

UNIVERSITY OF THE WESTERN CAPE
DEPARTMENT OF ECONOMICS

***A DESCRIPTIVE OVERVIEW OF PRODUCT REGULATION
IN SOUTH AFRICA***



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A research report submitted in partial fulfillment of the requirements for the degree of
Magister Commerce in the Department of Economics, University of the Western Cape.

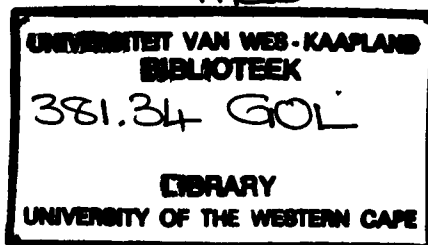
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June 2004



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THESIS



KEY CONCEPTS

Government intervention

Market failures

Lack of information

Regulation

Consumer safety

Consumer product regulation-South Africa

Hazardous products

Risk to consumers

Product related accidents

Consumer safety-South Africa



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ABSTRACT

The private market, if left to its own devices, often fails to achieve economic and social efficiency. Some of the problems relate to the existence of externalities, the inability to provide public goods and services, lack of information and failure to achieve other objectives such as greater equality, sustainable economic growth, higher levels of employment and stable prices. It is these instances of market failure that provide the major justification for government intervention in the market.

Moreover, the private market can impose unacceptable risk to consumers in the form of potentially hazardous products, which can lead to injury and even death. A few examples of such hazardous products are ladders that might buckle from under the consumer, non-glass tables with sharp edges that may cause injury, chain saws that may result in serious cuts and bacteria found in processed foods that can result in food poisoning.

This research report focuses on regulation as a form of government intervention in markets where potentially dangerous products are sold. It explains the theoretical rationale behind government regulation and distinguishes between alternative forms of regulation. It provides a descriptive overview of consumer product regulation as a form of social regulation and finally focuses on product regulation in South Africa, using the food and automobile industries as examples.

June 2004

DECLARATION

I declare that this report *A descriptive overview of product regulation in South Africa* is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Venecia Patricia Goliath

June 2004

Signed: *V. Goliath*.....



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ACKNOWLEDGEMENTS

In the course of writing this report I have been enormously helped by the useful comments and critique of my supervisor, Mrs. Stoltz. Thank, you for the patience, support and most importantly, for having faith in my ability to successfully complete this research.

I wish to acknowledge the Department of Economics and the Staff for their assistance and for providing me with the necessary resources that made my task so much easier.

My thanks are also due to my colleagues and friends. Thank you for every word of encouragement, support and motivation. It was your continuous reassurance that kept me going throughout the course of work.

Not forgetting my family who had to bear with me for the past two years while this research was in progress. I trust that they share in my belief that this was a worthwhile endeavour.

Last, but by no means least, I want to thank God Almighty for giving me the strength to see this through. "Through Him all things are possible."

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CHAPTER ONE

INTRODUCTION

1.1 Orientation

The maintenance of justice, law and order and the protection of property rights are some of the very basic functions that governments have to fulfil in any economy. However, academic literature indicates that there are other reasons for government participation in economic affairs. These reasons as identified by Viscusi et al. (1992:309), Nadar (1965:39) and Sloman (2003: 300) are related to the failure of market forces to achieve Pareto efficiency¹ in the allocation of resources or to serve social goals such as greater equality, social efficiency, consumer safety, freedom from exploitation and freedom to own property.

Given these failures of the market system, there are several policies that governments can use to improve allocative efficiency. Government intervention in this regard can take a number of forms, such as fixing prices above or below the free market equilibrium, taxing or subsidizing the production or sale of various goods and services, providing public goods directly, providing information and most importantly for the purpose of this report, regulating potentially hazardous products. According to microeconomic theory, when there is market failure, regulation may be able to raise the level of social welfare. Whether it does so in practice is a different issue.

Various laws have been passed in many countries to regulate the behaviour of firms and individuals. In the case of firms, various polluting activities are banned or restricted and safety standards are imposed, while food hygiene regulations prohibits the sale of any product that might pose a threat to the health of consumers. In the case of individuals for instance, it is illegal to drive when drunk, smoking is prohibited in

¹ Pareto efficiency occurs when it is impossible to make anyone better off without making someone else worse off (Sloman, 2003:283).

public places and there are compulsory seat belts laws that require individuals to use their seat belts at all times.

In some instances, regulatory bodies are instituted to supervise the activities of various firms. These bodies for example often act in the interest of consumers when they prevent firms from producing unsafe products. An example of a regulatory body in South Africa is the Department of Health that aims amongst other things to ensure that consumers do not suffer any harm from the consumption of any unsafe food product ([\[www.doh.gov.za\]](http://www.doh.gov.za)). This is done via the department's mandatory regulations that list specific food safety requirements. Another regulatory body is the South African Bureau of Standards (SABS) that is responsible for setting standards for all consumer products presenting undue risk of injury (Black et al., 2003:22). Virtually, all consumer goods should be cleared by the SABS and labels must indicate their weight, mass, volume and ingredients. The regulators regard it as an offence if the industry supplies products that do not comply with the required standards.

Magat et al. (1996:148) further claims: "Accidents associated with consumer products injure millions of citizens every year". The consequences of these accidents impose large costs on an economy, justifying efforts in understanding how these accidents can be reduced. Moreover, the media often reports about accidents that inflict severe physical, psychological, and financial costs on societies and countries as a whole. Typical examples of some potentially harmful consumer products are: exploding soda pop bottles, unvented gas heaters, poisonous lead paints, shatter prone sliding glass doors, chain- saws and ladders. According to Forsythe (2000:11) bacteria found in raw and processed foods like cereal, fish, vegetables and diary products that is subject to poor hygiene, can result in food poisoning.

It is evident that risks associated with consumer products are inherent in modern day society, thus indicating a need for protection against these distortions. According to Viscusi et al. (1992: 728) as well as Button and Swan (1989:152), the best way to attain acceptable levels of consumer safety is often intervention by means of government regulation. Today, everyone who buys an automobile, an electrical appliance, a loaf of bread, or a painkilling drug acquires something produced under extensive government safety rules.

In South Africa, as in other countries, there are various laws that protect consumers from exposure to products that might pose a threat to their health. Some of these consumer protection rules are stipulated in South Africa's Unfair Business Practices, Act 71 of 1988, which prohibits business practices and industries in South Africa to manufacture defective products. Examples of these stipulated rules in other countries are: The Fair Trading Act 1987 and Consumer Transactions Act 1972 in Australia² and America's Consumer Product Safety Act 1972³.

1.2 Problem statement and research goals

This research report was motivated by the researcher's involvement in a study done by the South African Bureau of Standards (SABS) on the impact of their technical regulations on the South African industry. This was a pilot study that investigated the various issues and policy concerns confronted by a regulatory authority in general given a certain conceptual framework. The research for the study reflected on the broad regulatory environment in South Africa, indicating the complexity of designing and implementing an appropriate regulatory regime. While being involved with this project the researcher gained valuable insight into these regulations as implemented by the SABS, how it affects various industries, but most importantly the impact it has on consumers since these regulations are applied merely for the protection and safety of South Africa's consumers.

On 8 March 2002, The Star reported a case of a young girl in Gauteng who died of eating contaminated tinned fish. Further investigation revealed that this was not a general food-borne⁴ outbreak but an isolated case, where a needy family consumed the contents of a badly rusted and damaged tin of pilchards, which was received as a donation. This incident, however, gave rise to the following questions: What if this

² These acts guarantees quality products and services and gives consumers the right to complain if they are not happy with their dealings with a trader ([http://www.ocba.sa.gov.au/about/04_laws.html])

³ The act protects the public against unreasonable risk and injury associated with consumer products, (Grabowski and Vernon, 1978:286).

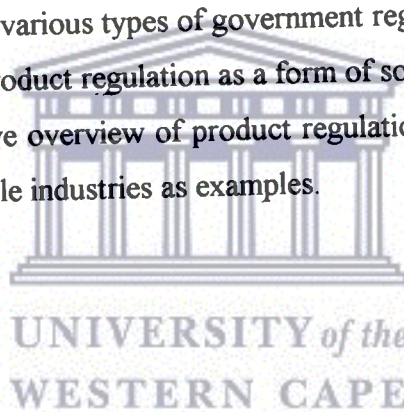
⁴ Food-borne diseases are caused by the presence of poisonous chemicals or harmful substances in food ([http://www.cdc.gov/ncidod/dbmd/diseaseinfo/foodborneinfections_g.htm#foodbornedisease])

has been a nationwide food-borne disease outbreak? What regulations protect consumers against the distribution of potentially hazardous food and other products? Who are the responsible regulatory bodies in South Africa? How are these regulations implemented and are the regulations effective?

This report attempts to answer some of these questions⁵. It provides an overview of product regulation as implemented in South Africa⁶ and focuses on regulations affecting the food and automobile industries, since accidents related to products provided by these industries often pose a real safety risk to consumers.

The objectives of this research report are therefore:

- to explain the theoretical rationale behind regulation as a form of government intervention;
- to distinguish between various types of government regulation;
- to discuss consumer product regulation as a form of social regulation;
- to provide a descriptive overview of product regulation in South Africa, using the food and automobile industries as examples.



1.3 Methodology

The methodology is speculative in nature, because the subjective approach includes examining and commenting on perceptions in order to gain a better understanding of economic and social activities (Hussey and Hussey, 1997:20). The methodology is also phenomenological as the final focus of the report is on two case studies that focus on the understanding of the dynamics present in the case of government regulation in South Africa. The case studies are descriptive as the main objective is to explain current regulatory practices.

⁵ Many factors constrain the final outcome of this report, such as extremely limited information available, the fact that the SABS is currently in the process of being restructured and the unwillingness of people in the relevant industries to supply information.

⁶ A search through the Nexus (National Research Foundation) database indicated that no research has been done on the implementation of product regulations in South Africa.

The rest of the report is structured as follows: CHAPTER TWO provides a theoretical analysis of regulation as a form of government intervention in a world where market failure tends to exist while CHAPTER THREE is a literature overview of consumer product regulation as a form of social regulation. It also distinguishes between alternative forms of product regulations imposed by governments. CHAPTER FOUR provides a descriptive overview of product regulation in South Africa. It discusses regulations on food products and automobiles in an attempt to understand the current regulatory framework as implemented in South Africa. The first part (4.2) discusses food regulation in terms of the legal framework that governs the industry, the regulatory authorities responsible for implementing food regulations and assesses the regulations as implemented by these authorities. The next part (4.3) focuses on automobile regulation. It discusses the legal framework governing the industry, identifies the regulators that implement automobile regulations and finally provides an assessment of the regulations as implemented by the regulatory authorities. CHAPTER FIVE provides a general conclusion.



