEMENT

The information gathered in the course of preparing this study clearly indicates that a low level of compliance with many (but not all) of the laws reg-

ulating agricultural marketing is a problem common to many countries. In some cases this is because the laws are inappropriate and outdated and the authorities choose not to enforce them. However, whatever their causes, in many cases low levels of compliance significantly undermine the effectiveness of the law as a policy instrument. Furthermore, unless a reasonable level of compliance with the law can be achieved, there is little point in making new laws.

The degree of enforcement required is generally less if those to whom the law applies perceive it as fair and there are no strong incentives to break the law. This suggests that, wherever possible, those affected by the proposed law (i.e. stakeholders) should be involved in the process of preparing legislation (see Chapter 8) and that caution should be exercised in introducing a rule where there is a strong economic incentive not to comply with it. For example, in several countries regulations prohibiting the movement of grain, which were introduced in order to avoid subversion of state-controlled marketing channels, merely resulted in clandestine transportation and storage of smaller quantities of grain to avoid detection (Staatz *et al*, 1989, p. 704).

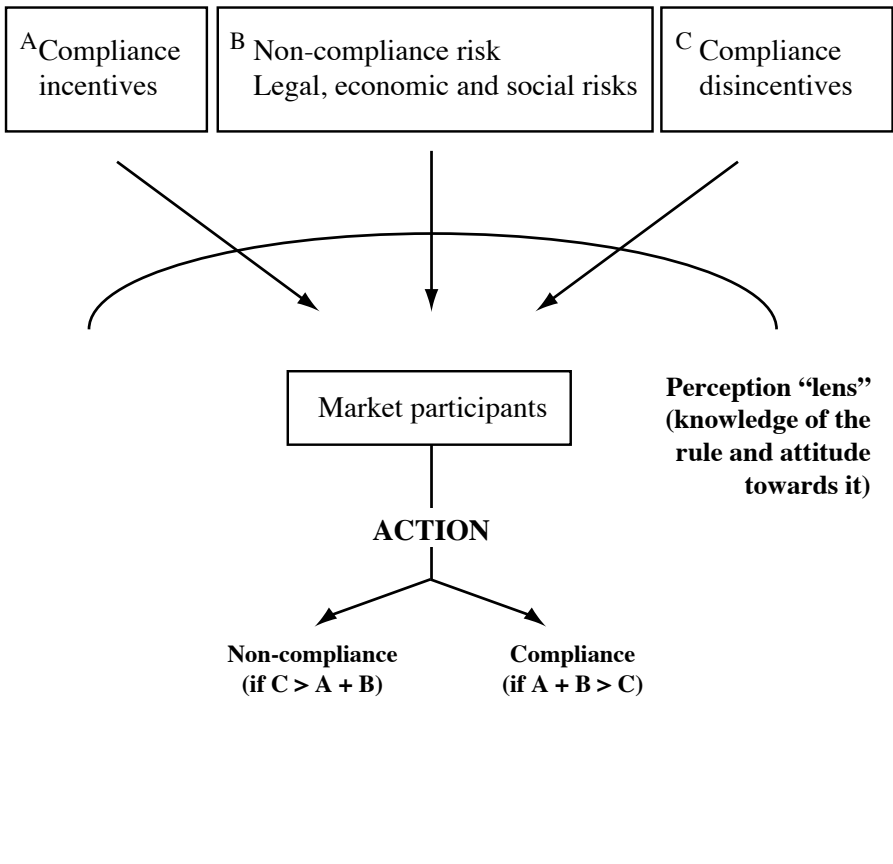
It is also possible to find ways of enforcing existing rules in such a way that fewer resources are required. In some cases new technologies can help. For example, the Central Food Research Laboratory in Nepal has distributed Food Test Kits to some municipalities to improve monitoring of compliance with the Food Act. Creating incentives for compliance can be another relatively low-cost way of improving compliance. Using officials to monitor compliance with legal obligations to report information may be ineffective, even if there are fines for non-compliance. However, it may be possible to achieve a high level of compliance at a lower cost if traders and others affected by the requirements know and understand the reasons for supplying the information and are required to submit the necessary data as a condition of renewing a licence.

How a law functions is fundamentally affected by its socio-economic context and there are many factors that may affect levels of compliance and hence a law's effectiveness. Consequently, it is impossible to develop an accurate formula for predicting how a law will function and the level of compliance that will be achieved. However, an understanding of the inter-relationship between the factors that typically have the greatest influence on compliance levels is helpful when planning a strategy either to improve compliance with an existing law, or to implement a new law.

Broadly speaking, the level of compliance with a legal rule will be affected by: the proportion of those affected who know about the rule, the incentives that they have to comply with the rule, the risks of non-compliance, and

the disincentives to comply. (Many other factors may also be relevant and obviously these factors will be different for different market participants.) This relationship is illustrated graphically in Figure 1. The figure does not encompass all the variables, nor does it give guidance as to the weight to be given to each factor (which will be different in different circumstances). However, it does give a broad indication of how compliance may be affected by taking measures to increase or decrease a particular factor.

Figure 1: **Factors affecting compliance with marketing laws**



Private-sector organizations can also play a useful role in enforcement, particularly where the organization has a vested interest in having a well-functioning system for ensuring compliance, such as in connection with contracts. For example, small loans may be advanced to a community group, which will then use social pressure to enforce compliance by individual members in order to ensure future access to loans. Similarly, limited enforcement functions can be delegated to market committees or traders' associations to enforce market bye-laws, etc., provided that the exercise of these powers is monitored to prevent abuse.

