



**Intergovernmental Group of Experts on Consumer Protection
Law and Policy, First Session**

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**Contribution
by
*Brasilcon***

The views expressed are those of the author and do not necessarily reflect the views of UNCTAD

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Guillermo Valles

Director Division on International Trade in Goods
and Services and Commodities
United Nations Conference on Trade and Development (UNCTAD)
Palais des Nations, 8-14,
Av. de la Paix, 1211 Geneva 10
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Dear Director Guillermo Valles,

It is with great satisfaction that I address to you in name of the Brazilian Institute of Politics and Consumer Law - BRASILCON – thanking you for the opportunity to officially take part at this meeting at the United Nations Conference on Trade and Development to address the consumer protection agenda since the last revision of UN guidelines on the subject.

Thanking you for your invitation, we hereby present our considerations following the proceedings progress and yet remaining challenges in our country on the issue, in order to contribute to the debate and to the search for a sustainable consumption environment globally.

Yours sincerely,

Brasília, 16th, September 2016.

Amanda Flávio de Oliveira

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**Remaining challenges in the Brazilian consumer protection after 25 years of
Consumer Code**

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Thirty years after the advent of the United Nations Guidelines for Consumer Protection, and having its review completed in December 2015, there is no doubt about the relevance and timeliness of this document to the economic reality of developing countries, such as Brazil.

The commitment and effective participation of country members, organizations, governmental agencies and non-governmental agencies of consumer protection in the UNGCP creation, having a world-wide scale, makes such document a safe guide and an important source of legitimacy for national initiatives to still cope with remaining challenges.

According to UNCTAD own reports, the Review 2012-2015 sought to make more pragmatic guidelines, considering the technological advancements, market practices and the changing lifestyle of consumers. The concern for pragmatism and effectiveness of consumer protection finds fertile ground in countries that have faced over the last thirty years, a significant change in consumption patterns in response to the undeniable change of state economic policy.

Specifically in Brazil, the Consumer Defence Code (CDC) came into force in 1991, in a country with a hyperinflation scenario, the provision of essential services by state monopolies, as



well as an economy still closed to foreign markets. Throughout its 25 years of existence, the Brazilian CDC attended the privatization of companies that provide essential services, the creation of sectorial regulatory agencies, the control of inflation, the opening of the Brazilian market and its inclusion in a global market, not to mention the consolidation of national antitrust policy.

It is natural, in such context, that law improvements may be needed to meet a reality that much differs from that one when the legal text was produced. After 25 years of the law advent, there are identifiable topics that need specific attention, due to the novelty they represent, or due to challenges they pose to the national consumer protection policy.

Among them, the following Brazilian current challenges deserve attention:

1. Proper regulation of consumer credit. As a result of the country full entry in a market economy, currency stabilization, privatization of enterprises and economic openness, the dramatic expansion of credit granting market, bringing the consequences of a market without regulation: irresponsible offer and the over-indebtedness of individuals. In order to discipline this issue, a specific bill for the theme (PL 3,515 / 2015) is pending before the Brazilian Parliament since the year 2012. The academy and organized civil society, especially our institute, the BRASILCON, have closely followed its progress since we believe in the need and the urgency of its approval for the establishment of a fairer credit market without social harm.

2. The legal regulation of electronic commerce. When elaborating the Consumer Protection Code, in the early 1990s, e-commerce was still in its embryonic form and had some inexpressive numbers in the Brazilian market. 25 years later, this reality has changed significantly. In addition, the specifics of the damages suffered in the web also require proper treatment to ensure at least the same level of rights present in the traditional consumer



relationship, and the matter has not yet deserved discipline in the Brazilian legal system. Also in this case, a specific bill for the theme (PL 3,514 / 2015) is pending in the Brazilian parliament, since the year 2012. As well as in the case of the Bill on electronic commerce, academia and organized civil society, especially our institute, the BRASILCON, have closely followed its progress.

3. Data protection. The issue of privacy and data protection has special highlight due to the fact that Brazil is the only G-20 country member that does not have specific legislation on the subject. Since May 2016, a draft law on personal data protection is pending in the Brazilian parliament, apart from the e-commerce one, by making direct reference to a consolidated regulatory framework about the protection principles of the internationally recognized human person (PL 5,276 / 2016). Note that, despite the protection of personal data to establish a series of safeguards that go beyond the consumerist subject, the subject is of such importance to the modernization of consumer protection paradigms in an Information Society that in Brazil, the Preliminary Draft law is coming from the consumer protection initiative. In this matter it is important to note the fortunate joint efforts of Brazil and Germany, and its co-presidency of the Working Group "Other Issues" in the discussion of the UNGCP revision.

4. Regulated services. As a result of privatization of companies providing public services and the opening of the Brazilian market during the 1990s, there were created several sectorial regulatory agencies in Brazil. Since then, those agencies are responsible for the market's regulation, which before, were almost always submitted to state monopolies; are now governed by private companies in a competition regime. There is much criticism to these agencies in Brazil, after almost 30 years of their creation. Among these criticisms, there is the observation that within consumer protection national public bodies and national Courts, the leading consumer complaints comes from the financial, credit and insurance sectors followed by telecommunications sectors and industries of private health provision, all governed by a specific



agencies. Therefore, there are persistent problems related to unfair terms in banking contracts, unfair practices promoted by business credit cards, provision of telecommunications services, in particular the internet providers, due to quality below the expected and high prices, negative coverage of private health insurance, all this persisting for more than two decades. The proposal pending in the Parliament aims to address the problem of poor performance of the regulatory agencies in the country, which is an indication that the problem does not manifest itself only in the consumer market. If, on the one hand, it is expected that a more effective performance of the agencies will inevitably lead to an improvement of the companies efficiency in the market, with positive impacts for consumers, on the other hand, it is necessary to establish a more effective implementation of CDC in Brazilian courts in this matter, which adequately contemplate the severity of the services involved, considered essential for a dignified human life.

All of these concerns, which are the main concerns raised by the currently organized civil society in the country, have already been highlighted by Brazil in reform of the UNGCP. At that time, the Brazilian government also appointed as priority, international cooperation themes of consumerist matter, such as tourism and, above all, the creation of a specific forum within the United Nations to exclusively deal with the issue of Consumer Protection and the implementation of UNGCP, in which, fortunately, now we find ourselves.

Regarding the issue of international tourist protection it is to be noted that it has been a major concern of both the Brazilian government and consumer protection civil society. It is important to mention that Brazil was a pioneer in launching projects and researches in this field, with the support of BRASILCON, developing cooperation policies environments within MERCOSUR (Pilot Project of Consumer Tourist Attention and MERCOSUR Agreement for International Consumer Contracts), the Ibero-American Forum of Consumer Protection Governmental Agencies, FIAGC and the Hague Conference on Private International Law (Draft Convention on co-operation and access to justice for international tourists). Also in this issue, it



is important to note that the progress of the discussions was made possible by several cooperation agreements in the consumer protection area that Brazil coined with Latin American countries as well as Portugal, Germany, South Korea and China.

It remains therefore clear, the correlation between the United Nations Guidelines for Consumer Protection and the most challenging issues in the consumer protection area in Brazil. This alignment is a powerful tool for effectively address the issues, which, every day, are less restricted to politically delimited territorial areas.

The time is appropriate to build a joint agenda among member countries, civil society and UNCTAD for the effective implementation of the Guidelines in all its content. The organized civil society of consumer protection in Brazil, especially BRASILCON, trust the joint efforts of member states, civil society and other stakeholders who recognize the appropriate consumer protection as a way to promote the sustainable economic development of countries, with undeniable consequences to the promotion of human dignity.

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