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East Africa High Commission:
(17) The East African
Industrial Council

Washington, D.C.
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Mr. Walter S. Rogers
Institute of Current World Affairs
522 Fifth Avenue
New York 36, New York

Dear Mr. Rogers:

The East African Industrial Council was established late in 1943 by the East African Governors' Conference when war conditions - shortage of supplies, difficulties of transport and the general necessity of increased production - made the promotion of industrial development and an industrial licensing system applicable to East Africa as a whole a necessity. The Council was assigned the primary duty of advising on broad policy in regard to the establishment and development of secondary industries, with particular reference to the siting, financing and selection of types of industries in the three East African mainland territories and Zanzibar in view of the fact that the shortage of manpower and machinery made it impossible for governments to support any project not required for war purposes.

The system of industrial licensing operated under Defence Regulations in each territory during the war. The purpose of the system was to prevent a larger number of manufacturers operating in any one type of industry than would be able to obtain reasonable allocations of raw materials and to protect manufactures which necessitated a large outlay or complicated plant. Regulations were drawn up after consultation between the governments and there was liaison between them in their administration. But the governments did not consider these regulations best suited to any long-term development of industry.

When the war ended the governments felt that in peacetime the economic advancement of the three territories individually, in view of shortages of labor, material, plant and currency problems, would require treatment of industrial development and industrial licensing on an East African basis. The Council therefore made a comprehensive survey of the requirements and potentialities of the area and published its conclusions in its 1945 Report and Recommendations regarding Industrial Development. In this document the Council pointed out the need of ensuring that "any new venture commences under the most favourable conditions attainable in regard to turn-over and technical efficiency. Experience elsewhere shows the danger in similar circumstances of multiplying small units." It considered the lack of protection of pioneer undertakings from unfair competition an impediment to industrial development in East Africa, and recommended legislation providing for industrial licensing on an East African basis.

The three governments agreed on a common policy of encouraging the development of certain secondary industries in East Africa through a system of industrial licensing which would protect those industries from uneconomic competition and control the siting of new industries. For the purpose of implementing this policy the High Commission reconstituted the Council at the end of August 1948 through the enactment of the East African Industrial Council Order. The same year parallel Industrial Licensing Ordinances were enacted in the three territories defining the licensing duties of the Council.

The Council, as reconstituted in 1948, consists of twelve members, including three each from the High Commission and the three mainland territories. The Administrator of the High Commission is Chairman, the Economic Secretary is Deputy Chairman and one other official member is appointed by the High Commission. The three members from each territory, including two non-officials and one official, are appointed by the Governor of the territory. Early in 1952 the former Chairman of the High Commission wrote that five of the members were non-officials, seven were also members of the Central Legislative Assembly, and six were also members of territorial Legislative Councils. In 1953 the Council consisted of six non-official and six official members. The members hold office for two years and are eligible for reappointment. The Council may co-opt as many as four non-voting members, and at the end of 1953 the Legal Secretary of the High Commission and the Director of the East African Industrial Research Organization were co-opted members. The general practice is apparently to hold two meetings each year. The quorum is seven and decisions are by a majority of members present, with the Chairman exercising a casting vote. The "secretariat" of the Council is provided by the Office of the Director of Produce Disposal, who is the executive officer of the Production and Supply Council.*

The Industrial Licensing Appeal Tribunal, which hears appeals on licensing decisions of the Council, includes the President of the Court of Appeal for Eastern Africa as Chairman and six other persons of whom two are nominated by each of the three territories and appointed by the High Commission.

Expenditures of the East African Industrial Council were £171 in 1948, £237 in 1949, and £5 in 1950. Each year, from 1948 through 1950, each of the three territorial governments contributed £80.

The stated functions of the Council are to advise on questions of policy relating to the industrial development in East Africa and on matters which may be placed before it by the High Commission or any of the three East African governments, and to undertake specific duties assigned to it. I have been unable to find published material giving evidence that the Council has ever advised the High Commission on questions of policy relating to industrial development in East Africa or that either the High Commission or any of the territorial governments has ever requested the Industrial Council to advise upon any matter of policy other than industrial licensing.

The activities of the Council have, in effect, been confined to one specific duty assigned to it - the administration of the system of industrial licensing, which was provided for first by the parallel Industrial Licensing Ordinances enacted in 1948 in the three territories and at present by new Industrial Licensing Ordinances of 1953. The licensing system, as stated above, is intended to encourage the development of certain necessary industries by providing protection to entrepreneurs from uneconomic competition - from losses at the expense of newcomers who would benefit from the risks and experience of the pioneer and from a market developed and tested by him. Licensing was also intended to control the siting of new industries to the best advantage of East Africa as a whole, and to protect the consumer and worker.