CHAPTER TWO

GOVERNMENT REGULATION: A THEORETICAL ANALYSIS

This chapter firstly focuses on the rationale for regulation as a form of government intervention and thereafter distinguishes between economic and social regulation as the main forms of regulation.

2.1 Rationale for government regulation

Regulation as defined by Button and Swann (1989:5) is the imposition of rules by government, backed by the imposition of penalties to modify the behaviour of firms or individuals, particularly in the private sector. Black et al. (2003: 6) further explains that regulation entails the enactment of a law or the proclamation of a legally binding rule that gives rise to market outcomes that are different from those that would have been obtained in the absence of the intervention. According to them, regulation can either prevent undesirable behaviour, actions and activities; or enable and facilitate desirable ones, such as with health and safety legislation where government establishes specific rules, which industries have to comply with.

Regulation is merely a form of government intervention aimed at addressing market failures. Lipsey et al. (1995:425) explain that government uses regulations to set the framework within which market forces operate and to alter the workings of unhindered markets. Harrington (1992: 309) and Nadar (1965:39) state that there are several bases for government regulation in an economy where market failures tend to exist. These failures include the presence of externalities, the possibility of firm failure, the existence of monopolies and public goods, common resources, the immobility of factors of production and imperfect information about the specific characteristics of products.

The following are the most common instances of market failures that provide an economic rationale for government intervention. Firstly, government regulates in markets where there are externalities. When an externality is present, perfect competition does not result in an optimal allocation of resources since the benefits are too low or costs are too high. Economic literature distinguishes between positive and negative externalities. According to Black et al. (2003:37) an externality is positive when the actions of an individual or producer confer a benefit on another party free of charge; and it is negative when those actions impose a cost on the other party for which he or she is not compensated. An example is the presence of a negative externality such as pollution. When a coal-fire station pollutes the air, it usually does not take into account the effect it has in reducing the air quality for other agents. Generally, when there are negative external effects, unregulated competition results in too much of an activity being pursued and government regulation will force firms to take the social costs into account as they make their production decisions.

Secondly, regulation is used in markets that are imperfectly competitive. Viscusi et al. (1992:2) explain: "If we existed in a world that functioned in accordance with the perfect competition paradigm, there would be little need for regulating". All markets would then consist of a large number of sellers of a product, and consumers would be fully informed of the product's attributes. Unfortunately though, economic reality seldom adheres to the benchmark model of perfect competition and government often needs to intervene by forcing firms to take the costs of their actions into account. In some, cases there might even exist oligopolies. An oligopolistic market structure is where a few leading firms dominate the entire industry. Firms that produce automobiles, cigarettes, steel, aircraft, soft drinks, cereals, soap, glass, copper, computers and pianos in the USA are classified as oligopolies (Mickleburgh, 1979:59). Examples of such industries in South Africa are Volkswagen, Peter Stuyvesant, Coca Cola and Shoprite/Checkers. Oligopolies tend to charge monopolistic prices and have excess capacity or they might even act collusively and join hands in an attempt to maximise profits.

Thirdly, governments regulate industries characterized as natural monopolies where production is subject to decreasing average cost. Berg and Tschirhart (1988:21) describe a natural monopoly as an industry in which the average costs tend to

decrease as production (output) increases. For example, most public utilities⁷, like local provision of water, electricity, and local telephone, are natural monopolies. In this case a particular firm that produces a well-defined product, such as water, is in a position to supply the product to additional customers at declining marginal costs, resulting in declining average costs as well. The phenomenon where average costs decline rapidly, because of falling marginal cost, is termed economies of scale.

Intervention in this market takes place through price and entry regulation so that the price will more closely approximate marginal cost of production. According to Viscusi et al. (1992:311) entry regulation permits only one firm to produce (as required for productive efficiency)⁸. Price regulation on the other hand is direct government control over the price charged in a market, especially by a firm with considerable market control. If allowed to maximize profit without restraint, the price charged would exceed marginal cost and production would be inefficient. However, because public utilities in most instances produce products of services that are regarded as essential to the general public, government steps in to regulate or control the price. The two most common methods of price regulation are marginal- and average-cost pricing⁹.

Lastly, governments regulate by setting quality standards for products where consumers lack sufficient information on the quality of certain products. Sherman (1989:112) argues that uncertain product quality can reduce the effectiveness of a competitive market in cases where information is costly for consumers to obtain. If the product or service involved is one that is important to society, information problems under competitive market structures may not be tolerated and a monopoly may be imposed in its place. For example, before New York City built underground tunnels that could bring water from mountain reservoirs, it relied on competitive markets for drinking water. Anyone who owned a pond seemed to be in the water business and the result was a serious problem of contamination. Sloman (2003:306)

⁷ Typical examples of these public utilities in South Africa are the provision of railways, harbours and airways by Transnet, the provision of electricity by Eskom, and the provision of water by Umgeni Water (in KwaZulu-Natal).

⁸ This means that production will take place at minimum long-run average cost.

⁹ If the regulated price is equal to marginal cost, the firm (natural monopoly) will run at a loss and will require subsidisation from tax revenue. If the regulated price is equal to average cost, no subsidy will be necessary, but the combination of price and output will not be optimal (Black et al. 2003:213).

claims that in such a case where information is not easy to convey, regulation in the form of quality standards could be most effective. If consumers were to be better informed about brand quality, competition may serve them better. Competition, safety, quality or reliability standards, as in automobile parts, drugs, lawn mowers and other industries may then perform better by providing customers with a choice.

Economic literature furthermore distinguishes between two types of regulation that governments use to correct market failures. These are economic and social regulation.

2.2 Types of government regulation

2.2.1 Economic regulation

This form of regulation refers to government-imposed restrictions on the decisions of firms over price, quantity, entry and exit (Button and Swann, 1989:5). In this regard, price regulation may specify a particular price that firms must charge or may instead restrict firms to setting prices within a certain range. If the concern of the government is with a monopolist that sets price too high, regulation is likely to specify a maximum price that can be charged. In some instance, such as in the event of controlling oil prices, regulation requires a specific price.

An example of restrictions on the quantity of a product that is sold is illustrated by the fact that from the 1930's up until around 1970, many oil-producing states like Texas and Oklahoma placed maximum production limits on crude oil producers (Ortolano, 1996:481), thus controlling the quantity of oil sold in this manner. According to Viscusi et al. (1992:294), entry may be regulated on two levels. Firstly, entry of new firms into the industry may be controlled, as is typically done in the case of the regulation of public utilities. Secondly, a regulatory agency may also control entry by existing regulated firms. These markets may already be served by other regulated firms or may be unregulated markets. The basis for exit regulation on the other hand entails that regulated firms serving unprofitable markets are forbidden from abandoning the market without regulatory approval.

Stigler (1986:19) further claims that economic regulation is mostly used to regulate utility markets such as water and electricity industries. In these cases, governments can either regulate prices by prescribing fixed prices or by allowing it to vary within certain prescribed upper and lower limits. Restrictions can also be imposed on entry through the agency of licensing. Even if a firm is allowed to enter into an industry, it may be restricted to a specific market, as in the case where the regulator limits the number of airlines allowed to serve a particular route.

However, the market failure of imperfect competition is based on the availability of goods from a limited number of suppliers. If all resources were freely available, the law of demand and supply would ensure that the price would never exceed the true value of resources to the market as a whole. However, these ideal conditions rarely exist, and the law of supply and demand can easily be subverted. With a limited number of suppliers, an agreement can be reached to limit the supply of a product, thereby increasing prices and causing a social cost to the community.

According to Button and Swann (1989:72), the most logical reaction against these subverting forces (mentioned above) is to implement regulatory measures in the form of antitrust regulation¹⁰, which seeks to control behaviour directly. Antitrust policies address the phenomena of dominant firms, oligopolies, mergers and restrictive business practices. Antitrust regulation exists when government controls behaviour directly by taking explicit action to block mergers that would otherwise threaten the competitive character of markets. This is a form of economic regulation, which owes its origin to the general belief that competition is capable of conferring significant welfare benefits and that a policy of laissez-faire would almost certainly lead to the forces of competition being severely undermined.

Antitrust policy is stimulated by a belief that consumers are vulnerable to the market power of monopolies (Harrington, 1992:3). Because of the potential welfare losses resulting from monopolistic behaviour, a number of states in America enacted antitrust laws at the end of the nineteenth century in order to maintain a higher level

¹⁰ The type of regulatory restrictions will reflect the philosophy of the society on which they are imposed. Some societies (America, for example) have reacted by strictly regulating all business activity while others have imposed less stringent regulation.

of competition. In an attempt to promote competition and in this way also allocative efficiency, the US Congress enacted antitrust laws where the government controls the behaviour of firms directly by taking explicit steps to block mergers that may threaten the competitive character of markets.

In conclusion, economic regulation is mostly used to regulate utility markets such as the water industry, electricity, etc. and the three key decision variables controlled by regulation are price, quantity and the number of firms.

2.2.2 Social regulation

This is the latest form of regulation and is often subdivided into health, safety and environmental regulation (Harrington et al, 1992:7). These dimensions arise with respect to risks in our environment, risks in the workplace and risks from the products we consume. According to Asch (1998), most of the regulations related to these risks take the form of direct government intervention by means of information provision (e.g. product labelling), standard prescription (e.g. product safety) and rights of redress (e.g. consumer rights in relation to deception and defective goods).

Consumer protection and health and safety regulation as indicated by Darvall (1980:206), are based on the provision of adequate information in truthful form. However, information has the property of a public good with the likelihood that in a free market it will be undersupplied or not supplied at all (Viscusi et al, 1992:609). The problem may be an inadequate supply of information on the inability of the consumer to evaluate the product's characteristics (as in the case of drug and food additives). It may therefore be deemed appropriate that those who are supposed to be in a position to make judgements (i.e. governments) should impose standards that all product manufacturers should comply with.

Button and Swan (1989:215) explain that social regulation has been used as a tool of government to accomplish a number of public purposes. According to them, many social regulations are aimed at preventing harm while others are aimed at providing public benefits. Regulatory programs vary considerably with regards to what they require and/or prohibit and they also differ regarding the timing of their intervention, especially as they concern potential harm from newly created products. One normally

thinks of regulation as entailing rules established by government to restrict the behaviour of private entities or citizens, but social regulation also includes mandates from higher levels of government to lower levels. While there is much conceivable harm that could be addressed, it is up to governmental officials to determine the particular harm that deserves attention.

