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Contribution on:

**Incorporating Sustainability into Consumer  
Protection Policy**

by

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# Incorporating Sustainability into Consumer Protection Policy

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## **BACKGROUND**

This submission is offered as a contribution to the current process underway to review the United Nations Guidelines on Consumer Protection (UNGCP), as co-ordinated by the Competition Law and Consumer Policies branch within the United Nations Conference on Trade and Development (UNCTAD). It is intended to feed into discussions under the auspices of the Working Group on Other Issues, which is open to additional comments on other issues that participants may wish to raise.

It is recognised that the UNGCP are not prescriptive but rather set forth principles that Member states are at liberty to transpose into their national laws. The UNCPG do however provide valuable policy advice to guide countries in the conceptualisation of regulatory frameworks in the domain of consumer protection. The Third Ad Hoc Expert Group Meeting on the UNGCP convened for 22 and 23 January 2015 in Geneva, Switzerland, is also due to give consideration to the implementation and monitoring of the UNGCP.

In line with the above, and recognising the pressing need for global sustainability initiatives, the intention of this submission is to firstly raise the issue of the usefulness of sharing best practice among countries and stakeholders that have already made strides in implementing policies to implement the sustainable consumption aspects of the UNGCP. Secondly, the intention is to raise discussion about the possibility of establishing a knowledge repository co-ordinated through UNCTAD for sharing information about country initiatives to implement sustainable consumption in accordance with the principles set out in the UNGCP. The third intention is to seek out guidance and support from Ad hoc Expert Group members for a proposed piece of academic research to draw on international best practice to develop guidelines for incorporating sustainability into consumer protection policies in South Africa, which will hopefully also provide pointers for Southern African Developing Community (SADC) Member States. This in turn may feed into discussions within the African Union about promoting the implementation of policies that promote and advance sustainable consumption.

## **INTRODUCTION**

Democratic governments, once elected, set up and run an administration system which provides the state machinery to implement delivery on the political intentions as promised to the electorate. Government then develops policy frameworks to manage the socio-economic and political realities of the societies they have been elected into power to govern (Waller, Morris & Simpson 2014; Gumede 2008). Consumer protection policy is one such domain of public policy. Recognizing “*that consumers often face imbalances in economic terms, educational levels, and bargaining power*” in relation to businesses and corporates when buying goods and services, the United Nations has issued Guidelines for Consumer Protection (United Nations Guidelines 2003). As a regulatory measure, the United Nations encourages governments to “*develop or maintain a strong consumer protection policy*” whilst doing this within the context of countries respective socio-economic and environmental conditions, and taking cognisance of the needs and expectations of

the people living in that country. A key element of the amendments to the United Nations Guidelines for Consumer Protection in 1999, was the inclusion of a range of measures to promote sustainable consumption.

A preliminary overview of South African consumer protection legislation, newly drafted as it is, shows that it does not explicitly incorporate sustainable consumption. This is despite the fact that the South African Consumer Protection Act was drafted in 2008, almost 10 years after the publication of the United Nations Guidelines for Consumer Protection in 1999. The institutional arrangements of government departments within a public administration system tend to be organized according to functional pillars, with separate departments set up to manage a particular portfolio of service delivery responsibilities. This vertically linear departmental configuration often mitigates against horizontal integration of policy issues. An unintended consequence is that policy makers working in their respective departments do not seek out the policy intersect across departments. The result is that policies that impact on and relate to the mandates of a number of departments are developed in isolation within one particular department. Tonner (2000) articulates this as “*disassociation*”.

In South Africa, a good example of disassociation is consumer protection policy and environmental policy. Consumer protection policy is the responsibility of the Department of Trade and Industry, whilst sustainability has tended to be framed as part of the environmental protection remit and is thus located under the Department of Environmental Affairs. As a result South African consumer protection policy does not holistically incorporate sustainability.

## **RESEARCH PROPOSED**

Academic research is proposed to address this South African policy dichotomy in more detail. A key first step would be to examine legislative frameworks in other countries to identify best practice in other countries in order to propose ways in which South African policy could be amended to embrace sustainable consumption practices and in-so-doing begin to steer consumer behaviour towards more socially equitable consumption choices.

