

The UN Guidelines For Consumer Protection: Making Them Work in Developing Countries

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5 The UN Guidelines For Consumer Protection: Making Them Work in Developing Countries

Robin Brown

ABSTRACT This paper outlines the background to the adoption of the UN Guidelines for Consumer Protection by the UN General Assembly in 1985 and developments since then. It notes that the Guidelines call upon governments to develop, strengthen and maintain a strong consumer policy and regulatory system to protect consumers in relation to physical safety, economic interests, standards, essential goods and services, redress, education and information, specific areas concerning health and sustainable consumption.

It observes that the Guidelines have two kinds of provisions: those concerning assistance people need to advance and protect their interests as consumers and the rules required to protect them where they cannot protect themselves and those concerning how governments might best provide assistance and make needed rules and how governments should cooperate with each other.

The paper goes on to discuss some of the realities of policy and regulatory development to achieve implementation of the Guidelines noting that there are four key elements: research, advocacy, policy and rule making, compliance action and consumer support. The challenge of ensuring adequate advocacy by civil society consumer organisations is considered. The conclusion is that, while there is much still to achieve, the Guidelines have made a major contribution to the advancement of the position of consumers around the world.

5.1 Introduction

THE UN GUIDELINES FOR CONSUMER PROTECTION were in the UN process at the same time as the Code of Conduct for Transnational Corporations. The Code had started out as a proposed instrument to contain excesses of TNCs in the developing world. However, provisions to protect business interests, especially from nationalisation, were added and provisions to protect the interests of developing countries and

their citizens were watered down. The Guidelines emerged and, in part, became the vehicle for some of the business regulatory elements lost from the Code. Not surprisingly they were opposed by certain business interests. The International Chamber of Commerce (ICC), not exactly a group balancing the interests of the north and south, pushed for the Code and strongly against the Guidelines. Nations lined up with the USA, Japan and Germany echoing the ICC and the G77 on the other side.

Consumers International (then called the International Organisation of Consumers' Unions) was represented at the UN by the indefatigable Esther Peterson. Esther, who had been consumer policy adviser to Presidents Johnson and Carter, commented at the time "It's amusing that opposition comes more strongly from business interests in countries where these guidelines already exist as laws or regulations."

In spite of strong opposition by the Reagan administration, on 16 April 1985 the UN General Assembly, by resolution 39/248, adopted the UN Guidelines for Consumer Protection by consensus.

The Code of Conduct for Transnational Corporations ultimately did not itself get anywhere. Another go was later had by business interests via the proposed OECD Multi-lateral Agreement on Investment. This failed too, but TRIPS and TRIMS Agreements (TRIPS – Agreement on Trade-Related Aspects of Intellectual Property Rights. TRIMS – Agreement on Trade Related Investment Measures) and bilateral trade agreements now give business many of the protections it was seeking.

It is important to note that the OECD was not one sided. Its Committee on Consumer Policy was a supporter of the Guidelines and contributed some of the thinking.

Apart from opposition to the Guidelines as a restriction on business activity they were opposed as being "Global Paternalism" (Jeane J. Kirkpatrick, President Reagan's UN representative). And Murray L. Weidenbaum, (former economic advisor to Reagan) wrote that the UN should not assume the role of global "nanny" and international consumer "cop". The line was essentially that northern countries should not be telling southern countries how to regulate their markets. This thinking seems to have been conveniently set aside over the decades in which neoliberal policies (the Washington Consensus) have been pushed on to developing countries including through such institutions as the IMF and the World Bank.

It is interesting that in his 1993 report on progress in implementation of the Guidelines the UN Secretary-General notes that both developing and developed country governments "reported that the guidelines had had a significant impact on their work" on consumer policy. Today, a Google search on the guidelines produces more than 20,000 entries. A sampling of these entries indicates as much interest in developed as developing countries. It would seem that suggestions that the guidelines are condescending toward developing countries were quite ill-founded.

The UN Secretary-General's 1993 report indicates a significant global take-up of the guidelines in national legislation by that time. There does not appear to be an up to date survey of the extent of implementation, but indications are but a minority of nations have not yet enacted reasonably comprehensive consumer protection legislation. Amongst ASEAN member states, for example, all but one either have such legislation or are in the process of finalising it.

The UN Guidelines call upon governments to develop, strengthen and maintain a strong consumer policy, and provide for enhanced protection of consumers by enunciating various steps and measures around the following eight issues:

- Physical safety
- Economic interests
- Standards
- Essential goods and services
- Redress
- Education and information
- Specific areas concerning health
- Sustainable consumption

In the 25 years since the Guidelines were first agreed, commentators and policymakers have come to describe the principles in the language of consumer “rights”. In this regard a common restatement of the Guidelines can be found in the Charter of Consumers International which renders the Guideline as eight consumer rights. They are the:

1. Right to satisfaction of basic needs
2. Right to safety
3. Right to choice
4. Right to redress
5. Right to information
6. Right to consumer education
7. Right to representation
8. Right to healthy environment

The Guidelines have two kinds of provisions. The first kind set out the assistance people everywhere should be given to advance and protect their interests as consumers of goods and services and the rules that should apply to protect them in circumstances where they cannot be expected to protect themselves. The second kind of provisions in the Guidelines indicate how governments might best go about providing such assistance and making such rules including how they should cooperate with each other.

The provisions of the first kind, particularly with the additions on sustainable consumption in 1999 which originated at the 1992 Earth Summit in Rio, are quite comprehensive. The proposed additions on access to knowledge would take the guidelines a major step further.

When national laws fully reflect the Guidelines they provide the legal basis for upholding the eight consumer rights that the international consumer movement has adopted. A very useful guide on what consumer protection laws need to cover to realise these rights was prepared by John Wood (Wood 1996). This is at Appendix 1.

No doubt both the first kind of provisions and the second kind and their implementation should, at least for the foreseeable future if not beyond, be seen as works in progress. Social, economic and technological change mean that consumer laws need continual updating and the same is likely to apply to the Guidelines. In my view though, there is rather more work to be done in relation to the guidelines’ second kind of provisions than the first and this paper concentrates on these.