Box 12: **Factors affecting compliance with marketing laws**

The major factors affecting legal compliance, as shown in **Figure 1**, are as follows:

“Perception” in this diagram encompasses both the proportion of those affected by a rule who know of the rule, and their attitude to it. Clearly, only those who know about the rule are likely to consciously try to comply with, or circumvent, it and so generally speaking the incentives and disincentives will only be relevant to this group. Furthermore, the attitude of this group to the rule (particularly the extent to which they regard it as fair and appropriate) will also have a significant effect on how they respond to the other factors. If more of the group believe that the law should be complied with, this is likely to have a marked effect on compliance levels. The implication is that measures taken to improve market participants' knowledge of the law and to legitimize the laws in their eyes (e.g. by involving stakeholders in the process of preparing the law), are likely to have a significant impact on compliance levels.

Compliance incentives include all economic and other benefits to be gained by compliance. These may include access to markets, tax incentives and increased security.

Non-compliance risk means the sum of the legal, economic and social risks to those affected if they do not comply. These risks are often interrelated and the higher the total risk the more likely market participants are to comply.

Legal risk can be regarded as the risk of being punished, i.e. the probability of being caught and convicted of breaking a rule, multiplied by the penalty. One of the ways of increasing compliance is therefore to increase the legal risk. This can usually be done by increasing enforcement (e.g. increasing the number and frequency of inspections and enforcement actions, such as on-the-spot fines and prosecutions)

and increasing the penalties. In some cases this can be achieved by developing innovative enforcement methods and granting appropriate enforcement powers to officials. However, in many cases increased expenditure on enforcement will be necessary to increase the legal risk. It is also necessary to take measures to prevent market participants bribing or corrupting officials in order to decrease the legal risk to the participants.

Economic risk is the risk of economic loss other than fines, etc. For example, non-compliance could affect the reputation of a market participant and hence result in economic losses.

Social risk is the risk that non-compliance would cause adverse social effects for the market participant. Fear of social rejection as a result of non-compliance with socially acceptable standards of behaviour (e.g. food safety standards) can be a powerful factor and may also result in economic loss.

Compliance disincentives consist mainly of the “compliance costs” discussed in Chapter 7. If this factor is sufficiently high it will outweigh the combined effect of the compliance incentives and the non-compliance risk, with the result that non-compliance will be more likely than compliance. Reducing these disincentives will therefore increase the prospects of compliance.

In seeking to maximize compliance in circumstances where state resources are limited, it may be useful to develop an enforcement strategy. This could involve, for example, concentrating inspections in a few key areas where they are likely to have the greatest effect (e.g. at customs points and the main markets) and delegating enforcement to local authorities.

Chapter 7

Analysing the legal environment

INTRODUCTION

Conducting a comprehensive analysis of the legal environment for agricultural marketing in any country is potentially a huge task. In theory it would be necessary to examine every relevant legal rule, how the rule is implemented and enforced, how it interacts with other parts of the regulatory system (e.g. existing market customs and practices and economic and political forces), how it is perceived by the people subject to it and the effects it produces on human behaviour. From this, an assessment could be made of the impact of the rule on the performance of the various aspects of the marketing system. Accurate empirical assessment of the economic and social impact of particular legal rules or administrative arrangements is likely to be impossible or extremely difficult in light of the complexity of regulatory systems for agricultural marketing, the number of variables involved, the variability between markets, areas and commodities, and the dynamic nature of markets.

The difficulties inherent in obtaining comprehensive empirical data do not mean that a rigorous evaluation of the legal framework will not be productive and should not be attempted. Law is one of the primary determinants of market performance and can be a powerful tool for implementing policy. If there is no rational evaluation of how a rule functions and what its impact is, rational policy development is not possible.

The purpose of this Chapter is:

- to outline an approach which could be adopted in evaluating the legal environment for a particular agricultural marketing system;
- to propose a methodology for analysing relevant laws which goes beyond abstract analysis of the law and seeks to identify how a legal rule works in a particular socio-economic context; and
- to give policy-makers and lawyers a framework for identifying the key legal features of the regulatory system for agricultural marketing to enable them to make informed decisions about how to improve its functioning in order to meet specific policy objectives.

THE RATIONALE FOR THE APPROACH

The proposed approach and methodology are based on the recognition that, firstly, the legal, institutional and economic aspects of a regulatory system for agricultural marketing are inseparable; and secondly, that the state and other participants in the market are all part of the same system and it is artificial to treat the state as external to the system.

The methodology also seeks to identify the most significant economic implications of a rule in terms of cost to the participants (compliance costs) and cost to the state or other authorities in implementing and enforcing the law. This information should be useful to policy-makers. However, it is important to be aware of the dangers of evaluating laws (i.e. judging them to be desirable or undesirable, or good or bad) solely on the basis of whether or not they appear to facilitate the creation of a perfectly competitive market. Such an approach has potential limitations: firstly, because the law may have been introduced in the belief that it would achieve an objective that the society valued more highly than market efficiency and secondly, changing a legal rule in order to make the structure of the market accord more closely with the theoretical model of an unregulated market will not necessarily increase welfare.

As Shaffer points out, there are at least two reasons why welfare will not necessarily be increased in such cases. Firstly, the functioning of all markets depends on existing institutions and distributions of wealth and power, which have been largely safeguarded by legal rules. Some economic analyses of regulations have tended to assume the status quo without evaluating the welfare implications of existing laws. They then implicitly measure regulations against the theoretical ideal of the unregulated, perfectly competitive market, and conclude that any regulations inconsistent with the perfectly competitive model necessarily reduce welfare. In fact, it is not possible to determine whether or not welfare will be improved by repealing such regulations without first analysing the welfare implications of the existing laws.

