

Rules for the Global Marketplace

This session examined the feasibility of voluntary codes or international standards for consumer protection in the global marketplace. Representatives from government, business and consumer advocacy presented the issues from their different perspectives. In addition a case study about the application of internationally recognized quality management standards was presented. The remarks of the speakers and the discussion are summarized.

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Introduction

With the shift to a global marketplace, domestic consumer protection laws are often ineffectual and enforcing legal rights overseas for consumer transactions is not a viable option. The Australian Competition and Consumer Commission has undertaken research about the issues of the global marketplace and produced a major discussion paper on this topic entitled, "The Global Enforcement Challenge: Enforcement of consumer protection laws in a global marketplace". (Australian Competition and Consumer Commission, 1997). One element of this research is an examination of the potential use of international codes and standards for consumer welfare and a comparison of alternative rule-making bodies such as ISO, OECD, UN, trade associations, consumer associations, etc. Each of the speakers was asked to provide their perspective about the feasibility of this concept and to highlight other initiatives taking place to address consumer welfare in the global marketplace. Jeanne Bank of the Canadian Standards Association moderated the session. The remarks of the speakers and discussion are summarized.

Allan Asher, Australian Competition and Consumer Commission

While increased global trade benefits both consumers and traders, it also poses a number of problems. Differing requirements of jurisdictions have the potential to create non-tariff barriers to trade and make it difficult for law-abiding suppliers to comply with various consumer protection laws. The global marketplace exposes consumers to very different levels of protection and it hinders law enforcement activities against cross-border fraud. Traders can circumvent regulations by setting up in locations of convenience and offering services to consumers in other jurisdictions, being unaffected by the regulations of those jurisdictions.

Additionally, downsizing by governments means that self-regulatory mechanisms are preferred as there are limited resources available for administration or enforcement. It should also be recognized that there are aspects to the global marketplace, such as the flow of information, that may be impossible to regulate by traditional means. In this environment with a new emphasis on business ethics and the rise of consumer power, there is an opportunity to reshape the international regulatory environment and to develop a set of international norms of conduct which are market sensitive and flexible. Tools such as international guidelines, charters, standards and codes are really the only way that consumer protection standards can be developed and maintained in the global marketplace.

There are a variety of alternative rule-making fora and some of these are adopting quasi-regulatory roles by developing standards which may or may not have force of law. Five venues for international rule making are: 1.) United Nations, 2.) Other governmental cooperation bodies, such as the OECD, 3.) International standards setting bodies, 4.) International industry organizations and peak bodies, such as International Chamber of Commerce, and 5.) International non-governmental organizations such as Consumers International.

1.) The United Nations universal charter for Consumer Protection has become an international benchmark but needs to be updated and is currently undergoing revision. The United Nations has also spearheaded work to establish guidelines for global business, but similar efforts have largely failed in the past. However, these could

address some of the public concerns about the proposed Multilateral Agreement on Investment (MIA), provided that they are developed using a transparent and multi-stakeholder approach.

2.)The OECD has an active Committee on Consumer Policy and offers an excellent opportunity for international cooperation in the development of consumer protection policy guidelines. One area currently underway is the development of guidelines for electronic commerce.

3.)International standards setting bodies have a longstanding involvement in the development of international technical and safety standards. In recent years, these organizations have also responded to requests to develop international standards for business management systems or best practices. For example, ISO is developing standards on environmental management and Codex Alimentarius is developing food standards. The discussion paper developed by the Australian Competition and Consumer Commission identifies the following subject areas as potential areas for standards work about the global marketplace: complaint handling; codes of conduct; charters; compliance; and criteria for a "quality trader". Many of these subjects are already addressed at national levels (eg, Australia has a successful voluntary standard on complaint handling). The development of similar international standards would help to harmonize consumer protection standards on a global basis.

ISO has a proven track record for producing market-based and market-accepted standards, including the 9000 series for quality management and the 14000 for environmental management. The standards are voluntary and developed on a consensual basis with input from all stakeholders. The process for development is highly transparent and ISO is truly international, unlike organizations such as OECD which have limited membership. ISO has a high profile and a good level of credibility with stakeholders. The process is relatively cost effective, especially for developing countries where the cost of developing their own standards is prohibitive.