The Policy and Regulatory Realities the Guidelines and Their Implementation Must Recognise

There are some who hold to the view that markets, or most of them, work entirely satisfactorily without regulation. I suggest that most participants in markets, both consumers and producers, accept that rules are necessary for their efficient and equitable functioning. But the soundest rules, both consumer protection and competition, are not sufficient for effective protection of consumers, advancement of their interests and the achievement of sustainable consumption and efficient allocation of resources.

Three additional conditions are critical:

- Each type of market, for its efficient and equitable operation, needs to be disciplined by a proportion of educated and informed consumers. The proportion needed will vary depending on the characteristics of the market in question.
- The institutions administering the rules need to be well designed and well resourced.
- The people responsible for complaint resolution and regulatory enforcement must be not only well trained, but be able to act uninfluenced and be prepared to take some risks.

The underpinning of all four conditions is of course sound public policy -in this discussion, consumer policy. Consumer policy is aimed at achieving equity and efficiency for consumers and the public interest by means of the most efficacious mix of market forces and regulatory or other intervention.

Consumer policy can be divided into three main subsets:

1. Policy to empower consumers to act in their own interests – **Consumer empowerment policy**;
2. Policy to provide for protection of consumers and action on their behalf in circumstances where, for one reason or another they are not able to fully prosecute their interests – **Consumer protection policy**; and
3. Policy to ensure, as far as possible, consumers benefit from competition so that efficiency gains make standards as high as possible and prices as low as possible – **Competition policy**.

While all three areas of policy relate to some extent to all the consumer rights there is a closer nexus between certain of the rights and one or other of these policy areas as follows:

Consumer empowerment policy relates mainly to:

- Right to redress
- Right to information
- Right to consumer education
- Right to representation

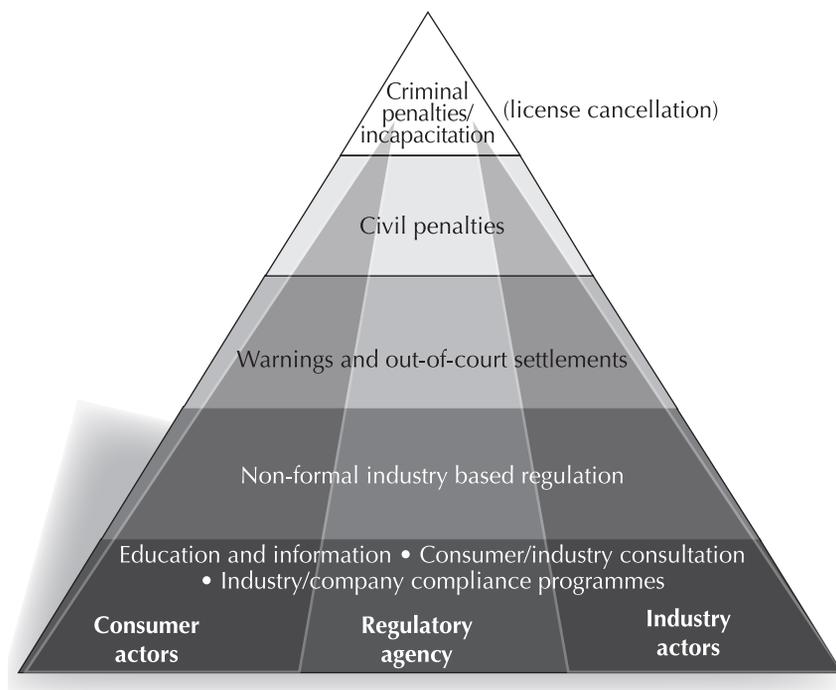
Consumer protection policy, which in broad terms is policy concerning the standards of goods and services and the conditions directly affecting the trade between buyer and seller relates mainly to:

- Right to basic needs
- Right to safety
- Right to redress
- Right to information
- Right to a healthy environment

Competition policy, though it affects most other rights, relates mainly to the right to choice.

Consumer Policy and the Compliance Pyramid

Development and implementation of consumer policy should be informed by the compliance pyramid model. The diagram below depicts a typical pyramid. The number of levels and the activities at each level will vary from regulatory regime to regulatory regime. The idea is that the bulk of effort and activity occurs at the base of the pyramid and this diminishes towards the top.



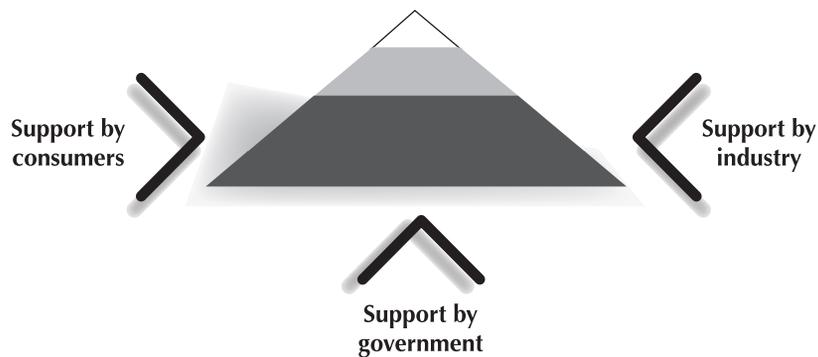
Under all regulatory regimes there is considerable scope for both consumer actors and industry actors to contribute at the base level. Individual consumers can contribute by drawing a company's attention to marketplace problems. Industry associations and companies can do much in the way of compliance programmes and complaint handling. Consumer organisations work with industries and companies and can distribute information to consumers.

In some regulatory regimes there is scope for both consumer and industry actors to contribute right up to the top level. The effect of this contribution from consumer and industry actors is of course to broaden the pyramid, to increase the activity at the

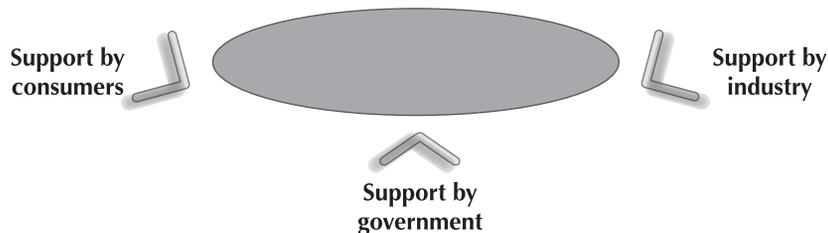
lower levels, thus reducing the need for activity at the higher levels and making the regulatory regime more effective and efficient.

