

CONSUMER PROTECTION AND THE WORLD TRADE ORGANIZATION

Pallavi Kishore

Abstract: International law on consumer protection is fragmented and consists of diverse legal instruments. This article focuses on consumer protection by mainly examining the law of the World Trade Organization (WTO). It finds that the WTO faces certain challenges in ensuring consumer protection. Consequently, this article undertakes a detailed analysis of these issues and makes suggestions to address the challenges in order to improve consumer protection in the WTO, while arguing that the interests of less-developed countries and their consumers should be taken into account.

Resumé: Mezinárodní právo v oblasti ochrany spotřebitele je roztržité a skládá se z rozmanitých právních nástrojů. Tento článek se zaměřuje na ochranu spotřebitele, přičemž se zabývá především právem Světové obchodní organizace (WTO). Zjišťuje, že WTO čelí určitým výzvám při zajišťování ochrany spotřebitele. V důsledku toho se tento článek zabývá podrobnou analýzou těchto otázek a předkládá návrhy na řešení těchto výzev s cílem zlepšit ochranu spotřebitele v rámci WTO, přičemž argumentuje, že by měly být zohledněny zájmy méně rozvinutých zemí a jejich spotřebitelů.

Key words: Consumer, consumer protection, convention, exceptions, fragmentation, harmonization, rights, United Nations, World Trade Organization

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Introduction

Historically, consumer protection has existed since a very long time before it became part of national and international laws. For example, consumer protection existed in the ancient Indian civilization.¹ The Old Testament and the Code of Hammurabi also incorporated consumer protection. In modern times, consumer interests were first considered in the United States (US) followed by Denmark, the United Kingdom (UK), France, Germany, and the European Community (EC).² Later, US President John F. Kennedy articulated the concept of consumer protection on 15 March 1962, which laid the foundation for modern consumer protection law.³

Given the rising relevance of consumer interests, they have found expression in international law as well. Many trade agreements concluded by the European Union and the

¹ PRASAD, A. Rajendra, Historical Evolution of Consumer Protection and Law in India A Bird's Eye View, 11(3) *Journal of Texas Consumer Law*, Summer 2008, p. 132.

² CORRADI, Antonella, International Law and Consumer Protection, March/April 2021, www.nyulawglobal.org/globalex/International_Law_Consumer_Protection1.html, accessed 12 April 2025.

³ United Nations Conference on Trade and Development, Manual on Consumer Protection, 2017, UNCTAD/DITC/CPLP/2017/1, p. 2.

US contain provisions on consumer protection.⁴ Additionally, the United Nations (UN) has been the centre of important activity in this regard. Following a long campaign by consumer associations in several countries, in 1981, the Economic and Social Council highlighted the importance of finalizing guidelines for consumer protection, keeping in mind the needs of developing countries. Finally, the United Nations Guidelines for Consumer Protection (UNGCP), inspired by a number of sources including the Organisation for Economic Co-operation and Development and the United States Consumer Bill of Rights, were adopted by consensus by the General Assembly in 1985, their main purpose being to help Member States in drafting and implementing their respective consumer protection laws as well as to encourage cooperation among them in this regard. These Guidelines were expanded in 1999 to include sustainable consumption and revised in 2015.⁵

According to guideline 3 of the UNGCP, “consumer generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs.” UNGCP guideline 11 lays down principles for good business practices to uphold consumers’ interests. The protection of consumers is beneficial for business as well since it enhances consumption and consumers’ trust in business. Despite consumers being in a weaker position than that of sellers, contract law is based on a presumption of equality between the parties to the contract. This makes protection of the consumer paramount. Consequently, consumer protection law protects the weaker party i.e. the consumer in the buyer-seller relationship. According to UNGCP guideline 2, “consumer protection policies include the laws, regulations, rules, frameworks, procedures, decisions, mechanisms and programmes of Member States, as well as private sector standards and recommendations that protect consumer rights and interests and promote consumer welfare.” This is not an exhaustive definition and includes all other forms of consumer protection. Additionally, this definition only refers to consumer protection by Member States and the private sector and not to any form of international consumer protection.

Apart from the aforementioned legal regimes, the law of the World Trade Organization (WTO) also includes certain rules on consumer protection. This article examines the importance of consumers and consumer protection by primarily focusing on the law of the WTO. Additionally, it also examines the UNGCP since the protection of consumers in international law is fragmented. However, the article does not purport to be exhaustive. Moreover, the article also lays emphasis on the concerns of less-developed countries⁶ and their consumers. The first part analyses the existing relationship between consumer protection and WTO law, the second part suggests ways to improve the protection of consumers in WTO law, and the third part examines the feasibility of harmonization in consumer protection at the international level.

⁴ PITSCHAS, Christian, GERSTETTER, Christiane, *Consumer Rights in International Trade Agreements*, Study commissioned by Verbraucherzentrale Bundesverband e.V. (vzbv), 17 March 2017, 47 p.

⁵ United Nations Conference on Trade and Development, *United Nations guidelines for consumer protection*, <https://unctad.org/topic/competition-and-consumer-protection/un-guidelines-for-consumer-protection>, accessed 28 March 2025.

⁶ In this article, the term less-developed countries/States/Members will be used for both developing countries/States/WTO Members and least developed countries/States/WTO Members.

1. The Relationship between Consumer Protection and WTO Law

An examination of the relationship of consumer protection with WTO law reveals a dichotomy, since there are some provisions that favour consumers directly or indirectly but there are as many provisions that do not favour consumers. Thus, there are both positive and negative aspects to this relationship. The positive aspects show that consumer protection is allowed and the negative aspects show that there are obstacles to consumer protection due to underlying reasons. This part aims to decipher this ambivalent and complex relationship in two interconnected sections. The first section examines the (moderately) positive aspects of the relationship and the second section examines its negative aspects.

1.1 *The Essentially Permissive Nature of Consumer Protection in WTO Law*

Despite WTO law not defining consumer and consumer protection, the Preamble to the Agreement Establishing the WTO mentions “raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services.”⁷ It can be argued that each of these goals is linked to consumers and consumer protection. Full employment would lead to a large and steadily growing volume of real income and effective demand, and consequently, to a higher standard of living which would include access to goods and services for which consumer protection is available, which would lead to higher consumption, and thus, to higher production of goods and services, followed by higher employment, higher income, and higher standards of living. Therefore, the achievement of the goals mentioned in the Preamble would help in upholding consumer interests and the upholding of consumer interests would help in achieving these goals, thus highlighting a mutualistic symbiotic relationship between the two.