The 1948 Industrial Licensing Ordinances provided that no person could manufacture for sale certain articles, listed in the first schedule of the ordinances, without a license granted by the Council. The Ordinances were enabling acts and items were scheduled, after recommendation by the Council in June 1948, by subsequent resolutions of the territorial legislative Councils. The scheduled articles under the 1948 Ordinances were cotton yarn, cotton piece

* JBG-61 on the East African Production and Supply Council.

goods (not including knitwear), cotton blankets, woolen yarn, woolen piece goods (not including knitwear), woolen blankets, glazed articles of pottery including glazed pipes and tubes, glazed tubes of earthenware, and glazed sanitary earthenware or stoneware. The list could be extended only by further legislation by the three territorial legislative Councils. Factories already producing articles to which the legislation applied automatically secured licences. These ordinances also laid down the grounds on which the Council should decide whether to grant a license or not. The Council could refuse to grant a license only on the grounds that the capital, technical skill or raw materials available to the applicant were inadequate to secure the successful establishment and operation of the factory and that the failure of the applicant's enterprise would be likely to prejudice the successful development of the industry: that factories already established in the three territories had an actual or potential output of the article in question sufficient to meet the actual or potential demands of the consumers in East Africa at a price as favorable to the consumers as the applicant would find necessary (the Board could take export potentialities into account); and that the site chosen for the factory was not suitable with respect to the availability of raw material, electric power, water or fuel, or with respect to the proximity to the main consuming centers. Licenses were granted after consideration of applications and objections by a licensee claiming he would be injuriously affected by the grant of a license to the applicant. A person refused a license was granted the right of appeal to the High Commission. The Council was empowered to cancel a license if the licensee failed to comply with conditions attached. A 1948 amendment provided for a new appeal tribunal to be set up by the High Commission.

In 1949 the Council reviewed the Industrial Licensing Ordinances and expressed doubts as to whether they enabled the achievement of the primary objectives of providing protection and controlling siting. The legislation could not achieve the objectives since the Council was unable or restricted in its powers to refuse an application for a license. This was leading to a situation where as soon as one entrepreneur obtained a license to manufacture a particular item others tried to follow with the risk that no one factory would be an economic project. One example was that after one large textile factory had received a license, another factory in another territory, with the full support of the government of that territory, applied for a license and the Council was unable to refuse the second license. The three territories then enacted parallel amending ordinances enabling the Council to further protect a new industry from uneconomic competition during the early stages of its development by making at its discretion a declaration in respect of a particular industry and on the application of a licensee, that no similar license should be granted for a period not exceeding five years. This, briefly, permitted the granting of an exclusive license for five years. The amending ordinances also provided for appeals to the Industrial Licensing Appeal Tribunal by a party aggrieved by the granting of a license to another, as well as by a person aggrieved by the refusal of one to himself. As provided by these amendments, the Council, on application of Calico Printer's Association Ltd., declared on 9 March 1950 that no license to establish or operate a factory for the manufacture for sale of cotton yarn or cotton piece goods (not including knitwear) should be granted for five years beginning September 1, 1949 to any person who did not hold such a license on that date. It was not envisaged at the time the amendment was made that the declaration would be so wide as to preclude the grant of licenses to other manufacturers who would not compete in any way with the licensee for whom the declaration was made. However, after this declaration was made, a company which wished to manufacture cotton textiles but of a different type than the textiles to which the original license applied made representations to the Council. The Calico Printers Association had no

objection to the commencement of manufacturing by this company, but the Council had no power under the existing law to grant a license. To get over this difficulty, amendments were passed in 1950 which provided that such licenses for the manufacture of articles with respect to which a declaration had been made might be issued with the consent of and under conditions agreed by the licensee (the Calico Printers Association Ltd.) upon whose application the declaration was made. The Council was thus enabled with the agreement of the Calico Printers Association to grant a conditional license to the Moshi Trading Company Ltd., Moshi, Tanganyika, to establish and operate a factory for the sale of Muscat cloth subject to certain conditions specified by the Calico Printers Association (that the cloth should be of the types represented by the samples submitted by the Association and that no more than 20 looms should be used without the consent of the Association).

In 1949 when the Council reviewed policy it decided new ordinances were necessary and completed a draft of a new industrial licensing bill by April 1951. This was amended in correspondence between the governments and the new parallel ordinances were enacted in Tanganyika in November 1952, in Kenya in May 1953, and in Uganda in August 1953. The three ordinances were brought into force on the same date, with the repeal of the existing ordinances.