For regulatory regimes to be fully effective the top level has to be, and be seen to be, real. This does not mean it always has to be utilised, but a real potential for utilisation is necessary. In the end, the government of the day must make it clear that it is prepared to back up the regulatory agency involved.

The stronger the commitment and support from government, industry and consumers (or citizens in respect of public interest issues or workers in respect of worker protection), the broader the regulatory/compliance pyramid can be at its base and thus most effective and efficient as depicted in the diagram below.



Where tripartite commitment is weak or lacking the pyramid structure collapses and the regulatory agency is limited to relatively ineffectual activity in the middle levels as represented in the diagram below.



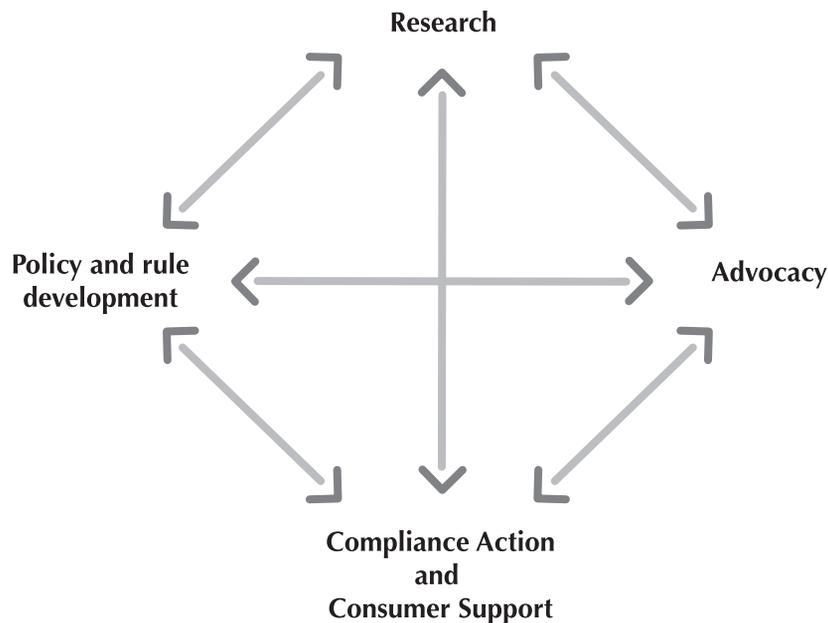
Consumer Policy Implementation – Four Elements

Sound consumer policy and its effective implementation will only be achieved with the four following interdependent activities well undertaken:

- Research
- Advocacy
- Policy and rule making
- Compliance action and consumer support.

The Guidelines either explicitly or implicitly have quite a lot to say about each of these.

There must be two-way interaction between all four and the process must be continual and continuous (as depicted in the diagram below) as the process of change in the characteristics of markets rarely pauses.



The main functions that need to be performed in respect of these four areas of activity are as follows:

Research

- Research and analysis of market sectors – both supply and demand sides
- Collection of data on the performance of market sectors

Advocacy

- Public interest advocacy for sustainability
- Producer advocacy
- Consumer advocacy

for

- Policy and/or regulatory reform
- Regulatory decisions – tariff approvals etc
- Improved administration of regulation
- Individual cases
- Improvements in companies' services

for consumers in general or for disadvantaged or vulnerable consumers

Policy and rule making

- Policy development

- General rule/regulatory instrument development and review
- Review and reform of regulation of a market sector.

Compliance action and consumer support – education, information, compliance programmes, rule enforcement, dispute resolution

- Education and dissemination of information to consumers
- Education and dissemination of information to suppliers
- Industry association and company level programmes for compliance with regulation and for continuing consumer service improvement
- Administration of general regulation for consumer protection and competition and for worker protection and environment protection
- Administration of market sector regulation
- Collection of complaints/disputes
- Independent mediation/conciliation and arbitration of complaints/disputes and
- Management of particular cases (eg. hardship cases).

There are many options for allocation of performance of these functions to different agents and many may be undertaken by more than one stakeholder. All these functions are integral to the effective operation of a market.

Research

II 8 of the UN Guidelines states:

The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

Promotion of sustainable consumption is a very important and large part of the UN Guidelines and in relation to this there are a number of references relevant to research needs including:

45. Governments should encourage the design, development and use of products and services that are safe and energy and resource efficient, considering their full life-cycle impacts. Governments should encourage recycling programmes that encourage consumers to both recycle wastes and purchase recycled products. and 55. Governments and other relevant organisations should promote research on consumer behaviour related to environmental damage in order to identify ways to make consumption patterns more sustainable.

In many countries there is an inadequate capacity in this area, particularly in terms of knowledge of how consumers are coping with changing markets. For example we do not know for a number of markets whether sufficient consumers are undertaking information searches so that the demand side is making competition work adequately. Frequently advantage is not taken of the large amount of data that many community based organisations have to inform policy development. Research is needed in all countries in this area. In many developing countries where there are high levels of extreme poverty and low levels of literacy and education, it is especially important to

know how well ordinary consumers are coping with markets for basic needs and how well those markets are delivering.

On the matter of research on consumer behaviour related to environmental damage, while there is need for this in developing countries, the larger responsibility is with developed countries where the environmental footprint of the individual consumer is many times larger.

Funding from international donors should be sought to support research and all opportunities to undertake collaborative research internationally should be taken.

Advocacy

While broad agreement can usually be achieved amongst a range of views on the other three elements, the resources they consume and the manner in which they should be performed, there is often controversy on advocacy. However there is no denying that advocacy plays a very significant part in public policy formulation and implementation.

While the research on a market might be comprehensive, policy and rule makers and regulators are likely to hear more about aspects and perspectives relevant to the interests of those whose livelihoods are involved in the market than about aspects and perspectives relevant to the interests of consumers or to the public interest. It is the costs and benefits of advocacy that determine this. In the extreme, policy and rule makers and regulators can be captured by producer interests. This becomes a particularly complex issue when the producers themselves may also be struggling to maintain financial security, and the temptation to 'cut corners' can mean the difference between surviving or not.

