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Voluntary Codes and the Consumer Interest

Voluntary codes are codes of practice and other arrangements intended to influence, shape, control or set benchmarks for behaviour in the marketplace. A supplement to traditional regulatory approaches and, in some circumstances, an alternative to regulation, voluntary codes can be an inexpensive, effective and flexible instrument for consumers, private sector firms and governments.

Yet such codes are not without their limitations, and consumers retain a healthy scepticism about them. This issue of *Consumer Quarterly* examines voluntary codes: when they work; the essential elements of effective codes; the industry structures conducive to their development; and the institutional, economic and legal underpinnings necessary to support voluntary codes in the marketplace.

Much of the information presented here is drawn from the Voluntary Codes Research Project and a recent symposium on voluntary codes sponsored by the Office of Consumer Affairs and the Treasury Board Secretariat's Regulatory Affairs Branch.

Voluntary codes are not new

Voluntary codes exist for a range of industries, products and services, and address many aspects of marketplace behaviour:

- the care tag on clothing, for example, is a familiar standard that was adopted voluntarily by the garment industry
- performance standards for manufacturing bicycle helmets, such as those developed by the Canadian Standards Association (CSA), are voluntary

- the electronic funds transfer code is a voluntary arrangement developed by financial institutions, consumer groups and the federal and provincial governments that underlies the use of debit cards
- the new *CSA Model Privacy Code* is a voluntary standard prepared with input from private sector, consumer and other public interest groups
- the Canadian Chemical Producers' Association has a "Responsible Care" program, which is a system of principles and rules designed to reduce harmful emissions
- the "Eco-logo" program gives firms that meet agreed-upon product standards the right to use a logo on their products that signifies certain environmental characteristics of that product.

Codes across national boundaries — an example

The Gap clothing chain has a *Sourcing Code* that requires its suppliers (many located in Third World countries) to meet certain labour-related standards; complying with this code is a requirement of the contract between The Gap and its suppliers. Following pressure from consumers, labour and others, The Gap has now agreed to have third parties help monitor code compliance. In effect, The Gap has, through private contracts, created a cross-jurisdictional mechanism to ensure adherence to labour standards.



What drives voluntary codes?

While these codes are all voluntary, in that firms are not legislatively required to develop or to adhere to them, the term “voluntary” is something of a misnomer. Typically, voluntary codes are a response to a real or perceived threat: of a new law or regulation; of competitive pressures or trade sanctions; or of consumer pressures or boycotts. The more credible the threat and the greater the market and competitive pressures, the more likely it is that firms will look for ways to alter their behaviour through voluntary approaches.

Examples of “driven” voluntary codes

- The chemical industry’s Responsible Care program grew out of a series of high-profile chemical disasters that eroded public confidence in the industry and raised the threat of tighter government regulation and controls.
- The Sustainable Forest Management Certification System was driven largely by the fear of European consumer boycotts of Canadian wood products.
- The Gap’s sourcing code was developed in response to consumers taking into account social and ethical practices, such as the use of child labour in developing countries, when making purchasing decisions. The guidelines may also give the company a competitive edge in marketing and selling its products worldwide.

Codes for competitiveness — an example

A code to ensure that fruit juices are, in fact, pure when they are so designated has been prepared by fruit juice manufacturers in Australia. As part of the arrangement, juice manufacturers can have their competitors’ products tested through an independent laboratory when they suspect there is a problem with purity. In this way, private sector competitive pressures help ensure quality for consumers.

What makes a “good” code?

While there is no one formula for developing a good code, the Voluntary Codes Project suggests that effective codes share common features, including the following:

- the explicit commitment of the industry’s leaders
- a clear statement of objectives, expectations and obligations to establish the ground rules
- early, regular, and meaningful participation of all affected stakeholders to help ensure credible standards. In addition to industry participants, stakeholders might include consumer organizations, environmental groups, government and labour
- an open and transparent development and implementation process to legitimize the code. This includes consultations on the proposed elements of the code, reporting and monitoring requirements, publication of compliance data and provision for revisions and adjustments
- a built-in commitment to review the terms of the code and its operation regularly to help “raise the bar” and ensure the code remains current with changing marketplace practices and standards
- a well-understood set of inducements for compliance, as well as sanctions for non-compliance, to increase the likelihood that a code will be followed
- an effective complaint-handling and redress system to assure that problems will be treated seriously. Fair and consistent application of the code over time is a measure of its success.

