

Abhandlungen/Articles

E. Scott Maynes Consumer Protection: Corrective Measures

Abstract

The failure of contemporary economies to give consumers "what they really want" manifests itself in a set of "consumer problems" that give rise to the demand for consumer protection. The pivotal problems: monopoly, informationally imperfect markets, consumer dissatisfaction or grievances, the underrepresentation of consumers, disadvantaged consumers. This article deals with the entire spectrum of measures designed to eliminate or correct these problems. It suggests criteria for assessing any corrective measure and deals generally with the merits and drawbacks of regulatory and legislative approaches before considering specific corrective measures. The body of the paper focuses on specific measures, giving examples and citing advantages and disadvantages. The paper is summarized by posing the crucial questions in consumer protection on which policy-makers and citizens alike must make up their minds.

The demand for consumer protection arises because contemporary economies fail to give consumers "what they really want." An earlier article (Maynes, 1979) identified five causes: monopoly, informationally imperfect markets, consumer grievances/dissatisfaction, the underrepresentation of consumers, vulnerable consumers. This paper provides a critical review of the entire spectrum of corrective measures, giving examples and citing advantages and disadvantages. In organization, the discussion links corrective measures to the five factors giving rise to consumer protection cited above.

Before considering specific corrective measures, we deal first with criteria for assessing the effectiveness of any consumer protection measures and, second, with the merits and drawbacks of regulatory and legislative approaches. The paper is summarized by posing crucial questions in consumer protection on which policy-makers and citizens alike must make up their minds.

CRITERIA FOR ASSESSING CONSUMER PROTECTION MEASURES

Two criteria are proposed: appropriateness and efficiency. *Appropriateness* denotes whether a consumer protection measure will achieve its intended objective. A measure may fail on this criterion due to either (a) faulty economic analysis, or (b) faulty behavioral assumptions. Examples should make these ideas clear.

Interest rate ceilings on consumer loans exemplify *faulty economic analysis*. Both economic analysis and empirical research show that "too low" ceilings result in the denial of credit to the poor, even though the ceilings were adopted for the commendable purpose of making credit available to the poor at a reasonable price (Dahl, Graham, & Rolnick, 1977; Durkin, 1974). The economic analysis is straightforward. The poor tend to be "bad" credit risks. Low ceilings do not permit lenders

7. *The agency is armed with meaningful enforcement levers.* A \$5,000 fine to a giant, multi-national corporation, for example, is not a meaningful lever. The requirement that it devote 25 percent (for example) of its advertising budget to "corrective advertising" may be.

Institutionally, regulation has proved dynamic. The threat of it has spawned self-regulation and its malpractice has recently spawned deregulation.

Self-Regulation

What are the factors that lead firms in an industry to adopt self-regulation and particularly stringent self-regulation? Hunt (1975) suggests several. First and most obvious is the threat of government regulation. This threat increases with (a) the amount of government resources available for regulation, (b) the attention the industry gets, and (c) the extent of regulation in similar industry. Second, self-regulation is facilitated when it is seen as improving sales and profits in the industry. Third, the pre-existence of a strong, independent organization among industry firms, e. g., a trade association, makes self-regulation more likely. Once in place, its importance will be greater, the larger the percent of firms participating and the number of policies with which it deals (due to economics of scale).

Self-regulation at its best is exemplified by the Association of Home Appliance Manufacturers (AHAM) in the U.S. The industry produces "white goods" – dishwashers, refrigerators, etc. Its economic performance is commendable over the 1960-70 decade, being marked by declining prices, improved quality, and moderate rates of profit.

AHAM sets safety standards, thereby forestalling government regulation, improving acceptance of all its products (not just those affected by safety standards), reducing the threat of legal actions by injured consumers, and probably raising cost barriers to firms seeking to enter the industry.

For much the same reasons, AHAM sets performance standards (e. g., how much dirt a washer removes from clothing). In addition, member firms gain from economies of scale in product testing. (For a knowing discussion of the establishment of standards as an avenue to self-regulation, see Rosenberg, 1976).

Finally, AHAM in 1970 established the Major Appliance Consumer Action Panel (MACAP), an autonomous panel empowered to deal with consumer complaints not resolved by retailers and manufacturers. Aside from forestalling government intervention, MACAP provides feedback on product deficiencies to high level executives, likely affecting future product design. From the consumer viewpoint it has been highly successful with 95 percent of complainants satisfied and almost 100 percent compliance with MACAP recommendations by firms. Its cost was trifling: \$100,000 per year for a \$6 billion industry.