Additionally, liberalization supposedly allows consumers access to cheap and better-quality goods and services. Consequently, promotion of the interests of producers and traders indirectly allows protection for consumers to a certain extent. Consumers need to be protected before, during, and after purchase and consumption of the product. Thus, there are different kinds of consumer interests that need to be protected at various stages such as protection from potential harm, redressal in case of harm, and provision of essential goods and services as enshrined in UNGCP guidelines 5(a) and 36,⁸ to name a few. WTO law enshrines protection from potential harm and provision of essential goods and services in the following ways.

The general exceptions in article XX of the General Agreement on Tariffs and Trade (GATT) and article XIV of the General Agreement on Trade in Services (GATS) allow, among others, measures protecting public morals, human, animal, plant life or health; measures maintaining public order; measures complying with domestic laws relating to the protection of intellectual property rights and privacy of personal data and confidentiality, the prevention of deceptive and fraudulent practices, and safety; and measures relating to the conservation of exhaustible natural resources. Article 2.2 of the Agreement on Technical

⁷ Recital 1 of the Preamble to the Agreement Establishing the WTO.

⁸ Article 25(1) of the Universal Declaration of Human Rights states that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services” thus pointing to the importance of provision of essential goods and services.

Barriers to Trade (TBTA) allows technical regulations for legitimate objectives, including for “national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.” Article 2.1 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPSA) allows measures “for the protection of human, animal or plant life or health.”

Paragraph 2 of article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) exempts Members from patenting inventions in the interest of protecting *ordre public* or morality, human, animal, plant life or health and avoiding serious prejudice to the environment.⁹ Article 30 allows limited exceptions to the exclusive rights conferred by a patent while considering legitimate interests of the patent owner and third parties. These third parties could include consumers. Article 31 allows Members to grant compulsory licences after fulfilling certain conditions. However, under article 31(f), these licences are granted predominantly for domestic consumption. Therefore, the TRIPS Agreement was amended for reasons of public health. A new article 31bis was added, paragraph 1 of which states that the requirement under article 31(f) does not apply in the case of export of pharmaceutical products. This would benefit the consumers of these pharmaceutical products in the importing Member. These provisions of the TRIPS Agreement pertaining to patents fall in the category of provision of essential goods and services. In addition, the TRIPS Agreement includes provisions on trademarks and geographical indications in articles 15 to 24, the implementation of which ultimately benefits consumers. This is an example of protection of consumers from potential harm since the implementation of these provisions prevents consumers from being misled. Moreover, article 46 of the TRIPS Agreement states that the interests of third parties shall be taken into account while ordering disposal or destruction of goods that infringe intellectual property rights. These third parties could include consumers.

Also, article 19.2 and footnote 50 of the Subsidies and Countervailing Measures Agreement (SCMA) allow representation by consumers whose interests might be adversely affected by the imposition of a countervailing duty.

Additionally, one of the tests to determine likeness of goods and services is consumer preferences. This determination is required in order to correctly apply the provisions on non-discrimination i.e. the most-favoured-nation treatment and national treatment provisions.¹⁰

Moreover, a comparison of WTO law with the UNGCP is instructive. For example, UNGCP guideline 33 states that national standards should aim to conform to international standards and guideline 34 states that national standards should be raised to international standards, but article 2.4 of the TBTA requires the use of international standards as a basis for technical regulations and article 3.1 of the SPSA requires that SPS measures be based

⁹ According to paragraph 3, “Members may also exclude from patentability:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.”

¹⁰ VAN DEN BOSSCHE, Peter, *The Law and Policy of the World Trade Organization Text, Cases and Materials*, Cambridge University Press, New York, 2005, pp. 316, 323-324, 335, 356, 358, 368. A large number of cases also deal with this issue. See for example WTO, WT/DS135 European Communities – Measures Affecting Asbestos and Products Containing Asbestos, Appellate Body (AB) Report of 12 March 2001, paragraph 117 and WTO, WT/DS453 Argentina – Measures Relating to Trade in Goods and Services, AB Report of 14 April 2016, paragraphs 6.31-6.32.

on international standards. Thus, these two WTO agreements impose strict obligations on WTO Members. Additionally, article 2.4 of the TBTA and article 3.3 of the SPSA allow technical regulations and SPS measures higher than international standards. Thus, the TBTA and the SPSA allow higher protection of consumers than that defined in international standards. The SPSA also enshrines the use of the precautionary principle in article 5.7 to protect consumers, thus highlighting the advances in consumer protection law. Another example of the interaction between WTO law and the UNGCP shows the similarity between the two. Both protect the consumers from hazards to their health in UNGCP guideline 5(c), the general exceptions in the GATT and the GATS, the TBTA, and the SPSA.

A study of GATT and WTO cases reveals some interesting aspects regarding consumer protection.

In *EC – Seal Products*,¹¹ the EC banned the import of products made from seals due to public morals concerns over seal welfare since European consumers were concerned about the inhumane killing of seals. Thus, there were two consumer protection objectives in this case i.e. consumers' access to imported products and consumers' public morals. The ban aimed to achieve the latter objective by invoking article XX(a) of the GATT which allows measures for the protection of public morals. However, it did not withstand the test of the chapeau of article XX of the GATT which prohibits arbitrary or unjustifiable discrimination and a disguised restriction on international trade. The EC also unsuccessfully invoked article XX(b) of the GATT which allows measures for the protection of animal life or health. In *US – Shrimp*,¹² the US required domestic shrimp trawlers to be equipped with Turtle Excluder Devices. This requirement was later applied to shrimp exporters when the US was pushed to do so by its non-governmental organizations.¹³ Thus, there were two objectives in this case as well i.e. consumers' access to imported shrimp and concerns for the protection of turtles. The ban on the import of shrimp caught without using Turtle Excluder Devices aimed to achieve the latter objective by invoking article XX(g) of the GATT which allows measures relating to the conservation of exhaustible natural resources. Like the previous case, the ban did not withstand the test of the chapeau of article XX of the GATT. In *US – Tuna*,¹⁴ the US banned the import of tuna caught using technology resulting in the incidental killing or injury of dolphins since US consumers had decided to boycott tuna after they became aware of the harm caused to dolphins.¹⁵ In this case too, there were two consumer protection objectives i.e. consumers' access to imported tuna and consumers' concerns for the protection of dolphins. The ban on the import of tuna aimed to achieve the latter objective

¹¹ WTO, WT/DS400 and WT/DS401 European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, Panel Report of 25 November 2013 and AB Report of 22 May 2014.

