

Third Ad Hoc Expert Meeting on Consumer Protection

Geneva, 22-23 January 2015

Contribution on:

Draft Resolution for the revision of the UNGCP

by

United States of America

The views expressed are those of the authors and do not necessarily reflect the views of UNCTAD

Draft Resolution for consideration by the General Assembly

Consumer Protection

The General Assembly,

Recalling Economic and Social Council resolution 1981/62 of 23 July 1981, in which the Council requested the Secretary-General to continue consultations on consumer protection with a view to elaborating a set of general Guidelines for consumer protection, taking particularly into account the needs of the developing countries.

Recalling further General Assembly resolution 38/147 of 19 December 1983,

Noting Economic and Social Council resolution 1984/63 of 26 July 1984, A/RES/39/248 of 16 April 1985 and Economic and Social Council resolution of .. 1999, E/1999/INF/2/Add.2, resolution 1999/7;

Recalling the GA Resolution..... on the Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules on Competition;

Recalling further the objectives formulated in the United Nations Millennium Declaration, notably the Millennium Development Goals, and the reaffirmation they received in the 2005 World Summit Outcome and the outcome document of the high-level plenary meeting of the General Assembly on the Millennium Development Goals in 2010, in particular in the pursuit of development and the eradication of poverty;

Noting that this year marks thirtieth anniversary of the adoption of the United Nations Guidelines for Consumer Protection as a thematic issue and acknowledges the enduring need for Member States to strengthen further the protection of consumers. The General Assembly remains committed to addressing the impact of development in markets and technology on consumers;

Reaffirming the validity of the Guidelines as a valuable set of principles for assisting interested countries in formulating and enforcing domestic and regional competition rules and regulations;

Pointing out that although significant progress has been achieved, with respect to the protection of consumers, at the normative level since the adoption of the Guidelines 1985, this progress has not been consistently translated into more effective and better-coordinated protection efforts in all countries and in all areas of commerce;

Bearing in mind that Consumer protection should be an integral part of the legal, regulatory and supervisory framework, and should reflect the diversity of national circumstances and global market and regulatory developments;

Recognizing that, despite the diversity of mechanisms and legal cultures that exist in Member countries, consensus exists on the need for common principles setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems;

Recognizing that, consumer confidence and trust in a well-functioning market for financial services promotes financial stability, growth, efficiency and innovation over the long term and that traditional regulatory and supervisory frameworks adopted by oversight bodies contribute to the protection of consumers;

Aware that, the recent financial crisis placed a renewed focus on consumer protection and on effective enforcement in the financial sector, resulting in the adoption of new guidelines for complaint-handling in the insurance field, and stronger supervision of the financial market;

Recalling that while it already exists in several jurisdictions, additional and/or strengthened dedicated and proportionate policy action to enhance financial consumer protection is also considered necessary to address recent and more structural developments;

Recognizing that, the authority for consumer protection enforcement agencies to obtain redress for consumers can be particularly helpful in addressing complex cross-border disputes involving fraudulent and deceptive commercial practices;

Recognizing that, certain principles set forth in this resolution may be relevant to mechanisms for consumer protection, dispute resolution and redress for consumers affected by breaches of laws in other policy areas and may therefore serve as the basis for future work in these areas;

Noting with satisfaction that electronic commerce can offer consumers new and substantial benefits, including convenience, access to a wide range of goods and services, and the ability to gather and compare information about such goods and services;

Noting further that certain special features of electronic commerce, such as the ease and speed with which businesses and consumers can communicate may put their interests at risk, and therefore it is important for consumers and businesses to be informed and aware of their rights and obligations in the electronic marketplace;

Recognizing that, rules regarding applicable law and jurisdiction in the consumer context could have implications for a broad range of issues in electronic commerce, just as rules regarding applicable law and jurisdiction in other contexts could have implications for consumer protection;

Recognizing that, Member countries have a common interest in promoting and protecting the fundamental values of privacy, individual liberties and the global free flow of information;

