

A Comparative Study on Consumer Protection Legislation in China and South Korea

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Abstract

I . Background and Objectives

- In just a few decades, China has transitioned from having no consumer economy to becoming the largest consumer market in the world. China is unique - it is a developing country with a developing legal system, but has a booming economy and a vast number of consumers. It is therefore neither a typical emerging market economy nor an equivalent to a Western industrialized economy. These attributes pose many challenges for the effective implementation of a legal regime for consumer protection.
- Observing the trade volume between China and Korea being escalated yearly and product manufacturing-consuming takes places across border between the two countries daily, examining the law that governs consumers and international business owners is unavoidable.
- This study will examine the chronological development of the consumer protection law in China while placing weight on the product liability law aspect.
- This study will also observe and analyze regulations adopted at

the Shanghai court and cases decided, deducing principals on the product liability issues.

II. Main Contents

- Overview of Chinese consumer protection law
 - In the 1990s, China put into place a comprehensive legal scheme for addressing consumer disputes; CRIL was the primary law enacted for consumer protection.
 - The PQL, Advertising Law, and the CCL all provide added protection.
 - In addition to these national laws, significant measures can also be found at the provincial and municipal level, as seen on the examples of the Shanghai Regulations for form contracts and for consumer protection.
 - When the national and local regulatory schemes are read and applied together, on their face, they offer significant protections for consumer in many areas.
- Analysis of Shanghai Court's product liability dispute cases
 - Data from the Shanghai Higher People's Court indicated that the consumer protection related cases showed a trend that it happened more and more often. With the rise in the number of cases, the rate of mediation withdrawal has a significant increase than five years earlier.

- The number of the courts that applied the Law of the People's Republic of China on Product Quality are about three times to the number of the courts that applied the new Tort Liability Law of the People's Republic of China. Further, in the event cases involved personal injury, the courts preferred to apply the Interpretation of the Supreme People's Court on Certain Issues concerning Determination of Liability for Compensation for Spiritual Damage Arising from Civil Tort to determine the spiritual damage.
- The current administrative protection mechanism of consumer rights and interests still have many deficiencies, and protection system need yet to be perfected.
- The protection mechanism provided by industrial and commercial administrative departments, especially, paid too much attention on the relief after the fact, giving consumers rights to complain and sue after their interests have been infringed. But ex post facto remedies haven't well protected the interests of consumers.
- Legal resolution on Foreign-related Products Liability-Comparison of Chinese law and Korean law
 - There is a single independent product liability law in Korea while China has not a single one; the provisions can only be found in one chapter of tort law and some separable articles in product quality law and others.
 - Punitive damages are awarded for all kinds of product defects in China. Because the laws are so new it is still unclear how Chinese

courts will resolve legal issues arising from application of foreign law in actual cases. Punitive damages are not allowed under Korean law nor permitted in product liability claims.

III. Expected effects

- Important legal information for foreign business operators to avoid committing any violations of the national/local laws and rules by presenting key issues of the Chinese consumer protection law at the national level along with the recent developments in the local courts with the municipal regulations

- Useful as basic information for international trade and business

➤ **Key Words : Chinese Consumer Protection Law, Chinese product liability law, Shanghai Court, Product liability dispute resolution, Korean Product Liability Law**

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I . Introduction

a. Research Purpose and Scope

With the rapid economic growth following the transition to the socialist market economy and the subsequent expansion of its domestic market, the pool of Chinese consumers exploded during the past couple of decades. The rise of this class of consumers urged legal protection of their rights, and this led to developments of a series of consumer protection laws.

The origin of Chinese government's attempts to address consumer protection issues may be found with the Pharmaceutical Administration Law (1984) which rather were aimed to combat illegal business practices than were providing consumers with relief. Then through series of legislations in 1990's, China has placed a comprehensive legal scheme for consumer protection, specifically focusing on resolving consumer disputes in the perspective of protecting consumer rights. The Law on the Protection of Consumer Rights and Interests (CRIL) (1994) takes the stand as the key national consumer protection law, forming the foundation of the consumer protection principals by ascertaining basic rights of consumers and imposing responsibilities upon business operators and the State. The Law on Product Quality (PQL) (1993, amended in 2000), along with the Civil Law and Torts Law, along with Advertisement Law and Contract Law, supplements and offer additional and more refined support for consumers.

Provincial and municipal regulations and codes offer another layer of protection for consumers through non-legal mechanism for dispute resolution. Case studies and statistics from the court on the local level supports this

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finding and also make available different angles to approach and resolve consumer protection cases.

Observing the trade volume between China and Korea being escalated yearly and product manufacturing-consuming takes places across border between the two countries daily, examining the law that governs consumers and international business owners is unavoidable. In the consumer protection law, product liability aspect is the main part that needs to be heeded both in the consumers' and the business operators' points when considering products produced and consumed in different countries by foreign consumers.

This study will examine the chronological development of the consumer protection law in China with its significance and limitation while focusing on the product liability law trait. Then it will observe and analyze regulations adopted at the Shanghai court and cases decided, deducing principals on the product liability issues. A brief review on Korean consumer protection and product liability law will offer comparison of Korean and Chinese law for cases involve international disputes and resolutions. This study hopes to provide an up-to-date information on Chinese consumer protection law and its practical implication on international business operators, serving as the guiding light on the international business practices in relation to consumer protection cases.

b. Researchers and Methodology

As a part of the Joint Research Projects conducted annually under the auspicious of Asia Legal Information Network, this study has been performed by a team of five scholars from East China University of Political Science and Law and a research fellow at Korea Legislative Research Institute. The

ECUPL team provided information and insights on the Chinese consumer protection law and product liability law along with their current application through statistics, local regulations, and caselaw. The KLRI research fellow designed the structure of this study, worked with the ECUPL team continuously in performing the research and preparing this report, while compiling, reviewing, and editing information provided by the members of the ECUPL.

A chronological review on the Chinese consumer protection law is provided, and the key legislations on the consumer protection and product liability law are explained with its advantages and drawbacks. Local regulations on the product liability law adopted and applied in Shanghai Court is reviewed by examining decisions made on caselaw in the court, on top of reviewing and analyzing statistics on product liability law cases by type, character, and the resolutions.

Traits on the Chinese product liability law and the Korean counterpart are observed and compared for international disputes in both countries, by reviewing choice of venue statutes, standards of liability determination, and compensation standards.

II. Overview of Chinese Consumer Protection Law

In just a few decades, China has transitioned from having no consumer economy to becoming the largest consumer market in the world. China is unique - it is a developing country with a developing legal system, but has a booming economy and a vast number of consumers. It is therefore neither a typical emerging market economy nor an equivalent to a Western industrialized economy. These attributes pose many challenges for the effective implementation of a legal regime for consumer protection.

a. Historical Development of Consumer Protection Legislation in China

One of China's first attempts at addressing consumer protection issues resulted in the Pharmaceutical Administration Law and other related regulations. Rather than directly addressing consumer protection concerns, the Law focused more on combating illegal business practices.¹⁾ Thus, the Law did not provide relief for consumers in situations where they suffered injuries due to defective products.²⁾ Facing a serious social problem highlighted by counterfeit products in the initial stages of reform and open policy made it difficult for these regulations to play a decisive role in consumer protection.³⁾

In 1986, the State Council issued the Regulations on Quality Responsibility for Industrial Products. This was one of the first regulations with the specific

1) Guanghui Guo, The Economic Analysis of Law Systematic Changes in Consumers' Protection in China, 1 HEBEI L. SCI. 87, 87 (2008).

2) Id.

3) Id.

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objective of protecting consumer rights and interests.⁴⁾ It demonstrated China's acknowledgment of the necessity of consumer protection. The regulation provided that both the producer and seller would be responsible for the quality of a product.⁵⁾ If the product was flawed or did not conform to the quality warranty given to the consumer, the producer and seller were both responsible for the repair, replacement, or return and were required to compensate for actual losses.⁶⁾ These general rules about repair, replacement, or return served as the basis for what is now known as the "Three Guarantees," a special rule that will be discussed later in this article.

Although the aforementioned regulations were steps in the right direction, they did not adequately protect consumer interests. There were no sections to provide specific relief when consumer rights were infringed.⁷⁾ For example, when consumer rights were violated, the law did not stipulate how to compensate the consumer or what amount of compensation was necessary. With the dramatic increase in a variety of consumer controversies, the lack of consumer protection laws and regulations obstructed the protection of consumer rights.⁸⁾ In light of this, the central government began enacting a series of consumer protection laws.⁹⁾

In 1987, the Chinese national government began adopting several consumer protection laws. The most significant legislation included : the General Principles of the Civil Law of the P.R.C., the Product Quality Law of the P.R.C., the Law on the Protection of Consumer Rights (CRIL), the

4) Art. 1.

5) Art. 4.

6) Art. 8,11.

7) See Guanghui Guo, 87.

8) See Guanghui Guo, 88.

9) See Kui Hua Wang, Celebrations Turn into Sorrow : Where is China's Consumer Protection Law?, 4 CANBERRA L. REV. 151, 152 (1997-1998).

Advertising Law of the P.R.C., and the Contract Law of the P.R.C.

China's legislative structure for online transactions is another area that has been reinforced since the 1990s. In order to provide consumers with a safe online shopping environment, the State Council and the Ministry of Posts and Telecommunications promulgated a series of rules and regulations.

The Electronic Signature Law (2004), the first e-commerce legislation in China, laid the legal foundation for e-commerce. This Law has had several important effects. First, the Law clearly stipulated that an electronic signature have the same effect as a handwritten signature or seal.¹⁰⁾ Second, the Law stated that electronic documents and written documents have equal validity.¹¹⁾ Third, the Law clearly affirmed the legal status of electronic authenticating organizations, and set up systems of market access and authentication of services.¹²⁾ Finally, the Law specified that all parties to an electronic signature assume legal liability when they violate the Law.¹³⁾

In 2010, the State Administration of Industry and Commerce promulgated the Interim Measures for the Trading of Commodities and Services Through the Internet in order to order electronic commerce markets and protect consumer rights and interests. This was the first administrative regulation that regulated online sales and related services. It had 6 chapters, covering all aspects of online sales, including but not limited to : market access, subject, commodity access, trading information, trading contracts, trading credentials, trading competition, the registered trademark, and business name rights. Additionally, it regulated standards of behavior for online sales and related

10) Art. 3.

11) Art. 7-8.

12) Art. 13-16.

13) Art. 27-33.

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services, and the obligations of the provider of the online platform.

Latest history shows a transformation of consumer attitudes to accompany the law reform project. Part III of the Article recounts recent product liability dispute cases in Shanghai courts, consumer self-help efforts and judicial resolution of complaints. As Part III will demonstrate, Chinese consumers have shown an increasing awareness of their rights, and have sought to enforce those rights through a variety of mechanisms and approaches. Overall, the China's current consumer protection laws can be divided into the following three parts :

First, Consumer Policy (Law)

Consumer Policy (Law) provides the basic elements of Chinese consumer policy, basic principles, administrative measures; further, it determines basic principles of legislative and judicial consumer, including :

1. Objective of consumer policy : to protect consumers' legitimate rights and interests; to maintain social and economic order, to promote the healthy development of the socialist market economy;
2. Both business operators and consumers should follow principles of voluntariness, equality, fairness, honesty and credibility;
3. The State protects the lawful rights and interests of consumers, safeguard the legitimate rights and interests of consumers and business operators as well.

Second, Consumer Contract (Law)

Consumer Contract (Law) contains specific provisions on individual interests of the consumers' involves special protection of basic standards and regulations based on the general principles and system of civil law. The most important contents include regulations on the following :

a. Historical Development of Consumer Protection Legislation in China

1. Standard terms;
2. Consumers' "right to know" and the "double compensation liability" of business operators in case of committing fraud
3. "Cooling-off Period" for Consumer and their rights for revocation
4. On typical consumer contracts (especially medical contract, travel contract, presale contract of residential real estate, contract of sale, residential property management services contract, passenger transport contracts, and other contracts providing labor or service for consumers).