The Better Business Bureaus (BBB's) in the U.S. represent a less reassuring example of self-regulation. Started in 1912, they now number 142 and are the best known consumer complaint processing organization. But by several analyses they are "paper tigers," leaving many complainants weary and unsatisfied (Matthews, 1978; Rosenthal, 1972).

Their defect: They suffer a fatal conflict of interest, being financed by many of the firms against which consumer complaints are directed. Hence, they have neither the

will nor the power to say how a consumer-retailer dispute should be resolved. From the industry viewpoint narrowly construed, they have been successful, postponing until the 1960's the establishment of government complaint organizations. Why did the BBB's not adopt the more rigorous complaint resolution procedures of MACAP? Probably because such procedures were profit-reducing for the BBB's *retailers* and profit-augmenting for MACAP's *manufacturers*, especially when one adds in AHAM's standard-setting and certification programs.

Summing up, industry self-regulation can be effective, but success depends upon full participation, tough standards, and meaningful feedback from consumer grievances to industry policy. Effective self-regulation appears to be the exception, not the rule.

Deregulation

If some of the undesirable tendencies of regulators prevail, regulation could evolve to the point where regulators protect only the regulated rather than customers. Or, while not directly benefitting producers, regulation could in other ways become subversive rather than supportive of the consumer interest. Many consumer representatives seem to feel that this has occurred in the U.S. At the 1979 meetings of the Consumer Federation of America 4 out of 14 presentations were focused on deregulation as a "pro-consumer" policy.

Anyone contemplating deregulation must remain aware of the monopoly concerns that originally gave rise to the impetus to regulate.

LEGISLATIVE INTERVENTION

For purposes of this discussion, *legislative intervention* refers to the enactment of laws requiring no special enforcement resources, e. g., laws requiring druggists to post prices, or substituting no-fault for fault liability principles in automobile insurance.

The supreme merit of legal intervention is its scope: When it works, it changes conditions for everyone, including the disadvantaged. Like regulations, laws too must be scrutinized on appropriateness and efficiency grounds.

We single out problems with legal intervention as a consumer protection device.

A first problem is enforcement. For some laws – no fault, for example – gains to consumers or insurance companies are so great that they will utilize the courts to insure their enforcement. For others – the law providing for the posting of drug prices, for example – compliance will depend upon the self-interest of the affected party (the pharmacist) and his or her attitude towards complying with the law. Most emphatically, the small gains accruing to consumers will not be sufficient – unless they are "activists" – to induce them to see to it that druggists comply. In terms of the private costs of enforcement, some laws will fail the efficiency test.

A second problem arises from "information overload." The incentive of legislators to satisfy the multitude of "special interests" doubtlessly results in the passage of too many laws. So many that affected sellers and consumers alike may be unaware that a law exists. Thus, the seller may not comply and consumers may not utilize the

what changes might make it usable (Russo, 1977). Simply put, the scanning of 15 to 20 shelf labels to find the lowest unit price is too difficult. It requires too much effort and is error-prone. Organize the information and people will use it. Do this by making a list of brand-size variants of (say) peanut butter ordered in by-unit price. Post this list on the shelf face. This example underlines the need for research on how information is more likely to be made usable. It emphasizes the need for legislators and regulators to pay attention *not only to goals but to means as well*.

A second way information minima measures may fail the appropriateness test is illustrated by nutritional labeling. The problem here is consumer understanding. Some critics doubt that any compressed message on a label will be meaningful and fear that any label may mislead, regardless of whether its contents be ingredients (salt, corn, oil, etc.) or percent of recommended daily allowance of nutrients.

But an arresting piece of research (Padberg, 1977) suggests an avenue by which informational minima may pass rather than fail the appropriateness test – *for the “wrong” reason!* Padberg suggests that such minima may attain their goals, not because consumers use the information (quite the contrary, according to the studies cited!), but rather because the requirements of open data and nutritional labeling are taken seriously by the food processing industry. The heightened sensitivity of manufacturers and retailers leads them to revise their inventory control and product planning procedures so as to attain the freshness and better nutritional content sought by the laws. If this dynamic is generally applicable, it portends better value for money for many products, especially since widespread consumer support seems to insure the passage of laws specifying more numerous and more stringent information minima.