Considering that Member States, businesses, consumers and their representatives should devote special attention to the development of effective consumer protection in online commerce;

Noting that digital networks and computer technologies that comprise the electronic marketplace requires a global approach to consumer protection as part of a transparent and predictable legal and self-regulatory framework for electronic commerce;

Further noting that disparate national policies may impede the growth of electronic commerce, and as such, these consumer protection issues may be addressed most effectively through international consultation and co-operation;

Recognizing that, the importance of combating substandard, spurious falsely-labeled falsified or counterfeit products that pose threat to consumers' health and safety. The harm associated with the trade in counterfeit goods is significant. Counterfeit products can pose health and safety risks to consumers, resulting in decreased consumer confidence in the marketplace, lost tax revenue for the Member States and lost income for businesses who suffer from such infringement.

The General Assembly Plenary,

On the proposal of the Seventh United Nations Conference to Review the Set:

1. Decides to adopt the revised guidelines for consumer protection annexed to the present resolution thereto of which it forms an integral part;
2. Requests the Secretary-General to disseminate the guidelines to Member States and other interested parties;
3. Requests all organizations of the United Nations system that elaborate guidelines and related documents on specific areas relevant to consumer protection to distribute them to the appropriate bodies of individual States;
4. Recommends that, Member States implement this resolution and the guidelines as set out in the Annex;
5. Instructs the United Nations Conference on Trade and Development secretariat to exchange information on progress and experiences regarding the implementation of this

Comment ["1"]: The United States limits its comments to the proposed revisions, and takes no position on whether the existing text remains relevant or advisable.

resolution, review that information, and report to the General Assembly this subject on the occasion of the Eight UN Conference to Review the Set;

6. Further requests the United Nations Conference on Trade and Development to promote the revised United Nations Principles for Consumer Protection and to encourage the interested member states to create awareness of the many ways in which, Member States, business and civil society can promote consumer protection in the provision of public and private goods;

7. Decides to establish an intergovernmental Group of Experts on Consumer Policy within the Framework of an existing Trade and Development Board Commission of UNCTAD;

8. Decides that the necessary resources should be made available to the United Nations Conference on Trade and Development to carry out the tasks embodied in the revised Guidelines;

9. Requests the Secretary-General to continue to promote effective implementation of the Principles for Consumer Protection by member states and business.

Annex

GUIDELINES FOR CONSUMER PROTECTION

I. Objectives

1. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels, and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international co-operation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices.
- (h) To promote sustainable consumption.

II. Definitions and scope of application

2. Defining Consumer protection as policies, Member States laws or regulations and rules to protect the interests of consumers.

3. Further defining Consumer protection as the measures and guidelines by business and professional bodies to create a more equitable balance for buyers in the marketplace.

Comment ["2"]: The United States does not see the value of including definitions of "consumer protection" or "consumer," since members would apply (as applicable) the UNGCP principles to their consumer protection framework regardless of whether the definition matches that of other members'.

4. Further defining a "consumer" as a natural person, who is acting outside the scope of an economic activity. However, recognizing that Member States may adopt wider definitions in national legislation to meet specific domestic needs.

III. General principles

5. Member States should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out below. In so doing, each Member States must set its own priorities for the protection of consumers in accordance with the economic and social circumstances of the country, and the needs of its population, and bearing in mind the costs and benefits of proposed measures.

6. 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;
- (e) Availability of effective consumer redress;
- (f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them;
- (g) The promotion of sustainable consumption patterns;
- (h) The protection of consumers accessing financial services;**
- (i) The protection of consumers using electronic and mobile commerce**

(j) The protection of consumers' fundamental values of privacy, individual liberties and the global free flow of information;

7. 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.

Comment ["3"]: The United States reiterates that we believe that privacy is beyond the scope of the UNGCP, as this issues is being addressed in other fora. We believe that the inclusion of "privacy, individual liberties, and the global free flow of information" are beyond the scope of the UNGCP as most consumer protection agencies are not likely charged with ensuring individual liberties such as freedom of expression, freedom of association, etc., or with telecommunications and net neutrality.