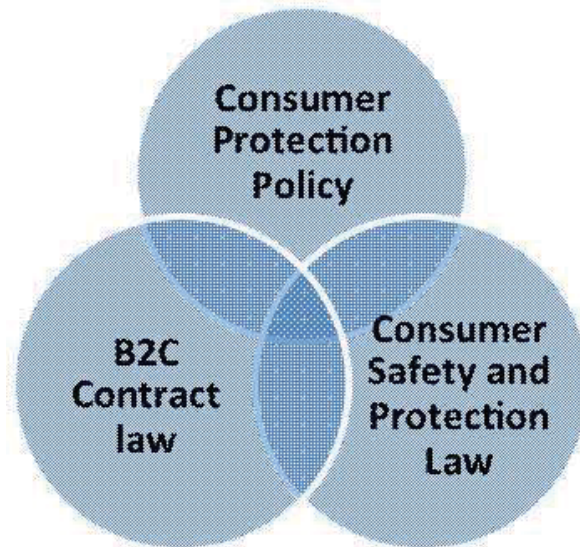
Third, Consumer Safety (Law)

Consumer Safety (Law) are distributed in Torts law, product liability law, Law on the Protection of Consumer Rights and Interests and other separate regulations, mainly involving consumers personal injury and property loss caused by business operators, including :

1. For personal or property damage caused by consumer product defects, consumers may claim compensation either from seller or from producer, which provide that sale to consumers, and assume joint and several liability;
2. Regulations on punitive damages;
3. Regulations on consumers' rights of personality and immaterial compensation.

The system of consumer protection law :

II. Overview of Chinese Consumer Protection Law



b. Legal System of Present Chinese Consumer Protection Law

i . National laws

1. Law on the Protection of Consumer Rights and Interests (CRIL) - Principal Consumer Protection Statute

The CRIL became effective in January 1994, and is the PRC's major consumer protection statute. Chapter II of the CRIL ascertains the basic rights of consumers in China, which include : (a) the right of inviolability of personal and property safety; (b) the right to obtain true information regarding the goods and services received; (c) the right to free choice of goods and services; (d) the right to a fair deal; (e) the right to demand compensation when personal injury or property damage occurs; (f) the right to form public organizations for the maintenance of consumer's legitimate rights and interests according to law; (g) the right to acquire knowledge concerning consumption and concerning the protection of consumer rights and interests; (h) the right

that their human dignity, national customs and habits are respected when purchasing and using goods, or when receiving services; and (i) the right of supervision, including the right to raise charges against state organs and functionaries, and to raise criticism of and proposals for protection of consumer rights and interests.

The CRIL also imposes responsibilities upon business operators and the State. Chapter III of the law contains an expansive list of business operators' obligations to consumers and specifically establishes a guarantee (or warranty) in Article 22 and 23, as follows :

Business operators shall guarantee the quality, function, usage, and terms of validity, which the commodities or services they supply should possess under normal operation or acceptance, except when consumers are aware of the defects before they buy the commodities or receive the services.

Business operators who employ advertisements, product instructions, samples or other ways to display the quality of their commodities or services shall guarantee that the actual quality of the commodities or services they supply is in conformity with that demonstrated.

Where there is an obligation to repair under other regulations of the State or by agreement with the consumer, business operators are to carry out those duties in accordance with the regulations or agreement, without deliberate delay or unreasonable refusal.

In the case of product defects that cause personal injuries, the business operator is responsible for medical and other related actual expenses.¹⁴⁾ Finally, Article 24 of the CRIL prohibits businesses from attempting to limit their

14) Art 41 CRIL.

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obligations toward consumers, by contract or otherwise. Under this section, business operators may not impose unfair or unreasonable rules on consumers; neither can they diminish or discharge their civil liability for infringing the legitimate rights and interests of consumers.

Although imprecise and vague, this provision might embody contractual exclusions of liability for damages, mandatory arbitration clauses, and other types of provisions frequently found in consumer contracts and considered by consumer advocates to be “unfair or unreasonable.”

In spite of these strict provisions protecting consumers, the CRIL’s principal weakness lies in its failure to address the legal consequences should a business operator fail to comply with its obligations.¹⁵⁾ Chapter VI of the Law states generally the resolution of disputes and although it does not mandate any particular form of dispute resolution, suggests settlement through conciliation, mediation represented by consumer associations, appeal to the relevant administrative department, referral to arbitration, or through legal proceedings.¹⁶⁾ Chapter VII specifically addresses “Legal Responsibility” and delineates general civil liability only in enumerated circumstances.¹⁷⁾ In another important liability section, where business operators committed fraudulent activities in supplying goods or services, Article 49 of the CRIL allows punitive compensation. However, unless specific liability is provided for in Chapter VII, it is unclear on whether a violation of obligations or an infringement of rights under the earlier Chapters would be the basis for civil liability. Because of this, the effectiveness of most regulations in the earlier

15) See Gary Zhao, Chinese Product Liability Law : Can China Build Another Great Wall to Protect Its Consumers?, 1 WASH. U. GLOBAL STUD. L. REV. 581, 583-86 (2002).

16) Art. 35.

17) Art. 40-53.

Chapters of the CRIL that identify consumers' rights and business operators' obligations is significantly weakened. The rights and obligations become general principles unsupported by any effective legal enforcement equipment.

Chapter IV of the CRIL identifies the obligations and duties of the government to consumers. For instance : "People's Governments at various levels shall strengthen their leadership, and organize, coordinate, and supervise the administrative departments concerned to do their work well in the protection of the legitimate rights and interests of consumers." The Law addresses administrative departments to adopt measures necessary to protect the legitimate rights and interests of consumers, to listen to the complaints of consumers and consumer organizations, and to carry out timely investigations and resolution of these complaints. The People's Courts are instructed to "adopt measures to facilitate consumers to take legal proceedings and to entertain and handle without delay cases of disputes over consumer rights and interests that meet the conditions for a lawsuit specified in the Civil Procedure Law."

2. Law on Product Quality (PQL)

As has been demonstrated, the CRIL states several product quality issues and, in this area, overlaps with Law on Product Quality (PQL). Typical of most products liability statutes, the Law on Product Quality(1993, amended in 2000), serves a strong consumer protection function.¹⁸⁾ The General Principles of Civil Law and Torts Law, also address product quality issues and was the legislative source for the Product Quality Liability. Chapter III,

18) See Li Han, The Product Quality Law in China : A Proper Balance between Consumers and Producers?, 6 J. CHINESE & COMP. L. 1 (2003);

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Article 14 of the PQL sets forth the liability of producers and sellers. Producers are liable as follows :

Producers shall be liable for the quality of the products they produce. The products shall meet the following quality requirements :

- (1) Constituting no unreasonable threats to personal safety or safety to property, and conforming to the national standards or the sectorial standards for ensuring human health, personal safety and safety of property, where there are such standards;
- (2) Possessing the properties as required, except for those with directions stating their functional defects; and
- (3) Conforming to the product standards marked on the products or on the packages thereof, and to the quality conditions indicated by way of one type of principal liability under the PQL is similar to warranty liability in many Western countries. Where a seller sells a product which (1) does not possess the properties as required, (2) does not conform to product standards marked on it or the package, or (3) does not conform to the quality conditions indicated by the directions, samples, etc., then the seller is obligated to repair or replace the good or refund the purchase price.

The seller is obliged to assume consequential losses rising from the non-conformity as well. The seller then has a right to recover its own losses from the producer or intermediate seller (right of recourse), if that party is liable. Should the seller deny the required replacement, repair, or refund, the department for supervision over product quality or another administrative department for industry is under compulsion to order the seller to comply.

The other type of main liability relates to defective products. The seller is liable for compensation when personal or property damages are suffered because of a defective product. There is an unsettled argument over whether this section ascertains a strict liability standard for liability or a fault-based standard. The defendant has a number of possible resistances, including where “the defects cannot be found at the time of circulation due to scientific and technological reasons,”¹⁹⁾ similar to a “state of the art defense” seen in many product quality statutes. The limitation of action is two years from the time the party concerned knew or should have known of the infringement of their rights under the Law.²⁰⁾ Victims may seek compensation from either the producer or the immediate seller, with the seller also having a right to recover from the producer when the producer is liable.

3. Advertisement Law of the People’s Republic of China

The Law in many aspects is analogous to other advertising laws found in the world, in that it proscribes advertisements which encompass false information, or which fraud or mislead China’s consumers,²¹⁾ and requires adver-

19) Art. 41 III.

20) Art. 45.

21) In the United States, deceptive advertising is covered under the Federal Trade Commission Act and is enforced by the Federal Trade Commission. See 15 U.S.C. § 45 (2006). Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” *Id.* False advertising, advertising that “is misleading in a material respect,” is expressly defined in the act as an unfair or deceptive act or practice. 15 U.S.C. §§ 55 (a) (1), 52. False advertising is also addressed under state consumer protection statutes. In Europe, the EU Misleading Advertising Directive, Article 2(2) defines “misleading advertising” as “any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reasons of its deceptive nature, is likely to affect their economic behavior or which, for those reasons, injures or is likely to injure a competitor.” Council Directive 84/450/EEC, art. 2(2), 1984 O.J.(L250) 17 (EU).

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tisers, advertising agents, and advertisement publishers to “adhere to the principles of fairness, honesty, and credibility.”

When advertisements “have been published to cheat and mislead consumers,” the advertiser may potentially be held liable under Article 38 of the Advertisement Law. This wording in Article 38 makes it vague and uncertain whether actual fraud would be required to establish liability under the statute, or whether a mere “likelihood of cheating” consumers would be sufficient to establish liability.

4. Contract Law of the People’s Republic of China (CCL)

Unlike the approach taken in the United Nations Convention on Contracts for the International Sale of Goods,²²⁾ and similar to the approach of other countries,²³⁾ the CCL does not expressly exclude consumers from its scope of application. The Law defines a “contract” as “an agreement on the establishment, modification or termination of a civil right obligation relationship between natural person, legal persons, or other organizations as subjects with equal status.”²⁴⁾ Nevertheless, some provisions of the CCL are playing a significant role on consumer protection. The Law states as a general principle and meanwhile an obligation that “neither party may impose its will on the other”²⁵⁾; a general duty to “observe the principle of equity in defining each other’s rights and obligations.”²⁶⁾ Article 6 imposes a general obligation of

22) Article 2(a) of the CISG excludes from its coverage sales “of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use.”

23) See Junke Xu, Development of online dispute resolution (ODR) in China, 42 UCC L. J. 265, 279 (2010).

24) Art. 2 CCL.

25) Art. 3 CCL.

26) Art. 5 CCL.

good faith in implementing rights and fulfilling obligations under the contract. These general requirements, all which reflect basic fairness principles, can perform a role to maintain the balance of economic power that exists in standard contracts entered into by consumers with business operators.

Regulation of standardized form contracts is an issue of particular importance in the consumer context. The Contract Law makes provisions for the following aspects in particular : (1) Commercial Advertisement; (2) Standard Terms; (3) Damages; (4) Exemption Clauses; (5) Mandatory Contract Obligations.

Articles 39 to 41 of the CCL address the inclusion standard clauses into contract and their effects, a topic that is of specific importance in the consumer protection context.²⁷⁾ Consumer transactions usually are concluded by pre-printed written contracts, drafted in advance by the business operators. The terms are then frequently unfavorable to the consumer. These agreements are entered into without the consumer's awareness of their content or in circumstances where the consumer lacks the bargaining power to influence in any meaningful respect the core elements and conditions of the contract. Article 39 provides :

If standard clauses are used in making a contract, the party that provides the standard clauses shall determine the rights and obligations between the parties in accordance with the principle of fairness, and shall call in a reasonable manner the other party's attention to the exemptible and restrictive clauses regarding its liability, and give explanations of such clauses at the request of the other party. 'Standard clauses' means the clauses that are formulated in anticipation by a party for the purpose of repeated

27) See Guanghai Guo, 87.

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usage and that are not a result of consultation with the other party in the making of the contract.

Thus, use of standard clauses is, largely, governed by principles of fairness and notice. Standard terms are per se invalid in three circumstances : (1) where they involve exemptions for liability for physical injury or losses to property due to intentional acts or gross negligence; (2) where the underlying contract is invalid under Article 52; or (3) if the party that provides the standard clauses exempts itself from the liability, imposes heavier liability on the other party, or precludes the other party from its main rights. Where there is a disagreement over the meaning of a standard clause, the clause is to be interpreted in accordance with common understanding, but if the clause is ambiguous, the clause is to be interpreted against the drafter of the contract. Non-standard clauses prevail over standard clauses, where the two are not identical.

5. Regulations on civil liability due to defective product in the CRIL

In the initial period of consumer protection, unified product liability laws did not exist.²⁸⁾ Producers and sellers of defective products assume liability towards consumer or a third person based on break of contract, but not torts liability. However, in most circumstances there existed no such contractual relationship. The injured parties relied on a complex system of rights and obligations to receive compensation.²⁹⁾ Most of these principles were embodied in the General Provisions of the Civil Law (1986). Presently, there still

28) See Edward J. Epstein, Tortious Liability for Defective Products in the People's Republic of China, 2 J. CHINESE L. 285 (1988).

