

## TOWARDS *CAVEAT VENDOR*: DEVELOPMENTS IN CONSUMER PROTECTION

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### THE BEGINNINGS OF CONSUMER ORIENTED RIGHTS

#### *Identifying the Consumer*

Consumers by definition include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. They are the only important group in the economy who are not effectively organized, whose views are often not heard. . .

If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interest suffers.

—John F. Kennedy <sup>1</sup>

The term consumer has become increasingly popular with television segments and newspaper columns tailored to “the consumer.”<sup>2</sup> Certain companies tout their consumer-friendly policies. While these are premised upon a popular image of the consumer as an active bargain hunter, probably middle class, and not

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<sup>1</sup> 108 CONG. REC. 4167, 4263 (1962) (message from Pres. Kennedy to Congress concerning strength programs to protect consumer interests.) cited in ROBERT J. LAMPMAN, *JFK's Four Consumer Rights: A Retrospective View*, in THE FRONTIER OF RESEARCH IN THE CONSUMER INTEREST: PROCEEDINGS OF THE INTERNATIONAL CONFERENCE ON RESEARCH ON CONSUMER INTEREST, 25-26 (E. Scott Maynes and ACCI Research Committee eds., 1986).

<sup>2</sup> The PHIL. DAILY INQUIRER publishes a column with the tag line *The Consumer* by Marilen Giron. ABS-CBN began airing short weekly segments entitled *ConsumerWatch* with Nancy Irlandia.

afraid to complain when necessary, under Republic Act No. 7394, otherwise known as the Consumer Act of the Philippines (*hereinafter* Consumer Act), personal traits of thriftiness and income are irrelevant. The “consumer” is defined therein as “a natural person who is a purchaser, lessee, recipient or prospective purchaser, lessor or recipient of consumer products, services or credit.”<sup>3</sup> The Consumer Act emphasizes the intended purpose of the purchase or lease of the item. Any person is considered a consumer if and when he/she enters into a “consumer transaction.” Since the definition refers us to consumer transactions, it is necessary to examine consumer transactions under the Consumer Act. The following transactions are regarded as consumer transactions and subject to regulation:

(1)(i) a sale, lease, assignment, award by chance, or other disposition of consumer products, including chattels that are intended to be affixed to land, or of services, or of any right, title or interest therein, except securities as defined in the Securities Act and contracts of insurance under the Insurance Code or (ii) grant of provision of credit to a consumer *for purposes that are primarily personal, family, household or agricultural*, or (2) a solicitation or promotion by a supplier with respect to a transaction referred to in clause (1).<sup>4</sup>

Thus, “consumer transactions” are so broadly defined that they encompass every type of transaction provided the item is acquired for primarily personal, family, household or agricultural use.

### *Objectives of the paper*

1. This paper briefly discusses the history of consumer protection legislation and reasons for the enactment of special interest legislation in favor of the consumer. Instead of focusing on consumer safety issues that accompany food, drugs, and hazardous items, this paper is more concerned with the problems that accompany defective consumer durables, particularly ordinary appliances that improve middle class life and make domestic work easier.<sup>5</sup>

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<sup>3</sup> Rep. Act. No. 7394, art. 4 (n) (1992).

<sup>4</sup> Rep. Act. No. 7394, art. 4 (s) (1992). Emphasis added.

<sup>5</sup> These items are expensive but not inaccessible to many Filipinos. These are the items that are saved up for and mulled over before the actual purchase. When the appliances prove faulty or break down, the consumer will usually opt to repair rather than replace the item, and when possible the consumer-purchaser approaches the manufacturer or seller for replacement or

2. This paper examines the ways that the Department of Trade and Industry, as the administrative agency tasked with regulating commerce in consumer durables, has made consumer protection accessible to the general public.<sup>6</sup>
3. This paper also examines how the Consumer Act streamlined the process of redress available to consumers.<sup>7</sup>
4. Finally, the author proposes ways of maximizing the effectiveness of consumer protection measures.

A brief review of related legislation may elucidate the concepts of consumer and consumer-oriented legislation in the Philippines.

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servicing. Arguably the service or product warranty on the item is important to the purchaser and may play a role in the decision to purchase.

<sup>6</sup> The government launched the *ConsumerNet* program to facilitate quick government action on consumer complaints. The *ConsumerNet* Secretariat, which was created after the enactment of the Consumer Act, is under the Bureau of Trade Regulation and Consumer Protection (BTRCP).

As an umbrella organization of eighteen (18) government agencies, the *ConsumerNet* helps consumers file their complaints and with the proper government agency since jurisdiction is determined by both the nature of the complaint and/or the item complained of.

Through the *ConsumerNet* the BTRCP disseminated colored pamphlets entitled "*May Reklamo? Ano ba ang dapat mong gawin? Para mabilis na solusyon, mag-reklamo sa tamang ahensya. ConsumerNet, isang grupon ng binubuo ng 18 ahensya ng gobyerno.*" The pamphlet listed these 18 government agencies, their areas of jurisdiction and their contact numbers. The pamphlet also listed the "Eight Consumer Rights" or "*Ang Aking Mga Karapatan*" and "Five Obligations" or "*Ang Aking Pananagutan.*"

While each administrative agency within the *ConsumerNet* has its specific jurisdiction and rules and procedures, this paper will be limited to disputes regarding consumer durables which are under the jurisdiction of the DTI.

<sup>7</sup> This paper briefly compares the remedies available under Executive Order 913 and Ministry Order 69 (series of 1983) to those available under the Consumer Act.

### TRACING CONSUMER RIGHTS LEGISLATION

The DTI entered into the area of consumer protection in its efforts to regulate commerce and to ensure fair trade practices.<sup>8</sup> Early consumer protection began with the various fair trade laws enforced by the precursor agency of the DTI known as the Department of Commerce and Industry.

On March 1, 1971, President Marcos issued Proclamation No. 822 and declared the last week of October of every year as Consumers' Protection Week. Under said Proclamation, the government sought to protect the consuming public against unreasonable price increases or fraudulent trade practices and to set aside a planning period during which concerted efforts for the assertion of consumers' rights may be thoroughly discussed, planned, and carried out.<sup>9</sup>

Pursuant to said Proclamation, the Bureau of Commerce prepared a compilation of consumer-oriented laws and distributed them to the public in a pamphlet entitled "Fair Trade Laws". This was part of large-scale efforts to encourage merchant compliance with fair trade practices and to better enforce existing fair trade laws. The campaign informed consumers of their rights, privileges, and obligations to help them guard against abuses of unscrupulous manufacturers, producers, importers, wholesalers and retailers. The pamphlet listed twenty-one fair trade laws and regulations spanning from 1918 to 1970. The bulk of the laws either focused on the standardization of weights, measures, and product standards or on minimizing fraud by regulating merchant behavior within certain key sectors or industries.<sup>10</sup> The earliest law in the compilation was

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<sup>8</sup> Interview with Divina D. Capua, Chief of Consumer Assistance and Protection Center, DTI-NCR in Makati City (2000).

<sup>9</sup> Proc. No. 822, par.1-2 (1971).

<sup>10</sup> The pamphlet enumerated the following laws and regulations: Act No. 2728 (1918), Organic Act of the Bureau of Commerce; Rep. Act No. 71(1946), Price Tag Law; Rep. Act No. 1074 (1954) An Act Amending the Price Tag Law; Commerce Admin. Order No. 2-C(1957); Rep. Act No. 1292 (1955), An Act to encourage Filipino Retailers and to create the Filipino Retailers Fund; Act 2333 (1914), An act relative to untrue, deceptive and misleading advertisements; Act 3595 (1929), An Act to regulate manufacture, importation, sale of galvanized iron, barbed wire and nails, etc.; Commerce Admin. Order No. 4 (1934) Revised Rules and Regulations Governing Manufacture, Importation and Sale of Galvanized Iron Sheets, Barbed Wire and Nails in the Philippine Islands; Act No. 3596(1929), An Act to prevent adulteration of and deception in the sale of paints and paints materials in the Philippine Islands; Commonwealth Act No. 46 (1961); Act No. 3740 (1930); Commerce Admin. Order No. 2 (1936), Rules governing the packing, labeling, marking or branding of products

Act No. 2728 (1918), "*The Organic Act of the Bureau of Commerce*," which created the Bureau of Commerce and Industry under the Department of Commerce and Communications. Among the different powers and functions granted to the Bureau were the power to investigate businesses domiciled in the Philippines and to impose penalties for non-compliance with duties. This created the proper structure necessary for monitoring and control of critical areas in the enforcement of these laws.

On October 7, 1983, President Marcos issued Executive Order No. 93, "Strengthening the rule-making and adjudicatory powers of the Minister of Trade and Industry in order to further protect consumers."<sup>11</sup> Subsequently, Trade Minister Roberto Ongpin issued Ministry Order No. 69(1983)<sup>12</sup> which provided for the rules and regulations governing administrative actions for violations of trade and industry laws. This Ministry Order specifically enumerated some forty-seven (47) trade and industry laws. These laws may be divided into several types: (1) organizational laws<sup>13</sup>, (2) regulatory laws<sup>14</sup>, (3) laws following government policy whether to develop or encourage regulation of certain industries<sup>15</sup>, (4) standardization laws and product quality oriented laws<sup>16</sup>, (5) laws to protect

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manufactured in and/or imported into the Philippines; Commerce Admin. Order No. 1 (1970); Act 3815, An Act relating to frauds in Commerce and Industry; Act 3883 (1931), Business Names Law; Rep. Act No. 863 (1953) Registration of Business Names; Act No. 3952(1932), The Bulk Sales Law; Commonwealth Act No. 617 (1941), An Act providing uniform units of Volume and Weights in Rice and Palay Trade; Act No. 3893 (1931); Rep. Act No. 247 (1948).

<sup>11</sup> EXEC. ORDER NO. 913 (1983).

<sup>12</sup> Ministry Order No. 69 (1983).

<sup>13</sup> The organizational laws include: Act No. 2728, Organic Act of the then Bureau of Commerce, PRES. DECREE 488, Charter of the Ministry of Industry; P.D. 721 Charter of the then Ministry of Trade.

<sup>14</sup> Among the different regulatory laws: Code of Commerce, Art. 1-30 Law on registration of merchants; Act No. 3883, Law on Business Names; Act No. 3893, Law on bonded warehouses; Act No. 3952, Law on bulk sales; Rep. Act No. 71, Law on Price Tags; Rep. Act No. 165, Law on Patents.

<sup>15</sup> Examples: P.D. No. 1167, Law regulating the overseas construction industry; P.D. No. 94 Charter of the Philippine Cement Industry Authority; Rep. Act. No. 1180, Law on retail trade nationalization; Rep. Act. No. 1292, Law requiring importers of commodities to sell to Filipino retailers at the same mark-up as their sales through present trade channels at least 30% of their imports.