Codes tend to work best when there is...

- a mature, stable industry
- comparatively few players, each of which is of similar size and market power
- leadership from key industry players and a strong industry association
- a positive inducement for firms to participate, as well as sanctions for non-compliance
- a credible threat of government or legal action
- public pressure.

But they have their limitations

Adopting voluntary agreements can block or delay the development of needed laws and regulations to protect the consumer and public interest. Such arrangements can also be anti-competitive when firms use the cover of a code to engage in collusive behaviour.

When there is not **widespread agreement** to adhere to a code, there is potential for non-participating firms to take a “free ride” on a voluntary agreement, giving consumers a false sense of security and penalizing firms that conform to it. If codes are to work, there should also be **effective inducements** for firms to join, and **sanctions for non-compliance**. Quick and **equitable redress** mechanisms are essential to effective codes. When these conditions are not met, it is unlikely that codes will work.

A consumer perspective on voluntary codes

As part of the Voluntary Codes Project, the Consumers Council of Canada surveyed 375 knowledgeable consumers to solicit their views on the use of voluntary approaches. Results suggest, firstly, that the respondents were favourably disposed toward industry assuming responsibility for its own behaviour. (See graph 1.) Secondly, respondents said that they tended to favour the use of voluntary codes, provided that consumers are equal stakeholders with business in the process; that the codes are well-publicized; that they cover an entire industry; and that the sanctions included in the codes have real teeth. Finally, the survey respondents clearly indicated that they would be more comfortable with codes that had been developed with some government involvement. (See graph 2.) Government support for voluntary codes can take many different forms — catalyst, facilitator, broker, rule-maker, participant or endorser — depending on the circumstances.

Research conducted for the project suggests that voluntary codes clearly have potential benefits for consumers. Aside from traditional consumer concerns about quality, price and choice, voluntary approaches can address broader public policy issues related to the marketplace: environmental and consumer protection, labour standards and human rights, advertising and public standards of decency, the need for better product information, and after-sales service.

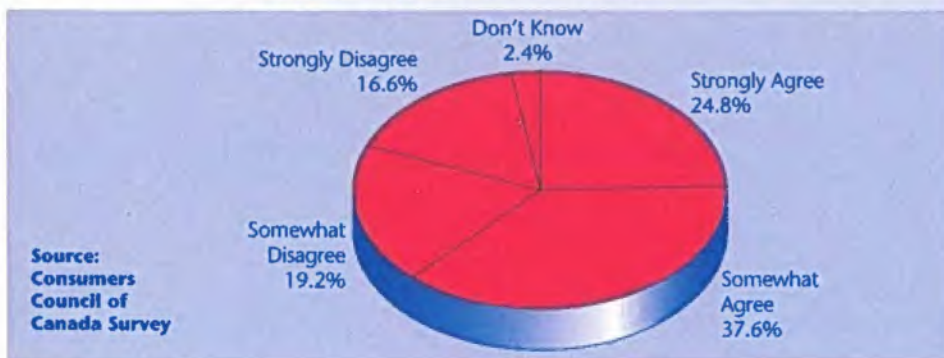
In contrast to command-and-control regulation, voluntary codes can be easier to develop and understand, cheaper and faster to implement, and more quickly adapted to changing circumstances. They can also support innovation and increased competitiveness in industry. In a competitive marketplace, the resulting cost savings and related benefits are passed on to consumers.

Compared to redress using traditional legal mechanisms, which can be costly, time-consuming and forbidding to consumers, consumer redress under voluntary codes can be faster, more accessible, more effective and less expensive. Because they are voluntary industry arrangements, voluntary codes can sidestep federal-provincial jurisdictional concerns and national boundaries. (For example, The Gap's code applies to developing country suppliers, and the Responsible Care program is followed in many industrialized countries.)