4.)International industry associations and peak bodies also have an important role to play in rule making and some initiatives are underway, such as the International Chamber of Commerce's code for advertising practices.

5.)Consumer organizations must have a clear and adequate "voice" at rule making forums to ensure adequate standards of consumer protection.

Kernaghan Webb, Office of Consumer Affairs, Industry Canada

Although alternative rule-making provides a potential solution to the problems of the global marketplace, there is also the potential for harm, especially if the interests of consumers are not adequately reflected through the process. The Office of Consumer Affairs has developed a guide for the development of voluntary codes and is a strong supporter of this approach. However, we need to examine their processes and determine if there is meaningful consumer input and work to improve this aspect. Those bodies with the most "consumer-friendly" systems should be the fora of choice.

While the ISO process is recognized as being quicker, less expensive, easier, and internationally accepted, compared to legal policy approaches, there are some concerns emerging about the ISO process. For example, the ISO 9000 series of standards for quality management are probably the most well-known and applied international standards. However, in recent years business has started to express concern about the costs to business of the implementation of these standards due to the 3rd party registration/audit process. With the introduction of the newer 14000 standards for environmental management, these concerns are increasing in business circles. Are these standards appropriate for small and medium sized firms? Additionally, the processes of standards setting bodies are often not flexible enough to meet the needs of stakeholders. For example, a system to allow small organizations to comply with the national privacy standard in Canada on a self-declaration basis with a use of a logo have not been made available despite requests from government and business.

There is also concern about the ISO process from the consumer perspective. Consumer participation and non-governmental organization involvement is not sufficient in many cases. However, competitive pressures may force ISO to address this issue. One example is the case of a forest management standard and certification program. A coalition led by environmental groups developed their own system at the same time as ISO was starting work in this field. At present, the system led by the environmental non-governmental organizations appears to be the dominant system in the marketplace. Consumer organizations need to get more organized and coordinated in their standards work. While barriers exist such as lack of resources for travel and volunteers, it will be important to achieve meaningful representation if we are to have the best standards possible. Consumer representatives need to be compensated for their participation in alternative rule-making, not just for their travel expenses but for their time and expertise.

Government has a variety of roles to play to support this new environment of voluntary standards and codes. First of all they must be prepared to enforce existing laws and regulations and they must act decisively and

bring in laws when required. This vigorous approach will provide pressure to business to self-regulate. Government is a key information provider, providing guidance tools to business and identifying market failures. In addition, government can serve as a facilitator in the standards setting process, balancing and reconciling competing interests.

Robert Kerton, University of Waterloo and Consumers' Association of Canada

The recent move to globalization has two faces. The cheerful promising face offers consumers new goods and services at ever more reasonable prices and emancipation from local monopolies and restrictions. The ominous threatening face offers a new wave of useless and harmful goods and selling tactics. Even in countries with established fair trading laws, the arrival of borderless electronic commerce offers new opportunities for unscrupulous sellers to escape domestic rules. While the potential for voluntary codes as outlined in the Australian paper is impressive there are imbalances such as the stunning faith in industry codes along with the withdrawal of a framework for fairness. What is needed is a set of conditions which tell us whether a voluntary effort has promise or not.

Standards setting can be a concealment for opportunistic behaviour. While many believe that the Better Business Bureau is a model for self-defined standards, research shows that leadership at local BBB's is of differing quality. More importantly, the fee payment mechanism means that the BBB may be reluctant to present a negative report on its members. The worst sellers find it very useful to display their BBB sticker and as a result the self-regulation is a form of concealment which is highly valuable for opportunistic sellers.

Standards setting can also be a barrier to potential competition. A further problem arises when firms agree to establish a standard instead of introducing products which bring innovations by means of meeting different standards. The decision to compete or cooperate with emerging standards is a strategic choice. One solution is to introduce competition to the standards setting process. While it may be confusing to have multiple standards, there may be a need to have a baseline international standard, plus a higher standard developed by another standards body for those firms who are interested in signaling that their quality meets that higher level.

One of the key elements missing in most voluntary standards is a procedure for a standard for redress. The absence harms the sellers who do provide everything promised while signaling other sellers that there is no penalty for malfeasance. Requiring standards-setting organizations to include a standard for redress within other standards is a method for setting expectations for customers and sellers and will enhance the operation of the global marketplace.