29) See Edward J. Epstein, 294.

exists no unified code on product liability in China. However, the regulations on civil liability due to defective product in the Torts Liability Law, combined with CRIL and the PQL operate together to protect Chinese consumers. The earlier civil law's contractual liability for defective products is evident in the modern CRIL. Article 16 states : "where an agreement exists between a consumer and a business operator, obligations shall be carried out in accordance with that agreement." An agreement between the parties concerned shall not, however, be in contravention of laws and regulations.³⁰⁾ This contractual liability is listed first among nine other positive duties imposed on the business operators,³¹⁾ suggesting that contractual liability is ought to be taken into consideration prior to torts liability.

Some Chinese scholars interpret consumer rights and business operators' fair dealing obligations in this Law as assessment scale for unfair terms towards the party with less negotiating power.³²⁾ The wording of the Consumer Protection Law supports this argument. For instance, Article 4 states that business operators conduct their transactions with consumers "according to the principles of voluntary participation, equality, fairness, honesty and trustworthiness." Article 24 states : "A business operator shall not be allowed to set unreasonable or unfair terms for consumers or alleviate or release itself from civil liability for harming the legal rights and interests of consumers by means of standard contract terms, circulars, announcements, shop notices, etc." Thus, Chinese lawmakers have maintained a system whereby product liability is created through consumers' contractual duties with producers or sellers.

30) Art.16.

31) Art.16-25.

32) See Qingkai SHI & Wenhua Liu, *Directory of Liabilities in China*, 169-95 (1999).

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The CRIL also has several structural flaws. The reason why the law fails to realize its effect properly lies in its inadequate construction. For instance, Article 18 of the CRIL establishes a positive duty for business operators to guarantee consumer safety and economic interests. Nevertheless, the Law does not define the words “business (operator)” or “consumer.” This raises a question of scope of application. It is doubtful whether the rights extend to the third party other than the direct consumer.

The second paragraph of Article 35 imprecisely states legal protection for any “other injured party whose person or property is harmed due to a commodity defect.” Thus, The CRIL appears to extend to third parties. However, no section of the Law specifically stipulates whether sellers or producers have an obligation of care or protection for persons that their products might affect - contractual or tort liability base. The sections on consumer rights and business operator’s duties provide protection only for “consumers” or “a consumer.”³³⁾ Consequently, the addition of the words “other injured party” in Article 35 does not correspond with the rest of the statute.

The wording of Article 35 also states that the “other injured party” may “claim compensation from the seller or from the producer. Article 35 introduces the terms “seller” and “producer.” However, the law does not stipulate whether this equal to “business operator.” Furthermore, the term “business operator,” which never is defined clearly, only raises the confusion.

Under the CRIL, liability does not automatically attach when enumerated rights and obligations are violated. The text is silent after proclaiming a right or obligation. Often, it is not clear what will result if a business operator breaches his obligation under the Law.³⁴⁾ Instead, Chapter VII creates a new

33) Art. 1-32

34) For example, Article 15 stipulates :

set of liabilities. However, several articles on rights and obligations are mutually exclusive of these Chapter VII legal liabilities. This flaw jeopardizes the Law's effectiveness. When violations of enumerated rights and obligations under the Law do not create liability, the provisions lack legal effect.

Currently, no provision of the CRIL is subject to more controversy than Article 18. This Article provides that a business operator shall (1) meet requirements for safety, and (2) provide clear notices and prevention measures against safety risks. However, this Article does not provide liability for violations of the enumerated duties. No specific provision in the text indicates that liability should be attached to business operators' failure to provide clear notices and prevention measures for possible defects in their products. Similarly, a business operator assumes civil liability when "a defect exists in a commodity." However, the statute does not clarify the definition of "possible defects."

ii. Local Regulations

Although laws and regulations of the central government are now the primary source of consumer protection in the PRC, municipal governments are also actively involved in consumer areas through regulations that parallel and supplement the national laws, as the Shanghai Form Contract Regulations demonstrate. Shanghai's regulations provide a good example of these

A consumer shall have the right to supervise the protection of consumers' rights and interests in work related to commodities and services.

A consumer shall have the right to report or complain of acts infringing upon the rights and interests of consumers, and unlawful or derelict acts of State authorities and personnel in the course of protecting the rights and interests of consumers. A consumer shall have the right to criticize and make suggestions for the protection of the rights and interests of consumers.

II. Overview of Chinese Consumer Protection Law

types of more local approaches. In addition to the Form Contract Regulations, Shanghai also has regulations that address general consumer protection concerns.

A large part of the Shanghai Consumer Protection Regulations reiterates the principles and rules of the national CRIL. For example, Article 3 states that, generally, business operators are to “conduct their business transactions with consumers in accordance with the principle of voluntariness, equality, fairness, and good faith.” Chapter II of the regulations establishes the rights of consumers, and Chapter III the obligations of business operators. Generally, the provisions of the Articles in these Chapters establish much more specific types of rights and obligations than are found in the more general CRIL and address a broader array of consumer issues.” There is an express obligation of business operators to undertake repair of defective goods for at least six months, or to refund the purchase price in certain situations. Chapter IV of the Regulations involves the role and powers of the municipality in ensuring that the rights and interests of consumers are protected. Chapter V addresses the role of consumer organizations at the local level.

Unlike the CRIL, the Shanghai Consumer Protection Regulations are more detailed on the modes for resolution of consumer disputes, with a seeming preference toward non-legal mechanism for dispute resolution. As stated by the Regulations, “business operators and consumers are encouraged to settle consumption disputes through consultation and conciliations.” Consumer organizations handling complaints are given specific guidance on the process. Other methods of resolving disputes include filing petitions with administrative departments, arbitration, or legal actions. In any case, the consumer is required to establish the existence of a consumption relationship with respect to the goods or services involved. Under the Form Contract Regulations

discussed in the previous section, a consumer's right to bring a lawsuit for future disputes may not be excluded by contract. Thus, arbitration clauses in consumer contracts that purport to require the submission of future disputes to arbitration are not enforceable.

c. Summary

In the 1990s, China put into place a comprehensive legal scheme for addressing consumer disputes, with general consumer protection established through the CRIL. The PQL, Advertising Law, and the CCL all provide added protection. In addition to these national laws, significant measures can also be found at the provincial and municipal level, such as seen in the examples of the Shanghai Regulations for form contracts and for consumer protection. When the national and local regulatory schemes are read and applied together, on their face they offer significant protections for consumer in many areas.

III. An Empirical Analysis on Product Liability Dispute in Shanghai

a. A Statistics of Product Liability Dispute Case in Shanghai Courts

i . Macroscopic Analysis

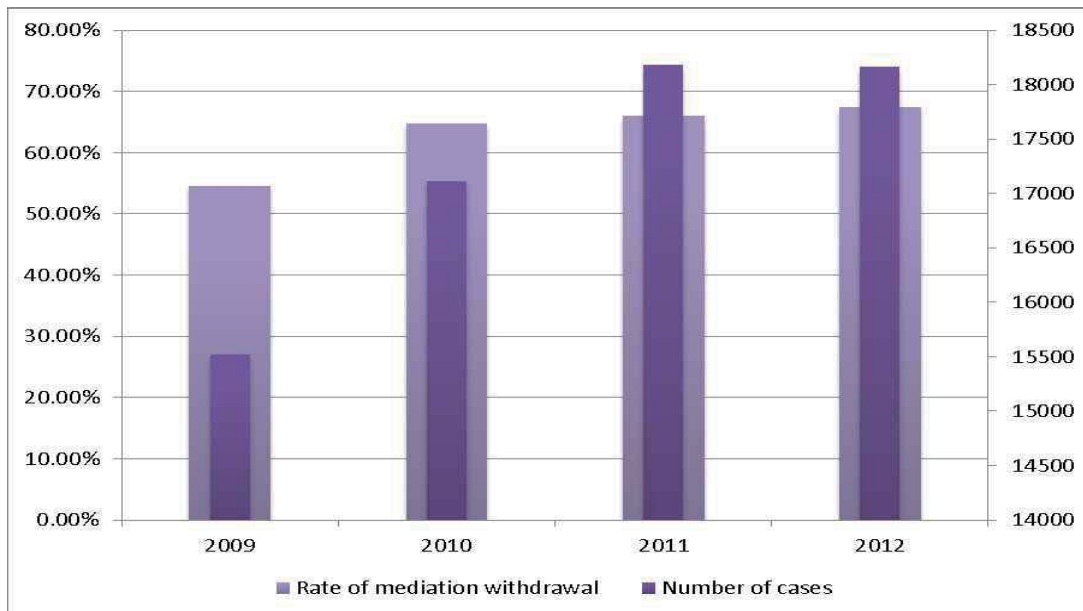
Chinese courts do not publish their opinions widely. Yet those opinions that are available show that despite the new provisions of the Tort Liability Law, in the one and a half years since the Law went into effect, Chinese courts have not significantly changed their views on the quantification of product tort liabilities and the appropriate remedies. Although the Tort Law allows an aggrieved party to claim punitive damages or emotional distress damages, in practice Chinese courts tend to strictly interpret these provisions in product liability cases. This may be due to the fact that higher-level courts, such as the Supreme People's Court, have not provided any substantial interpretation or guidance to actively support the application of punitive damages after the enactment of the Tort Law. The Intermediate People's Court of Guangzhou held in two food-related product liability cases in late 2010, that two elements must be met before the court grants punitive damages. First, the product was not compliant with food safety standards and the tortfeasor knew of the non-compliance; second, serious damage to life or health was actually incurred. Lack of either of these two elements will result in the court's denial of punitive damages. Thus, there is a heavy burden on the plaintiff to prove that the manufacturer or the distributor "knowingly" manufactured or sold defective products.

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These circumstances could be testified in the following case studies, and some other circumstances will be approached too.

Data from the Shanghai Higher People's Court indicated that the customer protection related cases showed a trend that it happened more and more often. With the rise in the number of cases, the rate of mediation withdrawal has a significant increase than five years earlier. For detailed data, please see the table below :³⁵⁾

Year	Number of cases	Rate of mediation withdrawal
2009	15521	54.60%
2010	17109	64.70%
2011	18180	66.00%
2012	18164	67.50%



35) Data received from a Survey of the Shanghai Higher People's Court, 2012.

a. A Statistics of Product Liability Dispute Case in Shanghai Courts

The detailed numbers came from a survey of the Shanghai Higher People's Court. The survey counted several types of cases, including contract disputes involving the interests of consumers and infringement disputes such as product liability related cases. Although it's a survey based on the view of consumer protection, the number of cases strictly related to product liability has not been isolated.

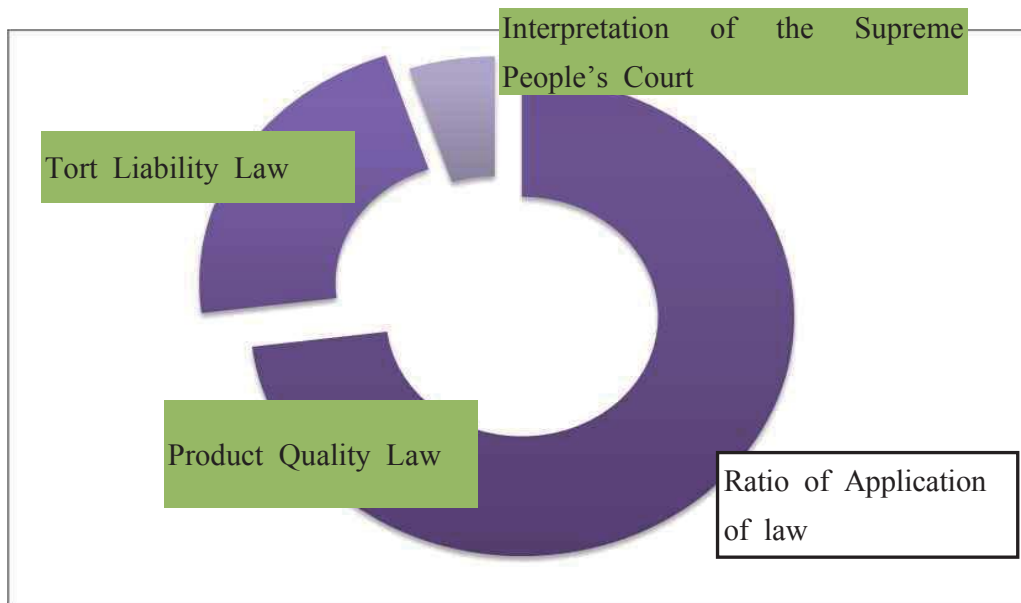
Even on a national scale, there won't be more than 2000 cases strictly related to product liability, after the new Tort Liability Law of the People's Republic of China has gotten into effect on July 1st, 2010, the number of cases related to product liability has not changed much, Product liability won't be the first choice for the plaintiff to receive compensation; they may sue for personal injury tort liability or go to the Consumers' Association - which is called Consumer Protection Commission at Shanghai City - for the complaints. And if they do sue for product liability, the two elements stated above should be strictly proven for the purpose of punitive damages, the burden of proof, which is too heavy for a regular consumer.

