
An Evaluative Analysis of Korean Legislative Development in Relation with Economic Growth

Consumer Protection Law

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Abstract

I . Background and purpose

Background of research

- In South Korea, the need for protection of consumers emerged as an important social issue in the 1970s amid the country's achievement of a rapid economic growth. The country has made efforts to settle such issues by enacting laws, including The Consumer Protection Act (1980), in diverse sectors related to consumer transactions and safety.
- Thirty-two years have passed since the enactment of The Consumer Protection Act, which was the first consumer law adopted in the country. During this period, South Korea achieved a rapid economic growth and became the 24th member of the Development Assistance Committee(DAC), an affiliate organization of the Organization for Economic Co-operation and Development(OECD), in 2009. The country's consumption-related matters have gone through epochal changes along with changes in the social and economic sectors.

Purpose of research

- It is necessary to make preparations to develop the country's consumer laws in a future-oriented way that can meet the rapid changes in consumer environment and fulfill its desired objectives. This study

intends to shed light on the process of the development of the country's consumer laws, check their current status and problems, and come up with their future prospects.

- Developing countries in Asia or transitional countries that are having a rapid economic growth also see an increasing need for the formulation of policies for consumer protection and compensation for consumer damages. It is expected that this study on South Korea's consumer laws will be useful as a referential material for later-starting countries in connection with their need to revamp their similar laws.

II. Major contents

- South Korea's economic growth and consumer laws
 - In South Korea, civic organizations, particularly women's organizations, started brisk consumer protection activities, having been awakened to the importance of the matter, in the 1970s. They kept up the pressure on the Government to enact framework laws for consumer protection and the Government started paying attention to the matter.
 - In 1980, the Government enacted The Consumer Protection Act, which was the first law enacted for consumer protection and it served as a framework law for the said purpose, but did not push ahead with a substantial policy for consumer protection. It was the 1980 amendment to The Consumer Protection Act that started the

consumer protection policy in earnest, and as a result, a series of laws related to consumer transactions and safety came to be enacted.

- In 2006, The Consumer Protection Act was replaced by The Framework Act on Consumers. It is said that with this replacement the focus of the country's policy switched from consumer protection to the realization of consumer sovereignty.

Analysis of the status of South Korea's consumer laws

- Despite the enactment of The Consumer Protection Act in 1980, no substantial action had yet been taken to push ahead with the consumer protection policy. Clauses of the said Act concerning obligations of the central or local Government were merely declarative and the system for promotion of a consumer-related policy was not in motion yet. However, the situation changed with the 1980 amendment to The Consumer Protection Act. Under the amendment, the Economic Planning Board (EPB) was designated as the agency in charge of consumer policy deliberation (now its function is assumed by the Fair Trade Commission) and the Korea Consumer Protective Board (KCPB) [now under the name Korea Consumer Agency (KCA)] was designated as the agency in charge of consumer policy execution. The Government started pushing ahead with consumer policies with such revamp in the system for promotion.
- Since 1986, laws have been enacted in diverse sectors to accomplish the aim of consumer protection. Major laws on consumer transactions include: The Regulation of Standardized Contracts Act, The Door-to-Door Sales, etc. Act, The Installment Transactions Act, The Act

on Fair Labeling and Advertising, The Act on Consumer Protection in the Electronic Commerce Transactions, etc. A major law on consumer safety is The Product Liability Act.

- Analysis of the development process concerning South Korea's consumer laws
 - In South Korea, the revamp of the consumer policy promotion system with the 1986 amendment to The Consumer Protection Act served as an occasion for commencement of the efficient promotion of a consumer policy.
 - In the beginning, consumer policy was handled by the EPB, which was the Government's central agency in charge of economic affairs. Now, the role is assumed by the Fair Trade Commission. Another Government agency that plays a central role in execution of consumer policies is the Korea Consumer Agency, which was established in 1986 under The Consumer Protection Act, and it handles matters concerning compensation for consumer damages.
 - The country's consumer transaction-related laws compel businesses to comply with the relevant administrative laws and regulations concerning consumer protection (i.e. "administrative regulation").
 - The Framework Act on Consumers contains clauses on the recall system and consumer safety. Individual laws related to consumer safety, like The Framework Act on the Management of Disasters and Safety, have been enacted. Like this, individual laws contain stipulations on the consumer safety policy.

- In South Korea, consumer laws were developed with the focus on substantive law perspectives, but recently improvements have been made from a perspective of procedural laws, with the adoption of the systems of consumers' collective action and collective dispute mediation in The Framework Act on Consumers in 2006. Continued improvements should be made on existing consumer laws, considering that they lack systematic apparatuses for compensation for consumer damages.
- It is necessary to revamp the system of judicial responsibility so that consumer damages may be settled within the framework of private autonomy.
- Factors to be considered concerning consumer laws of South Korea
 - Consumer protection should be established as a philosophy. A country's economy can have further growth through efforts made to enhance the quality of goods to give consumers satisfaction. Thus, consumer protection can play a role as an engine for economic growth. Consumer protection is a philosophy essential for a country's economic growth.
 - Upon establishment of consumer protection as a philosophy, priority should be placed on establishment of a consumer policy promotion system. In South Korea, it was only after the 1980 amendment to The Consumer Protection Act that the consumer policy promotion system started to be promoted. It shows that the establishment of a consumer policy promotion system should be given priority.

- Next, laws related to consumer transactions/safety should be revamped. Individual consumer-related areas are where consumer protection issues are raised and where consumer transactions-related laws should be revamped, along with the laws related to consumers' health and safety.
- Consumers need to carry out campaigns designed to protect them. Ultimate solutions to consumer-related problems can only be found through consumers' self-enlightenment.

III. Expected effects

- Checking the current status of South Korea's consumer laws will help those concerned learn from what the country has experienced and be prepared for future.
- Noticeable factors in South Korea's consumer laws presented in this study will be useful materials for developing countries that intend to revamp their consumer laws.

►► Key words : Consumers, consumer laws, consumer policy, The Consumer Protection Act, The Framework Act on Consumers, consumer transaction, consumer safety, consumer sovereignty

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Chapter 1. Introduction

Section 1. Purpose of study

During the initial stage of industrialization, economic growth was a main concern and the country's policy was focused on provisions of business-centered industrial support. Consumer protection-related matters, including those concerning consumer damages, were not really considered in the establishment of state policies.

Entering the stage of mass production/consumption amid industrial development and economic growth, the country realized a need to protect consumers. In a structure of a capitalist economy, consumers are in a position inferior to businesses in terms of the ability to gain information, have technological manipulation, shift burdens, organizational power, and market dominance. Thus, consumers were likely to incur economic damages due to unfair pricing or transaction conditions, and it was feared that their lives might be in jeopardy or that they might be injured if the goods they used were defective. Even more serious than that, such damages might spread to many people, resulting in a social problem.

Under such circumstances, governments now take it on themselves to remedy or prevent consumer damage, taking a positive attitude concerning consumer protection. It shows that they see a need to adopt a policy and enact laws designed for consumer protection, as that is the way to invigorate the market and promote industries. General Assembly adopted guidelines for consumer protection by consensus on 9 April 1985 (General Assembly resolution 39/248).¹⁾ In its guidelines for consumer protection the UN

1) Taking into account the interests and needs of consumers in all countries, particularly

General Assembly stressed the importance of consumer protection.

Looking at South Korea, the country put a priority on economic growth in the period right after the Korean War as shown by its Five-Year Economic Development Plans²⁾ started in 1962. Thus, the country's policy was formulated in a business-centered way and consumer protection-related matters were not really considered. Under such government policies, some businesses grew rapidly as monopolistic or oligarchic powers. In such a

those in developing countries; recognizing that consumers often face imbalances in economic terms in educational levels and bargaining power while bearing in mind that consumers should have the right to access non-hazardous products as well as the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate the production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at national and international levels that adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international co-operation in the field of consumer protection; and
- (g) To encourage the development of market conditions which provide consumers with greater choices at lower prices.

2) The first Five-Year (1962~1966) Economic Development Plan was aimed at the improvement of key industries, including energy sector, and reinforcement of social overhead capital. During the said plan period, the country posted an average of 8.3% growth in GNP. During the second Five-Year (1967~1971) Economic Development Plan period, the country stressed the development of iron/steel, machinery, and chemical sectors and posted an average of 19.5% growth in GNP. During the third Five-Year (1972~1976) Economic Development Plan period, the country focused on modernization of the heavy chemical industry. The country posted a rapid economic growth of 8.7% in 1974, 8.3% in 1975, and 15.2% in 1976, despite the worldwide recession caused by oil shock in 1973. Outsiders started calling it the Miracle of the Han River. During the fourth Five-Year (1977~1981) Economic Development Plan period, the country adopted the objectives of economic self-reliance and concentration on the heavy chemical industry. The country posted an average 7% growth in GNP in this period despite the second international oil shock in October 1978 and December 1981.

process, the country's economic strength was concentrated on a small number of large-sized businesses. The country displayed many problems, including distortion of capital allocation amid the shrinkage of market functions. In the 1970s onwards, people came to regard consumer problems, i.e. consumer damage-related problems³⁾, as a serious social problem. Thus, the Government started heeding issues concerning consumers' rights and enacted The Consumer Protection Act (Law No.3257) in 1980. The enactment of the said Act (now replaced by The Framework Act on Consumers) was a significant event, as it added a touch of consumer protection to business-centered state policies or laws. In the ensuing period, a series of special laws were enacted for consumer protection in such sectors as consumer transactions or safety. With the replacement of The Framework Act on Consumers in 2006, the focus of the country's policy switched from consumer protection to the realization of consumer sovereignty or promotion of consumers' rights.

Now, 32 years have passed since the enactment of The Consumer Protection Act, which was the country's first consumer law, in 1980. During the said period, the country has gone through colossal economic and social changes. In 2009, the country became the 24th member of the Development Assistance Committee (DAC), a subsidiary organization of the Organization for Economic Co-operation and Development (OECD). In South Korea, consumer laws have played an important role in the stabilization of people's lives. The consumer environment will continue to change

3) Consumer damages refer to bodily injury or property damage incurred by customers in the course of their purchase and use of goods and services, including damages due to defective goods, unfair prices, false or deceptive advertising, unkind attitudes toward consumers, refusal to exchange goods and poor repair (Kim Won-gi & Park Su-yeong, *The Consumer Protection Act*, Daemyeong Publishing, 2007, p.4)

rapidly and it is necessary to make preparations to develop consumer laws in a future-oriented way to provide proper consumer protection and establish a fair transaction order. It will be meaningful to check how the country's consumer laws have developed in this said respect.

This study intends to check how the country's consumer policy has changed and how consumer laws have been revamped in the course of carrying out the national policy concentrated on economic growth. This study will also analyze the current status of the country's consumer laws and check factors worth being considered by developing countries trying to learn from the country's past experiences.

Each country has its own economic situation, including one concerning consumer damages. This means that international discussions about consumer protection should be carried out in consideration of each country's own situation. Granted, it is said that there is an increase in the need to establish a policy for consumer protection and provide a remedy for consumer damages in developing/transitional countries whose industries are making a rapid growth. It is hoped that this study will be used by developing/transitional countries about to revamp their consumer laws.

Section 2. Scope of research and methods used

This study is composed as follows: Chapter 1 introduces the purpose and scope of the study. Chapter 2 ("South Korea's Economic Growth and Consumer Laws") divides the periods as follows and addresses the relevant background: the initial period (the 1960s ~ the 1970s); the formation period (the 1980s); the growth period (the 1990s), and; the stabilization period (the 2000s). Chapter 3 ("South Korea's consumer laws") checks the process of

development of The Framework Act on Consumers (, which replaced The Consumer Protection Act,) and the background of the enactment of consumer transaction-related laws, which have a direct impact on people's lives, including The Regulation of Standardized Contracts Act, and consumer safety-related laws, including The Product Liability Act. Chapter 4 ("The development process of South Korea's consumer laws - Analysis and evaluation") deals with the possibility of using the results of the foregoing review in developing/transitional countries. Chapter 5 (Conclusion) summarizes the brief history of South Korea's consumer laws, along with their features, which may be used by developing countries in their effort to revamp their relevant laws.

This study relied on a literature-based survey with a focus on the current status and problems of South Korea's consumer laws enacted in the course of its economic growth in connection with the intention to have it used as referential materials for developing or transitional countries. In-depth reviews were made of the relevant matters at experts' meetings and workshops.⁴⁾

4) Concerning this task, a workshop was held in April 2012 under the title "Development Process of South Korea's Consumer Laws and Legislation Models for Developing Countries' Consumer Protection," with the following scholars attending: Goh Hyeong-seok (professor at Sunmoon Univ.), Kim Seong-cheon (researcher at the Korea Consumer Agency), Suh Hui-seok (professor at Pusan National Univ.), Park Hui-ju (researcher at the Korea Consumer Agency), Hong Myeong-su (professor at Myongji Univ.), Hwang Tae-hui (professor at Sungshin Women's Univ.).

Chapter 2. South Korea's economic growth and consumer laws

Section 1. Overview

Today, consumers are in a position inferior to businesses in terms of the ability to know concerning information, technological manipulation or shift of burden or organizational power or and market dominance, which is termed “disparity between consumers and businesses.”⁵⁾ Due to the disparity, consumers are faced with various problems in purchasing, using, and disposing of goods. Consumer policy refers to a process in which the Government intervenes in the market either directly or indirectly through laws and systems to settle problems faced by consumers like this. That is to say, consumer policy has carried out the function of making up for the deficiency of private autonomy and market economy.

The South Korean Government was established in 1948 after the country's liberation from colonial rule in 1945, but it was only in the 1970s that the Government starting paying attention to the need for a consumer policy. The Act on Price Stabilization and Fair Transactions,⁶⁾ which was enacted in December 1975, following the oil shock in the early 1970s, was the country's first law dedicated to protection of consumers' right. Finally, in January 1980, The Consumer Protection Act was enacted and it served as a framework act concerning consumer protection.

5) Kwon Oh-seung, *The Consumer Protection Act*, 2005, Beopmunsa Publishing, pp. 9~10.

6) The said law replaced The Price Stabilization Act (Law No.2599 enacted in March 1973). With enactment of The Monopoly Regulation and Fair Trade Act (Law No.3320 enacted in December 1980), matters concerning fair transactions were transferred. In January 1995, the name of the law was changed to The Price Stabilization Act (Law No.4861 enacted in January 1995) (Lee Ho-yeong, *The Consumer Protection Act*, Hongmunsa, 2010, p. 8).

It was followed by a series of relevant laws as follows: The Regulation of Standardized Contracts Act (enacted in December 1986), intended to protect consumers' rights in transactions following standardized terms and conditions; The Installment Transactions Act (in December 1991), which concerned movable property; The Door-to-Door Sales, etc. Act (in December 1991); The Act on Fair Labeling and Advertising (in February 1999), and; The Product Liability Act (in January 2000). In March 2002, The Act on Consumer Protection in the Electronic Commerce Transactions, etc. was enacted to protect consumers' right concerning mail order sales, which had been controlled by The Door-to-Door Sales, etc. Act, and concerning Internet transactions, which newly emerged as an important act. In September 2006, The Consumer Protection Act was replaced by The Framework Act on Consumers.

The development process of the country's consumer laws can be divided as follows: Phase 1 (1960s~1970s), when the concept of consumer protection was considered only secondarily; Phase 2 (1980s), when consumer policy was adopted in earnest with the enactment of The Consumer Protection Act and establishment of the Korea Consumer Agency; Phase 3 (1990s), when diverse consumer laws were enacted, and; Phase 4 (2000s), when new discussions were started about the meaning of consumer protection.⁷⁾

Now, let's check the significance of *consumers* and see how *consumer laws* dealt with in this study. This study will shed light on the background, including economic status, of each period (Initial Period; Formation Period; Growth Period; Stabilization Period) and then the process of development of the country's consumer laws, along with consumer policy promotion agencies and relevant laws.

7) Concerning the division of periods, most researchers adopt a similar view despite some differences in details. However, they are divided about the names referring to the development process of consumer policies.

1. Significance of consumers

The concept of “consumers” emerged with the launch of the period of mass production/consumption. From the beginning, the concept of “consumers,” who are the key actors in consumption, was regarded as one confronting businesses.⁸⁾

As it happened, it took a considerable time for the concept of “consumers” to be accommodated normatively in the law. Concerning it, as Medicus puts it, the concept of consumers turns into a legal system through a three-phase process.⁹⁾ According to him, during Phase 1, the concept of consumer protection is handled only peripherally in the legalization process. During Phase 2, the concept is recognized as a motive for legalization, but does not constitute a direct condition for legalization. In Phase 3, the term “consumers” appears in the law.¹⁰⁾ Medicus also points out that, if the significance of consumers is not supplemented concerning its content, even in the foregoing three phases, it means that the concept of consumers has limitations in playing the role as a substantial protective norm.¹¹⁾

In Korea, the first step of a legal system for consumer protection was taken with the enactment of The Consumer Protection Act in January 1980

8) Robert N. Mayer, *Consumer movement*, Translated by Lee Gi-chun and others, Hawoo Publishing, 1996, p.18 and following pages.

9) Hong Myeong-su, *A study of the relationship between the laws concerning monopoly regulation and those consumer laws and the process of their development*, A collection of materials presented at a workshop on the development process of the country's consumer laws and the protection of consumers in developing countries, April 2012, pp. 96~97

10) Dieter Medicus, “Wer ist ein Verbraucher?,” Festschrift für Zentaro Kitagawa, Duncker & Humblot, 1992, pp. 472-473

11) Dieter Medicus, “Wer ist ein Verbraucher?,” Festschrift für Zentaro Kitagawa, Duncker & Humblot, 1992, 473, 478-479

as noted in the following. At that time, there were no regulations on consumers. At the time of the first amendment to The Consumer Protection Act in December 1986, the concept of consumers was adopted into the law at a level similar to the present content.¹²⁾ As the concept of consumers was supplemented concerning its contents with this, it can be said that the law started playing the role as a substantial protective norm by that time based on Medicus's viewpoint.¹³⁾

The Framework Act on Consumers (wholly amended on September 27, 2006), Article 2, Subparagraph 1 defines "consumers" as those who use the goods and services provided by enterprises for their daily lives as consumers or for their production activities and who are designated by Presidential Decree." Under this definition, people using the goods or services provided by themselves are not "consumers." Those not using the goods or services provided by enterprises for their daily lives or those engaged in the business of transferring them or engaged in production activities using them only as a material are not "consumers," either. "Consumers" refer to only the end-users who are in the final phase of the distribution process.

"Those using (the goods and services) for their production activities, who are designated by Presidential Decree" defined in The Framework Act on Consumers, Article 2, Subparagraph 1 concerning "consumers" include "a person who finally uses any goods or services (Subparagraph 1, Article 2, The Enforcement Decree of The Framework Act on Consumers)" and "a

12) The Consumer Protection Act, Article 2 (Definitions), Subparagraph 2: "The term 'consumers' means those who use the goods and services for their lives as consumers, who are determined by Presidential Decree."

