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INTERNATIONAL CO-OPERATION AND CO-ORDINATION WITHIN THE UNITED NATIONS SYSTEM

Consumer protection

Report of the Secretary-General

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INTRODUCT ION

By resolution 1981/62 of 23 July 1981, adopted at its second regular session of 1981, the Economic and Social Council requested the Secretary-General to continue consultations on consumer protection with the aim of pursuing, <u>inter alia</u>, the elaboration of a set of general guidelines for consumer protection, taking particularly into account the needs of the developing countries and, in light of his findings, to submit to the Council at its second regular session of 1983 a report with appropriate proposals, covering, <u>inter alia</u>, the possibility of convening an intergovernmental meeting on the guidelines.

Chapter I of the present report contains a set of draft guidelines which take as their point of departure the conclusions of the earlier report of the Secretary-General on consumer protection $(E/1981/75) \cdot 1/$ The guidelines also draw on the relevant international legal instruments and the work of international organizations relating to different aspects of consumer protection, as well as on the findings of the intergovernmental regional consultation which took place at the headquarters of the Economic and Social Commission for Asia and the Pacific in June 1981.

The draft guidelines have been revised in the light of comments provided by Governments in response to a note verbale sent to them by the Secretary-General on 17 September 1982. A summary of these comments appears in chapter II below.

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The draft guidelines represent an initial attempt to create an international framework within which national consumer protection policies and measures can be worked out. They are also intended to assist the international community in its consideration of the question of consumer protection policy and to further international co-operation in this field.

It is important to emphasize at the outset that the formulation of specific legislation and measures with respect to consumer protection is a prerogative of Governments, to be carried out in the light of the requirements and the economic, social and cultural conditions of individual countries, and in accordance with their administrative and legal systems. Furthermore, the guidelines should not in any way interfere with the development of more specific international standards and instruments on subjects related to consumer protecion, but rather should encourage further work, by pointing out the importance of international agreements already adopted or being negotiated.

As to the scope of the guidelines, they focus first on the physical safety of consumers and the protection of their economic interests, and then go into the related questions of safety and quality standards, distribution facilities, consumer redress and consumer education and information. Special measures are proposed for the areas of food, water and pharmaceutical products because of their importance to developing countries. Finally, the guidelines deal with international co-operation on consumer protection.

Protection of the health and physical safety of consumers and their economic interests is obviously of primary importance. This is generally reflected in national legislation on consumer protection, as well as in the specific recommendations and decisions adopted by various international bodies, which, as noted above, form a basis for the guidelines. The Food and Agriculture Organization of the United Nations/World Health Organization Codex Alimentarius Commission, for example, which promotes consumer protection in regard to food and facilitates international trade in food, has, inter alia, recommended a number of international food standards and limits for additives and contaminants in food, and In 1975, the World has drawn up a code of ethics for international trade in food. Health Organization (WHO) adopted a Certification Scheme on the Quality of Pharmaceutical Products moving in International Commerce, directed towards improving safety in the international trade of drugs and in May 1981 it adopted a code on the marketing of breast milk substitutes. WHO has also done extensive work on selecting drugs, called "essential drugs", which are essential and adequate for meeting the common health problems of the population. The work of the United Nations Environment Programme (UNEP) for the protection and enhancement of the environment is also related to the physical safety of consumers, as are the safety rules for civil aviation established under the auspices of the International Civil Aviation Organization (ICAO), and for maritime transport established by the International Maritime Organization (IMO).

The guidelines also draw on the work of several United Nations agencies and organizations which is specifically related to the protection of the economic interests of consumers. The United Nations Conference on Trade and Development (UNCTAD), for instance, has been working towards the elimination or control of restrictive business practices which affect international trade, particularly the trade and development of developing countries, and which also affect the price, quality and availability of goods and services. Both UNCTAD and the World Intellectual Property Organization (WIPO) 2/ have studied the implications of the industrial property systems for consumer interests, particularly as regards protection against misleading advertising practices. In the area of pharmaceuticals, WHO and UNCTAD are trying to reduce consumer costs by promoting the use of generic drugs rather than drugs in their proprietary form, whenever The draft United Nations Code of Conduct on Transnational Corporations, possible. which is currently being negotiated, contains a section on consumer protection. The General Agreement on Tariffs and Trade (GATT) has negotiated agreements for the liberalization of trade (such as the agreement on technical barriers to trade), which generally tends to increase production efficiency, lower prices and improve the quality of goods. By assisting consumer co-operatives, the International Labour Organisation (ILO) has sought to meet the basic needs of rural populations with limited access to goods and services by ensuring the supply of quality goods at reasonable prices.