Getting citizens in general to advocate their interests or pay up to have their interests represented as consumers of a good or service or beneficiaries of a clean environment is much harder. The benefits of participation in advocacy are often seen to fall well below the costs. This is largely due to the "collective action problem" described in 1965 by Mancur Olson So, where public policy and regulation should reflect a diffuse public interest, members of the community at large will, not unreasonably, question why they should devote a lot of time and energy with everyone else "free riding" on their efforts.

Of further concern is the fact that many people in disadvantaged groups in the community are, in any case, disempowered in advocacy. For a range of reasons they are unable, or find it very difficult, to engage in participation processes available.

Regulatory arrangements need to be adaptable. This means that care must be taken to provide for the weakest voices to be heard in the adaptation process.

The increasing globalisation of public policy formation is problematical. Compromises from national positions often occur at international forums. Such compromises are more likely to be in favour of producer interests because members of national delegations to these forums are rather more likely to be exposed to the advocates of producer interests than consumer movement advocates.

Advocacy can be seen as occurring both extra and intra state. Intra state advocacy is provided by the agency charged with consumer policy development and other interested agencies and by members of parliament. In many countries it is also provided by consumer advisory committees in various forms. When such committees have statutory independence they can be more effective.

Extra state advocacy is provided by:

1. The consumer movement and other community sector interests
2. Industry and industry organisations
3. Academics
4. Professional bodies

A number of countries have industry ombudsman and other external dispute resolution administrators. Because these agencies have so much information on what is really happening in a market they can make important contributions to advocacy. However, it is somewhat constrained, as they must be careful to maintain their status as impartial umpires between producers and consumers.

Consumer Movement Advocacy

The UN guidelines on consumer protection deal with the issue of consumer representation or advocacy in a number of different ways. Objective 1 (e) of the UN guidelines calls for "Government action to facilitate the development of independent consumer groups."

The guidelines also say that opportunities are to be provided to consumer groups for presenting their views in the decision-making process or to speak up on behalf of consumers and, in particular, measures are to be put in place to represent the interests of disadvantaged consumers.

Laws and policies which are designed to protect the interests of consumers are almost certain to fail in their objective unless there is a systematic opportunity for consumers and their representatives to influence the policy, its expression in legislation and the administration of that legislation or regulation. In his keynote speech to a 2009 conference on Consumer Protection in Bangladesh, for these reasons Doctor Atiur Rahman, Governor of the Bangladesh Bank, regretted the lack of civil society organisations in his country involved in representing consumers' interests within that country.

In a number of developed countries, consumer organisations have been successful in building membership or supporter groups by essentially selling the results of their product testing. However, this has been largely restricted to middle class consumers able to afford the price of the information. This means that products or markets dealt with are largely those related to middle class consumption patterns. In addition there is a limit to the extent that income from information selling can cross-subsidise public interest advocacy. The structure of the movement in most developed countries, therefore, comprises a single large product-testing organisation and a large number of relatively small or poorly resourced groups either geographically or issues based. It would seem that product-testing organisations have been generally able to secure national monopolies for their services to consumers.

In some countries, notably the USA, significant extra resources have been available from donations from charitable foundations for example. The personal contribution of Ralph Nader from the earnings of his books and lectures is not inconsiderable. This sort of support has been rather limited in other countries.

Developed country governments though, have recognised the resource constraints of consumer organisations and provided state financial assistance. Referring particularly

to consumer policy issues, William Gormley shows that even in the USA, where consumer organisations are better resourced from their own efforts than anywhere else, there is still a need for state assistance:

Without such support, citizens must often choose between passive acquiescence and hysterical appeals to the mass media for publicity. With government support, citizens can sharpen their own understanding of complex issues before they make a case to the bureaucracy. The playing field (between producer and consumer interests) may not be equalized, but it does become more equal. (Gormley 1991)

Decades ago in Australia the argument for state assistance being provided to public interest groups was well articulated in the report of the Royal Commission into Australian Government Administration (1976). Appendix 2D of the Report specified that to receive such assistance:

citizens' groups should meet the following criteria:

- they represent certain interests deemed worthy of support; especially of the economically and socially deprived and the public at large;
- they are properly constituted;
- the funds are used for specified purposes;
- the group's accounts are audited;
- the group report on how the funds were spent.

The Commission recommended (R90) that a special neutral agency be established to provide this assistance. This has not been implemented, but all governments since then have given financial assistance to consumer organisations amongst others. It is critical that while some of this assistance has been given in response to particular project proposals, organisations have received grants-in-aid to provide general support for their operations and activities that they independently decide to undertake from time to time. This has meant, for example, that they have been able to advocate policy positions not favoured by the government of the day.

Pursuant to Objective 1 (e) of the Guidelines governments of all countries should satisfy themselves consumers' associations have the resources needed to perform a strong advocacy role. It would be useful if there were some elaboration of Objective 1(e) on the question of resourcing. There has always been some reservation amongst CI (IOCU) members on the question of state support for consumer organisations. When the guidelines were written the influence of the large product testing, information selling consumer organisations of the north, which were very jealous of their independence from government, may well have been the reason why the Guidelines are silent on the matter of government funding. If the Guidelines had tackled the question, and had set out some principles on government funding to limit influence on consumer organisations, the consumer movement might well be a larger global force today than it is.

Especially in developing countries there are many demands on government funding. But the improvements on efficiency and equity of markets that a strong national consumer movement can achieve multiply many times the value to the community of providing such funding.

Having said this it is also appropriate for funding from international donors to be sought. A 2000 CI paper *The management and funding of consumer organisations* was not very optimistic about funding of indigenous consumer organisations from donor

countries. The paper foresaw some constraint on the growth of development assistance (DA) funding globally. In the event, the last decade has actually seen substantial increases. The immediate future will likely see a pause in growth in DA from some countries due to the "Great Recession", but it is noteworthy that the UK has quarantined this funding from its budget cuts and that Australia is doubling its DA budget over the next couple of years.

Although there had been a general increase in funding to NGOs up to 2000 the paper warned that this might not continue. The last decade has seen some greater caution in NGO funding due to some practical problems, but DA through NGO continues to be seen as potentially efficient and effective especially to avoid corrupt misallocation of funds. The paper probably correctly suggested "Donors will tend to concentrate their limited resources towards NGOs in their own country where they have greater control and visibility to their publics." and are "likely to reduce the percentage of NGO project costs they will fund." A result of this approach is the growth of partnerships between donor country NGOs and those indigenous to developing countries. This is the mechanism that developing country consumer organisations should pursue and a number are.