13) Hong Myeong-su, Ibid, p.97

person who uses the furnished goods or services for agricultural and fishery activities” (Subparagraph 2, Article 2, the said enforcement decree). According to these regulations, the scope of consumers extends beyond the key actors of daily lives to those engaged in the business. It is thought that the extension of the concept concerns a need to protect even those who are not end-users concerning damages incurred in a transaction as the socially weak. However, it appears that it is not necessary to provide a measure for protection of these intermediate consumers, who can shuffle the damages incurred by them off to others, on a level similar to those for end users in the Framework Act on Consumers.¹⁴⁾

2. Significance of consumer laws

Consumer laws refer to all consumer-related laws and individual laws related to consumers with diverse contents.

Depending on the categories, consumer laws are divided into consumer-related administrative laws, consumer-related criminal laws, consumer-related private laws, and consumer-related procedural laws. As for consumer-related administrative laws, those concerning consumer policies are a leading example. They include all laws on administrative regulation on businesses aimed at protection of consumers. Under consumer-related criminal laws, regulation on businesses is made in the form of criminal punishment. Under consumer-related private laws, relationships between individuals are regulated without involvement of the state or public institutions as in the Civil Act or the Commercial Act. Finally, consumer-related procedural laws refer to the laws concerning the procedure for protection of consumers incurring

14) Kwon Oh-seung, *Economic Laws*, Beopmunsa, 2010, p.396

damages in transactions with businesses. Many consumer laws of South Korea are consumer-related administrative laws, which have elements related to consumer-related criminal laws.

Consumer laws can also be classified into consumer policy laws, consumer transaction laws, and consumer safety laws, depending on the contents of regulation. Consumer policy laws are those designed to make it clear that consumer protection is an objective of promotion of administrative policies. South Korea operates The Framework Act on Consumers, which belongs to the category of a consumer policy law. Consumer transaction laws are those designed to regulate the relationship between consumers and businesses. Consumer safety laws usually take the form of administrative or criminal regulations, but there are some exceptions like The Product Liability Act.¹⁵⁾

Section 2. Analysis of the process of the development of consumer laws

1. Initial Period(1960s~1970s)

(1) Background, including the country's economic status

The term “consumer policy” did not appear side by side with other government policies until the early 1970s, not to mention in the mid-1960s, when the country's economy was in a much poorer state.¹⁶⁾ During the said period, the country's economy was operated based on the market economy

15) Suh Hui-seok, *The Process of Development of Consumer Laws of South Korea - Proposal on Korean-type Legislation Model*, a collection of materials concerning the aforesaid workshop, April 2012, pp. 72~74

16) Yeo Jeong-seong, *Development of South Korea's Consumer Policy and Its Future Prospects*, A seminar hosted by the Korean Association for Policy Studies, 2008, p. 5

system that put more emphasis on economic freedom than economic equality. The Government adopted a so-called mixed economy system in which the Government regulated the economy within a necessary scope for the goal of realizing social justice while developing the national economy. At that time, the country was setting up a comprehensive plan for economic development following the successful completion of the first Five-Year Economic Plan (1962-1967).

Looking at the dark side of the country's economy during that time, the economic operation was lopsided on some sectors under the export-driven growth policy. The unbalance got worse between agriculture and manufacturing, between export-oriented sectors and sectors focusing on domestic consumption, and between SMEs and large-sized businesses. Due to the first international oil shock in 1973, prices became unstable. Shrinkage of market functions led to distorted capital allocation. The economy lost its resiliency. The consumer issue rose to the surface along with many other problems.

Thus, consumer movement was developed in earnest. The Consumers' Union of Korea was established in January 1970. People in various circles pointed to a need for the efficient promotion of a consumer policy aimed to protect consumer's basic rights and for a system of compensating damages incurred by consumers from defective goods and services provided by businesses.

(2) Policy-based countermeasures and system for promotion of the relevant policy

The Committee for Reviewing Ways for People's Higher Living Standards, along with the Consumer Protection Subcommittee, was established as an organization reporting directly to the Prime Minister in October 1968. When

the issue of Shinjin Motor's profiteering concerning the imported car Corona was pointed out at a special inspection of state affairs of the National Assembly in 1968, the Meeting of Vice Ministers reviewed the Consumer Protection Guidelines, which was the country's first norm for consumer protection and its first consumer policy, in June 1968.¹⁷⁾ Six months later, the guidelines were adopted. It was arranged that the guidelines would serve as the regulation concerning consumer protection until the enactment of the relevant law. Thus, the basic direction of the legalization for consumer protection was set and positive measures came to be taken to revamp laws and regulations aimed to protect consumers' rights.

In 1972, the Bureau of Price Stabilization was established within the Economic Planning Board (EPB) in connection with a need to watch and regulate rises in prices. It served as an occasion for promotion of laws related to the control of prices. The Government also launched the Fair Transaction Department (1977) and the Consumer Administration Department (1979) within the EPB, and the Consumer Protection Department within the Industrial Advancement Administration.

17) The guidelines took an important position in the history of consumer protection policies and had the following contents: The Government shall ① submit an annual report on matters related to consumer protection to the Cabinet Meeting every year, ② regulate unfair acts perpetrated by monopolistic or oligarchic businesses dominating the market, unreasonable prices, and acts of hampering distribution of goods in the market, ③ encourage the adoption of a fixed price system, ④ revamp the system of goods inspection, and ⑤ provide support for the development of consumer organizations. Furthermore, the guidelines stipulated that the Government should do its best for the following for consumer protection: ① prevention of harm done on consumers' lives, bodies or property due to goods and services, ② no disadvantages incurred by consumers in the quantification of goods or services, This is quite awkward, and I'm not clear on what it means; I recommend that it be clarified and revised. ③ prices and quality of goods and services, ④ fair transaction and no unreasonable profit, ⑤ provision of support for consumers' self-help and having consumers' opinions on Government policy.

(3) Consumer laws

The Unfair Competition Prevention Act, which was enacted in December 1961, was a law closely related to consumers' interests.¹⁸⁾ Other laws enacted for the quality management of individual goods were: The Measures Act (Law No.615 enacted in May 1961); The Food Sanitation Act (Law No.1007 enacted in January 1962), and; The Quality Control of Industrial Products Act (Law No.1934 enacted in March 1967). The Quality Control of Industrial Products Act (Article 1)¹⁹⁾ was the first law in which the protection of consumers' interests was stated as the purpose.

In 1973, prices became very unstable due to the first international oil shock. The Price Stabilization Act was enacted in March 1973 to replace The Act on Temporary Measures for Price Adjustment with the addition of stipulations, such as price regulation, restrictions over unfair transactions, and improvement of the distribution structure. The newly enacted Act, Article 7²⁰⁾ says that the government and local autonomous bodies may take necessary measures to protect consumers' rights. Under the Act, the govern-

18) The Unfair Competition Prevention Act (Law No.911 enacted in December 1961), Article 1 (Purpose) says, "The purpose of this Act is to maintain the sound order of commercial transactions by preventing unfair commercial competitions."

19) The Quality Control of Industrial Products Act (Law No.1934 enacted in March 1967), Article 1 (Purpose) says, "The purpose of this Act is to protect the interest of the public, including consumers, and enhance the quality of industrial products by marking the quality level on industrial goods and carrying out the system of grading quality inspection/management."

20) The Quality Control of Industrial Products Act (Law No.1934 enacted in March 1967), Article 1 (Purpose) says, "The purpose of this Act is to protect the interest of the public, including consumers, and enhance the quality of industrial products by marking the quality level on industrial goods and carrying out the system of grading quality inspection/management."

ment may set a price ceiling for rent²¹⁾, prohibit cornering and hoarding, and institutionalize prices.

As the foregoing Act caused a problem, such as distortion of market prices, The Price Stabilization and Fair Trade Act was enacted in December 1975. The Price Stabilization and Fair Trade Act, Article 1²²⁾ stipulates the protection of consumers' rights and interest. Under this Act, the Government may, when deemed necessary to stabilize the people's livelihood, set price ceilings on particularly important commodities, rent for real estate, etc. or charge for services. When designating price ceilings, a relevant notice shall be made.²³⁾ The Act on Distribution and Price Stabilization of Agricultural and Fishery Products, which was enacted in December 1976), stipulates the protection of consumers' rights and interests.²⁴⁾

21) The Price Stabilization Act, Article 2 (Designation of Price Ceilings) ① The Government may, when deemed necessary to stabilize the people's livelihood, set price ceilings on particularly important commodities, rent for real estate, etc. or charge for services. ② When designating price ceilings per the foregoing ①, a relevant notice shall be made, including the target, period, regions, etc in the notice. ③ Necessary matters concerning the notice stated in the foregoing ② shall be prescribed by Presidential Decree.

22) The Price Stabilization and Fair Trade Act (Law No.2798), Article 1 (Purpose) says, "The purpose of this Act is to protect consumers' rights and contribute to the stability and development of the people's lives and the national economy through stabilization of prices and establishment of the order of fair and free competition."

23) The Price Stabilization and Fair Trade Act, Article 2 (Designation of Price Ceilings) ① The Government may, when deemed necessary to stabilize the people's livelihood, set price ceilings on particularly important commodities, rent for real estate, etc. or charge for services. ② Price ceilings stated in the foregoing ① may be set for each region and for each trading stage, such as the production stage, the wholesale stage, and the retail stage. ③ When the Government deems that the grounds for maintaining price ceilings set under the foregoing ① do not exist, it shall remove such ceilings without delay. ④ When the Government sets or removes price ceilings under the foregoing ① or ③, it shall publicly announce such fact without delay. Please check the numbering on these.

24) The Act on Distribution and Price Stabilization of Agricultural and Fishery Products

The foregoing laws have their own significance, as they stipulate the purpose of protecting consumers' interests, but they do not elaborate on the definition of "consumers" and how to protect consumers' interests. These laws appeared to protect consumers' interests indirectly or reflexively through quality control, smooth distribution, and price stabilization of industrial and agricultural goods, but they are not aimed directly at the protection of consumers.²⁵⁾

Meanwhile, voices were raised concerning a need to enact a framework law on consumer protection. Many organizations submitted their ideas about a basic act for consumer protection to the Government. Those submitted included: a sample of The Consumer Protection Act submitted by the Korea National Council of Consumer Organizations (1977) and a recommendation to such effect submitted jointly by consumer organizations (1978).²⁶⁾ In response to such a move made by consumer organizations, the Government took a step toward enactment of a consumer protection law. In the process, the Government listened to the opinions of economic organizations and government agencies in charge. The Government also held public hearing

(Law No.2962 enacted in December 1976), Article 1 (Purpose) says, "The purpose of this Act is to ensure the smooth distribution of agricultural and fishery products and maintain their prices at proper levels to protect the interests of both consumers and producers, and to contribute to the stability of the life of the citizens.

25) Suh Hui-seok, *Ibid*, p.77

26) Contents of the recommendation submitted by a consumer organization in December 1978: "We recommend the following for brisk development of consumer protection measures: ① The National Assembly should pass the bill for The Framework Act on Consumers as soon as possible. ② The Government should launch an institution dedicated to consumer issues. ③ The Ministry of Education should include practical consumer education in school curricula. ④ Businesses should do their best to improve the goods produced by them based on consciousness and a sense of ethics and offer a provision of accurate information on their goods to consumers. ⑤ Consumer organizations should exert their utmost efforts to carry out enlightenment activities for consumers."

sessions to listen to the opinions of the generable public. Finally, The Consumer Protection Act was enacted in January 1980.

(4) Evaluation

At that time, the country did not have a policy directly aimed at consumer protection, which means that the country did not have a consumer policy promotion system. Laws related to the protection of consumers' rights that existed at that time were not consumer laws in a true sense of the word, as their main purpose was accomplishment of other policies. Granted, the period can be regarded as the initial period of consumer laws, as steps for enactment of The Consumer Protection Act was started to be taken in the late 1970s.

2. Formation Period(1980s)

(1) Background, such as the economic situation

In the 1980s, the country's economy grew larger and more complicated. External economic conditions became unstable due to the second international oil shock (1980~1981). Amid such a situation, the country experienced lots of problems, such as prevalence of inflation psychology, distortion of market functions, deepening of the monopolistic and oligarchic situation, and damages incurred by consumers. Accordingly, the country changed the way the economy was operated in many ways to help restore market functions and maintain free and fair competition.

First of all, the Constitution of the Fifth Republic enacted in 1980 included the following stipulations: regulation on demerits of monopolistic and oligarchic status while maintaining the basic principles of economy

[Paragraph 3 of Article 120]; protecting and encouraging SMEs' business activities [Paragraph 2 of Article 124]; development of self-help organizations for farming and fishing households and SMEs and guaranteeing their political neutrality [Paragraph 3 of Article 124]; encouraging healthy consumption activities and protection of consumer activities designed to enhance the quality of produced goods (Article 125).

The stipulation on the guarantee of consumer protection activities in the foregoing Constitution of the Fifth Republic has significance, as it provides the basis for the protection of consumers' rights.²⁷⁾ Such a spirit contained in the Constitution was substantiated by enactment of consumer protection laws in the 1980s and was reflected in the fifth Five-Year Economic Plan started in 1982.

(2) Policy-based countermeasures and the policy promotion system

Under The Consumer Protection Act enacted in January 1980, the Consumer Protection Committee was launched within the EPB in 1982. The committee, which was headed by the Economic Planning Minister, was composed of eight ministers and three people from the private sector. Within the EPB, the newly launched Distribution and Consumption Department came to be in charge of policies concerning the distribution industry and consumer protection.

Under the amendment to The Consumer Protection Act in December 1986, the Consumer Protection Committee was renamed the Consumer Policy Deliberation Committee. In 1987, the Korea Consumer Protective Board was established to be in charge of promotion of the Government's consumer protection measures.

27) Suh Hui-seok, *Ibid*, p. 78

Many measures were taken to remedy consumer-incurred damages. In 1986, the EPB enacted the Consumer Damages Compensation Regulations as reasonable criteria for damages compensation. The EPB also adopted a system for designation of the establishment of a consumer-incurred damage compensation organization for businesses' voluntary action to remedy consumer-incurred damages. In 1988, the action taken by the Fair Trade Commission concerning department stores' bargain sale-related practices²⁸⁾ served as an occasion that prompted the country's consumer protection laws to focus on consumers' right of choice. Department stores' incorrect labeling on the goods sold on an installment payment basis and provision of false or exaggerated information on advertisements on goods met consumers stiff resistance. It resulted in reinforcement of stipulations on consumer protection in The Monopoly Regulation and Fair Trade Act enacted in 1990.

(3) Consumer laws

1) The Consumer Protection Act enacted in January 1980²⁹⁾

The relevant bill passed the National Assembly in December 1979 and The Consumer Protection Act was enacted in January 1980. This Act was implemented on September 13, 1982 with the enactment of its Enforcement Decree.

28) In November 1988, the Fair Trade Commission investigated department stores' unfair transaction acts concerning their bargain sales and issued an order that ten department stores take remedial action concerning their violation of The Monopoly Regulation Act (the EPB, A collection of decisions made under the Monopoly Regulation and Fair Trade Act, Vol. 18, 1988, p. 261).

29) Law No.3257 enacted on January 4, 1980 and implemented on September 13, 1982

In this Act, Article 1 stipulates that its purpose³⁰⁾ is to protect consumers' basic rights. Article 2 says that the central and local governments have the obligation to establish measures designed to protect consumers' rights. Chapter 6 stipulates the establishment of the Consumer Protection Committee³¹⁾ within the EPB for deliberation of matters concerning consumer protection.

2) The Monopoly Regulation and Fair Trade Act enacted in December 1980³²⁾

The Monopoly Regulation and Fair Trade Act (herein forth, "the Monopoly Regulation Act") enacted in December 1980 has significance, as it establishes a way of economic operation normatively on the basis of the market economy order. The Act was enacted to protect the competition mechanism activating in the market so that the inherent function of the market, i.e. coordination of the interests of key actors of the economy, might be exerted properly.³³⁾ In the period following the 1980s, the way the country's economy was operated changed, with emphasis put on stability rather than on growth and the private sector replacing the Government as a key actor.³⁴⁾ Such a change led to the enactment of The Monopoly

30) The Consumer Protection Act, Article 1 (Purpose) says, "The purpose of this Act is to protect consumers' basic rights and contribute to the improvement and rationalization of the people's lives by stipulating the obligations of the central and local governments and businesses, along with the role of consumers."

31) The Consumer Protection Act, Article 21 (Establishment of Committee) says, "The Economic Planning Board shall operate the Consumer Protection Committee to deliberate matters concerning consumer protection and improvement of the people's lives."

32) Law No.3320 enacted in December 1980 and implemented in April 1981

33) The Monopoly Regulation and Fair Trade Act, Article 1 (Purpose) says, "The purpose of this Act is to promote fair and free competition, to encourage thereby creative enterprising activities, to protect consumers and to strive for a balanced development of the national economy by preventing any abuse of market-dominating positions by enterprisers and any excessive concentration of economic power and by regulating undue collaborative acts and unfair trade practice."

34) Lee Je-min, *Industrialization and the Relevant Policy of South Korea*, Edited by Ahn

Regulation Act, which concretized the principle of a market economy from a legal system perspective.

The Monopoly Regulation Act indirectly protects consumers' interest in the course of realizing its purpose, while The Consumer Protection Act directly aims at protection of consumers. The two laws have an inter-complementary relationship. The Monopoly Regulation Act concerns market order, while The Consumer Protection Act concerns a need for protection of consumers, who are in an inferior position compared to other market participants.³⁵⁾

3) First amendment to The Consumer Protection Act in December 1986³⁶⁾

The Consumer Protection Act, which was enacted in January 1980, still lacked substantial functions associated with consumer protection. Those interested pointed to a need to make up for shortcomings of this Act, push ahead with consumer policy systematically and efficiently, and cope with changes in consumers' needs more positively. Thus, The Consumer Protection Act was amended in December 1986. The amendment took effect in April 1987 through a corresponding amendment to its Enforcement Decree.

The aforesaid amendment announces consumers' basic rights (Article 3), stipulates the basis for consumer organizations (Chapter 4), and stipulates the establishment of the Consumer Policy Deliberation Committee within the EPB (Chapter 5).³⁷⁾ It also provides stipulations concerning the Korea

Byeong-ji, The History of Economic Growth of South Korea, Seoul National University Press, 2001, p.502 and ensuing pages

35) Hong Myeong-su, Ibid, pp.93~94

36) Law No.3921 wholly amended in December 1986 and implemented in April 1987

37) The Consumer Protection Act, Article 21 (Deliberation Committee) says, "The Government shall establish the Consumer Policy Deliberation Committee within the EPB to

Consumer Protective Board (Chapter 6) and its subsidiary body, the Consumer Disputes Mediation Commission (Articles 34~38), in charge of remedies for damages (Articles 39~46).

Under the said amendment, the Consumer Policy Deliberation Committee was established within the EPB to be in charge of the deliberation consumer policy, and the implementation of consumer policy came to be assumed by the Korea Consumer Protective Board established separately under the amendment.