This circumstance leads to the appearance of professional anti-defeat men, who buy the defective products on purpose for chasing after punitive damages. Although it is still controversial whether professional anti-defeat men should be recognized as consumers, in legal practice, these cases would be closed smoothly and quickly because the facts and evidences are professional enough to make producers agree on paying the compensation.

Among the cases within the scope of Shanghai that are strictly related to product liability, certain tendencies could be found in the application of law. The number of the courts that applied the Law of the People's Republic of China on Product Quality are about three times to the number of the courts

III. An Empirical Analysis on Product Liability Dispute in Shanghai

that applied the new Tort Liability Law of the People’s Republic of China. Further, in the event cases involved personal injury, the courts preferred to apply the Interpretation of the Supreme People’s Court on Certain Issues concerning Determination of Liability for Compensation for Spiritual Damage Arising from Civil Tort to determine the spiritual damage.



ii . Microanalysis

Some typical cases were gathered to analyze the operation of product liability law in Shanghai courts.³⁶⁾

Case 1

Case Name	Jiangsu Province Jing’an Industrial Equipment Installation Co., Ltd. v. Defendant Jiangyan City Jiangdong Marine Valve Co., Ltd. maritime personal injury compensation disputes
Case No.	(2010)HGMS(H)ZNo.84

³⁶⁾ Data received from the database of Shanghai Higher People’s Court.

a. A Statistics of Product Liability Dispute Case in Shanghai Courts

Case Type	Maritime personal injury compensation disputes
Court	Shanghai Higher People's Court
Level of Trial	Trial of second instance
Summary	Under the law, producers should be liable for the personal and property damage resulting from product defects. Jingan company was employed by New Age company; accidents in the case was caused by installing the products Jiangdong company delivered. Jiangdong company should be liable for the personal injury and property damage, which was caused by a cracked valve. Jingan company as the installation and commissioning party, after an injury has occurred, took active measures, and paid for casualty, preventing further expansion of the damage, their actions were without undue delay. Due to the fact that they had paid the victim reasonable compensation of personal injury, there is legal basis for Jingan company to recover the loss from Jiangdong company.
Application of Law	Law of the People's Republic of China on Product Quality Articles 13, 27
Judgment	Reject the appeal and uphold the original verdict.

Case 2

Case Name	Lo, Chen, Mei and Lo v. A Motors Limited and B vehicle maintenance center product liability dispute
Case No.	(2011)JMY(M)CNo.5558
Case Type	Product liability dispute
Court	Shanghai Jiading District People's Court

III. An Empirical Analysis on Product Liability Dispute in Shanghai

Level of Trial	Trial of first instance
Summary	The Court finds that according to the rules of evidence in civil litigation, the parties have the responsibility to provide evidences to prove that the proposed claim or the refusal to the other's litigation request is based on facts. In case of a tort action resulting from damage caused by a defective product, the manufacturer of said product shall bear the burden of proof for the existence of the grounds of exemption from liability as provided for by law; according to the rule of "who alleges, adduces evidence," the plaintiff shall undertake the burden of proof for the components of the product liability.
Application of Law	Tort Liability Law of the People's Republic of China Articles 41, 42
Judgment	Non-suit.

Case 3

Case Name	Bai v. Shanghai A Building Materials Co., Ltd. and B Industry Co., Ltd.
Case No.	(2011)LMY(M)CN0.1951
Case Type	Product liability dispute
Court	Shanghai Luwan District People's Court
Level of Trial	Trial of first instance
Summary	The Court finds where the damage to the property of the victim is caused by the defect in a product, the person liable shall restore the damaged property to its original state, or pay compensation at the market price. If the victims suffer other serious losses, the person liable shall compensate for such losses.

a. A Statistics of Product Liability Dispute Case in Shanghai Courts

Application of Law	Law of the People's Republic of China on Product Quality Articles 4, 26, 27, 41, 43, 44
Judgment	The Shanghai B Industry Co., LTD. shall compensate the plaintiff for the cost of decorating a house, rent loss, and appraisal cost total of up to RMB 268,768.02 within five days of the enforcement of this decision. Reject other claims of the plaintiff.

Case 4

Case Name	Zhang, Wang v. A water treatment equipment company and B company product liability dispute
Case No.	(2012)PMY(M)CNo.560
Case Type	Product liability dispute
Court	Shanghai Putuo District People's Court
Level of Trial	Trial of first instance
Summary	The Court finds that a citizen's lawful property shall be protected by law, if a product is defective through the fault of the seller and results in damage to others, the seller shall bear tort liability.
Application of Law	Tort Liability Law of the People's Republic of China Articles 42, 43
Judgment	Defendant should pay the cost of decoration, drainage, cleaning, furniture restoration, water and electricity, a total of up to RMB 43802.00, within 10 days after the sentencing takes effect. Company A and B shall bear joint compensation and payment obligations. Reject other claims of the plaintiff.

III. An Empirical Analysis on Product Liability Dispute in Shanghai

Case 5

Case Name	Shan and Xu v. Shanghai Kaineng Environmental Protection Equipment Co., Ltd. and Shanghai Macalline Furniture market management Co., Ltd. product liability dispute
Case No.	(2011)XMY(M)CNo.1071
Case Type	Product liability dispute
Court	Shanghai Xuhui District People's Court
Level of Trial	Trial of first instance
Summary	<p>The Court finds that to confirm whether the product has defects in it, is not only a matter of review of design, materials, manufacturing defects, but also review about the instructions on the defects; in other word, for products with a special quality and method of use, manufacturers should give instructions and warnings.</p> <p>In this case, the special quality means the water press limit of the defendant's product, which hasn't been warned to the plaintiff, of which the court finds the defendant hasn't fulfilled the instruction obligation, thus, there is defect in the product.</p>
Application of law	Tort Liability Law of the People's Republic of China Article 19, 41
Judgment	<p>Defendant Shanghai Kaineng Environmental Protection Equipment Co., Ltd. should pay the compensation, total of up to RMB 93,676.00, within 10 days after the sentencing takes effect.</p> <p>Reject other claims of the plaintiff.</p>

a. A Statistics of Product Liability Dispute Case in Shanghai Courts

Case 6

Case Name	Yang v. Liu product liability dispute
Case No.	(2012)PMY(M)CNo.18465
Case Type	Product liability dispute
Court	Shanghai Pudong District People's Court
Level of Trial	Trial of first instance
Summary	The Court finds that producers shall be liable for the quality of the products they produce. The products shall meet the following quality requirements, constituting no unreasonable threats to personal safety or safety of property, and conforming to the national standards or the sectoral standards for ensuring human health, personal safety, and safety of property, where such standards exist.
Application of Law	Tort Liability Law of the People's Republic of China Article 41 Law of the People's Republic of China on Product Quality Articles 26, 46 Interpretation of the Supreme People's Court on Certain Issues concerning Determination of Liability for Compensation for Spiritual Damage Arising from Civil Torts Articles 1, 10
Judgment	Defendant should pay the compensation; total of up to RMB 1,836.60, within 10 days after the sentencing takes effect.

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Case 7

Case Name	Chen v. Qingdao A beer Co., Ltd., Fujian Fuqing B beer Co., Ltd. and Shanghai C Co. Ltd. product liability dispute
Case No.	(2010)PMY(M)CNo.22673
Case Type	Product liability dispute
Court	Shanghai Pudong District People's Court
Level of Trial	Trial of first instance
Summary	The Court finds that if a producer's defective product causes physical injury to a person or damage to property other than the defective product itself (hereinafter referred to as another person's property), he shall be liable for compensation.
Application of Law	Tort Liability Law of the People's Republic of China Article 41 Law of the People's Republic of China on Product Quality Article 29 Interpretation of the Supreme People's Court on Certain Issues Concerning the Application of Law in Trying Cases Involving Compensation for Personal Damage Articles 17, 18, 18, 20, 21, 24
Judgment	Defendant should pay the cost of medical charges, transportation, accommodation, lost income, lawyer, nursing and nutrition; total of up to RMB 10,098.20, within 15 days after the sentencing takes effect.

Case 8

Case Name	Zhang v. Company 1 and Company 2 product liability dispute
Case No.	(2010)HYZMY(M)ZNo.2332
Case Type	Product liability dispute

a. A Statistics of Product Liability Dispute Case in Shanghai Courts

Court	Shanghai No. 1 Intermediate People's Court
Level of Trial	Trial of second instance
Summary	The Court finds that a product quality damage compensation dispute should be recognized as part of an infringement dispute, so it should meet the constitutive requirements of tort liability. According to Article 42 of the Law of the People's Republic of China on Product Quality, where physical injury is caused to a person or damage to another person's property by a product's defect resulting from the seller's fault, the seller shall be liable for compensation. Where the seller can identify neither the producer of the defective product nor the supplier thereof, he shall be liable for compensation.
Application of Law	Law of the People's Republic of China on the Protection of Consumer Rights and Interests Article 22 Law of the People's Republic of China on Product Quality Articles 4, 26, 40, 41, 42, 43, 44 Interpretation of the Supreme People's Court on Certain Issues concerning Determination of Liability for Compensation for Spiritual Damage Arising from Civil Torts Articles 1, 8 Interpretation of the Supreme People's Court on Certain Issues Concerning the Application of Law in Trying Cases Involving Compensation for Personal Damage Articles 18, 19, 21, 22, 24, 25, 35
Judgment	Reject the (2009)PMY(M)CN0.15049 judgment. Defendant should pay the cost of medical charge, disability compensation, transportation, photography, lawyer, nursing and nutrition; total of up to RMB 77,020.00, within 15 days after the sentencing takes effect.

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Case 9

Case Name	Song, Li and Song v. Shanghai GM Co., Ltd. product liability dispute
Case No.	(2010)HEZMY(M)ZNo.1483
Case Type	Product liability dispute
Court	Shanghai No. 2 Intermediate People's Court
Level of Trial	Trial of second instance
Summary	The Court finds that producers shall be liable for the quality of the products they produce. The products shall meet the following quality requirements, constituting no unreasonable threats to personal safety or safety of property, and conforming to the national standards or the sectoral standards for ensuring human health, personal safety and safety of property, where such standards exist. If a producer's defective product causes physical injury to a person or damage to property other than the defective product itself (hereinafter referred to as another person's property), he shall be liable for compensation.
Application of Law	Law of the People's Republic of China on Product Quality Article 41
Judgment	Reject the original verdict. Reject all claims of plaintiffs. Allow the defendant to pay the compensation willingly; total of up to RMB 70,000.00, within 30 days after the sentencing takes effect.

1. Criterion of Liability

Through the cases above, we could find the criterion of liability in China's product liability system. According to the Law of the People's Republic of China on Product Quality, Article 46, for the purposes of this Law, "defect"

means an unreasonable threat to personal safety or to safety of another person's property. Where there are national or sectoral standards for ensuring human health, personal safety and safety of property to measure up to, "defect" means failure to measure up to such standards. The two standard are namely, "unreasonable threat to personal safety" and "national or sectoral standards." In Case 5, the Court made it clear that the warning of the defect should be recognized as the producer's obligation and a part of the standard.

Even the Law of Product Quality has the "unreasonable threat to personal safety" standard, however, the courts seem to be unwilling to apply the same in these cases. Because of lack of the specific guidance from the Supreme Court, the courts use civil judicial discretion, discreetly. In the meantime, if any plaintiff needs to prove the producer's product has "unreasonable threat to personal safety," the burden of proof should be borne by himself; this is another reason as to why this kind of standard is barely used in the court.

In short, the criterion of liability in China's product liability system is a kind of prevention, and the standard of "unreasonable threat to personal safety" is indistinct. This makes a lot of courts reach the verdicts with a lack of clear basis; judgments of similar cases might be different or even opposite.

Further, the "national or sectoral standards" might not consider safety as its priority; in fact, cases where products meet the standards frequently caused danger and damage.

The laws in China currently do not attach importance to the classification of a defective product, which is not conducive to product liability cases on trial.

III. An Empirical Analysis on Product Liability Dispute in Shanghai

2. Conceptual Standards for Defectiveness

Chinese conceptual standards for defectiveness is not clearly defined in the law, as a result, similar cases end up using different conceptual standards in the actual product liability case.

Scholars also have different points of view on this issue; there are several kinds of conceptual standards such as, fault liability principle, doctrine of presumption, strict liability, and the combination of fault liability principle and strict liability.

In the cases above, it's hard to determine which principles each case used, because the different courts interpreted the cases in a different way.