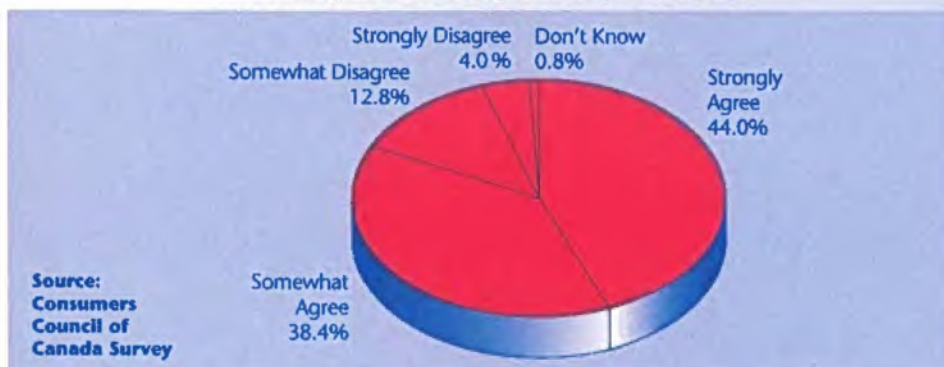
Consumers: Not just another interest group

The role of consumer organizations in developing and implementing effective voluntary codes is neither well-understood nor fully accepted. Too often, industry's view has been that consumer groups are simply another interest group to deal with. This attitude misses both the point and the opportunity.

Graph 1
"The best way to protect consumers is to have the different industries take on responsibility for their own behaviour."



Graph 2
"Self-regulation is successful only if government stands ready to force changes to help consumers."



Private sector takes on consumer dispute resolution — an example

Several years ago, the Canadian Radio-television and Telecommunications Commission (CRTC) relinquished lead responsibility for consumer service standards for cable television to the Canadian Cable Television Association (CCTA). The CCTA has since set up a separate foundation of industry members that first attempts informal mediation of consumer disputes. If no resolution can be reached, the foundation refers the matter to a council consisting of a neutral chair, with tribunal experience, an industry representative and a consumer representative. Consumers may still appeal to the CRTC, but rarely have they done so since the foundation was set up.

The point is that consumers are customers. Their preferences, feedback, confidence and experience in the marketplace help shape businesses' bottom line. Unfortunately, compared to the well-established consultation processes in place for developing statutes and regulations, public participation in the development of some voluntary codes now being implemented has been limited: for example, the tobacco industry code, a standard on how and where cigarette advertising should occur, was developed with virtually no third-party involvement. In industries with few players, there is a real risk that codes developed with only limited involvement of consumers and suppliers will be unstable, will lack public credibility and may reduce competition in the marketplace.

The involvement of consumer representatives in the development of industry standards of practice should be seen as an opportunity to tap into users' perspectives and expertise. In addition, these groups can bring credibility and legitimacy to voluntary code initiatives.

For further information

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The *Consumer Quarterly* is also available on the internet at the following addresses:

English
<http://strategis.ic.gc.ca/OCA>
or French
<http://strategis.ic.gc.ca/BC>

Does Canada need a voluntary codes guide?

While speaking at the recent Voluntary Codes Symposium, Industry Canada's Deputy Minister, Kevin Lynch, challenged participants to build on the research studies by moving toward some specific, practical outputs.

One such output that received broad support from participants was a voluntary

codes guide to help industry, government, consumer groups and other stakeholders develop future codes. Both the Australian and New Zealand governments have produced such guides, and it is an idea the Office of Consumer Affairs will be exploring in the coming months, with the Treasury Board Secretariat and groups outside government.

Key features of the Draft Australian Guide*

This document is a "how-to" guide for the private sector, the public and the government. It was prepared originally by the Australian Competition and Consumer Commission, and is in the process of being adopted as a federal and state guide.

The document

- explores why organizations develop codes of conduct in order to
 - advance consumer confidence
 - promote good business practices
 - safeguard consumers
 - create minimum quality benchmarks
 - discusses how to prepare codes
 - stresses the importance of wide consultation among all stakeholders
 - encourages a role for consumer groups in both code creation and implementation
 - suggests key components of codes, including objectives, obligations, administration, dispute resolution, monitoring, publicity and review
 - examines dispute resolution
 - public legitimacy of code tied to complaints handling
 - notes that proper processes enhance consumer loyalty and industry reputation and provide valuable feedback to companies
 - urges an open dispute resolution process that moves from internal resolution to third party involvement
 - emphasizes the importance of an effective approach to sanctions, which should include
 - appropriate sanctions
 - a fair decision process
 - an opportunity to appeal
 - sets out components of code administration, including
 - monitoring, publicity and reporting
 - adequate financing
 - use of plain language
 - provides for periodic review to
 - ensure continued effectiveness and appropriateness
 - allow for the code to be adjusted to changing circumstances and marketplace standards
- * from: Commonwealth, State and Territory Consumer Affairs Agencies (Australia), *Fair Trading Codes of Conduct: Why have them, how to prepare them* (Draft, November 1995)