8. 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.

9. Member States 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.

10. 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.)

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

IV. Principles for Good Business Practices

12. The principles establish benchmarks for good business practice for conducting online and off-line commercial activities with consumers online and off-line are as follows:

(a) Fair and equitable treatment

Businesses should deal fairly and honestly with consumers at all stages of their relationship, so that it is an integral part of the culture of a business. Businesses should avoid practices that cause any unnecessary consumer detriment to vulnerable and disadvantaged groups of both genders.

(b) Behaviour and work ethic

Consumers should not be subject to illegal, unethical, discriminatory, or deceptive business practices (such as abusive marketing tactics, abusive debt collection practices, or other behaviour that harms consumers).

(c) Disclosure and transparency

Businesses should provide complete and accurate information to consumers about the terms and conditions of all products and services, including fees and interest rates for these services. Businesses should update information about products and services provided to consumers, so that the products and services are clear and concise, easy to understand, accurate, and not misleading. Consumers should be able to access this information ~~easily and~~ without unnecessary inconvenience, especially the key terms and conditions.

(d) Education and awareness

Businesses benefit from developing programmes and appropriate mechanisms to help existing and potential consumers develop the knowledge and skills to appropriately understand risks, including financial risks and opportunities, make informed choices, and know how to access assistance when they need it.

(e) Protection of privacy

Businesses engaged in online and off-line commerce should protect personal information through appropriate control and security mechanisms and should take steps not to disclose information without client knowledge and consent. These mechanisms should define the purposes for which data may be collected, processed, held, used and disclosed ~~(especially to third parties).~~

Comment ["4"]: Again, the United States believes that privacy is beyond the scope of the UNGCP, as it is being addressed in other international fora.

Comment ["5"]: Would delete. This is redundant since "accessible" is in the sentence already.

(f) Complaints handling

~~Consumers should have access to~~ Businesses should make available adequate complaints handling mechanisms that are accessible, affordable, independent, fair, accountable, timely, efficient and based on the rule of law.

(g) Conflict of interest

Businesses and their authorised agents should have as an objective, to work in the best interest of their consumers and be responsible for upholding consumer protection. ~~Financial institutions should also be responsible and accountable for the actions of their authorised agents. Businesses and banks should have a written policy on conflict of interest, and ensure that this policy will help to detect potential conflicts of interest. When the possibility of a conflict of interest arises between the bank and the third party, this should be disclosed to the consumer.~~

Comment ["6"]: Clarification is warranted on this issue. What is being addressed? To the extent that it involves financial regulatory issues, it may not be appropriate for inclusion in the UNGCP. Perhaps the issue can be framed in terms of Disclosure and Transparency.

(h) Compliance with Consumer Laws and regulations

Businesses should comply with all aspects of relevant domestic and regional consumer laws and best practices as well as and cooperate with enforcement agencies and Member States in resolving consumer complaints.

V. Guidelines

13. The following guidelines should apply both to home-produced goods and services and to imports.

14. In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.

A. Physical safety

15. Member States should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

16. Appropriate policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as "distributors"), should ensure that while in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible.

17. Appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Member States should also consider ways of ensuring that consumers are properly informed of such hazards.

18. Member States should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

B. Promotion and protection of consumers' economic interests

19. Member States policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market place.

20. Member States should intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards. Consumer organizations should be encouraged to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing and service frauds.

21. Member States should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to Consumers, including means for the enforcement of such measures. In this connection, Member States should be

guided by their commitment to the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980.

22. Member States should adopt or maintain policies that make clear the responsibility of the producer to ensure that goods meet reasonable demands of durability, utility and reliability, and are suited to the purpose for which they are intended, and that the seller should see that these requirements are met. Similar policies should apply to the provision of services.