3. Punitive Damages

Through the analysis on the cases above, it can be seen that China has not established a system of punitive compensation; the related rules are dispersed in different statues, such as Article 49 of PRC Law on the Protection of Consumer Rights and Interests, Article 113(2) of the People's Republic of China Contract Law, and Article 96(2) of Food Safety Law of the People's Republic of China. Although these rules have the function of punitive compensation, both in theory and practice, there exists a dispute on whether China really has punitive compensation or not. In addition, these provisions regulate a small amount of compensation and do not cover a wild field of products so that they played a limited role in protecting consumers' rights and interests until the PRC Tort Liability Law enacted in December 2009. Article 47 states, "In the event of death or serious damage to health arising from a product that is manufactured or sold when it is known to be defective, the infringer shall be entitled to claim corresponding punitive compensation." This Article

b. Consumer Complaints Statistical Data about Product Liability Disputes

is a symbol that China recognizes the system of punitive compensation and put hot disputes to an end. However the Tort Liability Law of People's Republic of China only established a principle of punitive compensation without describing in detail the concrete method on applying punitive compensation, the sum of compensation, and what needs to be taken into consideration when determining punitive compensation. As a result, it leaves the court still with no specific legal regulation to base determination on punitive compensation.

In the several cases above, almost all the plaintiffs raised a claim for punitive damages, but the court didn't approve any of them.

b. Consumer Complaints Statistical Data about Product Liability Disputes

i . Complaints by Type

The data we acquired from the CCA (China Customers' Association) showed the different rates of all kinds of complaints.

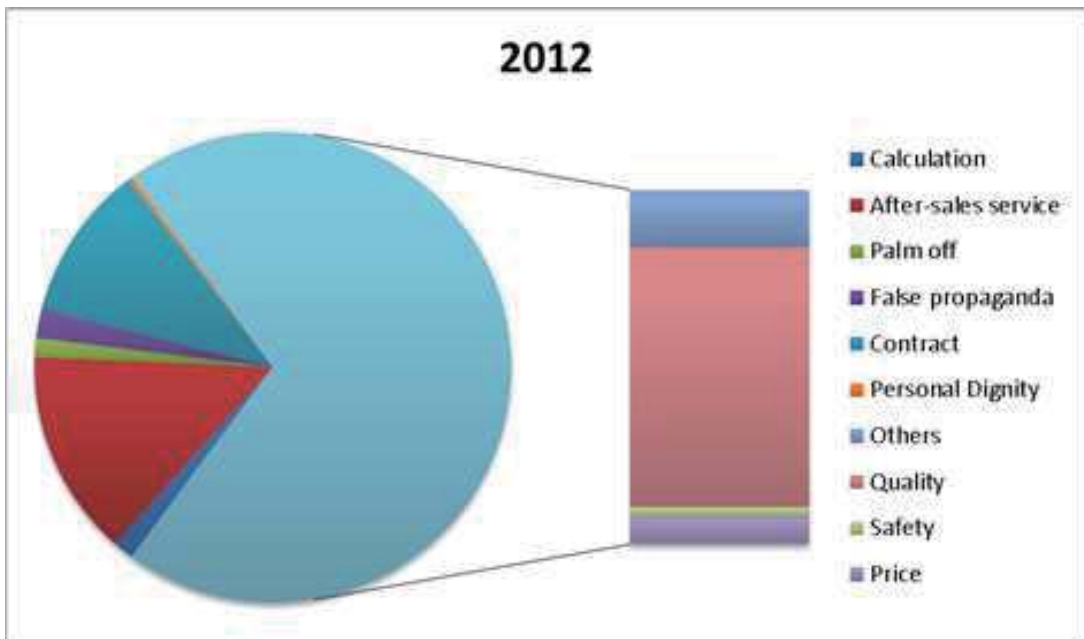
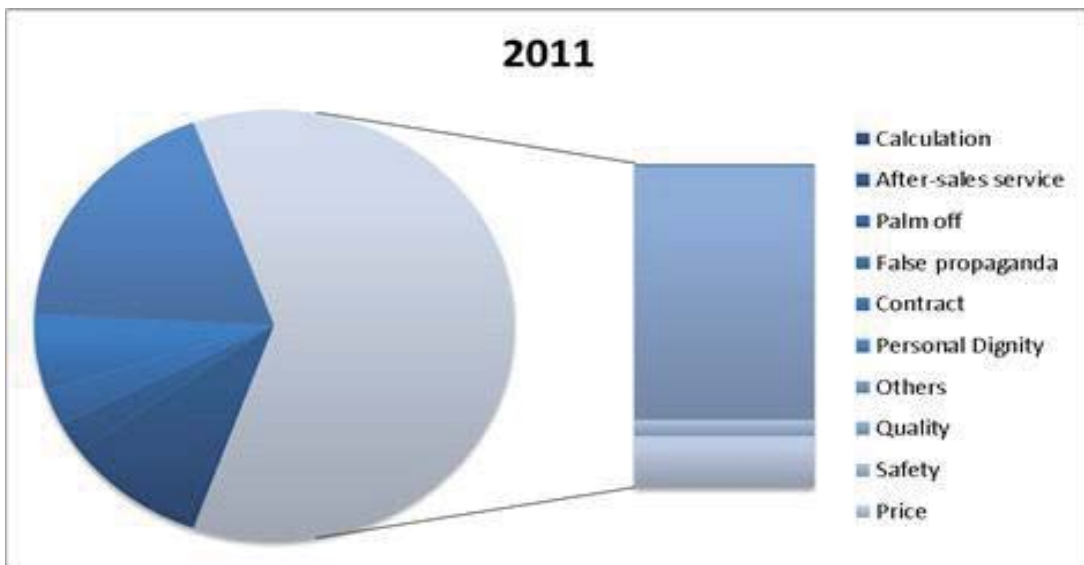
The situations of the years of 2011 and 2012 are listed as followed : ³⁷⁾

Subjects	2012	Rate	2011	Rate
Quality	280,511	51.6	304,846	50.2
Safety	9,435	1.7	10,216	1.7
Price	29,516	5.4	32,179	5.3
Calculation	7,691	1.4	7,733	1.3
After-sales Service	76,917	14.2		

37) Data from the Website of CCA : [http : //www.cca.org.cn/web/xfts/newsShow.jsp?id=60898](http://www.cca.org.cn/web/xfts/newsShow.jsp?id=60898) visited at 2013.7.15

III. An Empirical Analysis on Product Liability Dispute in Shanghai

Palm Off	7,028	1.4	9,062	1.5
False Propaganda	11,074	2	19,049	3.1
Contract	57,487	10.6	62,781	10.3
Personal Dignity	1,656	0.3	1,857	0.3
Others	62,023	11.4	159,540	26.3



b. Consumer Complaints Statistical Data about Product Liability Disputes

The latest data about the first half year of 2013 is listed as followed :

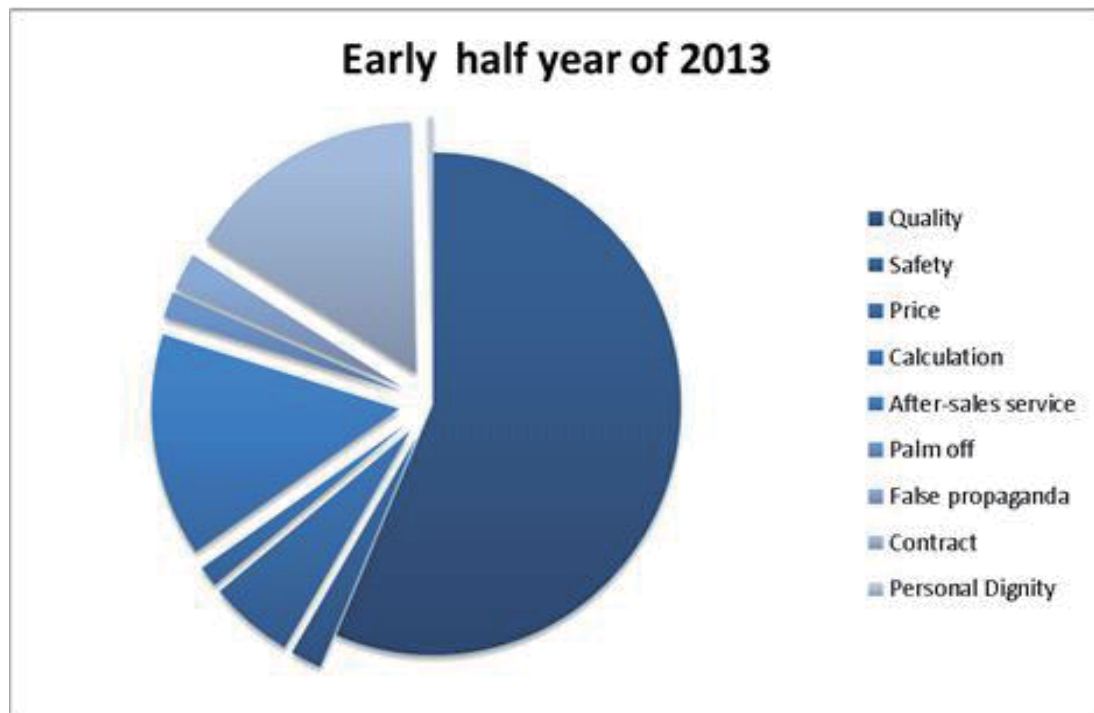
Subjects	First half year of 2013	Rate
Quality	125296	47.2
Safety	4535	1.7
Price	12257	4.6
Calculation	3049	1.1
After-sales Service	32078	12.1
Palm off	3690	1.4
False Propaganda	5415	2
Contract	35016	13.2
Personal Dignity	749	0.3

These numbers were counted until the end of last month, July 25th, 2013.

As we can see, the number of cases remains the same as the same period last year with a 5% reduction on the Quality and Safety related cases.

Further, the number of CCA cases is far more than the number of consumer protection related cases accepted by the courts. This could be because of mediation withdrawals and consumers opting for unofficial, alternative means of resolution.

III. An Empirical Analysis on Product Liability Dispute in Shanghai



ii . Resolution of Complaint³⁸⁾

Subject	First half year of 2013	First half year of 2012
Acceptance	265,572	256,713
Resolution	244,601	234,371
Resolution Rate (%)	92.1	91.7
Recuperation(RMB 10k)	59,057	26,335
Number of double compensation cases	3,628	3,320

38) Data from the Website of CCA : [http : //www.cca.org.cn/web/xfts/newsShow.jsp?id=63380](http://www.cca.org.cn/web/xfts/newsShow.jsp?id=63380) visited at 2013.7.30

b. Consumer Complaints Statistical Data about Product Liability Disputes

Subject	First half year of 2013	First half year of 2012
Total of double compensation(RMB 10k)	864	555
Visiting number	86	105

These numbers showed the China Consumer Association's situation about acceptance, resolution and double compensation cases of the first half year of 2013 and 2012.

As can be seen, the number of double compensation cases is 1.48 percent of the total number of resolution cases. It's a little increase from the previous year, but still the number is so small that it appears there is no consensus reached regarding punitive damages, which would help the development of the product liability system in an economic way. Almost all of the double compensation cases applied Article 49 of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests, which provides, "Business operators engaged in fraudulent activities in supplying commodities or services shall, on the demand of the consumers, increase the compensations for victims' losses; the increased amount of the compensations shall be one time the cost consumers paid for the commodities purchased or services received."

The new Tort Liability Law stipulates in Article 47, "In the event of death or serious damage to health arising from a product that is manufactured or sold when it is known to be defective, the infringer shall be entitled to claim corresponding punitive compensation, barely been used in the compensation claims, which is too heavy burden of proof for the consumers."

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Article 32 of Consumer Rights and Interests Protection Law provides, “The function of consumer associations, explicitly gave the association social supervision functions.” The type of social supervision of consumer association could be recognized as an external oversight imposed on operators through goods and services. In accordance with the divided community supervision function of the whole process, social supervision of consumer association can be divided into three kinds; antecedent supervision, supervision in the act, and post supervision. For example, “education, information and advice services for consumers” will be a kind of antecedent supervision; “conducting consumer surveys, consumer experience, product comparison, review products and services” is a supervision in the act; and “accepting the handling of complaints, consumer tips, consumer alerts, exercise of the right to public criticism” would be considered post supervision.

From the above functions, it is not hard to find that the object of social supervision of consumer associations is mainly on the goods and services provided by merchants; the data above proves the fact that more than half of the all cases were about product quality. There are two main components : direct participation of relevant administrative departments to the supervision and inspection of goods and services, and exposure and criticism of damages to the lawful rights and interests of consumers through mass media.