Secondly, the economic theorem of “second best” formulated by Lipsey and Lancaster (1956) “postulates that a rule to make a market more nearly meet the conditions of a perfectly competitive market will not necessarily lead to improved welfare within the context of the theory unless all the other conditions of the competitive market are met. Such conditions are never met in the real world” (Shaffer, 1979, p. 722).

THE APPROACH

The suggested approach is to assemble a team to perform the initial analysis in two phases:

1. The first phase would involve the identification, analysis and classification of relevant legal rules and the identification of the agencies responsible for implementing and enforcing the rules. This would be primarily a “desk-top” exercise performed mainly, but not exclusively, by the legal expert(s).
2. The second phase would involve field research, primarily by interviewing various participants in the agricultural marketing system, including farmers, wholesalers, retailers, market agents, state officials, market officials, and consumers. This part of the study would be aimed at identifying how the law actually functions, including the costs to the authorities of implementing it, the costs to market participants of complying with it, the responses of participants to it, and the effects on the performance of the market.

The results of the study could be summarised in a matrix in the form of Figure 2 (see page 60), which uses three hypothetical legal rules as examples.

Wherever possible a multi-disciplinary team should be used for such an analysis. In addition to a lawyer, it would be beneficial to include people knowledgeable about the practical functioning of the marketing system, and a socio-economist. Since the analysis will involve an assessment of the attitudes and responses of participants in the market to the law, the team should be careful to avoid being too strongly identified with any particular interest group and should strive to achieve open communication with all parties.

PHASE ONE – IDENTIFYING RELEVANT LAW AND INSTITUTIONS

The first step is to identify the actual law applicable to the various stages of agricultural marketing. In theory this could cover an enormous number of laws, ranging from trade licensing regulations to rules on food quality and packaging, so it is important to narrow the focus. Initially, it will be most productive to concentrate on those areas in which specific legal obstacles are obviously preventing the development of the agricultural marketing system. For example, insufficiently developed laws may be preventing the establishment of inventory credit systems or existing laws may limit the private sector from engaging in different aspects of marketing. Thereafter, it is useful to focus on those areas of law which could be expected to have a significant effect on marketing systems (the various categories of which were discussed in Chapter 4).

In many countries some of the most relevant rules will be contained in Agricultural Marketing Acts and in market bye-laws or municipal regulations. Laws should be selected on the basis of judgements as to their likely

impact on agricultural marketing as well as the status of the law. The enquiry should also cover any non-legislative sources of legally enforceable rules, such as judicial decisions in common law jurisdictions. (Annex 1 lists some of the areas of law to be considered and questions to be asked in this regard.)

Once the most important laws have been identified and collected, they should be analysed to determine the precise legal rules governing key issues relevant to the functioning of the market, such as who is entitled to participate in various markets and under what conditions. This part of the study is intended to be an objective analysis of the law, to determine what the law states and how it is intended to function, rather than how it actually functions. The relevant laws and the precise rules should be entered in the first column of the matrix in Figure 2.

Unlike most traditional legal analyses, the proposed methodology will require the purpose of the legal rule to be identified where possible (Figure 2: column 2). In many cases this is likely to be difficult, particularly where the rule is an old one or, as often happens, where several rationales are mentioned for the same rule (all of which may be correct). The point here is not so much to arrive at a single, historically correct, purpose for the enactment of the rule, but rather to focus attention on trying to identify the social purpose(s) that the rule was intended to achieve in relation to agricultural marketing. This allows the effectiveness of the rule as a tool for achieving policy objectives to be evaluated by comparing the original purpose with the actual responses of actors in the market (column 8) and the performance of the market (column 9) - insofar as these can be evaluated. Furthermore, if it is difficult to identify a relevant purpose for a rule it suggests that the rule is likely to be either irrelevant or redundant.

The legal mechanism being used (setting prices, establishing a licensing system, etc.), should be identified more precisely in the third column if this is not already apparent from the first column. It also requires the rule or legal mechanism to be classified according to its object. The taxonomy of regulations suggested by Schaffer (1979, p. 725) proposed that a distinction be made between:

- regulations that establish a *structure* for market interactions but leave preferences to be determined by the market (e.g. laws that give smallholders the right to sell tobacco on official auction floors affect the structure of the market but preferences for such tobacco relative to other tobacco will be determined by the market and expressed as the price offered for it);
- those that regulate *conduct* and so do not rely solely on the market to determine preferences; and

- those that attempt to specify the *result*, outcome or product directly (e.g. by establishing a fixed or “official” price for a commodity).

This taxonomy has been incorporated in the matrix by providing for the rules to be classified according to their main object-structure(s), conduct (c); or result (r). This classification gives a general indication of the extent to which a legal mechanism substitutes political decision-making for the decisions of the market and will often also be an indicator of the likely enforcement costs. Generally, legal rules which serve an enabling function (see Chapter 3) would relate to structure and would have low enforcement and compliance costs. Rules with an economic regulatory function would mainly prescribe conduct but may also seek to prescribe results. Legislation that seeks to prescribe results would include, for example, legislation that prescribes the maximum profit that traders may make.

Identification of the agencies responsible for implementing and enforcing particular rules is important as the institutional structure has a very strong influence on the functioning of a regulatory system. The information summarised in the fourth column should also highlight any inappropriate fragmentation of regulatory powers and jurisdictional overlaps between state agencies.

PHASE TWO – DETERMINING HOW LAWS FUNCTION

The second phase of the exercise will be to examine how the legal rule actually functions in practice. Since the responses of participants to a rule will be determined by their own interpretation of it in relation to their own interests, most of the data will be subjective and a degree of inconsistency must be expected. Only a few salient points would be reflected on the matrix.