¹² WTO, WT/DS58 United States – Import Prohibition of Certain Shrimp and Shrimp Products, Panel Report of 15 May 1998 and AB Report of 12 October 1998.

¹³ KISHORE, Pallavi, Revisiting the WTO Shrimps Case in the Light of Current Climate Protectionism: A Developing Country Perspective, 3(1) *The George Washington Journal of Energy & Environmental Law*, January/Winter 2012, p. 89.

¹⁴ GATT, DS21/R - 39S/155 United States – Restrictions on Imports of Tuna, Panel Report of 3 September 1991 and GATT, DS29/R United States – Restrictions on Imports of Tuna, Panel Report of 16 June 1994.

¹⁵ ALLEN, Liz, The Origin Of The “Dolphin-Safe” Tuna Label, 28 April 2021, Forbes, <https://www.forbes.com/sites/allenlizabeth/2021/04/28/the-origin-of-the-dolphin-safe-tuna-label/>, accessed 26 September 2025. See also SAHAGUN, Louis, Protests Urge Tuna Boycott Over Killings of Dolphins, 12 April 1988, Los Angeles Times, <https://www.latimes.com/archives/la-xpm-1988-04-12-mn-795-story.html>, accessed 26 September 2025.

by unsuccessfully invoking articles XX(b) and XX(g) of the GATT. Additionally, the US law also provided for labelling the imported tuna as “Dolphin Safe” indicating that tuna was caught without harming dolphins. This law facilitating the sale and purchase of tuna caught without harming dolphins, was upheld. These cases focused on the method of killing seals and of catching shrimp and tuna. The import bans imposed in these cases took into account (consumer) concerns regarding process and production methods (PPMs) that arose before purchase/consumption of the product, also highlighted in UNGCP guidelines 5(e) and 5(i). However, the method of killing seals and of catching shrimp and tuna did not constitute a safety risk to consumers if they were to consume the products.

As opposed to these cases, the *EC – Asbestos*,¹⁶ *EC – Hormones*,¹⁷ and *EC – Approval and Marketing of Biotech Products*¹⁸ cases were about safety risks to consumers after purchase/consumption of the product. In *EC – Asbestos*,¹⁹ France banned asbestos and asbestos products to protect the health of consumers and workers. This ban was upheld under article XX(b) of the GATT which allows measures for the protection of human life or health. Additionally, the protection of human life or health was found to be a highly vital and important value. It was also held that it would be easier to justify a measure as necessary under this provision if it was meant to achieve an objective the importance of which was very high. In *EC – Hormones*,²⁰ the EC banned the import of meat and meat products which had been treated with hormones for growth purposes due to consumer concerns about their safety.²¹ However, the EC’s risk assessment did not support the ban as required by the SPSA. In *EC – Approval and Marketing of Biotech Products*,²² the EC had an approval procedure for approving genetically modified products but placed a moratorium on approvals and some EC Member States refused entry to those genetically modified products that had been approved by the EC. Both the moratorium and the refusal effectively deprived the EC consumers from access to the imported products and both were found to violate different provisions of the SPSA.

The protection of consumers from cross-border gambling and betting services and fraud was considered a valid objective in the *US – Gambling*²³ and *Korea – Various Measures on Beef*²⁴ cases. In *US – Gambling*,²⁵ the US banned the import of cross-border gambling and

¹⁶ WTO, WT/DS135 European Communities – Measures Affecting Asbestos and Products Containing Asbestos, Panel Report of 18 September 2000 and AB Report of 12 March 2001.

¹⁷ WTO, WT/DS26 and WT/DS48 European Communities – Measures Concerning Meat and Meat Products (Hormones), Panel Report of 18 August 1997 and AB Report of 16 January 1998.

¹⁸ WTO, WT/DS291, WT/DS292, and WT/DS293 European Communities – Measures Affecting the Approval and Marketing of Biotech Products, Panel Report of 29 September 2006.

¹⁹ WTO, WT/DS135 European Communities – Measures Affecting Asbestos and Products Containing Asbestos, Panel Report of 18 September 2000 and AB Report of 12 March 2001.

²⁰ WTO, WT/DS26 and WT/DS48 European Communities – Measures Concerning Meat and Meat Products (Hormones), Panel Report of 18 August 1997 and AB Report of 16 January 1998.

²¹ MUELLER, Kristin, Hormonal Imbalance: An Analysis of the Hormone Treated Beef Trade Dispute Between the United States and the European Union, 1(1) *Drake Journal of Agricultural Law*, Spring 1996, p. 102.

²² WTO, WT/DS291, WT/DS292, and WT/DS293 European Communities – Measures Affecting the Approval and Marketing of Biotech Products, Panel Report of 29 September 2006.

²³ WTO, WT/DS285 United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, Panel Report of 10 November 2004 and AB Report of 7 April 2005.

²⁴ WTO, WT/DS161 and WT/DS169 Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef, Panel Report of 31 July 2000 and AB Report of 11 December 2000.

²⁵ WTO, WT/DS285 United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, Panel Report of 10 November 2004 and AB Report of 7 April 2005.

betting services to address concerns regarding money laundering, organized crime, fraud, underage gambling, and pathological gambling and invoked article XIV(a) of the GATS which allows measures for the protection of public morals and the maintenance of public order. It was held that Members have some discretion in determining what constitutes an issue of public morals and public order in their territories. This shows that the interpretation of this exception allows some flexibility to the Member invoking it. Therefore, this exception could be used for consumer protection. However, the US ban only partially withstood the test of the chapeau of article XIV of the GATS which prohibits arbitrary or unjustifiable discrimination and a disguised restriction on international trade. In *Korea – Various Measures on Beef*,²⁶ Korea introduced a dual retail system for the sale of beef that required the sale of imported beef in specialized stores selling only imported beef and displaying a “Specialized Imported Beef Store” sign or in larger departmental stores having separate sales areas for imported beef. This was held violative of the national treatment provision because it led to less favourable treatment for imported beef and not because it differentiated based on the origin of the products. This finding could allow Members to enact consumer protection measures based on the origin of products provided they do not lead to less favourable treatment for imported products. Korea invoked article XX(d) of the GATT which allows measures securing compliance with domestic laws, stating that the dual retail system was meant to prevent fraud and deceptive practices in the sale of beef. It was held that the word “necessary” in article XX(d) of the GATT did not only refer to indispensable measures but also to measures that were not indispensable and that a higher importance of the objective to be achieved would lead to a higher possibility of accepting the measures designed to achieve it as necessary. Thus, there is some scope for Members to adopt consumer protection measures and defend them under article XX(d) of the GATT. However, Korea’s measure was held not to be necessary since alternative measures were reasonably available.