<sup>16</sup> Examples: Act No. 3595, Act on the manufacture, importation, and sale of galvanized iron, barbed wire, and nails; Act 3596, Law on the sale of paints and paint materials; Rep. Act No. 623, Law on the use of duly-stamped or marked containers for products; Rep. Act No. 4109, Law on product standards; Pres. Decree No. 165, Law on the use of the metric system of weights and measures.

consumers from monopolies and price manipulation<sup>17</sup>, and (6) laws against fraudulent and deceptive trade practices<sup>18</sup>.

Clearly, even prior to the passage of the Consumer Act, consumers were protected against deceptive trade practices and shoddy, unsafe goods. However, since the legislation was scattered among different laws, this did not encourage the formation of a body of consumer law or widespread public awareness of consumer issues.<sup>19</sup>

The 1987 Constitution incorporated the first constitutional provisions on consumer rights. Article XV, section 9 of the 1987 Constitution declares that “[t]he State shall protect consumers from trade malpractices and from substandard or hazardous products.” According to Constitutional Convention member Joaquin Bernas, the framers of the Constitution intended the consumer to have recourse against manufacturers as well as the sellers of defective and hazardous products.<sup>20</sup> Thus, the incorporation of consumer provisions in the 1987 Constitution had the effect of acknowledging consumers as a class deserving of special protection.

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<sup>17</sup> Examples: Act No. 186, Act No. 3815, Law on monopolies and combinations in restraint of trade; L.O.I. 1359, Law directing measures to prevent hoarding, profiteering and price manipulation of prime and essential commodities.

<sup>18</sup> Examples: Act No. 2333, Law on untrue, deceptive or misleading advertisements; Act No. 3740, Law on fraudulent advertising, mislabeling and misbranding; Act 187, Act No. 3815 Law on importation and disposition of falsely-marked articles or merchandise made of gold, silver, or other precious metals or their alloys; Act 188, Law on substitution and alteration of trade marks, trade names or service marks; Act 189, Law on unfair competition, fraudulent registration of trade mark, trade name or service mark, fraudulent designation of origin and false description.

<sup>19</sup> Jurisprudence that refers to the consumer and consumer behavior can be found in the area of intellectual property law. According to Professor Tristan Catindig of the UP College of Law, the Supreme Court in its presumptions on consumer behavior, looks at 1) cost of item and 2) means of distribution. The Supreme Court does not expect a consumer to examine inexpensive items as carefully as the more costly consumer durables. The degree of care used when purchasing small and inexpensive items is expected to be less. With regard to means of distribution, the Supreme Court expects consumers to be put on their guard when they purchase items in “unexpected places.” The consumer was supposed to be able to note the differences in the manner of distribution of Esso gasoline and Esso cigarettes to comprehend that these products were not necessarily produced by the same corporation. (Advanced Bar Review lecture on Commercial Law, 2000).

<sup>20</sup> JOAQUIN G. BERNAS, THE INTENT OF THE 1986 CONSTITUTION WRITERS 1161 (1995).

On April 13, 1992, Congress passed the Consumer Act of the Philippines. This law declares it the policy of the State "to protect the interests of the consumer, promote his general welfare and to establish standards of conduct for business and industry."<sup>21</sup> The law also provides that "the best interest of the consumer shall be considered in the interpretation and implementation of the provisions of this Act, including its implementing rules and regulations."<sup>22</sup>

From a practical perspective, the Consumer Act played an important role in jumpstarting the consumer movement by developing consumer awareness through consumer education programs. The Consumer Act also streamlined the procedure to enforce consumer rights. This made consumer rights more accessible and easier to implement. From a policy perspective, the passage of the Consumer Act effectively declared that consumers were a class deserving of special interest legislation. Through the passage of the Consumer Act, Congress declared that favoring consumers has the effect of promoting an important State interest.

*Why special interest legislation is necessary (Benefits from consumer protection on several levels)*

Adherence to the doctrine of equal protection may lead us to ask whether there exists a substantial distinction justifies granting consumers special treatment. Clearly, it is not enough to imagine numerous and substantial differences between consumers and ordinary purchasers of goods and services. We must inquire whether there are rational grounds to justify treating consumers as a special class.

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<sup>21</sup> Rep. Act No. 7394 (1992), art. 2. Art. 2 Declaration of Basic Policy – It is the policy of the State to protect the interests of the consumer, promote his general welfare and to establish standards of conduct for business and industry. Toward this end, the State shall implement measures to achieve the following objectives: a) protection against hazards to health and safety; b) protection against deceptive, unfair and unconscionable sales acts and practices; c) provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer; d) provision of adequate rights and means of redress; and e) involvement of consumer representatives in the formulation of social and economic policies.

<sup>22</sup> REP. ACT NO. 7394 (1992), art. 3.

Arguments in favor of special interest legislation in favor of the consumer exist on many levels. Furthermore, the immediate benefits of consumer protection is felt by individual citizens. Consider these reasons why consumers deserve special protection:

1. *In a consumer transaction, a citizen or resident uses his/her wages to purchase items for his/her own personal use.* The implication is that the buyer spent hard earned money that he/she could ill-afford to waste on defective or ineffectual items. In contrast, the other party is a corporation engaged in the business of manufacturing and/or selling these items to numerous citizens. Not only is the company better positioned to absorb the loss, but it usually has more to gain by the transaction.<sup>23</sup> To paraphrase the argument posited by John F. Kennedy, if consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his money is wasted, his health and safety may be threatened, and the national interest suffers.<sup>24</sup> Kennedy's argument enunciated the policy perspective that whatever pecuniary loss or injury the consumer suffers as a result of a substandard product indirectly impacts on the domestic economy. This provided the justification for government's concern and involvement in the area of consumer protection.

2. *Consumer-merchant transactions are skewed in favor of merchants.* There has been a growing recognition that consumer transactions, as a rule, are characterized by such difference in power between the consumer-purchaser and the merchant-manufacturer that the very structure of consumer transactions works against the consumer. Consumers are typically in a weak bargaining position because of the disparity in knowledge and resources between the parties.<sup>25</sup> Consider that consumer purchases are limited to numerous small items necessary for personal use. Each particular item bought is just one of many purchased. When

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<sup>23</sup> Since this paper focuses on consumer durables, when describing manufacturers, the author refers to medium to large-sized firms. Arguments regarding funds for legal fees, research and development budgets, and marketing costs are not to be applied to firms that operate on a subsistence level. Note that under existing revenue regulations certain establishments are not subject to the usual income tax requirements, I do not include these firms in my arguments.

<sup>24</sup> 108 CONG. REC. 4167, 4263 (1962) (message from Pres. Kennedy to Congress concerning strength programs to protect consumer interests.) ROBERT J. LAMPMAN, *JFK's Four Consumer Rights: A Retrospective View*, in *THE FRONTIER OF RESEARCH IN THE CONSUMER INTEREST: PROCEEDINGS OF THE INTERNATIONAL CONFERENCE ON RESEARCH ON CONSUMER INTEREST*, 25-26 (E. Scott Maynes and ACCI Research Committee eds., 1986).

<sup>25</sup> ROSS CRANSTON, *CONSUMERS AND THE LAW* 3(1984).

one item proves to be disappointing or substandard,<sup>26</sup> this "violation" is rarely of a tangible, provable nature and the amount of damages available under compensatory remedies is usually insufficient to render it cost-efficient for a consumer to sue for a purely compensatory remedy.<sup>27</sup> The buyer merely wants to return to *status quo ante* usually through a refund or replacement of the item. In contrast, the seller/manufacturer is aware of other possible implications of accepting a return based upon substandard or defective merchandise. The seller/manufacturer views other consequences of the "return or exchange." While the seller/manufacturer may admit a factory defect in a small percentage of the total items, any admission of design defects or similar more costly flaws may result in a flood of complaints and large economic losses. The seller is more inclined to spend money on legal fees and experts to deny fault or flaws in items in order to reduce "exposure to risk" of this nature.

The costs of initiating legal action are significant if not prohibitory since it is a practical necessity for the consumer to hire a lawyer to claim a compensatory remedy. Furthermore, under the Rules of Court, the complainant filing the civil action must bear the burden of the filing fees and related legal expenses before the court will take cognizance of the action.

Further, basic consumer transactions favor the merchant. The force and power of the industry is often behind a merchant-manufacturer. The merchant is *engaged in the business of* manufacturing and/or selling the item. The same item, through millions of nearly identical transactions, is the source of the merchant's income.<sup>28</sup> In the course of producing the item, rational merchants would be more likely to rely upon standardized sales and warranty contracts to reduce "unforeseeable risk."<sup>29</sup> Rational merchants would have consulted with their lawyers to prepare for possible hazards or consumer claims. Faced with a potential lawsuit, merchants are better able to justify greater expenditures on litigation than

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<sup>26</sup> Note that there is a difference between falling below the consumer's expectations and being substandard. The first is subjective, so the merchant can not be held accountable for the disappointment. The latter, however, gives rise to a cause of action.

<sup>27</sup> William C. Whitford, *Structuring Consumer Protection Legislation to Maximum Effectiveness* 1981 WISCONSIN L. REV. 1018, 1027 (1981).

<sup>28</sup> As mentioned earlier, this paper focuses on merchants engaged in the business or manufacturing consumer durables, these are likely to be medium to large sized enterprises with the necessary capital to invest in the venture.

<sup>29</sup> For additional readings on foreseeable risk, see Morris, *Hazardous Enterprise and Risk Bearing Capacity*, 61 YALE L.J. 1172 (1952).

consumers, particularly since legal fees may be deducted as valid corporate expenses.<sup>30</sup> Having invested considerable resources into the product,

[Merchants] can generally justify greater expenditures on the litigation than consumers, therefore, which probably causes decisions to be more favorable to merchant interests than they would be if each side invested equally in the litigation. For the same reason a merchant can more easily justify the expense of circumventing any undesirable precedent that is established by attempting to distinguish it in future cases.<sup>31</sup>

Merchants are willing to exert a greater effort to maintain the *status quo* than consumers would willingly expend on a civil action impugning a product's quality or safety. Consider that since a determination of hazardous flaws or defects in the product may cause a significant setback to the company, the seller has much more to gain by delaying a case or refusing to pay a settlement or appealing the case to a higher court in order to prevent an unfavorable legal precedent from being established. Manufacturers have far more resources to expend in litigation and are also better positioned to absorb the losses. Such willingness to spend paired with their "deep pockets" must be factored in when viewing the outcome of most consumer lawsuits. Experts in consumer behavior have posited that the disparity in the investment in the litigation probably causes decisions to be more favorable to merchant interests than they would be if each side invested equally in the litigation.<sup>32</sup>

3. *The buyer has no effective bargaining power.* Unlike ordinary contracts, consumers' contracts are usually pre-packaged and standardized with the terms dictated by the stronger party. Although in theory each person holds the power to choose with whom to contract and the terms of the transaction, our experience with everyday transactions proves otherwise. As businesses have grown larger and become specialized, an ordinary person rarely deals with the manufacturer or

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<sup>30</sup> NIRC sec. 34 paragraph 1 (a) includes among the deductions of gross income "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession."