Analysis of the incentives to comply with a legal rule (mainly economic but also social) and the sanctions for non-compliance is important in predicting the extent to which the rule is likely to be effective. The incentives will often be different for different participants and, where there are significant variations, these should be indicated to facilitate understanding of the responses of market participants. (One way of beginning an analysis of incentives is to ask who would benefit and who would lose from compliance with the rule.)

Where there are strong economic incentives for compliance, a high degree of compliance and low enforcement costs could be expected. On the other hand, where there are significant economic benefits to be obtained by non-compliance (i.e. strong economic disincentives to compliance) high enforce-

Figure 2: Matrix of assessment criteria for legal instruments, with hypothetical examples

(1) Legal Instrument/ Rule	(2) Policy Objective	(3) Mechanism & Object	(4) Implementation (I) & Enforcement (E) Agencies	(5) Compliance Incentives & Sanctions	(6) Costs of Implementation (I) & Enforcement (E)	(7) Costs of Compliance	(8) Response	(9) Performance Commercial Code
Commercial Code Warehouse receipts are negotiable documents of title	To increase trade by facilitating transfer of ownership of stored goods	(s) = structure (c) = conduct (r) = result Creation of principle of exchange and security interest (s)	(I) Market participants (voluntary) (E) Parties then Courts	Strong (+) economic incentives. Civil sanctions	(I) Negligible (E) Low	Negligible	Inventory credit offered by banks. Increased borrowing by wholesalers. Lower price fluctuations.	Increase in liquidity. Increase in grain storage.
Marketing Act Prohibition of use of non-standard weights & measures	Facilitate trade & protect consumers.	National Standardization (c)	(I) National Trading Standards Authority (E) Inspectors from Authority, local market authorities	No incentives for traders. Sanctions: suspension of licences, fines	(I) Moderate. Additional inspectors required. (E) High. Inspections & prosecutions are time consuming.	Traders. Moderate to high in short term (cost of scales, etc).	Compliance by larger traders, evasion by unlicensed traders. Consumer approval.	Variable. Some increase in consumer protection, also evasion & abuse (e.g. officials taking bribes).
Maize Control Act All maize to be sold to Board at fixed price	To stabilise prices, protect farmers from fluctuations & increase production.	Seasonal price fixing by Ministerial regulation (r)	(I) Maize Board (E) Board Inspectors then Courts	Strong (-) economic incentives. Sanctions: fines, confiscation, imprisonment.	(I) High: Cost of single marketing channel infrastructure & of intervention to stabilise prices. (E) High: Many trained inspectors required nationwide.	Farmers: Variable. High cost if shortage, benefit if oversupply. Traders: High risks/costs to participate in market.	Farmers: Sale of part of crop on parallel market Traders: widespread evasion of law. Officials: Incentives to be corrupt.	No increase in production. Mounting costs to state. Flourishing parallel markets undermining state revenue collection.

ment costs for the law to be effective could be expected. In such cases, even if there are high sanctions for non-compliance these may not have a significant deterrent effect unless there is a significant enforcement effort that increases the probability of offenders being caught.

One of the most important factors to assess is the compliance cost of various participants. What is important here is to identify how participants see the cost of complying with a rule. This may involve direct financial costs such as licence fees or finance charges incurred as a result of delayed payment, as well as factors such as inconvenience and delays. If high compliance costs co-exist with low or negative compliance incentives, the law is likely to be ineffective without heavy expenditure on enforcement. Unnecessarily high compliance costs can also function as a type of friction in the regulatory machinery, which reduces efficiency and increases the cost of transactions in the market.

It is important to attempt to identify the responses of various participants to a rule. If the response from a key target group of market participants is negligible, unanticipated or undesirable, it would suggest that a re-evaluation is required and that corrective action should be taken by, for example, adjusting incentives or sanctions and improving communication of the rule to the target group.

The aggregate of the responses by different classes of participants will be an important determinant of the performance of the market in response to the legal measure (which is recorded in the last column). From a policy-maker's point of view, the last column of the matrix reflects what really counts since it should enable the effectiveness of the legal rule as an instrument for implementing policy to be evaluated. In many cases it will be difficult to make unequivocal statements about the effects of a rule on market performance but the information recorded in the previous columns should help to identify areas to focus on in assessing the effect of the rule on performance. For example, by starting with the original purpose behind the legislation (column 2) and armed with the knowledge of whether the rule functions by changing the structure of the market, regulating the conduct of participants or by prescribing the desired result (column 3) who will implement and enforce it (column 4), whether the economic forces will push each class of participant, including state agencies, towards or away from compliance and enforcement (columns 6 and 7); and how participants are responding (column 8), it should at least be possible to develop a well-informed hypothesis of the likely effect of the legal rule on the performance of the marketing system (column 9). In addition, reference can be made to the discussions in Chapter 4 of the various categories of laws that typically affect certain aspects of the marketing

system, such as the supply of goods, the availability of credit and access to markets.

In using the above methodology it is important to appreciate that regulatory systems change over time and current events are influenced by history. It is important not to lose sight of the fact that such a study (or at least that part of it based on the results obtained from Phase 2) is only a snapshot of the system at a particular moment. Therefore, where the regulatory system is being reformed to improve the legal environment for agricultural marketing it would be advisable to conduct a baseline study of the status quo and then undertake further studies at a later date to evaluate the effects of the changes.