Furthermore, environmental protection is a response to the negative externality arising from pollution and the fact that, without the exertion of property rights a free market will behave sub optimally by reflecting the impact of private rather than social costs. According to Folmer et al. (1995:201), when environmental policies were adopted in the late 1960s, the authorities in most industrialized countries turned to regulatory control either by creating new regulations or by re-adopting existing ones. Button & Swann (1989:59) support this argument and add that even though economic instruments (in particular, taxes) are being increasingly introduced in environmental policies, the regulatory approach remains the most commonly used. In this case, the policy consists of prescribed objectives, standards and technologies that polluters must comply with, for example, laws on water and air pollution and waste disposal.

Generally, within this regulatory framework, specific rules are usually prescribed in the form of compulsory standards. Folmer et al. (1995:206) further mentions the following arguments in support of adopting an environmental regulatory approach:

- a) In some cases regulators can implement existing regulatory structures. (There is a long standing experience with regulation in other areas of public interest such as health and safety, labour, etc.)
- b) Regulations may provide an effective means of preventing hazards such as pollution and the harmful effects it has on society.
- c) Regulations provide a promise to achieve the environmental goals with regards to emission flows, because once an emission standard is fixed, the emission is not likely to exceed the limit, provided that there is effective implementation.

In support of the above arguments, Ortolano (1996:4) uses the example of the United States where environmental regulations have been developed largely because of concern regarding the effect of a deteriorating environment on people. According to him, the history of American environmentalism reflects four basic reasons for environmental concern. These are the promotion of human health, efficiency of

resources, life support and personal renewal. In this regard, the promotion of public health refers to the provision of engineering works to meet people's need for safe water and basic sanitation whilst efficient resource use is merely the productive use of natural resources so that no wastage occurs. Life support on the other hand is based on safeguarding the habitat of the planet for human and nonhuman species. Personal renewal refers to the preservation of areas valued by people as sources of beauty and renewal. Ortolano's argument is based on the idea that governments would save money if environmental policies would take account of these four goals.

Viscusi et al, (1992:690) however is of the opinion that social regulations do not dictate health and safety outcomes since it is impossible for regulators to monitor and influence the health and safety attributes of firms. Instead, the regulations create incentives for firms to take particular action as with the installation of seat belts in vehicles that reduce the risk of severe injury in the event of an accident.

2.3 Summary and conclusion

Governments intervene mainly with regulation in the event where markets fail to achieve efficiency in terms of the allocation and distribution of resources. The main instances of market failures are identified as the presence of externalities, imperfect competition and the lack of information on product characteristics. In order to correct these sources of market failures, government uses various types of regulation as policy instrument to encourage firms to act in the public interest.

In the case of economic regulation, government places restrictions on the firm's decisions on price, quality, entry and exit, whilst social regulation is aimed at restricting behaviours that threaten public health, safety, welfare, or well being. These include environmental pollution, unsafe working environments, unhealthy living conditions, hazardous products and social exclusion.

The specific focus of this report is consumer product regulation, which refers to the design of regulatory policy in order to promote greater consumer safety. This will be discussed in CHAPTER THREE.

CHAPTER THREE

CONSUMER PRODUCT REGULATION

3.1 Introduction

This chapter provides a literature overview of consumer product regulation as a form of social regulation.

Consumer product regulation is about risk, its assessment, its acceptance or rejection, its reduction and its control (Darvall, 1980: 87). Risk in this context is regarded as the probability of a hazard that causes harm to human health and is an inherent facet of our daily lives. Individuals encounter risks in their daily lives, such as risk in food, transportation, employment and recreation. People are exposed to risk, when they climb up ladders that might buckle from underneath them or if they may run into a table with sharp edges. It is thus impossible for society to live the way it wants to without being exposed to risks since these cannot be eliminated from everyday life.

According to Hemphill (1981:86) the aim of consumer product regulation in general should be to discourage the production, distribution and sales of potentially harmful products. At the same time these regulations should not deter beneficial innovations, because firms may be cautious due to the prospect of liability burdens and other effects of regulations. Oi (1973:5) agrees with this statement and claims that the appropriate goal of a regulatory policy should be the maximization of the economic welfare of consumers. Consumers, out of their own free choice, buy food products that contain potentially dangerous substances; use ladders; install sliding doors and operate automobiles, thus exposing themselves to risks. The argument for 'product regulation' is not to reduce all risks associated with products to zero; the intention is rather to ensure that the risks are reasonable (Cranston, 1984:113).

The literature also indicates that government policy toward product regulation has experienced major institutional changes over the years not only in South Africa but also in other countries such as the United Kingdom and the United States (Viscusi et

al., 1986:154). In particular, regulatory agencies in the US passed a number of laws imposing and strengthening regulatory controls on products across a broad spectrum of industries. In the mid sixties, the US government for example passed a succession of product regulations dealing with specific products such as automobiles, toys, flammable fabrics and poisonous toxic subsistence (Viscusi et al., 1992: 228).

Also, in 1968 the Delaney Amendments compelled the Food and Drug Association (FDA) to ban any food additive (from the marketplace) found to be carcinogenic in animals (Grabowski et al., 1978: 284). Then, in 1972, the United States Congress passed the Consumer Product Act, which established the Consumer Product Safety Commission (CPSC). The Commission was empowered to protect the public against unreasonable risk or injury associated with consumer products. In general, product regulations tend to be drawn with very specific and narrow mandates such as the protection of consumers against the production of unsafe products. These laws often list the specific requirements that products have to comply with, such as mass, weight, height, volume and ingredients that would make it acceptable in the market.

What conclusions can be drawn regarding these regulations? Mickleburgh (1979:3) supports product regulations on the basis that individuals lack an awareness of potentially harmful properties which may be inherent in some products they purchase and as a result consumers are in an inferior bargaining position which forces them into disadvantageous transactions. Regulation, according to Mickleburgh seeks to protect these individuals from what has come to be regarded as an undesirable exploitation of their inferior position. This argument is supported by Spence (1977:63) who adds that the mere fact that products may cause accidents is not by itself an argument for intervention in the market. According to him, it is the fact that consumers are not accurately informed about the characteristics of products, that calls for governments to intervene (See Section 2.1). A product, he argues, should be thought of as having a bundle of characteristics such as price, a distribution of possible product failures and an insurance policy. The term product failure (in this case) refer to the fact that the product may break down, cause or be involved in an accident, or simply fail to perform according to the expectations. To be misinformed about the probabilities of

product failure is to be misinformed about the product itself and this is the source of market failure that provides the rationale for government intervention¹¹.

To this end, the literature suggests three regulatory alternatives available to governments for regulating markets where potentially hazardous products are sold (Spence, 1977:569; Viscusi et al., 1992:301; Oi, 1978:17). These are informational regulation, producer liability and direct regulations, which are designed to encourage greater consumer safety. The following section explains these alternatives in more detail.

3.2 Alternative forms of product regulations

3.2.1 Informational regulation

This form of product regulation as described by Viscusi et al. (1986) arises due to the fact that individuals are believed to have imperfect knowledge of the risk they face when buying products that may possibly harm them. To overcome this problem, the United States government has initiated a number of efforts to control health and safety hazards by placing direct constraints on the use of hazardous materials. In the event where lack of information leads to excessive risk-taking, informational regulation (hazard warning) addresses the problem directly without disturbing other beneficial features of the market (Viscusi et al., 1986:358). Users of a product with different susceptibilities to a particular hazard, different preferences toward risks, and different product needs can select the combination of risk, product efficacy and usage rates that reflect their particular needs such as in the case of alcohol consumption where consumers are well aware of the consequences of excessive drinking.

Oi (1973:15) further adds that the informational strategy is often viewed as a temporary measure until such time when the health implications of a hazard are better understood. An example is where regulatory agencies alert consumers of a potential hazard in the interim so that they can at least exercise caution until the information for taking stringent action becomes firmer. According to Viscusi (1992:753) the rationale

¹¹ Guarantees (for example, a one year warranty that accompanies a new bicycle) are a form of insurance against product failure.

for employing informational regulation strategy is twofold: Firstly, in many instances governments do not wish to ban an activity altogether. The regulatory agency may not have sufficient information to proceed with a ban, nevertheless may want to alert consumers to a potential hazard. Secondly, regulation through information may sometimes be the most appropriate and effective response even when the agency is in doubt as to the appropriate course of action. If individuals differ with regards to their tastes and their willingness to bear risks, then information provides consumers with the ability to make these market judgements and to choose the level of risk that is most efficient given their own preferences. Furthermore, Button and Swan (1989:98) explain that many decisions taken must necessarily be made on a decentralized basis. For example, the care consumers take when using household chemicals cannot be monitored by direct regulatory agency.

As a result, the most effective way to promote safety is to give consumers the motivation to undertake the appropriate levels of precautions themselves. Consumer behaviour often plays an important role in determining the level of safety that will result from a particular product design, as in the case of seat belt regulation. To this end then (Viscusi, 1992:105) proposed that governments should evaluate both producer actions and consumer actions when intervening in the product market. According to him there should be greater safety benefits if both these mechanisms are considered instead of simply relying on a technology based approach, which focuses more on the producer.

However, for the provision of informational regulation to be a successful policy, individuals must be able to think systematically about risks and make sound decisions under uncertainty. This assumption can be challenged because decisions under uncertainty are difficult to make.

3.2.2 Producer liability

According to Viscusi (1992:749), producer liability is explicitly linked to the attributes of the product, principally negligence standards. An example would be in the event where firms fail to conform to the requirements that governments set for the production of automobile parts like breaks, steering wheels, seat belts and other

requirements. Once a firm has been found liable for injury, individuals should receive full compensation for losses.

This policy option is best analysed by Michael Spence (1977) in his paper that investigated the use of producer liability as an instrument to improve market performance when the problem has indeed been market failure. According to his research, government has two options to choose from. Firstly, the producer can be made liable directly to the consumer. In this case the producer is mandated to pay a fine in the form of insurance that will fully compensate the consumer in the case of product failure. Secondly, the producer could be made liable both to the state and the consumer in the event of accidents that stem from products. In the case of product failure, the state should levy a fine on the producer and then use this source of revenue to compensate the consumer in the form of subsidies.

These two-part liability strategies will permit the fine levied on the producer to deviate to the consumer since they suffer the consequence of a hazardous product. According to Spence (1977: 561), the first option will work best in the case where the consumer is risk-neutral. The consumer is risk-neutral when he/she purchases the product irrespective of what the outcome of the transaction might be. The product is purchased even if the consumer knows that he/she might suffer an injury. The second option is more appropriate in a market of misinformed consumers who does not know that they face a risk in purchasing a particular product.