4) Revamp of consumer transaction-related laws

Following the amendment to The Consumer Protection Act in December 1986, major laws related to consumer transactions were revamped in the ensuing ten years. They included: The Regulation of Standardized Contracts Act (enacted in December 1986); The Wholesale and Retail Trade Promotion Act (December 1986), and; The Credit Card Business Act (May 1987).

The Regulation of Standardized Contracts Act is designed to protect consumers by regulating the contents of standardized terms and conditions. Methods used for regulation of standard terms and conditions are both judicial and administrative. The Wholesale and Retail Trade Promotion Act said that its purpose was “to promote wholesale and retail trade efficiently and establish a healthy commercial transaction order with a view to protecting consumers and contributing to the balanced development of the national economy.” The said Act also included contents concerning administrative regulation on installment transactions, door-to-door sales, and mail order sales-based sales. Concerning such special types of sales of goods, the

deliberate basic policies concerning consumer protection and improvement of the people's lives.

following laws were enacted separately in December 1991: The Door-to-Door Sales, etc. Act and The Installment Transactions Act. The Credit Card Business Act was enacted to regulate credit card businesses administratively and stipulate matters concerning responsibilities. The said act was integrated into The Specialized Credit Financial Business Act in 1998.

(4) Evaluation

The Consumer Protection Act, which was enacted in January 1980, was significant as it was the country's first law dedicated to consumer protection. Under the Act, The Consumer Protection Committee was established and the system for promotion of consumer policy was revamped. Accordingly, it can be said that the country's consumer laws started with the Act. However, the Act did not have a clause concerning an effective implementation agency. Nor did it have specific content about the way consumer policy should be promoted. It only had a clause concerning the establishment of the Consumer Protection Committee within the EPB.

With the amendment to The Consumer Protection Act in December 1986, the Consumer Protection Committee was renamed the Consumer Policy Deliberation Committee. The Korea Consumer Protective Board, which was established under the Act, came to be in charge of implementation of the consumer policy. From this time on, consumer policy could be promoted efficiently. It can be said that, with this, the country's system for promotion of the consumer policy and the basis for consumer-related administration came to be properly established. Under such a system for promotion of consumer policy, the country came to enact major laws related to consumer transactions over the next ten years. Thus, we can call it the Formation Period for consumer laws.

3. Growth Period(1990s)

(1) Background, including the country's economic status

During this period, the country's per-capita income rose and consumers came to take higher interest in the safety and quality of goods. Consumers were awakened to their right for getting compensated for their damages caused by defective goods and services provided by businesses. As it happened, local councils were launched in 1991 under the amendment to The Local Autonomy Act and the local autonomy system came to be in full operation with the direct election of the heads of local autonomous bodies in June 1995. It led to the extension of the scope of the consumer policy. The activities of consumer organizations came to enjoy a more reinforced status and the launch of the Korea Consumer Protective Board resulted in the adoption of many policy mechanisms. The country joined the OECD in 1996 and had to strive to upgrade the country's relatively backward consumer protection system to make it on a par with OECD norms.³⁸⁾

Thus, the Government started considering a change in its policy concerning consumer protection-related laws and dealt with consumer protection as an important item in the 7th Five-Year Economic Plan (1992-1997).

(2) Policy-based countermeasures and system for promotion of relevant policies

The government saw the absolute need to present policy direction conducive to the improvement and rationalization of the people's lives to meet the people's desires and expectations expressed in a variety of ways.

38) Yeo Jeong-seong, Ibid, p.7

1) The 7th Five-Year (1992-1997) Economic Plan and consumer policy

The Government dealt with consumer protection, which was rather neglected in the past, as part of the economic/social development sector and set basic objectives of consumer policy as follows: ① consumer policy equal to an advanced, welfare society, and ② reinforcement of the function of consumer protection in a way that corresponds to changes in economic/social conditions, including decentralization and door-opening.

In connection with a need to achieve the said basic objectives of consumer policy, the Government selected the following as major policy measures to concentrate on during the 7th five-year Economic Plan period: ① revamping consumer protection-related laws and systems; ② re-establishing the role of consumer protection agencies; ③ reinforcing consumer safety measures; ④ encouraging proper transactions; ⑤ reinforcing consumer education and provisions of information, and; ⑥ securing compensation for damages incurred by consumers.³⁹⁾

2) Emergence of the FTC

The Fair Trade Commission ("FTC") was first established in April 1981 as a body reporting directly to the EPB. In 1990, it became an independent body, separate from the EPB. In 1994, it became a central administrative agency under the control of the Prime Minister. The position of its chairman was filled by a vice minister-level official. In 1996, its chairman was upgraded to a minister-level official and the Consumer Protection Bureau was established. Starting in 1993, the FTC came to deal with the business

39) Gang Chang-gyeong, Jeong Sun-hui, and Huh Gyeong-ok, *Ibid*, pp. 21~24

of reviewing unfair transaction terms and conditions under the Regulation of Standardized Contracts Act. In 1999, the functions related to consumer protection under The Door-to-Door Sales, etc. Act and The Installment Transactions Act were transferred from the MOCIE (the successor of the Ministry of Commerce and Industry) to the FTC. In February 1999, The Act on Fair Labeling and Advertising was enacted through an initiative of the FTC.

To summarize, the FTC started carrying out business concerning consumer protection in a true sense of the word in 1999 after it became an independent body headed by a minister-level official with the establishment of the Consumer Protection Bureau in 1996 and the transfer of consumer protection functions under The Door-to-Door Sales, etc. Act and The Installment Transactions Act from the MOCIE to the FTC. Thus, the FTC started acting as a body with the rights of legislation and the execution of major laws related to consumer transactions.

(3) Consumer laws

In May 1991, The Wholesale and Retail Trade Promotion Act was amended to adopt consumers' right to withdraw a sales contract.⁴⁰⁾ In December 1991, The Door-to-Door Sales, etc. Act and The Installment Transactions Act were enacted. In December 1992, The Regulation of Standardized Contracts Act was amended to insert "Corrective Measures" (Article 17-2) and "Request for Examination of Standardized Contracts" (Articles 19 and

40) Wholesale and Retail Trade Promotion Act, Article 37-2 (Purchaser's right for withdrawal) says, "① One who has purchased goods from a door-to-door salesperson may withdraw the relevant contract in writing within 7 days from the receipt of the contract under Article 37 or from the receipt of the goods if he/she has not received a copy of the contract."

19-2). In January 1995, The Door-to-Door Sales, etc. Act was wholly amended to extend the period during which a purchaser may withdraw his/her sales contract from 7 days to 10 days (Article 7) and insert a clause for consumer protection concerning mail order sales (Articles 12~14).

By far, the most epoch-making act for consumer transaction-related measures was The Act on Fair Labeling and Advertising enacted in February 1999. Its purpose was to “prevent unfair labels and advertisements for products or services which may deceive or mislead consumers, and to promote provision of correct and useful information to consumers, thereby establishing order in fair trade and protecting consumers.”

With regard to consumer safety, The Consumer Protection Act was amended in December 1995 to insert a clause for ordering the collection and scrapping of goods (the forced recall system) (Article 17-3). A series of individual laws were enacted to have this purport of the law reflected in individual goods.

Concerning a need to establish order in fair trade, The Monopoly Regulation and Fair Trade Act was wholly amended in January 1990 to include a deceptive or false advertisement in the category of an unfair trade practice (Article 23).

(4) Evaluation

The most notable of what occurred during this period was the FTC's emergence as a body with the right of legislation and the execution of major consumer transaction-related laws in 1999 after its establishment as a subsidiary organization of the EPB in 1981. Other noteworthy things that occurred during this period included: a conspicuous achievement in consumer policy with policy measures taken concerning consumer issues; improvement in consumer laws through enactment of diverse laws designed

to settle problems concerning special transactions; inclusion of a consumer safety clause (the forced recall system) in The Consumer Protection Act. Overall, the country's consumer laws made a noticeable development during this period.

4. Stabilization Period (2000s)

(1) Background, including the country's economic status

In the 2000s, the country began to be influenced by consumer issues occurring in other countries amid the globalization trend. The levels or types of consumer issues to be dealt with by consumer policy became very diverse. Under the growing demand for consumer safety, it was necessary to take measures to enhance the effectiveness of the forced recall system adopted in 1996. It was also necessary to take stronger safety measures for children and senior citizens. The advent of the era of digital economy also necessitated the enhancement of safety and reliability of e-Commerce, including protection of personal information.⁴¹⁾

(2) Policy-based countermeasures and system for promotion of relevant policies

1) Change in focus of consumer policy from consumer protection to the realization of consumer sovereignty

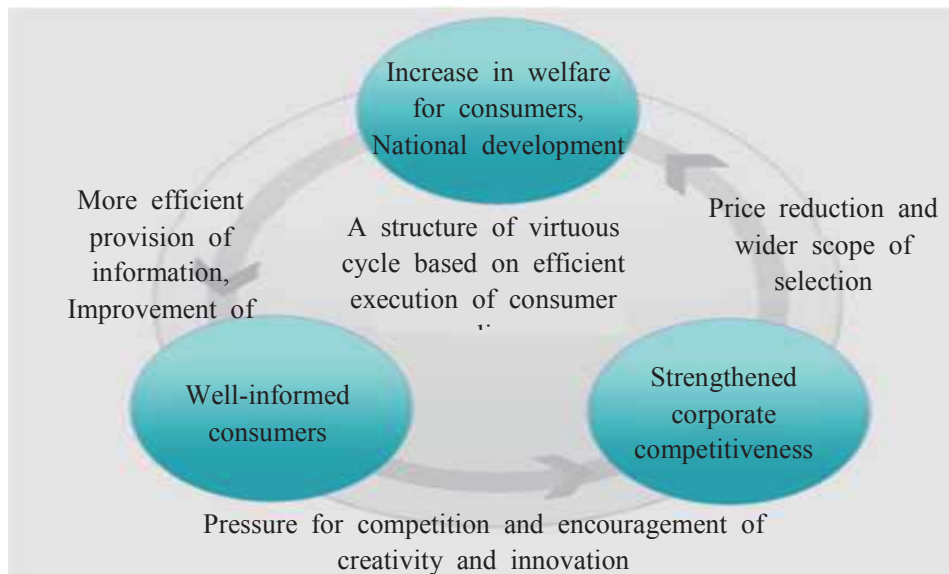
The focus of the country's consumer policy switched from consumer protection to the realization of consumer sovereignty. In the past, consumers were regarded as relatively weak and those requiring protection, but now consumers were on an equal footing with businesses. Consumer policy also focused on provision of support (such as provision of educational opportunities

41) Yeo Jeong-seong, Ibid, p.10

and information) for consumers in their self-reliant settlement of problems rather than on protective, administrative regulations.⁴²⁾⁴³⁾

The new focus stated in the foregoing paragraph is based on a view that an effective consumer policy designed to develop consumers' abilities works to build a structure of virtuous cycle of bringing an increase in welfare to consumers and encouraging businesses' technological development and price reduction. Consumer policy focusing on the realization of consumer sovereignty can be described as in <Fig.1>.⁴⁴⁾

<Fig. 1> Conceptual diagram concerning consumer policy focusing on the realization of consumer sovereignty



42) Yeo Jeong-seong, *Desired direction of consumer policy in the 21st Century*, A collection of theses presented at the Korean Society of Consumer Studies, 1998, p.12; Park Myeong-hee & Park Mi-hye, *The role of consumers and consumer policy for formation of governance amid the buildup of consumer sovereignty*, *The Consumer Studies*, Vol. 16, No. 4, 2005, p.50

43) The following studies view consumer protection and consumer sovereignty as inter-complementary concepts: Kwon Oh-seung, *The Consumer Protection Act*, Beopmunsu, 2005, p. 45; Suh Jeong-hui, *A study of consumer sovereignty*, *The Consumer Studies*, Vol. 2, No. 1, 1991, p.73

44) Source: The Fair Trade Commission (<http://www.ftc.go.kr/policy/consumer/generalNotion.jsp>)

2) The FTC as the authorities for consumer policy

The basic plan concerning consumer policy first established for 2009 through 2011 under The Framework Act on Consumers⁴⁵⁾ was finalized by the Committee on Consumer Policy in October 2008. The Government set the following as basic factors of its consumer policy, i.e. establishment of a reliable market, development of capable consumers, spread of responsible corporate culture, and promotion of efficient and proactive policies, under the policy objective of the realization of substantial consumer sovereignty.

Matters concerning the promotion of efficient and proactive policies made progress amid competition between the MOFE (Consumer Policy Department) and the FTC (Consumer Protection Bureau) to assume the responsibilities as the body in charge. The question concerning which of the two should be the body in charge of consumer policy was raised with the launch of the Kim Dae-jung Administration in 1998. After all, the Korea Consumer Agency had been transferred from the MOFE to the FTC in September 2006 through the replacement of The Consumer Protection Act by The Framework Act on Consumers. Under the amendment to The Consumer Protection Act⁴⁶⁾ in February 1997, the Consumer Policy Committee⁴⁷⁾ was transferred to the FTC.⁴⁸⁾ Thus, the FTC became the key actor concerning consumer policy.⁴⁹⁾

45) Law No.7988 wholly amended in September 2006 and implemented in March 2007

46) Law No.8852 enacted and implemented in February 2008

47) Under the replacement of The Consumer Protection Act by The Framework Act on Consumers in September 2006, the Consumer Policy Deliberation Committee was re-named the Consumer Policy Committee, but still remained within the MOFE.

48) The Framework Act on Consumers (Law No.8852 enacted in February 2008 through amendment to another law), Article 23 (Establishment of Consumer Policy Committee) says, "The Fair Trade Commission shall operate the Consumer Policy Committee for deliberation and decision on basic policies concerning promotion of consumers' rights and improvement of the people's life."

49) Yeo Jeong-seong, Ibid, The Korean Association for Policy Studies, 2008, pp.10~11;

(3) Consumer laws

The most notable thing about the revamp of consumer laws during this period was a shift in the focus of consumer policy from consumer protection to the realization of consumer sovereignty⁵⁰⁾ under the replacement of The Consumer Protection Act by The Framework Act on Consumers in September 2006. The enactment of The Framework Act on Consumers was focused on reinforcement of consumer sovereignty (in the form of promotion of consumers' rights through establishment of a mid- and long-term consumer policy and the strengthening of consumer safety education and information provided to consumers) in connection with a need to cope with a change in consumers' status amid economic development and enhancement of consumers' consciousness in the relevant environment, i.e. invigoration of e-Commerce and international trade.⁵¹⁾

Another feature during the 2000s was that consumer transaction laws were divided into more detailed, separate laws. In March 2002, The Door-to-Door Sales, etc. Act was wholly amended with a focus on door-to-door

Suh Hui-seok, Ibid, pp.81 and 82

50) Consumer sovereignty means that resource allocation in all of society is decided through consumers' free choice. It is distinguished conceptually from consumer rights that stand for consumers' benefits in a concrete transaction. What is recognized as consumer rights, e.g. "right to know" (The Framework Act on Consumers, Article 4, Subparagraph 2) or "right to select" (The Framework Act on Consumers, Article 4, Subparagraph 3) is closely associated with consumers' sovereignty in some cases. Thus, the distinction between the two is not always clear. Meanwhile, consumer sovereignty is a useful concept for a more fundamental understanding of consumer issues, as it is directly associated with the significance of the market economy and serves as the basis that presents justification of a market economy (Suh Jeong-hui, On consumer sovereignty, University of Ulsan Press, 1993, pp. 17~20).

51) Kim Seong-cheon & Kim Jae-yeong, *Relationship between competition law and consumer law*, the Korea Consumer Agency, 2008, p.28

sales and pyramid sales. Transactions, in which consumer damages occur frequently, i.e. phone marketing, continuous transaction, business solicitation transaction, were added to the Act's scope of application. In March 2002, The Act on Consumer Protection in the Electronic Commerce Transactions, etc. was enacted to deal with mail order sales-related stipulations separately. The Act on Consumer Protection in the Electronic Commerce Transactions, etc., which was amended in March 2005, stipulated that consumers' payments should be deposited with a third party to prevent consumer damages in mail order sales, which is a non-face-to-face transaction that requires prepayment (Article 13). The Electronic Financial Transaction Act, which was enacted in April 2006, clarified legal relationships, including transacting parties' rights and obligations, in consideration of characteristics of e-Commerce.

Finally, efforts were made to provide for legal and institutional apparatuses for consumer safety. In March, The Consumer Protection Act and its Enforcement Decree were amended to adopt the following systems: making businesses reports on defective goods (Article 17); voluntary re-collection of defective goods (Article 17-2); recalls (Article 17-3), and ; order for emergency recalls (Article 17-4). The Product Liability Act (enacted in January 2000 and implemented in July 2002) simplified the procedure for consumers' receiving compensation concerning defective goods. In March 2004, The Framework Act on the Management of Disasters and Safety was enacted. Under The Framework Act on Food Safety, which was enacted in June 2008, the Food Safety Policy Committee was established as an agency reporting directly to the Prime Minister. In February 2010, The Framework Act on Product Safety was enacted.

(4) Evaluation

The two most notable things about the revamp of consumer laws during this period were a shift in the focus of consumer policy from consumer protection to the realization of consumer sovereignty under The Framework Act on Consumers, which replaced The Consumer Protection Act in September 2006, and the change of hands between the MOFE and the FTC, which emerged as the key actor concerning consumer policy in February 2008.

During this period, consumer transaction laws were divided into more detailed, separate laws. The Act on Consumer Protection in the Electronic Commerce Transactions, etc. and The Electronic Financial Transaction Act were enacted in an effort to meet needs in an era of digital economy. Legal and institutional apparatuses for consumer safety were also stipulated in The Framework Act on Consumers or other individual laws. Judging from these, the country's consumer policy has already entered a stabilization period. However, the country has yet to decide how to revamp consumer laws to cope with rapid changes in a consumption environment in an era of digital economy.

Section 3. Process of development in consumer laws

It is said that the enactment of The Consumer Protection Act in January 1980 was the beginning of the country's history of consumer laws, as the said Act was the first law dedicated to consumer protection.

There were other laws containing clauses about protection of consumers' rights and interests, but they appeared to protect consumers' interests merely

indirectly or reflexively through quality control and the price stabilization of industrial and agricultural goods; they were not aimed directly at the protection of consumers. The Quality Control of Industrial Products Act, which was enacted in March 1967, for example, stated that its purpose was protection of consumers' rights and interests, as noted in the foregoing.

Meanwhile, The Unfair Competition Prevention Act, which was enacted in December 1961, was an example of a law closely associated with consumers' interests, although it did not contain a clause that stated "protection of consumers' rights and interests" as The Quality Control of Industrial Products Act did.

Contents like this were already checked in this Chapter, Section 2 (Analysis of the process of development of consumer laws). <Table 1> re-arranges the laws stated in the foregoing §2, according to their period.