Consumer Product-Testing Organizations

There are about thirty-five major consumer product testing organizations in the world. All bear considerable resemblance to the original model, Consumers Union of the United States, publisher of *Consumer Reports*. Their chief activity is to publish results of laboratory tests and controlled use tests of consumer products as well as reporting on their members' experience with certain products and services.

As “corrective measures,” they differ in two major respects from most. First, while most consumer protection measures involve intervention by government, these product-testing organizations are mostly non-government cooperatives, controlled and financed by member/consumers. Second, they represent “generalized” consumer protection agents as described below.

Besides engaging in product testing, they try to initiate and influence consumer policy, further the consumer movement, engage in and promote consumer education, advance the legal position of consumers. Their means are multiple: the publication and dissemination of books, educational materials, film strips, films; lobbying, testimony, and litigation; the sponsorship and conduct of research; financial subsidies; the sponsorship of conferences; the production and dissemination of television and radio programming and commercials; the development of consumer advisory centers. For a detailed description of their activities, see Thorelli & Thorelli (1974); for a critical review of Consumers Union of USA, see Maynes (1976, chap. 5). We now review their achievements and limitations.

As institutions, the consumers unions have been successful. Where there was one until 1957, there are now thirty-eight. Typically, their periodicals are sold to 1 percent of the population in their country and they have an audience of 5 percent. Most are growing organizations with growing influence. Surveys show that their readers use their information and pay attention to their consumer policy recommendations and consumer education activities. Together they formed the International Organization of Consumers Unions (IOCU) in 1960 as a device for coordination and sharing of experiences. IOCU has 38 product testing organizations, 65 affiliated organizations, and an office in Penang to service the consumer problems of less developed nations. In each country the consumers union is considered its foremost consumer spokesman.

But their success has not been what they would have liked. Progress in combating informationally imperfect markets would have been achieved had the publication of product tests substantially narrowed the range of prices, quality held constant. This did not occur though there is evidence that in some cases the publication of product tests caused the redesign of some products and the withdrawal of others. A second limitation is that despite the mass circulation of their periodicals, they have not gained a mass political movement that they can readily influence.

A third limitation is that dissemination of product test information has been largely confined to printed publications. They have yet to master television or radio. Fourth, they have necessarily confined their attention to products distributed in national or regional markets. Fifth, though they have yearned to serve the poor, the evidence is that their publications and information are used mainly by highly educated, middle- and upper-income families. The poor are served only to the extent that the policy measures they advocate have been adopted and do serve everyone, including the poor.

A final limitation is financial. The almost total reliance of these organizations on sales of product-test magazines has constituted an upper limit on their activities and influence. A notable exception has been West Germany where Stiftung Warentest has received from 40 to 60 percent of its revenues from the government. Consumers Union of USA sought, unsuccessfully, to break out of this dilemma in 1974-76 by selling news segments to the television networks.

The consumers unions in each country and their international organization pose a consumer protection challenge. Should the consumers unions be given resources by government to disseminate consumer information and educational materials on television? It is possible that their activities would make markets less informationally imperfect, thus benefiting everyone including the poor. At a minimum, access to television and radio would enable them to reach more families who might become better off by obtaining better value for money in their purchases. The consumers unions would certainly represent an appropriate countervailing influence to powerful corporations and, perhaps, labor unions. While it seems clear that the consumers unions would accept free television and radio time, many – prizing their independence – may not accept a direct government subsidy.

The Local Consumer Information System

In essence, the proposed “local consumer information system” would do for local consumers and the local market what the consumers unions have sought to do for

correcting the grievance itself, e. g., replacing a part, tends to be small relative to the consumer's time-effort costs, and/or the legal costs involved in getting the condition corrected, and/or the initial quality control or production costs of avoiding it. This suggests that policymakers should favor corrective measures that encourage relatively grievance-free products and services even though it means higher initial prices.

A third consideration is that the costs of preventing grievances or the cost of correcting grievances will be born by consumers. The question that policymakers must face is: which consumers?

The concept of redress. When the grievance is entirely attributable to some failure on the part of the seller, *in principle* the redress of a grievance should involve:

1. The correction of the condition giving rise to the grievance.
2. Cash or in-kind compensation sufficient to offset costs to the consumer – the inconvenience, the lost time, payments for professional assistance (lawyer's fees) as well as the cost of secondary damages (for example, the damage to a second car as a result of a brake failure on *your* car would represent "secondary damage").