Viscusi et al. (1992:749), further distinguish between two types of liability standards: i.e. 'negligence standards' and 'strict liability standards'. Firstly, under a negligence regime, a firm is liable if it does not meet the medium degree-of-safety standard. Thus, all firms providing a low level of safety are liable for a certain amount of accident costs that could have been prevented if they had provided the efficient degree of safety at the medium level of safety. Secondly, and in contrast to the above standard, under a strict liability standard, a firm is liable for all of the accident costs incurred by the consumer, irrespective of whether the firm has met the appropriate level of safety. Since the company is required to bear the entire product related costs associated with accidents, what this doctrine does effectively is to force the company to internalise all accident-related costs.

3.2.3 Direct Product regulation

According to Darvall (1980:211), effective consumer product safety requires direct regulation, which is the enactment of minimum standards of composition or construction. An example would be, where governments set specific standards that manufactures should comply with in the production of their products in terms of size, shape, ingredients, and volume. Industries must be capable of meeting these standards at an acceptable cost to the community. Cranston (1984:3) agrees with this statement and put forward the following argument in support of direct government regulation. According to him, the advent of mass production has resulted in consumers facing an information gap when they enter transactions involving the purchase of products. Products are marketed in such a manner that it is difficult for consumers to judge their qualities adequately. For example, if buyers are unaware of product defects, the high quality sellers cannot command higher prices than low quality sellers and this may result in deterioration of quality.

Magat and Moore (1996) further adds that advertising often fails to inform consumers about the attributes of a specific product and raises expectations beyond what can be fulfilled by the product. It is for these reasons that consumer organisations, initiated by government should provide consumers with more objective information on the characteristics of products. Also, consumers who use hazardous products such as electrical appliances may not fully understand the consequences of their actions. Similarly, producers do not always have at their disposal the necessary information to make rational decisions. For example, they may be unaware of the existence of certain resources or the latest technologies available in their own lines of business. It is for these reasons that manufactures should be obliged to design safer products in order to reduce severity of accidents. But will the free market system ever encourage business to produce the right things? Weiss and Strickland (1982:379) believe that it is the responsibility of government to protect the public from such negligent manufactures.

However, there is much more to be said about the appropriate circumstances for adopting each of the above three strategies. Regulatory policies based on information have typically been undertaken in situations where individual decisions were believed not to be fully rational, because of failure to understand the risk associated with

different actions. Moreover, information provision can produce precautionary behaviour. Though perhaps not ideal, it does appear to be sufficiently promising to warrant further scrutiny as an alternative to more direct regulation. Also, the mere introduction of liability will not prevent consumers from purchasing the wrong products, but it will make the strategy of informing consumers more attractive than the other two strategies.

Perhaps an important issue in the assessment of product regulation is whether these efforts have had any significant effect on safety. Without an enhancement in safety there is no real rationale for governments regulating the product market.

The next section discusses the impact of product regulation on consumer safety.

3.3 The effect of product regulation

The effect of product regulations depends not only on the engineering of mandated standards but also on the interaction of product characteristics with consumer's precautionary behaviour (Viscusi, 1992:224 and Peltzman 1975:703). According to Viscusi, one can distinguish between three different mechanisms by which product regulations may alter precautionary behaviour and consequently the level of safety produced by the regulation.

Firstly, regulation can lead to a reduction in safety-related efforts for the affected product, as was claimed by Peltzman (1975) in his analyses of Auto Safety Regulation; that wearing a seatbelt may reduce the incentive to drive safely. This diminished responsibility could lead to a net reduction in the safety level, even after the advent of protective devices such as seatbelts. Secondly, regulation may produce misperceptions that encourage consumers to reduce their safety precautions, because they overestimate the product's safety. For example, the protective bottle cap requirement introduced in America during the 1970s which aimed at addressing the problem of accidental poisoning involving children under the age of five (Viscusi, 1992:238). If parents increase the child's access to these bottles because they are supposedly "childproof, the regulation may not have a beneficial effect. Finally, one

product may affect the safety of other products, if there are indivisibilities in one's actions. Many safety precautions relating to pharmaceuticals affect a variety of products, not simply those with protective caps. For example, parents may choose to keep medicine in a chest, a kitchen cabinet, on a bathroom shelf, in a safety-latched drawer or in a purse. This may be done to the extent that there is a spillover effect of diminished responsibility on other products and safety caps will increase poisoning rates of these unprotected products. The net effect of safety will continue to be dampened by the consumer's response.

The existing literature on individual responses to regulatory protection has been analysed by Peltzman (1975) who showed that seat belts would lead to increased driving intensity (for example, less caution or higher speeds). The economic mechanisms generating this effect are similar to those, which produce adverse incentives or moral hazard problems¹² in the insurance context. However, there may be an effect on the price of the regulated product. In the same manner that wearing seatbelts may reduce the incentive to drive safely, by reducing the activity's riskiness, an informational program may affect precautionary behaviour through changes in the perception of risk as been proven in research done by Magat and Viscusi (1986) who analysed the effect of labels on precautionary behaviour.

In this study, an experiment was done on two products, liquid bleach and a liquid drain-opener which both pose short-term risks to consumers. Professionally drafted labels were used for both products, differing only in their hazard warning information. For each product, all labels included the same information regarding the functions of the products and directions for use. The labels with warnings created awareness among consumers of the pertinent hazards associated with the product. A sample consisting of 368 consumers were interviewed in a shopping centre. Participants were screened on the basis of whether they used household cleaning products to avoid including in the sample individuals who would never purchase such products. Each consumer in the sample examined only one of the product labels and was interviewed regarding his perspective use pattern. The outcome identified from this experiment

¹² The moral hazard problem is defined by (Sloman, 20003:298) as the temptation to take more risk when you know that insurers will cover the risk. In this case the seat belt functions like an insurance that would urge individuals to drive recklessly or at higher speed even though the intention of government was merely to reduce the risk of injury in the event of an accident.

was that there is an increase in safety precautions when using labels that include risk information as opposed to labels lacking risk warnings.

The next sections (Sections 3.4 and 3.5) provide a general discussion of automobile and food regulations in general in an attempt to be able to assess regulation of food products and automobiles in South Africa.

3.4 Automobile regulations

3.4.1 Introduction

Given the significant number of fatalities and serious injuries that result from automobile accidents every year, the issue of automobile safety regulation is of considerable importance. Therefore, a principle target of product regulation has been the automobile. This is merely because accidents associated with vehicles poses a chief risk to safety. A pivotal event that led to the rise in automobile regulation was the publication of Ralph Nadar's *Unsafe At Any Speed* (Nadar, 1965:52). Nadar charged that the automobile industry devoted insufficient resources to product safety as was evidenced. For example, in the turnover risks posed by the Chevrolet Corvair developed in America. This compact car with an engine in the rear was marketed by Chevrolet in the early 1960s as a moderately priced compact that had some of the driving feel of a sports car. Its main disadvantage was that the car was highly unstable during cornering manoeuvres, leading to a rash of deaths to Corvair owners. Furthermore, The Universal Declaration of Human Rights of the United Nations proclaims that: "adequate, safe and wholesome food is vital for achieving acceptable living standards and every individual has the right to a standard of living adequate for his health and well being" (Codex, Alimentarius Commission: 1985). The onus thus remains on government legislation in all countries to protect the health of consumers by stipulating regulations that will eliminate the manufacturing, distribution and sales of unsafe food products and automobile parts.

The purpose of automobile regulation as indicated by Viscusi et al. (1992:745) is to produce improvements in the accident rate and also to reduce the number of injuries and deaths resulting from automobile accidents. According to Cranston (1984:315)

road accidents are ranked among the major causes of death in developed as well as developing countries. They still occur despite the attempt in recent decades to modify driver behaviour through road safety education. Even if the overwhelming majority of drivers were careful at all times, accidents would still occur, because of the actions of a careless minority.

Although there appear to be considerable benefits associated with the introduction of safety devices, Winston and Mannering (1984:28) argues that given the technology involved in the installation of automobile devices and the nature of competition in the industry, no company has an incentive to initiate the introduction of these safety features. In this case the free market may be incapable of generating the optimal amount of automobile safety protection, thus justifying governmental interference. This form of market failure has led many to conclude that there is a case for obliging manufactures to design safer cars to reduce severity of accidents. According to Hemphill (1981:158) the purpose of automobile regulation efforts is not to drive an industry out of business, but rather to address the source of product safety problems, that is accidents related to automobile accidents. Many of the mandatory devices designed and installed is an attempt by government agencies to improve automobile safety to reduce the accident toll.

3.4.2 The implementation of automobile regulations

Most countries make use of a Motor Vehicle Safety Act, which formulates the vehicle standards for that specific country (Cranston, 1984:316). These Acts establish the following categories of motor vehicle safety for which standards are to be issued: to reduce the risk of accidents, to reduce the risk of injuries when accidents occur, to provide greater tolerance for pedestrians (on impact) and to protect persons from injury while vehicles are not in operation. The procedure should be that manufactures certify the incorporation of a standard and the authorities then conduct a spot check where the cars are tested in laboratories.

According to Harrington (1992:725) the product safety era of the early sixties was quite different from what it is today. There were no requirements for automobiles to include safety belts and in general they did not. For example, only in the early seventies did safety belts become a mandatory regulation in the United States. In this

country, the two basic approaches developed to increase the savings of life and mitigation of injury afforded by occupant restraint systems (Weiss and Strickland, 1982: 418). Provinces have enacted mandatory seat belt laws to increase usage and thereby the effective lifesaving potential of existing seat belts systems. The other approach was to install automatic passive restraints in passenger cars in place of, or in conjunction with, active seat belt systems.

Today, there are quite a number of regulations affecting the safety of automobiles, including occupant protection requirements, steering column protection, seat belt assemblies, side door strength, bumper requirements, fuel system integrity standards and a variety of other specific safety standards (Viscusi et al, 1992:738). The usual approach to product safety regulation has been to alter the technology of the product in a safety, enhancing manner. If the behaviour of the users of the product remains unchanged after the mandated safety device is instituted, then there will be benefits to be reaped of the engineering controls.

3.5 Food Regulations

3.5.1 Introduction

Food regulation has been defined by the Joint FAO (Food and Drug Organization) /WHO (World Health Organization) expert on food safety as; “ All conditions and measures that are necessary during the production, processing, storage, distribution and preparation of food to ensure that is safe, sound, wholesome and fit for consumption “ (Hubbert et al., 1993: 6). The most secondary reason for regulating food products is the protection of the consumer. Perhaps Section 1 (1) and 2(1) of the UK Food and Drug Act, 1955 (Dennis et al., 1979: 110) is the best motivator for food legislation simply because these two sections sufficiently cover all aspects of safety and fraud as applied to the manufacturing and selling of food.