In *Spain – Unroasted Coffee*,²⁷ while determining the likeness of different types of coffee, it was held that coffee was mainly sold in blends and was regarded as one product. Irrespective of whether or not this finding is interpreted as taking into account consumer tastes and preferences while determining likeness, it was one of the factors that contributed to arriving at the final decision in the case.

The *EC – Sardines*²⁸ case shows how WTO law interacts with other international instruments such as the standards of the Codex Alimentarius Commission while protecting consumers. In this case, the EC adopted a regulation establishing common marketing standards for preserved sardines in contradiction to an existing standard of the Codex Alimentarius Commission. It was held that the effectiveness and appropriateness of the international standard were influenced by the perceptions and expectations of consumers in the EC and that the international standard was not ineffective or inappropriate to fulfill the EC’s objectives since it laid down labelling requirements aimed at market transparency. Thus, the EC regulation was violative of article 2.4 of the TBTA.

²⁶ WTO, WT/DS161 and WT/DS169 Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef, Panel Report of 31 July 2000 and AB Report of 11 December 2000.

²⁷ GATT, L/5135 - 28S/102 Spain - Tariff Treatment of Unroasted Coffee, Panel Report of 27 April 1981.

²⁸ WTO, WT/DS231 European Communities – Trade Description of Sardines, Panel Report of 29 May 2002 and AB Report of 26 September 2002.

These cases show that consumer concerns have been present in the GATT and the WTO since a long time. However, the final outcomes of these cases were not necessarily in favour of consumers since WTO law does not grant any rights to consumers. This is because the WTO mainly promotes the interests of producers and traders by promoting liberalization, a political choice²⁹ made by WTO Members due to the presumption that an improvement in the situation of producers and traders necessarily results in the growth of the economy. Naturally, producers and traders prefer this approach and a narrow definition of consumer protection since it benefits them. Moreover, producers and traders are better organized, making them more powerful than consumers. Consequently, they are able to make their voice heard and ask for protectionism³⁰ or for promotion of their interests even if it does not involve protectionism. This preference for producers and traders is also the reason why WTO law does not define consumer and consumer protection. This shows how difficult it is to protect consumers in the WTO. This bias in favour of producers and traders is visible in many more WTO agreements in the form of important interlinked challenges to consumer protection.

1.2 The Challenges in Consumer Protection in the WTO

The first challenge relates to restraints on consumer protection in the law of the WTO itself.

For instance, WTO law does not provide for redressal in case of harm, thus leaving consumers without any redressal mechanism.

Also, article I:3(b) of the GATS excludes services supplied in the exercise of governmental authority, thus excluding the possibility of protecting consumers who consume these services.

Moreover, consumer protection is enshrined mainly in exceptions in the form of the general exceptions in the GATT and the GATS. The TBTA and the SPSA are also based on article XX of the GATT with the TBTA even allowing technical regulations for national security requirements, thus taking into account article XXI of the GATT which is also an exception. Further, the provisions of the TRIPS Agreement pertaining to patents are also exceptions or exemptions. Thus, consumer protection is merely incidental in the WTO or an afterthought like the Amendment of the TRIPS Agreement. Consequently, a Member would have to violate WTO law in order to invoke the exceptions. These exceptions and exemptions are interpreted strictly and require fulfilment of certain strict conditions while enacting measures for consumer protection. For instance, as mentioned earlier, the TBTA and the SPSA require the use of international standards while enacting measures for consumer protection. Another example is the word “necessary” used in these exceptions and exemptions which requires that any measure, including for consumer protection, be least trade-restrictive i.e. the measure will be struck down if a less trade-restrictive alternative is reasonably available to achieve the objective of the measure.

Additionally, article XXIII:2 of the GATT as well as articles 3.7 and 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes or the Dispute Settlement Understanding (DSU) allow suspension of concessions in case the respondent

²⁹ ROLLAND, Sonia E., Are Consumer-Oriented Rules the New Frontier of Trade Liberalization?, 55(2) *Harvard International Law Journal*, Summer 2014, p. 397.

³⁰ NARAYANAN, Prakash, Anti-dumping in India-Present State and Future Prospects, 40(6) *Journal of World Trade*, 2006, p. 1095.

does not implement the panel and/or AB report/s, which would disadvantage consumers of the complainant. The fact that suspension of concessions is approved by reverse consensus under article 22.6 of the DSU also shows neglect of consumer interests.

Furthermore, WTO law allows anti-dumping and countervailing duties as well as safeguard measures even though dumped, subsidized, and cheap imports would be beneficial for consumers. Article 6.11 of the Agreement on Implementation of Article VI of the GATT 1994 or the Anti-Dumping Agreement (ADA) leaves it to the discretion of the importing Member to include consumers in the definition of interested parties. Naturally, importing Members would not include consumers in the definition of interested parties since article 11.2 of the ADA empowers interested parties to request a review of existing anti-dumping duties and consumers would not want the renewal of anti-dumping duties. Article 3.1 of the Agreement on Safeguards requires the granting of an opportunity of representation to other interested parties on whether or not the application of a safeguard measure would be in public interest. These other interested parties could include consumers. However, this is left to the discretion of the importing Member.³¹ Article 6.12 of the ADA and Article 12.10 of the SCMA allow consumers to submit information relevant to the investigation (and not necessarily information which is useful for the consumers such as information on consumer protection). Another example is article 6.8 of the ADA and article 12.7 of the SCMA allowing use of facts available in the investigation which are generally those in the application of the domestic industry (requesting an investigation) unable to compete with the allegedly dumped/subsidized imports which might be beneficial for consumers. The use of facts available leads to a higher possibility of imposition of anti-dumping and countervailing duties, thus making goods expensive for consumers. Additionally, article 9.1 of the ADA and article 19.2 of the SCMA do not mandate application of a lesser duty beneficial for consumers but only refer to it as desirable, and the Agreement on Safeguards makes no reference to a lesser duty. Moreover, article 17.6 of the ADA requires WTO dispute settlement panels to defer to the importing Member imposing the anti-dumping duty, which may not be in the interest of consumers. It should be noted that dumping is legal and consumer protection might lie in allowing consumers access to cheap goods. Furthermore, the Agreement on Safeguards does not lay down a time limit during which the investigation must be completed, allowing it to be stretched unnecessarily. This is problematic for consumers since the commencement of an investigation is enough for importers to look for other exporters, thus negatively impacting the consumers of those goods, and the absence of a time limit for the completion of the investigation perhaps deprives the consumers of a possible quick finding that safeguard measures might not be imposed. Clearly, WTO law favours domestic industry in these instances since trade remedies allow Members to practice protectionism. Moreover, domestic industry may itself lobby for the imposition of trade remedies.