Consumer education and information are also very important aspects of consumer protection policy since they enhance consumer awareness and help consumers to make informed choices. This is particularly important in developing countries, in rural areas especially, where the means of most consumers are more limited, illiteracy rates are higher and information on the quality, safety and range of products is often not systematically made available to consumers. It may be noted that the

United Nations Educational, Scientific and Cultural Organization (UNESCO) is, <u>inter</u> <u>alia</u>, encouraging the use of mass media for promoting consumer education and disseminating consumer information. Another important aspect of any legislation on consumer protection is provision for the consumer to obtain redress for loss or injuries suffered in consequence of using a particular product or service. This is because from the point of view of the individual consumer, there is little value in having a right by law without a legal means by which this right can be exercised.

In addition to the work being undertaken within the United Nations system, the guidelines also draw upon the work being carried out by international organizations outside the United Nations system, such as the Organisation for Economic Co-operation and Development (OECD) and the European Economic Community (EEC), and non-governmental organizations, including the International Organization of Consumers Unions (IOCU), the International Chamber of Commerce (ICC) and the International Organization for Standardization (ISO).

Finally, it may be noted that international co-operation with regard to consumer protection is needed because the development of a consumer protection policy no longer requires that measures be taken only at the national level. Since the world economy has become so interdependent, national consumer protection policies have now acquired international dimensions. This is mostly due to the international character of business practices, in that the marketing of goods and services is often done on a multinational basis and, in many cases, by transnational corporations, and also to the fact that problems encountered by consumers are often not exclusive to any one country. As a result, measures adopted to protect consumers in one country can have implications for consumers in other countries. For instance, consumer protection measures, such as national standards, intended to protect consumers in one country, can become barriers to international trade by making it more difficult for consumers in that country to choose among various goods and to purchase those goods at the lowest possible price, and they may also affect consumers in exporting countries by depriving them of the income generated by exports. However, the adoption of common international measures for consumer protection, such as international standards, certification systems and testing methods, can help prevent such measures from being used as obstacles to international trade. Another area where international co-operation is required is the exchange of information on banned and severely restricted products in order to enable importing countries to protect themselves adequately. guidelines deal with this question in the context of General Assembly resolution 37/137 of 17 December 1982 on protection against products harmful to health and the environment, by which the Assembly requested the Secretary-General to prepare a consolidated list of banned, withdrawn and severely restricted products.

It may also be mentioned that until recently international co-operation on consumer protection policies has been largely limited to developed countries. The guidelines are intended to encourage further interaction between developing countries, as well as between developed and developing countries, and to promote regional co-operation among States having similar economic and social conditions.

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It may be recalled that, by resolution 1981/62, the Economic and Social Council requested the Secretary-General to submit appropriate proposals on the draft guidelines on consumer protection covering, <u>inter alia</u>, the possibility of convening an intergovernmental meeting on the guidelines. As noted above, a note verbale was sent to Governments in September 1982, and 22 replies had been received as at April 1983. None of the Governments that replied advocated the convening of an intergovernmental meeting, and two of them expressed the opinion that there was no need to convene a meeting of this kind.

If the Economic and Social Council decides to adopt the guidelines and to disseminate them to countries, it would be for States to implement them according to their own priorities and needs. The Council might also wish to consider the possibility of elaborating further specific measures for consumer protection in particular areas in addition to the measures relating to food, water and pharmaceuticals that are contained in the present draft guidelines.

I. DRAFT GUIDELINES FOR CONSUMER PROTECTION

A. <u>Objectives</u>

Taking into account the interests of all countries, particularly the needs of developing countries; recognizing the social imbalance which exists between producer and consumer in economic terms, educational levels, and bargaining power; and bearing in mind the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:

(a) To assist countries in achieving adequate protection for their population as consumers;

(b) To facilitate production patterns geared to meeting the most important needs of consumers;

(c) To encourage standards of ethical conduct for those engaged in production and distribution of goods and services to consumers;

(d) To curb business practices at the national and international levels which adversely affect consumers (including abuses of a dominant position of market power by private and public enterprises);

(e) To stimulate the development of independent consumer groups;

(f) To further international co-operation in the field of consumer protection.

B. General principles

1. Governments should develop or strengthen and implement a coherent consumer protection policy taking into account the guidelines set out below. In so doing, each Government 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 legislation.