<Table 1> Process of development consumer laws

	Classifi- cation	Individual laws	Remarks
Initial Period (1960s~ 1970s)		Unfair Competition Prevention Act (enacted on 12/30/1961) Measures Act (5/10/1961) Food Sanitation Act (1/20/1962)	Laws on consumer interests
		Quality Control of Industrial Products Act (3/30/1967) Price Stabilization Act (3/12/1973) Price Stabilization and Fair Trade Act (12/31/1975) Act on Distribution and Price Stabilization of Agricultural and Fishery Products (12/31/1976)	Laws containing the purpose of protection of consumers' rights and interests

	Classification	Individual laws	Remarks
Formation Period (1980s)		※ Monopoly Regulation and Fair Trade Act (12/31/1980)	Laws dedicated to consumer protection
	Consumer policy laws	Consumer Protection Act (1/4/1980)	
		Regulation of Standardized Contracts Act (12/31/1980) Wholesale and Retail Trade Promotion Act (12/31/1986) Credit Card Business Act (5/30/1987)	
Growth Period (1990s)	Consumer transaction laws	Door-to-Door Sales, etc. Act (12/31/1991) Installment Transactions Act (12/31/1991) Specialized Credit Financial Business Act (1/13/1998) Act on Fair Labeling and Advertising(2/5/1999)	
Stabilization Period (2000s)		Act on the Consumer Protection in the Electronic Commerce Transactions, etc. (3/31/2005) Electronic Financial Transaction Act (4/28/2006)	
	Consumer safety laws	Product Liability Act (1/12/2000) Framework Act on the Management of Disasters and Safety (3/11/2004) Framework Act on Food Safety (6/13/2008)	

Section 3. Process of development in consumer laws

	Classifi- cation	Individual laws	Remarks
		Framework Act on Product Safety (2/4/2010)	

※ Dates in () refers to when they were enacted.

Chapter 3. Status of South Korea's consumer laws

Section 1. Overview

Following its enactment in January 1980, The Consumer Protection Act, which is regarded as the country's first consumer law, was amended several times to offer better consumer protection. Other consumer transaction and safety laws have also been enacted and amended.

This section will discuss other major consumer transaction laws enacted in each period. During the Formation Period, The Regulation of Standardized Contracts Act (12/31/1986) and The Wholesale and Retail Trade Promotion Act (12/31/1986) were enacted. During the Growth Period, the following laws were enacted: The Door-to-Door Sales, etc. Act (12/31/1991), The Installment Transactions Act (12/31/1991), and The Act on Fair Labeling and Advertising (2/5/1999). During the Stabilization Period, The Act on Consumer Protection in the Electronic Commerce Transactions, etc. (3/30/2002) was enacted. The Product Liability Act (1/12/2000), which is a consumer safety law, was also enacted.

Let's check to see why it was necessary to enact and amend The Consumer Protection Act and other major consumer transaction and safety laws, with a focus on characteristics found in the process of their development, that were aimed at helping developing countries learn lessons from the country's experience indications in connection with their consumer laws.

Section 2. Changes in The Framework Act on Consumers

1. Enactment of The Consumer Protection Act⁵²⁾ in 1980

(1) Reason for the proposal of the enactment

Consumer protection became a matter of urgent importance following the rapid economic growth as defective or inadequate goods threatened people's health or safety amid production and transaction of goods in large quantities. It also became necessary to establish order in the distribution of goods based on ethical business practices and improvement of the relevant systems to protect consumers and let them make reasonable choices in transactions. Under such circumstances, enactment of The Consumer Protection Act was proposed as a framework act on consumer protection due to a need to ① regulate businesses, ② protect consumers' interests, and ③ encourage consumers' self-reliant and reasonable role in transactions.⁵³⁾

(2) Major content

The Consumer Protection Act, which was enacted in January 1980, is composed of Chapter 1 (General Provisions); Chapter 2 (State's Consumer Protection Measures); Chapter 3 (Consumers' Safety); Chapter 4 (Faithfull Labeling); Chapter 5 (Propriety of Transactions); Chapter 6 (Consumer Protection Committee); Chapter 7 (Supplementary Rules), and; Chapter 8 (Punitive Measures).

52) Law No.3257 enacted on January 4, 1980 and implemented on September 13, 1982

53) The Secretariat of the National Assembly of South Korea, the 103rd Economy and Science Committee meeting minutes, No. 6 dated 11/23/1979, p.15

The Consumer Protection Act, Article 1 says that its purpose is consumer protection. Article 2 says that the central and local governments have the obligation to take measures designed to protect consumers' rights and interests. Article 3 stipulates that businesses are obligated to cooperate positively with the Government in consumer protection measures. Article 21 provides for the operation of the Consumer Protection Committee within the EPB for deliberation of matters concerning consumer protection and improvement of the people's lives. Article 28⁵⁴⁾ says that the application of this Act may be overruled by a special clause in other laws.

With regard to The Consumer Protection Act, the reason for the proposal of it was stated "as a comprehensive and rational, framework law for consumer protection." Expert Advisor Kim Cheol's report on the review of the Act says that it focuses on the securing of efficacy by mixing "declarative and practical clauses," referring to cases where such a law is enacted as a framework law or a substantive law.⁵⁵⁾ It shows that the Act was enacted to serve as a framework law on consumer protection policy and meant to have practical significance.

(3) Evaluation

The Consumer Protection Act is said to have had the following problems.⁵⁶⁾ First, it did not have a clause on consumers' rights nor did it have a

54) The Consumer Protection Act, Article 28 (Non-Application of This Act) says, "Concerning matters stipulated in Chapters 3 through 5 and Article 27, if other laws have special clauses concerning them, they shall prevail over this Act."

55) Expert Advisor Kim Cheol's report on the review of The Consumer Protection Act, 1980, p. 6.

56) KIIE, *A study of a way for systematic improvement in consumer protection-related administration*, The Study of Policies, No. 3, 1979. pp.381~385; Gang Chang-gyeong, *Operation of The Consumer Protection Act and the direction of legalization*, The Study of Consumer Issues, No. 23, p. 5

desired level of consumers' rights and interests. Second, its stipulations about the obligations of the central and local governments and businesses were simply declarative, making it difficult to expect efficacy. Punitive measures stipulated were also lukewarm. Third, it entrusted the promotion of consumer protection measures to the EPB without providing for a separate body dedicated to it. It was difficult for the EPB to push ahead with a comprehensive measure for consumer issues extending over economic, social, and educational sectors. Fourth, the operation of the body concerning compensation for consumer damages stipulated in The Consumer Protection Act made little progress. The Consumer Protection Committee did little to benchmark laws or systems of more advanced countries. Fifth, Article 28 (Non-Application of This Act) indicated limitations of the law.

After all, The Consumer Protection Act failed to result in efficient promotion of consumer protection policy due to such problems.

2. (1st) Amendment to The Consumer Protection Act⁵⁷⁾

(1) Reason for the proposal

Concerning The Consumer Protection Act, it was necessary to amend its declarative stipulations to make them more substantial and clarify its nature as a framework law for consumer protection. The first amendment to the said Act was designed to revamp its structure more systematically, make up for its deficiencies, and establish the Korea Consumer Protective Board as an agency dedicated to diverse consumer protection projects to cope with a

57) Law No.3921 wholly amended on December 31, 1986 and implemented on April 1, 1987

rapid increase in consumers' desires and to push forward with consumer protection moves more systematically and efficiently.⁵⁸⁾

(2) Major contents

Major contents of the December 1986 amendment to The Consumer Protection Act were as follows: First of all, the entire structure of the Act was revamped. The responsibilities of each key actor, i.e. consumer, the central and local governments, businesses, and consumer organizations, were stipulated. Second, Article 28 regarding special clauses in other laws prevailing over this Act was deleted. The amendment stipulated that this Act prevail over other laws. Third, it was arranged that the amendment should serve as a substantive law that could guarantee consumers' rights effectively to make up for the simply declarative nature of the Act. The amendment provided for seven items concerning consumers' basic rights (Article 3). It obliged the central and local governments to come up with measures designed to guarantee consumers' rights like those. Fourth, it defined "consumers" for the first time (Article 2) and inserted a clause regarding a basis concerning consumer organizations (Article 19). Fifth, the Consumer Protection Committee was renamed the Consumer Policy Deliberation Committee (Article 21). Sixth, the basis for the establishment of the Korea Consumer Protective Board, a special public-good corporation dedicated to consumer protection was provided (Article 26) for the more efficient promotion of relevant projects⁵⁹⁾ and compensation for consumer damages

58) The Secretariat of the National Assembly of South Korea, the 131st Economy and Science Committee meeting minutes, No. 9 dated 12/10/1986, p.7

59) The Consumer Protection Act, Article 28 stipulated that the Korea Consumer Protective Board should carry out the following duties: 1. process consumers' complaints and compensation for their damages, 2. test, inspect or survey specifications, quality, and the

(Chapter 6, §4). The Consumer Dispute Mediation Commission was to be established within the Korea Consumer Agency (Chapter 6, §3). Thus, the country's consumers could resort to the "counseling → compensation for damages → dispute arbitration" system concerning their complaints about business-provided goods and services. In the ensuing period, the system came to serve as a model for the country's Alternative Dispute Resolution (ADR) system.⁶⁰⁾

(3) Evaluation

The December 1986 amendment to The Consumer Protection Act served as the basis for consumers-related administration and the framework law concerning consumer protection. The amendment includes clauses on punitive measures, in addition to stipulations on matters concerning the establishment of the Korea Consumer Agency, compensation for consumer damages, and administrative measures. Thus, it can be said that the amendment also has characteristics as an ADR law, an organization law, a law for administrative regulation on businesses, and a law concerning regulation under the Criminal Code.

The establishment of the Korea Consumer Protective Board serving as an agency for execution under the said amendment enabled the country to push ahead with consumer policy more efficiently through a revamp of the

safety of goods and services provided by businesses if required for consumer protection, 3. research, and recommend, consumer protection measures, 4. collection and provision of information for the rationalization of people's lives, 5. education of consumers, 6. comprehensive survey and research for improvement of the people's lives, and 7. other consumer protection-related matters.

60) Suh Hui-seok, *Thirty years of the Framework Act on Consumers and conversion of the structure of consumer laws - for the third wave of consumer laws,* Beopjo, March 2011, p. 93

relevant system, with the EPB serving as an institution for deliberation of consumer policy. Several things to point out concerning the amendment were consumer organizations' registration that were made obligatory with imposition of a fine amounting to not more than 3 million won for violators, which served as an inhibitive factor for the invigoration of consumer organizations' activities, restrictions on consumer organizations' right for public disclosure, which caused activities to shrink, and insufficient remedial measures against businesses that violated the regulations concerning labeling and advertising.⁶¹⁾

3. Substitution of The Framework Act on Consumers⁶²⁾ for The Consumer Protection Act (or the 10th amendment) in 2006

(1) Reason for substitution (or amendment)

The Consumer Protection Act was replaced by The Framework Act on Consumers. The reasons for replacement were as follows: First, it was necessary to reinforce consumer sovereignty (in the form of promotion of consumers' rights through establishment of a mid- and long-term consumer policy and the strengthening of consumer safety education and information provided to consumers) in connection with a need to cope with a change in consumers' status amid economic development and the enhancement of consumers' consciousness in the relevant environment, i.e. invigoration of e-Commerce and international trade. Second, it was also necessary to coordinate

61) Lee Gi-su, *Economic Laws*, Sechang Publishing, 1999, p.337

62) Law No.7988 wholly amended on September 27, 2006 and implemented on March 28, 2007

the consumer-related business functions per changes in the market environment and transfer the execution function concerning consumer policy, including the Korea Consumer Agency, to the FTC. Third, it was necessary to improve deficiencies found in The Consumer Protection Act and adopt systems of collective dispute mediation and collective action to remedy small-amount damages incurred by a large number of consumers promptly and efficiently.⁶³⁾

(2) Major content

First of all, The Consumer Protection Act was renamed The Framework Act on Consumers, and the Korea Consumer Protective Board was renamed the Korea Consumer Agency. The “purpose” of the Act changed from “consumer protection” to “development of the national economy through enhancement of the rights and interests of consumers as key actors of market economy and improvement of their lives” (Article 1 and Chapter 6). Second, the newly enacted law stipulated matters concerning consumers’ basic tasks to do and a need to enhance consumers’ capability (Articles 5, 14, and 15). Third, the operating system of the Consumer Policy Committee was changed for more a efficient establishment and execution of consumer policy. The consumer policy function of the FTC was reinforced, including the transfer of the right to control Korea Consumer Agency and review/cancel the registration of consumer organizations to the FTC. Fourth, the newly enacted law stipulated consumer safety clauses included the following: the obligation of putting priority on the protection of vulnerable people, including children; the right bestowed on the heads of central administration

63) June 28, 2006, the bill for whole amendment of The Consumer Protection Act, Bill No. 4798, p. 2

agencies to investigate harmful goods; the FTC's right to ask for remedial action; making the Consumer Safety Center in the Korea Consumer Agency a formal agency; collection of information on harmful goods, and consumer safety warnings [Articles 45, 46, 51, 52, and 77 (2)]. Fifth, the collective dispute mediation system was adopted (Article 68) (allowing the Consumer Dispute Mediation Commission to make a package dispute coordination concerning the same or similar dispute raised by 50 or more consumers). Sixth, a consumer organizations' collective action system was adopted, allowing qualified consumer organizations, business associations, or non-profit private organizations to ask for a court order to prohibit or stop a business's act in a limited way that violated the law that threatened many consumers' rights and interests (lives, bodies and property) (Articles 70 through 76).

(3) Evaluation

The substitution of The Framework Act on Consumers for the Consumer Protection Act in August 2006 was something close to enactment of a new law, as the amendment was made concerning the core of the previous law. It was a switch in the focus of consumer policy from consumer protection to the realization of consumer sovereignty. The switch was concretely displayed in the change of the name of the law and its purpose. The expression "consumer protection" was deleted from the name of both the law and the Korea Consumer Protective Board.

Factors that brought about the shift included a shift in the focus on consumer policy to the realization of consumer sovereignty in major countries⁶⁴⁾

64) Kim Seong-cheon, *Recent trend of consumer policy*, The Education and Research on

and enhancement of consumers' status.⁶⁵⁾ In the past, consumers were regarded as relatively weak and requiring protection, but now consumers were on an equal footing with businesses. Thus, it was necessary to focus consumer policy on things, such as provision of educational opportunities and information for consumers, rather than on protective, administrative regulations.⁶⁶⁾

There are views that the focus of the country's consumer policy should be shifted back to consumer protection.⁶⁷⁾ They point out that things, such as enhancement in consumers' status or changes in major countries' consumer policies, have not really happened, as proponents of consumer sovereignty say and that the EU, for example, seeks stronger measures of consumer protection. They say that the theoretical basis for consumer sovereignty should be re-checked and that it is not desirable for policy-making authorities to use the term consumer sovereignty as it does not correspond to national sovereignty. They say that at present consumers are by no means on an equal footing with businesses and that consumer-related policy-making should be made from a perspective of consumer protection.

Consumer Policy, Vol. 1, No.1, November 2005, p. 120

65) Jang Ju-seong · Park Hui-ju, *Development of South Korea's consumer policy and changes in paradigm*, MOFE/Korea Consumer Protective Board, 2006, pp. 68 and 69; Kim Seong-cheon, *A study of the process of amendment to The Framework Act on Consumers and contents*, The Study of Economic Laws, Vol. 6, No. 2, 2007, pp. 12 and 74

66) Yeo Jeong-seong, *Ibid*, 1998, p. 12; Park Myeong-hee · Park Mi-hye, *Ibid*; Park Myeong-hee, *The role of consumer organizations as governance partners amid reinforcement of consumers' sovereignty*, Consumers and Rule of Law, Seoul National University Press, 2008, p.203

67) Goh Hyeong-seok, *A study of South Korea's consumer laws from a historic perspective*, South Korea consumer laws, A collection of materials presented at the workshop stated in Note 4, April 2012, pp. 26 and 57~58

Section 3. Consumer transaction laws

1. The Regulation of Standardized Contracts Act

(1) Enactment of The Regulation of Standardized Contracts Act⁶⁸⁾ in 1986

Standardized contracts used in business transactions, which became a common scene in a modern period characterized by mass production/ consumption, has been useful in many respects.⁶⁹⁾ The South Korean Government checked the status in 1984, jointly with consumer organizations, and found that consumer damages due to standardized contracts were at such a serious level that it required a drastic remedial action. The enactment of an all-inclusive law was required in connection with a need to improve the existing hundreds of standard contracts. Thus, The Regulation of Standardized Contracts Act was enacted in December 1986.⁷⁰⁾

The Regulation of Standardized Contracts Act contained clauses with the following contents: making it obligatory for businesses to provide consumers with an explanation about such a contract; adoption of the principle of objective interpretation and the *contra proferentem* principle; invalidation of

68) Law No.3922 enacted on December 31, 1986 and implemented on July 1, 1987

69) West Germany became the first country in the world to adopt legal regulation on standard contract terms. In December 1976, the country enacted Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen (AGBG) (Standard Contract Terms Act / implemented in April 1977, setting an example for regulation on standard contract terms. The said Act was incorporated into Article 305 onwards, the Law of Obligations under the German Civil Code, which went into effect on January 1, 2002. (Kwon Oh-seung, Economic Laws, Beopmunsa, February 20, 2010, p. 446; Kim Dae-gyu, "Incorporation of AGBG of Germany into the Civil Code in Germany, The Study of Competition Laws, Vol.8, February 2002, p. 591

70) The bill for The Regulation of Standardized Contracts Act, December 1986, pp. 1~3

clauses that lack fairness under a bona fide principle; establishment of the Standard Contracts Inspection Committee within the EPB to make recommendations on a remedial action concerning a business applying a clause in violation of the Act.

(2) Major amendments

Under the December 1992 amendment to the said Act (Law No.4515), (1) the FTC was authorized to issue a remedial action order to a business engaging in a transaction in violation of the Act and impose a penalty on a business not complying with the order, and (2) a system for pre-review under which a request could be made to the FTC to see a standard contract applied by a business was in compliance with the Act.⁷¹⁾

The March 2001 amendment to the Act (Law No.6459) inserted a clause for issuance of a remedial action order against a non-compliant business and increased the number of factors (from five to six) that could lead to a remedial action order for a more strict execution of the Act.⁷²⁾

The January 2004 amendment to the Act (Law No.7108) included the following: (1) authorizing consumer organizations and the Korea Consumer Protective Board to ask the FTC for presentation of standard contracts for each area and (2) making it required for businesses to present standard contracts if requested by consumer organizations or if a large number of consumers suffered damages in given areas of transactions.⁷³⁾

71) Refer to the bill for the amendment dated October 1992 to The Regulation of Standardized Contracts Act, pp. 1 and 2.

72) Refer to the bill for the amendment dated December 2000 to The Regulation of Standardized Contracts Act, pp. 1 and 2.

73) Refer to the bill for the amendment dated December 2003 to The Regulation of Standardized Contracts Act, pp. 1~3.