These sections proclaim as follows:

Section 1(1):

“No person shall add any substance to food, use any substance as an ingredient in the preparation of food, abstract any constituent from food, or subject food to any other process or treatment (in any such case) to render the food

injurious to health, with intent that the food shall be sold for human consumption in that state”.

Section 2(1):

“If a person sell (to the prejudice of the purchaser) any food or drug which is not of the nature, or not of the substance, or not of the quality, or the food or drug demanded by the purchaser, he shall, be guilty of an offence”.

These rules explicitly spell out the requirements that all manufacturers, processors and distributors should comply with in order to ensure that all food products are safe for human consumption. It follows that all advertising, connected with foodstuffs is at least partially controlled by the phrase “not of nature, or not of substance, or not of the quality of food...demanded by the consumer.” One can therefore conclude that legislation is designed primarily to ensure that food is safe and not sold fraudulently.

Furthermore, food regulations ensure that microbiological hazards and general contamination resulting from poor hygiene and plant construction do not lead to potentially dangerous food products. Dennis et al. (1979:112) list the following points in support of food regulation. According to him, food regulation:

- a) Eliminates food hazards, because it prevents the entry of food that might pose a threat to the health of consumers from the food chain. The food inspection process will separate unwholesome food from wholesome food.
- b) Maintain strict hygiene in the form of clean equipment and environment that are essential to provide quality food products.
- c) Proper labelling prevents adulteration and misrepresentation of products since regulations require that essential information is included on the label. Thus, providing consumers with criteria for evaluating the product and preventing processors from taking advantage of consumers.
- d) Prevent objectionable, undesirable or aesthetically unacceptable food from being sold.

3.5.2 The implementation of food regulations

Legislation and other regulatory measures aimed at ensuring that the food we eat is safe and handled hygienically, are probably one of the oldest statutory arrangements to be found in society (Hubbert et al., 1993:26). Through the ages, a need existed for controlling the activities of people whose actions were aimed at producing, processing, manufacturing, or preparing food intended for consumption by others, by means of what is generally referred to as food laws. According to Forsythe (2000:259) national food laws in most countries is drawn up by the appropriate government

department, after consultation with its own scientists, technologists, industry, enforcement authorities, consumers and government appointed independent expert committees.

In the UK, for example there are professional bodies of food technologists and analysts (such as the institute of Food Science and Technology and the Association of Public Analysts) that are consulted during the course of drafting legislation (Dennis et al., 1980:116). In this country industrial representations are made by individual companies and their food technologists but usually by their trade association representing a sector or sectors of the food industry. The food technologist is certain to play an important part in shaping the views represented by the trade association. The representations can be made directly to the government, but usually one of the independent committees of experts, which advise the government, seeks the industry's opinion before making recommendations to government. Further, industrial opinion is expressed after any reports are issued, and before and after draft legislation is published.

According to Hubbert et al. (1993:221), the EEC food law follows a similar pattern, although it differs in some details. As a result, the food industry has two methods of approach to the Commission of the EEC. It can express its opinions via European trade associations to the Food and Agriculture Industrial Committee of the Community (CIAA) and thereby to the Commission, or follow the customary procedure employed within its own country to make its views known to its national government, whose representatives participate directly in discussions with the Commission and in the EEC Council Working Parties. The Commission drafts its proposals for legislation after considering the official views of the governments of the member States, the general views of the European industry and those of the European consumers, but the committee of government representatives does the final formulation of proposals.

Food regulations are not uniform around the world and such differences can lead to trade disagreements among countries. The standards, guidelines and recommendations by the Codex Commission and International trade agreements, such as those administered by the World Trade Organisation plays an important role in protecting

the health of consumers and ensuring fair practices in trade (Forsythe, 2000:361). There is also no international food legislation. There is however, an international organization, the Codex Alimentarius Commission, who is aimed at drawing up international standards and codes of practice, which it recommends to governments for adaptation into legislation. The work of the National Codex Committee includes the promotion and facilitation of domestic and international trade, the protection of the health of a country's consumers as well as the promotion of food trade through the insurance of fair practices and eliminating the barriers in trade (Forsythe, 2000:163). The World Health Organization (WHO) has recognized Codex as the international reference for setting disputes between governments on food safety related issues. According to the (Department of Health; 2003), the Codex Alimentarius (Latin for food law or code) is a collection of internationally accepted standards presented in a uniform manner.

Examples of such standards are the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) that was drawn up to ensure that countries apply measures to protect human and animal health (sanitary measures) and plant health (phytosanitary measures) based on science. The SPS Agreement incorporates safety aspects of foods in trade. The WTO Agreement and the Agreement on Technical Barriers to Trade (The TBT Agreement) cover all technical requirements and standards applied to all commodities, such as labeling of foodstuffs that are not covered by the SPS Agreement. The development of trade agreements between countries is facilitated through the use of these Codex standards, guidelines and recommendations as a basis for food control legislation of individual countries.

3.6 Summary and conclusion

It appears from the literature that the regulators of products are likely to rely more on direct controls (product bans and standards) since it is more concerned with the benefits, in terms of the number of lives saved and accidents avoided. There are two other alternatives often advocated in literature that might create greater product safety, these are the generation of better information about product hazards and the use of economic incentives (i.e. taxes and subsidies) as was discussed in Section 3.3.

However, there are much more to be said about the appropriate circumstances for adopting each of these strategies. The provision of information may result in precautionary behaviour and although perhaps not ideal, it does appear to be sufficiently promising to warrant further scrutiny as oppose to direct regulation. Also, the mere introduction of liability will not prevent consumers from purchasing the wrong products, but it will make the strategy of informing consumers more attractive compared to the other two strategies.

There is consensus that the rationale for product regulation is to enhance consumer safety. In an attempt to test for the effectiveness of these regulations, governments often analysed automobile and food regulations merely because health risk associated with automobiles and food products poses the chief risk to safety. An important issue that should be considered when analysing product regulations is the objective of the regulatory system in terms of promoting safety.



CHAPTER FOUR

PRODUCT REGULATION IN SOUTH AFRICA

4.1 Introduction

Regulation is the only form of government intervention in South Africa that applies to situations where products pose a potential or real risk to human health. As was stated in Section 3.3 an important target of product regulation has been automobiles, simply because accidents associated with vehicles poses a chief risk of safety. It is further stated in the Universal Declaration of Human Rights that every individual has the right to: “adequate, safe and wholesome food...” This report focuses specifically on regulations regarding automobiles and food products mainly for the two reasons stated above. Regulations on food and automobiles in South Africa are examples of social regulation. As explained in Section 2.3 this type of regulation is aimed at restricting behaviours that directly threaten public health, such as in the event of manufacturing unsafe food products and automobiles.

The first step in the design and administration of food and automobile regulations in South Africa is the specification of rules that establish the requirements for the specific products (Department of Health; 2000). These rules are normally contained within the legislation that establishes the regulatory program. According to the Environmental Practitioner of the Department of Health in Cape Town (personal communication, March 19, 2004), product regulations in South Africa are imposed with the objective to protect South African consumers against the distribution and production of unsafe products. These regulations are contained in the Acts of Parliament and are published in the government gazette. It states the specific requirements of a particular product, such as mass, weight, height and ingredients that would render it acceptable in the market.

This chapter discusses regulations on food products and automobiles in an attempt to explain the current regulatory framework as implemented in South Africa. It describes how the regulatory institutions in South Africa implement the regulations that would

eliminate products not complying with specific requirements. The first part (4.2) discusses the food industry in terms of the legal framework that governs the industry, the regulatory authorities responsible for implementing food regulations and assesses these regulations as implemented by these authorities. In the next part (4.3) the focus is on the automobile industry. It firstly discusses the legal framework governing the industry, then identifies the regulators that implements automobile regulations and finally presents an assessment of the regulations implemented by the regulatory authorities.

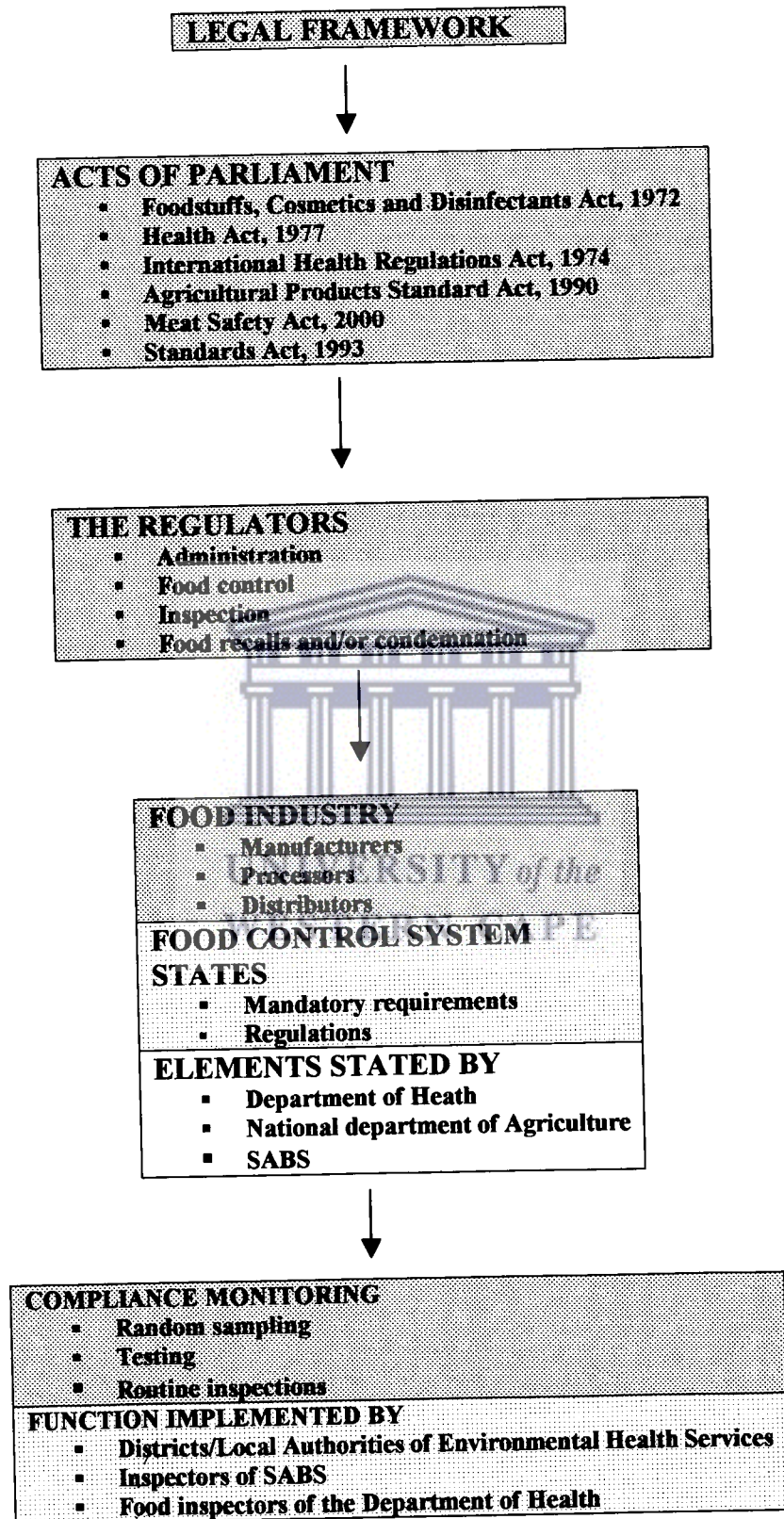
4.2 Food regulations in South Africa

4.2.1 The legal framework for food regulations in South Africa

South Africa's food legislation can be illustrated with the aid of a diagram. The legal framework is a step by step procedure that begins when government drafts the legislation aimed at ensuring food safety in South Africa. The legislation establishes the Acts of parliament that formulates the food regulations of the country. Government then appoints independent authorities (food regulators) to implement and enforce these regulations as stipulated in the various Acts. It is the responsibility of the regulatory authorities to make sure that the relevant industries comply with the stipulated regulations. The diagram below provides an illustration of the regulatory framework that governs the food industry in South Africa.