2. The legitimate needs which the guidelines are intended to secure are the following:

(a) The physical safety of consumers and their protection from potential dangers;

(b) The protection of the economic interests of consumers;

(c) Access of consumers to the necessary information to make informed choices according to individual wishes and needs;

(d) Consumer education;

(e) Availability of effective consumer redress;

(f) Freedom to form consumer groups or organizations and the opportunity of such organizations to be consulted and to have their views represented.

3. Governments should provide adequate infrastructure, including the establishment of public bodies, as well as financial facilities 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.

4. The introduction of new products, particularly in developing countries, must be assessed in relation to local conditions and with due regard for the existing production, distribution and consumption patterns of the country or region concerned.

5. Transnational corporations should conform to national and international standards for consumer protection, including the pertinent provisions of United Nations instruments.

C. Guidelines

1. Physical safety

(a) Governments should encourage manufacturers and distributors to ensure that products are safe, <u>inter alia</u>, through compliance with safety regulations, national or international standards and voluntary standards, and by the maintenance of safety records.

(b) The manufacturer should ensure that goods produced are safe for both intended and normal use. Suppliers, exporters, importers, retailers etc. (hereinafter referred to as distributor/s) should ensure that goods brought on to the market are safe and that these goods while in their care are not rendered unsafe, <u>inter alia</u>, through improper handling or storage, or through failure to provide the necessary information. Consumers should be instructed as to the proper use of the goods and should be informed of any risks involved, taking into account the nature of the goods, the people who will use them, and the environment in which they will be used.

(c) If manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and the public without delay.

(d) If a product is found to be seriously defective 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 it for another product. If it is not possible to do so within a reasonable length of time, the consumer should be adequately compensated.

2. Protection of consumers' economic interests

(a) Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. To this end, 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 are essential.

(b) Governments should adopt, review and/or strengthen, as the case may be, legislation relating to the control of restrictive and other business practices which may be harmful to consumers, including measures for the enforcement of such legislation. In this connection, Governments 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 United Nations General Assembly in resolution 35/63 of 5 December 1980.

(c) It is the responsibility of the manufacturer to ensure that goods produced for sale meet normal demands of durability, utility and reliability, and are suitable for the purpose for which they are intended.

(d) Governments 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.

(e) Manufacturers and/or retailers, as appropriate, should ensure the availability of reliable after-sales service and spare parts.

(f) Consumers should be protected from abuses by sellers in a dominant position of market power by, <u>inter alia</u>, legal sanctions against the use of one-sided standard contracts, exclusion of essential rights in contracts, and unconscionable conditions of credit.

(g) Promotional marketing and sales practices should be guided by the principle of fair treatment of the consumer. 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.

(h) Governments should encourage the adoption and implementation of national codes on marketing and other business practices to ensure that such practices are fair to consumers. Consumer organizations should participate in the elaboration and monitoring of such codes.

(i) Governments should regularly review the legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

(j) Governments should intensify their efforts to prevent practices which are damaging to the economic interests of consumers through systematically monitoring the adherence to established laws and standards by manufacturers, distributors and others involved in the provision of goods and services. Consumer organizations should be encouraged and supported in monitoring practices, such as the adulteration of foods, false or misleading claims in marketing and service frauds.

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

(a) Governments should, as appropriate, formulate or promote the elaboration and implementation of standards at the national and international levels for the safety and quality of essential 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 necessary, to generally accepted international standards.

(b) Where a standard lower then the generally accepted international standard must be applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

(c) In order to ensure implementation of standards, Governments should, as appropriate, take legislative measures, set up facilities or accredit laboratories to test and certify the safety, quality and performance of essential consumer goods and services, or support such facilities if they are operated by other institutions in the interest of consumers.

(d) Standards, certification systems, testing methods, administrative procedures and regulations should not be practised in a way that they become barriers to international trade.

4. Distribution facilities for essential consumer goods and services

(a) Governments should, where appropriate, consider adopting a specific policy for improving the distribution system for essential goods and services, particularly in rural areas. Such a policy could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of safety, quality and prices of essential goods and services in rural areas.

(b) The establishment of consumer co-operatives and related trading activities should be encouraged and supported, especially in rural areas.

5. Measures enabling consumers to obtain redress

(a) Governments should establish or maintain legal and/or administrative measures to help consumers 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.

(b) Governments should encourage the establishment of voluntary mechanisms, including advisory services and informal complaints procedures which can provide assistance to consumers.

(c) Information as to available redress procedures should be provided to consumers.

6. Education and information programmes

(a) Governments should develop or support 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.

(b) Consumer education should become an integral part of the basic curriculum of the education system, preferably as a component of existing subjects.