<sup>31</sup> Whitford, *supra* note 27 at 1020. See Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974)

<sup>32</sup> *Id.* at 1020.

producer of the product in a way that would allow him to bargain.<sup>33</sup> With the increased growth and sophistication of businesses, many everyday transactions involve powerful chains, franchises, multinationals or conglomerates against whom an isolated and individual consumer has little bargaining power.<sup>34</sup> It is no longer true that the consumer can avoid an oppressive bargain by carefully shopping around. As Kessler explains:

The weaker party, in need of goods or services, is frequently not in a position to shop around for better terms, either because the author of the standard contract has a monopoly (natural or artificial) or because all competitors use the same clauses. His [the consumer's] contractual intention is but a subjection more or less voluntary to terms dictated by the stronger party, terms whose consequences are often understood only in a vague way, if at all.<sup>35</sup>

Furthermore, since the manufacturer and his competitors may have a monopoly over the product and offer essentially the same terms,<sup>36</sup> the free enterprise system no longer ensures freedom of contract. The consumer cannot shop around for a better deal since most firms use essentially the same standardized contract. As Kessler points out: "The standardized contract, one whose contents had been formulated by a business firm, is used in every bargain dealing with the same product or service."<sup>37</sup>

Moreover, The buyer often doesn't have the opportunity to bargain. When the manufacturer-merchant specifies the terms in a standardized contract (whether a contract of sale or of warranty), the individual consumer needs only to agree, the consumer does not have the power to amend or alter the terms. Often the person that he/she deals with directly, whether a salesperson or dealer, does not have the authority or discretion to adjust the contract to the consumer's needs. In brief, the consumer knows full well that he/she must either "take it or leave it." This type of contract has been described as a contract of adhesion – the

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<sup>33</sup> Nowadays, a large number of persons buy retail through department stores and shopping malls. In these places, the buyer is usually forced to accept the tag price. As a general rule, the sales clerks do not have the authority to reduce the ticket price.

<sup>34</sup> It should be noted that to the extent that the large company places a premium upon its reputation and good will, the company may be willing to enter a no-fault settlement to prevent embarrassment and bad publicity.

<sup>35</sup> Friedrich Kessler, *Contracts of Adhesion – Some Thoughts About Freedom of Contract* 43 COLUM. L. REV. 629, 632 (1943).

<sup>36</sup> *Id.*

<sup>37</sup> Kessler, *supra* note 18 at 631.

consumer adheres to the terms set by the more powerful party.<sup>38</sup> While under the law contracts of adhesion are not unconscionable *per se*, they may still treat the weaker party unfairly. Particularly in situations where the consumer is ignorant, contracts of adhesion between the parties may lead the consumer to waive rights and remedies without intending to do so or fully comprehending the terms of the waiver. Thus, minimum standards of protection are essential and consumer protection legislation can make a substantial difference by foreseeing trouble spots and incorporating safeguards into such agreements.

As goods increase in complexity, the traditional doctrine of *caveat emptor* no longer appears equitable. Consumers can no longer be expected to be able to identify flaws through inspection in advance of purchase.<sup>39</sup> It is no longer reasonable to expect the average buyer to determine whether complicated gadgets will function properly based upon his/her initial inspection.<sup>40</sup> When the consumer purchases an item, it is sufficient that he/she believes that the item is reasonably fit for its intended purpose. This protection is guaranteed as an implied warranty against hidden defects. The seller, by offering merchandise for sale, implicitly warrants that the item is reasonably fit for the purpose for which it was intended. The buyer pays the price agreed upon and expects that the item will be safe and effective when used under ordinary conditions. Both the Civil Code and Republic Act No. 7394 provide for implied warranties to protect the consumer. Regardless of whether the item is offered at a discount or not, the manufacturer or merchant must continue to comply with the minimum safety standards and the implied warranty of fitness.

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<sup>38</sup> See generally Karl N. Llewellyn, *What Price Contract?—An Essay in Perspective*, 40 YALE L.J. 704 (1931); Morris Cohen, *The Basis of Contract*, 46 HARV. L.R. 553 (1933); John Murray, *Basis of the Bargain: Transcending Classical Concepts*, 66 MINN.L.R. 283 (1982); Kessler, *supra* note 18; Todd D. Rahoff, *Contracts of Adhesion: An Essay in Reconstruction* 96 HARV.L.R. 1174 (1983).

<sup>39</sup> Arthur R. Miller, *Products Liability: Must the Buyer Beware?* in PHILOSOPHICAL ISSUES IN CIVIL LAW 428-442 (Arthur and Shaw eds.).

<sup>40</sup> Many people purchasing computers and similar technical items would have difficulty determining whether the item was defective. For this reason, warranties for such items are extremely important.

4. *Shift the burden to manufacturers to encourage product development and innovation.* Professor Arthur R. Miller<sup>41</sup> explained one reason why manufacturers in the United States are often held liable for product defects:

When it finally became clear that the profusion of new and complex products on the market had the unfortunate consequence of increasing the accident toll, the policy of promoting industrial expansion had to give way to the policy of promoting human life and limb. The law responded by slowly chipping away at the old precedents; more and more exceptions were carved out from the basic rule, and an increasing number of cases were found to fall within the exceptions. The result has been a shift in the law of 180 degrees away from *caveat emptor*: The seller now has a duty to watch out for and guard against potential hazards associated with the use of his product. And sometimes the seller will be held liable to a person injured by his product, even though the seller's behavior was entirely reasonable.<sup>42</sup>

Even in the absence of negligence, it has been argued that the manufacturer should bear the cost as an *enterprise liability*.<sup>43</sup> In brief, since the manufacturer has entered the business of creating and selling the product, he/she should be aware that the activity may harm others, and should treat this harm or damage as a cost of the activity. When the activity is a business, then this cost will be incorporated in the pricing and passed on to consumers. The producer can also control the cost of these "injuries" by obtaining liability insurance. Not only is the manufacturer better situated to absorb the risk, but since he/she also profits from the transaction, the manufacturer must be viewed as the *superior risk bearer*.<sup>44</sup>

Furthermore, the manufacturer has control over the product. When defective products cause damage, the manufacturer should absorb the burden of the corresponding cost since it was he/she who put them up for sale; and the

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<sup>41</sup> Arthur R. Miller is the Bruce Bromley Professor of Law, Harvard University.

<sup>42</sup> Arthur R. Miller, *Products Liability: Must the Buyer Beware?* PHILOSOPHICAL ISSUES IN CIVIL LAW 429 (Arthur Miller and Shaw eds.).

<sup>43</sup> Eugolia M. Cueva, *Philippine Law on Product Liability*, 55 PHIL. L. J. 206. Cites Morris, *Hazardous Enterprise and Risk Bearing Capacity*, 61 YALE LJ. 1172 (1952).

<sup>44</sup> *Id.* at 206. The concept of the superior risk bearer is attributed to Morris 61 YALE L.J. 1172.

injured persons who are ordinarily powerless to protect themselves should not be made to bear the economic loss.<sup>45</sup>

5. *The poorest consumers are less likely to enforce a rightful claim.* At present, the consumer movement is still at an early stage and there is dire need for consumer education. It is unfortunate that the poorest customers are often the least informed and in the worst bargaining positions.<sup>46</sup> Many of the poorer consumers are not well informed about price differences and the cost of credit. They are less likely to have the time and resources to comparison shop for the better bargains.<sup>47</sup> When the consumer is poor, the lack of financial resources or storage facilities may also necessitate the constant purchase of small quantities from a local store, even at higher prices.<sup>48</sup> Not only do the poorer consumers often lack knowledge; they often also lack the confidence and the resources to exercise their legal rights.<sup>49</sup> Studies of consumer activism conducted in developed countries have shown that consumer activists tend to be younger, better educated, and more affluent.<sup>50</sup> This is also likely to hold true in the Philippines.<sup>51</sup>

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<sup>45</sup> *Id.* at 206. Citing Traynor, *The Ways and Meanings of Defective Products and Strict Liability*, 32 TENN. L. REV. 363 (1965).

<sup>46</sup> Note the "suki" relationship that develops between the shopkeeper or stall owner and a favored customer. For the *suki* relationship to flourish, it is important that the seller believe that the buyer can and will repeatedly purchase merchandise. The favorite *sukis* are those with money to spend.

<sup>47</sup> Housewives or househusbands may have the time and resources to shop at Divisoria or Macro or similar out of the way places known for their low prices. However, those individuals who do not have that support system are not able to visit such bargain centers. Operating under considerable time constraints, most of their shopping will be limited to those nearby. The twenty-four hour convenience stores were founded on this principle.

<sup>48</sup> CRANSTON, *supra* note 25 at 3.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 6. Citing Barry Elliot, *Consumer Activism in Australia*, (1975), 10 POLITICS (Sydney), 188, 191-2.

<sup>51</sup> During my research at the DTI, the information officers pointed out that in terms of demographics consumer awareness seems to be more visible amongst students in the larger cities of Metro Manila and Cebu City. Arguably, the more educated and affluent consumers are more likely to bring their complaints to the proper authorities.

On October 9, 2000 on the TV show Points of View on Channel 23, DTI Undersecretary Ordonez stated that there has been a considerable increase in the number of complaints filed with DTI. He stated that during his first year with the DTI under the Aquino administration there were 72 complaints filed, but in 1999 they received 17,000 complaints from consumers. He also stated that the majority of the complaints did not come from the "A" segments of society but the "B" & "C" sectors.

Consumer behavior does not adequately express customer dissatisfaction or discontent. Economic competition and free market forces by themselves cannot sufficiently regulate the price of goods when the consumer is ignorant.<sup>52</sup> In an efficient market, the purveyors of shoddy goods would eventually be put out of business while the better manufacturers and producers would be rewarded. However, where the consumers are unable to discern the differences in the quality of goods, the manufacturer may be tempted or pressured to compromise quality in order to maintain a certain profit margin.<sup>53</sup>

Consumer education and advocacy are critical to ensuring fair commercial transactions and effective consumer protection. Since consumer education is fundamental to consumer protection, "Consumer Power" remains a key factor in ensuring fair market transactions. Fast-tracking consumer complaints and monitoring non-compliant sellers and manufacturers are effective aspects of consumer protection.

6. *Ill-informed consumers are even more likely to make poor choices that they can ill afford when the Philippines liberalizes trade borders.* As a signatory to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), the Philippines is expected to be inundated with imported consumer goods.<sup>54</sup> The range and complexity of the goods on the market may

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<sup>52</sup> Eulogia M. Cueva, *The Consumer Buyer and His Rights*, 49 PHIL. L.J. 529 (1974).