Avenues to Prevention

In general, any measure that increases the cost of correction to the seller-producer will provide an incentive to the seller-producer to avoid grievances in the first place.

A first corrective measure might be the enactment of a law requiring a seller-producer to compensate a genuinely aggrieved consumer fully for the time-effort and transaction costs incurred in seeking correction of his grievance in addition to correcting the original problem. Thus, costs to be compensated would include foregone pay, lost recreation time (compensated at his regular pay rate), transportation-mailing costs in seeking redress, lawyer's fees, etc.

Two corrective measures, government mandated product recalls and revised product liability rules, greatly enlarge manufacturers' responsibilities for the safety of products. Both impose the cost of correcting unsafe products on the manufacturer. Recalls are government-initiated and unconditional while product liability rules are privately initiated and place correction costs on the manufacturer only when a complaining lawsuit is successful. Both measures provide manufacturers with powerful incentives to make their products safer by either design or quality control. In the U. S. the scope of recalls has been very broad, involving hundreds of products and millions of items.

Both by legislative fiat and by judicial decisions, the doctrine of strict liability now prevails widely. First stated in a California court in 1963, this doctrine holds that a manufacturer is responsible for any injuries arising because the product is "defective and unreasonably dangerous" (Greenman vs. Yuba Power Products, 1963). Criteria for determining whether a product is "defective and unreasonably dangerous" include such factors as the usefulness and desirability of the product, the availability of safer products to meet the same need, the likelihood of injury and its seriousness, the obviousness of danger, common knowledge of the danger, the avoidability of injury by care in use, and the ability of the maker to eliminate the danger without making it less useful or too expensive (Weinstein et al., 1977, p. 2). In 1976, 84,000 product liability suits were filed in the U. S. (*Business Week*, February 12, 1979, p. 74).

One problem with the product liability approach is its capricious nature. Noting the large variations in awards and high legal costs under product liability and medical malpractice suits (a form of product liability), O'Connell (1973) proposes the establishment of an optional no-fault insurance to cover such liabilities.

A final note: It is the *threat* of recalls and product liability suits that aid prevention. Otherwise, the seller-producers will use *ex post facto* corrective measures.

A third approach is to require *minimum standards* for products or services. Examples include (a) mandatory seat belts in automobiles, (b) prohibition of prescription drugs not yet "proved," (c) housing "codes" specifying acceptable materials and construction methods, (d) maximums for harmful or poisonous ingredients. Since they may be imposed on the relatively few manufacturers of products, they usually meet the efficiency test. The standards approach tends to work best when the standard involves (a) a simple technology or requirement, and (b) the technology is relatively stable.

But standards can pose questions in terms of the appropriateness criterion. A first problem is that the determination of whether the standard will "work" may pose a difficult scientific problem that requires considerable time and investment in its resolution. Ready examples are the "air bag" and thalidomide. A second problem is the assessment of cost-benefits for early vs. late introduction of new drugs or new designs. Again, so-called "miracle" drugs are convenient examples. What chances do we wish to take in order to obtain benefits earlier? A third problem is the possible obsolescence of standards. Housing codes afford a classic example where defensible standards have been retained too long. Why? Because they protect monopoly returns for contractors and skilled craftsmen in the building trades who are otherwise threatened by new technologies. A final problem is that the standard must attain public acceptance. An example of a standard that failed on this count was the seat belt ignition interlock required in 1974 automobiles in the United States. Though careful investigations showed that seat belts reduced serious injuries and deaths from auto accidents (Scott & O'Day, 1975) the inconvenience caused by the ignition interlock raised so much public opposition that the requirement was repealed before it was a year old.

Yet another measure, "cooling-off" laws, stand on the threshold between prevention and correction. They permit the abrogation of purchase contracts within a certain period, e. g., a week. Their objective: succor for vulnerable consumers – the ignorant, the senile, etc. – who have been taken in by glib salesmen.

Avenues to Correction

No matter how ardently policymakers seek success in the prevention of grievances, a substantial volume of these will occur, posing the question of what corrective measures are possible. Five measures are considered here: consumer complaint agencies, small claims courts, measures to assure consumer access to the services of lawyers (prepaid legal services and class action suits), and warranties.