RAPID EVALUATION OF THE LEGAL ENVIRONMENT FOR PRIVATE SECTOR PARTICIPATION

As discussed above, a legal framework should facilitate the attainment of the objectives of the agricultural marketing policy. The effectiveness of the legal framework must be evaluated against these policy objectives and not only against the criterion of economic efficiency. However, since most developing countries wish to encourage private sector involvement in agricultural marketing, this section describes a rapid evaluation of the appropriateness of the legal framework measured against this policy objective.

This approach is less thorough than the approach recommended above. However, it may be helpful, either as a prelude to conducting a thorough analysis of a regulatory framework, or in situations where that is not possible.

A reasonably accurate indication of the extent to which an agricultural marketing system provides an appropriate environment to encourage efficient private sector involvement in agricultural marketing may be obtained by measuring the legal framework against three criteria. These are:

1. Flexibility and responsiveness to the needs of participants in the agricultural marketing system.
2. Certainty regarding the law and transparency regarding its implementation.
3. The enforceability of laws and contracts.

A rapid evaluation of the system using these three criteria can be achieved by examining the key indicators described in Box 13, in respect of each of the criteria.

Box 13: Assessing the legal environment for private sector participation

Criteria	Indicators
<p>1. Flexibility and responsiveness to the needs of participants in the food marketing system</p>	<ul style="list-style-type: none"> • The extent to which participants were involved in the preparation of new legislation (how wide was the consultation, what opportunities were created for private sector input in the drafting process, etc?). • The degree of support among participants for new rules before and after implementation. • The degree to which participants have flexibility to find the most economically efficient means to achieve an objective (i.e. if the law prescribes what practices are acceptable rather than merely prohibiting unacceptable practices, it may reduce flexibility and restrict the freedom of participants to seek more economically efficient alternatives). • Low compliance costs (i.e. participants do not have to spend unreasonably large amounts of effort, time and money in order to comply with the law). The level of compliance costs will usually be higher where there is poor communication of the law to those affected by it, multiple authorizations are required; and the conditions for obtaining authorizations are unnecessarily complex.
<p>2. Certainty and transparency concerning the law and its implementation.</p>	<ul style="list-style-type: none"> • Legislation which is clear and easy to understand. • A practice of communicating changes in the law to all affected parties well in advance of implementation of the laws. • Licensing procedures which: require a licence to be granted if certain clear criteria, published in advance, are met, require reasons to be given for any refusal of a licence, and provide for a right of appeal. • Consistency of interpretation and application of law by different officials and authorities in different areas.

Box 13, continued	
Criteria	Indicators
3. Enforceability of laws and contracts	<ul style="list-style-type: none"> • Few instances where there are strong economic or other incentives not to obey a particular rule (the introduction of such rules is usually only appropriate where very important social issues are at stake). • Statistics on monitoring legal compliance and successful prosecutions (for example if a new licensing law is being well enforced some level of non-compliance would be expected initially, followed by a sharp increase in successful prosecutions which then declines as compliance increases). • Adequate institutional capacity to enforce laws (generally it is wise to avoid bringing rules into force until the capacity exists to enforce them). • Low regulatory costs (i.e. costs to the state of implementing and enforcing relevant laws). • A degree of private sector “self-regulation” which is adequately monitored by the state (e.g. rule-making and enforcement of market bye-laws, produce quality standards and minor dispute resolution by market committees, traders’ associations, etc.). • Availability of inexpensive, quick and effective conflict resolution mechanisms, particularly for smaller claims.

Chapter 8

The process of regulatory reform

STRATEGIES FOR LEGAL REFORM

Successful legal reform is not just a matter of correctly identifying the changes to be made, but is also highly dependent on how the process of change occurs. For example, one of the most important enabling functions which law can play is to increase certainty in the market (and hence reduce risk) by establishing a framework which allows participants to predict more accurately the consequences of their actions and the actions of others. Yet the paradox is that improving the law involves changing it and change in itself can often have the effect of increasing uncertainty.

The degree of change involved in a liberalization process and hence the potential for instability and uncertainty should not be underestimated. As a number of writers have pointed out, in countries in which the state has played a central role in organising economic production and distribution, liberalization does not simply involve getting the government out of the market and removing restrictions on private traders. It involves redefining the rights of the state and the private sector in relation to the ownership and control of agricultural commodities and redefining their respective roles in the marketing system so that the market takes precedence over the state. (See, for example, Staatz *et al*, 1989, p. 715 and Bryceson, 1994, p. 14). The uncertainty associated with this fundamental change can have a marked impact on the behaviour of participants in the marketing system. For example, a survey conducted in Mali identified uncertainty about the future of the liberalization programme and the laws applicable to traders as reasons for the reluctance of traders to undertake long-term investment. In 1988 most wholesalers in Koutiala, Sikasso and Mopti stored grain for ten days or less while the corresponding period in Bamako was less than three weeks (Staatz *et al*, 1989 citing Mehta).

In using law as a tool for promoting change it is important to remember that laws are shaped by political forces and in this sense are very far from mere technical rules. Almost any fundamental change will be opposed by conservative elements of society and by those that have a vested interest in

maintaining the status quo. Initiating a process of reforming laws that could impact on food prices and food security represents a significant risk to the society and may represent a personal political risk to those politicians involved in the reform process. Therefore, the process of preparing legislation to give effect to a market liberalization initiative which will fundamentally change the functioning of an important part of the economy and affect the welfare of many thousands of producers, consumers, traders and officials is, inevitably, a highly political process – and rightly so.

The political nature of such legal reform to liberalize agricultural markets also means that it is advisable to structure the reform programme so as to allow time for the development of significant support for liberalization. It is likely that if outside pressure is brought to bear to introduce legislation to promote liberalization before such support has developed, the legislation will not be enacted or will be substantially modified in the process, and implementation of the legislation will be strongly resisted.