23. Member States should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost.

24. Member States should, where appropriate, see to it that manufacturers and/or retailers ensure adequate availability of reliable after-sales service and spare parts.

25. Consumers should be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts and unconscionable conditions of credit by sellers.

26. Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate.

27. Member States should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products.

28. Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, voluntary and transparent eco-labeling programmes and product information hotlines.

29. Member States, in close collaboration with manufacturers, distributors and consumer organizations, should take measures regarding misleading environmental claims or information in advertising and other marketing activities. The development of appropriate advertising codes and standards for the regulation and verification of environmental claims should be encouraged.

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

31. Member States should regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

C. Standards for the safety and quality of consumer goods and services

32. Member States should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time, in order to ensure that they conform, where possible, to generally accepted international standards.

33. Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

34. Member States should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

D. Distribution facilities for essential consumer goods and services

35. Member States should, where appropriate, consider:

(a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of the conditions under which essential goods and services are provided in rural areas;

(b) Encouraging the establishment of consumer co-operatives and related trading activities, as well as information about them, especially in rural areas.

E. Measures enabling consumers to obtain redress

36. Member States should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations 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.

37. Member States 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.

38. Information on available redress and other dispute-resolving procedures should be made available to consumers.

F. Education and information programmes

39. Member States should develop or encourage the development of general consumer education and information 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 an informed choice 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, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels.

40. Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.

41. Consumer education and information programmes should cover such important aspects of consumer protection as the following:

- (a) Health, nutrition, prevention of food-borne diseases and food adulteration;
- (b) Product hazards;
- (c) Product labelling;
- (d) Relevant legislation, how to obtain redress, and agencies and organizations for consumer protection;
- (e) Information on weights and measures, prices, quality, credit conditions and availability of basic necessities; and
- (f) As appropriate, pollution and environment.

(g) Access to knowledge

42. Member States should encourage consumer organizations and other interested groups, including the media, to undertake education and information programmes, particularly for the benefit of low-income consumer groups in rural and urban areas.

43. Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.

44. Bearing in mind the need to reach rural consumers and illiterate consumers, Member States should, as appropriate, develop or encourage the development of consumer information programmes in the mass media, or through delivery channels that reach such consumers.

45. Member States should organize or encourage training programmes or other resources for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes.

G. Promotion of sustainable consumption

46. Sustainable consumption includes meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable.

47. Responsibility for sustainable consumption is shared by all members and organizations of society, with informed consumers, Member States, business, labour organizations, and consumer and environmental organizations playing particularly important roles. Informed consumers have an essential role in promoting consumption that is environmentally, economically and socially sustainable, including through the effects of their choices on producers. Member States should promote the development and implementation of policies for sustainable consumption and the integration of those policies with other public policies. Member States policy-making should be conducted in consultation with business, consumer and environmental organizations, and other concerned groups. Business has a responsibility for promoting sustainable consumption through the design, production and distribution of goods and services. Consumer and environmental organizations have a responsibility for promoting public participation and debate on sustainable consumption, for informing consumers, and for working with Member States and business towards sustainable consumption.

48. Member States, in partnership with business and relevant organizations of civil society, should develop and implement strategies that promote sustainable consumption through a mix of policies that could include regulations; economic and social instruments; sectoral policies in such areas as land use, transport, energy and housing; information programmes to raise awareness of the impact of consumption patterns; removal of subsidies that promote unsustainable patterns of consumption and production; and promotion of sector-specific environmental-management best practices.

49. Member States 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. Member States should encourage recycling programmes that encourage consumers to both recycle wastes and purchase recycled products.

50. Member States should promote the development and use of national and international environmental health and safety standards for products and services; such standards should not result in disguised barriers to trade.

51. Member States should encourage impartial environmental testing of products.

52. Member States should safely manage environmentally harmful uses of substances and encourage the development of environmentally sound alternatives for such uses. New potentially hazardous substances should be evaluated on a scientific basis for their long-term environmental impact prior to distribution.

