
Discussion in Session III

International standard

The discussion in the Session III concentrated on the matter of international standard in consumer protection and other areas.

In some developing countries, there are opinions against the imposing of high standards for promoting consumer's rights. Such opinions argued that, for a poor country, it is hard to impose high standards developed in wealthy countries and if such standards are imposed, it would be bad for business, and it would impede the flow of investments. Another point is that the giving emphasis on consumer protection sometimes would merely shift the problem to other areas. There is an example in the Philippines that the company shifted the blame to their employees and simply deducted it from their salaries. In other words, what started out as a consumer problem ended up as a employment law question. The second problem is between WTO rules and social labeling or eco-labeling. The example mentioned was the case of tuna in which certification as dolphin safe was required according to certain environmental regulations. Same problems can be seen in the problem of child labor free. These are consumer based measures but at the same time they are in the jargon of WTO regulations.

A comment against this opinion argued that the poverty of the country should not be an excuse not to protect the consumers' interest. In this regard, the case of India was mentioned as having a precise mechanism on consumer protection under the Consumer Protection Act.

Another comment also argued that we should not make underdevelopment as an excuse for not protecting someone's rights, but it pointed out that there should be making difference the case of children and the case of intellectual property rights (IPR) or strict liability. The industrialized countries came to think of IPR after they reached a certain point of economic welfare. It is not fair to insist even to the least developed countries to have IPR or strict liability. It criticized such attitude as intending to expand their market in the future on the ground of globalization.

Another aspects of this matter was raised by a comment as follows: These views sometimes can be seen in developing countries that some of those standards may be used as tool for economic sanctions to developing countries by making use of social ladders and social clause. However, it should be given much concern on the recent

trend that some of the social labeling initiatives so far defeated the by WTO panel. In the future the matter of such standards may become one of the most problematic issues. Some of the standards in Japan are under the international level and there are contradictions between competitors and the local market where only stronger industries can make use of such standards and compete against other companies. It can be a question of unfair competition or monopoly rather than social lobbying. We have to approach this question from both sides, from the social aspect as well as from the economic aspect. We should not be too simplistic by saying that one justice is just for all this.

It was added by the reporter that consumer protection was not only the matter of international standards, and more important points was to identify local needs local standard for consumer protection. The result of ADR can be a source for identifying the problems in each country.

Administrative litigations

The information about the situation of administrative litigation in India was added as follows: In India, there is one retired judge who was very active in environmental law and famous as a “green judge”. Each time a case comes to his court, the enterprises or manufacturers would have a hard time. There was a case regarding a school bus accident. The courts concluded that there should be two teachers in the school bus, and that conductors and drivers should have much experience and that there should not be more than 70 children in the bus. That was the direction given to the school and the administration to avoid a similar mishap to happen again. The similar directions were also seen in the case regarding the overcrowding jails. The courts always keep an eye to see that these directions are being followed. Looking at the size of the country and the laxity of the law, the jail officers find some loopholes to give excuses why they could not comply in letter and spirit. It was argued that these should not be a pretext not to abide by these things. The locus standi in India have not taken any of these issues. The Supreme Courts and the High Courts have the power to judicial review. That means reviewing their judicial and administrative actions. When they are not doing that will bring the courts in the scheme of separation of powers and they will be acting as a watchdog in activities of the state.