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# Forum

*The following is an edited version of a speech given by Deputy Chairman Allan Asher to the Africa Conference on Consumer Protection in Harare, Zimbabwe, on 30 April 1996.*

## **The UN Guidelines for Consumer Protection: extension and application to developing nations**



I would like to begin by reviewing the major elements and trends that provide a context for my comments on the guidelines.

First, consider the Uruguay Round of GATT and the establishment of a World Trade Organisation. This historic free trade agreement is expected to generate significant wealth within the world economy. But which world economy? It contains little likely to benefit the majority of African nations; and it may have especially negative impacts on sub-Saharan Africa. Yet there are grounds for optimism. An increasingly sophisticated transnational consumer movement can mobilise consumer power across the globe.

The recent consumer boycott of Shell related to its activities in Nigeria illustrates the potential for consumer activism on a global scale. Through concerted international consumer action, through the mobilisation of corporate interests, and through a conscious and vigilant application of the United Nations Consumer Protection Guidelines, it is possible to enhance African consumer welfare within the framework of GATT.

Meanwhile, in nations of diverse size, wealth and ideology, governments are seeking to divest themselves of infrastructure assets, such as electricity generation and water supply businesses. In the place of public funds comes global capital, driven as always by a quest for productivity and profit. This influx of global capital to traditionally public functions brings with it some easily identified risks. To what extent will consumers' access, indeed local business' access, to such essential products be maintained? What is to prevent price gouging on essential commodities? And how will safety and public health be guaranteed?

The UN Guidelines have much to say on these very issues. Their adoption and extension must be a priority if consumers, especially urban consumers, are to derive any benefit from the privatisation of public utilities.

Technology, as always throughout history, carries great promise as well as the seeds of danger. As communications technology continues to shrink the globe, and new agricultural technology expands world food stocks, we know there is a down side: new diseases constructed in a laboratory have pandemic potential, other diseases cross species' lines in the wake of dangerous agribusiness practices, inherently dangerous factory systems are 'exported' to the Third World by First World capital and, on occasions, such as Bhopal, their danger is realised. Meanwhile thousands of unskilled or low-skilled jobs are lost to the advancing machines.

The other side of the technology coin, however, is the rising awareness of industrialised nations of the consequences of their actions (e.g. the movement for ecologically sustainable development can no longer be denied). And the tools of technology are exploitable by an increasingly information-rich international consumer movement.

All these trends may be seen as part of an overall movement toward a 'global marketplace', with serious implications for all actors in it.

### The global marketplace

Today's corporation — whether defined as 'transnational' or not — competes for markets and profits in a globalised environment. Even if it chooses to operate within a domestic market, it faces foreign rivals. And the modern transnational corporation (TNC) is different from its predecessors: rather than being governed by a 'head office' in a given country, the modern TNC is far more likely to be a number of distant groups of workers linked only by a 'brand'.

These TNCs are in a position to achieve what no government, or set of governments, can: they can contribute to the realisation of a core set of human rights values in every territory in which they operate. Our argument is that the UN Guidelines provide a workable statement of at least part of that core value set, and that TNCs can be a singularly effective vehicle for spreading such values. This is the other, positive side of what has been called 'Coca-Colonisation'.

Today's First World consumer faces a bewildering array of choices for almost every product he or she purchases. The choices they make tend to be more informed, due to the technological revolution, though products are necessarily more complex. But more and more often those choices will reflect the consumer's preference for the corporate good citizen and for environmentally sound products; all of which means that, over time, corporate adherence to the values expressed in the UN Guidelines should have a dollar value.

The African consumer, considered broadly, is less empowered and driven by other needs and priorities. Nevertheless it is likely that the African consumer movement will secure welfare gains by forming alliances with its global

counterparts. The African consumer, one might generalise, will be more concerned with issues such as food security than with sustainable development. But the UN Guidelines, in the context of a globalised market, can deliver on this front. For example, public activism can not directly influence the stock of essential commodities available for distribution; but it can, as it did in Southern India,<sup>1</sup> expose and stamp out corrupt practices in the distribution of those commodities.

Consumer education, one of the most important of the guidelines, can be a key contributor to improving the welfare of the rural poor in Africa or elsewhere.

### Consumer protection in the global market

Consumer protection used to dwell on the fringes of national and economic policy making. Consumer activism used to be concerned with gaining redress for defective products, and little else. This is no longer the case, as the consumer movement recognises the potential for genuine positive outcomes through the application of market forces and competition policies, and as policy makers come to realise that the consumer interest is one, arguably the best, unifying principle for disparate policy goals.