The UK *White Paper on International Development – Eliminating World Poverty: Making Globalisation Work for the Poor* (DFID, 2000) stated: "While the market fundamentalism of the 1980s and early 1990s has been thoroughly discredited, it is now almost universally accepted that efficient markets are indispensable for effective development." The consumer movement may well not have promoted effectively enough the contribution it has made and can make to optimising the contribution of efficient markets to development. The potential for northern financial support for southern consumer organisations may be very under realised though CI has had some success in getting such support as have some national organisations notably the Consumers' Unity and Trust Society of India.

In 2002 I wrote:

In their extensive survey of the way markets are regulated at the global level, Braithwaite and Drahos (2000) find that key actors include governments, transnational corporations, labour organisations, international institutions and civil society organisations. They conclude that the rules adopted reflect the interests of the most powerful actors – "the global law-makers", that civil society organisations have been the weakest actors and that "Women, excluded national minorities and citizens of developing countries are the law-takers", thus the rules adopted do not operate in their interests. Of the actors involved, they decide that civil society organisations have the greatest potential to enhance the position of the law-takers. Amongst CSOs they see the international consumer movement, given its purposes and expertise in making the most of markets, as being in a very special position, indeed potentially "an NGO powerhouse of the next (21st) century.

They advance a demanding programme for the movement, which, inter alia, requires it to "globalise to consumer organisations in developing countries". They say, though, that for the movement to do all they ask "would require the funding leverage of a visionary foundation. (Brown 2002)

Efforts should grow to recruit that visionary foundation and to increase national and international government funding, but other mechanisms should be explored. One such that has worked in the USA, should work in other developed countries and might be appropriate in some developing countries, involves requiring utility services to provide for their customers to make a very small donation to a consumer organisation as part of the bills that they pay. Growing organisation membership, on which the 2000 CI paper places some emphasis, should always be a priority, but in most countries

members of consumer organisations are not likely to be numerous especially amongst lower income consumers who are the most vulnerable and in need of protection reforms.

Policy and Rule Making

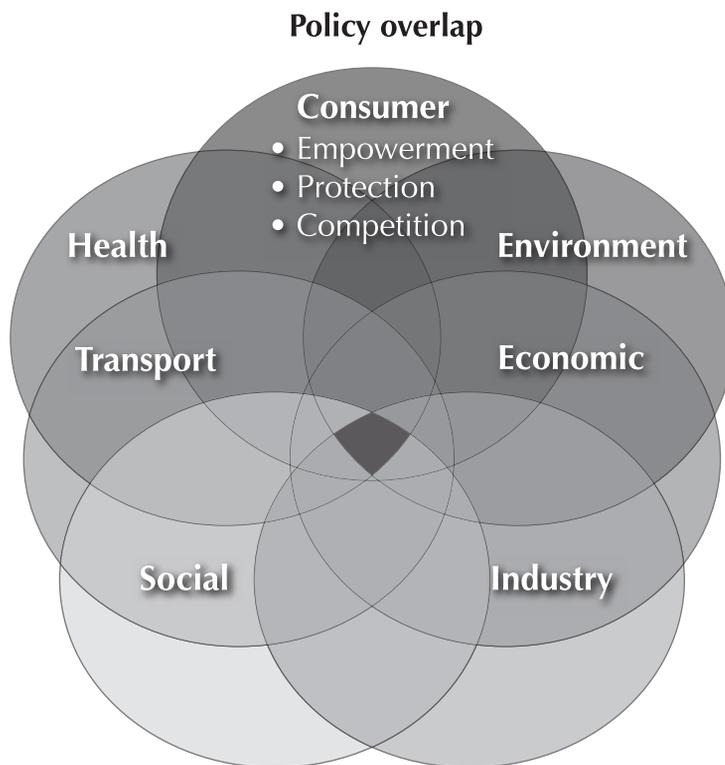
The UN Guidelines state:

II. General principles

2. Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.
3. The legitimate needs which the guidelines are intended to meet are the following:
 - (a) The protection of consumers from hazards to their health and safety;
 - (b) The promotion and protection of the economic interests of consumers;
 - (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
 - (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;
 - (e) Availability of effective consumer redress;
 - (f) Freedom to form consumer and other relevant groups or organisations and the opportunity of such organisations to present their views in decision-making processes affecting them;
 - (g) The promotion of sustainable consumption patterns.
4. Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment. All countries should strive to promote sustainable consumption patterns; developed countries should take the lead in achieving sustainable consumption patterns; developing countries should seek to achieve sustainable consumption patterns in their development process, having due regard to the principle of common but differentiated responsibilities. The special situation and needs of developing countries in this regard should be fully taken into account.
5. Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society, and reducing inequality within and between countries.
6. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty.
7. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter references to international standards in the guidelines should be viewed in the context of this paragraph.)
8. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

Consumer policy is clearly at least as complex as any other area of public policy and requires perhaps even more extensive whole of government approach. There is always

large overlap between areas of public policy, which of course is why interdepartmental committees, Cabinet coordination processes and whole of government approaches are frequently needed to make sound public policy. Consumer policy has more overlaps than most policy areas. Perhaps only defence policy is outside its circle. The diagram below illustrates this. Clearly a large part of the consumer policy role in government is informing other policy makers about the consumer interest, eg. through consumer advisory bodies or consumer impact statements.



Compliance Action and Consumer Support

In many countries consumer regulation enforcement is undertaken by a statutory agency which is not directly answerable to the government of the day. In some countries consumer protection and competition regulation are administered by a single agency and this model can be very effective. However, there is a problem of giving balanced attention to:

- big issues involving big powerful players – mergers, takeovers, cartels etc
- issues that are small, but affect many small players
- issues that affect few small players, but severely.

This can be a difficult management task perhaps in part because big powerful players can make more noise than small players. Some suggest that the only way it can be achieved is by having separate agencies. On balance, the advantages of a fused agency in terms of synergies and the value of understanding competition, consumer protection and empowerment issues in a particular market, outweigh the disadvantages.