Figure 4.1

South Africa's legal framework for Food Regulation



Source: Draft Policy guidelines: Department of Health, South Africa, November 2003

The next section is structured according to the stepwise procedure outlined in Figure 4.1 and provides specific information regarding the implementation of food legislation in South Africa.

4.2.1.1 Acts of Parliament

South Africa's food legislation is governed by five Acts amongst others, which formulates the regulations related to food products. The various Acts allows the regulators to impose certain regulations that all manufactures, distributors and processors of food products should comply with. These Acts contain the following information regarding food products:

a) The Foodstuffs, Cosmetics and Disinfectant Act, 1972 (Act 54 of 1972).

This Act is administered by the Directorate: Food Control of the Department of Health and enforced by local authorities in their areas of jurisdiction. Based on information provided by the Environmental Practitioner of the Department of Health in Cape Town (personal communication, March 19, 2004) it was highlighted that most of the regulations concerning South Africa's food industry is covered by the Foodstuffs, Cosmetics and Disinfectant Act. It is the most important piece of legislation aimed at addressing the safety of all foodstuffs manufactured, sold or imported into the country. There are forty regulations promulgated under the Foodstuffs Act that governs the manufacture, sale and importation of foodstuffs, cosmetics and disinfectants from a safety/public health point of view. The Act regulates foodstuffs as well as labelling and advertising. The Act further empowers the Director General of the Department to authorize persons as food inspectors and order that imported foodstuffs be confiscated and destroyed should it not comply with the required regulations stated in the Act.

b) The Health Act, 1977 (Act 63 of 1977)

There are several sets of regulations promulgated under this Act that have direct relevance to food safety and are enforced by local authorities in their areas of jurisdiction. These include amongst others:

- Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food (G.N. No. R. 918 of 30 July 1999), which regulate hygiene provisions that relate to, for example, the handling and transport of food.

- Regulations Relating to Milking Sheds and the Transport of Milk (G.N. No.R. 1256 of 27 June 1986).
- Regulations Relating to Inspections and Investigations (G.N. No. R. 1128 of 24 May 1991), which make reference to, amongst others, detention and seizures of food.
- Regulations Regarding Food and Water Vessels (G.N. No. R. 1575 of 10 September 1971), which aim to prevent the transmission of certain metals from containers to foodstuffs.
- General Regulations Promulgated in terms of the Public Health Act, 1919 (G.N. No. R. 180 of 10 February 1967), which make reference to the transport of meat and meat products.

These regulations govern, among others, the hygiene aspects of food premises and the transport thereof; milking sheds and the transport of fresh milk; and, the inspection of premises (Information Document, Department of Health 2000:11). Coordination during the process of formulating new regulations and/or revising existing regulations took place through the Food Legislation Advisory Group (FLAG). FLAG is an institution consisting of a wide range of role players namely; industry, government departments and consumer organizations, convened under the auspices of the Directorate: Food Control to advise the department on all matters related to existing and future legislation. The various provinces are responsible to support local authorities, which cannot render a service related to the enforcement of the mentioned legislation within their areas of jurisdiction.

c) The International Health Regulations Act, 1974 (Act 28 of 1974):

This Act provides for the approval, by the Department of Health, of the source of food for consumption at ports, airports, on vessels and on aircraft, as well as for the inspection of such premises and the sampling of food by local authorities. The provincial health departments currently approve premises on behalf of the National Department of Health.

d) The Agricultural Products Standards Act, 1990 (Act 119 of 1990):

This Act controls and promotes specific product quality standards for the local market and for export purposes. It is administered and enforced by the Directorate Food Safety and Quality Assurance in the Department of Agriculture. Authorities such as the Perishable Products Export Control Board (PPECB) are appointed and authorized as assignees to do physical inspections under the Act.

e) The Meat Safety Act (Act 40 of 2000):

This Act is administered by the Directorate of Food Safety and Quality Assurance in the Department of Agriculture and enforced by the Departments of Agriculture of the nine provinces. It addresses, among others, meat safety and hygiene standards in abattoirs and regulates the importation and exportation of unprocessed meat. It further establishes and maintains essential national standards in respect of abattoirs, regulates the importation and exportation of meat and establishes meat safety schemes.

f) The Standards Act, 1993 (Act 29 of 1993):

This Act is administered by the SABS and has compulsory specifications (technical regulations) that address canned meat and fish products, as well as frozen seafoods.

4.2.1.2 The Regulators

In South Africa, various regulatory bodies are responsible for food regulation. The main authorities identified by the Senior Inspector of SABS's Food and Associated Industries in Cape Town (personal communication, April 06, 2004) are the National Department of Health (NDOH), the National Department of Agriculture (NDA) and the South African Bureau of Standards (SABS). Based on informal interviews conducted with representatives (The Environmental Practitioner of the Department of Health in Cape Town; The Deputy Director of Department Agriculture in Elsenburg; The Senior Inspector of SABS in Cape Town) of the respective regulatory bodies, the roles and responsibilities of these departments are as follows:

a) The National Department of Health (NDOH)

The Directorate of Food Control administers the regulations on food products, for which the Minister of Health is responsible. It is responsible for food recalls, i.e. the removal from the market of any food product that is unsafe for human consumption within the country. It further sets national norms and standards, supports provinces and local authorities and assumes the Role of the National Codex Contact Point (NCCP) for South Africa.

In this regard, the Directorate General of Health Services has been designated as the Ministry to liaise with the Codex Alimentarius Commission (Department of Health; 2003). The National Codex Contact Point acts as the liaison office to coordinate with

the other concerned government departments, the food industry, consumers, traders and research institutions to ensure that the government is backed with an appropriate food policy. It further keeps track of international food standards and gives comments and data to ensure that international food standards are practicable for local manufactures and do not to hinder exports of food products.

b) The National Department of Agriculture (NDOA)

The directorate of Food Safety and Quality Assurance is responsible for regulating and promoting the safety of animals and animal products, the quality of agricultural products as well as the safety of food, plant and animal origin.

The department also ensures the safety, quality and efficiency of production and enhancement agents. Under the Meat Safety Act, for example, the department approves the amount of animal drug residues that should be given to kettle in order to promote growth. Based on the Act, an animal drug must be safe and effective for the animal and its residues must be shown to be safe for human consumption.

c) The South African Bureau of Standards (SABS)

According to the Deputy Director of the Department of Agriculture (personal communication, April 22, 2004) the division of Food and Associated Industries is responsible for the regulation of canned meat/fish products and frozen marine products. The European Union and other countries recognize this division of the SABS as the certification authority for exports related to fish and seafood products.

The regulatory bodies as discussed above are responsible for the administration of the various Acts. The Foodstuffs Act is administered by the National Department of Health. The Department of Agriculture on the other hand is responsible for the administration of the Agricultural Products Standard Act and the Meat Safety Act while the Department of Food and Associated Industries of the SABS administers the Standards Act and certain parts of the Foodstuffs, Cosmetics and Disinfectants Act. The regulators are also involved with other food safety related activities such as health promotion, food control, hazard identification, inspection and food recalls. Environmental Health Services (a division of The Provincial Department of Health)

for example is responsible for health promotion by informing people and educating consumers, industry and law enforcers on health related issues.

Regulations relating to Inspections and Investigations (R1128 of May 1991), promulgated under the Health Act, 1977, make provision for local authorities to detain, sample and if necessary seize, in their area of jurisdiction, foodstuffs that have been examined and deemed to be unsafe for human consumption (Policy Guidelines, Department of Health, 2003:12). In addition, section 4(1)(a) and 4(1)(b) in these regulations state that “If, after an examination of any food contemplated in regulation 2(1)(e), he (the inspector) is satisfied that such food is unsound, unwholesome or contaminated... by written order signed by him seize the food concerned” These regulations thus allow for Environmental Health Practitioners to (after receiving a written request from the National Department of Health) seize and detain or dispose of foodstuffs without having to sample for laboratory analysis.

4.2.1.3 Compliance with food regulations

South Africa’s food industry consists of manufacturers, processors and distributors of food products. It is these institutions that have to comply with the regulations as stated in the various Acts. The food control system further states the mandatory requirements and regulations for the specific food products.

Compliance with food regulations is monitored through monitoring/auditing programs such as the testing and inspection of the final food product. The sampling programs implemented by regulators further seeks to ensure food safety through inspectors that goes out and test food products at random. These tests are done to ensure that food manufacturers do indeed comply with the regulations as stipulated in the various Acts. The Acts further empowers the regulatory authorities to authorize their own inspectors that work in cooperation with inspectors of the National Department of Health. SABS’s surveillance auditors, local authorities of the Environmental Health Services as well as food inspectors of the Health Department do inspections of food products. According to the Environmental Practitioner of the Department of Health in Cape Town (personal communication, March 19, 2004), the regulators regard non-compliance with food regulations as an offence, which is punishable by law.

In an attempt to eliminate food hazards The Department of Health has adopted the Hazard Analysis and Critical Control Point (HACCP) assessment program into their regulatory system (Department of Health; 2003). According to Forsythe (2000:259) HACCP programs, which were first introduced in the early 1960s, represent a systematic and scientific way for industry to identify hazards and prevent or control them in the production stage. HACCP is a management system in which food safety is addressed through the analysis and control of biological, chemical, and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product.