<sup>53</sup> *Id.* at 529. (Citing WAITE & CASSADY, *THE CONSUMER AND THE ECONOMIC ORDER* 20 (1949).

<sup>54</sup> See generally *Tanada v. Angara*, G.R. No. 118295, May 2, 1997. The case challenges the constitutionality of the ratification of WTO. Decided by the Supreme Court en banc, the *ponente* Justice Kapunan also describes benefits that may accrue to consumers with the liberalization of trade barriers: "Liberalization, globalization, deregulation and privatization, the third-millennium buzz words, are ushering in a new borderless world of business by sweeping away as mere historical relics the heretofore traditional modes of promoting and protecting national economies like tariffs, export subsidies, import quotas, quantitative restrictions, tax exemptions and currency controls. Finding market niches and becoming the best in specific industries in a market-driven and export-oriented global scenario are replacing age-old "beggar-thy-neighbor" policies that unilaterally protect weak and inefficient domestic producers of goods and services. In the words of Peter Drucker, the well-known management guru, Increased participation in the world economy has become the key to domestic economic growth and prosperity." "The Constitution has not really shown any unbalanced bias in favor of any business or enterprise, nor does it contain any specific pronouncement that Filipino companies should be pampered with a total proscription of foreign competition. On the other hand, respondents claim that WTO/GATT aims to make available to the Filipino consumer the best goods and services obtainable anywhere in the world at the most reasonable prices.

leave the average and less savvy Filipino consumer particularly vulnerable to advertising, purchase inducement, and consumption pressures.

7. *Certain activities cannot be left to individual incentive because of the tendency to freeload* Another reason why free market and economic competition must be subjected to government regulation is that there are types of activities that cannot reasonably be left to individual incentive because there is no particular incentive for an individual to act. It has also been argued that since everyone is a consumer, consumer interest is so diffused and all-encompassing that people lack self-awareness as consumers. Rational and self-interested individuals are not likely to join a group purporting to represent consumer interest because of the free-rider tendency – the commonly-held attitude that a person's individual contribution will not make a difference,<sup>55</sup> in other words, just let the other fellow do the job. It has become necessary to regulate business activity directly instead of relying on the free market.<sup>56</sup>

### *Benefits to manufacturers and merchants*

The benefits of consumer protection are not one-sided. Some of the reasons why merchant-manufacturers benefit from increased consumer protection are:

#### **1. Flight to quality**

While not all merchants and manufacturers can expect to benefit from increased consumer awareness, those that consistently give value for money can expect that their behavior will be rewarded with consumer goodwill, brand loyalty, and greater sales revenues. As shoppers learn to identify the poor products and shoddy workmanship, there will be increased recognition of quality. Both consumer ratings and increased reliance on objective and scientific consumer reports should result in increased sales of good quality products.

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Consequently, the question boils down to whether WTO/GATT will favor the general welfare of the public at large."

<sup>55</sup> CRANSTON, *supra* note 25 at 11-12.

<sup>56</sup> Cueva, *supra* note 52 at 529.

**2. Greater faith in the system means increased consumer confidence which means more sales**

Just as better information and market responses will result in increased sales for those selling quality goods, merchants can reasonably expect higher consumer confidence with a decline in deceptive sellers and shoddy products. Market forces should bring about this correction. A concrete example of this is the mutual fund industry in the United States. Its current phenomenal success is strongly attributed to the fact that regulatory safeguards were put into place beginning with the Investment Company Act of 1940. Illicit activities were contained and consumer confidence created, thus resulting in consumer confidence and in the growth of a multi-billion industry.<sup>57</sup>

**3. Honest establishments are benefited by the crackdown on deceptive trade practices. Less undercutting of prices by the shysters.**

As customers grow accustomed to quality goods, expect this to be reflected in consumer behavior. The demand and market for good product should increase. Buyers will be willing to pay the higher prices since they can see and feel the improvement in the quality of the goods.

Manufacturers will also benefit when they purchase their supplies and services. Since manufacturers actually purchase more raw product (in the form of raw material) than individual consumers, manufacturers also stand to benefit from removing shoddy goods from the market. Money wasted on shoddy goods is wasted, whether spent by a consumer or a merchant.

**4. Establishments that are responsive to consumer concerns or complaints may expect to be rewarded through goodwill and added sales. Greater publicity for the firms and establishments that are reliable and honest.**

When the manufacturers are responsive to consumers and show a commitment to quality and consistency, the buyers respond in kind. An example of a company listening to its customers was Coca-Cola during the release of the

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<sup>57</sup> For more information on how consumer confidence helped develop the mutual fund industry, *see generally*, WALTER UPDEGRAVE, *THE RIGHT WAY TO INVEST IN MUTUAL FUNDS* (1996).

controversial "New Coke." When "New Coke" came out, Classic Coke's loyal patrons protested so loudly that the company withdrew the product from the market. The 40,000 protest letters and 8,000 telephone calls a day against the New Coke affirmed customer loyalty to the Coke Classic.<sup>58</sup> The Coca-Cola Company withdrew New Coke in three months but, arguably, the result was still a public relations victory for Coca-Cola Corporation and the old Coke.<sup>59</sup>

When the customers' response is clear, customers can be the best source of feedback and quality control. As long as the manufacturer shows that he/she listens to customer complaints, the goodwill that has been built up over the years can be preserved even in the face of company mistakes and blunders.

**5. By responding reasonably, the company learns from its mistakes and increases its goodwill.**

When a company acts reasonably and fairly, complaints are more readily resolved. This also affords the company the chance to transform an angry and dissatisfied customer into a satisfied and loyal one. Considerable money is spent on advertising, just to get a consumer to enter a store or try a product. Word of mouth publicity spreads and convinces. It is important for the company to know about the problem early and act on it decisively. By keeping the lines of communication between sellers and customers open, the manufacturers gain added insight into customer preferences and behavior. Knowledge of the consumer market can significantly strengthen a company's market position.

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<sup>58</sup> Blair Matthews, *Most Consumers Hated New Coke* available at <http://www.pww.on.ca/newcoke.htm>. (visited October 3, 2000) Matthews points out the "blunder of all blunders happened when Coke decided to change its formula in 1985 to the new and improved version, appropriately named New Coke." The New Coke lasted only three short months. Coca-cola Company fielded 40,000 letters of protest and 8,000 complaint calls a day. The loyal Coke fans hated the new taste and wanted the old Coke back. Also see the Coca-cola website at <http://www.thecoca-colacompany.com/brands/index.html> (visited October 3, 2000) which outlines the release of "coca-cola with a new taste" and coca-cola classic in 1985 as well as the 1992 "new" coke which was renamed Coke II.

<sup>59</sup> *Id.* Matthews points out "it cost The Coca-Cola Company \$4 million to research and develop New Coke but I suspect that what they got back as far as free publicity, advertising and repaired image, surpassed that amount."

### IGNORING THE CONSUMER RESULTS IN HIDDEN COSTS TO THE GENERAL WELFARE

Consumer protection measures have been criticized as costly. Critics argue that Filipino manufacturers cannot afford to comply with the strict product standards of developed nations. But an economic “recession” cannot justify the relaxing of strict product standards or consumer protection since it is precisely during these hard economic times, when businesses are closer to the margin, that merchants are tempted to engage in unconscionable business practices to make sales.<sup>60</sup> To survive, businesses might fail to implement regulatory standards. Competitive pressures might oblige them to adopt production or marketing schemes in which legal obligations are secondary.<sup>61</sup> It is during these times however that strict product standards should be enforced and consumer rights protected. Consumers are just as badly affected by an economic downturn. He/she should be able to rely upon the safety and quality of items purchased. Even if consumer protection law involves net costs, consumers might be prepared to incur and pay for these costs if this will bring them closer to reliable products and fair trade practices.

### PROTECTION AVAILABLE TO CONSUMERS UNDER THE CONSUMER ACT

The declared policy of the Consumer Act is “to protect the interests of the consumer, to promote his/her general welfare, and to establish standards of conduct for business and industry.”<sup>62</sup> The different provisions of the law can be divided according to five (5) different objectives:

1. To provide information and education to facilitate sound choice and the proper exercise of rights by the consumer;
2. To protect against deceptive, unfair, and unconscionable sales acts and practices;

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<sup>60</sup> CRANSTON, *supra* note 25 at xxxvii.

<sup>61</sup> *Id.*

<sup>62</sup> REP. ACT NO. 7394 (1992), art.2.

3. To protect against hazards to health and safety;
4. To provide adequate rights and means of redress; and
5. To involve consumer representatives in the formulation of social and economic policies.

The first objective of consumer information and education is particularly important because it can effectively prevent consumers from unwise purchases and the like. An important goal of "consumer power" is to enable intelligent consumers to get the best value for their money both through careful choices and better quality products.<sup>63</sup> The Consumer Act provides for the creation of the National Consumer Affairs Council tasked with continuing education and information campaigns on consumer issues.<sup>64</sup> The Consumer Act also provides for the development of a consumer education program to be integrated into the existing curricular of primary and secondary schools.<sup>65</sup> Hence, its thrust is two-pronged: in the arena of the formal school system and through the informal network of social clubs, media and other means.

Under the authority of the Consumer Act, the Bureau of Trade Regulation and Consumer Protection of the DTI (DTI-BTRCP) conducted various consumer information and education campaigns targeting different segments of the public. According to the DTI-NCR office, these consumer awareness projects have been most effective with students. To this end, the DTI in coordination with the Department of Education, Culture and Sports (DECS) conducts consumer education and consumer awareness seminars in schools.<sup>66</sup>

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<sup>63</sup> Department of Trade and Industry, Bureau of Trade Regulation and Consumer Protection (DTI-BTRCP) released a pamphlet entitled "Only one INTELLIGENT CONSUMER out of seven gets the best value for her peso." It caricatured different types of shoppers such as the spendthrift, the wasteful, the panic buyer, the bargain addict, the impulsive buyer, and the close-fisted consumer. The tag line used in all the BTRCP pamphlets on consumer protection emphasizes consumer education: "A well-informed and vigilant consumer is the best protected consumer!"

<sup>64</sup> REP. ACT NO. 7394 (1992), art. 153. The information and education campaigns should be geared to provide consumers with facts about consumer products and services, consumer rights and the mechanism for redress available, information on new concepts and developments on consumer protection, general knowledge and awareness necessary for better judgement on consumption

<sup>65</sup> REP. ACT NO. 7394 (1992), art. 154.

<sup>66</sup> REP. ACT NO. 7394 (1992), art. 154.