2. Door-to-Door Sales, etc. Act

(1) Enactment of The Door-to-Door Sales, etc. Act⁷⁴⁾ in 1991

The Wholesale and Retail Trade Promotion Act, which was enacted in December 1986, contained clauses concerning: the requirement for disclosure of the name of the door-to-door salesperson on his/her visit to each household, the obligation of issuance of a contract document, and advertisement in mail order sales. The May 1991 amendment to the said added the following: definition of “door-to-door sales” (Article 2); the obligation of pre-notice about a door-to-door salesperson’s visit (Article 36), and; the obligation of issuance of a contract document/purchaser’s right to withdraw a contract (Article 37). With the rapid increase in the number of cases of consumer damages concerning multilevel marketing and pyramid sales toward the end of the 1980s, The Door-to-Door Sales, etc. Act was enacted in December 1991 to regulate such transactions.⁷⁵⁾

Under The Door-to-Door Sales, etc. Act, a purchaser was allowed to withdraw a contract within 7 days (in the case of door-to-door sales) or 14 days (in the case of multilevel marketing) from their receipt of the contract document by expressing such a decision in writing. Businesses were also prohibited from providing false information or misleading a consumer into signing a contract concerning door-to-door sales and multilevel marketing.

74) Law No.4481 enacted on December 31, 1991 and implemented on July 1, 1992

75) Kim Seong-cheon, *How to improve consumer laws*, KLRI, 1994, p.107

(2) Major amendments

The January 1995 amendment (Law No.4896) included the following: (1) making it required for businesses engaging in multilevel marketing and (2) lengthening the period to ask for withdrawal of a contract, i.e. from 7 to 10 days in the case of door-to-door sales and from 14 days to 20 days in the case of multilevel marketing.

The December 1995 Amendment (Law No.5086) included the following: (1) making it required for door-to-door sales or mail order sales businesses to report their business name/address to the relevant mayor or provincial governor and (2) measures taken to protect door-to-door salespeople, such as businesses prohibited from imposing burdens on door-to-door salespeople, including requiring the salespeople to recruit a given number of sub-salespeople.

The March 2002 Amendment (Law No.6688) included the following: (1) rearrangement of the Act with the focus on door-to-door sales or mail order sales, in connection with enactment of The Act on Consumer Protection in the Electronic Commerce Transactions, etc. by making some improvements in the clauses concerning mail order sales and (2) transactions, in which consumer damages occur frequently, i.e. phone marketing and continuous transaction, were added to the Act's scope of application.

The March 2005 Amendment (Law No.7490) adopted the requirement for reporting door-to-door sales businesses while the December 2005 Amendment (Law No.7795) added the basis for the FTC's investigation of the business status of mutual aid cooperatives.

3. The Installment Transactions Act⁷⁶⁾

(1) Enactment of The Installment Transactions Act⁷⁷⁾ in 1991

At first, the Government attempted to apply administrative regulations on installment sales by inserting a few clauses in The Wholesale and Retail Trade Promotion Act, which was enacted in December 1986; however, the primary purpose of the Act was to develop wholesalers/retailers and did little for consumer protection.⁷⁸⁾ Thus, the government enacted The Installment Transactions Act in December 1991 (implemented on July 1, 1992) to protect consumers engaging in installment transactions.

The Installment Transactions Act was enacted to protect consumers' rights and interests and establish a healthy order in commercial transactions. Its major contents are as follows: making it required for parties to an installment contract to sign the contract in writing; allowing consumers to withdraw a contract within seven days from the receipt of the contract document or handover of the goods; making it required for the business to give at least a 14 days' notice to the consumer in the event of the business cancelling the contract due to the consumer's default in payment, and finally; setting reasons for which the consumer could refuse to make installment payment to the business.

76) Legal regulation on installment transaction was attempted prior to The Installment Transactions Act. The Wholesale and Retail Trade Promotion Act had clauses regulating installment, door-to-door, mail order sales.

77) Law No.4480 enacted on December 31, 1991 and implemented on July 1, 1992

78) Kwon Oh-seung, *Economic Laws*, Beopmunsa, 2010, pp. 479~480

(2) Major amendments

Under the May 1999 Amendment (Law No.5982), the key actor changed hands from the MOCIE to the FTC.

The March 2005 Amendment (Law No.7489) was aimed to reduce consumer damages due to installment transactions by making it required to state consumers' right to defend, along with how to exercise it in an installment contract document.

The March 2008 Amendment (Law No.9084) was aimed at making it a consumer's right to withdraw an installment contract more substantial. With regard to the period during which the consumer could withdraw a contract, the period was made to be calculated from the delivery of the goods when the delivery was made later than the distribution of the contract document or from the day the consumer comes to know the address to which his/her withdrawal can be submitted, as the case may be.

4. The Act on Fair Labeling and Advertising

(1) Enactment of The Act on Fair Labeling and Advertising⁷⁹⁾ in 1999

Amid the shift in the market structure to consumer-centeredness and the newly adopted thought that consumers' right to their choice of goods is the key to promotion of competition in the market, it was necessary to set right dishonest labeling and advertising more efficiently and provide consumers with correct and useful market information. In February 1999, The Act on

79) Law No.5814 enacted on February 5, 1999 and implemented on July 1, 1999

Fair Labeling and Advertising was enacted (implemented in July 1999) by making up for deficiencies in The Monopoly Regulation and Fair Trade Act.⁸⁰⁾

Major contents of The Act on Fair Labeling and Advertising are as follows: prohibition of dishonest labeling and advertising for protection of consumers and establishment of fair order of transactions; having businesses comply with the FTC's notice (made in consultation with the relevant ministries, businesses and consumer organizations) concerning compulsory information to be provided to consumers; authorizing the FTC to ask businesses to submit relevant data concerning what appears to be dishonest labeling and advertising if needed to verify the fact; putting restrictions over business associations' right to ban specific business's labeling or advertising without the relevant stipulation in the law to guarantee businesses' free activities and promote free competition; authorizing the FTC to stop dishonest labeling and advertising by putting a public notice about violations of the law and imposing a fine.

(2) Major amendments

The December 2005 Amendment (Law No.7794) required the FTC to include matters concerning labeling and advertising stipulated in other laws in its notice about labeling and advertising in order to help consumers and businesses have easier access to the relevant information.

80) The bill dated November 1998 for The Act on Fair Labeling and Advertising, p.1

5. The Act on Consumer Protection in the Electronic Commerce Transactions, etc.

(1) Enactment of The Act on Consumer Protection in the Electronic Commerce Transactions, etc.⁸¹⁾ in 2002

The Door-to-Door Sales, etc. Act regulated e-Commerce,⁸²⁾ along with door-to-door sales and multilevel sales, but the Act could not fulfill the function of consumer protection due to the rapid development of Internet-based commercial transactions. To meet the changes in the situation, matters concerning e-Commerce and mail orders were separated from the Act and The Act on Consumer Protection in the Electronic Commerce Transactions, etc. was enacted in March 2002 (implemented in July 2002) to cover them to establish fair trade order in e-Commerce and protect consumers.⁸³⁾

Major contents of The Act on Consumer Protection in the Electronic Commerce Transactions, etc. are as follows. In e-Commerce, businesses were unable to claim its rights unless transmitting electronic documents to the address agreed to with the consumer, with the exception of a case in which the consumer printed out the electronic document transmitted to an address other than what was agreed. Businesses were required to operate a procedure to check content accuracy before issuing invoice payments to prevent damages caused by consumers' errors in device manipulation. Consumers were allowed to cancel a purchase contract signed with a mail

81) Law No.6687 enacted on March 30, 2002 and implemented on July 1, 2002

82) E-Commerce refers to a commercial act carried out by means of electronic transactions (The Framework Act on Electronic Commerce, Article 2, Subparagraph 1). E-Transactions refers to transactions using electronic documents either partly or wholly (The Framework Act on Electronic Commerce, Article 2, Subparagraph 5).

83) The bill dated April 17, 2001 for The Act on the Consumer Protection in the Electronic Commerce Transactions, etc., p.2

order business within seven days from the delivery of the contract document or from the supply of goods if the supply of goods came after the delivery of the contract document.

(2) Major amendments

The March 2005 amendment (Law No.7487) stipulated that consumer payments should be deposited with a third party to prevent consumer damages in mail order sales, which is a non-face-to-face transaction, and adopted a system in which consumers could refuse to receive advertising e-mails.

Section 4. Consumer Safety Laws

South Korea's major consumer safety systems include those concerning product liability and recall. The Product Liability Act was enacted in July 2002. The Framework Act on Consumers has a clause on product recall and other consumer safety-related clauses. Other consumer safety laws include: The Framework Act on the Management of Disasters and Safety (Law No.7188 enacted in March 2004); The Framework Act on Food Safety (Law No.9121 enacted in June 2008), and; The Framework Act on Product Safety (Law No.10028 enacted in February 2010).

1. The Product Liability Act⁸⁴⁾

(1) The process of enactment of The Product Liability Act

The Korea Consumer Protective Board started research in early 1994 in connection with a need to enact The Product Liability Act. In June 1994,

84) Law No.6109 enacted in January 2000 and implemented in July 2002

the Board made a proposal on the direction of a law concerning product liability at a policy seminar. The Presidential Committee on Government Innovation checked the proposal and recognized a need for the relevant legalization. The relevant bill was submitted to the National Assembly.⁸⁵⁾ With some finishing touches, the bill passed the National Assembly in December 1999. It was enacted in January 2000 and implemented in July of the same year.

(2) Reason for the proposal

The proposal for enactment of the relevant law was aimed to protect consumers' rights by having the manufacturers pay for damages incurred by consumers due to their defective goods, while contributing to the safety of the people and the healthy development of the national economy. It was also aimed to help enhance businesses' competitiveness through promotion of safety consciousness.⁸⁶⁾

(3) Major content⁸⁷⁾

Products covered by the Act are set as "movable property manufactured or processed including those constituting part of other movable property or real estate." Under the Act, the key responsible parties for compensation of damages are: a business that has manufactured, or processed or imported the relevant product; a party that has labeled itself, or attached a label that can make others take it, as the manufacturer of the relevant product; and

85) Gang Chang-gyeong, Jeong Sun-hui, and Huh Gyeong-ok, *Consumer Laws and Policies*, Sigma Press, 2003, p. 185

86) A report on the review of the bill for The Product Liability Act, September 2007, p. 3

87) The report stated in the foregoing Note. 87, pp. 3 and 4

the supplier, when the manufacturer is not known. The Act stipulates that the manufacturer compensate damages, including loss of life or property or bodily injury, incurred by consumers due to defective goods. The manufacturer can avoid being responsible if it can prove that the relevant defect is something not known under the level of prevalent scientific or technological development. Joint and several liabilities are imposed when there is more than one party responsible for the same damages. A contract that stipulates that the manufacturer is free from the responsibility for compensation or limits the manufacturer's responsibility shall be invalid under the Act. The statute of limitation for asking for compensation of damages is three years from the time the consumer has come to know of his/her damages and identified the manufacturer.

(4) Evaluation

At first, it was virtually impossible for consumers to ask for compensation for damages caused by defective goods. It was also difficult for them to receive compensation for damages, as they had to prove the manufacturers' fault. However, The Product Liability Act adopts the principle of liability without fault and makes it easier for consumers to ask for compensation.

However, under The Product Liability Act, consumers cannot ask the manufactures for damage compensation or prevention. Concerning the manufacturers' product quality guarantee, consumers can rely on an approach based on contract laws, but if the manufacturer does not accept it, there is no way consumers can ask the manufacturer for a remedy. Some scholars point to the possibility of asking for defects liability under The Civil Act, but consumers can hardly blame the manufacturer, as their counterparty is

usually the supplier. Thus, it is necessary to improve the system so that consumers may ask for the manufacturer's compensation.⁸⁸⁾

2. Recall system

Under the amendment dated April 1, 1996 to The Consumer Protection Act and its Enforcement Decree, the heads of the central administrative agencies could issue an order for the collection or scrapping of goods (forced recall).⁸⁹⁾⁹⁰⁾ The Act has come to have the current structure through the following amendments: the March 2001 amendment for insertion of a clause concerning business's obligation for reports on a defect in goods (Article 17),⁹¹⁾ a clause concerning voluntary collection of defective goods (Article 17-2),⁹²⁾ and the heads of the central administrative agencies issuing recalls [Article 17-3 (1)].⁹³⁾

The recall system stipulated in The Framework Act on Consumers has the following features: both the goods and the services covered by the recall; adoption of both voluntary and forced recall, and; voluntary recall subject to administrative supervision.⁹⁴⁾

88) Goh Hyeong-seok, A collection of materials presented at the workshop stated in Note 4, p. 65

89) The Consumer Protection Act, Article 17-3 (Order for Collection or Scrapping) (1) says, "Heads of the central administration agencies may issue an order for the collection or scrapping of goods or prohibition of their manufacture, import or sales or provision of the relevant services, if the goods or services (are feared to) inflict noticeable harm to consumers' lives or their body or property and may order a necessary measure, including repair, concerning the facility related to the relevant goods or services."

90) Framework Act on Consumers (Law No.7988 enacted on September 27, 2006), Article 50

91) Framework Act on Consumers (Law No.7988 enacted on September 27, 2006), Article 50

92) Framework Act on Consumers (Law No.7988 enacted on September 27, 2006), Article 50

93) Framework Act on Consumers (Law No.7988 enacted on September 27, 2006), Article 50

94) Gang Chang-gyeong, Jeong Sun-hui, and Huh Gyeong-ok, Ibid, p.356

For the recall system to be invigorated effectively, ① businesses should take part voluntarily, ② the Government should be involved proactively, and ③ information on defective goods should be collected systematically. (The Government is doing what it can to have the police, fire departments, and general hospitals as well as the Korea Consumer Protective Board and consumer organizations cooperate in the collection of such information, but the results have not been so encouraging.), and ④ consumers themselves should take part positively.⁹⁵⁾

3. Safety regulations in The Framework Act on Consumers

The Framework Act on Consumers deals with consumer safety as a crucial issue (Article 4, Subparagraph 1). The Act stipulates that the Government is obligated to provide criteria for the prevention of harm caused by defective goods, labeling and advertising and operation of relevant test/inspection facilities (Articles 8, 10, 11 and 17). The Act requires businesses to take necessary measures not to let harm fall on consumers (Article 19). The Framework Act on Consumers, Chapter 8 (Consumer Safety) stipulates that the Government should take protective measures for vulnerable people and businesses should take measures to prevent harm done to consumers (Article 45). The Act also endows the FTC (the FTC Chairman since 2008) with the right to ask for a remedial action. Concerning the aforesaid recall system, The Framework Act on Consumers stipulates that businesses are obligated to provide information on defects in their goods and collect such goods voluntarily (Articles 46

95) Gang Chang-gyeong, Jeong Sun-hui, and Huh Gyeong-ok, *Ibid*, pp.360 and 361

through 48), and it authorizes the heads of the relevant central government agencies to collect and scrap harmful goods (Articles 49 and 50). Under the Act, the Korea Consumer Agency operates the Consumer Safety Center to collect and analyze information on harmful goods.

Chapter 4. The Promotion and Execution of Consumer Policy

Section 1. System for consumer policy promotion

1. The period prior to adoption of the consumer policy promotion system

The country started the first Five-Year Economic Development Plan in 1962. At that time, all possible efforts were poured into economic development, and thus, the country paid little attention to a need for enactment of a law dedicated to consumer protection.

In the 1970s, women's organizations, which had led the consumer movement, pointed to a need for a consumer protection law.

However, a law dedicated to consumer protection was not enacted even in the 1970s nor did the Government adopt such a policy.

2. Development of the consumer policy promotion system

At the time of its enactment, the Consumer Protection Act stipulated the establishment of the Consumer Protection Committee within the EPB for deliberation of matters concerning consumer protection, but it did not elaborate on agencies that would push ahead with consumer protection measures or direction of promotion. With the 1986 amendment to the Act, a full-fledged system for promotion of consumer policy started to operate under the EPB (now the MOSF)⁹⁶⁾ as a deliberation agency and the Korea

96) Under The Government Organization Act amended and promulgated in July 1961, the

Consumer Protective Board as an execution agency. In the ensuing decade, the system pushed forward with the country's consumer policy, including enactment of many consumer laws.

With the September 2006 amendment to the Act, the Korea Consumer Protective Board became an agency under the control of the FTC. With the February 2008 amendment to the Act, the Consumer Policy Committee, which had been controlled by the MOFE, was transferred to the FTC. Thus, the FTC became the consumer policy authorities.

Thus, the process of establishment and promotion of consumer policy was legalized. The structure for promotion of consumer policy was revamped in a way such that matters presented as policy objectives came to be concretized through enactment of individual laws. Thus, the country's consumer protection measures came to be promoted efficiently.

3. Current system for promotion of consumer policies

Article 6 (Tasks of Central and Local Governments) of the current Framework Act on Consumers, which was partially amended in May 2011, says, "The central and local governments shall carry out the following tasks to have consumers' basic rights realized: ① enactment, amendment or abolition of the relevant laws and ordinances, ② revamp of necessary administrative organizations and improvement of their operation, ③ establishment and execution of necessary measures, and ④ provision of support for consumers' healthy and self-reliant organizational activities. Chapter 4 stipulates

EPB carried out a pivotal role for the country's economic development. In December 1994, the Ministry of Finance-Economy was launched as an agency that incorporated the EPB and the Ministry of Finance. In February 1998, the MOFE replaced it.

matters concerning a system for consumer policy promotion. Thus, the country's system for consumer policy promotion was revamped as follows:

(1) Establishment of a basic plan

The FTC⁹⁷⁾ shall establish a basic plan concerning consumer policy every three years through deliberation and decision-making by the Consumer Policy Committee [Paragraph 1 of Article 21]. The said basic plan shall include changes in consumer policy-related economic and social environments and the basic direction of consumer policy [Paragraph 2 of Article 21]. When establishing the said basic plan, the FTC may ask the heads of the relevant central government agencies, metropolis mayors, and provincial governors to submit materials concerning policy and projects to be reflected in the basic plan [The Enforcement Decree, Paragraph 1 of Article 12]. With regard to matters that should desirably be included in the basic plan, in addition to the policies and projects submitted, the FTC may include them in the basic plan in consultation with the heads of the relevant central government agencies, metropolis mayors, and provincial governors [The Enforcement Decree, Paragraph 2 of Article 12].

(2) Establishment of an implementation plan

Under the aforesaid basic plan, the heads of the relevant central government agencies should establish their implementation plan for consumer policy for the following year by the end of October each year [Paragraph 1

97) Under the September 2006 amendment to The Framework Act on Consumers (Law No.7988), matters concerning the establishment of a basic plan were controlled by the MOFE, but they were transferred to the FTC under the February 2008 amendment to the said Act (Law No.8852 through the amendment of another law).

of Article 22]. Metropolis mayors and provincial governors should establish their implementation plan concerning consumer policy for the following year in accordance with the aforesaid basic plan and the implementation plan by the end of November each year [Paragraph 2 of Article 22]. The FTC should establish a comprehensive implementation plan by the end of each year through the deliberation and decision-making of the Consumer Policy Committee after coordination of the aforesaid implementation plans set by the central government agencies, metropolises and provinces.