53. Member States should promote awareness of the health-related benefits of sustainable consumption and production patterns, bearing in mind both direct effects on individual health and collective effects through environmental protection.

54. Member States, in partnership with the private sector and other relevant organizations, should encourage the transformation of unsustainable consumption patterns through the development and use of new environmentally sound products and services and new technologies, including information and communication technologies that can meet consumer needs while reducing pollution and depletion of natural resources.

55. Member States are encouraged to create or strengthen effective regulatory mechanisms for the protection of consumers, including aspects of sustainable consumption.

56. Member States should consider a range of economic instruments, such as fiscal instruments and internalization of environmental costs, to promote sustainable consumption, taking into account social needs, the need for disincentives for unsustainable practices and incentives for more sustainable practices, while avoiding potential negative effects for market access, in particular for developing countries.

57. Member States, in cooperation with business and other relevant groups, should develop indicators, methodologies and databases for measuring progress towards sustainable consumption at all levels. This information should be publicly available.

58. Member States and international agencies should take the lead in introducing sustainable practices in their own operations, in particular through their procurement policies. Member States procurement, as appropriate, should encourage development and use of environmentally sound products and services.

59. Member States and other relevant organizations should promote research on consumer behavior related to environmental damage in order to identify ways to make consumption patterns more sustainable

H. Domestic Frameworks for ~~consumer protection~~ complaint handling

60. ~~Member States should develop~~ **Member States should encourage the development of fair, effective and transparent mechanisms to address consumer complaints, and to resolve consumer disputes arising from business-to-consumer transactions, including those that occur across borders. Member countries should ensure that such procedures are not used to protect domestic businesses from competition or applied unfairly.**

61. Member States should review their existing consumer protection laws and enforcement frameworks to ensure that they provide consumers with access to fair, easy to use, timely, and effective protection and redress against fraudulent, misleading, or unfair commercial practices without unnecessary cost or burden. In particular, Member countries should work towards ensuring that consumers have access to adequate dispute resolution and redress mechanisms. In designing laws, enforcement mechanisms as well as education and awareness initiatives, special consideration should be given to the needs of disadvantaged or vulnerable consumers.

Comment ["7"]: Section H as it is presented, conflates "domestic frameworks for consumer protection" with "domestic frameworks for complaint handling," the latter of which is only addressed here and is a more narrow concept. The OECD 2003 Cross-border Fraud Guidelines require countries to set up real CP agencies with robust enforcement powers. We would recommend switching the order of this section with G. ("Promotion of Sustainable Consumption"), which should include reference to the OECD recommendation indicated in the comment below. See OECD Cross-border Fraud Guidelines at II.A.

Comment ["8"]: As originally written, this sentence implies that government mechanisms should supplant non-government complaint-resolution mechanisms, such as consumer advocacy groups or non-profit business associations. The suggested edit is broad enough to encompass both approaches.

**I. Domestic Frameworks for Consumer Protection
and Mechanisms for consumer protection
enforcement**

62. Member countries should introduce and maintain an effective framework of laws, consumer protection enforcement agencies, institutions, practices, and joint initiatives designed to limit the incidence of fraudulent and deceptive commercial practices against consumers. Member States should work towards ensuring that consumer protection enforcement authorities have the human and financial resources to take action and obtain or facilitate redress for consumers, including monetary redress. Where appropriate, in seeking such remedies, consumer protection enforcement authorities may be assisted by other enforcement entities, such as private consumer organisations.

J. Dispute resolution and redress mechanisms

63. Member States should promote the amicable settlement of disputes, by encouraging the use of mediation, and by adopting measures that ensure a balanced relationship between mediation and judicial proceedings.

64. Member States should consider how to ensure effective redress for victimized consumers in cases involving fraudulent and deceptive or misleading advertising commercial practices.

65. Member States should consider participating in multilateral and bilateral arrangements to improve international judicial co-operation in the recovery of foreign assets and the enforcement of judgments in appropriate cross-border cases.