Our first candidate for discussion is the consumer complaint agency. As noted earlier, the bane of consumer complaints is the fact the gain from their correction is small as compared with the total cost of correction. The justification for public financing of a consumer complaint agency comes from possible benefits to non-inju-

red consumers as a result of the agency's operations. The agency's operation and financing should be designed to maximize these third party benefits. A disadvantage: The small gains from the resolution of consumer grievances mean that only a small fraction of grievances (3 percent) remaining unresolved after buyer-seller contacts are ever brought to a third-party complaint agency (Andreasen & Best, 1977).

The ideal consumer complaint agency would have the following characteristics. First, it would possess the power to decide whether the consumer, the seller, or neither was at fault and to determine what redress is suitable. Redress might take the form of one or more of the following: (a) replacement of a defective item (or service), (b) repair, (c) refund of the purchase price, (d) provision of a substitute good (or service) during the repair period, (e) cash or in-kind reparation. Second, an appeals mechanism would be provided. Third, the agency would be given modest enforcement powers itself and, otherwise, be provided with staff to undertake legal action in the courts. Fourth, the agency would publicize (in a fair manner) the records of various firms in generating and resolving consumer complaints. The purpose of this feature would be to aid consumers in selecting reliable firms and, in the long run, to penalize via publicity firms whose complaint records were "poor."

The ideal complaint agency would be publicly financed, preferably from a variable tax on manufacturers or retailers of consumer goods and services. The tax should be high enough to cover the costs of handling all the complaints generated. In addition, it should be assessed on an "experience rating" basis, higher for firms that generate many complaints and lower for firms that generate few complaints.

Small claims courts are courts that (a) cater to consumer damages falling under some ceiling, e. g., \$1000, and (b) minimize formal legal procedures, thus enabling consumers to seek redress without incurring costly legal expenses. Small claims courts predate consumer complaint agencies and would probably become less needed if an adequate system of consumer complaint agencies is developed.

Under existing conditions in most countries the successful prosecution of consumer grievances involving large dollar claims requires access to the expensive services of lawyers. Two consumer protection measures that might improve access to legal services are (a) prepaid legal services, and (b) class action suits.

Each of these involves the pooling of expenses so that the individual may have access when the need arises. Arrangements for prepaid legal services are actually insurance devices by which members of a group – a labor union, a credit union, employees of a firm, inhabitants of some governmental unit – pay a membership fee that entitles them to legal services of a specified nature when needed. The costs of prepaid legal services are born by the consumer-members. Because the need for legal services is infrequent, the cost to each member is kept low.

Class action lawsuits permit the pooling of damages among the common victims of some injury such as near-airport residents afflicted with noise "pollution." Usually, a lawyer acts as entrepreneur, identifying the class of victims and soliciting their cooperation. By spreading legal costs over many claimants, the legal cost to each victim is kept reasonably low. Though sought by many consumer groups, legislators and courts have been loathe to enlarge the scope of class action suits. One reason for their caution is the fear that some class action suits could cause the bankruptcy of a very large enterprise. This problem suggests the need of an insurance device for firms that would protect them against the fatal effect of a class action suit.

Warranties and guarantees, by which we mean expressed or implied promises with respect to product performance or characteristics, are at once *sources* of consumer grievances and devices that *set grievances right*.

Warranties-guarantees become sources of grievances due to differing perceptions of their function, misleading representations, consumers' ignorance of their existence and terms, obscure terms, unreasonable provisions, and failures by sellers or manufacturers to perform as promised (Feldman, 1976).

When they work, they are insurance schemes pooling the costs of repair over all consumers. See Bryant and Gerner (1978) for an economic analysis.

As corrective devices, warranties-guarantees suffer on appropriateness grounds as purchasers, often ignorant of their rights or having lost their purchase contract or guarantee, seek more or less than that to which they are entitled. On efficiency grounds they seem likely to compare unfavorably with measures that would induce manufacturers to produce better performing, more reliable products initially.

THE UNDERREPRESENTATION OF CONSUMERS: CORRECTIVE MEASURES

In the long run consumers will represent the most powerful of all political constituencies. This is because we are all consumers and because factors giving rise to consumer consciousness are on the increase. Why will consciousness continue to increase? Because of the increasing volume of consumer grievances that gives rise to consumer awareness and ultimately to clamor for consumer representation. Consider the causes of consumer grievances: technologically complex products (becoming ever more complex); increasing affluence and urbanization that contribute to increasingly less informed choices (and hence, grievances) and to markets that are more and more informationally imperfect; the distribution of goods by firms that are increasingly large, non-local, and hence impersonal and bureaucratic. As grievances increase, so too will consumer consciousness and pressure for corrective measures. The institution of corrective measures themselves will contribute to the representation of the consumer interest as a core of "consumer affairs professionals" develops.