Consumer associations participated in the supervision and inspection activities of the departments of national administration. On one hand, such participation aids the consumer associations to have a fuller understanding and grasp of the situation relating to goods and services by conducting supervision of the merchants. This is because in some areas, consumers lack sufficient information to make proper assessments on the quality and quantity of services.

b. Consumer Complaints Statistical Data about Product Liability Disputes

Either because buyers are not the final consumers of the service, there is a missing link, or because the nature of the service itself is too complex for consumers to assess. Therefore, for the purpose of supervising the goods and services, consumers need a certain platform and rely on a certain organization. On the other hand, such participation urges the executive authorities of the countries concerned to strictly perform their duties, and carefully carry out their supervision and inspection work. However, as the data showed, when faced with a wide range of market information and merchants' behavior, social supervision of consumer associations was somewhat superfluous or unnecessary; the oversight function clearly was inadequately played. In an environment with conspicuous producer-consumer problems and many recurring incidents, the social surveillance function of consumers association is very vague and weak.

Although the Chinese consumer rights and interests protection system is improving step by step, consumer disputes still appear constantly. According to the data, the number is increasing every year; this explains, that the current administrative protection mechanism of consumer rights and interests still have many deficiencies, and protection system need yet to be perfected. The protection mechanism provided by industrial and commercial administrative departments, especially, paid too much attention on the relief after the fact, giving consumers rights to complain and sue after their interests have been infringed. But ex post facto remedies haven't well protected the interests of consumers. Most consumer disputes are recurrent, multiple, and small, that they think it's not worth much in a law suit and choose to give up. That's why the CCA data shows a much larger figure than the case number from the courts.

c. Legal Regulation on Foreign-related Product Liability - Comparison with Korean Law

i . The Application of Law in Foreign-related Product Liability from Consumer Protection Viewpoint

Product liability, as a special liability for tort, originated from the United States and Britain in the 1920s. After World War II in the 1960s, product liability became more and more important so that many states established their own product liability law. The United States has established principles of strict product liability; the rest of the world, legislatures have also taken the lead in imposing strict liability for defective products. In Europe, a movement towards strict liability began with the Council of Europe Convention on Products Liability in regard to Personal Injury and Death (the Strasbourg Convention) in 1977. On July 25, 1985, the European Economic Community adopted the Product Liability Directive. The directive stated that “liability without fault on the part of the producer is the sole means of adequately solving the problem, peculiar to our age of increasing technicality, of a fair apportionment of the risks inherent in modern technological production.”³⁹⁾ The Directive only imposed strict liability upon manufacturers or importers, and deviated significantly from the U.S. model by refusing to impose strict liability on purely domestic distributors or retailers. The legislatures of many other countries outside the EEC subsequently enacted strict liability regimes based on the European model that is, generally applying only to manufacturers and importers, including South Korea (January 2000), Japan (June 1994) and etc.

39) EU Council Directive 85/374/EEC, 25 July 1985

The inconsistency of national product liability legislation led to the conflict of foreign-related product liability. Therefore, choosing the applicable law has become the key point in foreign-related lawsuits. Foreign-related product liability is the area of law in which different countries' manufacturers, distributors, suppliers, retailers, and others who make products available to the public are held responsible for the injuries those products cause. By the 1970s, in order to strengthen international cooperation in free trade and eliminate the conflict of national product liability laws, regional and international legal documents and international conventions in the product liability system also have emerged (e.g. Convention on the Law Applicable to Products Liability (Hague Conference, October 1973)), and product liability law has formed a unified system.

China first enacted the Product Quality Law in October of 1993 but the law was a little weak on the product liability. With the steadily increasing of product cases throughout the 2000s, China finally enacted a much stronger Tort Liability Law in December 2009, followed by a Law on Application of Laws to Foreign-Related Civil Relations of the PRC (the Choice-of-Law Statute), in April 2011. The Choice-of-Law Statute covers aspects of application of law and choice of law rules in foreignrelated product liability cases; the Tort Law contains major adjustments to substantive law regarding product liabilities.

South Korea enacted the Product Liability Act (PLA) on July 2002. The purpose of this Act is to protect consumers against damages caused by defective products, and contribute to the safety of the citizen's life and sound development of the national economy by regulating the liability of manufacturers, etc. for damages caused by the defectiveness of their products.⁴⁰⁾ Prior

40) Article 1 KR Product Liability Act (2002)

III. An Empirical Analysis on Product Liability Dispute in Shanghai

to the enactment of the PLA, claims for harm caused by defective products were based on general tort principles provided under the Korean Civil Code. The Private International Act (PIA) was amended in 2011 and covers the international jurisdiction, as well as aspects of application of law and choice of law rules in foreign-related affairs.

See the table below for the application of law in foreign-related product liability disputes in China and South Korea.

	China	South Korea
Category	Foreign-related tort	Foreign-related tort
Connecting Factors	<ul style="list-style-type: none"> • The most significant relationship • Law of habitual residence • Lex fori • Lex loci delicti • Law of the place of business of the defendant 	<ul style="list-style-type: none"> • “most closely” principle • Law of habitual residence • law of nationality
Renvoi	Remission	Remission
Applicable Law	Tort Liability Law (2010) Protection of Consumer Rights and Interests Law (1993) Product Quality Law (2000) General Civil Law (1987)	Product Liability Act (2002) Civil Act (2009)

In the conflict of law, connecting factors are facts that tend to connect a transaction or occurrence with a particular law or jurisdiction. With the viewpoint from protecting consumers and users’ profit, the rule of the application of foreign-related product liability is more flexible than the application of general tort. The following are the connecting factors usually used in foreign-related product liability suits : (1) Domicile, residence, nationality,

or place of incorporation of the parties; (2) The place of conclusion or performance of the contract; (3) The place where the tort or delict was committed.

According to the PRC Law on Application of Laws to Foreign-Related Civil Relations, there are four connecting factors for choosing applicable law in China : the most significant relationship⁴¹⁾, law of habitual residence⁴²⁾, lex fori and lex loci delicti. The most significant relationship and law of habitual residence are widely used in the choice-of-law statute all over the world. When a case comes before a court and all the main features of the case are local, the court will apply the lex fori, the prevailing municipal law, to decide the case. It states definitely in Article 8 that lex fori shall apply in determining the nature of foreign-related civil relations.⁴³⁾ However if there are “foreign” elements to the case, the forum court may be obliged under the conflict of laws system to consider. Lex loci delicti is the term for “law of the place where the tort was committed.” Article 45 states, “Product liabilities shall be governed by laws of the habitual residence of the infringed party. Where the infringed party chooses to apply laws of the place of principal office of the infringer or lex loci delicti, or the infringer does not engage in relevant business activities at the habitual residence of the infringed party, laws of the place of principal office of the infringer or lex loci delicti shall apply.”⁴⁴⁾ Accordingly, a plaintiff, Chinese or foreign, can choose to have the Chinese People’s Court apply to his case either the substantial law of the place where he has his habitual residence or, alternatively, the law of the place of business of the defendant or the law of the

41) Article 2 PRC Law on Application of Laws to Foreign-Related Civil Relations (2010)

42) Article 11 PRC Law on Application of Laws to Foreign-Related Civil Relations (2010)

43) Article 8 PRC Law on Application of Laws to Foreign-Related Civil Relations (2010)

44) Article 45 PRC Law on Application of Laws to Foreign-Related Civil Relations (2010)

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place where the tort has taken place. However, if the defendant has no relevant business operation at the habitual residence of the plaintiff, the latter can only choose between the law of the place of business of the defendant or the law of the place where the tort has taken place. This provision is newly stated in PRC Law on Application of Laws to Foreign-Related Civil Relations especially to product liability. As a result, the plaintiff may thus increase the liabilities of the manufacturer and sellers, and their exposure to higher damage compensation by choosing the substantial law most favorable to his case. What's more, the plaintiff also can choose to apply the laws between the defendant's main business place, for instance the laws of a manufacturer's home country, and the laws of the location where damages occur, such as China. And whether the defendants have actual business presence in China or engage in business operation activities in China will become a decisive factor on whether the plaintiff can exercise that option or not.

According to the Korean Private International Act (PIA 2011), there are three connecting factors of choosing applicable law in China : the “most closely” principle⁴⁵⁾, the law of habitual residence,⁴⁶⁾ and the law of nationality. The “most closely” principle would effectively give judges discretion to base judgment on laws that are most closely related to the legal relations of the litigations; and to all legal relations between the determination of applicable law and the active introduction and implementation of the most extensive range of principles most closely in contact. Korea has a special connecting factor; the law of nationality, which is stated in the PIA : “In case the law of nationality of a party shall govern, if the party has two or more nationalities, the law of the country, which is most closely connected

45) Article 3(3) Korean Private International Act (2011)

46) Article 4 Korean Private International Act (2011)

with the party, shall be the law of nationality; if one of the nationalities is the Republic of Korea, then the law of the Republic of Korea shall be the law of nationality.”⁴⁷⁾ It has the advantages of being more easily ascertained, more certain, difficult to change, and difficult to evade law.

Both of China and South Korea haven't joined the Convention on the Law Applicable to Products Liability. The applicable laws of the foreign-related product liability in China are mainly Tort Liability Law (2010) and Product Quality Law (2000); also, some provisions are in the Protection of Consumer Rights and Interests Law (1993) and General Civil Law (1987). As mentioned above, the PRC Tort Liability Law came into force on 1 July 2010. In addition to principles generally applied to tort cases, the law specifies seven types of tort liability; one of them is product liability, which is stated in a single section-Chapter V. It was designed to collect several pre-existing lowerlevel regulations, rules, and judicial interpretations, such as Product Quality Law and codify them at the highest level of legislation so that there exists a repetition of pre-existing law. The applicable law of the foreign-related product liability in Korea is mainly the Product Liability Act (2002) and a few provisions in other statutes such as the Civil Act (2009). Korea has an independent single law specifically regulating product liability.

ii . Product Liability Determination Standards in China and Korea Foreign-related Product Liability

Products Liability distinguishes between three major types of product liability claims : manufacturing defect, design defect, and a failure to warn. Manufacturing defects are those that occur in the manufacturing process and usually

47) Article 3(1) Korean Private International Act (2011)

III. An Empirical Analysis on Product Liability Dispute in Shanghai

involve poor-quality materials or shoddy workmanship. Design defects occur where the product design is inherently dangerous or useless (and hence defective) no matter how carefully manufactured. Failure-to-warn defects arise in products that carry inherent non-obvious dangers that could be mitigated through adequate warnings to the user, and these dangers are present regardless of how well the product is manufactured and designed for its intended purpose.⁴⁸⁾

PRC Product Quality Law states : For the purposes of this Law, “defect” means one that constitutes an unreasonable threat to personal safety or to safety of another person’s property; where there are national or sectoral standards for ensuring human health, personal safety, and safety of property to measure up to, “defect” means failure to measure up to such standards.”⁴⁹⁾ This provision describes not only the definition of “defect” but also the determination standards, i.e. the standard of “unreasonable threat” and mandatory standards like national or sectoral standards. China learnt from American “Restatement of Torts Second (1965)” which states : “One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property.”⁵⁰⁾ The core is that the defective product contains unreasonable danger. However in the aspects of defining unreasonable danger and specifically identifying the standards of product defects, the provisions of the two countries are quite different, which reflect the disinterested legal policy orientation in the balance of producers, sellers and consumers. China’s double standard of exterminating

48) Wikipedia : Product liability

49) Article 46 PRC Product Quality Law (2000)

50) Article 402a(1) Restatement of Torts Second (1965)

the defect both has its advantage and disadvantages. Dual judgment of the “defect” fails to protect the legitimate rights and interests of consumers. In practice there is still room for improvement.

The Korean PLA is quite more specific in defining product liability determination standards. “Defect” means a flaw or a lack of reasonably expected safety in the manufacture, design or labeling of a product as specified in the following subparagraphs. It has three types : defect in manufacture, defect in design, and defect in labeling. “Defect in manufacture” means a flaw in the manufacture of a product which makes the product different from the way it is designed, thereby making it unsafe, regardless of the care the manufacturer has taken in the process of manufacture. “Defect in design” means a flaw in the design of a product which the manufacturer could have avoided by adopting a safer design, thereby preventing or reducing harm or injury the product has caused. “Defect in labeling” means a failure on the manufacturer’s part to provide adequate descriptions, directions or warnings which could have prevented or reduced the harm or injury the product has caused.⁵¹⁾

Product liability determination standards	
China	<ul style="list-style-type: none"> • Unreasonable threat • Specifically identifying the standards
Korea	<ul style="list-style-type: none"> • A flaw or a lack of reasonably expected safety • Defect in Manufacture • Defect in Design • Defect in Labeling

51) Article 2-2 Product Liability Act (2002)

iii. Product Liability Imputation Principle in China and Korea Foreign-related Product Liability

The principle of imputation in product liability reflects the objective of product liability law and value of lawmaking; it is the standard and foundation that determines product liability in practice too. Generally speaking, the imputation principles of product liability has gone in turn through the no-liability, fault liability, strict liability, and binary principle times in which fault liability and strict liability concur so far. Further, strict liability has become the general principle of imputation of major western industrialized nations in product responsibility law. The principle of imputation in product liability is the key to constructing the overall frame of product liability law system.