A separation of responsibilities for consumer protection and competition regulation between the statutory officers of the agency is a possible way to ensure balance.

Community support for competition policy and regulation is sometimes weak as the benefits are not well understood making it politically difficult for governments to make the needed reforms and for laws to be effectively enforced. Where a single act of parliament provides for both consumer protection and competition regulation and where a single agency is responsible for enforcement of both kinds of regulation it is easier to build community understanding of the benefits of competition and thus support. The Australian Competition and Consumer Commission, for example, is invariably described in the media as the “consumer watchdog” whether its consumer or competition actions are being reported.

A Compliance Role for Consumer Organisations

In some countries, the UK for example, citizens’ consumer organisations have been given special legislated roles to bring complaints before regulatory agencies on behalf of numbers of consumers (in the UK these are called “Super complaints”) and this can be very effective in ensuring that agencies are dealing effectively with market place abuses. Another mechanism is to provide for consumer associations to have standing in litigation on behalf of classes of consumers. Such mechanisms need to be accompanied by a means of providing financial support to cover legal costs.

Non-statutory regulation

The UN Guidelines state:

B 26: Governments should, within their own national context, encourage the formulation and implementation by business, in cooperation with consumer organisations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organisations and other interested parties. These codes should receive adequate publicity.

and

E. Measures enabling consumers to obtain redress

32. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organisations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.
33. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.
34. Information on available redress and other dispute-resolving procedures should be made available to consumers.

In a number of countries non-statutory codes of conduct regulate industry sectors and often result in higher standards than are required by black letter law. These may be initiated by government or industry or citizens organisations. They are ideally administered by independent agencies. Some are governed by bodies with balanced industry and consumer representation. In other cases they can be administered by government officials. In Australia, for example, the national government ombudsman is commissioned to administer the code and deal with disputes for the postal and courier

industry and recently has been given a similar role in relation to private companies supplying education services to overseas students.

Such schemes are usually established by a deed amongst the companies involved. The great advantage to a complainant is that a complaint can be speedily adjudicated and remedial action and/or compensation, up to an amount specified in the deed, ordered by the administrator of the scheme.

Of particular importance is that these schemes are funded by the industries involved and thus are not a demand on the public purse. Industries covered usually include financial services, electricity and communications. In the context of developing countries such industries would tend to be those the products of which are mainly consumed by better off consumers. This means the cost of consumer protection in the markets of those industries can be contained to the participants in the markets. Therefore government funded consumer protection agencies can devote more of their resources to protecting lower income consumers.

Consumer Support through Education and Information

General Principle 3 of the Guidelines provides:

The legitimate needs which the guidelines are intended to meet are the following:

- (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice.

According to the Guidelines, government should encourage the development of general consumer education programmes, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making informed choices of goods and services and conscious of their rights and responsibilities. In developing such programmes special attention should be given to the needs of disadvantaged consumers. The UN Guidelines have some specific provisions relating to consumer education. They are:

- the introduction of consumer education in basic school curricula,
- consumer education programmes should be delivered in the mass media and
- that government should pay specific attention to problems of consumers in rural areas and the illiterate.

In F 35 of the UN Guidelines it is stated, inter alia "Consumer groups, business and other relevant organisations of civil society should be involved in these educational efforts."

In many countries, particularly developing countries there is no clear-cut policy with respect to consumer education. Many individual government ministries or agencies might undertake small though typically uncoordinated exercises in education but these are rare and limited. The majority of consumers in developing countries are not fully aware of the rights they possess or the nature of consumer protection legislation or its implementation mechanisms.

There are very large obstacles to overcoming the problems of inadequate consumer education. These include a low ratio of literacy particularly in rural communities

together with the high incidence of poverty. A critical issue is the lingering lack of awareness about consumer issues which prevent consumers acting in their own interests. It should also be noted that the most effective forms of consumer education are provided on the subject matter and at the time when issues are of concern to consumers. In this regard consumer education should be needs-based and should attempt to teach skills which go beyond dealing with issues immediately apparent.

Intergovernmental Cooperation – Regional and International

Part IV, International Cooperation, of the Guidelines is extensive. The UN Secretary-General's 1993 report noted a number of activities undertaken to develop regional and international cooperation to that date though mostly these were somewhat transient in character and such activities have continued to the present.

A significant cooperation mechanism, established 1992, is the International Consumer Protection and Enforcement Network (ICPEN) (Formerly called the International Marketing Supervision Network (IMSN)). This is an organisation composed of consumer protection authorities from almost 40 countries. The aims of ICPEN are:

- Protect consumers' economic interests around the world;
- Share information about cross-border commercial activities that may affect consumer welfare;
- Encourage global cooperation among law enforcement agencies.

ICPEN so far has only a few developing country authorities in its membership, but it is moving to bring more in. Mongolia, Papua New Guinea, Vietnam and Nigeria, for example, are in the process of joining. Its presidency, which is currently the Netherlands authority, will next go to the authority in Costa Rica. It is focussing on the following three work streams which all will result in benefit to developing country authorities:

- Gathering and analysing intelligence on regulation – what works and what does not work so well;
- Developing best practice on analysis of regulation; and
- Practical international enforcement cooperation.

ICPEN will produce best practice guides and run best practiced workshops in conjunction with its conferences, which are likely to be particularly useful to authorities in developing countries. (Kell 2011)

A limitation on ICPEN is that it operates on the basis of member authorities funding their own participation though the USA additionally contributes secretariat services. It would be useful for donor countries to contribute to a fund to support developing country participation.

Over the years CI itself has been active in various ways in facilitating intergovernmental activities. One such was the government group meetings at CI Congresses initiated at the 1987 Congress by John Wood, then Director of the Australian Federal Bureau of Consumer Affairs. This proved a useful mechanism, especially for organising twinning arrangements between north and south consumer affairs agencies, and should be re-established for future Congresses.

Establishment of facilities for cooperation and collaboration at the regional level would significantly accelerate building consumer policy and regulation capacity in developing countries. A proposal for an Asia Pacific Institute for Consumer Training, Information and Education was prepared in 1992 by Anwar Fazal (Fazal 1992). At Appendix 2 is an outline for an Asia Pacific Consumer and Competition Facility I proposed in a paper a decade ago. (Brown 2002) I have made a similar proposal, but limited to consumer policy and regulation and to ASEAN Member States, in connection with a current ASEAN project – Road-Mapping Capacity Building needs in consumer protection in ASEAN – ASEAN-Australia Development Cooperation Program II (AADCP II).