The new ordinances contained no major changes of policy but were intended to correct defects in the old legislation. This had proved incapable of ensuring that accepted policy would become operative in four important aspects: the encouragement of new industries by preventing uneconomic competition, the control of siting of new industries, and the protection of consumers and workers. As a result, as soon as one entrepreneur entered a field others tried to follow before the field was proved, with the risk that no one factory would be successful.

The new legislation was drawn up to prevent uneconomic competition not only for the purpose of encouraging the establishment of new enterprises, but also for the maintenance of an established enterprise not of a monopolistic character. The new legislation provides that the Council at its discretion may grant or refuse a license, although it must have regard to the considerations of site, potential production and demand, transport, suitability of labor, interests of employees, interests of consumers and the general promotion and development of industries and the avoidance of uneconomic competition. An application satisfactory in every one of the specified considerations might nevertheless be refused, provided the reason was given to the applicant, who could appeal to the tribunal. The new ordinances provided that the protection of a license would be limited to 20 years and that scheduled products in respect of which there is a valid license would remain on the schedule for 20 years only, unless the Council advised and territorial legislatures approved a longer period. The new legislation also excluded "cottage industry" (single unit employing not more than 10 workers and utilizing no prime mover providing energy in excess of 5 horse-power) from the terms of the ordinance, and defined manufacture as covering any change in substance, character, or appearance. The new legislation includes three additional items in the first schedule of articles which can only be manufactured with a license. These are fabric spun or woven from soft fibres other than fibres derived from cotton or flax, steel drums of 5 to 60 gallon capacity of 26 to 12 gauge, and caustic soda other than caustic soda manufactured by way of recovery from a residue resulting from the use of caustic soda in any processes. All three items were added because of requests from Kenya manufacturers. The new ordinances also provided that there should be a single Registrar rather than three Registrars, one in each territory appointed by the Government.

The remainder of the provisions are similar to those of the previous legislation. The Council may attach to a license such conditions as it thinks fit, and, on the application of a licensee and with his consent the Council may vary or add to conditions. The Council may revoke a license if the licensee fails to comply with any condition attached to it, fails or ceases to manufacture the licensed article, or fails to maintain a minimum level of production. The legislation retains provision for the granting of an exclusive license for five years renewable for a further period of five years and for the granting of conditional licenses. However, the Tanganyika Ordinance also provided that a declaration would be operative in respect of any one of the three territories only if the majority of the representatives appointed to the Council from that territory voted in favor of the declaration. The right of appeal was not to be confined to a person refused a license but extended to an existing licensee who is aggrieved by the granting of a license to another person. The legislation provides for an Appeal Tribunal of a Chairman who must be either a person who holds or has held judicial office in East Africa or an advocate of not less than seven years standing entitled to practise in East Africa, and six other persons appointed by the High Commission.

In the six years of the Council's life - through May 1953 - it had granted 13 licenses, of which 6 were subsequently revoked, and had refused 3 applications for licenses. No licensed factory, other than those in being at the time the 1948 ordinances were enacted, were in production by May 1953. Among the licenses granted were three for the manufacture of cotton yarn and piece goods. These were a license granted to Calico Printers Association Ltd., Jinja, Uganda (Uganda Textile Industries, Ltd.) in respect of which a declaration for five years was made from September 1, 1949, the license granted to E.A. Spinning and Weaving Co. Ltd., Kisumu, Kenya, in May, 1949, and the conditional license granted to Moshi Trading Co., Ltd. in November, 1951, for the manufacture of Muscat cloth only. Seven licenses for the manufacture of cotton blankets were granted, of which four were subsequently revoked. The licenses still effective are those granted to Coatsal Textile, Mombasa, in June, 1952, to Bandali Jaffer Ltd., Kampala, in March 1952, and to Nakuru Industries, Nakuru, in October 1951. No licenses were granted for the manufacture of woolen yarn. The only license for the manufacture of woolen piece goods and woolen blankets is held by Nakuru Industries which was already in existence in 1948. Two licenses for glazed articles of pottery have been granted and revoked. By early 1952 only one appeal had been lodged against a decision of the Council and the appellants did not proceed with it.