DTI representatives have assisted interested school students in forming consumer groups to spread awareness of consumer rights. These young consumer groups have occasionally volunteered and assisted DTI-NCR in various projects. In the Makati area, a consumer group of high school students assisted the DTI-NCR in "spot checking" the quality control of school supplies. After comparing different brands and types of notebooks, these young volunteers identified certain brands and types which "overstated" the number of sheets per notebook.<sup>67</sup>

The second objective of protecting against deceptive, unfair and unconscionable sales acts is at the very heart of consumer protection.<sup>68</sup> The Consumer Act defined deceptive and unfair in very broad terms to include any concealment, false representation or fraudulent manipulation, which induces consumers to enter into the sales contract.<sup>69</sup> "Unconscionable" is also liberally defined as "an unfair sales act which takes advantage of the consumer's physical or mental infirmity, ignorance, illiteracy, lack of time or the general conditions of the environment or surroundings which induces the consumer to enter into a sales or lease transaction grossly inimical to the interests of the consumer or grossly one-sided in favor of the producer, manufacturer, distributor, supplier or seller."<sup>70</sup> In order to protect the consumer against these unfair trade practices, the Consumer Act prohibits certain sales acts and practices, regulates the sealing and testing of instruments of weights and measures<sup>71</sup>, provides for stricter consumer product and service warranties<sup>72</sup>, requires basic labeling of special and hazardous products, requires price tags, imposes specific packaging for children and labeling requirements for food, drugs and cosmetics<sup>73</sup>, and regulates advertising and sales promotions to prevent false, deceptive and misleading advertisements<sup>74</sup>.

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<sup>67</sup> Interview with Divina D. Capua, Chief of Consumer Assistance and Protection Center, DTI-NCR, Makati City, Metro Manila. (January 24, 2000). Ms. Capua organized the high school students and enlisted their aid.

<sup>68</sup> See generally, CONST. art XVI, sec.9.

<sup>69</sup> REP. ACT NO. 7394 (1992), art. 50-51.

<sup>70</sup> REP. ACT NO. 7394 (1992), art. 52.

<sup>71</sup> REP. ACT NO. 7394 (1992), art. 61-65.

<sup>72</sup> REP. ACT NO. 7394 (1992), art. 66-73.

<sup>73</sup> REP. ACT NO. 7394 (1992), art. 74-95.

<sup>74</sup> REP. ACT NO. 7394 (1992), art. 108-124.

In addressing the third goal of reducing hazards to health and safety, DTI works with the Department of Health and the Department of Agriculture.<sup>75</sup> Cooperation among the agencies is essential since technical expertise is necessary to set product standards and to develop effective ways of regulating food, drugs, and hazardous products. Under the Consumer Act, the different Departments are required to establish consumer product quality and safety standards and to develop tests to determine the necessary requirements for packaging and labeling these products. The Consumer Act encourages and requires a quick response from governmental regulatory bodies when any consumer product is found to be injurious, unsafe or dangerous.

The Consumer Act streamlined the procedure and requirements in order to provide adequate means of redress by simplifying the procedure and reducing the requirements for filing consumer complaints with the DTI.<sup>76</sup> Prior to Republic Act No. 7394, arbitration and mediation of consumer complaints were subject to the procedure and requirements set forth in Executive Order No. 913 and the Memorandum Order 69 (1983). The changes in the requirements will be discussed later in the paper.

The fifth objective of involving consumer representatives in the formulation of social and economic policies is the basis for the creation of the National Consumer Affairs Council. The Council is tasked with continuing the campaign to educate and to inform the consuming public of their rights and available redress mechanisms. The Council also monitors and evaluates the implementation of consumer programs and projects.<sup>77</sup>

The law itself streamlined the procedure and requirements in order to provide adequate rights and means of redress. The Consumer Act simplifies the procedure and reduces the requirements for filing consumer complaints with the DTI.<sup>78</sup> Prior to the Consumer Act, arbitration and mediation of consumer complaints were subject to the procedure and requirements set forth in Executive Order No. 913 and Memorandum Order 69 (1983). The changes in the requirements will be discussed later in the paper.

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<sup>75</sup> REP. ACT NO. 7394 (1992), art 5-47.

<sup>76</sup> REP. ACT NO. 7394 (1992), art.159-166.

<sup>77</sup> REP. ACT NO. 7394 (1992), arts. 148-158.

<sup>78</sup> REP. ACT NO. 7394 (1992), arts.159-166.

*How the Consumer Act supplements warranty provisions of the Civil Code*

The Philippines is a country under the civil law tradition. Consequently, the provisions of the Civil Code govern the rights and obligations of parties entering into private transactions and the transactions themselves. Before the enactment of the Consumer Act, the special law on consumers, consumer transactions were governed by the Civil Code. In general, the substantive rights and obligations of parties delineated under the Civil Code have not been reduced; parties may continue to file civil actions based upon causes of action premised upon the Civil Code provisions. To illustrate the benefits to the consumer, the paper briefly discusses the protection afforded through product warranties and how the Consumer Act has extended the available protection.<sup>79</sup>

Under the Civil Code, warranties are classified into express warranties<sup>80</sup> and implied warranties.<sup>81</sup> Chapter III of the Consumer Act expressly provides that the provisions of the Civil Code on conditions and warranties shall govern all contracts of sale with conditions and warranties.<sup>82</sup> The special law, however, amends the Civil Code in the area of warranties under consumer transactions by requiring sellers and manufacturers to make clear the terms and limitations under express warranties.<sup>83</sup> The concept of express warranties have been expanded to

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<sup>79</sup> The have chosen to focus on warranties because warranties can protect the consumer and provide value for his/her peso in an effective and straightforward way. Furthermore, since it is usually the merchant or manufacturer who provides the terms of the express warranty, whether as an express guarantee or through explicit claims relied upon by the public, fairness and equity dictate that the consumer be able to hold the manufacturer to his/her promise. When items prove substandard, consumer protection measures should enable consumers to enforce whatever warranties exist.—wanted to keep this part in since it explains the emphasis on warranties.

<sup>80</sup> CIVIL CODE, art. 1546. Any affirmation of fact or any promise by the seller relating to the thing is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon. No affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer.

<sup>81</sup> CIVIL CODE, art. 1547. In a contract of sale, unless a contrary intention appears, there is: 1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing; 2) An implied warranty that the thing shall be free from any faults or defects, or any charge or encumbrance not declared or known to the buyer.

<sup>82</sup> Rep. Act No. 7394, (1992) art. 67.

<sup>83</sup> Rep. Act No. 7394, (1992) art. 67.

include all written warranties or guarantees issued by manufacturer, producer, or importer.<sup>84</sup> The new law lists the requirements with which express warranties must comply with:

- a) To express the terms of the warranty in clear and readily understandable language and to clearly identify the warrantor;
- b) To identify the party to whom the warranty is given;
- c) State the products or parts covered by the warranty;
- d) To state what warrantor will do in the event of a defect, malfunction or failure to conform to the written warranty and at whose expense;
- e) To state the actions the consumer must do to avail of the rights under the warranty;
- f) To stipulate the period within which, after notice of defect, malfunction, or failure to conform to the warranty, the warrantor will perform any obligation under the warranty.<sup>85</sup>

Furthermore, under the Consumer Act, express warranties are made automatically operative from moment of sale.<sup>86</sup>

To ensure that the protection under an express warranty is available to the consumer, the Consumer Act requires that the distributors of products complete sales reports within thirty (30) days from date of sale. Sales reports should state the date of purchase, model of product purchased, serial number, name and address of buyer. Filing of the report is deemed to have the same effect as warranty registration with the manufacturer, producer or importer and is sufficient to hold him liable under the warranty.<sup>87</sup> If the distributor fails to file the sales report, then the manufacturer is relieved of liability under the warranty. While the manufacturer is obligated to make good the warranty, the distributor becomes personally liable for the expenses incurred.<sup>88</sup> The retailers have subsidiary liability for the fulfillment of the express warranty. When both manufacturer and

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<sup>84</sup> Rep. Act No. 7394, (1992) art. 68 (b).

<sup>85</sup> Rep. Act No. 7394, (1992) art. 68 (a).

<sup>86</sup> Rep. Act No. 7394, (1992) art. 68 (b).

<sup>87</sup> Rep. Act No. 7394, (1992) art. 68 (b)(1).

<sup>88</sup> REP. ACT NO. 7394 (1992), art. 68 (b)(2).

distributor fail to honor the warranty, the retailer shall shoulder the expenses and costs necessary to honor the warranty. This does not preclude the right of the retailer to proceed against the manufacturer or the distributor.<sup>89</sup> By holding manufacturers, distributors and retailers responsible, a system of checks and balances have been built into the system. To the consumer, strict privity of contract is no longer a requisite for the institution of legal action.

The Consumer Act does another service to consumers by reducing the requirements and steps needed to enforce a warranty. Under the said Act, warranty rights can be enforced upon the mere presentation of a claim. A purchaser may present either the official receipt or the warranty card along with the product to be serviced. He/She shall not be required to present other documents.<sup>90</sup> If the item was purchased from a distributor or directly from the manufacturer, the warranty must be immediately honored. Otherwise, the consumer may hold the retailer responsible and require him to present the warranty claim to the distributor on his behalf. This has the effect of aligning the retailers' interest with those of the consumer. In such case, the buyer shall not be responsible for the cost of presenting the claim.<sup>91</sup> The law requires distributors and retailers to keep a record of all purchases covered by warranty or guarantee for the period covered. All agreements or stipulations contrary to Article 68 of the Consumer Act shall be without legal effect.<sup>92</sup> Parties are not able to waive the warranty protection granted under the Consumer Act.

### *Mechanisms of redress: enforcing consumer rights*

It is important not to limit our analysis of consumer rights to the abstract. Part of the argument for increasing consumer-oriented legislation is that consumers do not effectively enforce their rights. It may be that the consumer holds substantive rights and adequate causes of action under the law, in which case the key to consumer protection may lie in facilitating the effective enforcement of consumer rights not in increasing their substantive rights. In this regard, DTI plays an important role as the administrative agency with jurisdiction over trade and commerce.<sup>93</sup> It should be noted that the Administrative Code of

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<sup>89</sup> REP. ACT NO. 7394 (1992), art. 68 (b)(3).

<sup>90</sup> REP. ACT NO. 7394 (1992), art 68 (4).

<sup>91</sup> REP. ACT NO. 7394 (1992), art 68 (4).

<sup>92</sup> REP. ACT NO. 7394 (1992), art 68. Additional Provisions on Warranties.

<sup>93</sup> EXEC. ORDER NO. 292 (1987), Title X, Chapt.1. Under the Administrative Code of 1987, DTI is given the following powers and functions relating to the consumer: a) regulate the

1987 places the Bureau of Trade Regulation and Consumer Protection (DTI-BTRCP) under the Office of the Undersecretary for Domestic Trade.<sup>94</sup>

Arguably, administrative suits are better able to address consumer concerns than civil and criminal suits. Consider that administrative suits are not limited by the strict rules of procedure that are required in the regular courts. Since administrative suits merely require the parties to present substantial evidence to prove their case, the burden of proof for administrative suits is considerably less stringent than what is required in civil and criminal cases. At certain stages of the proceedings before the DTI, it is not even necessary for parties to be represented by counsel. These factors mean that administrative suits may allow the consumer to pursue his/her complaint at considerably lower costs than would be possible in regular courts.