According to The British Food Journal (1987:10) many international companies have been using HACCP programs for years and it proves to be quite successful. The government in the USA (for example) has taken note of the ease with which HACCP can be adopted into regulation, and the Federal Department of Agriculture (FDA) issued its first set of HACCP regulations over the seafood industry in 1995 (Forsythe, 2000:217). The principles of HACCP have been universally accepted by government agencies, trade associations and the food industry around the world and South Africa is no exception. The process in South Africa is relatively new and the focus still remains on testing the end product rather than testing the product in production stage (Department of Health; 2003). The representative for the Department of Health has indicated that regulations covering a mandatory control system should be made applicable to the entire food industry in the near future.

Therefore, to ensure that the regulations on food products are effective it is crucial that South Africa's legal framework contains regulatory activities that are enforced by the authorities as instituted by government. In an attempt to create consumer safety these activities should aim at ensuring that foodstuffs are safe and suitable for consumption. Part (3.5.1) explicitly states that the reason for regulating products is to protect consumers. This statement is supported by the Environmental Practitioner of the Department of Health in Cape Town (personal communication, March 19, 2004). According to her, regulatory authorities in South Africa regulate food products merely for the protection of South African consumers. The five Acts listed in figure (4.1) further list the requirements that all manufacturers, processors and distributors should comply with in order to ensure the safety of food products. Furthermore, as indicated

in part (3.2.3) when assessing food regulations, it is important to test whether these regulations have been effective in enhancing safety.

4.2.2 An assessment of food regulations in South Africa

National food regulations in South Africa is implemented and administered by the National Department of Health, the Department of Agriculture and the South African Bureau of Standards. Clearly the regulatory structure that governs the food industry is highly decentralized. There are three main regulatory authorities all trying to achieve the same objectives; but how effective are they in terms of enforcing these regulations? One of the major drawbacks of this decentralized system is the lack of coordination among the regulatory authorities¹³. The regulators vary in their abilities to enforce the regulations and this place a constraint on the effectiveness of the regulatory process. This coordination problem prevent the regulatory bodies from working with each other, thus stimulating differences in the regulatory programmes applied by the various regulators.

Another problem associated with these regulatory bodies is that they do not really try to compare benefits and costs in deciding where regulations are necessary (Deputy Director of the Department of Agriculture, personal communication, April 22, 2004). As was stated by Button and Swan (1989:151), the benefits in this instance would involve the saving of human lives, a reduction of bodily injuries and health hazards while the costs would involve higher product prices and lower business profits.

According to the (Environmental Practitioner, Department of Health), the regulator's decision reflects more on saving human lives and creating consumer safety, thus ignoring the cost side of the equation almost completely. In order to be effective in creating greater consumer safety, it is recommended to use some type of cost-benefit calculation in raking projects and setting government priorities (Grawbowski et al., 1978:287). A cost-benefit analysis would help the regulators to choose among alternative strategies of government intervention. For example, in cases where direct product regulation has a relatively higher cost-benefit ratio but where some alternative

¹³ Information obtained from discussions with the representatives of the regulatory authorities, (SABS and Department of Health).

strategy (information provision) could accomplish the same objective in a more cost effective manner.

These arguments clearly highlight some areas that South African policy makers should consider when assessing the effectiveness of the current regulatory framework.

4.3 Automobile regulations in South Africa

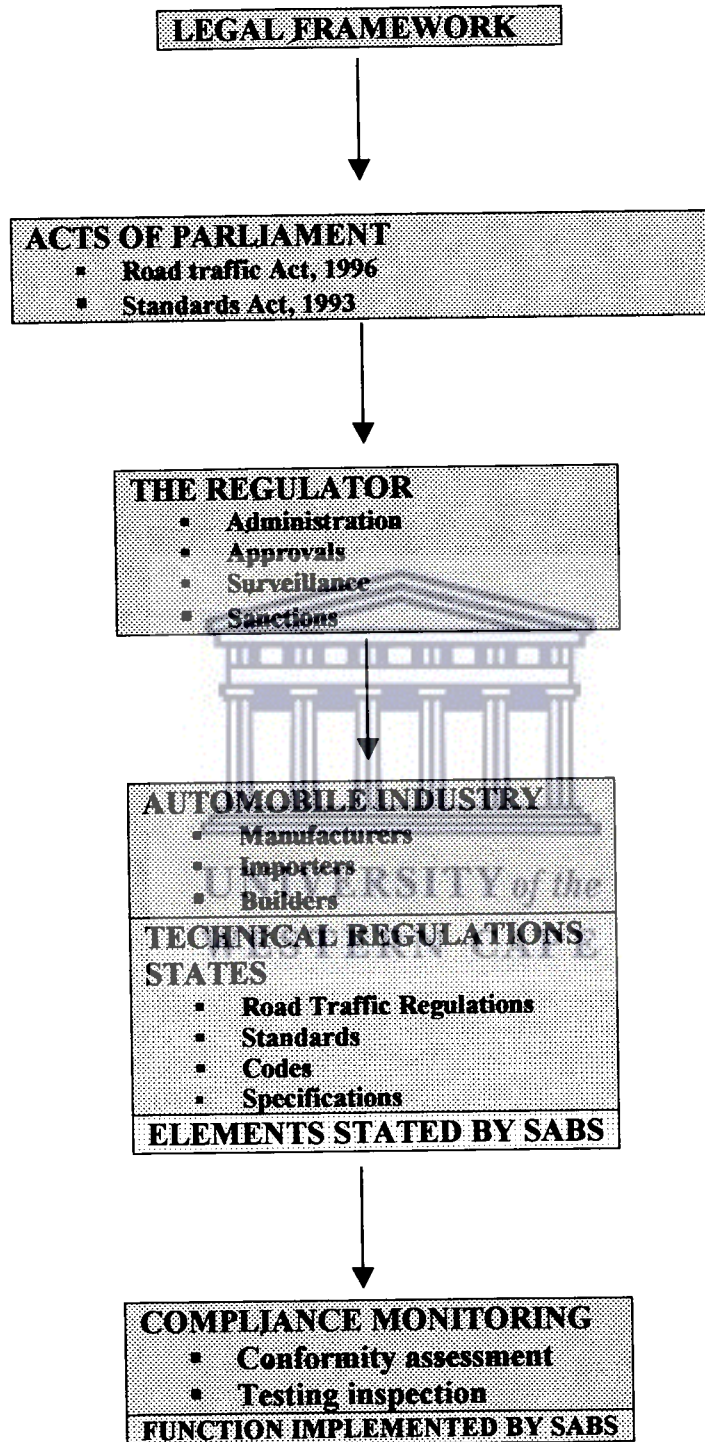
4.3.1 The legal framework for automobile regulations in South Africa

The implementation of automobile regulations can be explained in terms of the legal framework drawn up by the South African Government. This framework follows the same procedure as in the case of food regulations and can be illustrated as follows:



Figure 4.2

South Africa's legal framework for Automobile Regulation



Source: <http://www.sabs.co.za/regulatory>

The diagram above is an illustration of the regulatory framework that governs the food industry in South Africa. It consist of the following information regarding automobile safety:

4.3.1.1 Acts of Parliament

The two Acts listed in the diagram cover most of South Africa's automobile regulations and form part of the Acts of the South African government which is published in the government gazette. It contain the following relevant information with regard to automobile safety requirements:

a) Standards Act, 1993 (Act 29 of 1993)

This Act lists the requirements, in terms of compulsory specifications for all vehicles manufactured or imported to South Africa. The Act further allows the SABS to examine, test or analyse vehicles, materials and substances; to issue a national standard specification, code of practice or standard method, and to administer schemes based on it. It also affords the Bureau the opportunity to control the use of distinctive marks, certification marks, marks of proof and marks of authenticity that promote and maintain standardization and quality regarding commodities and the rendering of services.

b) Road Traffic Act, 1966 (Act 93 of 1996)

This Act lists requirements regarding wheels and the width and condition of the tyres when they are on the road, the number, nature and kind of lamps, including retro-reflectors ¹⁴. It also states the conditions of the use of any lamp or lighting device, which may endanger public safety, the nature of brakes and requires that brakes, silencers and steering apparatus shall be efficient and in proper working order, in respect of any vehicle operated on a public road. The Act further prohibits the transportation of any good that might pose potential risks to consumers.

According to the Head of MIB's of SABS (personal communication, April, 03, 2004) one of the means proposed to achieve a reduction in highway deaths and injuries is the South African Government's legislation to induce state enactment of mandatory

¹⁴ For the purposes of this report, "retro-reflector" means a reflector that bears a certification mark as defined in section 1 of the Standards Act, 1993 (Act No.29 of 1993).

seat belt use laws. These laws are stipulated in the Standards Act, 1993, which is administered by SABS. This approach taken by the South African government is also favoured abroad, since these laws provide benefits in the form of reduced risk of injury¹⁵. The government, in this instance enforces fines and penalties on consumers that fail to make use of the seat belts.

4.3.1.2 The Regulator

In South Africa, the South African Bureau of Standards (SABS), on behalf of the Minister of Trade and Industry is responsible for the regulation of automobiles. According to The Head of Manufacturers, Importers and Builders (MIB's) at SABS's Automotive Regulatory in Pretoria (personal communication, April 03, 2004) the Bureau's Automotive Regulatory Division is responsible for implementing the requirements of the Standards Act (Act 29 of 1993) and parts of the Road Traffic Act (Act 93 of 1996). Under these Acts, the department issues technical regulations (compulsory motor vehicle safety standards) that protect the public against unreasonable risk of death or injury. The Acts list the requirements for all vehicles manufactured or imported to South Africa. These Acts state the regulations in terms of product characteristics, specifications and requirements that the vehicle industry¹⁶ should comply with when manufacturing vehicles. It further allows the SABS to test all automobile parts for compliance. Automobile parts are approved only after the surveillance inspectors have tested it.

In an attempt to reduce the number of road accidents in South Africa, the Department of Transport has initiated the Arrive Alive Campaign. This Campaign is an attempt to modify driver behaviour through the provision of education and more intensified traffic law enforcement. An example would be in the case where a televised advertisement is screened on the loss of a loved one that occurred, because the driver exceeded the speed limit and crashed the car. This approach taken by government is a type of shock tactic, which is aimed to change the attitude and behaviour of drivers. Another method that government also applies is that of zero- tolerance where strict

¹⁵ For example, Arnould and Grabowski (1981), Peltzman (1975) as well as Viscusi (1992) proved that seat belts tend to reduce the risk of many severe injuries that involve total paralysis, multiple fracture etc.