(3) Consumer Policy Committee's deliberation, decision and evaluation

The FTC should operate the Consumer Policy Committee for deliberation and decision-making concerning basic policies for promotion of consumers' rights and interests and improvement of their lives (Article 23). The Committee is composed of not more than 25 members, including the two Chairs [Paragraph 1 of Article 24]. The position of the Committee Chair should be assumed by the FTC Chairs and one person appointed by the President among those well versed and experienced in consumer issues [Paragraph 2 of Article 24]. Its members should be composed of those appointed by the heads of the relevant central government agencies, the President of the Korea Consumer Agency, and the Chair of the FTC [Paragraph 3 of Article 24].

The Consumer Policy Committee should be in charge of deliberation and decision-making concerning: ① the basic plan and the comprehensive implementation plan, ② matters concerning promotion of consumer policies, ③ matters concerning consumer policy evaluations and improvement of the

relevant system, and ④ matters put to debate by the Chair for enhancement of consumers' rights and interests and improvement of the people's lives [Paragraph 1 of Article 25]. The Consumer Policy Committee may operate working-level subcommittees and expert subcommittees for the more efficient operation of businesses [Paragraph 2 of Article 25]. Invigoration of the operation of the aforesaid working-level and expert committees and positive reflection of consumer organizations' opinions will contribute greatly to the enhancement of consumers' rights and interests.⁹⁸⁾

(4) Execution of consumer policy

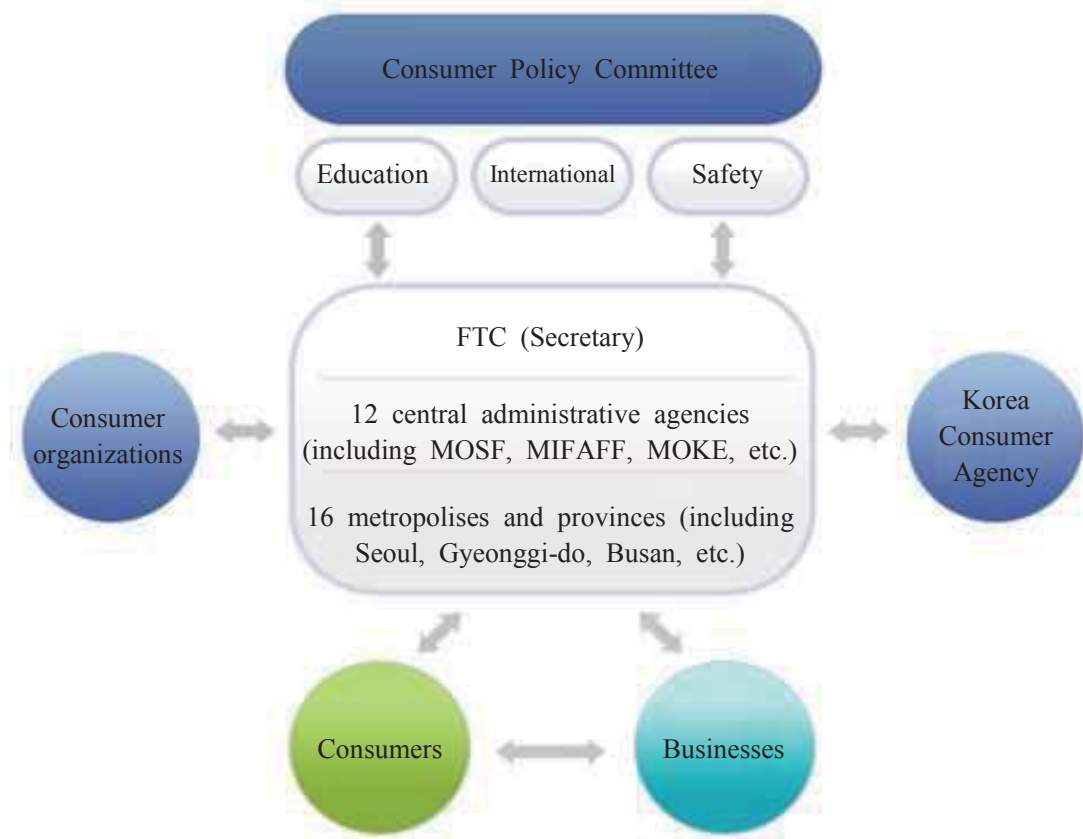
After all, consumer policy is finalized by the Consumer Policy Committee through the deliberation of consumer measures established by the FTC.

Major contents of the country's consumer policy include: ① helping transactions be carried out on a proper level (The Framework Act on Consumers Article 12), ② the guarantee of safety (Articles 8 and 45 through 52), ③ provision of information [Paragraph 2 of Article 13], ④ consumer education (Article 14), and ⑤ remedies to damages (Articles 31 and 53 through 76). Basically, each Government ministry carries out consumer policy in its own area based on individual laws, while the FTC assumes the role of coordinating consumer policy adopted by each ministry. The current system for promotion of consumer policy is carried out as shown in <Fig. 2>.⁹⁹⁾

98) Yeo Jeong-seong, Choi Jong-hwa, and Jang Seung-hwa, *Consumers and Rule of Law*, Seoul National University Press, p. 29

99) Source: The Fair Trade Commission (<http://www.ftc.go.kr/policy/consumer/general/Notion.jsp>)

<Fig. 2> System for promotion of consumer policy



Section 2. Consumer policy executing agencies

1. Basic executors of consumer policy

Basically, the executors of annual implementation plans and basic plans concerning consumer policy are government ministries and local autonomous bodies. Each head of the relevant central government agencies, metropolis mayors, and provincial governors should take measures, including the drawing up of budgets, for effective promotion of implementation plans [The Framework Act on Consumers, Paragraph 4 of Article 22], and submit

the results of the evaluations of its implementation to the FTC by the end of January each year [its Enforcement Decree, Paragraph 2 of Article 13]. The FTC should periodically evaluate the results of the basic plan through compilation of the results submitted to it and have the results reflected in the establishment of the basic plan [its Enforcement Decree, Paragraph 3 of Article 13].

Such a system of evaluation will serve as a useful tool to enhance the execution of consumer policy one notch higher, depending on how the policy authorities are committed.¹⁰⁰⁾

2. Key actor for execution of consumer policy

With regard to the question on who should be in charge of matters concerning consumer policy in establishment of the relevant system for promotion, there are three options: the ministry in charge of the country's economic policy, the competitive policy authorities, or the consumer policy authorities, although it depends on the prevalent political and economic situation.¹⁰¹⁾

In South Korea, the EPB was in charge of consumer policy as an agency generally in charge of the country's economic policy when The Consumer Protection Act was enacted in January 2008. In February 2008, the duty was transferred to the FTC, which was in charge of competitive policy, under the amendment to The Framework Act on Consumers. In Japan, the Consumer Affairs Agency¹⁰²⁾ was launched in September 2009 as a separate

100) Yeo Jeong-seong, Choi Jong-hwa, and Jang Seung-hwa, *Ibid*, p.30

101) Suh Hui-seok, *Ibid*, p. 88

102) In Japan, the Fukuda Cabinet's proposal passed the Diet in May 2009, and thus, the Consumer Affairs Agency was launched in September 2009 as an agency reporting directly to the Prime Minister. Prior to this, consumer-related administrative affairs were handled

agency directly reporting to the Prime Minister on consumer policy. It serves as a command post for consumer administration that carries out functions, such as planning, execution of laws, and providing recommendations.¹⁰³⁾ It is important to establish a separate agency like the Korea Consumer Agency that provides assistance to central administrative agencies and pushes ahead with relevant measures.¹⁰⁴⁾

(1) FTC

The FTC, which is an agency reporting directly to the Prime Minister,¹⁰⁵⁾ regulates cases of unfair transactions, including the act of abusing the status of market dominance, and handles matters stipulated in The Monopoly Regulation and Fair Trade Act (Law No.11406 amended on March 21, 2012), Article 35. The said Act, Article 35, Subparagraph 7 stipulates that the FTC handles matters set as its duties in other laws, including: The Framework Act on Consumers; The Installment Transactions Act; The Regulation of Standardized Contracts Act; The Act on Fair Labeling and Advertising; The Door-to-Door Sales, etc. Act; The Act on Consumer

by several ministries (e.g. the Ministry of Agriculture, Forestry, and Fishery concerning labeling of specifications or quality of agricultural produce or the Ministry of Health and Welfare concerning the processing or additives of agricultural produce, etc). The newly launched Consumer Affairs Agency came to take over affairs concerning operations under approximately 30 relevant laws to block loopholes in consumer laws (Source: <http://blog.naver.com/rits/88243562>).

103) Source: The Japanese Prime Minister's Office, April 2008, courtesy of the Korea Consumer Agency, Kim Jae-yeong

104) Suh Hui-seok, Ibid, p. 88

105) The Monopoly Regulation and Fair Trade Act (Law No.11406 partially amended in March 2012), Article 35 Establishment of Fair Trade Commission states that: (1) The Fair Trade Commission shall be established under the jurisdiction of the Prime Minister for the purpose of independently performing the objectives of the Act. (2) The Fair Trade Commission shall carry out its functions as one of the central administrative agencies pursuant to Article 2 of the Government Organization Act.

Protection in the Electronic Commerce Transactions, etc., and; The Product Liability Act.

The Framework Act on Consumers (Law No.10678 amended in May 2011) presents the FTC,¹⁰⁶⁾¹⁰⁷⁾ which is the competition authorities assigned the mission of maintaining competition order in the market, or its Chair with consumer-related policies in general, including the following: establishment of consumer policy (Articles 21 and 22); establishment and operation of a Consumer Policy Committee (Articles 23 through 26); registration or cancellation of registration concerning consumer organizations (Articles 29 and 30), and; supervision of the Korea Consumer Agency (Article 42). It can be said that the foregoing displays the country's legalization policy to the effect that the country's competition policy is closely associated with the philosophy pursued by the country's consumer policy and that the two should exist in harmony.¹⁰⁸⁾

As the FTC was also assigned the function of providing support to consumer organizations, the relationship between consumer organizations and the FTC will get closer,¹⁰⁹⁾ and the FTC will be able to provide direct support for consumer organizations engaging in consumer protection activities, fully utilizing the function of execution of consumer protection activities

106) State agencies that execute competition laws in each country, including The Monopoly Regulation and Fair Trade Act of South Korea are called competition authorities (Lee Ho-yeong, *The Consumer Protection Act*, Hongmunsa, 2010, p. 16).

107) "Competition laws in a narrow sense of the word" refer to a law concerning fair trade and prevention of unfair competition, including unfair means of competition in general, dumping, and regulation on free gifts. "Competition laws in an ordinary sense of the word" refers to The Unfair Competition Prevention Act and The Anti-Monopoly Act (Jeong Ho-yeol, *Economic Laws*, Bakyongsas, 2010, pp. 10 and 11).

108) Lee Ho-yeong, *Ibid*, p.16

109) Under the whole amendment to The Framework Act on Consumers (Law No.7988 in September 2006), the right concerning registration and cancellation of registration of consumer organizations was transferred from the MOFE to The Fair Trade Commission.

that it has carried out in special transactions, standardized contracts, and matters concerning labeling and advertising.¹¹⁰⁾

(2) Korea Consumer Agency

The Korea Consumer Agency is a special public-good corporation established with government investments for efficient promotion of measures concerning consumers' rights and interests. The Framework Act on Consumers has clauses concerning its establishment, organization, operation and assignments.

The Korea Consumer Agency, which was established in 1987 with the name the "Korea Consumer Protective Board" under the amendment to The Consumer Protection Act in December 1986, got its current name under the enactment of The Framework Act on Consumers in September 2006. The right to supervise the agency was transferred from the Finance/Economy Minister to the FTC. The FTC is authorized to supervise the activities of The Korea Consumer Agency (including the Consumer Safety Center under The Framework Act on Consumers, Article 51,) and issue instructions or orders concerning the business carried out by The Korea Consumer Agency when required [The Framework Act on Consumers, Article 42 (1)]. The Korea Consumer Agency is required to obtain the FTC's approval concerning its annual business plan and budget and submit its annual accounting settlement report, along with auditor's opinion on it, to the FTC [Article 42 (2)]. When necessary, the FTC may have The Korea Consumer Agency submit a report on matters concerning its operation, accounting, and property or may audit it [Paragraph 3 of Article 42].

110) Yeo Jeong-seong, Choi Jong-hwa, and Jang Seung-hwa, *Ibid*, p. 30

At present, the Korea Consumer Agency serves as an agency engaging in consumer policy-related research/surveys, provision of remedies for damages, test/inspections, consumer education, and consumer information collection.¹¹¹⁾ Its role as an agency in charge of remedying consumers' damages is important as a model of South Korea's administration of the ADR system. It is not an exaggeration to say that the history of The Korea Consumer Agency is equivalent to South Korea's history of consumer laws.¹¹²⁾ Meanwhile, the Korea Consumer Agency is required to disclose facts that it has acquired in the course of carrying out business if it is needed for enhancement of consumers' rights and interests, prevention or spread of consumer damages, upgrade of the quality of goods, or improvement of the people's lives, but it may not do so if required to protect a business or business association's business secret or for the public good [Article 35 (3)].

The Consumer Protection Act used to stipulate the Consumer Dispute Mediation Commission in Chapter 6 (The Korea Consumer Agency), the

111) The Framework Act on Consumers (Law No.10678 partially amended on May 19, 2011), Article 35 (Business) (1) The business of the Korea Consumer Agency shall be as follows:

1. Research on and recommendation of systems and policies concerning consumers' rights and interests
2. Survey and analysis of transaction conditions/methods, including prices and tests or inspections concerning specifications, quality, safety and environmental characteristics of goods, when required for enhancement of consumers' rights and interests
3. Collection and provision of information designed for enhancement of consumers' rights and interests, safety and improvement in their lives and international collaboration
4. Education, PR and broadcasts concerning enhancement of consumers' rights and interests, safety and ability development
5. Processing consumers' complaints and remedies for consumers' damages
6. Survey and research for enhancement of consumers' rights and interests and improvement of their lives
7. Carrying out surveys, etc as entrusted by the central or local governments concerning enhancement of consumers' rights and interests
8. Other matters concerning enhancement of consumers' rights and interests and safety

112) Suh Hui-seok, Ibid, p.85

September 2006 amendment to The Framework Act on Consumers, Chapter 8 (Settlement of Consumer Disputes) stipulates the operation of the Consumer Dispute Mediation System (the Consumer Dispute Mediation Commission still remains an agency belonging to the Korea Consumer Agency) as a tool for settlement of consumer disputes. This can be interpreted as an intention contained in The Framework Act on Consumers to stipulate a system of compensating consumer damages while keeping it separated from the system of policy promotion in The Korea Consumer Agency.¹¹³⁾

Section 3. Consumer policy-regulating measures

1. Consumer policy-regulating measures

In regulating legal relationships between individuals, modern civil laws presuppose that the status of the key actors of transactions is equal and interchangeable. In today's consumer transactions, however, there are many instances in which such equality of status and interchangeability of positions do not exist. Accordingly, modern civil laws have certain limitations in the settlement of problems occurring in consumer transactions.¹¹⁴⁾

Under such circumstances, governments are taking various measures for consumer protection and revamping their consumer laws. Consumer laws exist in areas where public laws and private laws intermingle with each other. Thus, consumer protection measures can be prepared in the areas of both public laws and private laws,¹¹⁵⁾ with legislative, judicial, and administrative means mobilized by them all.

113) Yeo Jeong-seong, Choi Jong-hwa, and Jang Seung-hwa, *Ibid*, p.31

114) Kwon Oh-seung, *Ibid*, p. 404

115) Kim Yoo-hwan, *Regulatory innovations and consumer protection*, A collection of law theses, Chung-Ang University, Law Research Institute, Vol. 23, No. 1, 1998, p.99

(1) Legislative regulation

Consumer damages can be remedied and prevented positively by means of legislative measures in connection with a need to protect consumers who are in a weak position economically and socially. The Framework Act on Consumers of South Korea imposes an obligation to enact relevant laws and municipal ordinances on the central and local governments with a view to protecting consumers' basic rights from such a context (The Framework Act on Consumers, Article 6, Subparagraph 1).¹¹⁶⁾

Thus, the Government operates the following laws concerning consumer transactions and safety: The Regulation of Standardized Contracts Act; The Door-to-Door Sales, etc. Act; The Installment Transactions Act; The Act on Consumer Protection in the Electronic Commerce Transactions, etc.; The Product Liability Act, The Monopoly Regulation, and The Fair Trade Act, etc.

(2) Judicial regulation

Under judicial regulation, measures can be taken for consumer protection by suing the party that has infringed on consumers' rights and interests in a business transaction under either the Civil Act or the Criminal Act.

Under the regulations made from a Civil Act perspective, a consumer is allowed to cancel a contract, if it involves fraud and the unfair standardized contract is invalidated, and unfair transactions are prohibited. Such regulation is realized by the court's involvement in response to a party's lawsuit. Most consumers lack legal knowledge and cannot afford lawsuit

116) Kwon Oh-seung, Ibid, p.405

expenses. They are unwilling to start a lawsuit unless they have suffered a large amount of damages or their lives or bodily safety are/is jeopardized. After all, only a small number of them succeed in having their damages compensated through the court.¹¹⁷⁾ Consumer damages are characterized by a small amount involving a large number of people. In connection with such characteristics, the United States and Germany operate the Class Action system or *Verbandsklage*. As for South Korea, the country legalized the consumers' collective action system through the September 2006 amendment to The Framework Act on Consumers (The Framework Act on Consumers, Article 70).

The state can also employ criminal sanctions to realize consumers' rights. The Framework Act on Consumers, Article 84, for example, stipulates that a violator should be subjected to imprisonment with hard labor or a fine, which intends to protect consumers by forcing the relevant parties to comply with the regulations.

(3) Administrative regulations

In many cases, administration regulations are used to ensure consumers' safety. Methods used include: adoption of a permit system concerning businesses engaging in the manufacture or processing of food or medications to prevent consumer damages (The Food Sanitation Act Article 37; The Pharmaceutical Affairs Act, Article 31), and; making it required for businesses engaging in special types of transactions to be registered with the Government to force them to comply with administrative regulations and impose sanctions (e.g. a fine or issuance of remedial action order) on businesses violating regulations.¹¹⁸⁾

117) Kwon Oh-seung, *Ibid*, p.406

118) Suh Hui-seok, *Ibid*, p.75

Examples of administrative regulations designed to protect consumers concerning consumer transactions are: The Regulation of Standardized Contracts Act, The Door-to-Door Sales, etc. Act, and; The Installment Transactions Act.

(4) Voluntary regulations

Businesses may choose to impose self-regulated measures for consumer protection to win consumers' trust and earn profit. This method has characteristics as a positive measure.¹¹⁹⁾

Administrative regulation, Civil Act perspective-based regulation, and voluntary regulation are the three main regulations concerning consumer policy. A specific regulation should be given priority over the others in particular consumer issues (concerning consumer safety, for example, administrative regulation is more important than the other two), but it is important that they function in an inter-complementary way with each other. If any one of them is missing or does not function properly, it will result in an increase in regulation-related expenses.¹²⁰⁾

Individual victims hardly see seriousness in cases that are enough to result in legal actions, although the entire amount of consumer damages in a case may be enormous. Thus, consumer protection through a lawsuit has limitations. As there are limitations to what can be done to protect consumers' rights and interests through judicial regulation, it is necessary to rely on administrative regulation.¹²¹⁾

Thus, the country is revamping its consumer transaction laws with administrative regulations as stated in the below.