Even before the Consumer Act took effect in 1992, consumers could file administrative suits to enforce their rights. Executive Order No. 913 expanded the jurisdiction of Ministry of Trade & Industry and provided the foundation for filing administrative suits to protect consumers' rights. Ministry Order No. 69, issued by then minister Ongpin, set forth the procedure for administrative suits for violations of fair trade laws. To show that the Consumer Act significantly improved recourses available to the consumer, it is necessary to compare the requirements and procedure for filing administrative suits under the Executive Order and Ministry Order No. 69 with those under the Consumer Act. A comparison of the requirements and procedure for initiating administrative suits show that the more recent law significantly improved the mechanisms for recourse available to the consumer.

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importation of essential consumer and producer items to maintain their fair and competitive prices to end-users; b) protect consumers from trade malpractices and from substandard or hazardous products; c) encourage and support the formation of People's Economic Councils at regional, provincial and municipal levels as well as other trade, industry and consumer protection institutions or associations. (Sec. 3.)

<sup>94</sup> EXEC. ORDER NO. 292 (1987), Title X, Chapt.1, sec. 10 (1). The DTI-BTRCP shall formulate and monitor the implementation of programs for the effective enforcement of laws to protect and safeguard the interests of consumers and the public, particularly the health and safety implications of intrinsic product features, produce representation, and the like; and establish the basis for evaluating consumer complaints and product utility features.

*Procedural remedies available to consumers under the Executive Order No. 913*

Executive Order No. 913 strengthened and consolidated the rule-making<sup>95</sup> and adjudicatory powers of the Ministry of Trade and Industry (MTI). Under Executive Order No. 913, the MTI in the exercise of its adjudicatory powers was also granted the related powers to investigate, to issue *subpoenas* and *subpoenas duces tecum*, to hold parties in contempt, to impose preventive measures pending formal investigation, to issue preliminary orders to desist or refrain from actions that may do injustice to the complainant, and the power to impose various administrative penalties. In cases where one of the parties was criminally liable, the MTI was not divested of jurisdiction over the case, but instead the compliance, payment or satisfaction of the award prescribed was to be taken into account in criminal prosecution in court.<sup>96</sup>

Although the Executive Order explicitly states that the parties seeking redress under the E.O. are not be bound by strict rules of evidence and procedure, the requirements are rather strict when compared with the requirements under the Consumer Act:

1. To initiate action — Under Executive Order No. 913, action is instituted through either a sworn complaint filed by the complainant accompanied by sworn affidavits of the witnesses and documentary evidence<sup>97</sup> or through a “Statement of Violation”<sup>98</sup> subscribed to and filed by the Head of the Office

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<sup>95</sup> Note that under Exec. Order 913, the rule making power is limited by the requirement that the rules and regulations must implement the provisions and intent of the trade and industry laws. Before the regulations can take effect, the public must have been given fifteen days notice through publication in two newspapers of general circulation. Although under emergency rules, the rules may take effect at an earlier date, after publication. Furthermore if the rules are voluminous, it is not necessary that they be published in their entirety, but it is sufficient to publish the gist along with a statement as to where and how to secure copies of the full text.

<sup>96</sup> EXEC. ORDER NO. 913 (1983), sec. 4.

<sup>97</sup> EXEC. ORDER NO. 913 (1983), sec. 2.

<sup>98</sup> Under sections 2, 4, 5 and 11 of the Exec. Order No. 913, the action may be commenced by the Head of the Office through the filing of a *Statement of Violation*. The Statement of Violation is a written statement charging the person, corporation, partnership or association with an offense, subscribed to by the Head of the Office. The Statement of Violation must contain the same items as the complaint as well as the preliminary and preventive orders recommended by the Head of Office. The Statement of Violation must be filed with the Chief Hearing Officer of the Central Office.

concerned.<sup>99</sup> The complaint or the Statement of Violation must indicate the offense charged; state the section, article or paragraph of the trade and industry law violated; the ultimate facts of the cause of action; the approximate time of the commission of the offense or the appropriate time when the offense was discovered; and the reliefs prayed for.<sup>100</sup> The complaint or Statement of Violation is also required to be subscribed to either by the complainant or the Head of the Office, respectively.<sup>101</sup>

In contrast, under Article 159 of the Consumer Act, a concerned consumer may file a petition or a "letter-complaint" to commence an investigation by the concerned department.<sup>102</sup> Upon a finding of the department that a *prima facie* violation of any of the provisions of the Consumer Act, formal administrative action may be commenced *motu proprio* by the department or through a verified complaint.<sup>103</sup> It should be noted that Executive Order No. 913 deals with violations of existing trade laws while the Consumer Act deals with violations of Republic Act No. 7394 and its implementing rules and regulations. It was through the Consumer Act that the DTI developed the *ConsumerNet* program that encourages and facilitates resolution of consumer grievances.

A consumer may contact ConsumerNet and avail of DTI assistance at all stages of the complaint process and may even request assistance in drafting the letter-complaint. The current consumer-friendly *ConsumerNet* program of the DTI has made the process of asking for assistance much simpler in a number of ways. For instance, the DTI recently established a toll free *ConsumerNet*<sup>104</sup> phone number to help consumers all over the Philippines seeking advice and assistance in pursuing their grievances. It should be noted that *ConsumerNet* information officers will first require the caller to contact the merchant and try to work out a solution. The information officers of the DTI will not take action until the complainant has first shown that it has made earnest efforts to enter into some sort of agreement or compromise with the merchant involved.<sup>105</sup> It is only after the merchant refuses to assist the consumer or denies his request, that the consumer is

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<sup>99</sup> EXEC. ORDER NO. 913 (1983), sec. 2.

<sup>100</sup> EXEC. ORDER NO. 913 (1983), sec. 8.

<sup>101</sup> EXEC. ORDER NO. 913 (1983), sec. 2, 5.

<sup>102</sup> Article 159 uses the term "letter-complaint".

<sup>103</sup> REP. ACT NO. 7394 (1992), art. 159.

<sup>104</sup> Persons may call *ConsumerNet* collect from anywhere in the Philippines at either of these numbers (632) 890-4932 or 890-4943.

<sup>105</sup> Telephone Interview with Rico Monteverde, Information Officer at the *ConsumerNet* program of the DTI (2000).

encouraged to either approach Consumer Welfare Desks<sup>106</sup> or *ConsumerNet* for assistance in settling the complaint or drafting an effective complaint letter.

2. Under Executive Order No. 913, if a complaint is filed, it must be filed in triplicate with the Head of Office with jurisdiction over the offense. When a single transaction involves violations within the jurisdiction of two or more Heads of Office, a separate complaint shall be filed with each Head of Office concerned.<sup>107</sup> The Consumer Act does not require that the complaint be filed in triplicate. If the consumer is uncertain which of several departments to contact, he may opt to contact the *ConsumerNet* which will help him determine which departments have jurisdiction.

3. Prescriptive period-Under Executive Order No. 913, the action may be pursued within three (3) years from the day of the commission of the offense or if such date is unknown at the time, from the discovery thereof.<sup>108</sup> The Consumer Act provides that claims and actions prescribe within two (2) years from the time that the consumer transaction is consummated or the deceptive or unfair and unconscionable act is committed or in the case of hidden defects, from the discovery thereof.<sup>109</sup>

4. Under Executive Order No. 913, the decision to adjudicate the case or to dismiss the case lies with the Head of Office, which may be overturned by the Minister. Adjudication is not a matter of right for the complainants but is discretionary with the Minister. These Minister considers the following factors in his decision: a) Whether the adjudication will aid the enforcement of the trade and industry law violated, and to what extent; b) the wisdom, propriety, and expediency of adjudicating the case; c) the resources of the office concerned which are available for adjudicating the case; d) whether the case is a priority in the adjudicatory program of the Ministry.<sup>110</sup> Nor is the Head of the Office required to give a reason for the dismissal of the case. The order of dismissal is sufficient if

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<sup>106</sup> Consumer Welfare Desks (CWDs) are set up by business establishments for the purpose of handling consumer complaints. The DTI assists in setting up the CWDs by training the personnel and accrediting those CWDs that comply with DTI standards. The cost of running the CWDs, including the salaries of the personnel, are paid for by the business establishments. Undersecretary Ordonez stated on the television show *Points of View* that there are currently 1,100 CWDs in operation. (October 8, 2000)

<sup>107</sup> EXEC. ORDER NO. 913 (1983), sec. 9.

<sup>108</sup> EXEC. ORDER NO. 913 (1983), sec. 11.

<sup>109</sup> REP. ACT NO. 7394, (1992), art. 169.

<sup>110</sup> Ministry Order, 69 (1983), sec. 15.

it states: "Pursuant to section 13 of the Rules and Regulations of Executive Order No. 913, this Office elects not to adjudicate the case." The decision is not subject to appeal.<sup>111</sup> If the Head of Office decides that the case should be adjudicated, he then determines whether a *prima facie* case exists. If so, he may give due course to the complaint.<sup>112</sup> He may elevate the complaint directly to the Chief Hearing Officer or he may require that the case pass first pass through a mediation phase. If the case is to undergo mediation, the complaint is transmitted to a hearing officer.<sup>113</sup> If an amicable settlement is reached within the mediation period, the agreement shall be reduced to writing, signed by the parties, and approved by the Head of Office in the decision that he shall render. The decision is not subject to appeal and is immediately executory.<sup>114</sup> However, if the respondent fails to appear at the mediation conference or no amicable settlement can be reached, then the Head of Office shall elevate the case to the Chief Hearing Officer in the Central Office for a formal hearing.<sup>115</sup>

The summons shall require the respondent to answer the complaint or statement of violation within fifteen (15) days. If the respondent fails to answer within 15 days, the Hearing Officer may upon motion or *motu proprio* declare the respondent in default and receive evidence *ex parte*.<sup>116</sup> If the complainant fails to appear at the time and place indicated in the Notice of Hearing, the complaint or statement of violation may be dismissed for failure to prosecute and a judgment issued for the Respondent to recover costs for complainant.<sup>117</sup> No Motion to dismiss shall be allowed but grounds for such motion may be presented as affirmative defenses. The resolution of the case shall be made in the decision on its merits.<sup>118</sup>

The Hearing Officer may require parties to appear before him for a Pre-Formal Hearing and to submit a Pre-Formal Hearing Brief. Parties must appear with their counsel, upon pain of dismissal or the respondent being declared in default.

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<sup>111</sup> Ministry Order, 69 (1983), sec. 15.

<sup>112</sup> Ministry Order, 69 (1983), sec. 16.

<sup>113</sup> Ministry Order, 69 (1983), sec. 17.

<sup>114</sup> Ministry Order, 69 (1983), sec. 20.