The Association of Chambers of Commerce and Industry of Eastern Africa has consistently advocated industrial licensing on an East African basis. It even expressed the view - and the Council subsequently recommended - that commercial legislation should be on an interterritorial basis and that after enactment by the territorial Legislative Councils the ordinances should by resolution of the legislative Councils be made into a single legislative instrument operative throughout East Africa in the form of an Act assented to by the High Commission. Such a step would not give the Central Legislative Assembly power to amend the legislation nor prevent the territorial legislative Councils from amending or repealing the legislation in its application to its territory. The recommendation was not accepted by the Governments.

Although the commercial community, as represented in the Association of Chambers of Commerce and Industry of Eastern Africa, has wholeheartedly supported industrial licensing, there has been some opposition to it by unofficial members

of the territorial legislative Councils, particularly in Kenya and Tanganyika. In Kenya Legislative Council several unofficials, including Messrs Welwood, Patel and Havelock, opposed the original ordinance on the grounds that it would provide for monopolies while they thought competition best, and that it would lead to friction between the territories on the question of the siting of new industries. They expressed the view that the requirement that the legislative Councils must approve additions to the schedule was not a safeguard because government members would force through uniform schedules. Mr. Nicol (Mombasa), Sir Alfred Vincent, and Mr. Vasey (Nairobi North) favored the ordinance but opposed its provision for appeal to the High Commission. Mr. Havelock opposed the 1949 amendment also on the grounds that it would create monopolies.

When the new Industrial Licensing Ordinance was being discussed in Kenya legislative Council in May 1953 two of the European elected members, Mr. Havelock and Mr. Grogan, the two Arab members, and three Asian members, J.S. Patel, Chanan Singh, and Zafrud-Deen, opposed it. Mr. Havelock questioned whether the bill provided real protection to a new industrialist against uneconomic competition, claiming that he must simply trust the Council to protect him. He felt that the legislation only made the situation complicated, that it was better "to let the whole thing run by free enterprise."[1] He maintained the former legislation had led to interminable arguments between the three territories and asked whether it would be easier in the future to get agreement between them as to where an industry might be sited and whether a license should be granted. Mr. Chanan Singh opposed the legislation because "it cuts out the chance of promoting free enterprise."[2] He insisted it permitted the granting of ten year monopolies and that both workers and consumers suffer with monopolies. He wanted any industrial establishment engaging not more than ten workers, whether or not a prime mover is utilized, exempted from the provisions of the law.

Lt.-Col. Ghersie supported the Bill, saying he thought "in a young, developing Colony such as this it is wise to make provision whereby you can protect local industry."[3] Mr. Harris also supported the bill, stating it was not restrictive of private enterprise but "in fact, it is an encouragement for economic private enterprise and perhaps a deterrent to sub-economic private enterprise."[4]

In Tanganyika legislative Council there was no strong unofficial opposition to the ordinance in 1948. One member, Hon. M.A. Carson, asked whether the bill was an infringement of sub-clause (b) of Article 9 of the Trusteeship Agreement which prohibits discrimination on grounds of nationality in matters relating to the grant of concessions for the development of natural resources of Tanganyika Territory and concessions having the character of a general monopoly. He made the point that the bill depended basically on assessing everything on the basis of consumers in East Africa. Even though raw materials and markets were in Tanganyika, if the Council felt a Kenya industry met requirements in Tanganyika, no similar industry would be permitted in Tanganyika. He thought nothing should be done to prevent the natural resources of Tanganyika being developed. The Member for law and Order replied that the licensing ordinance did not infringe the Trusteeship Agreement. The Agreement allowed the establishment of monopolies if they were for the benefit of the inhabitants of the territory.[5] Although there was little opposition during the debate on the 1948 Ordinance in the Tanganyika legislative Council, Mr. V.M. Nazerali later stated that at that time "many of us had doubts as to the success of such control, and wondered whether it could be operated without placing one territory or another at a disadvantage."[6]

When the 1949 amendment was being discussed in the legislative Council unofficials expressed the feeling that Tanganyika was not benefitting from the