(c) Consumer education should cover such important aspects of consumer protection as:

- (i) Health, nutrition, prevention of food-borne diseases and food adulteration;
- (ii) Hazardous products, pollution and environment;
- (iii) Product labelling;
- (iv) Legislation and organizations for consumer protection.

(d) Consumer organizations and other interested groups should be encouraged to undertake education and information programmes, particularly for the benefit of low-income consumer groups in rural and urban areas. Such programmes should, <u>inter alia</u>, provide information about price, quality and availability of basic necessities and emphasize information on prices and quality in general, credit conditions, weights and measures, and redress of consumer grievances. Consumer ^{co-}operatives should include consumer protection as part of their education programmes for members.

(e) Bearing in mind the need to reach rural consumers and also illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programmes in the mass media.

(f) Governments should organize or encourage training programmes for educators, mass media professional and consumer advisers, to enable them to participate in carrying out consumer information and education programmes.

7. Guidelines for measures in specific areas

Food

(a) Governments, when formulating national policies and plans with regard to food production and distribution, should take into account the need of all consumers for food security. Such policies and plans should, <u>inter alia</u>, provide for adequate post-harvest handling, storage, processing and distribution and should also take into account problems arising from seasonal fluctuations in food supply and prices. Appropriate incentives for increasing food production and for its

wider distribution and marketing should be elaborated. In this connection, appropriate policies might encourage consumer and producer co-operatives.

(b) Governments should develop or improve the national strategy for food quality control, taking the following elements into account:

- (i) The food quality control infrastructure should be developed and strengthened, especially through national legislation on food standards, food testing laboratories and food inspection services, covering food production, processing, marketing and distribution, and the training of the necessary managerial and professional personnel;
- (ii) Food safety should be ensured through the development or strengthening, <u>inter alia</u>, of safety criteria, food standards, and effective inspection and evaluation mechanisms.

(c) Food contamination monitoring and control programmes should be established or strengthened.

(d) Governments should as far as possible adopt standards from the Food and Agricultural Organization of the United Nations/World Health Organization Codex Alimentarius or, in their absence, other international food standards. They should also accept and implement the Code of Ethics for the International Trade in Food adopted by the FAO/WHO Codex Alimentarius Commission.

(e) Governments should encourage consumer participation in food quality control activities, particularly in formulating policies and drafting food regulations and standards.

(f) Business practices affecting the processing and distribution of food products, especially the marketing of food products which are inappropriate to the dietary requirements and habits of developing countries, should be regulated, if necessary, in order to ensure that such practices do not conflict with consumer interests or government objectives in the area of food policy.

Water

(a) Governments should, within the goals and targets set for the United Nations International Drinking Water Supply and Sanitation Decade, formulate national policies and plans to improve the supply, distribution and quality of water for drinking and sanitation purposes, aiming at a general upgrading in the level of services provided to the population.

(b) In developing such policies, the following principles should particularly be considered:

 Governments should pay due regard to the choice of an appropriate level of technology compatible with prevailing economic and social conditions;

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- (ii) Education programmes should be established, especially in rural areas, to raise awareness of the importance of clean water and adequate sanitation as well as the appropriate use of available water;
- (iii) Community participation should be encouraged, especially in rural areas, in the construction, operation and maintenance of water supply and sanitation facilities.

Pharmaceutical products

(a) Governments should develop or, where they already exist, systematically monitor national drug policies as part of the country's health programme in order to improve the pharmaceutical supply and distribution situation, taking especially into account the work and recommendations of the World Health Organization. As part of this policy, Governments should review and adopt or strengthen, as appropriate, legislation and regulations applying to all drugs, which would cover such aspects as importation, production, distribution, manufacturing practices, and promotion and supply of information about drugs. Promotional activities by manufacturers should not conflict with the public health objectives of Governments.

(b) Measures should be taken at the national level to promote the use of essential drugs under their International Non-Proprietary Names (INNS), drawing upon the work done by the World Health Organization, and to encourage doctors to prescribe drugs by their generic names, where feasible. Measures should also be taken to provide health workers and consumers directly with authoritative independent information on the drugs.

(C) A national registration system for pharmaceutical products should be established on the basis of reliable information obtained, <u>inter alia</u>, through national institutions, bilateral and regional arrangements, and international organizations, particularly the World Health Organization.

(d) Drug procurement and distribution systems, including provisions for quality control, should be developed and/or strengthened.

(e) The quality of drugs should be controlled and/or protected at all levels in the distribution system. For imported products, use of the WHO Certification Scheme on the Quality of Pharmaceutical Products moving in International Commerce should be encouraged.