The language of the debate has changed, and with it the focus of the debate. But this momentum must be maintained. An important step, both conceptually and practically, is to maintain the links between the consumer movement and its two 'bedfellows': the environment and labour.

Consumption is the most obvious reason for environmental degradation, and environmental issues influence consumption choices. The bond between the consumer and environment movements is axiomatically unbreakable. And this is recognised at the highest institutional level, the United Nations, where consideration of the renewal and/or updating of the

1 Tiphagne, H., 'Essential commodities and the rural poor in Tamilnadu', in Suplido, M.L.B. (ed.), *Empowering Rural Consumers*, Consumers International, 1995.

Guidelines for Consumer Protection is conducted under the auspices of the UN Commission on Sustainable Development.

It was organised labour that gave tangible support to the early consumer movement. And it is clearly impossible to consider consumption issues without at least recognising their industrial implications (e.g. the purchase of products where the producer is involved in unsafe or exploitative use of labour). These links must be maintained, and built into the dynamic alliances proposed below.

Disadvantaged consumers are, and must remain, the focus of consumer policy, whether they be a disadvantaged group in an affluent country or citizens of a disadvantaged country. The development of low-cost, accessible options for education, redress etc. must benefit the impoverished consumer if the guidelines are to have any meaning at all.

### **The law and its limits**

Historically, sovereign governments have dealt with 'wrongs' by legislating against them. One problem with this is that a national government's power to deal with wrongdoing against its citizens by persons in other countries is circumscribed. Moreover, differences between the laws of neighbouring countries (and in the global economy, who is not a neighbour?) can be and are exploited by unscrupulous businesses.

The need for international cooperation in dealing with unfair trade practices and the like is quite clear, and made more pressing by the communications revolution and the rise of the global marketplace.

Another common error is to suppose that by merely enacting a law a government has dealt with the problem that law addresses. The most carefully drafted law is but ink on paper if it is not accompanied by a mechanism that allows those who are wronged direct, affordable access to a court (or its equivalent) wherein justice is delivered, and/or by a publicly funded

enforcement champion. We may think of these two things as comprising the enforcement infrastructure which implements 'good' laws.

But the 'enforcement infrastructure', while essential, must be realistic. To impose total government supervision of every consumer transaction — 'full-on' regulation — is not. It hampers the initiative of business, frustrating it with unnecessary red tape and adding cost burdens which the consumer must meet in the end. And it must invariably lead to the corruption of officials who are, equally invariably, underpaid.

The standard alternative to this had been deregulation — an equally impractical alternative when overall welfare is the objective. Left entirely alone, unethical businesses will become involved in unfair or restrictive practices, in deception and naked exploitation of customers and the manufacture of sub-standard goods; and businesses that were initially ethical will join in such practices just to survive.

The answer is, for the most part, the use of 'responsive regulation'.<sup>2</sup> This approach develops and applies laws only to the extent these are necessary, relying in large part on the corporate self-interest of business to set up voluntary self-regulatory initiatives and internal compliance programs in those market sectors with a reasonable to high propensity to comply with ethical and legal principles. Education and cooperative action become priorities of the public agency responsible for market regulation, on an equal footing with enforcement through the courts.

### **Institution building**

As all the above observations suggest, the appropriate stance for the consumer movement in its dealings with business is likely to be cooperation (with government bodies as the third limb of this policy partnership). The commonality of consumer and business interests in many instances must be recognised and fortified. Opposition should be reserved for

2 Ayres, I. and Braithwaite, J., *Responsive Regulation*, Oxford University Press, 1992.

those enterprises, transnational or otherwise, which persistently infringe human rights in general and the UN Guidelines specifically.

As an operating principle, TNCs should ensure that their activities in developing countries subscribe to the same ethical norms as in their 'home' countries (although the 'home' concept is increasingly nebulous: see above). And, as a matter of experience, many of them do. TNCs are often 'better' corporate citizens than the majority of local businesses. But TNC abuses are also well known, and the need for creative interaction tempered with vigilance is clear.

There are a variety of forums for dialogue and interaction with and among global businesses. One noteworthy example is the International Chamber of Commerce, whose Code on Sustainable Development is exemplary; it includes a commitment to technology transfer, environmental restoration, and full and frank information sharing in relation to any hazardous operations or products. And there are bodies such as UNCTAD, and the OECD Committee on Consumer Policy, where such dialogue is encouraged (though it is not always easy!).

The UN Guidelines themselves amount to a useful common ground for international cooperation, and it may be hoped that the process of extending and updating them becomes a vehicle for constructive dialogue.

### **The UN Guidelines**

It is difficult to appreciate in the 1990s just what a radical proposal the UN Guidelines were when first drafted in 1974. And who could then have predicted their success? After their adoption by the UN General Assembly in 1985, the guidelines have enjoyed broad acceptance by every government, and aroused an absolute minimum of controversy — an unusual outcome for any United Nations' initiative.