In designing a strategy for legal reform, policy-makers should give particular attention to involving all parties (“stakeholders”) likely to be affected by the proposed reform in the process of framing new legislation, and to communicating any changes to those stakeholders well in advance. Governments should seek to involve stakeholders in the process of designing new legal frameworks, not only by consulting with them before preparing new laws, but also by creating opportunities and allowing sufficient time for participants in the marketing system to comment on proposed reforms. In encouraging public participation care should be taken to design a process which does not implicitly exclude contributions from anyone with an interest in the outcome. For example, limited literacy skills or social hierarchies may constrain written responses or oral responses in public forums.

While a participatory approach may prolong the drafting process this is normally outweighed by the advantages. Typically these would include: legislation that is better suited to the needs of those affected by it (including enforcement officials), a greater degree of public acceptance and willingness to comply with the law, and a reduction in legal uncertainty when the changes are introduced, since the key elements have already been widely debated.

Good communication of regulatory changes, preferably well in advance of their implementation, will also reduce uncertainty. For example, a study in Kenya showed that less than 15 percent of farmers and women trading on the market knew the current regulations on maize movements (Thomson and Terpend, 1993, p. 7, citing Gachangua, 1990). Similarly, 56 percent of the respondents interviewed during a 1997 survey in the Kalimati Fruit and Vegetable Wholesale Market in Nepal stated that they knew little or nothing

Box 14: Guidelines for improving the legal environment for agricultural markets

These general guidelines are intended to highlight useful principles for policy-makers and legal reformers when planning legal reforms to improve agricultural marketing systems. Not all of the guidelines will be applicable in all circumstances and any legislative reform should be based on a sound analysis of the functioning of the particular regulatory system.

- Involve stakeholders in preparing new legislation and seek to build stakeholder support for rules before and after they are implemented.
- Avoid introducing rules where there are strong economic or other incentives not to obey the law, unless important social issues are at stake.
- Seek to make the regulatory system flexible enough to adapt to new circumstances and allow participants to find the most economically efficient solutions (e.g. generally be wary of trying to control results directly and of being highly specific about conduct).
- Minimize restrictions by only prohibiting what is unacceptable rather than prescribing what is acceptable.
- Seek to increase certainty about what the law is and how it will be implemented.
- Look for ways of reducing compliance costs.
- Reduce regulatory costs (particularly transaction costs) wherever possible without jeopardising the proper functioning of the regulatory system.
- Enforce laws consistently and avoid bringing rules into force until the capacity exists to enforce them.
- Encourage private sector involvement in regulating agricultural markets (e.g. encourage the formation of market committees or traders' associations which are capable of exercising certain rule-making and enforcement power delegated by the state, but monitor performance to ensure that they are not "captured" by special interest groups and used to oppress other groups).
- Look for ways to introduce inexpensive, quick and effective, conflict-resolution mechanisms, particularly for smaller claims.
- Make the regulatory system as a whole, and particularly the exercise of administrative discretion, as transparent as possible.

about the rules and regulations of the market (which were passed on an ad-hoc basis and displayed on a notice board). Furthermore, among the respondents who claimed some knowledge of the market rules, only two rules were

well known – that rent must be paid on time (cited by 94 percent of respondents claiming knowledge of the rules) and that certain commodities could only be sold in certain places (cited by 40 percent) (Mathema and Sharma, 1997, p. 32).

On the other hand, in the Marikina City Public Market in the Philippines, all participants were well informed about the Market Code and other ordinances that affected them. This was attributed to the fact that the rules and other information affecting market participants were regularly broadcast over a radio station that was “piped-in” all over the market; and to the fact that market participants that contravened the rules were penalised. For example, uncalibrated or inaccurate scales had been confiscated by the Market Administrator who gave vendors five days to pay a penalty to redeem their scales and to have the scales properly calibrated. After five days the unredeemed scales were crushed in public in a street near the market in order to demonstrate that the officials were serious and impartial in enforcing the regulations and were not profiting from the confiscation of the scales. (Villasis, 1997, p. 16).

HOW MUCH REGULATION SHOULD THERE BE?

More highly developed economies generally tend to have more extensive and intensive regulation of economic activities. This is typified by the very extensive regulation of agricultural and food marketing in the United States. Policy-makers should recognize, however, that increasing the range and intensity of such regulations is likely to impose additional burdens on the regulatory authorities and increase the compliance costs of participants in the market. Determining the optimum level of regulation will therefore be dependent on a number of factors, including:

- the stage of development of the economy in question;
- the wealth of the society;
- the political priorities of the society (which will be important in striking a balance between social concerns, such as protecting consumers and the environment on the one hand, and economic development objectives on the other); and
- the capacity of state institutions to implement and enforce the legal provisions.

It is always important to question whether existing or proposed legislation is necessary or desirable and to avoid automatically responding to undesirable events or behaviour by introducing regulations, particularly where there

is little prospect of their being enforced. If a rational decision is to be made about the desirability of introducing or retaining a legal provision, it is necessary to have some basis for assessing the actual or expected effects of the law (this was discussed in Chapter 7). In the context of agricultural marketing this inevitably involves evaluating the economic effects of a particular law. In doing so, it is important:

- firstly, to evaluate the legal rule within the context of a specific regulatory system at a particular time;
- secondly, to take account of the fact that the law may be intended to achieve non-economic policy objectives such as consumer protection; and
- thirdly, to be aware that it is a fallacy to believe that the functioning of the market will automatically be improved by removing all regulations which are inconsistent with the structure of the model of a perfectly competitive market.