industrial licensing system. Mr. E.C. Phillips from Dar es Salaam said that when the matter was discussed at the last meeting of the Industrial Council pressure was brought to bear on Tanganyika to enact legislation identical to that of Uganda and Kenya. He pointed out that this would mean that a simple majority of the Industrial Council would be able to grant an exclusive license for a period of five years. He felt that Tanganyika was at a distinct disadvantage because there was an immediate attempt by the members of the other territories to have scheduled industries cited in the other territories, which its representatives believed offered greater advantages than Tanganyika. For this reason he had moved an amendment in the Council that no license should be granted if the majority of the members of the Industrial Council appointed by the Governor of any one of the territories voted against it.[7] This amendment was seconded by Mr. Nazerali who said he was not sure the original doubts whether licensing could operate without placing one territory at a disadvantage had been dispelled. Nor was he certain that the organization set up for this purpose was "worth its while or time."[8] The bill was amended as proposed by Mr. Phillips. Mr. Chopra and Mr. DuToit were even more extreme in their opposition. Mr. Chopra said: "... to some of us on this side of the House it is becoming abundantly obvious that the principal Ordinance and the working of the Industrial Council is not likely to benefit this country very much. I would ask the Government to consider whether, in the best interests of this country, it would not be a good thing to withdraw from the Industrial Council and scrap the whole arrangement altogether, and let the Territory's expansion go ahead on its own, which I feel sure it could do with great advantage."[9] Mr. DuToit supported him. He wanted controls and monopolies removed and asked that the bill be withdrawn.[10]

In Uganda Legislative Council the unofficials, unlike those in Kenya and Tanganyika, have apparently never expressed opposition to the ordinance on the grounds that it creates monopolies. C. Handley Bird, during the debate on the 1953 ordinance, complained that it did not give the Industrial Council means to force the development of the industry for which it had granted a license. A clause permitting the Council to force the monopolist to continue with his monopoly was necessary, he felt, to protect consumers and workers. He recommended that consideration be given to the introduction of rules or regulations under the existing clauses or the introduction at some future date of an amending bill to give the Council power to demand a guarantee if necessary for the due carrying out of the purpose of the monopoly or to force forfeiture of the license. He felt, however, that "this type of legislation which covers East Africa in commercial affairs is all to the good ..."[11] The Attorney General pointed out in reply that Clause 11 (2) already provided that licenses granted were subject to conditions the Council thought fit to impose.

Government officials, of course, have supported the industrial licensing legislation, maintaining that it has contributed to industrial development and that there are safeguards against monopolies. In 1948 a Kenya official declared in Legislative Council that imports, the issuing of new licenses, and changes in customs rates all provided protection against monopoly. When the approval of the first schedule of items was considered in Kenya Legislative Council officials were dissatisfied with it because it did not include more items, such as cement. During the debate on the 1953 Industrial Licensing Bill in Kenya Legislative Council the Chief Secretary of the Kenya Government said he was convinced that the action taken under the existing ordinances had "contributed substantially to the benefit of East Africa - and he did not mean to the benefit of only one country other than Kenya." He was also "convinced that from the long-term point of view this legislation will result in enterprise coming to East Africa which otherwise would not. That has already happened."[12] He felt that in time the bill would contribute towards East Africa's self-sufficiency, so necessary to future existance.

The extent of interterritorial friction created by the industrial licensing system is impossible to determine. The scheduling of pottery was originally opposed by Tanganyika members of the Council, and a provision was included in the Tanganyika 1953 Industrial licensing Ordinance that no five-year declaration should be made unless the majority of members from any one territory voted in favor of it. This amendment, reflecting the feeling among Tanganyika unofficials that the system was operating to the disadvantage of that territory, was designed to prevent Kenya and Uganda representatives on the Industrial Council from granting, without Tanganyika's approval, further five year "monopolies" to industries in one of the northern territories. A Kenya unofficial, as mentioned above, has referred to constant arguments in the Council. Nevertheless the Kenya Secretary for Commerce and Industry said in May 1953 "... there has undoubtedly been a good deal of discussion in the past because the operation of this law is ... quite rightly complicated but the territories are now, in so far as the East African Industrial Council is concerned, I think I can say, working with a very great deal of agreement and that this new Ordinance is likely to make the whole procedure very much easier. I think one can say that the interterritorial relations are now most cooperative and cordial on this subject."[13]

Sincerely,

John B. George

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Footnotes

1. Kenya, Legislative Council Debates, 2nd Session, 4th Sitting, 3 May 1953, 124.
2. Ibid., 125.
3. Ibid., 128.
4. Ibid.
5. Tanganyika Territory, Proceedings Legislative Council, 22nd Session, 1948, 20 April 1948, 24-25.
6. Tanganyika Territory, Proceedings Legislative Council, 24th Session, 1949/50, Parts I-IV, 30 November 1949, 79.
7. Ibid., 77,79.
8. Ibid., 79.
9. Ibid., 78.
10. Ibid.
11. Uganda Protectorate, Proceedings Legislative Council, 32nd Session, 9th Meeting, 11 August 1953, p. 36.
12. Mr. H.S. Potter, quoted in East African Standard, May 12, 1953, p. 3.
13. Kenya, Legislative Council Debates, 2nd Session, 4th Sitting, 8 May 1953, 130.

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