(f) Training should be encouraged and/or provided for personnel at all levels concerned with the distribution and marketing of drugs.

(g) Local production of drugs should be encouraged, where economically feasible. Consideration should be given to periodic reviews of licensing agreements concerning the local manufacture of drugs, and of policies with regard to the transfer of technology.

(h) Research on the use of local resources, including traditional remedies and medicinal plans should be promoted, especially where they can make a potential contribution to primary health care.

8. International co-operation

- (a) Governments should, especially in a regional or subregional context:
- (i) Develop or strengthen the exchange of information on national policies and measures in the field of consumer protection.
- (ii) Co-operate 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.
- (iii) Co-operate to improve the conditions under which essential goods are offered to consumers. Such co-operation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications.

(b) Governments should develop or strengthen information links regarding products which have been banned, withdrawn or severely restricted in order to enable importing countries to protect themselves adequately against such products. In this connection, Governments might wish to take into account General Assembly resolution 37/137 of 17 December 1982 on protection against products harmful to health and the environment.

(c) Special consideration should be given to ensuring that the quality of the products intended for different countries, and information relating to such products, does not vary from country to country in a way that would have detrimental effects on consumers.

II. SUMMARY OF GOVERNMENT REPLIES

A note verbale with the draft guidelines for consumer protection attached, was sent to Governments on 17 September 1982 asking for comments.

As at April 1983, replies had been received from 23 developed and developing countries, 3/ representing all continents.

A clear majority of the countries either supported the draft without further comment, or supported the draft while adding comments which mainly seek to develop specific topics further and make the guidelines more effective. Two Governments believed the draft already to be too detailed and thought that the guidelines should be limited to essential elements and generally accepted precepts of consumer protection policy. Three Governments were of the opinion that consumer protection is in principle an internal problem of countries and that it is a subject which only acquires an international dimension in the field of international trade, when it deals with the protection of the interests of developing countries as importers and consumers of industrial equipment, transport, communication media, food and other consumer goods. In the view of those Governments, United Nations involvement should be limited to the protection of the interests of developing countries in the sphere of international economic relations, especially from the negative impact of transnational corporations. One Government believed that self-regulatory mechanisms are often more effective, less costly and less cumbersome than government regulation in meeting consumer protection. Another Government thought that countries would benefit more from a study of the experience of other countries in the area of consumer protection and from bilateral contacts than from multilateral discussions on the subject. Other Governments stressed the need for countries to promote competition as a way of helping consumers.

Some Governments made proposals concerning topics which they wished to be included in the guidelines or to be treated more specifically, such as regulations covering conditions in credit contracts; explicit regulations aimed at countering malpractices and misleading advertising; rules ensuring that advertising contains adequate, correct and objective information; establishment of voluntary mechanisms for redress of consumer grievances; provision to consumers of information on the available redress procedures; mention of the topics of hygiene, nutrition, pollution, labelling and the environment in connection with consumer education; representation of consumers in the decision-making process affecting their interests; encouragement of competition in the market place in order to provide consumers with the greatest range of choices among products and services at the lowest cost; requirements for after-sale service not applicable to all manufacturers and/or retailers; importance to Governments of weighing the costs of consumer protection policies against the benefits to be derived from such policies; specific mention of consumer responsibility; encouragement of consumer organizations and other interested groups to undertake education and information programmes; and training programmes for consumer advisers. Two countries suggested deleting the guideline placing the burden of proof on the advertiser, while other Governments explicitly supported it.

Some countries made specific mention of the need for expanded international co-operation. It was suggested that the feasibility of international norms of production, including minimum quality of important products, as well as rules to secure safe packaging, should be studied; that rules to identify products by name and batch should be established; and that aid and technical assistance in installing and using laboratories for the testing of goods and in implementing consumer protection policies should be promoted. One country warned about exporting States that hold back information relating to potentially harmful products for reasons of protecting national interests.

Notes

 \underline{l} It may be recalled that in that report, the Secretary-General provided information on the background of consumer legislation and made an assessment of the numerous issues involving consumer protection.

2/ See WIPO, "The role of industrial property in the protection of consumers", (COPR/III/1), June 1982.

<u>3/</u> Australia, Austria, Belize, Byelorussian Soviet Socialist Republic, Canada, Denmark, German Democratic Republic, Germany, Federal Republic of, Greece, Guatemala, Malawi, New Zealand, Norway, Philippines, Poland, Spain, Sri Lanka, Swaziland, Sweden, Thailand, Union of Soviet Socialist Republic, United Kingdom of Great Britain and Northern Ireland and United States of America.

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