But comfortable acceptance is not enough. While the UN, reviewing the guidelines, found that they had had an impact in promoting 'just, equitable and sustainable economic and social development', there is clearly more to be achieved.

The main role of the UN Guidelines today is in the provision of a framework. Governments use this framework to build up consumer protection policies, institutions and legislation (especially in developing and newly independent nations), or to measure the effectiveness of steps already taken.

Containing as they do a framework for policy development, the guidelines have a clear relevance to the emerging nations of Africa. They also provide, as suggested earlier, a set of ethical norms which many TNCs adopt in their dealings with other nations. Thus many of the perceived risks of TNC engagement with a given country can be minimised, and the benefits maximised through a mutual understanding of, and commitment to, the guideline principles.

The shortcomings of the guidelines are to be expected after 10 years of application in a rapidly changing world. Among the many improvements I could suggest are:

- a more explicit linkage of consumer and environment policies within the guidelines;
- a direct, practical linkage to the real-world activities of corporations, with genuine sanctions for serious breaches; and
- the development of a cooperative, functional international network to tackle trans-border issues.

But there are many, many more improvements which I hope others will suggest.

### **Extending the guidelines — issues**

The TNCs are here. They are not the monsters we thought them to be. But they could do better.

The failure of all efforts to establish a UN-endorsed code of conduct for TNCs is a matter of history. Yet, for the most part, TNCs have not excessively abused their enormous financial and political power. The fact that there are exceptions to this broad statement underlines the need for an explicit linkage of the value statements that are the guidelines to the actual activities of global corporates. A mechanism to make this link is urgently needed.

Free market philosophies now dominate the global economic debate. Generally speaking, the free market delivers significant benefits by comparison with other systems. But there needs to be a recognition by both sides of the production–consumption equation that there is another side which has legitimate interests. Suppliers must recognise the consumer interest in issues such as the environment, safe working practices and fair pricing. The consumer movement must recognise that businesses are established to make a reasonable profit. Without this mutual recognition, the partnership of interests discussed above will be stillborn.

Predatory business practices cross borders. Governments lack the ability to deal with foreign predators. The first priority for regulators and the consumer movement must be the establishment of international networks to coordinate action against the transnational offender. While the UN Guidelines have moral weight and (as I argued earlier) constitute a useful framework, there is an undeniable need to flesh them out with a credible enforcement mechanism.

Consumer policy is now a mainstream economic issue. But it is essential that this position be maintained and strengthened. Where there is a conflict between two policies, the consumer interest is a better mechanism than most by which to reconcile them, or to choose between courses of action. The reason for this is the same as first stated by John F. Kennedy over 30 years ago: 'We are all consumers'.

As noted earlier, development of the UN Guidelines is the responsibility of the Commission on Sustainable Development. This amounts to an administrative recognition of the linkage between these two streams of thought: consumers' environmental preferences can be most forcefully expressed through their consumption choices, and consumption decisions are the basis for much environmental degradation. At some point, First World overconsumption will have to be addressed; it may well be that a renewed set of UN Consumer Protection guidelines will be the vehicle for this.

### **Extending the guidelines — process**

Examining the current state of international business regulation, we can see that there are the UN Guidelines and a host of other multilateral agreements which consumers would accept and approve. These include:

- Agenda 21 (Rio Earth Summit);
- OECD standard on environmental claims;
- UNCTAD Multilateral Agreed Principles for Restriction of Anti-Competitive Business Practices; and
- OECD Guidelines for Multinational Enterprises.

Linking the UN Guidelines to these agreements seems to me the simplest and most promising immediate step towards improving them. There are two ways in which this might be done. The first is to maintain the guidelines as a statement of principle and import other multilateral agreements as 'schedules'. The second is to expand the guidelines themselves to include these issues. Whichever is chosen, there also needs to be a mechanism to incorporate future agreements and an international regulatory network to give the arrangement some 'teeth'.

### **Conclusion**

While it is abundantly clear that the UN Guidelines for Consumer Protection have had a major impact on the global economy over the past 10 years, it is equally clear that they must be updated for the next millennium. I have argued that this updating should involve expansion to include consumer concerns arising from the new global marketplace and our deteriorating environment, a direct linkage to the activities of corporations and a credible international enforcement mechanism.

These outcomes are most likely to be achieved through partnerships/alliances. Many of these alliances — between governments and non-government organisations (NGOs), between NGOs and ethical businesses, between ethical businesses and governments, and so on — have yet to be established. The challenge for us is to begin forging these alliances now.