According to the PRC General Principles of Civil Law, if a substandard product causes property damage or physical injury to others, the manufacturer or seller shall bear civil liability according to law. If the transporter or storekeeper is responsible for the matter, the manufacturer or seller shall have the right to demand compensation for its losses.⁵²⁾ Not only the PRC Civil Law, but also the PRC Product Quality Law regulates the imputation principle. It states if a producer's defective product causes physical injury to a person or damage to property other than the defective product itself (hereinafter referred to as another person's property), he shall be liable for compensation.⁵³⁾ Where physical injury is caused to a person or damage to another person's property by a product's defect resulting from the seller's fault, the seller shall be liable for compensation.⁵⁴⁾ The PRC General Civil Law indi-

52) Article 122 PRC General Civil Law (1987)

53) Article 41 PRC Product Quality Law (2000)

54) Article 42 PRC Product Quality Law (2000)

cates the strict liability in the product liability imputation principle while the PRC Product Quality Law indicates the fault liability or presumption of fault liability. There exist some problems in the legislation of principle of imputation in product liability. It has contradictions to different laws which makes the principle of imputation in product liability too ambiguous, that such legislation brings about deviation easily in judicial practice.

The Korean product liability imputation principle experienced two stages : from tort liability to no-fault liability. Although Korean precedent and most scholars support tort liability, PLA states : “A Manufacturer shall be liable to compensate for any injury that his/her product has caused to the lives, bodies or property of its users.”⁵⁵⁾ It indicates to the no-fault liability where the infringer is not intentional or negligent.

Product Liability Imputation Principle	
China	<ul style="list-style-type: none"> • Strict liability (General Civil Law) • Fault liability (Product Quality Law)
Korea	<ul style="list-style-type: none"> • No-fault liability

iv. Product Liability Compensation Standard in China and Korea Foreign-related Product Liability

If a defective product infringes the personal or property safety of others, the subject of duty shall compensate the infringer, as product liability compensation. Generally, product liability compensation includes physical injury compensation, property damages, and mental damages.

China has four types of product liability compensations : physical injury compensation, property damages, mental damages, and punitive damages.

⁵⁵⁾ Article 3(1) KR Product Liability Act (2002)

III. An Empirical Analysis on Product Liability Dispute in Shanghai

The subjects of duty are expanded, i.e. if a product defect is caused through the fault of a third party, including, inter alia, the transporter or the party providing storage, and results in damage to others, the manufacturer or seller of the said product shall be entitled to seek reimbursement from the third party upon compensation.⁵⁶⁾ According to the early enacted Product Quality Law (2000), it states : “If a producer’s defective product causes physical injury to a person or damage to property other than the defective product itself (hereinafter referred to as another person’s property), he shall be liable for compensation.”⁵⁷⁾ In the newly enacted Tort Liability Law, physical injury compensation and property damages are also mentioned in the provisions of Article 45 and Article 46. The Tort Liability Law’s provision for emotional and mental distress damages is also the first time such a measure of damages has been recognized. It mandates that for tortious acts that infringe on personal rights and interests, and resulting in serious mental damage, the infringer may seek compensation for mental damage.⁵⁸⁾ A plaintiff may seek compensation for mental damages where there is infringement on personal rights and interests, which results in serious mental damages.

Most importantly, the new Tort Liability Law allows punitive damages awarded to all kinds of product defects, whereas previously they were only allowed in specific areas such as food defects. Without strong legislation on the specific provisions of product liability compensation, China has faced cases, such as the famous “Toshiba Note Book Product Quality,” in which American consumers were awarded two billion dollar compensation in 1999. On the contrary, in 2000, Chinese consumers prosecuted Toshiba for the same product

56) Article 44 PRC Tort Liability Law (2010)

57) Article 41 PRC Product Quality Law (2000)

58) Article 22 PRC Tort Liability Law (2010)

defect, however they got next to nothing for compensation because of China's weak legislation. After China became a member of the WTO, the growing foreign trade also brought about increasing numbers of foreign-related product liability cases. China needed to promote protection from defective foreign-related products to consumers. The new Tort Liability Law contains a provision that allows an aggrieved party to claim punitive compensation against producers or distributors for loss of life or damage to health caused by defective products, if the products were produced or sold knowing that a defect existed.⁵⁹⁾ Punitive damages are a milestone of China's standard compensatory approach to product liability. In principle, the Tort Liability Law is China's first law that provides unlimited punitive damages and punitive damages are now enlarged to cover all products.

Korea has three types of product liability compensations : physical injury compensation, property damages, and mental damages. The PLA states that a manufacturer shall be liable to compensate for any injury that his/her product has caused to the lives, bodies, or property of its users.⁶⁰⁾ In the torts chapter of the Civil Act (2009), it pointed out that a person who has injured the person, liberty of fame of another, or has inflicted any mental anguish to another person shall be liable to make compensation for damages arising therefrom.⁶¹⁾ The subject of duty includes manufacturer, supplier, and all parties who are liable for compensation and that is named jointly and severally liability.⁶²⁾

59) Article 47 PRC Tort Liability Law (2010)

60) Article 3(1) KR Product Liability Act (2002)

61) Article 751 KR Civil Act (2009)

62) Article 5 PLA and Article 760(1) Civil Act 2009-05-08

III. An Empirical Analysis on Product Liability Dispute in Shanghai

	China	Korea
Compensation Type	<ul style="list-style-type: none"> · Physical injury compensation · Property damages · Mental damages · Punitive damages 	<ul style="list-style-type: none"> · Physical injury compensation · Property damages · Mental damages

v . A comparative Analysis

Comparison of foreign-related product liability between China and South Korea leads to the following results :

- (1) China has a single independent and specific provision on product liability in the Choice-of-Law Statute.⁶³⁾ Previously, there were no specific provisions regulating the choice of substantial law in foreign-related product liability cases. The new statute provides a rule favorable to the infringed person, which are aimed at facilitating the victims' access to Chinese civil courts and provide plaintiffs with the choice of flexible means of redress in complex cross-border product liability litigation. Unlike in the Korean Choice-of-Law Statute : Private International Act (2011), there is no single section or articles especially for the foreign-related product liability.
- (2) The connecting factors for choosing the applicable law in China are much more flexible than Korean factors. A plaintiff, Chinese or foreigner, can choose to have the Chinese People's Court apply to his case either the substantial law of the place where he has his habitual residence or, alternatively, the law of the place of business of the defendant, or

63) Article 45 PRC Law on Application of Laws to Foreign-Related Civil Relations (2010)

the law of the place where the tort has taken place (*lex loci delicti*). Therefore consumers' interests can be protected as much as possible.

- (3) There is a single independent product liability law in Korea while China has not a single one; the provisions can only be found in one chapter of tort law and some separable articles in product quality law, and etc.
- (4) Punitive damages are awarded for all kinds of product defects in China. Because the laws are so new it is still unclear how Chinese courts will resolve legal issues arising from application of foreign law in actual cases. Punitive damages are not allowed under Korean law nor permitted in product liability claims.
- (5) A general recall provision is specifically introduced in the product liability chapter of the PRC Tort Liability Law (2010).⁶⁴⁾ When a product is found to be defective after it is put into circulation, the manufacturer or seller of that product must give timely warnings and recall the defective product. Otherwise it will bear tort liabilities. The obligation to recall certain products in Korea are imposed by, among other laws, the Consumer Basic Act, but not yet the PLA. When a product defect is discovered, which poses threat of injury to the consumer or physical damage to property, the relevant governmental agency has the authority to order the manufacturer to recall the product, based on the seriousness of the defect. There are two types of recalls in Korea : voluntary recalls and mandatory recalls.

64) Article 46 PRC Tort Liability Law (2010)

IV. Conclusion

Although still exhibits aforementioned shortcomings and conflicts within, Chinese consumer protection law provides foundational shields on their consumers. At the practical level, local courts interpret and decide in the direction towards offering more and more protective mechanism for consumers against manufacturers and business operators, and this protective policy will have great impact on Korean and other foreign businesses in China. In this regard, understanding detailed key aspects of the Chinese consumer protection law at the national level while apprehending the recent developments in the local courts with the municipal regulations are important for foreign business operators to avoid committing any violations of the local laws and rules.

As examined and analyzed above, Shanghai courts are very cautious in building precedents on product liability issues while processing a large volume of cases. Most interesting and worth-waiting aspect that are still yet to be clarified in those courts' decisions could be the issue of the punitive damages, as the law allows it without detailed guideline to implement in the real life and thus the Court is still holding off in deciding in the consumer's favor and allowing the punitive damages. Another noteworthy point in the product liability law in Chinese court is that the product liability cases may be deciphered upon and translated based on different Civil Laws due to the fact that there is no independent Product Liability Law; different laws that may be applied altogether in one case have diverse standards and dissimilar definitions that do not coordinate with each other very smoothly, and this causes conflicts within laws that brings difficulties in bringing a claim, predicting a resolution, or defending a case. It may place Chinese market a

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challenging place to conduct business with Chinese consumers while consumers may feel barriers to bring product liability claims, as the two are opposite sides of the same coin. This issue will get more complicated if a foreign entity gets into the picture, either as a claimant, or a defendant. The review of the Chinese and Korean Product Liability Law resolves some of those issues by providing backbone of the two countries' Product Liability Law. A further research more in depth on the two countries' product liability and consumer protection issues may be helpful and will be reserved for a project forthcoming.

Supplement

Supplement A: Historical Development of Consumer Protection Legislation in China

Period		Main Issues and Challenges in Consumer Protection	Consumer Protection Legislation	Characteristics of Consumer Protection policy and Legislation
1949-1978 (30 years before China's Reform & Opening-up)	Planned economy	Shortage of consumer goods	Relevant administrative command	· Consumer cooperatives, state monopoly for purchase and marketing, low rent housing policy
1979-present (30 years Reform & Opening-up)	1978-1981 (The transition from planned economy to market economy)	Inferior goods The supply of goods The consumer is not obvious	Relevant administrative regulations	· Rectifying the economic order : only “indirect and reflect effect” on consumer protection
	1982-1992 (Establishment of the socialist market economic system)	Fake or flawed products	· The Pharmaceutical Administration Law (1984) · The General Principles of the Civil Law(1986)	· Rectifying the economic order : only “indirect and reflect effect” on consumer protection · The beginning of legislation protection

Period		Main Issues and Challenges in Consumer Protection	Consumer Protection Legislation	Characteristics of Consumer Protection policy and Legislation
				<ul style="list-style-type: none"> • Administrative regulation as main legal source
	1993-2000 (Initial development of the socialist market economy)	Fake products, toxic food, inferior seed and fertilizer, false advertising, serious local protectionism, disorder of the market	<ul style="list-style-type: none"> • The Product Quality Law(1993) • Consumer Rights and Interests Protection Law(1993) • Anti-unfair Competition Law (1993) • Advertisement Law(1994) • Food Hygiene Law(1995) • Price Law(1997) • Contract law(1999) +other administrative regulations 	<ul style="list-style-type: none"> • Promulgation national basic consumer protection law and other related specific laws • Formulation of consumer protection legal system • Civil rules as main legal Source
	2001-present (Market liberalization and economy expansion)	Food safety, real estate disputes, vehicle quality and after-service, agricultural products quality, fraud, trans-national litigation	<ul style="list-style-type: none"> • Electronic Signature Law(2004) • Public Security Administration Punishments Law (2005) • Renewable Energy Law(2005) • Quality and safety law of Agricultural Products(2006) • Property Law(2007) 	<ul style="list-style-type: none"> • Establish and improve of consumer protection legal system • Civil rules as main legal Source • Formation of Enterprise self-discipline rules

Supplement A: Historical Development of Consumer Protection Legislation in China

Period		Main Issues and Challenges in Consumer Protection	Consumer Protection Legislation	Characteristics of Consumer Protection policy and Legislation
			<ul style="list-style-type: none"> · Anti-monopoly Law(2007) · Food Safety Law(2009) + other administrative regulations 	