The second challenge relates to protectionism since governments can ban imports in the name of consumer protection to protect competing domestic industry.³² Although this is related to the first challenge, it is being discussed separately because it highlights the divide between WTO Members based on their level of development.

³¹ United Nations Conference on Trade and Development, Dispute Settlement World Trade Organization 3.8 Safeguard Measures, UN, New York and Geneva, 2003, UNCTAD/EDM/Misc.232/Add.16, p. 43.

³² KISHORE, Pallavi, The Role of Consumer Protection in the Relations between Asia and the European Union, 14(11 & 12) *Global Trade and Customs Journal*, 2019, p. 550.

Exporters of less-developed Members would find it difficult to comply with the different standards of each importing Member³³ and a level of protection higher than that enshrined in international standards, thus protecting the competing domestic industry of importing Members that enact stringent measures under the general exceptions in the GATT and the GATS, the TBTA, and the SPSA. In fact, articles 12.3 and 12.7 of the TBTA guard against unnecessary obstacles to exports of less-developed Members. This means that necessary obstacles to exports of less-developed Members can be created. But the word “necessary” can be interpreted to promote protectionism disadvantageous to less-developed Members.

Moreover, article 11.3.2 of the TBTA envisions technical assistance to less-developed Members for complying with technical regulations of importing Members and article 9 of the SPSA envisions technical assistance to less-developed Members in order to fulfil the requirements of importing Members. However, neither article specifies the modalities and the time limits for this process. This effectively means that the process of providing technical assistance could go on forever, thus protecting the competing domestic industry of importing Members from imports.

Likewise, PPMs can also lead to protectionism. This protectionism cannot always be checked by the fact that measures under the general exceptions in the GATT and the GATS, the TBTA, and the SPSA are subject to the usual requirement of non-discrimination and to other strict conditions referred to in the first challenge.

Furthermore, article 5.1 of the SPSA requires scientific evidence in the form of a risk assessment to lawfully impose consumer protection measures. This requirement is one of the strict conditions to be fulfilled while enacting measures for consumer protection, referred to in the first challenge. The supposed purpose of such a requirement is to prevent protectionism because importing Members would have to conduct a risk assessment which might not indicate any risks from imports. However, this requirement could lead to protectionism because developed Members who have the means to conduct a risk assessment might not conduct it objectively, thus protecting their competing domestic industry from imports.

Less-developed Members have a greater burden to take into account interests of consumers in the export markets since these Members are the main food suppliers in international trade,³⁴ thus being more vulnerable to protectionism. The consequence of protectionism in the name of consumer protection is that consumers in importing Members will not have access to imports. Importantly, therefore, UNGCP guidelines 13, 24, 53, and 94 guard against protectionism.

The third challenge relates to the accessibility of consumer protection mechanisms by consumers belonging to less-developed Members. Given that not many less-developed Members would be in a position to enact measures (at a level equivalent to or higher than that of international standards) due to lack of legal infrastructure as recognized in articles 12.8 and 12.9 of the TBTA, the TBTA and the SPSA seem more protective of developed Members’ consumers whose governments would be in a position to enact such strict measures. In fact, the general exceptions in the GATT and the GATS, the TBTA, and the

³³ ZHANG, Lin, Insurance and Consumer Protection in WTO Law: A Chinese Perspective, 12(7 & 8) *Global Trade and Customs Journal*, 2017, p. 310. This article makes this argument for Chinese commodity export inspection bureaus.

³⁴ ZHANG, Lin, Insurance and Consumer Protection in WTO Law: A Chinese Perspective, 12(7 & 8) *Global Trade and Customs Journal*, 2017, pp. 305, 310.

SPSA have been used mostly by the developed Members. Similarly, most cases involving PPMs concern developed Members as respondents, demonstrating the benefits to consumers from developed Members. Thus, consumer protection, like any other legal regime, reflects prevailing inequalities in society.

Clearly, the protection of consumers is not a priority in the WTO since there are many ways in which it is weakened. This is due to the lack of unity between consumers. Consumers are not as well-organized as producers and traders.³⁵ For example, consumers in developed Members might want to consume goods produced in an environment-friendly manner such as Turtle Excluder Devices-caught shrimp but consumers in less-developed Members might not be interested in the consumption of such goods. Thus, consumers have different priorities (which may also be true for consumers within the same country) and are unable to speak with one voice,³⁶ allowing countries to ignore their interests leading to their weak presence in international law. This is why consumer protection is fragmented and consumers do not necessarily have enforceable rights at the international level. For example, the UNGCP are only guidelines and the WTO only allows consumer protection. Another example is that consumer preferences as one of the tests to determine likeness has never been the sole reason for allowing differentiation between products since Members must ensure equality of competitive conditions³⁷ to producers and traders participating in international trade. This is relevant because allowing differentiation between products allows Members to regulate them to further consumer protection, and disallowing differentiation between products disallows Members from regulating them, thus not furthering consumer protection.

However, regulators might be overlooking a larger community interest in ignoring consumers' interests. It should be remembered that all producers and traders are consumers and protection of the interests of the latter benefits producers and traders in their position as consumers. Of course, as noted earlier, consumer protection also helps producers and traders by increasing sales.

Thus, there are two essential elements regarding the WTO's stance towards consumer protection that can be deduced from the above analysis. First, WTO law does not mandate consumer protection. Second, as already highlighted, WTO law creates certain obstacles to the consumer protection it allows. Therefore, the next part makes suggestions to improve consumer protection in the WTO.

2. Suggestions for Improving Consumer Protection in the WTO

Undoubtedly, the fabric containing different actors such as consumers, producers, traders, and regulators is quite complex. The WTO should include consumer protection because it includes producer and trader protection. Producers and traders do not trade in a vacuum, instead they trade with consumers. Therefore, Members need to accept that trade is a two-party activity involving buyers and sellers. Moreover, if it is recognized that trade is not divorced

³⁵ NARAYANAN, Prakash, Anti-dumping in India-Present State and Future Prospects, 40(6) *Journal of World Trade*, 2006, p. 1095.

³⁶ NARAYANAN, Prakash, Anti-dumping in India-Present State and Future Prospects, 40(6) *Journal of World Trade*, 2006, p. 1095.