Chapter 9

Conclusions

Law provides the foundations for the operation of agricultural marketing systems and is essential for the development of more sophisticated systems. Legislation is probably the most important tool available to governments for regulating a marketing system and changing how it functions in order to achieve politically desirable goals. As such, initiatives to reform agricultural marketing systems will inevitably involve a legal element.

However, using law as a development tool is not straightforward and the effects produced are heavily influenced by the context in which it is used, particularly by factors such as the institutional framework and legal culture. This means that caution is needed when making general conclusions concerning the best way to improve legal frameworks. Nevertheless, based on the experiences of a range of countries it is possible to identify general principles that can be usefully applied in most circumstances.

Past experience indicates that the effects of legal reform may be difficult to predict. However, by adopting a methodology that combines a careful analysis of the law with research into how it actually functions, it should be possible to reduce the uncertainty associated with legal reform.

The process of reforming legal structures in order to give effect to market liberalization programmes presents particular challenges to policy-makers and those drafting laws. Policy-makers should beware of over-simplistic models based on the mistaken belief that fewer rules mean more efficient markets. Legal drafters should be aware of the new challenges created by the reduction of the role of the state in controlling agricultural markets. This will require a fundamental shift in thinking, away from highly prescriptive legislation designed to maximize state control of all aspects of the system, towards legislation designed to enable efficient private sector involvement. However, the creation of greater economic freedom for the private sector is also likely to increase the potential for abuse, giving rise to a need for new and more sophisticated legal mechanisms.

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Annex 1

IDENTIFYING RELEVANT LEGAL RULES

Note: The following list of questions is intended to help identify some of the issues that may be relevant to the functioning of agricultural markets. However, it is not a complete checklist and should not be used as such since answering all the questions would be very time consuming. Instead, existing knowledge about the functioning of the marketing system and the policy objectives of any market reform initiative should be used to narrow the focus to specific areas where problems exist and/or improvements are desired.

Potential Issues and Questions to Ask	Where to look
<p>Restrictions on access to, and participation in, markets.</p> <ul style="list-style-type: none"> • Are any parties excluded from participation in the market? • What licences (if any) are required to participate in the market in various capacities? • What are the requirements to qualify for a licence (e.g. requirements to have a certain bank balance, to have approved storage facilities, and to maintain certain records)? • What conditions are imposed in licences? • What is the procedure for obtaining licences and how much does it cost? • Is there a restriction on the number of licences and how are they allocated? 	<p>Agricultural marketing legislation; market bye-laws.</p> <p>Legislation and standard licence forms; administrative guidelines.</p>

Potential Issues and Questions to Ask	Where to look
<p>Commodities traded</p> <ul style="list-style-type: none"> • What legal provisions are there relating to: <ul style="list-style-type: none"> - the quality of produce and food; - public health; - standards of agricultural products; - packaging and labelling? • Is there a distinction between standards for domestic and export markets? 	<p>Food laws. Public health, Pesticides legislation. Agricultural marketing legislation. Marketing & Environmental legislation. Standards legislation. Marketing, and trade & export legislation.</p>
<p>Restrictions on the supply and price of agricultural produce</p> <ul style="list-style-type: none"> • Are there controls on the movement of certain foods, above certain quantities or between locations? • Are there controls on sales of food, e.g. on the basis of type of commodity, quantity, quality or location of sale? • Are there controls on the storage of food? • Are there any direct controls on the prices of food? 	<p>Marketing legislation; conditions in licences. Marketing legislation. Anti-hoarding legislation. Marketing or price control legislation & laws establishing state marketing institutions.</p>

Potential Issues and Questions to Ask	Where to look
<p>The market place</p> <ul style="list-style-type: none"> • Are there any restrictions on market days and hours? • Are there any restrictions on the location of markets in urban areas? • Are there any restrictions preventing the establishment of market places in optimum locations? • Are there adequate rules governing hygiene standards in the market? • Are there legal measures to maintain public order in and around the market, and to control competition from unlicensed operators outside? • Are there laws restricting physical access to the market place? 	<p>Town planning laws and municipal bye-laws; market laws. Food, public health and hygiene laws; bye-laws and market rules.</p> <p>Laws empowering officials in charge of markets. Trading laws.</p> <p>Transport legislation.</p>
<p>Dispute resolution</p> <ul style="list-style-type: none"> • What legal mechanisms exist to enforce contract? • What evidence would usually be required to prove the existence and terms of a contract? • Are there any established bodies or mechanisms for resolving market disputes? 	<p>Case law/jurisprudence. Laws establishing courts, marketing authorities or other bodies with adjudicatory powers.</p>

Potential Issues and Questions to Ask	Where to look
<p>Finance and credit</p> <ul style="list-style-type: none"> • Can stored produce such as grain be pledged to secure a loan? • Can effective security be created even when the produce in question is mixed with other similar produce and can no longer be specifically identified? • What protection does the lender have against a third party who buys the produce or acquires some interest in it without knowledge of the lender's security interest in it? (e.g. some countries have a system of registering security interests designed to protect the interest of the lender by giving notice to the world at large of lender's interest in the goods)? • What protection does the lender have if the borrower or operator of the warehouse containing the goods, dies or becomes bankrupt? • Are warehouse receipts recognized as negotiable documents of title? • Does the legal personality of the borrower have any effect on the security? • Do public-sector organizations in the marketing system have preferential access to credit? • Are there any restrictions on access to foreign exchange? 	<p>Case law and jurisprudence. Commercial Code. Legislation on security and collateral. Banking law.</p> <p>Case law and jurisprudence. Bankruptcy/ insolvency law. Legislation (and case law/ jurisprudence) on warehouses, legal tender and negotiable instruments. Commercial Code and Banking legislation.</p> <p>Exchange Control laws.</p>
<p>Transactions in the market</p> <ul style="list-style-type: none"> • Are there any rules establishing standard weights and measures? • Are there any standard contracts in use which standardize and clarify issues such as: the date when the transaction is binding; the terms of sale; the margin of tolerance for quality; responsibility for loss or damage; consequences of delay, etc? 	<p>Legislation on weights and measures.</p>