Some funding for such regional facilities would come from participating countries, but where some participating countries are less developed donor funding would be appropriate. In the ASEAN case Australia should be a major contributor.

Conclusion

While there is much still to achieve the Guidelines have made a major contribution to the advancement of the position of consumers around the world. The addition of the proposed provisions on access to knowledge would take the Guidelines a major step further. It is to be hoped that CI can soon recruit two or three UN member nations to sponsor these amendments.

2015 will be the thirtieth anniversary of the adoption of the Guidelines. CI should advocate a full review of the Guidelines, and the progress each member nation has made in their implementation, to be completed by that date. The process to add the access to knowledge provisions, however, should not be delayed due to this. Again, it would be necessary to get two or three member nations to champion such a review. A first step would be to seek funding for a scoping study. A number of countries and/or their citizens were instrumental in the Guidelines coming into being. Australia and a number of its citizens, especially the late David Harland, played a significant role and it should be one country prepared to contribute again.

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Appendix 1

What Consumer Laws Should Do

(Based upon Consumers International's Eight Consumer Rights)

Note: Reference to consumer laws includes related laws

The Right to Safety

Consumer laws should:

1. Protect consumers from products or services which are dangerous or unsafe, or whose use might cause injury to others, by:
 - Establishing a general duty of safety upon suppliers.
 - Banning the supply of unsafe goods.
 - Prescribing safety and information standards with which goods or services must comply.
 - Establishing procedures to examine products and services alleged to be unsafe.
 - Monitoring the market place for unsafe goods and services.
 - Warning consumers of the possible risks involved in the use of certain goods or services.

2. Ensure that information about unsafe products and services is collected and made available to consumers, by:
 - Establishing procedures to collect and disseminate information on particular goods and services identified as being unsafe.
 - Establishing procedures for the notification to authorities by consumers of alleged hazardous goods and services.
 - Requiring suppliers who become aware that their goods or services are unsafe to advertise any dangers.

3. Ensure that dangerous products are recalled from suppliers, by:
 - Requiring any manufacturer who recalls goods for safety reasons to notify relevant authorities of the recall.
 - Establishing procedures for the monitoring of voluntary recalls to ensure they are effective.
 - Allowing relevant authorities to order a manufacturer to recall goods, and to specify how those goods are to be recalled.
 - Giving relevant authorities power to investigate the actions of manufacturers to determine whether they have complied with laws relating to recalls.

The Right to be Informed

Consumer laws should:

1. Require all necessary information to be given to consumers about the goods and services they acquire, especially in relation to therapeutic goods and toxic products, by:
 - Requiring appropriate statements and warnings to accompany toxic products.
 - Regulating the supply of therapeutic goods and toxic products to ensure information is disclosed in a manner consistent with international best practice.
 - Establishing procedures to monitor national and international developments relating to therapeutic goods and toxic products.
 - Prescribing mandatory information standards to require particular information to be disclosed about particular goods not otherwise regulated.
2. Ensure consumers are able to compare different products, by:
 - Prohibiting deceptive packaging.
 - Requiring packages to clearly identify their price and their contents.
3. Protect consumers from conduct which is false or misleading, by:
 - Prohibiting conduct, in relation to the supply of goods or services to a consumer, that is misleading or deceptive, or likely to mislead or deceive, or which is unfair.
 - Prohibiting representations about goods or manufacturers and suppliers which are not true or which could mislead consumers.
 - Prohibiting any particular sales or marketing practices which act to the detriment of consumers.
4. Require all necessary information to be given to consumers about food and drinks in order to enable them to make informed decisions regarding health and nutrition.
5. Ensure that necessary information about goods and services is required to be accurate and comprehensible.

The Right to Choose

Consumer laws should:

1. Encourage consumers to acquire only the things they need, by:
 - Establishing procedures for community and consumer education about products.
2. Protect consumers from anti-competitive conduct and exploitation, by:
 - Ensuring manufacturers and suppliers do not abuse their powers.
 - Giving consumers rights to obtain redress for goods which are unsafe, unsuitable, defective or of poor quality.
3. Protect consumers by ensuring effective trade measurement practices and standards are adopted and enforced.
4. Prohibit direct sales and marketing practices without appropriate 'cooling off' periods.

The Right to be Heard

Consumer laws should:

1. Ensure consumers can participate in the development of policies which affect them, including giving consumer representatives access to the media, by:
 - Requiring administrative and political bodies responsible for matters affecting consumers to include members representing consumers.
 - Requiring laws and policies which affect consumers to be publicised before they are introduced to allow consumers to comment on them.
 - Establishing procedures to channel any comments or complaints made by consumers to appropriate authorities, and to monitor the response to those comments or complaints.
2. Facilitate the establishment of complaints handling systems in both the government and non-government sectors, including the involvement of consumer representatives in the process -ensure consumers have standing to take action in courts and tribunals, including as third parties, to protect consumer interests.
3. Enable consumers to take collective action before courts and tribunals.
4. Enable indigent consumers to enforce their rights by providing access to legal and financial assistance.

The Right to Redress

Consumer laws should:

1. Provide consumers with cost-effective, speedy and accessible means to enforce their legal rights, by:
 - Establishing a court or tribunal, with a simple procedure, to hear consumer complaints.
 - Prescribing procedures to ensure consumers know their rights and how to enforce them, particularly in relation to disadvantaged groups.
 - Ensuring that consumers are allowed to play an equal role in the resolution of their disputes.
 - Providing consumers with effective remedies and reasonable compensation if their complaints are found to be justified.
2. Provide consumers with a right to compensation if they are injured as a result of unsafe goods or faulty services.
3. Provide a mechanism through which consumers can channel their complaints and grievances to government, by:
 - Establishing mechanisms to collect and register consumer complaints and grievances.
 - Prescribing procedures to investigate complaints.
 - Prescribing procedures to monitor the number of complaints and grievances, and to report any results back to the consumer.