³⁷ HERTOGEN, An, A new frontier? Consumer protection in international trade agreements, 30(2) *Competition & Consumer Law Journal*, 2023, p. 214.

from environment and labour, it would be difficult to recognize that trade is divorced from consumers. So how can consumers' interests be safeguarded? It may be possible to address some of these challenges and strengthen consumer protection by implementing the following suggestions which are meant to ensure that the WTO takes a balanced approach towards trade in upholding the interests of consumers. These suggestions are very diverse and include legislative, judicial, and executive suggestions requiring collective and/or individual action on the part of the various stakeholders in the WTO. Members can start by implementing the easier suggestions leading to a gradual shift of the WTO's focus on to consumers.

First, an assessment of the impact of existing WTO agreements on consumers should be undertaken in order to identify where consumer concerns are lacking the most. This can serve as a useful guide to take further action in incorporating consumer protection in the WTO.

Second, there should be a separate multilateral consumer protection agreement in the WTO so that consumer protection is no longer incidental or an afterthought. Moreover, consumer representatives should be allowed to participate in the negotiations for this agreement. Existing WTO law allows consumer protection to a certain extent so this new agreement could (a) consolidate the existing consumer protection and/or (b) mandate consumer protection while laying down specific rights for consumers. The agreement would also have to specify how this mandated consumer protection would function. This would require defining the scope of consumer protection including offline and online transactions, place of transaction, and origin of the products as well as of the consumer/producer/trader. Additionally, an agreement mandating consumer protection in the WTO would require laying down certain consumer protection standards with which each WTO member would be required to comply. Thus, exporting Members would have to ensure that exports comply with these standards and importing Members would be entitled to refuse entry to these products if they do not comply with these standards. As regards enforcement, the normal dispute settlement channels would apply. It is also possible to allow consumers to enforce this agreement directly without going through their Members but only very privileged consumers would be able to make use of this possibility. Such an agreement would ultimately increase consumer trust in business and promote the interests of producers and traders. However, this agreement might be used by developed Members or their consumers against less-developed Members who are unable to comply with this agreement. In such a situation, it is preferable that this be a plurilateral agreement. But then, Members not interested in the protection of consumers would be under no obligation to adhere to it leaving consumers without WTO protection. Therefore, a better option would be that this agreement takes into account the concerns of Members at different levels of development without which the agreement should not be concluded. If it is concluded without taking into account the concerns of Members at different levels of development, the WTO should set up a system wherein less-developed Members are entitled to receive technical assistance if they are required to comply with this agreement. This will ensure that consumers from all Members, including those from less-developed Members, can benefit from this agreement.

Third, irrespective of whether or not the above agreement on consumer protection is concluded, less-developed Members should be entitled to technical assistance from developed Members if the latter expect them to comply with their consumer protection standards.³⁸ This

³⁸ THOMAS, Chantal, *The WTO and labor rights: strategies of linkage*, in JOSEPH, Sarah, KINLEY, David,

would benefit the consumers of developed Members since exports of less-developed Members would be in compliance with the consumer protection standards of developed Members.

Fourth, there has also been discussion on the incorporation of a binding multilateral competition agreement in the WTO since it is felt that such an agreement can address business practices that harm consumers.³⁹

Fifth, the dispute settlement mechanism can also be used to promote consumer protection. Since the AB in *US – Shrimp* has already used “sustainable development” in the Preamble to the Agreement Establishing the WTO to interpret the word “exhaustible” in the GATT,⁴⁰ the panels can also use the Preamble to interpret WTO law in order to promote the interests of consumers while not imposing unnecessary obstacles to the trade of less-developed Members. However, the panel members would need to be educated in consumer protection and its application in WTO law.⁴¹ Additionally, *amicus curiae* briefs supporting consumer interests can be submitted in pending WTO cases but these briefs should not only highlight the concerns of the developed Members but also those of the less-developed Members. Furthermore, consumers should be given an opportunity to express their views in case of proposed suspension of concessions⁴² whether by inserting a provision in WTO law or by following it as a practice, since suspension of concessions has a direct impact on the complainant’s consumers, as mentioned in the first challenge.

Sixth, there should be a consumer protection committee in the WTO with consumers’ and Members’ representatives as participants, in order to further the objective of consumer protection by building expertise on the subject, overseeing the execution of potential consumer protection policies, and performing related tasks. Additionally, the three councils i.e. the Council for Trade in Goods, the Council for TRIPS, and the Council for Trade in Services as well as the committees set up under each agreement of the WTO should have participation from consumer representatives, in order to highlight and work on consumer concerns that arise under each agreement of the WTO. However, participation by non-Members is, normally, not allowed in the WTO. Moreover, only very privileged consumer representatives would be able to access the consumer protection committee, the three councils, and the committees set up under each agreement of the WTO, reinforcing inequality in consumer protection. Therefore, one solution could be to have a consumer protection committee without consumer representatives as participants and to mandate that the three councils and the committees set up under each agreement of the WTO will necessarily consider consumer interests in their work even in the absence of consumer representatives. Furthermore, an expert group on trade and consumer protection should be established in order to provide

WAINCYMER, Jeff (eds.), *The World Trade Organization and Human Rights: Interdisciplinary Perspectives*, Edward Elgar, Cheltenham and Northampton, 2009, pp. 279–280. This chapter mentions this point while discussing the debate on linking trade with environmental and labour issues.

³⁹ Consumers International, *Consumer Policy and Multilateral Competition Frameworks: A Consumers International Discussion Paper*, March 2003, 28 p.

⁴⁰ WTO, WT/DS58 United States – Import Prohibition of Certain Shrimp and Shrimp Products, AB Report of 12 October 1998, paragraphs 129–131.

⁴¹ HERTOGEN, An, A new frontier? Consumer protection in international trade agreements, 30(2) *Competition & Consumer Law Journal*, 2023, p. 226. This article makes this suggestion for arbitrators appointed under the UK-New Zealand Free Trade Agreement.

⁴² HERTOGEN, An, A new frontier? Consumer protection in international trade agreements, 30(2) *Competition & Consumer Law Journal*, 2023, pp. 216–217.

relevant information to all the stakeholders in the WTO, including the Members and panel members who decide disputes.⁴³

Seventh, WTO Members should also nominate consumers as their representatives in trade negotiations and include them in national bodies that advise the Members on trade matters.⁴⁴

Eighth, certain amendments should be made in the three trade remedies agreements i.e. the ADA, the SCMA, and the Agreement on Safeguards, in order to enhance consumer protection.