119) Kwon Oh-seung, Ibid, p.408

120) Suh Hui-seok, Ibid, p.76

121) Kim Yoo-hwan, Ibid, pp.99 and 100

2. Revamp of consumer transaction laws in an administrative regulation style

The Framework Act on Consumers, Article 12 (Propriety of Transaction) reads as follows: “(1) In order to protect consumers from unreasonable damage caused by unfair transaction conditions or methods of enterprisers, the State shall establish and implement necessary policies. (2) The State may designate and make publicly known unreasonable acts of enterprisers which are deemed likely to prevent rational selections of consumers and inflict damages on consumers. (3) The State and local governments shall take policy measures necessary for protection of consumers’ rights and interests with respect to specific forms of transactions, such as transactions based on any standardized contract, door-to-door sale, multistage sale, installment sale, mail order sale, electronic commerce, etc.” The December 1986 amendment to The Consumer Protection Act, Article 10 contained similar stipulations.¹²²⁾

Under such stipulations on “propriety of transactions” in The Consumer Protection Act and The Framework Act on Consumers, the country has enacted the relevant laws as follows: The Regulation of Standardized Contracts Act (enacted in December 1986), The Door-to-Door Sales, etc.

122) The Consumer Protection Act (Law No.3921 wholly amended on December 31, 1986), Article 10 (Propriety of Transactions) contained the following stipulations: (1) The State shall establish and implement policy measures to protect consumers from unreasonable damage caused by unfair transaction conditions or methods of enterprisers. (2) The State may designate and make publicly known unreasonable acts of enterprisers which are deemed likely to prevent rational selections of consumers and inflict damages on consumers. (3) The State shall take policy measures, such as enactment of laws, necessary for the protection of consumers with respect to specific forms of transactions, such as transactions based on any standardized contract, door-to-door sale, installment sale, etc.

Act (enacted in December 1991), The Installment Transactions Act (enacted in December 1991), The Act on Fair Labeling and Advertising (enacted in February 1999), and The Act on Consumer Protection in the Electronic Commerce Transactions, etc. (enacted in March 2002).

Forms used by the Government in enactment of laws concerning propriety of consumer transactions includes: 1) administrative regulation issued in the form of an order¹²³⁾ and 2) administrative regulation issued in the form of market incentives.¹²⁴⁾ When businesses fail to comply with consumer protection-related laws, the Government may take measures stipulated in the laws, such as recommendations on remedial action, fines, orders for improvement, orders for scrapping or collection of the relevant goods, ban on sales, suspension of business, cancellation of authorization or permit, etc.¹²⁵⁾

The stipulation of administrative regulation like this in consumer transaction-related laws is for preventive measures taken prior to the occurrence of consumer damages, considering the irretrievable nature of consumer damages and the difficulty in providing remedies.

123) Administrative regulation issued in the form of an order is a measure taken by the government for consumer protection. The relevant methods include stipulation of obligations that businesses should comply with in the law and establishment of safety standards to be observed by businesses.

124) Market incentives refer to conditions provided to consumers for their rational actions through provision of information with a view to helping consumers solve problems themselves.

125) Gang Chang-gyeong, Jeong Sun-hui, and Huh Gyeong-ok, *Ibid*, pp.5 and 6

Chapter 5. The Consumer Safety and Consumer Damage Compensation

Section 1. Securing of consumer safety

The basic structure of the country's consumer safety system was established with the following: the December 1995 amendment to The Consumer Protection Act concerning issuance of orders for the collection or scrapping of goods by the heads of the relevant central government agencies (Forced Recall System) (Article 17-3), and; the March 2001 amendment to The Consumer Protection Act concerning requiring businesses to report information on defects and collect defective goods voluntarily.¹²⁶⁾ Under the September 2006 amendment to The Framework Act on Consumers, the Finance/Economy Minister (or the FTC in 2008 onwards) was authorized to ask the heads of the relevant central government agencies to issue a recommendation or order on recalls. The Korea Consumer Agency was authorized to operate the Consumer Safety Center to collect and analyze information on harmful goods. Meanwhile, safety policy measures are being taken in each sector following the enactment of consumer safety-related framework laws as follows: The Framework Act on the Management of Disasters and Safety; The Framework Act on Food Safety, and; The Framework Act on Product Safety, in addition to The Framework Act on Consumers

There are a wide range of consumer safety-related sectors, i.e. food, manufactured goods, pharmaceuticals, buildings, transportation, natural

126) By this time, The Product Liability Act (2004) was also enacted, making it possible to resort to judicial regulation concerning defective goods. It was a great achievement.

disaster. That makes it difficult for the Government to unite the relevant laws into one.¹²⁷⁾

The current Framework Act on Consumers appears to contain a variety of factors, including those related to consumer safety and consumer damage remedies in one. It is thought that it is time to enact separate laws for such factors, considering their increasing importance.

Section 2. Consumer damage compensation

Concerning a large number of consumers incurring a small amount of damages each, it is usually hard to get proper compensation under the current structure of the legal system. It takes the consumers lots of time and expense to get their damages compensated through a lawsuit. Thus, in many cases, the consumers give up the idea of bringing such a case to the court.

Even if a country has substantive laws containing clauses on protection of consumers' rights, consumers are likely to give up trying to get their damages compensated, especially if a system does not help them find remedies.

In its *Recommendation on Consumer Resolution and Redress* of 2007, the OECD recommends that member countries review their existing dispute resolution and redress frameworks to ensure that they provide consumers with access to fair, easy to use, timely, and effective dispute resolution and redress. It recommends that member countries should 1) adopt effective processes for handling consumers' complaints about goods and services, which provide consumers with the opportunity to resolve their complaints directly with the business concerned in a fair, effective, and timely manner,

127) Suh Hui-seok, Ibid, pp.89 and 90

and 2) provide private ombudsman schemes, by which businesses set up a plan for Alternative Dispute Resolution (ADR) or appoint and finance a neutral body to investigate, determine or make recommendations on any disputes that may arise between that business and consumers.¹²⁸⁾

The ADR system has the following functions: ① Reductions of burden and cost, and time savings of Litigants in the court, ② Prevent delays of the resolving disputes from the court's overburden, ③ Prevent the a falling-off in quality of resolving disputes, ④ Stability against the social division from legal disputes, ⑤ Meet the satisfaction of the public about the judicial system, ⑥ Ease approaches about the dispute resolution system of the public, ⑦ Alleviate of the mortification from the decisiveness.¹²⁹⁾

In this connection, The Framework Act on Consumers has the following clauses concerning consumer damage remedies: ① Damage compensation through voluntary negotiation, ② self-regulated dispute resolution by the council of registered consumer organizations, ③ consumers' collection action, and ④ damage compensation by the Korea Consumer Agency.

1. Damage compensation through voluntary negotiation

Concerning consumers' damages caused by business-provided goods or services, the most efficient and economical way of getting compensated appears to be voluntary negotiation with the relevant business without involving a third party unlike a lawsuit or ADR.¹³⁰⁾

128) OECD, "Recommendation On Consumer Resolution and Redress", 2009. 2. 6.
([http:// www.oecd.org/dataoecd/43/50/38960101.pdf](http://www.oecd.org/dataoecd/43/50/38960101.pdf))

129) Stephen B Goldberg/ Frank E Sander/ Nancy H Rogers, Dispute Resolution, 2ed., 1992, p.8

130) Lee Ho-yeong, Ibid, p.360

However, this method cannot present a criterion as a precedent unlike an official dispute resolution method (e.g. arbitration by the Consumer Dispute Mediation Commission), and thus, it cannot exert any impact on other similar victims, nor does it have much effectiveness, as it is entirely left to the relevant parties' thoughts whether damage compensation is really made. Despite such shortcomings, voluntary negotiation is thought to be an important remedy for consumer damages, as it does not require any legal basis and can be easily used by victims. The current Framework Act on Consumers has many stipulations designed to facilitate a voluntary compensation of damages.¹³¹⁾

The current Framework Act on Consumers, Article 16 (2), for example, stipulates, "The State may lay down the criteria for the settlement of consumer disputes as determined by the Presidential Decree, for the purpose of smoothly settling disputes which may arise between consumers and consumers and enterprisers," and accordingly, its Enforcement Decree, Article 8,¹³²⁾ presents the criteria for the settlement of consumer disputes.

131) Lee Ho-yeong, Ibid, p.361

132) The Enforcement Decree of The Framework Act on Consumers (Presidential Decree No.23169 dated September 29, 2011, through an amendment to another law), Article 8 (Criteria for Settlement of Consumer Disputes): (1) The criteria for the settlement of consumer disputes as prescribed in Article 16 (2) of the Act shall be classified into general criteria for the settlement of consumer disputes and criteria for the settlement of consumer disputes by items. (2) The general criteria for the settlement of consumer disputes referred to in Paragraph (1) shall be as shown in the attached Table 1. (3) The Fair Trade Commission may establish and publish the criteria for the settlement of consumer disputes by items in compliance with the general criteria for the settlement of consumer disputes referred to in Paragraph (2).<Amended on February 29, 2008> (4) The Fair Trade Commission shall, in establishing and publishing the criteria for the settlement of consumer disputes by items, consult with heads of the central administrative agencies in charge of the goods, etc, concerned by item and hear the opinions of consumer agencies and enterpriser organizations as well as other experts in related fields. <Amended on February 29, 2008>

However, the criteria for the settlement of consumer disputes presented like this serves as criteria for an agreement or recommendation for dispute settlement only when parties to the dispute express no particular opinions on a dispute settlement method [The Framework Act on Consumers, Article 16 (3)] and do not have a binding force on the parties to the dispute, i.e., consumers or businesses.

2. Self-regulated dispute resolution by the council of registered consumer organizations

When a disputes arise between consumers and a business, the FTC or a consumer organization registered with the municipal office, may recommend an agreement between them [The Framework Act on Consumers, subparagraph 5, Paragraph 1 of Article 28]. If they fail to reach an agreement, the parties (the consumers and the businesses) may ask a consumer organization registered with the FTC for a voluntary dispute settlement [Paragraph 1 of Article 31]. If the said settlement is accepted by the parties, it shall be deemed that the parties have reached the same agreement [Paragraph 3 of Article 31].

The foregoing voluntary dispute settlement can be said to be a way of remedying consumer damages, which is midway between damage compensation based on voluntary negotiation between the parties and damage compensation based on an official dispute settlement, which will be discussed in the following, but its effect is not as clear as a judicial conciliation, which is recognized when the parties accept the result of The Korea Consumer Agency's consumer dispute settlement.¹³³⁾

133) Lee Ho-yeong, Ibid, pp.363 and 364

3. Damage remedies provided by the Korea Consumer Agency

(1) Recommendation on agreement

“Consumers may apply for compensation for damages caused by use of goods, etc. to the Korea Consumer Agency. Where the State, a local government or a consumer organization receives an application for compensation for damages from a consumer, the settlement for it may be entrusted to the Korea Consumer Agency.” [The Framework Act on Consumers, Paragraph 1 and 2 of Article 55]. “An enterpriser may, upon receipt of an application for compensation for damages from a consumer, may entrust the Korea Consumer Agency with the settlement thereof only in case of falling under any one of the following subparagraphs: 1) Where no agreement is reached even after thirty days have passed since the date when the application for compensation for damages was filed by the consumer. 2) Where an agreement is made with the consumer to entrust the settlement of damage compensation to the Korea Consumer Agency, and 3) Where, otherwise, it is necessary for the Korea Consumer Agency to deal with the remedy for damages, as determined by the Presidential Decree.” [the same Act, Paragraph 3 of Article 55]

Upon receiving such an application as stated in the foregoing, “the President of the Korea Consumer Agency may recommend the parties of an application for remedy of damages to agree on the compensation for the damages.” (the same Act, Article 57). “If an agreement is not reached within thirty days after receiving an application for the remedy for damages, the President of the Korea Consumer Agency shall immediately apply for

mediation of the dispute concerned to the Consumer Dispute Mediation Commission provided that, with respect to the damage remedy application cases that require a considerable period of time to inquire into the causes of damages, the period of the settlement may be extended up to sixty days,” if it is related to a ① medical service accident, ② insurance accident, ③ an accident associated with agriculture and fishery, or ④ a case that requires a test, inspection or investigation to inquire into the cause (Article 58).

(2) Ordinary consumer dispute mediation

When an agreement is not reached between the parties within the period stipulated (30 days or 60 days) despite the recommendation for an agreement stated in the foregoing, the President of the Korea Consumer Agency should apply for mediation of the dispute concerned to the Consumer Dispute Mediation Commission [The Framework Act on Consumers Paragraph 1 of Article 58]. When a consumer dispute is not settled at an agency established by the central or local government to handle consumers’ complaints or damages under The Framework Act on Consumers, Paragraph 1 of Article 16¹³⁴⁾ or an agreement is not reached despite the recommendation for an agreement by a consumer organization, either party or the head of the relevant agency or organization may apply for mediation by the Consumer Dispute Mediation Commission [Paragraph 1 of Article 65], which process is termed the ordinary consumer dispute mediation system as first stipulated in the December 1986 amendment to The Consumer Protection Act.¹³⁵⁾

134) Framework Act on Consumers, Article 16 (Settlement of Consumer Disputes) (1)
The State and local governments shall take necessary measures including the establishment of related organs so as to settle promptly and fairly the complaints and damages of consumers.

135) The December 1986 amendment to The Consumer Protection Act (Law No.3921 wholly

“When a dispute mediation is completed, the Chair of the Consumer Dispute Mediation Commission shall promptly notify the parties of the contents thereof” [Paragraph 1 of Article 67]. “Upon receipt of a notification, the parties shall inform the Commission of the acceptance or refusal of the contents of the dispute mediation within 15 days after receiving such notification. If they fail to expression their intention within the 15 days, they shall be considered as having accepted the dispute mediation” [Paragraph 2 of Article 67]. “If the parties accept or are deemed to have accepted the contents of the dispute mediation, the contents of the dispute mediation shall have the same effect as a judicial compromise” [Paragraph 4 of Article 67].

(3) Collective consumer Dispute mediation

The State, local government, Korea Consumer Agency, and consumer organization may submit a request or application to the Consumer Dispute Mediation Commission to mediate a dispute collectively, if the number of consumers who suffered the same or similar type of damages due to goods, etc. is no less than fifty and issues in the cases are factually or legally common (“collective consumer dispute mediation”) [The Framework Act on Consumers, Paragraph 1 of Article 68; its Enforcement Decree, Article 56)], which was first stipulated in the September 2006 amendment to The Framework Act on Consumers.

The collective consumer dispute mediation system is designed to avoid duplication of efforts that may result from a large number of consumers following the dispute mediation process concerning the same or similar damages and avoid results of dispute mediation that are different from each

amended on December 31, 1986), Articles 34~38 and 43~45

other.¹³⁶⁾ This system aims to remedy consumer damages that have occurred, and thus, it is distinguished from the system of consumers' collective action, which is for the prevention of consumer damages.

4. Consumers' collective action

If an enterpriser infringes directly on the rights and interests of consumers relating to their lives, bodies or property in violation of Article 20 (Observance of Criteria for Promotion of Consumers' Rights and Interests)¹³⁷⁾ of The Framework Act on Consumers and the infringement continues, the organization which meets given conditions may file an action with a court to prohibit and suspend the infringement of the consumers' rights and interests ("consumers' collective action")(Article 70, the said Act), which was first adopted in the September 2006 amendment to the said Act. A similar Act was adopted in Germany¹³⁸⁾ and Japan.¹³⁹⁾

136) Lee Ho-yeong, Ibid, p.367

137) The Framework Act on Consumers, Article 20 (Observance of Criteria for Promotion of Consumers' Rights and Interests): (1) No enterpriser shall manufacture, import, sell or provide any goods, etc. that are in contravention to the criteria determined by the State pursuant to Article 8 (1); (2) No enterpriser shall violate the criteria indicated as determined by the State pursuant to Article 10; (3) No enterpriser shall violate the criteria for advertisement determined by the State pursuant to Article 11; (4) No enterpriser shall commit any such act as designated and notified publicly by the State pursuant to Article 12 (2); (5) No enterpriser shall violate the criteria for protection of personal information determined by the State pursuant to Article 15 (2).

138) In Germany, matters concerning class actions are stipulated by The Unfair Competition Prevention Act. The said Act does not recognize collective rights to claim damage compensation, but provides for the forced transfer of illegal gain earned through violation of the said Act to the national treasury. Under the 2002 amendment to The Legal Consulting Law (RBerG), it became possible for consumer organizations to raise a lawsuit for the compensation of damages against businesses by taking over consumers' right to claim damages. (Han Chung-su, *Desirable class action system for consumer protection*, Civil Lawsuit, Vol. 10, No.1, May 2006, pp.157~163).

139) In Japan, the consumers' class action system was first adopted in The Consumer

Consumers' collective action is not aimed at getting compensated for damages caused by a business's past illegal act(s), but to stop or prohibit a business's illegal act(s), and thus, it presupposes the business's continued illegal act(s). A class action should be brought against an illegal act perpetrated in violation of The Framework Act on Consumers, Article 20 (infringing directly on the rights and interests of consumers relating to their lives, bodies or consumers). The parties that can file a consumers' collective action against a business are the Korea Chamber of Commerce and Industry (KCCI), Korea Federation of Small Businesses (KFSB), an economic organization that carry out activities on a national level and is determined by the Presidential Decree, and non-profit private organizations that meet given requirements, in addition to registered consumer organizations (The Framework Act on Consumers, Article 70). In filing a collective action, they should appoint a lawyer as their attorney (Article 72).

Section 3. Examination

The consumption-related environment is expected to change rapidly, and thus, the country needs to continue to revamp its consumer laws to cope with such a change. Next, the desirable ways of development of the country's consumer laws will be discussed.

1. Improvement in the system for consumer damage compensation

Generally, consumer laws are divided into substantive laws and procedural laws. At first, the country's consumer laws focused on substantive law-related

Contract Act (the said Act, Article 12 onwards). Later, the same was adopted in The Specific Commercial Transaction Act (the said Act, Article 58-4 onwards).

perspectives,¹⁴⁰⁾ but gradually supplemented procedural law-related perspectives. As noted in the foregoing, the December 1986 amendment to The Consumer Protection Act adopted the ordinary dispute mediation system. The September 2006 amendment to The Framework Act on Consumers adopted the consumers' collective action system and the collective dispute mediation system. However, it is pointed out that these newly adopted systems still have shortcomings and are not enough for consumer protection. The shortcomings and how to improve them in connection with a need to provide procedural law-based supplementation to the system for consumer protection should be addressed.