66. Member States should ensure that, the collective resolution procedures are transparent, efficient, and fair to both consumers and businesses.

K. Private sector co-operation

67. Member States should encourage businesses and industry groups to provide consumers with voluntary mechanisms to informally, and at the earliest possible stages, resolve their disputes and obtain redress, or compensation as appropriate.

68. Member States should encourage businesses to adhere to domestic and international standards developed through open and transparent multi-stakeholder processes pertaining to internal complaints handling, private third party alternative dispute resolution services, and customer satisfaction codes.

L. Dispute Avoidance and Awareness of Resolution Mechanism

69. Member States should co-operate with businesses, industry groups, and consumer groups

in furthering consumer and business understanding of how to avoid disputes, of dispute resolution and redress mechanisms available to consumers, and of where consumers can file complaints. In designing education and awareness initiatives on this topic, special consideration should be given to the needs of disadvantaged or vulnerable consumers.

70. Member States should work towards improving awareness of and access to dispute resolution and redress mechanisms, including alternative dispute resolution (ADR) and to enhance the effectiveness of consumer remedies in cross-border disputes.

M. E-commerce

71. Member States should harness the opportunities offered by electronic and mobile commerce to help facilitate economic development and growth based on emerging network technologies, while providing their citizens with effective and transparent consumer protection for electronic commerce. Member States should review existing consumer protection laws and practices to determine whether or not changes need to be made to accommodate the unique aspects of electronic commerce,

72. Member States should work towards enhancing consumer confidence in electronic commerce by the continued development of transparent and effective consumer protection mechanisms that limit the presence of fraudulent, misleading or unfair commercial conduct online;

73. Member States should work towards establishing;

- fair business, advertising and marketing practices;
- clear information about an online business's identity, the goods or services it offers and the terms and conditions of any transaction;
- a transparent process for the confirmation of transactions;
- secure payment mechanisms;
- fair, timely and affordable dispute resolution and redress;
- privacy and data security; and
- and consumer and business education.

74. Member States contemplating the adoption of e-commerce regulations may wish to study the OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce*, approved on 9 December 1999 and their future revisions, and where appropriate adhere to them as well as collaborate with other Member States in their implementation across borders.

N. Financial services

75. Member States should adopt measures to reinforce ~~and~~ policies protecting consumers in accessing financial services and integrate these policies with other financial inclusion and financial education policies;
76. Member States should provide consumers with access to remedies that do not impose a cost, delay, or burden disproportionate to the economic value at stake and at the same time do not impose excessive or disproportionate burdens on society and business.
77. Member States should put in place effective ~~and proportionate~~ financial consumer protection regimes, and consult all relevant stakeholders in the policy making process.
78. Member States may wish to examine the High-Level Principles on Financial Consumer Protection and where appropriate adapt them to their economic and social circumstances so they can adhere to them.
79. Member States should work towards establishing or encouraging, as appropriate;
- financial consumer protection regulatory and enforcement frameworks;
 - oversight bodies with necessary authority and resources to carry out their mission;
 - fair treatment and proper disclosure;
 - improved financial education,
 - responsible business conduct by financial services providers and authorized agents,
 - objective and adequate advice,
 - protection of assets and data including from fraud and abuse,
 - competitive frameworks,
 - adequate complaints—handling and redress mechanisms and policies which address, when relevant, sectoral and international specificities, technological developments and special needs of vulnerable groups.

O. Measures relating to specific areas

80. In advancing consumer interests, particularly in developing countries, Member States should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or maintained for product quality control, adequate and secure distribution facilities, standardized international labeling and

information, as well as education and research programmes in these areas. Member States guidelines in regard to specific areas should be developed in the context of the provisions of this document.

81. Food. When formulating national policies and plans with regard to food, Member States should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations and the World Health Organization Codex Alimentarius or, in their absence, other generally accepted international food standards. Member States should maintain, develop or improve food safety measures, including, inter alia, safety criteria, food standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms.