So much for the future. For now the primary objective for policy should be the recognition of the right to representation and with it a commitment to finance consumer representation.

"Voice" and Its Implications

In market economies the traditional way that consumers have signaled dissatisfaction with a brand or seller is to *exit* by rejecting the offering of one seller and accepting that of another. The chief difficulty with this signal is its crudeness: It does not tell the seller *why* his product (service) was rejected. An alternative way of registering dissatisfaction is *voicing* in which consumers indicate the sources of their dissatisfaction, thus helping sellers (governments) to correct the conditions that gave rise to dissatisfaction. All the corrective measures discussed below may be viewed as variants of "voicing" (Hirschman, 1970).

Corporate departments of consumer affairs. For two or three generations, businesses have engaged in marketing and market research with an eye to anticipating

consumer needs and responding to them in the design of their products and services. In the last decade many businesses have established "Consumer Affairs" Departments (vice presidents, etc.) whose responsibility (when it goes beyond simple "public relations") is to identify consumer dissatisfactions and organize a response to them. Both the recency and momentum of this trend are reflected in SOCAP in the U. S. The "Society for Consumer Affairs Professionals" (in *both* business and government with a sprinkline of academicians) was formed in 1973 and now has 500 members.

Public interest law firms and research groups. Two new economic institutions for voicing of the consumer interest have come into existence in the United States under the aegis of Ralph Nader. They are the public interest law firm and public interest research groups (Meeker, 1977).

Public interest law firms participate in proceedings before government agencies and undertake litigation in the consumer interest. The following criteria govern the selection of cases by one of them – the Center for Law and Social Policy in Washington:

1. An important public interest is at stake;
2. The individuals and groups seeking representation do not have sufficient financial resources to retain and compensate counsel;
3. No other legal institution is likely to provide effective representation;
4. The area of law has not been adequately explored;
5. Opportunities for innovation are present;
6. The subject matter is one in which the staff of the Center has competence;
7. The resources required to the Center are commensurate with the gains likely to be achieved.

So far public interest law firms have been financed from public contributions, grants by foundations, and recovery of legal and other expenses from regulatory agencies.

The great merit of public interest law practice resides in the possibility that a single case may change market performance and increase economic welfare for a large number of consumers, including the poor. A weakness of this approach is the frequent tendency to count a legal victory as a changed market condition.

The undertaking of public interest law has been facilitated by the institution of laws permitting regulatory agencies to award "reasonable attorney's fees, fees and costs of experts, and other costs of participation in the proceeding that promote or can be reasonably expected to promote a full and fair determination of the issues involved in the proceeding" (from a U. S. law of January, 1975, relating to the Federal Trade Commission). This is a corrective measure that deserves emulation.

Public interest *research groups* have tended to be student groups that have undertaken consumer-oriented research in the public interest, e. g., local price surveys, assessment of college admissions tests, etc. Resources available to them include time volunteered by students and the proceeds of check-offs from student fees.

Again, any measure that would facilitate the organization and effectiveness of such groups would amplify the consumer voice.

Consumer Representation in Government

A major principle (and corrective measure) is that consumers should be represented on the following types of government bodies: (a) all policymaking bodies concerned with consumer protection, (b) boards of public enterprises, (c) bodies concerned with questions of general economic and social policy having an impact on the consumer interest (anti-inflation policies, anti-pollution programs, trade restrictions, price and wage controls, etc.).

A second major issue is the type of representation that consumers should have in administrative agencies. One model calls for a consumer office (assistant secretary, for example) in each administrative department. The disadvantage is that such a voice is necessarily limited. An "Assistant Secretary for Consumer Affairs" in a Ministry (Department) of Agriculture cannot challenge the Secretary on a fundamental matter where the interests of consumers differ from those of farmers and still retain his position. A second model is the Department of the Consumer model. There are two variants: (a) the advocacy model, and (b) the all-embracing model by which all governmental activities affecting consumers are collected under one organizational umbrella.

Under the advocacy model, representatives of the consumer agency might appear in hearings and proceedings before other agencies or legislative committees, armed with subpoena powers, might lobby, might participate in inter-agency discussions. In short, the advocacy model embodies beliefs in (a) the lawyers' adversary approach to truth and (b) in the efficacy of publicity. Supporters of this approach argue that an "advocacy only" agency restricts the growth of bureaucracy and keeps the agency's objective clear.