<sup>115</sup> Ministry Order, 69 (1983), sec. 21.

<sup>116</sup> Ministry Order, 69 (1983), sec. 28.

<sup>117</sup> Ministry Order, 69 (1983), sec. 28.

<sup>118</sup> Ministry Order, 69 (1983), sec. 30.

Where an answer fails to tender an issue or admits the material allegations of the adverse party's pleadings, the Chief Hearing Officer shall, on motion of the party, render judgment on such pleadings.<sup>119</sup>

The hearing officer may receive evidence *ex parte*, provided the evidence is in writing and any party in interest shall have the opportunity to examine and rebut by presenting further evidence. The evidence required is substantial evidence.<sup>120</sup>

The Chief Hearing Officer or the Adjudication Officer shall decide the case within thirty (30) working days from the time the formal hearing is terminated. The written decision must state the merits of the case and the facts and law on which it is based.<sup>121</sup>

Consider the extent of these adjudicatory powers granted to MTI under Executive Order No. 913:

- a) formal investigation— The power to institute and proceed with an administrative investigation is independent of any criminal or civil action. Upon verification that trade and industry laws were violated, the Minister may *motu proprio* charge the violators and proceed with a formal investigation. Whatever administrative penalties may be imposed in the formal investigation is without prejudice to the imposition of penalties in a criminal action, and vice versa. However, the Minister or the judge may consider the decision and/or the penalties imposed by the other as sufficient, as his sense of justice dictates.<sup>122</sup>

The Minister must use all reasonable means to ascertain the facts of the case speedily and objectively, *without regard to technicalities of law or procedure and strict rules of evidence prevailing in courts*. The Minister shall have the power to punish direct and indirect contempt and the power to issue *subpoena* and *subpoena dulces tecum*. The

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<sup>119</sup> Ministry Order, 69 (1983), sec. 38.

<sup>120</sup> Ministry Order, 69 (1983), sec. 41.

<sup>121</sup> Ministry Order, 69 (1983), sec. 42.

<sup>122</sup> EXEC. ORDER NO. 913 (1983), sec. 5 (a).

Minister must decide the case thirty days from the termination of the formal investigation.<sup>123</sup>

- b) Preliminary orders—After the Minister has instituted a formal charge, even before the formal investigation has commenced, the Minister may *motu proprio* or upon verified application by any person, issue a preliminary order requiring a person to refrain from a particular act or to perform a particular act, if the act would probably work injustice to the complainant.<sup>124</sup>
- c) Preventive measures pending formal investigation—As soon as a formal charge is instituted by the Minister, and even prior to the commencement of a formal investigation, the Minister may order any one or more of the following measures to prevent the disposition or tampering of evidence, the continuation of the acts complained of, and the flight of the respondent: seizure of goods, seizure of paraphernalia, machines, vehicles, and the like believed to be used in the commission of the offense, padlocking of the warehouse, building, etc. containing this paraphernalia; padlocking of the business establishment, warehouse, building, shop or other structure that was used in the commission of the offense; holding in port of any vessel or aircraft used in the commission of the offense; prevention of departure from the Philippines of the respondent, regardless of citizenship; and other preventive measures which the Minister deems necessary. The Minister shall issue a copy of the order to the Philippine Coast Guard, Aviation Security Command, or Commission on Immigration and Deportation which shall immediately implement the order and submit a report of compliance to the Minister.<sup>125</sup>
- d) Administrative penalties—After formal investigation the Minister may impose one or more of these administrative penalties: issuance of a cease and desist order, acceptance of a voluntary assurance of compliance or discontinuance under such terms and conditions as

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<sup>123</sup> EXEC. ORDER NO. 913 (1983), sec. 5(c)(d).

<sup>124</sup> EXEC. ORDER NO. 913 (1983), sec. 10.

<sup>125</sup> EXEC. ORDER NO. 913 (1983), sec. 11.

may be imposed,<sup>126</sup> condemnation or seizure of products which are subject of the offense, forfeiture of the paraphernalia and all properties, real or personal, used in the commission of the offense, cancellation of any permit, license, authority or registration which may have been granted by the Ministry or suspension not exceeding one year, withholding of the permit, license, authority or registration which is being secured from the Ministry, assessment of damages, censure, and other analogous penalties or sanctions.<sup>127</sup>

Minister of Trade and Industry Roberto Ongpin issued Memorandum Order 69 (1983) pursuant to Executive Order 913. The Memorandum Order 69 set forth rules and regulations governing administrative actions for violations of trade and industry laws.

Under the Executive Order 913, the procedure of an administrative action followed these basic steps and requirements:

- a) Commencement of the action. Either through a Statement of Violation filed by the Head of the Office concerned or through a sworn written complaint filed by complainant witnesses together with sworn testimonies of witnesses and documentary evidence.<sup>128</sup>
- b) The complaint or the statement of violation must contain the names and addresses of the complainant and respondent, the section or article or paragraph of the trade and industry law violated, the ultimate facts of the cause of action or acts or omissions complained of as constituting the offense, the approximate time of the commission of the crime or its discovery, the penalties prayed for and the preliminary and preventive orders recommended to the Head Office.<sup>129</sup>

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<sup>126</sup> Voluntary assurance of compliance or discontinuance is discussed in sec. 8 of Exec. Order No. 913. It includes an assurance to recall, replace, repair, refund the money value of defective products distributed in commerce. The Minister may require the respondent to submit periodic reports of compliance and file a bond to guarantee compliance.

<sup>127</sup> EXEC. ORDER NO. 913 (1983), sec. 6.

<sup>128</sup> EXEC. ORDER NO. 913 (1983), sec. 2.

<sup>129</sup> EXEC. ORDER NO. 913 (1983), sec. 8.

- c) The complaint must be filed within three years from the date of the commission of the offense or if the date is unknown at the time, from the date of discovery. Actions filed after the three year period shall be barred.<sup>130</sup>
- d) The administrative action under these rules and regulations is independent of the corresponding criminal or civil actions for the violation of trade and industry laws.
- e) The complaint may be prosecuted by the Complainant by himself or through counsel.

While Executive Order No. 913 provided consumers with the means to seek administrative redress, it is unlikely that the ordinary consumer would rely upon this to resolve a consumer dispute. In contrast, the current Consumer Act emphasizes settlement between the parties. Instead of enumerating in equal detail the steps for filing an administrative complaint under the Consumer Act, below is a brief list of steps involved.

**The present procedure of resolving a complaint under the Consumer Act<sup>131</sup>**

Compare the procedure under Executive Order No. 913 with the current procedure under the Consumer Act as described below. Notice that the procedure under the Consumer Act can be broken down into simple steps:

- 1. Contact the person who sold you the item. Identify the problem and what would be a fair settlement.**

The BTRCP-DTI published a pamphlet to assist consumers in "Handling Your Own Complaint." The first step is to identify the problem and what would be a fair settlement. The law provides that under the minimum standards of warranty, the manufacturer should first attempt to repair the item. When the item has been repaired but continues to malfunction, the buyer may seek a refund or the replacement of the item.<sup>132</sup> Then gather documentation to support the complaint. Return to the seller and calmly explain the problem and the proposed

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<sup>130</sup> EXEC. ORDER NO. 913 (1983), sec. 11.

<sup>131</sup> Telephone Interview with analyst Migs Balein of the ConsumerNet (January 13, 2000).

<sup>132</sup> REP. ACT NO. 7394 (1992), art. 68 (c).

solution. A large percentage of consumer problems are resolved even before a formal letter of complaint is filed. If the company does not respond to the complaint, prepare to draft a formal letter of complaint to the consumer protection agency concerned.

**2. Know which government agency has jurisdiction.**

If it is not immediately clear which is the appropriate government agency to approach, the fastest way to resolve the problem is for the consumer to call the *ConsumerNet* hotline. The *ConsumerNet* analysts can determine the appropriate agency to settle the dispute. Consider that certain complaints may fall under the jurisdiction of several agencies at the same time.<sup>133</sup>

**3. Draft a complaint letter.**

When a consumer has a complaint against a retailer or importer or distributor or against the manufacturer, first step is to write a letter of complaint addressed to the manufacturer. The consumer/customer should also send a copy of the complaint letter to the appropriate government agency. The letter should contain the names and addresses of the customer and the establishment as well as the circumstances regarding the complaint complete with names, dates and places. Also enclose copies of the supporting documents to enable the mediation officer to determine whether a cause for complaint exists.

**4. Prepare for the mediation conference.**

If a cause for complaint is found to exist, then the next stage is the mediation conference. The consumer-complainant is not allowed to bring a lawyer. The consumer-complainant represents himself at this stage. Since the purpose is to reach a middle ground, parties take all possible steps to reach a settlement.

If mediation does not resolve the dispute, the parties may file for arbitration with the Office of Legal Affairs at DTI. Parties must then prepare for arbitration. When the parties are unable to reach a settlement, then the case is elevated to the arbitration stage. Although a settlement may be entered into at any point, after the first attempts at mediation fail, the parties and their lawyers must prepare for arbitration before the Office of Legal Affairs of the DTI. The

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<sup>133</sup> Telephone interview with analyst Migs Balein of the *ConsumerNet* (January 13, 2000).

Office of Legal Affairs has jurisdiction over the case, following the principle of exhaustion of administrative remedies.

*Arbitration under Executive Order No. 913*

The Executive Order was issued to provide for uniform, economical, and simple adjudication and to ensure that the penalties imposed are commensurate to the offense. The law sought to offer swift and effective solutions to the following problems of the Ministry of Trade and Industry which were described as having assumed proportions of economic sabotage: hoarding, profiteering, price manipulation of prime and essential commodities during periods of price adjustments, hoarding of cement, dumping of substandard, imitation, hazardous cheap goods, infringement of internationally known tradenames and trademarks, textile smuggling, and unfair trade practices of business firms.

*Arbitration under the Consumer Act*

Under the Consumer Act, the consumer arbitration officers have *original and exclusive jurisdiction* to mediate, conciliate, hear, and adjudicate all consumer complaints. However, this does not preclude the parties from pursuing the proper judicial action.<sup>134</sup>

The consumer arbitration officers have the power to summon witnesses, administer oaths and affirmations, issue *subpoena* and *subpoena dulces tecum*, rule upon offers of proof, and receive relevant evidence, take depositions when it serves the ends of justice, regulate the course of the hearing, rule on any procedural request or similar matter and to decide the complaint.<sup>135</sup>

In hearing the complaint the mediation officer shall use every and all reasonable means to ascertain the facts in each complaint speedily and without regard to strict rules of evidence prevailing in courts. The complaint shall be decided within fifteen (15) days from the termination of the investigation.<sup>136</sup>

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<sup>134</sup> REP. ACT NO. 7394 (1992), art. 162.

<sup>135</sup> REP. ACT NO. 7394 (1992), art. 163.