Potential Issues and Questions to Ask	Where to look
<p>Public-Sector Institutions</p> <ul style="list-style-type: none"> • How is the responsibility for administering various aspects of the marketing system allocated among government departments, agencies and parastatals? • Are there jurisdictional overlaps and conflicts? • Are there legal mechanisms for ensuring that delegated rule making (e.g. by market committees) does not conflict with superior laws? 	<p>Laws setting up public sector organizations.</p>
<p>Private-sector organizations</p> <ul style="list-style-type: none"> • Are there any laws preventing the formation of private organizations of producers, wholesalers, retailers, etc? • Would such bodies be able to acquire legal personality? • Could limited powers to make and enforce rules or business practices and decide disputes be legally delegated to such bodies and have these powers been used? • Are there any rules aimed at preventing special interest groups dominating such organizations? 	<p>Marketing laws. Company laws and Commercial codes.</p> <p>Legislation on Markets.</p>
<p>Market manipulation</p> <ul style="list-style-type: none"> • Are there any rules applicable to agricultural markets which prohibit cartels, price fixing, “unfair competition” or other anti- competitive behaviour? • Are there any rules prohibiting specific forms of fraud or corruption relevant to agricultural marketing (e.g. submitting false applications, misgrading produce, bribing officials, etc)? 	<p>Competition or “anti-trust” laws. Legislation on business practices. Case law or jurisprudence on “unfair competition”. Criminal law; legislation on trade practices; anti-corruption and economic crime legislation.</p>

Annex 2

GLOSSARY

cartel	An association of producers to attempt to regulate prices, e.g. the Organization of Petroleum Exporting Countries (OPEC).
compliance costs	The expenditure of time and money in conforming to government regulations.
law	A rule or set of rules enforceable by the courts which includes legislation and other legally enforceable rules (such as binding case-law in common law countries).
legislation	Written law made by a body (such as a parliament) or an official, which or who is empowered to make laws under the constitution or under powers delegated by a body or official with such powers. Legislative instruments come in a variety of forms and have different names in different countries. Legislation includes: acts, decrees, regulations and bye-laws.
monopoly	A market in which there is only one supplier. Classic economic theory predicts that this will usually result in higher prices (there is no competitive pressure to reduce prices or lower costs) and lower output. The more inelastic the demand for the product the more the monopolist can raise prices (and increase profits) without losing sales. Most countries control monopolies (e.g. where one firm is

dominant by virtue of having, say, more than 25% of the market) although the nature of some industries may require a single dominant supplier in order to be efficient (e.g. where an extensive infrastructure is necessary).

monopsony

A market in which there is only one buyer of the commodity with the result that demand is directly affected by the purchases made by that buyer.

octroi

A duty on goods brought into, or transported through, certain towns.

rent-seeking behaviour

Behaviour which improves the welfare of someone at the expense of some else. This is often criminal, e.g. an official requiring a bribe before issuing a licence, but not necessarily so. For example, management or labour may seek to increase their share of turnover rather than increasing the total value of turnover.

transaction costs

The costs associated with buying and selling. These are often characterized as “frictions” in the economic system.

Annex 3

TABLE OF LEGISLATION REFERRED TO

Moldova	Law on Domestic Trade	No. 749-XIII of 23 February 1996.
	Law on Entrepreneurship and Enterprises	No. 845-XII of 3 January 1992.
	Law on the Protection of Consumer Rights	No. 1453-XII of 25 May 1993
	Resolution on State Monopolies	Government Resolution No. 582 of 17 August 1995
	Resolution on the Regulation of Specific Types of Activity	Government Resolution No. 888 of 19 September 1997
	Trade Bazaar Rules	Government Resolution No. 517 of 18 September, 1996
Nepal	Black Marketing and Other Social Crimes Punishment Act	Act No. 10 of 2032 (1975)
	Co-operative Act, 1991	Nepal Gazette, Section 42, Kathmandu, February 1992
	Essential Commodity Control (Right) Act	Act No. 28 of 2017 (1961)

Philippines	Agricultural Tariffication Act	Republic Act No. 8178 of March 28, 1996.
	Consumer Act of the Philippines	Republic Act No. 7394 of April 13, 1992.
	Co-operative Code of the Philippines	Republic Act No. 6938 of March 10, 1990.
	Price Act	Republic Act No. 7581 of July 22, 1991.
	Quedan and Rural Credit Guarantee Corporation Act.	Republic Act No. 7393 of April 13, 1992.
	The General Banking Act	Republic Act No. 337 of July 24, 1948.
	The Rural Banks Act of 1992	Republic Act No. 7353 of April 2, 1992.

Good law is essential for the effective functioning of marketing systems. Inappropriate law can distort and reduce the efficiency of the market, increase the costs of doing business and retard the development of a competitive private sector. By exploring a topic which has been much neglected in the past, this publication aims to provide policy-makers and law-makers with the necessary tools to evaluate the impact of existing law on marketing systems and to identify the changes needed to achieve the desired policy goals. Although it is primarily aimed at those interested in agricultural marketing, the approach adopted and the methodology outlined for analysing the various effects of laws should also make it very relevant to specialists in other fields of agriculture who are concerned with the impact of the regulatory framework on their work.

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