(1) Need for improvement in the dispute mediation system

The Framework Act on Consumers, Paragraph 1 of Article 65 stipulates conditions to the following effect: If a consumer dispute is not settled in an organ established to handle consumers' complaints or damages or no agreement is reached complying with the recommendation of an agreement, the parties or the head of the organization concerned may apply for mediation to the Consumer Dispute Mediation Commission. Here, the matter in question is whether it is required to go through ① the procedure for compensation of damages involving a State-established organ [Paragraph 1 of Article 16] or ② the procedure concerning a consumer organization's recommendation on agreement [subparagraph 5, Paragraph 1 of Article 28], before applying for mediation of the Consumer Dispute Mediation Commission.

The pre-procedure requirement is understood to have been set to help the Mediation Commission avoid excessive workloads, but it goes against a need for prompt settlement of a dispute. Compared to remedial procedures

140) Kwon Oh-seung, Ibid, p.4

for victims stipulated in other laws, this one appears to be out of place, as it imposes a pre-procedure requirement.¹⁴¹⁾ Thus, the pre-procedure requirement should be improved, in consideration of equity with other remedial procedures. The problem of heavy workloads of the mediation commission should be solved by increasing the number of its staff.

(2) Need for improvement in consumers' collective action system

The system of consumers' collective action was implemented in January 2008 under the additional rules attached to the September 2006 amendment to The Framework Act on Consumers. However, there has been only one case of a lawsuit filed under the system (a lawsuit filed against Hanaro Telecom by four organizations, i.e. the Citizens' Coalition for Economic Justice (CCEJ), the Green Consumer Network, Consumers Korea, and Korea YMCA, in July 2008).¹⁴²⁾ It may be a result of the administrative authorities' efficient promotion of consumer protection policy, but on the other hand it appears that the overly stringent conditions for filing a consumers' collective action makes it hard for people to use the system. Which means that the system needs to be improved so that it can fulfill its role. Let's shed more light on the matter in the following:

141) Goh Hyeong-seok, *A study of consumer dispute mediation systems adopted in South Korea and Japan*, Yeungnam Law Journal, No. 30, April 2010, pp.387 and 388.

142) In July 2008, the four organizations filed a lawsuit asking for the court's order on Hanaro Telecom to stop reckless collection and provision of personal information in violation of the law and the use of its service-related terms and conditions toward users. The court accepted the proceeding by the other three organizations, but put Korea YMCA out of the proceeding, saying that it was not an organization chiefly aimed at the enhancement of consumers' rights and interests according to its Articles of Incorporation. Later, SK Broadband, which took over Hanaro Telecom, revised the relevant clauses of its terms and conditions in January 2009, and thus, the plaintiff withdrew their lawsuit. (Park Hui-ju & Gang Chang-gyeong, *A study of evaluation and improvement of operation of the consumers' class action system*, The Korea Consumer Agency, 2011, pp.48~56

Concerning a factor that may constitute a reason for consumers' collective action, The Framework Act on Consumers, Article 70 stipulates "an enterpriser infringing directly on the rights and interests of consumers relating to their lives, bodies or property in violation of Article 20." The statement "infringing directly on the rights and interests of consumers" may be interpreted in such a way that collective action can only be taken on such an occasion. Thus, it is doubtful whether class action may be taken based on the possibility of consumers incurring damages.

One of the purposes of the adoption of collective action in The Framework Act on Consumers is to prevent businesses' infringement of consumers' rights and interests and help businesses exert self-control so as not to be engaged in an illegal act. Thus, the system should be improved in a way that makes it possible to take collective action even based on a possibility concerning consumer damages.¹⁴³⁾

What a plaintiff can ask for through a consumers' collective action is the court's order to stop the ongoing illegal acts of a businesses. It leaves one in doubt about the possibility of fulfilling the purpose of the system, i.e. prevention of (expansion of) consumer damages. It is necessary to make it possible to launch a collective action when there is a need to get rid of a result of an illegal action (collection or scrapping of objects provided for an illegal action) so that no more consumer damages may result due to a previously taken illegal action.¹⁴⁴⁾

Organizations that can file a consumers' collective action are consumer organizations and economic organizations. To obtain this eligibility, a consumer

143) Kim Dong-gyun, *Problems in The Framework Act on Consumers*, KBLA, The Study of Business Laws, Vol. 23, No.1, March 2009, p.127

144) Goh Hyeong-seok, *Evaluation of The Framework Act on Consumers*, Justice, No. 120, December 2010, p.36.

organization should have more than a thousand members (The Framework Act on Consumers, item B, Paragraph 1 of Article 70). However, the clause does not define what a member is, which means that there is the possibility of a controversy. If a member is defined as one paying his/her memberships fee regularly, there is not a single consumer organization within the country that can file a consumer's collective action.

If such requirements are to discourage the reckless filing of collective actions, it is thought that the purpose can be attained by the clauses stipulating "a consumer organization that is mainly aimed at the promotion of consumer's rights and interests" (the said Act, item A, Paragraph 1 of Article 70) and "an organization for which three years have passed since it was registered" (item C, Paragraph 1 of Article 70).

As for Japan, which also operates a consumers' collective action system, the country does not impose requirements based on the number of members concerning the eligibility of a consumer organization. It is desirable to delete the relevant clause in the said Act.¹⁴⁵⁾

(3) Need for adoption of the class action lawsuit system

Usually, cases of consumer damages involve a large number people incurring a small amount of damages each, which makes it very difficult for individual consumers to get compensated in a civil law suit. Representative examples of an effective system for getting compensated for consumer damages are Verbandsklage (collective action) of Germany and the Class Action system of the United States.¹⁴⁶⁾

145) Goh Hyeong-seok, Ibid, p.35

146) Under the Class Action system of the United States, one or more people representing a group file(s) a class action lawsuit. If the court recognizes his/her/their status as the representative of the group (the class), the proceeding commences. Kwon Oh-seung, Ibid, p.342

As for a comparison between collective action and class action, collective action refers to an action filed by an organization to realize the interests of its members or public interests, while class action refers to an action by a person or a group of persons representing his/her/their organization to realize their joint interests.¹⁴⁷⁾ (See Table 2.)

<Table 2> Comparison between consumers' collective action and class action

	Consumers' collective action	Class action
Purpose	Stopping an act infringing on rights and interests	Receive compensation for individual damages (Compensation for pecuniary damages)
Party eligible to file an action	Consumer organizations, business associations, non-profit private organizations	Those that incurred damages in a given amount (Representing all victims) ¹⁴⁸⁾
Adopted in	Germany, France, the United Kingdom, the Netherlands, Italy, Japan	The United States, Australia, Canada
Merits /demerits	Merits: Only a small number of organizations can file an action, resulting in less burden on businesses Demerits: Little effect of helping consumers get compensated for damages (No individual compensation)	Merits: High effect of helping consumers get compensated for damages (Individual compensation) Demerits: Heavy burden on businesses. Possibility of reckless lawsuits

147) Kwon Oh-seung, Ibid, p.347

148) Concerning the qualification of those filing a class action, The Act on Securities-related Class Actions, Article 12 (1) 1 of South Korea, stipulates: "The number of the class members shall not be less than 50, and the sum of the securities held by the

In South Korea, the September 2006 amendment of The Framework Act on Consumers adopted the collective action system. It is still questionable whether The Framework Act on Consumers needs to adopt the class action system.¹⁴⁹⁾

Some people say that it is more desirable to expand or change the current selected party system stipulated in the Civil Procedure Act¹⁵⁰⁾¹⁵¹⁾ rather than adopting the class action system outright, as the right for filing a lawsuit granted to individuals may result in reckless lawsuits.

In a class action, a lawsuit can be filed to get compensated for damages incurred by the members of a group even if there are no individual authorizations from the members, unless certain individuals express an intention of abandonment. In contrast, the selected party system requires selecting the party's individual authorizations for the selected party's proceeding of the lawsuit, which makes it difficult for a large number of people who have incurred a small amount of damages each. Under the selected party system, the court's judgment applies only to applicants and thus the socially weak, including low-income people, or those incurring a small amount of damages that cannot get compensated for their damages.¹⁵²⁾

class members shall be not less than 1/10,000 of the total number of the outstanding securities of the defendant company.”

149) In South Korea, the class action system was adopted under the enactment of The Act on Securities-related Class Actions in January 2004 (implemented on January 1, 2005). In the event of damages incurred by a large number of people concerning the transaction of securities, one or several of the victims can file a lawsuit to get compensation for damages as their representative(s).

150) In the selected party system in which a representative(s) is/are selected to file a lawsuit for the other members of a group, the relationship between the selected party and the selecting party is not that of principal/agent, but that of trustor/trustee.

151) Kwon Oh-seung, *Ibid*, p.350

152) Gang Chang-gyeong, Jeong Sun-hui, and Huh Gyeong-ok, *Ibid*, pp.376~377

Consumers' collective action does not appear to be a proper procedure, as consumers who are victims cannot file an action, although they are the very ones who know the details of the damages the best. It is not a sufficient measure for consumer protection, as individual consumers cannot get compensated for their damages. The selected party system requires individual victims' authorization and thus has limitations for a large number of consumers incurring a small amount of damages each to rely on. Such being the case, the class action system appears to be a proper alternative, if stringent qualifications are set for the selected representative and measures are taken to prevent reckless lawsuits, as it can help consumers get compensated for their damages promptly and realistically.

(4) Need for adoption of a punitive damages system

Punitive damages are imposed in addition to the compensation for the losses incurred due to a willful illegal act. Punitive damages are a way of suppressing repetition of the same illegal act perpetrated by the defendant or a third party.¹⁵³⁾

Concerning the scope of compensation for damages caused, The Civil Act of South Korea stipulates that compensation shall be made based on ordinary damages, i.e. actual amount of damages. In fact, it is difficult to prevent businesses' willful illegal act perpetrated in the pursuit of profit only with imposition of such compensation. Discussion about a need to impose punitive damages in addition to as-incurred damages started in the 1990s.

Many views have also been presented about the method of adopting the punitive damages system. Some people have made the suggestion that the

153) Lee Jeom-in, *Need for adoption of the punitive damages system*, Dong-A Law Review No.38, June 2006, p. 188; Yun Jeong-hwan, *A study of punitive damages*, Studies of Property Laws, Vol. 9, No.1, 1992, p.133

system of punitive damages be adopted as The Civil Act, Paragraph 2 of Article 750, while others have said that it is necessary to settle the matter based on the theory of interpretation. Other opinions include: enactment of an independent law for it; insertion of the relevant clause in a special law, such as The Registration, etc. of Periodicals Act or The Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., for operation of the system only in specified sectors.¹⁵⁴⁾

Adoption of the punitive damages system is feared to lead to reckless lawsuits intended to get more compensation and cause businesses to stop operation due to the excessive burden of compensation. It is necessary to carry out legal discussions about the need for adoption of punitive damages and taken institutional apparatuses designed to minimize a negative impact even if a decision is made to adopt them.¹⁵⁵⁾ For one thing, it does not appear to be a good option to generalize it by inserting the punitive damages system in The Civil Act.

2. Revamp of the judicial system related to the compensation of consumer damages

As noted in the foregoing, South Korea has dealt with the consumer protection issue by revamping consumer transaction laws mainly based on administrative regulation. However, it is not desirable to rely totally on administrative regulation concerning such an issue as a country where the principles of private autonomy and market economy are recognized. That is because, if it is possible to settle the issue of consumer protection satisfac-

154) Yeo Jeong-seong, Choi Jong-won, and Jang Seung-hwa, *Consumers and Rule of Law*, Seoul National University Press, 2008, p.384

155) Yeo Jeong-seong, Choi Jong-won, Jang Seung-hwa, *Ibid*, p.398

torily based on the principles of private autonomy and market economy, it will be desirable to let consumers hold the relevant businesses responsible through civil lawsuits rather than through administrative regulation. It can be said that The Product Liability Act (enacted in January 2000 and implemented in July 2002) was also enacted with such an intention. However, it is necessary to have the issue of consumer protection settled within the grand framework of private autonomy by revamping the judicial system of responsibility concerning consumer damages (through adoption of the system of punitive damages or positive consideration of the reversal or mitigation of the burden of proof concerning consumer damages) so that the purpose of consumer protection may be attained through a judicial order.¹⁵⁶⁾

The country should also adopt diverse systems similar to The Product Liability that will allow consumers to have their rights secured by exercising their judicial rights. The State should not be self-content with the administrative regulation against businesses and neglect its obligation to improve the legal system in a way that will allow consumers to exercise their judicial rights themselves. As for consumers, they should not give up their rights due to the small amount of damages incurred by them. They should exert positive efforts to have their rights realized for the interests of the entire society.

156) Kim Yoo-hwan, *Ibid*, p.104

Chapter 6. Conclusion

The country's consumer laws have been influenced by the government's economic policy and consumer protection policy, as consumer laws were swayed by legal policy factors. In the 1970s and thereafter, when the country made a noticeable growth in the economy, civic organizations pointed to the seriousness of consumer damages caused by distortion of market functions and the deepening of the monopolistic and oligarchic situation. The government listened to what they pointed out and started reflecting the need for consumer protection in its policy. In 1980, the country enacted The Consumer Protection Act, which can be said to be the framework law concerning consumer protection. However, it was not until 1986 that the country starting pushing ahead with consumer policy in earnest and enacting and operating a variety of consumer laws.

In 2006, The Consumer Protection Act was wholly amended and renamed The Framework Act on Consumers, with a change in the focus from "consumer protection" to "realization of consumer sovereignty" under the influence of changes in the country's political and social environment featuring digitalization, privatization, liberalization and mitigated regulation.¹⁵⁷⁾

After all, the country's consumer laws developed from consumer laws focused on reflection of the government's industrial policy and prevention of businesses' monopoly and oligarchy into independent laws designed to secure consumer sovereignty in a true sense of the word, displaying a change from consumer protection to promotion of consumers' rights and interests.

157) Yeo Jeong-seong, Choi Jong-won, and Jang Seung-hwa, *Ibid*, p.95

Matters that the country experienced in the process of development of its consumer laws as noted in this study will present useful lessons to learn from (see the following) to developing countries or transitional countries currently trying to revamp their consumer laws.

First, it is necessary to establish consumer protection as a valued philosophy. As shown by South Korea's consumer policy in the 1960s and the 1970s and the process of development of laws, the policy-making authorities paid full attention to economic growth during that period and matters concerning consumer protection were not their major concern. Consumers' rights and interests were only to be considered as matters of secondary importance in the course of pushing ahead with economic policies. Perhaps they thought that matters concerning consumer protection could stand in the way in their operation of economic policy. As a result, consumers were not protected properly in the course of industrial development, which was accompanied by distortion of market functions and the widespread psychology of inflation. Despite the brisk consumer movement in the 1970s onwards, which pointed to the seriousness of consumer damages, it was not until 1980 that The Consumer Protection Act was enacted as the first consumer law adopted in the country. The Act was followed by other individual laws directly aimed at consumer protection in the mid-1980s.

Consumer laws, i.e. laws aimed at consumer safety and matters concerning transactions involving consumers should play the role of enhancing the quality of manufactured goods and the level of consumers' satisfaction, thus contributing to the growth of the national economy. In this respect, consumer protection is an essential philosophy and objective for a country's economic growth.¹⁵⁸⁾

158) Suh Hui-seok, Ibid, p.87

The 1980 amendment to the Constitution inserted a clause concerning consumer protection (Article 125). The 1986 amendment to The Consumer Protection Act, Article 3 announced the importance of consumers' basic rights. With this, the country established consumer protection as a crucial philosophy and started pushing forward with consumer policy.

Second, the first action to take is establishment of the system for promotion of consumer policy. The government should have the established philosophy of consumer protection reflected in its policies and take measures required to promote consumer policy.

South Korea failed to pay much attention to the importance of consumer policy until the enactment of The Consumer Protection Act. The Consumer Protection Act, which was enacted in January 1980, stipulated that the EPB shall operate an organ dedicated to deliberation matters concerning consumer protection (Article 21) and that the central and local governments shall take consumer protection measures (Article 2). It signified the commencement of an effort for establishment of a system for promotion consumer policy in the country, but the relevant policy could not be taken effectively, as the Act stated the obligation of the central and local governments too declaratively and failed to elaborate on the institutions responsible for promotion of consumer policy and how to push ahead with it.

The 1986 amendment to The Consumer Protection Act elaborated on the duties of the EPB and the Korea Consumer Protective Board as the agencies responsible for promotion of consumer policy (Chapters 5 and 6). This enabled the Government to push forward with the consumer protection policy effectively under the duly established system of promotion led by the EPB as a consumer policy deliberation agency and the Korea Consumer Protective Board as a consumer policy execution agency. The foregoing shows that the

relevant system should be established first for promotion of consumer policy effectively.

Third, it is necessary to revamp consumer transaction-related laws once the system for consumer policy promotion is established.

In South Korea, following the 1986 amendment to The Consumer Protection Act, major consumer transaction-related laws were enacted, including The Regulation of Standardized Contracts Act (enacted in December 1986) and The Wholesale and Retail Trade Promotion Act (December 1986). Then, The Door-to-Door Sales, etc. Act (December 1991) and The Installation Transactions Act (December 1991) were enacted as the ones split off from The Wholesale and Retail Trade Promotion Act in connection with a need to regulate transactions in specific areas. These individual consumer transaction laws were revamped one after another to cope with prevalent consumer issues.

With regard to a need to revamp these consumer transaction laws, South Korea stipulated the obligations that businesses needed to observe for consumer protection in the laws. If businesses failed to observe them, the Government applied administrative regulations against them, i.e. administrative regulations of consumer transaction laws. Another possible option was to adopt market-centeredness (Civil Act-based regulation or self-regulation) in the legislation of consumer transaction laws. In the event of a developing or transitional country pushing ahead with State-led economic development, it appears that the administrative regulation-type revamp of consumer transaction laws like that of South Korea is a more efficient option.

Fourth, consumer, safety-related laws need to be revamped. What really is important for consumer protection are consumer safety laws, along with consumer transaction laws. The Framework Act on Consumers of South

Korea has a variety of stipulations concerning consumer safety, including authorizing the heads of the relevant central government agencies to issue orders for the collection and scrapping of defective goods (the forced recall system). The country also has individual laws concerning consumer safety, such as The Framework Act on Food Safety and The Framework Act on Product Safety.

More consumer safety-related individual laws will be enacted and revamped to meet the people's increasing demand. At present, stipulations on the system of consumer policy promotion, consumer safety, and compensation for consumer damages are included in one law, i.e. The Framework Act on Consumers. It is recommended that framework laws concerning consumer safety and consumer damage compensation be separately enacted for establishment of an independent legal system for each important sector.

Fifth, consumers need to launch a self-reliant consumer protection movement, as that is the way to settle consumer issues. In South Korea, consumer protection is being promoted by consumer organizations in a healthy and self-reliant way, with the enhancement of the status and role of consumer organizations, while the central and local governments provide support for them in accordance with the 1986 amendment to The Consumer Protection Act, Chapter 4.

In South Korea, the consumer policy was first adopted with the enactment of The Consumer Protection Act in 1980. The Consumer Protection Act was based on the proposal made by the Korea National Council of Consumer Organizations in October 1977. It shows that civic organizations play a significant role in the settlement of consumer issues and a mature sense of citizenship and consumers' recognition of their rights serves as a starting point for the consumer protection movement.

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