<sup>136</sup> Rep. Act No. 7394 (1992), art. 163.

*Methods of Review available under the Administrative Code of 1987*

The Administrative Code provides for a fifteen day period within which a party may appeal an agency decision whether through filing a notice of appeal with the agency or filing a petition for review with the reviewing court.<sup>137</sup>

The petition for review must be filed within fifteen (15) days from receipt of the final administrative decision. One motion for reconsideration is allowed, if the motion is denied then the movant must perfect his appeal during the remaining period for appeal reckoned from the receipt of the denial of the resolution of denial.<sup>138</sup>

Review shall be made on the basis of the record taken as a whole. The findings of fact of the agency when supported by substantial evidence shall be final except when specifically provided otherwise by law.<sup>139</sup>

Appeals from the decision of the Office of Legal Affairs should be filed with the Department Secretary and then with the Office of the President.

*Differences*

Administrative actions filed under the Consumer Act differ from the previously available procedures in these ways:

1. Executive Order No 913 deals with violations of fair trade laws. Actions filed under Republic Act No. 7394 are limited to violations of the Consumer Act.
2. Under the Executive Order, the Minister of Trade, at his discretion could refuse to pursue an administrative complaint. The complainant had no right to demand a reason or explanation for the decision.
3. The Consumer Act emphasizes and encourages parties to reach a settlement at all stages of the proceedings.

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<sup>137</sup> CARLO CRUZ, PHILIPPINE ADMINISTRATIVE LAW 78 (1991).

<sup>138</sup> CARLO CRUZ, PHILIPPINE ADMINISTRATIVE LAW 78-79 (1991).

<sup>139</sup> EXEC. ORDER NO. 292 (1987), Book VII, Chapter 4, sec. 25.

4. The Consumer Act reduced the requirements for the filing of the more straightforward complaints, such as actions based upon warranties. In this manner the Consumer Act provided individuals with a means to hold sellers and manufacturers to their guarantees and their statements regarding the product.
5. The Consumer Act has a shorter prescriptive period of two years as opposed to the three years under Executive Order No. 913.

Since present-day merchant consumer transactions will always be skewed in favor of the merchant, special interest legislation has established certain minimum rights for consumers. Though individual consumers cannot be reasonably expected to negotiate with merchants in the area of consumer contracts, the Consumer Act enables consumers to seek fast and inexpensive relief in instances when the products prove substandard or inferior. To prevent unduly penalizing manufacturers and merchants, the law encourages settlement or arbitration of the dispute.

#### CONCLUSIONS AND RECOMMENDATIONS:

Consumer protection should be viewed from two perspectives: the substantive rights granted under the law and the availment of these rights. It is the availment of these rights that determines the actual difference in the lives of consumers. Availment requires awareness of the actual rights and the mechanisms for redress. The current remedies available to consumers are geared towards the settlement of disputes and the resolution of complaints in a swift and inexpensive manner.

The success of DTI-NCR may serve as a prototype for other urban areas. According to DTI-NCR officials, the ConsumerNet campaign and the informational campaigns in schools<sup>140</sup> have resulted in such a wellspring of awareness and complaints that their offices are inundated.<sup>141</sup>

The sophistication of Metro Manila consumers and the responsiveness of the area's merchants along with greater awareness of consumer rights have allowed the DTI officials to resolve most consumer disputes at the mediation level. For instance, in the past the enforcement of warranties would reach the arbitration level. Nowadays, this rarely happens since DTI officials have found manufacturers and merchants to be willing to adhere to the terms of the warranty contract. Arguably, as both parties grow accustomed to the notion of consumer rights and recognize DTI support of consumer rights, both sides will realize the benefits that arise from greater cooperation and communication between merchants and consumers. This may be reflected in the availment and enforcement of basic rights, whether of product standards or warranties or against deceptive trade practices. Responsiveness to consumer complaints and interests should do much to advance the popularity of consumer protection. The benefits of greater consumer-merchant cooperation may also include increased consumer confidence and this redounds to the benefit of the country in general.

### *Recommendations for the Future*

Since consumer protection depends greatly on informing the consumer and merchants of existing consumer rights and the mechanisms of redress. The author would like to offer a few recommendations in this regard:

1. To continue the information campaigns using mass media. The *ConsumerNet* advertisements in movie houses, on television and on the radio have caught the public's awareness. While the campaign was limited to the Metro Manila area, if possible this should be replicated in other urban areas.

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<sup>140</sup> Consumer information campaigns by the DTI, such as the *ConsumerNet* advertisements on television and in movie theaters and the inclusion of consumer awareness modules in primary and secondary schools, have effected a clear difference in consumer awareness in Metro Manila. According to DTI-NCR officials, Metro Manila consumers have reached a different stage of development.

<sup>141</sup> It should be noted that DTI-NCR has only three full time mediation officers and one lawyer who handles both mediation and arbitration.

2. To coordinate with local government units and instigate consumer awareness campaigns in the barangay level. DTI officials are willing to assist in education campaigns and coordinate with LGUs to ensure that fair trade laws are understood and enforced on a grassroots level, even in *palengkes*, beyond shopping malls and department stores.
3. To increase the number of mediation officials in the DTI-NCR office. Clearly, the complaints arising from a population of seven million consumers cannot be adequately addressed by the current staff.
4. To avail of computer systems to collect and collate data. It has been noted that product defects tend to cluster within a geographical area, sometimes due to the fact that the items all originate from one factory in the area. Ideally, the internet may be used to accept complaints. If it were possible for the consumer to immediately inform the DTI, of possible product defects, the place of purchase, the type of item, etc. it would facilitate the tracking of products and the possible health hazards.
5. The regional bureaus of the DTI document the consumer complaint at the early stages.<sup>142</sup> However, they have to go beyond that. If a merchant engages in fraudulent trade practice, the DTI officials must, however, compile and consolidate this data, making it accessible to the public who can then make use of the information.<sup>143</sup>
6. Since it is possible that substandard or hazardous products are present in clusters, especially if the defect arises from faulty factory machinery or poor inspection standards, communities would benefit if local DTI offices monitored various complaints and injuries arising from these possibly substandard or hazardous products. Publicizing this information through the local government units or the local DTI offices would provide invaluable assistance to consumers.

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<sup>142</sup> Interview with Ms. Nelly Guinid, Senior Trade and Industry Development Specialist at the Consumer Welfare Division of the Bureau of Trade Regulation and Consumer Protection of Department of Trade and Industry, in Makati, Metro Manila. (May 27, 1999).

<sup>143</sup> According to Atty. Rodolfo B. Gilbang, at present the data is not consolidated in this manner. The funding for the Consumer Affairs cannot support the paperwork. Interview with Atty. Rodolfo B. Gilbang, Chief Adjudication Officer of Administrative Adjudication and Investigation Division of DTI Office of Legal Affairs (DTI-OLA), Makati, Metro Manila. (July 16, 1999).

7. Since the DTI maintains an e-mail address for the *ConsumerNet* campaign, it may be possible to maintain an informational website to notify consumers of recalled products or items that have had an unusual number of complaints. Similarly, DTI could collect information through the website using on-line surveys that sort information to differentiate products, geographic areas, nature of complaint, the place of purchase, and the adequacy of the response of the merchant-manufacturer.
8. Manufacturers and merchants should be encouraged to establish Filipino equivalents of the *Better Business Bureaus* (BBB)<sup>144</sup> in order to regulate businesses within their area. *Better Business Bureaus* record and regulate compliance of industry standards, ethical advertising, and fair trade practices of the different manufacturers and merchants in a location.<sup>145</sup> Through effective data gathering and record keeping on the volume of complaints and the reasons for customer dissatisfaction, the Better Business Bureau Organization monitors different businesses and identifies possible design or manufacturing defects in particular products. The Better Business Bureau Organization has various trademarks such as the *Reliability Seal*, and zealously publishes lists of “companies that do not have permission to use them” A similar nationwide organization in the Philippines could perform this valuable preventive step. Member businesses would have given access to the information and be able to change their behavior or products accordingly.
9. Publication or making the information on businesses available would be a significant public service: It would enable consumers to make informed choices before entering into contracts. These records of noncompliance with fair trade laws, warranty agreements, and product safety standards would perform an important public function. Aside from assisting consumers to make informed choices, an

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<sup>144</sup> Better Business Bureaus are private organizations that keep track of complaints about merchants and their products within a particular locality. Although Better Business Bureaus are American, the Filipino consumer would benefit from a local counterpart.

<sup>145</sup> According to Mrs. Nelly Guinid (cited above) the DTI developed a program of setting up Consumer Welfare Desks (CWDs) inside shopping malls, palengkes, and within stores. These businesses voluntarily fund and maintain the CWDs. The CWDs function as comprehensive complaints-handling desks. The DTI coordinates with business establishments interested in creating and running the CWDs.

effective monitoring organization may pressure companies to comply with existing government regulations. Even without acting as watchdogs of industry, local *Better Business Bureaus* may allow businesses to police themselves – with the effect of decreasing government interference and rewarding deserving merchants and manufacturers.

10. Another measure that private citizens may undertake is the publication of consumer ratings similar to the Ralph Nader reports and the CONSUMER REPORT magazines in the United States. The publishers of these magazines heavily engage in comparison testing: the result is credible ratings of the different products on the market. Since readership not advertisements sustains these publications, they remain independent and are less vulnerable to pressures from businesses. Reports are substantiated with statistics and accurate tests. CONSUMER REPORTS have maintained a reputation for accuracy, reliability, and fairness. In the United States, consumers tend to examine these publications before making large consumer purchases.<sup>146</sup>

This multi-pronged approach would serve to monitor merchant behavior and their compliance with quality control and product safety standards, with the end-result of reducing the cost of identifying materially defective products.

There exist at present adequate measures, guarantees and options protecting and serving consumer rights. What seems to be inadequate is consumer avilment of these rights in areas outside of Metro Manila. In-depth research on why consumers do not make use of them seems to be a necessary first step towards addressing the problem. Is it due to lack of information? If so, more effort and funds need to be focused in this direction. Is it because individual consumers feel powerless to effect any change? Sharing of information and developing linkages may be all that is necessary.

The movement towards consumer education, protection and activism in the Philippines is in its infancy stage. Like other grassroots causes, leaders working for this cause must identify the areas of particular concern to consumers. Only

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<sup>146</sup> The "Blue Book" gives an estimated valuation of the different cars according to the model, the year of production, and its condition. Most persons intending to purchase or sell their cars rely upon the Blue Book for a reliable valuation of the car.

through knowing and meeting these needs will the cause of consumer protection become relevant to the individual Filipino. Careful study of the hows and whys of the different success stories in consumer protection may help the Philippines adapt and transport experiences of nations who successfully “empowered the consumer” without unduly burdening industry. A careful balance must be maintained in order to ensure that consumers are able to find the best products available and that deserving manufacturers are rightfully recognized and rewarded.

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