An initial literature survey was been undertaken to get a sense of initiatives in other countries. Table 1 outlines examples of previous research on sustainable consumer protection policies in developed and developing countries

**Table1: Previous Research on Sustainable Consumer Protection**

Author	Country	Research Focus
Mont, O & Plepys, A. (2008)	European Union and OECD countries, drawing on Swedish Environmental Protection Agency resources	<p>An assessment of different mechanisms for influencing consumption patterns:</p> <ul style="list-style-type: none"> <li>• economic and informational policy instruments,</li> <li>• shifting from production-side regulation towards consumption-oriented policies,</li> <li>• addressing sustainable consumption through international collaboration, as national country-level policy and legislation has limited impact, given the global nature of the world economy</li> </ul>
Bulkacz, V (ed). (2009)	European Union (EU)	<p>A critique of the limited scope of the European Union Commission's Action Plan on Sustainable Consumption and Production, and the proposal for shaping a sustainable <i>society</i>, not a sustainable <i>consumer</i>; and addressing the public as citizens in society, not simply as consumers</p>
Muller, E. (2005)	Germany	<p>Argues that institutional reforms are needed to strengthen consumer policy and that effective instruments must be introduced to protect consumer interests and direct consumer demands towards sustainable choices.</p> <p>Further that if policy is aimed at influencing consumer demand towards more sustainable consumption patterns, this will</p>

Author	Country	Research Focus
		unlock the binary that equates increasing consumer protection with increasing disadvantage for business
Seyfang, G. (2007)	United Kingdom (UK)	Explores the notion of ecological citizenship and whether the UK policy model of sustainable consumption can be a tool for ecological citizenship, with consumers putting their environmental and social concerns into practice through their spending choices
Connolly, J & Prothero, A. (2010)	Ireland	Identified factors that encourage less consumption by consumers, finding that consumers view environmental and green opinions from a supply and not a demand perspective. This in turn suggests which policy instruments will influence changes in consumer behaviour towards more sustainable consumption
Zabel, H-U. (2005)	Germany	Proposes a model of human behaviour for sustainability, identifying sustainability-hostile behaviour and sustainability-supporting behaviour
Smith, R. (2000)	Australia	Presents proposals for how firms or industries can be more proactive in relation to consumer protection
Zeija, F. (2013)	Uganda	Using a case study of micro-finance, lessons are extracted for ensuring greater consumer protection through consumer awareness, obligatory inclusion of fair contract terms; and increased monitoring of finance providers
Ghate, P. (2007)	India	Using a case study of micro-finance, lessons are extracted for consumer protection, and the impact of industry self-regulation versus state regulation are set out

There is a need for identification of additional literature and country studies that have been undertaken and that could inform the proposed academic research. The Competition Law and Consumer Policies branch with the United Nations Conference on Trade and Development (UNCTAD), may further wish to consider creating a repository, for the centralised collection of country-specific information about the incorporation of sustainability into consumer protection policy frameworks in different countries world-wide.

The primary objective of the proposed research is to develop best practice guidelines to incorporate sustainability into South African consumer protection policy. It is envisaged that the following research process be embarked on.

**Table 2: The Research Process**

Research Step	Proposed Research method
<p><b><u>Step One</u></b> To review and study literature to understand how consumer protection policies developed; what is sustainability and sustainable consumption and to look at the African context of consumer protection and sustainability</p>	Literature study
<p><b><u>Step Two</u></b> To analyse the consumer protection policy frameworks of three developed countries; identified African countries and the geo-political region of the European Union, to ascertain how sustainability has been incorporated into consumer policy</p>	Content analysis
<p><b><u>Step Three</u></b> To analyse South African consumer protection policies</p>	Content analysis
<p><b><u>Step Four</u></b> To extract comparable best practice for South Africa</p>	Interpretive studies
<p><b><u>Step Five</u></b> To validate the extracted best practices by asking members of the National Consumer Tribunal using the Delphi Technique</p>	Delphi technique

Research Step	Proposed Research method
<b><u>Step Six</u></b> Make recommendations how business can incorporate best practices	Interpretive studies
<b><u>Step Seven</u></b> To confirm the business recommendations with a focus group	Focus group

This study will contribute to a better understanding of the following:

- How sustainability can be incorporated into consumer protection policies in South Africa, given that currently no such guidelines exist;
- Offer best practice guidelines to Government, as well as to the Southern African Development Community (SADC) and the African Union (AU), for incorporating sustainability into consumer protection policies;
- Provide best practice guidelines to business so as to respond and implement it;
- Contribute to the academic knowledge of consumer protection and sustainability literature; and
- Contribute to the debate on sustainable consumption, in a policy arena with a natural tension between consumer protection policies that encourage consumption on the one hand, and sustainability policies on the other that serve to limit consumption by encouraging consumers to consider the impact of their consumption on the global resource pool.

The guidance and support of members of the Ad Hoc Expert Group convened by UNCTAD to further review the United Nations Guidelines on Consumer Protection will assist to ensure that the focus and proposed structure of the research is appropriate to enable the development of guidelines for the incorporation of sustainability into consumer protection policies of South Africa in particular, as well as other countries still aiming to do so.



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