82. Member States should promote sustainable agricultural policies and practices, conservation of biodiversity, and protection of soil and water, taking into account traditional knowledge.

83. Water. Member States should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation.

84. Member States should assign high priority to the formulation and implementation of policies and programmes concerning the multiple uses of water, taking into account the importance of water for sustainable development in general and its finite character as a resource.

85. Pharmaceuticals. Member States should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies which could address, inter alia, procurement, distribution, production, licensing arrangements, registration systems and the availability of reliable information on pharmaceuticals. In so doing, Member States should take special account of the work and recommendations of the World Health Organization on pharmaceuticals. For relevant products, the use of that organization's Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce and other international information systems on pharmaceuticals should be encouraged. Measures should also be taken, as appropriate, to promote the use of international non-proprietary names (INNs) for drugs, drawing on the work done by the World Health Organization.

86. In addition to the priority areas indicated above, Member States should adopt appropriate measures in other areas, such as pesticides and chemicals in regard, where relevant, to their use, production and storage, taking into account such relevant health and environmental information as Member States may require producers to provide and include in the labelling of products.

87. Member States should formulate, maintain or strengthen national policies to improve the supply, distribution and quality of affordable energy. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation.

as appropriate, the contents of the Global Code of Ethics for Tourism in relevant laws, regulations and professional practices, and, in this regard, recognizes with appreciation the efforts made and measures already undertaken by some States.

The public and private stakeholders in tourism development should cooperate in the implementation of these principles and monitor their effective application.

Tourism professionals have an obligation to provide tourists with objective and honest information on their places of destination and on the conditions of travel, hospitality and stays; they should ensure that the contractual clauses proposed to their customers are readily understandable as to the nature, price and quality of the services they commit themselves to providing and the financial compensation payable by them in the event of a unilateral breach of contract on their part.

89. Existing utility consumer protections vary widely among Member states. Member States should formulate, maintain or strengthen national policies to improve rules and statutes dealing with provision of service, provision of consumer information, security deposits and advance payment for service, late payment fees, termination and restoration of service, establishment of payment plans, and resolution of disputes between customers and utility companies.

In addition to the priority areas indicated above, Member states are invited to periodically re-examine specific provisions to ensure that they adequately meet the purposes for which they were originally intended.

VI. International co-operation

90. Member States should, especially in a regional or sub-regional context:

(a) Develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection;

(b) Co-operate or encourage co-operation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such co-operation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration of regulations;

(c) Co-operate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality. Such co-operation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications.

Comment ["9"]: The OECD Cross-Border Fraud Guidelines, at Section III, has specific provisions on international co-operation that could be useful here.

88. Member States and other stakeholders in the tourism sector should consider introducing,

91. Member States should develop or strengthen information links regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products.

92. Member States should improve their ability to co-operate in combating cross-border fraudulent and deceptive commercial practices recognizing that co-operation on particular investigations or cases under these Guidelines remains within the discretion of the consumer protection enforcement agency being asked to co-operate.

93. Consumer protection enforcement agencies should co-ordinate their investigations and enforcement activity to avoid interference with the investigations and enforcement activity of consumer protection enforcement agencies taking place in other Member countries.

94. Consumer protection enforcement agencies should make every effort to resolve disagreements as to co-operation that may arise.

95. Member countries and their consumer protection enforcement agencies should make use of existing international networks and enter into appropriate bilateral or multilateral arrangements or other initiatives to implement these Guidelines.

96. Member countries should enable their consumer protection policy agencies in consultation with consumer protection enforcement agencies to take a leading role in developing the framework for combating fraudulent and deceptive commercial practices set forth in these Guidelines.

97. Member countries should designate a consumer protection enforcement agency or a consumer protection policy agency to act as a contact point to facilitate co-operation under these Guidelines. These designations are intended to complement and not replace other means of co-operation. Such designations should be notified to the Secretary-General.