4. Ensure that consumers are properly compensated for any loss suffered if their consumer rights are contravened, by:
 - Ensuring any court or tribunal can provide a consumer with an appropriate remedy if it is established that the consumer's rights have been contravened.
5. Protect consumers from intimidation or harassment if they seek to enforce their rights.
6. Establish effective post-sale consumer protection, by:
 - Implying into contracts for the supply of goods and services, non-excludable warranties governing acceptable quality, fitness for known purpose, and, in relation to services, that they are rendered with due care and skill.

The Right to Consumer Education

Consumer laws should:

1. Be written in language which can be easily understood.
2. Establish procedures which ensure consumers are informed about their consumer rights, particularly consumers with special needs, by:
 - Prescribing mechanisms to monitor consumer awareness and use of their rights.
 - Introducing laws to protect particular groups with special needs as required.
3. Set in place mechanisms to inform consumers about how to enforce their rights.
4. Ensure consumers are aware of their consumer responsibilities.

The Right to a Healthy Environment

Consumer laws should:

1. Protect consumers from pollution of the environment, by:
 - Promoting the use of products which are environmentally friendly.
 - Encouraging recycling of consumer goods.
 - Requiring environmentally dangerous products to carry appropriate warnings and instructions for the safe use and disposal of the product.
2. Promote the use of non-toxic products where available, by:
 - Promoting consumer awareness of safer alternatives to toxic products.
 - Establishing procedures to monitor international developments and ensure products which are banned overseas do not find their way into national markets.
3. Ensure the social costs of pollution are minimised.
4. Encourage the promotion of ethical and socially responsible practices by the producers and suppliers of goods and services.

The Right to the Satisfaction of Basic Needs

Consumer laws should:

1. Promote the provision of information to consumers about products and substances which may adversely affect them, by:
 - Requiring therapeutic goods to carry information about safety, efficacy, and side effects.
 - Requiring any products containing hazardous substances to clearly list all its ingredients and to display appropriate warnings.
2. Protect consumers from unethical, unconscionable, and illegal practices especially in the supply or provision of: healthcare; housing and accommodation; education; water; energy; financial services; employment; retirement services; children's services; insurance; investment services; and food.
3. Protect the privacy of consumers, by:
 - Ensuring telecommunications and other communications are secure from unauthorised interference and are not used to provide or promote unsolicited commercial communications.
 - Ensuring personal information about consumers is used only for the purposes for which it is collected and with their knowledge and approval.
 - Ensuring that consumers have the right to access, amend and correct their personal information held by government or non-government entities.

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Appendix 2

Asia Pacific Consumer and Competition Facility APCCF

Background

There is a growing international consensus and recognition of the important role of consumer and competition policy and regulation in making markets work efficiently and equitably.

The mission of the APCCF would be to strengthen the institutional, organisational and technical capacity of countries in the region to implement effective consumer protection and competition regulatory regimes that are compatible where possible, with the overarching goal of achieving economic welfare, efficiency and social stability, but which also meet the specific requirements of individual economies.

The APCCF would provide focus for development activities, reinforce networks, exchange information on best practice and build technical and organisational capacity. The need for such a facility is highlighted by the following factors:

- Resources in the region generally tend to be insufficient to attack problems independently, which may result in the development of barriers to trade and investment between countries.
- Resulting need for deeper cooperation in the region.
- Existence of a large number of inconsistent, poorly framed laws across the region.
- There is currently considerable scope for increased coordination of technical assistance activities in the region. Assistance is being provided by a range of sources and duplication of efforts appears to be occurring. Such a facility could ensure that development and technical assistance efforts are not duplicated or wasted.
- Scepticism about the benefits of competition and unfounded fears about the effects of competition law and policy, particularly in relation to the implications of foreign ownership.

Goals

The goals of the facility would be to:

- Assist in sharing of specific technical skills for enforcement.
- Assist in education and technical training of people in policy development and regulatory agencies, business, the legal and other professions, academia and, most importantly civil society organisations – especially consumer organisations.
- Assist in development of effective national frameworks for consumer protection and competition regulation which, while not necessarily the same' are broadly compatible with each other.
- Assist in implementation or revision of consumer protection and competition regimes, as appropriate, so that they cover conduct such as:
 1. Monopolies, mergers, price fixing, horizontal and vertical restraints.

2. Food and product safety, scams such as pyramid selling and multilevel marketing schemes, misleading and deceptive conduct, including in relation to the misleading promotion of drugs.
- Assist in the process of deregulation and privatisation.
 - Develop mechanisms to facilitate access to information in the region about consumer protection and competition regulation.
 - Provide guidance on best practice policy development and administrative structures and processes in consumer protection and competition regulation and related governance areas.
 - Assist in capacity building of civil society consumer organisations.

The scope of operations of the resource centre could be expanded over time to include other areas of responsibility and to cover other economic activities that are being subject to privatisation or structural reform, including for example:

- Strategies to facilitate the detection and control of corruption.
- Consideration of economic governance issues.
- Economic reform of natural monopolies such as in gas and electricity distribution, telecommunications, ports, airports and railways.

In the longer term this facility could evolve into a body with a role similar to that of the European Directorate-General for Competition and could deal with regional, cross border problems.

Outputs

The functions of the facility would be to:

- Coordinate and implement meetings
- Provide education and training programs and skill development and augmentation directed at government officials responsible for both policy and administration, members of the judiciary, academics, business associations and civil society consumer groups such as:
 1. Scholarships for university study.
 2. Training courses.
 3. Staff exchange programs between agencies.
 4. Study visits to other countries.
 5. Work attachments with other agencies.
 6. Short term technical assistance programs.
- Collect information and maintain of a central register of laws and regimes applying in countries in the region and of laws of other countries and of relevant scholarly material.
- Provide short term consultancies for specific work requirements.

- On request, assist in development of bilateral or multilateral cooperation arrangements.
- Provide a forum for legislation review and assessment processes, with the overarching goal of promoting harmonisation of laws and practices in competition, consumer protection and utility regulation; and the promotion of market access and reduced barriers to trade.
- Research into common marketplace problems to implement market focused solutions.

Membership and Governance

Membership could be open, but it would seem appropriate to focus on the East Asia and western Pacific region.

It would seem appropriate for the facility to be governed by a board comprised of representatives of the participating countries plus some representatives of business and civil society consumer organisations.