¹⁶ The vehicle industry in South Africa consists of manufactures, importers and builders of motor vehicles (MIB's).

laws (for example a speeding fine) are applied in the case of traffic offences. It has been proven that these tactics has lead to a reduction in road deaths in South Africa (Sunday Times, 23 November, 2003).

4.3.1.3 Compliance with automobile regulations

As indicated above, the vehicle industry in South Africa consists of manufactures, importers and builders (MIB's) of motor vehicles. Therefore, all vehicles whether manufactured or imported into the country must conform to the requirements set out by the Road Traffic Act, 1996. Importers as well as manufactures must supply proof to The South African Bureau of Standards that they have conformed to the regulations as stated in the Acts.

The SABS, under the Standards Act, 1996 regards it as an offence when any person contravenes or fails to comply with the provision of the Act, or any regulation made (Head of MIB's, SABS, personal communication, April 03, 2004). According to him, South Africa's vehicle regulations is based on the European Council Directives 76/211/EEC and/or 75/106/EEC and OIML R87. This mark assists manufacturers with access to markets in the EU (European Union) since the e-mark acts as a metrological "passport" when supported by relevant documents.

Compliance with automobile regulations is monitored via conformity assessment and inspections done by SABS's surveillance inspectors. The government grants SABS the permission to apply sanctions (in the form of fines), in the case of non-compliance. A court can convict any person offending the regulations and may order that a vehicle be forfeited or impose a fine on the manufacturer. In default of payment, the offender is deemed for imprisonment for a period not exceeding one year.

However, (3.4.2) stated that most countries make use of a Motor Vehicle Safety Act that formulates the vehicle standards in that specific country. This is exactly the approach followed in South Africa where the Standards Act and the Road Traffic Act formulate the regulations for all vehicles manufactured in or imported to South Africa. The two Acts further aim to create motor vehicle safety by setting regulations that should reduce the risk to accidents, reduce the risk of injury when accidents

occur, provide greater tolerance for pedestrians on impact and protect persons from injury while vehicles are not in operation. According to the (Head of MIB's, SABS, personal communication, April 03, 2004) consumer safety is further enhanced through the technical regulations administered by the Automotive Department of the Bureau of Standards. These regulations list all the requirements that motor vehicles should comply with in order to be accepted in the market. An effectiveness test will be a better estimate to judge the extent to which these regulations actually affect consumer safety.

4.3.2 An assessment of automobile regulations in South Africa

A single authority, The South African Bureau of Standard (SABS), regulates the automobile industry in South Africa. The SABS, in this regard protect the consumer's rights by setting technical regulations, which sets out the specific characteristics of motor vehicles such as the size, shape, design, functions and performance ([\[http://www.regulatory.co.za\]](http://www.regulatory.co.za)). The Bureau's Automotive Regulatory Division is responsible for the implementation of the requirements of the Standards Act (Act 29 of 1993) and part of the Road Traffic Act (Act 93 of 1996). Under these Acts, the department is responsible for issuing motor vehicle safety standards that protect the public against unreasonable risk of death or injury.

Viscusi et al. (1992:745) states that one of the purposes of automobile safety regulation is to reduce the number of deaths and injuries resulting from automobile accidents. This is also what the SABS wants to achieve with the implementation of the Standards Act and the Road Traffic Act. With these Acts the department aims to create motor vehicle safety that would protect the public against the risk of death or injury in the event of a motor vehicle accident. It further appears that the Department of Transport's Arrive Alive Campaign proved to be a very effective safety strategy provided its success to reduce the number of deaths on South Africa's roads.

It is obvious that the regulatory framework of the automobile industry varies from that of the food industry. One major difference highlighted is the number of regulatory authorities governing the two industries. Legislation of automobiles is governed by the SABS only and therefore the regulatory framework is much more centralized

compared to that of food products. This centralized structure eliminates some of the problems encountered in the case of food regulation (For example, the lack of coordination among regulatory authorities). Enforcement of regulations seems to be much easier since it is only the actions of one institution (SABS) that needs to be considered. Also, considering the way in which both industries are regulated it appears that the South African government is quite strict in their application of legislation pertaining to food products and automobiles. Penalties in the form sanctions are applied for failure to comply with a given automobile regulation. In the case of food regulations the Health Act allows for the disposal of foodstuffs that are deemed to be unsafe for human consumption. The regulations thus compel compliance through the issuing of penalties for non-compliance of vehicle regulations and detainment for non-compliance of food regulations and ensure consumer safety in this manner.

4.4 Summary and conclusion

In this chapter, the researcher has constructed diagrams that attempt to explain South Africa's current regulatory framework in terms of food products and automobiles. These diagrams illustrate the procedures followed by the South African government to ensure product safety.

When assessing the implementation of regulations for both industries it became clear that the regulatory framework of the food industry is highly decentralized. Legislation of automobiles on the other hand is governed by the SABS only and therefore the regulatory framework is much more centralized. In this instance, the central authority contributes to more effective and efficient implementation of regulations regarding automobiles because it does not have to consult with other regulators before making any changes in the regulatory programs. It further appears that both industries are governed by quite strict legislation provided the application of sanctions and confiscation of foodstuffs in the event of non-compliance.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 General conclusion

The research report is an investigation into regulation, as a form of government intervention in a world where market failure tends to exist. The focus is particularly on regulation in markets where potentially harmful consumer products are sold. The researcher used regulations on food products and automobiles as examples to explain product regulation as implemented in South Africa.

It became clear in this report that traditionally governments have embarked upon regulation in the form of product design to eliminate unsafe products from the markets. Apart from direct standards on product design there are other regulatory approaches available to governments such as information provision and producer liability. However, there is much consideration to be taken on the appropriate circumstances for adopting each of these strategies. Regulatory policies based on information have typically been undertaken in situations where individual decisions were believed not to be fully rational because of failure to understand the risk associated with different actions. Moreover, information provision can produce precautionary behaviour and although perhaps not ideal, it does appear to be sufficiently promising to warrant further scrutiny as an alternative to more direct regulation. Also, the mere introduction of liability will not prevent consumers from purchasing the wrong products but it will make the strategy of informing consumers more attractive compared to the other two strategies.

In an attempt to understand the rationale for government intervention to promote greater consumer safety, the researcher used existing theory on product regulations in general as a benchmark to explain how these regulations are implemented in South Africa. The focus is mainly on automobiles and food regulations, merely because accidents related to vehicles and instances of food-borne illnesses are among the

major risks that consumers are exposed to on a daily basis. It has been highlighted in the report that product safety is not only promoted by the design of appropriate technological (direct) standards. Consumer behaviour often plays an important role in determining the level of safety that will result from a particular product design, as in the case of seat belt regulation. According to Viscusi (1992:105), governments should evaluate both producer actions and consumer actions when intervening in the product market. Based on this argument the safety benefits would be greater if both these mechanisms were considered instead of simply relying the actions of producers.

The assessment of product regulations in South Africa, based on the two respective industries highlighted the following important points:

1. The regulatory structure that governs the food industry is highly decentralized, resulting in a lack of coordination among the regulatory authorities in the sense that the regulators varies in their abilities to enforce regulations, thus constraining the effectiveness of the regulatory process.
2. Another problem associated with the regulatory bodies in the food industry is that they do not really try to compare benefits and costs in deciding where regulations are necessary. The regulator's decision rather reflects a "safety imperative" which tends to ignore the cost side of the equation almost completely. Grawbowski et al. (1978:287), however means that in order to be effective in creating greater consumer safety, it is very appropriate to use some type of cost-benefit calculation in raking projects and setting government priorities). The cost-benefit analysis would help the regulators to choose among alternative strategies of government intervention.
3. The regulatory framework of the automobile industry varies from that of the food industry. The regulatory structure that governs the food industry is highly decentralized while legislation of automobiles is governed by a central authority only. The centralized structure eliminates the problem of coordination, thus allowing for more effectiveness since only one regulator is responsible for the enforcement of regulations. One of the means proposed to achieve reduction in highway deaths and injuries is the South African Government's legislation to induce state enactment of mandatory

seat belt use laws. Also, the Arrive Alive Campaign has been quite successful in reducing the death rate on South African roads.

It is these points that has lead to the proposal of the following recommendations to the South African government:

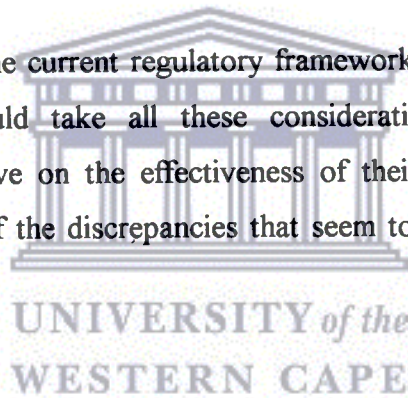
5.2 Recommendations

1. The best way to achieve the goal of improved food safety would be through a centralized authority that would provide a "single point of leadership." It could be done by eliminating the other two regulators, which will centralize management of all policy and rulemaking activities. This might contribute to a better coordination and a more precise implementation of the regulations within the realm of the food industry. The new structure might even improve the regulator's ability to make effective and efficient program changes if and when it is needed, since it does not have to consult with the other bodies.
2. Even though food safety legislation seems quite effective in South Africa it appears that there is not so much focus on the use of Risk Assessment Programs such as HACCP. The South African government has adopted HACCP into their regulation system only quite recently and thus the focus still remains largely on end product testing. Government should expand the use of (HACCP) programs that plant managers can use to prevent hazards from occurring in the production process. The British Food Journal stated that many international companies have been using HACCP programs for years and it proves to be quite successful.
3. In order to improve food safety, government can establish a hotline that will provide consumers with information on the safe handling, storage, and preparation of food products. An effectiveness test can be done by simply conducting a survey that will test how satisfied consumers are with such a system.
4. An important issue that should be considered when analysing product regulations is the objective of the regulatory system in terms of promoting safety and fostering the interest of the business affected by the regulation. The

aim of any product regulation should be to discourage the sales of potentially harmful products not to deter beneficial innovations, because firms are cautious due to the prospect of liability burdens and other effects of regulations such as sanctions and fines.

5. Most fundamentally, when testing for effectiveness of consumer product regulations, the appropriateness of the specific method applied is very important. In this case the government has a choice between two methods: accident rate tests and cost-benefit analyses.
6. When applying accident rate tests the goal should not be the minimization of accident cost, but rather a significant reduction in the accident rate, Grabowski et al (1981:29). In turn, the utilization of a cost-benefit analysis has an advantage of establishing the cost efficiency of applying a particular regulatory strategy.

Therefore, when reviewing the current regulatory framework on products, the South African policy makers should take all these considerations into account. The regulators could only improve on the effectiveness of their regulatory system and might even eliminate some of the discrepancies that seem to exist within the current framework.



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