The all-embracing agency concept says that (a) it provides greater visibility and leverage to the consumer agency and (b) that the various consumer-related activities, e. g., the conduct of pro-consumer research, administrative activities, advocacy, are mutually reinforcing. Sweden's National Board for Consumer Policies comes closest to representing the all-embracing agency (Johansson, 1976).

DISADVANTAGED CONSUMERS: CORRECTIVE MEASURES

According to Andreasen (1975), disadvantaged consumers – the poor, the less educated, minorities, the aged – suffer from three major weaknesses:

1. *Their own characteristics.* They lack the education; the understanding of markets, sellers, economic and legal concepts and arrangements; the income and related mobility; and the attitudes that, together, enable consumers to make effective choices.

2. *Market structure.* Due to low incomes, discrimination, and other social factors, many live in locations *not* characterized by effective markets.

3. *Discrimination and exploitation.* The characteristics of the disadvantaged just listed make it possible for sellers to practice price discrimination or to exploit them through acts of misrepresentation, deception, fraud.

Consumer reformers work overtime to achieve corrective measures that will aid disadvantaged consumers. Yet the list above reveals few factors that can be easily

changed. Certainly not personal characteristics. Certainly not the market structure that comes with a neighborhood. And it is these two sets of factors that make discrimination and exploitation possible.

The reluctant conclusion is that disadvantaged consumers are most likely to benefit from measures that improve markets for everyone – a redress law that requires sellers to cover all costs of redress, a local consumer information system that reduces the variation of prices (quality constant) for everyone, and so forth.

Yet, there is much that can be done. One might be a consumer advice/complaint center in a ghetto area and manned by people with whom the disadvantaged feel comfortable (Morris & Reeson, 1979). Another would be the delivery of consumer education via television, a media that the disadvantaged use in preference to printed matter.

One final caution. Andreassen (letter of October 4, 1978) reports there is no evidence from complaints studies that the disadvantaged *perceive themselves* as worse off. By middle class standards, they ought to be. But, *given their values* (which middle-class people should perhaps not alter) they are more (or equally) satisfied as compared with others!

THE ROLE OF THE UNITED NATIONS IN CONSUMER PROTECTION

This paper was written for the United Nations Centre on Transnational Corporations (though they bear no responsibility for its contents). Hence it was appropriate to suggest what the UN might do to further consumer protection.

No country is exempt from at least some of the forces giving rise to the demand for consumer protection: the monopoly problem, informationally imperfect markets, consumer grievances, the underrepresentation of consumers, disadvantaged consumers. In response all countries have taken steps to assure consumer protection. Thus, the world may be viewed as a "laboratory" in which natural experiments are taking place as various countries test the effectiveness of their particular approaches.

This view suggests four roles for the United Nations:

1. *An agent for the collection and sharing of consumer protection experience* – by maintaining a complete, central library of:

- a. Consumer protection measures in force in various countries.
- b. Publications and research articles relating to consumer protection, "consumerism," consumer movements, and similar topics.

2. *A sponsor of conferences on consumer protection for:*

- a. Legislators and governments officials involved in consumer protection.
- b. Organized consumer groups.
- c. Researchers.

3. *A sponsor of research relating to consumer protection with special emphasis on:*

a. Comparative research, drawing on the differential experience of different countries.

b. Research important to the consumer interest that is not being undertaken in particular countries.

c. Research that would provide benefits to many countries, e. g., less developed countries as a whole, countries in a particular geographic area.

4. *A sponsor of product-testing*, especially of the products of multinational corporations that are likely to be uniform (or comparable) as marketed in many countries.

THE CRUCIAL QUESTIONS

We summarize this paper by posing the crucial questions on which citizens and policymakers alike must make up their minds.

Overall

1. To what extent do each of the following prevent consumers from “getting what they really want” and hence contribute to the demand for consumer protection – monopoly, informationally imperfect markets, consumer grievances, the underrepresentation of consumers, “vulnerable” consumers?