To start with, a public interest clause mandating an opportunity of representation to consumers should be inserted in the aforementioned three trade remedies agreements. This would allow consumers benefiting from dumped, subsidized, and cheap imports to express their views.⁴⁵

The ADA and the SCMA lay down certain requirements for initiating an investigation. These requirements should be tightened⁴⁶ so that investigations are commenced only in case of genuine need. Moreover, this rule should be introduced in the Agreement on Safeguards as well. Fewer investigations mean fewer duties, thus benefiting the consumers.

Cumulation, which allows addition of import shares in the importing Member before imposing anti-dumping duties, countervailing duties, and safeguard measures, should be disallowed⁴⁷ because it increases the possibility of imposition of these duties and measures. The prohibition of cumulation would not only save the consumers of the importing Member from the burden of these duties and measures but also save the less-developed Members from being hit by these duties and measures unnecessarily.

In case cumulation continues to be allowed, the *de minimis* import shares, dumping margin, and subsidy margin should be increased in the ADA, the SCMA,⁴⁸ and the Agreement on Safeguards. Further, a *de minimis* margin should be introduced in the Agreement on Safeguards as well. This will result in lesser cases of imposition of anti-dumping and countervailing duties and safeguard measures, thus benefiting consumers.

⁴³ CHOUDHURY, Barnali, The Facade of Neutrality: Uncovering Gender Silences in International Trade, 15(1) *William & Mary Journal of Women and the Law*, October 2008, pp. 157-158. This article makes this suggestion while discussing the linkage of trade and gender issues.

⁴⁴ CHOUDHURY, Barnali, The Facade of Neutrality: Uncovering Gender Silences in International Trade, 15(1) *William & Mary Journal of Women and the Law*, October 2008, p. 157. This article makes this suggestion while discussing the linkage of trade and gender issues.

⁴⁵ KUFOR, Kofi Oteng, The Growing Problem of Intra-Developing Country Anti-Dumping Actions in World Trade, in DEBROY, Bibek, CHAKRABORTY, Debashis (Eds), *Anti-Dumping: Global Abuse of a Trade Policy Instrument*, Academic Foundation, Liberty Institute, New Delhi, 2007, pp. 97-98. This chapter makes this suggestion only for the ADA.

⁴⁶ NEUFELD, Inge Nora, Anti-Dumping and Countervailing Procedures – Use or Abuse? Implications for Developing Countries, Policy Issues in International Trade and Commodities Study Series No. 9, United Nations Conference on Trade and Development, UN, New York and Geneva, 2001, UNCTAD/ITCD/TAB/10, p. 20.

⁴⁷ NEUFELD, Inge Nora, Anti-Dumping and Countervailing Procedures – Use or Abuse? Implications for Developing Countries, Policy Issues in International Trade and Commodities Study Series No. 9, United Nations Conference on Trade and Development, UN, New York and Geneva, 2001, UNCTAD/ITCD/TAB/10, p. 20. This study makes this argument only for the ADA.

⁴⁸ NEUFELD, Inge Nora, Anti-Dumping and Countervailing Procedures – Use or Abuse? Implications for Developing Countries, Policy Issues in International Trade and Commodities Study Series No. 9, United Nations Conference on Trade and Development, UN, New York and Geneva, 2001, UNCTAD/ITCD/TAB/10, p. 20.

Provisional measures under the three trade remedies agreements should be disallowed because they impose a burden on consumers for the time that these measures are in effect and their being overturned does not overturn the burden on consumers.

The Agreement on Safeguards should lay down a strict time limit during which the investigation must be completed so that consumers know as quickly as possible whether or not safeguard measures will be imposed.

The application of a lesser duty should be made mandatory in the ADA and the SCMA⁴⁹ so that consumers have to bear a lower burden. Such a rule should also be introduced in the Agreement on Safeguards.

Article 8.3 of the Agreement on Safeguards shields the importing Member taking a safeguard measure from suspension of concessions for the first three years if the safeguard measure is taken due to an absolute increase in imports. This provision should be removed. Perhaps, the fear of suspension of concessions negatively affecting a domestic industry might dissuade the importing Member from imposing a safeguard measure, thus saving the consumers from the negative impacts of a safeguard measure. However, the industry protected by a safeguard measure and the industry affected by suspension of concessions will be different, and the relative importance of these industries, rather than the interests of consumers, might determine the actions of the importing Member.

Article 23 of the SCMA, which entitles interested parties in the importing Member to ask for prompt judicial review of administrative action if they had participated in the administrative proceeding and are affected by the administrative actions, should include consumers in the definition of interested parties like in article 19.2 and footnote 50 of the SCMA. Such a provision should also be introduced in the ADA and the Agreement on Safeguards. This would allow consumers to put forth their point of view.

All the three trade remedies agreements should introduce strict time limits for judicial review of administrative action so that consumers can benefit quickly in case the duties and measures imposed are overturned.

The requirement of WTO dispute settlement panels deferring to the importing Member while examining its anti-dumping duties (enshrined in article 17.6 of the ADA) should be removed,⁵⁰ since overturning these duties would benefit consumers.

Lastly, food security for consumers should also be included in the WTO since this amounts to providing essential goods. This would require an examination of the Agreement on Agriculture and the SCMA. It has already been recognized in the UN that “[t]rade agreements invariably affect the human rights of consumers ... However, trade agreements are often negotiated without reference to their impact on the rights to health, education, food, work and water.”⁵¹ WTO law mainly reflects interests of consumers from developed

⁴⁹ NEUFELD, Inge Nora, *Anti-Dumping and Countervailing Procedures – Use or Abuse? Implications for Developing Countries*, Policy Issues in International Trade and Commodities Study Series No. 9, United Nations Conference on Trade and Development, UN, New York and Geneva, 2001, UNCTAD/ITCD/TAB/10, p. 21.

⁵⁰ NEUFELD, Inge Nora, *Anti-Dumping and Countervailing Procedures – Use or Abuse? Implications for Developing Countries*, Policy Issues in International Trade and Commodities Study Series No. 9, United Nations Conference on Trade and Development, UN, New York and Geneva, 2001, UNCTAD/ITCD/TAB/10, p. 21.

⁵¹ UN, Office of the High Commissioner for Human Rights, *Human rights in the trade arena*, 25 October 2011, <https://www.ohchr.org/en/stories/2011/10/human-rights-trade-arena>, accessed 11 April 2025. See also UN, Office of the High Commissioner for Human Rights Regional Office for the Pacific and UNDP Pacific Centre,

Members but should also reflect interests of consumers from less-developed Members. This can be done if WTO law focuses more on the provision of essential goods and services. This would also require that the less-developed Members that constitute two-thirds of the WTO membership⁵² be united in the defence of their consumers' interests.