98. Member States should work to ensure that the quality of products, and information relating to such products, does not vary from country to country in a way that would have detrimental effects on consumers.

99. To promote sustainable consumption, Member States, international bodies and business should work together to develop, transfer and disseminate environmentally sound technologies, including through appropriate financial support from developed countries, and to devise new and innovative mechanisms for financing their transfer among all countries, in particular to and among developing countries and countries with economies in transition.

100. Member States and international organizations, as appropriate, should promote and facilitate capacity-building in the area of sustainable consumption, particularly in developing countries and countries with economies in transition. In particular, Member States should also facilitate Cooperation among consumer groups and other relevant organizations of civil society, with the aim of strengthening capacity in this area.

101. Member States and international bodies, as appropriate, should promote programmes relating to consumer education and information.

102. Member States should work to ensure that policies and measures for consumer protection are implemented with due regard to their not becoming barriers to international trade, and that they are consistent with international trade obligations.

VII. International institutional machinery

(i) Institutional arrangements

103. An Intergovernmental Group of Experts on Consumer Policy operating within the framework of ~~an existing~~ the Trade and Development Commission of UNCTAD will provide the institutional machinery.

104. States should take appropriate steps at the national or regional levels to meet their commitment to the Guidelines;

(ii) Functions of the Intergovernmental Group on Consumer Policy

(a) To provide a yearly forum and modalities for multilateral consultations, discussion and exchange of views between States on matters related to the Guidelines for Consumer protection, in particular its operation and the experience arising therefrom;

(b) To undertake and disseminate periodically studies and research on consumer protection related to the Guidelines for Consumer Protection, with a view to increasing exchange of experience and giving greater effectiveness to the Guidelines;

(c) To conduct voluntary peer reviews of National Consumer Policies of interested countries;

(d) To collect and disseminate information on matters relating to the Guidelines overall attainment of its goals and to the appropriate steps States have taken at the national or regional levels to promote an effective implementation of its objectives and principles;

(e) To provide capacity building and technical assistance to developing countries and economies in transition for formulation and enforcement of consumer protection rules;

(f) To invite and consider relevant studies, documentation and reports from relevant organizations of the United Nations system, the OECD and other International organizations and networks;

(g) To collaborate closely with the OECD Consumer Committee and holding at least one annual interagency meeting to exchange information on work programs, topics for consultations and identify work sharing projects as well as cooperation in the provision of technical assistance, with a view to creating synergy and avoiding duplication of efforts

Comment ["10]: Isn't this best dealt with through existing "institutional machinery?"

Accordingly, more clarification is needed on the scope of the proposed IGE's authority. It is not clear whether a new body is necessary to coordinate policy with OECD, since this can apparently be carried out through existing mechanisms. For example, in the financial services space alone, there is the OECD Task Force on Financial Consumer Protection, the G-20 GPFI Subgroup on CFPPL, and FINCONET, the international organization made up of national supervisory authorities that have responsibility for financial consumer protection.

Even assuming such a body were necessary, it is also unclear whether it would be cost-effective to convene yearly meetings and a review of the guidelines every 5 years. There are already existing multilateral fora for exchanging information that would potentially obviate the proposed periodic reviews of guidelines and enable peer reviews of domestic consumer protection laws. It is also not clear what the budget implications would be such that the additional cost would be warranted.

Without more specifics, we consider it premature to take a position as to whether any new institutional mechanisms would be warranted, given that it remains unclear how this entity will be constituted, formed and structured; what powers it will have; how members can ensure that their views are conveyed through this mechanism; among other issues.

Comment ["11]: Reiterate that we believe it is premature to determine whether or not the creation of a newly-formed body is necessary.

(h) To make appropriate reports and recommendations to States on matters within its competence, including the application and implementation of the Guidelines;

(i) To conduct a periodic review of the Guidelines every five years upon consensus agreement