2. How effective are various corrective measures in eliminating these causes of consumer protection?

Regulation, Self-Regulation, Legislation

3. To what extent do alternative corrective measures fail on either the (a) *appropriateness* or (b) *efficiency* test?

4. Under what conditions is *regulatory intervention* or *legislative intervention* appropriate and effective?

5. Under what conditions is *self-regulation* both likely and effective?

6. When is deregulation consistent with consumer protection? (A question not discussed in the paper.)

Informationally Imperfect Markets

7. What are the merits and demerits of the following measures in eliminating informationally imperfect markets – the regulation of advertising, laws and regulations designed to assure minimum information, consumer product-testing organizations, local consumer information systems, consumer education and research, comprehensive countervailing consumer information?

8. Should government undertake the politically popular step of regulating advertising by traditional means when analysis suggests that it is unlikely to achieve “truth” and certainly will not assure complete information for consumers?

9. Can new forms of regulation of advertising meet both the appropriateness and efficiency criteria?

10. Should governments and the United Nations provide resources – money and/or access to media – to help the Consumers Unions and the International Organization of Consumers Unions?

11. Is there a compelling need for the development, perfection, and reproduction of local consumer information systems?

12. How much support should a local government, a national government, or the United Nations give to this activity?

13. How much support should be given to consumer education/research? What avenues are likely to be most effective?

14. How important is the imbalance between seller-controlled and consumer-controlled consumer information?

15. What resources should be devoted to countervailing consumer information and how should this effort be organized?

Consumer Grievances

16. Should we continue to view redress simply as correction of the condition giving rise to a genuine consumer grievance, or include costs incurred in seeking and obtaining correction of the grievance as part of redress compensation?

17. Should we change relevant laws to require compensation for *all* costs of obtaining redress?

18. What investment should be made in research on workable product standards and the exact specifications to be adopted?

19. What minimum safety and other standards should a country adopt? Should standards be uniform as between advanced and less developed countries?

20. What are the characteristics of the ideal consumer complaint agency?

21. Should governments establish publicly financed consumer complaint and advice agencies? What procedures and financing arrangements should they embody?

22. How desirable are other consumer complaint redress and prevention mechanisms such as small claims courts, prepaid legal services, class action suits, revised product liability laws, product recalls?

Consumer Representation

23. What are the merits and demerits of exit vs. voice? How effective as "voice" are corporate "consumer affairs" departments, public interest law firms and research groups, consumer representation in government?

24. What form of consumer representation in government is most effective – consumer representatives in various departments, the advocacy model, the all-embracing agency?

Disadvantaged Consumers

25. Do disadvantaged consumers benefit most from corrective measures directed to their needs or to measures that benefit all?

26. Can new effective approaches be concocted that will aid the disadvantaged?

United Nations

27. What should be the role of the United Nations in consumer protection?

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Zusammenfassung

Verbraucherpolitik: Instrumente zur Korrektur. Das zunehmende Verlangen nach Verbraucherpolitik entsteht aus einer Reihe von Verbraucherproblemen, die die mangelnde Fähigkeit gegenwärtiger Wirtschaftsordnungen widerspiegeln, den Bedürfnissen von Verbrauchern angemessen zu begegnen. Solche

Verbraucherprobleme sind der Trend zur Monopolisierung, eine unzureichende Markttransparenz, Verbraucherunzufriedenheit und Verbraucherklagen, eine nicht ausreichende Berücksichtigung von Verbraucherinteressen sowie der mangelnde Schutz benachteiligter Verbrauchergruppen.

Dieser Beitrag behandelt die gesamte Spannweite von Maßnahmen zur Lösung oder zumindest Verminderung solcher Probleme.

Er beginnt mit den Kriterien zur Bewertung solcher Maßnahmen, beschäftigt sich anschließend allgemein mit den Möglichkeiten und Grenzen regulierender und gesetzgeberischer Ansätze und wendet sich dann im Hauptteil den Maßnahmen im einzelnen zu, wobei auch Beispiele angeführt werden.

Der Beitrag wird abgerundet durch die wichtigsten Fragen der Verbraucherpolitik, die sowohl von den Verantwortlichen der Verbraucherpolitik wie auch von den Bürgern entschieden werden müssen.

The Author

E. Scott Maynes is Professor and Chairman, Department of Consumer Economics and Housing, New York State College of Human Ecology, Cornell University, Ithaca, New York 14853, U. S. A. This paper has been improved by comments from Melbourne Boynton, Alan R. Andreasen, Robert O. Herrmann, Loren V. Geistfeld, Marjorie Galenson, and James N. Morgan. This article is a revised version of a paper prepared for the UN Centre for Transnational Corporations. The author expresses his appreciation of the UN Centre support of this project. As usual, responsibility for content remains with the author.