These suggestions might appear overly optimistic but perhaps, that is exactly what is required i.e. optimism at the conceptual level followed by enthusiasm in the implementation of this optimism. Despite this, it is obvious that the implementation of these suggestions is quite complex since many of them would require amending WTO law. Additionally, these suggestions will have to be implemented in such a way so as to ensure that unnecessary burdens are not placed on less-developed Members. It should also be ensured that the developed Members are unable to use consumer protection to practice protectionism and unable to impose their consumer protection laws on the less-developed Members. Moreover, the implementation of these suggestions should also lead to consumer protection for consumers from less-developed Members and should not enhance prevailing inequalities in consumer protection. To this end, the Preamble to the Agreement Establishing the WTO states that trade relations "should be conducted ... in a manner consistent with their respective needs and concerns at different levels of economic development"⁵³ and that "there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development."⁵⁴

Apart from the WTO, the next part discusses the feasibility of another possibility to protect consumers.

3. A Convention for Consumer Protection

Currently, the consumer is protected in a fragmented manner at the international level. This article has examined two instruments contributing to this protection i.e. the UNGCP and the WTO. Given the importance of consumer protection, it should be ensured in a comprehensive manner at the international level. However, this is not an issue which has led to any convergence amongst different jurisdictions because there is no treaty (like the Agreement Establishing the WTO) to uphold consumer interests. Can such a treaty be concluded by transferring the national perspectives on consumer protection to the international sphere? The answer may be both yes and no. The question would then be what to transpose and how to transpose. Of course, transposition is only one way to proceed. Another way would be to make new law. However, the following needs to be kept in mind while making law at the international level. Consumer interests in developed countries are well-protected by means of various laws but requiring less-developed countries to enforce them while trading with developed countries would lead to a reduction in the trade of less-developed countries since they/their producers and traders may not be able to comply with stringent consumer protection standards. Also, even outside the realm of trade, less-developed

Pacific Trade and the Right to Health, <https://pacific.ohchr.org/docs/pacifictraderighttohealth.pdf>, p. 1, accessed 11 April 2025.

⁵² WTO, Understanding the WTO: Developing Countries Overview, https://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm, accessed 15 April 2025.

⁵³ Recital 1 of the Preamble to the Agreement Establishing the WTO.

⁵⁴ Recital 2 of the Preamble to the Agreement Establishing the WTO.

countries may not be able to enact strict consumer protection laws for their respective domestic jurisdictions due to lack of expertise and because their own producers and traders may not be able to comply with them. Consequently, there might be a conflict of interest between the less-developed countries and their consumers since the latter might want to be protected in ways which the less-developed countries cannot provide. Thus, the argument is that differences in levels of development and in consumer protection interests must be taken into account while drafting a consumer protection law at the international level. This can be done by having an equitable consumer protection law, something which may not necessarily be achieved by enacting a uniform law and following it up with exceptions like special and differential treatment, since this has not been entirely successful in the case of the WTO.⁵⁵

However, the question remains as to the content of this treaty and its enforcement. Should the treaty lay down binding minimum standards with which the less-developed countries may or may not be able to comply? How to implement these minimum standards? Who should be party to the treaty? Should it be the subjects of international law i.e. States or consumers or both? Should the treaty have a judicial mechanism and how should it function? Should both the State and the consumer be allowed to bring cases or should only one of them be allowed to do so? Who would be the respondent? The State or its producer/trader? Additionally, this court would be another addition to the multitude of existing international tribunals and it will need to be ensured that its jurisdiction does not clash with their jurisdictions. Moreover, only very privileged States/consumers would be able to bring cases to this court i.e. less-developed States and their consumers would be excluded. For this reason, less-developed countries might not want to be party to the treaty in the first place. Perhaps, there is no treaty at present due to these issues. Furthermore, some of these issues would arise even if the treaty were to be enforced by means of national courts. If the treaty were to be enforced by means of another international judicial forum like that of the WTO, it would only be possible if there is an overlap between the substantive law of the treaty and that of the WTO. But WTO law does not mandate consumer protection. An overlap in the membership of the two treaties as well as the consent of their membership to use the WTO judicial forum for this purpose would also be needed. This means that consumers not covered under the membership of the two treaties would be deprived of protection. In any case, the WTO does not allow individuals to be Members and its dispute resolution procedure is rather expensive⁵⁶ and not very effective in view of the absence of the AB.

In such a situation where harmonization of consumer protection law at the international level is not possible, it would be better to enhance cooperation to enforce existing consumer protection mechanisms. Although there are many bodies for this purpose including the International Consumer Protection and Enforcement Network, none of them has universal coverage.⁵⁷ As highlighted earlier, this fragmentation is a persistent feature of consumer protection in international law.

⁵⁵ KISHORE, Pallavi, Special and Differential Treatment in the Multilateral Trading System, 13(2) *Chinese Journal of International Law*, June 2014, pp. 391–393.

⁵⁶ BAHRI, Amrita, ALI, Toufiq, Using dispute settlement partnerships for capacity building Bangladesh's triumphant experience at WTO DSU, 18(1) *Journal of International Trade Law and Policy*, 2019, p. 20.

⁵⁷ DUROVIC, M., International Consumer Law: What Is It All About?, 43 *Journal of Consumer Policy*, 2020, pp. 125–126, 135–136, 140.

Conclusion

This article has highlighted the importance of consumers and consumer protection. “Consumers are the *raison d’être* of all economic activity. Thus consumer welfare is the basis of all economic policy making and implementation.⁵⁸” However, consumer protection is a complex issue and a universal solution does not appear to be forthcoming. Therefore, this article has made suggestions to cooperate in the WTO (a) for enhancing consumer protection and (b) for furthering existing consumer protection. However, since questions may be raised about the appropriateness of the WTO for promoting consumer protection,⁵⁹ this article has also made a suggestion to increase cooperation between other institutions to enforce existing consumer protection mechanisms. These suggestions highlight the fact that consumer protection requires a multi-pronged approach. Additionally, the access of consumers from less-developed countries to these consumer protection mechanisms must be ensured while also ensuring that less-developed countries are not subjected to protectionism in the name of consumer protection. The precondition for the success of these suggestions is political willingness. Hopefully, it will be forthcoming.

⁵⁸ Consumers International, *Consumer Policy and Multilateral Competition Frameworks: A Consumers International Discussion Paper*, March 2003, p. 8.

⁵⁹ ROLLAND, Sonia E., *Are Consumer-Oriented Rules the New Frontier of Trade Liberalization?*, 55(2) *Harvard International Law Journal*, Summer 2014, p. 361.