In addition to redress, there is a need for criteria to assess a proposed standard for its potential success with consumers. Transparency is an essential element. Needed too, is a means of measuring success or failure and an agreed-upon method of compliance. A consumer purpose test would be an important contribution to the international standards system.

The march towards globalization has proceeded with an arresting lack of balance. One area to concentrate our efforts is in the development of standards for the area of settlement of international financial transactions. The first step with each international standard is a method of making sure that consumers are included in the establishment of any standard being set, supported by a protocol to help assess the acceptability of any proposed standard.

Marlene Futterman, Direct Selling Education Foundation

Ms. Futterman provided an overview of the history and scope of the United States Direct Selling Association Code of Ethics and the corresponding World Code. The U.S. Code was developed in the late 60's and early seventies at a time when there were problems within the industry and the government was threatening to introduce legislation. The industry was under pressure from consumers and government to set ethical standards. Since that time the Code has constantly evolved and become stronger.

The U.S. Code provides protection to both the salesperson and the consumer. The provisions for the salespeople are more recent additions but are a very important component of the Code. As far as consumer protection, the Code sets out rules covering: testimonials and claims, truthfulness of product/service aspects, terms of sale, warranties and guarantees, privacy of personal information, and provisions against any pyramid schemes.

The Code has a strong enforcement component. There is an independent administrator to investigate complaints and recommend appropriate action. The complainant is not forced to wait for redress - the administrator can authorize immediate financial reimbursement up to \$500. If the member company does not comply with the findings of the administrator the complaint may be referred to appropriate government body or there may be action initiated to expel a member company in serious cases.

The World Code is endorsed by 50 Direct Selling Associations that make up the World Federation. It provides global coverage and in some cases it is more stringent than the US Code - eg, the European cooling off period is longer than in the U.S. Like the U.S. Code the World Code is strongly enforced. There are 26 independent Code Administrators. In addition, if there is no national Direct Selling Association in a particular country, the U.S. Code will exercise jurisdiction if the salesperson represents a U.S. member company.

While the Direct Selling Association is a strong advocate of international voluntary codes and standards, there are a number of questions that need to be addressed:

- How do you harmonize standards so that business is not affected adversely? For example, international labelling requirements may create severe problems for business.
- While voluntary standards and guidelines are a good step, it is essential that they are supported by a rigorous enforcement process. How can international voluntary standards achieve this?
- Where should we focus our efforts first? - the development of standards to prevent abuses in the global marketplace - or establishing a redress process for electronic commerce and the Internet.

Case Study: Premavathy Seetharaman, University of Delhi

The adoption of internationally accepted international standards for quality management has been widely promoted in Indian industries, but the application in the textile industry has been relatively slow. A study was conducted on two textile mills to look at the impact of implementation of ISO 9000 standards, including: cost and effectiveness. For both these firms the rationale for ISO 9000 registration was export requirements plus the desire to enhance their status in the industry.

From studying these two examples, it was clear that successful implementation requires management commitment and determination. The gains of implementing the standards were significant, including streamlining of the processes, improved productivity, and increased employee morale. It was found that one of the mills experienced a 75% increase in exports following registration.

In order for textile mills to survive in the rapidly changing business environment and to compete in the global market, it will be in their interests to take the initiative and adopt international standards.

From a consumer perspective, there are several issues that need to be addressed. The most important is that the average consumer does not understand what ISO 9000 registration means. How should this be communicated to consumers? What claims can registered firms make to consumers? More research is needed to address the impact of these standards on the end consumer.

Discussion

The discussion focused on a number of issues about the appropriateness of international voluntary standards for the area of consumer protection and the harmonization of standards. Concern was expressed that this would simply result in the lowest common denominator and that consumers may lose existing protections. It was pointed out that we must strive to harmonize upwards and to move to what is desirable rather than what is customary. It was pointed out that the move to international voluntary standards offers opportunities but the abilities of the standards setting bodies are often not sufficient to carry out the promise. Key elements such as transparency of the process and adequate consumer representation are often not adequate. The other key question for consumers is how to know whether these approaches are working. The application of these standards through supervision or labelling schemes costs money and this is passed on to the consumer. However, no resources have been put into evaluating the effectiveness for the consumer.

References

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Endnotes

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