Supplement B: Key Acts and Phrases Table

1. Laws

The Pharmaceutical Administration Law(1984)	《中华人民共和国药品法》
The General Principles of the Civil Law(1986)	《中华人民共和国民法通则》
The Product Quality law(1993)	《中华人民共和国产品质量法》
Consumer Rights and Interests Protection Law (1993)	《中华人民共和国消费者权益保护法》
Anti-unfair Competition Law(1993)	《中华人民共和国反不正当竞争法》
Advertisement Law(1994)	《中华人民共和国广告法》
Food Hygiene Law(1995)	《中华人民共和国食品卫生法》
Price Law(1997)	《中华人民共和国价格法》
Contract law(1999)	《中华人民共和国合同法》
Electronic signature law(2004)	《中华人民共和国电子签名法》
Public Security Administration Punishments Law (2005)	《中华人民共和国治安管理处罚法》
Renewable Energy law(2005)	《中华人民共和国可再生能源法》
Quality and safety law of Agricultural Products (2006)	《中华人民共和国农产品质量安全法》
Property Law(2007)	《中华人民共和国物权法》
Anti-monopoly Law(2007)	《中华人民共和国反垄断法》
Food safety Law(2009)	《中华人民共和国食品安全法》
Tort Liability Law(2010)	《中华人民共和国侵权责任法》
Law of the People's Republic of China on Application of Laws to Foreign-Related Civil Relations (2011)	《中华人民共和国涉外民事关系法律适用法》
Interpretation of the Supreme People's Court on Certain Issues concerning Determination of Liability	《最高人民法院关于确定民事侵权精神损害赔偿责任若干问题的解释》

for Compensation for Spiritual Damage Arising from Civil Torts(2001)	
Interpretation of the Supreme People's Court on Certain Issues Concerning the Application of Law in Trying Cases Involving Compensation for Personal Damage(2004)	《最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释》

2. Legal Phrases

Product liability legislation	产品责任立法
Consumer protection legislation	消费者保护立法
Strict Liability	严格责任
Unreasonable danger	不合理危险
Joint and several responsibilities	连带责任
Mental damage compensation	精神损害赔偿
Industrial Product Quality Responsibility Regulations	工业产品质量责任条例
Public Law	公法
Private Law	私法
Product defect	产品缺陷
Product infringement	产品侵权
Hague Convention	海牙公约
Strasbourg Convention	斯特拉斯堡公约
EC Product Liability Directive	欧盟产品责任指令
Defects in design	设计缺陷
Manufacturing defects	制造缺陷
Defect indication on the defects	指示缺陷
Defect of the raw materials	原材料缺陷
Imputation principle	归责原则

Supplement

Damage compensation	损害赔偿
Punitive compensation	惩罚性赔偿
Limit of indemnity	赔偿限额
Security rights	安全权
Right to know	知情权
Right to choose independently	自主选择权
Even bargain rights	公平交易权
Right of claim	求偿权
Right of association	结社权
Personal dignity	人格尊严
Right of privacy	隐私权
Asymmetric information	信息不对称
Right of rescission	撤销权
Product recall system	产品召回制度

Supplement C: Chinese Laws Directly Related to Product Liability and Consumer Protection (English version)

Law of the People's Republic of China on Product Quality

Promulgating Institution: Standing Committee of the National People's Congress
Document Number: Order No.33 Of The President Of The People's Republic
Of China
Promulgating Date: 07/08/2000
Effective Date: 09/01/2000
Validity Status: Revised

Order Of The President Of The People's Republic Of China No. 33

The Decision of the Standing Committee of the National People's Congress on Revision of the Law of the People's Republic of China on Product Quality, adopted at the 16th Meeting of the Standing Committee of the Ninth National People's Congress of the People's Republic of China on July 8, 2000, is hereby promulgated and shall enter into force as of September 1, 2000. Jiang Zemin
President of the People's Republic of China
July 8, 2000

Law of the People's Republic of China on Product Quality

(Adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress on February 22, 1993; Amended in accordance with the Decision of the Standing Committee of the Ninth National People's Congress on Revision of the Law of the People's Republic of China on Product Quality adopted at the 16th Meeting on July 8, 2000)

Supplement

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Section 2. Liability and Obligation of Sellers in Respect of Product Quality

Chapter IV. Compensation for Damage

Chapter V. Penalty Provisions

Chapter VI. Supplementary Provisions

Chapter I . : General Provisions

Article 1 This Law is enacted to strengthen the supervision and control over product quality, to improve product quality, to define the liability relating thereto, to protect the legitimate rights and interests of consumers and to safeguard the social and economic order.

Article 2 Anyone who manufactures or sells any product within the territory of the People’s Republic of China shall abide by this Law.

For the purposes of this Law, “product” means one which is processed or manufactured for sale.

This Law shall not apply to construction projects. However, it shall be applicable to those materials, components, fittings and equipment used for construction which fall within the scope of the definition mentioned in the preceding paragraph.

Article 3 Producers and sellers shall establish and improve their internal system for product quality control, and strictly apply the quality standards for jobs, the quality responsibility system and the related check measures.

Article 4 and sellers shall be liable for product quality in accordance with this Law.

Article 5 It is prohibited to forge or fraudulently use authentication marks or other product quality marks; it is prohibited to forge the origin of a product, or to forge or fraudulently use the name and address of another producer; and it is prohibited to mix impurities or imitations into a product that is manufactured or for sale, or pass a fake product off as a genuine one, or pass a defective product off as a quality one.

Article 6 The State encourages the popularization of scientific methods for quality control and the adoption of advanced science and technology, and encourages enterprises to make their product quality reach and surpass their respective sectoral standards, national standards and international standards.

Units and individuals that have made outstanding achievements in exercising advanced control over product quality and in raising their product quality to advanced international standards shall be awarded.

Article 7 People's governments at various levels shall incorporate the improvement of product quality into their plans for national economic and social development, improve their overall planning, organization and leadership in respect of product quality, provide guidance to producers and sellers and urge them to tighten control over product quality and improve product quality, ensure that the government departments concerned will, in accordance with law, take measures to stop any violations of this Law committed in the process of manufacture and sale of products, and guarantee that this Law is implemented.

Article 8 The department for supervision over product quality under the State Council shall be responsible for supervision over product quality throughout the country. The relevant departments under the State Council shall be responsible for supervision over product quality within the scope of their respective functions and responsibilities.

Local departments for supervision over product quality at or above the county level shall be in charge of supervision over product quality within their respective administrative regions. The relevant departments in the local people's governments at or above the county level shall be responsible for supervision over product

quality within the scope of their respective functions and responsibilities.

Where laws provide otherwise with respect to departments for supervision over product quality, the provisions of such laws shall apply.

Article 9 No functionaries of the local people's governments at various levels or of other State organs may abuse their power, neglect their duty, engage in malpractices for personal gain, shield or connive at violations of this Law committed in the process of manufacture or sale within their own regions, or obstruct or interfere in the investigation and handling of such violations.

Where a local people's government at any level or a State organ shields or connives at violations of this Law committed in the process of manufacture or sale, the person who is chiefly responsible shall be investigated for legal responsibility in accordance with law.

Article 10 All units and individuals shall have the right to inform the departments for supervision over product quality or other relevant departments against any violations of this Law.

The Departments for supervision over product quality and other relevant departments shall keep secrets for the informers, and award them in accordance with the relevant regulations of the people's governments of provinces, autonomous regions, or municipalities directly under the Central Government.

Article 11 No units or individuals may exclude up-to-standard products manufactured by enterprises or sectors from entering into their regions or sectors.

Chapter II . : Supervision over Product Quality

Article 12 The quality of a product shall undergo inspection until it proves to be up to the standards.

No sub-standard product may be passed off as an up-to-standard one.

Article 13 Industrial products constituting potential threats to human health, personal safety and safety of property shall be in conformity with the national standards and sectoral standards for ensuring human health, personal safety and

safety of property; with regard to products for which there are no national or sectoral standards to measure up to, products shall meet the requirements for ensuring human, personal safety and safety of property.

Manufacturing and selling of industrial products that do not conform to the standards and requirements for ensuring human health, personal safety and safety of property are prohibited. The specific administrative measures shall be prescribed by the State Council.

Article 14 The State applies, in light of the quality control standards used internationally, the practice of authentication with respect to the quality series of enterprises. An enterprise may, on a voluntary basis, apply for authentication with respect to its quality series to an authentication body approved by the department for supervision over product quality under the State Council or by a department authorized by the said department. The enterprise that is authenticated as qualified shall be issued an authentication certificate for its quality series by the authentication body.

The State applies, in light of the internationally advanced product standards and technical requirements, the system for product quality authentication. An enterprise may, on a voluntary basis, apply for authentication with respect to the quality of its products to an authentication body approved by the department for supervision over product quality under the State Council or by a department authorized by the said department. The enterprise whose product quality is authenticated as up-to-standard shall be issued an authentication certificate for its product quality by the authentication body and shall be permitted to use product quality authentication mark on its products or the packages thereof.

Article 15 The State, with respect to product quality, applies a system of supervision and inspection with random checking as the main form. Products constituting potential threats to human health, to personal safety and to safety of property, important industrial products which have a bearing on the national economy and the people's wellbeing, and products with quality problems as reported by consumers or relevant organizations shall be subjected to random checking. Samples for random checking shall, at any time, be selected from the

market or from among the finished products ready for sale in the storehouse of an enterprise. Supervision and random checking shall be planned and arranged by the department for supervision over product quality under the State Council. The local departments for supervision over product quality in the people's governments at or above the county level may also make arrangements for supervision and random checking within their respective administrative regions. Where laws provide otherwise with respect to supervision over and inspection of product quality, the provisions of such laws shall apply.

Local departments may not repeat random checking already conducted by State departments; departments at lower levels may not repeat random checking already conducted by departments at higher levels.

Products may be inspected where random checking of such products so requires, but the amount of samples selected for inspection may not exceed the reasonable need of the inspection and no fees may be charged from the enterprises concerned. The expenses thus incurred shall be disbursed in accordance with the relevant regulations of the State Council.

Where producers or sellers have objections to the result of inspection, they may, within 15 days from the date the result is received, apply to the department for supervision over product quality that has conducted the random checking or its superior for re-inspection. The department for supervision over product quality that conducts the re-inspection shall make a conclusion afterwards.

Article 16 No producers or sellers may refuse to undergo supervision over and inspection of their product quality conducted in accordance with law.

Article 17 Where the quality of a product is proved to be not up to standard after random checking is conducted in accordance with the provisions of this Law, the department for supervision over product quality that has conducted random checking shall order the producer and/or seller to improve it within a time limit. If the producer and/or seller fails to do so at the expiration of the time limit, the matter shall be announced by the department for supervision over product quality under the people's government at or above the provincial level; if the product quality fails to pass re-inspection conducted after the announcement, the producer

shall be ordered to discontinue production and/or business operation for overhaul within a time limit; if it again fails to pass another re-inspection conducted at the expiration of the time limit, the producer's and/or seller's business license shall be revoked.

Where a product is found through random checking to have serious quality problems, punishment shall be meted out in accordance with the relevant provisions in Chapter V of this Law.

Article 18 The departments for supervision over product quality at or above the county level may, on the basis of the obtained evidence for or information against suspected violations of this law, exercise the following functions and powers when investigating and handling such violations:

- (1) to conduct on-the-spot inspection of the place where the party is suspected of engaging in production or sale activities in violation of this Law;
- (2) to conduct investigation among the legal representative of the party, the person who is chiefly in charge, and other persons concerned for information related to the production or sale activities engaged in by the suspected party in violation of this Law;
- (3) to look into and duplicate the contracts, invoices and account books concerning the party and other relevant material; and
- (4) to seal up or seize the products which are regarded, on the basis of evidence, as not being in conformity with the national or sectoral standards for ensuring human health, personal safety and safety of property or as having other kinds of serious quality problems, and the raw and supplementary materials, package materials and production tools that are used directly for the manufacture and sale of such products.

Administrative departments for industry and commerce at or above the county level may, within the scope of their functions and duties defined by the State Council, exercise the functions and powers mentioned in the preceding paragraph when investigating and handling suspected violations of this Law.

Article 19 Product quality inspection institutions shall have the necessary testing facilities and competence and shall undertake inspection of product quality only

after being appraised and endorsed by the department for supervision over product quality under the people's government at or above the provincial level or a department authorized by the said department. Where laws or administrative regulations provide otherwise with respect to the institutions for inspection of product quality, the provisions of such laws or administrative regulations shall apply.

Article 20 Intermediary bodies for product quality inspection or authentication shall be established in accordance with law, and they may not be subordinate to or have any relationship of interest with any administrative department or other state organs.

Article 21 Institutions for product quality inspection or authentication shall, on the basis of relevant standards, be objective and impartial in issuing the result of inspection or authentication certificate.

Institutions for product quality inspection or authentication shall, in accordance with the relevant regulations of the State, conduct follow-up inspection of the products bearing the authentication mark with approval; where products not conforming to the standards for authentication bear such mark, it shall demand rectification; if the circumstances are serious, the products shall be disqualified from using the mark.

Article 22 Consumers shall have the right to make inquiries to the producers and sellers about the quality of their products. Where a complaint is made to a department for supervision over product quality, or to an administrative department for industry and commerce, or to any other department concerned, the department that receives the complaint shall be responsible for handling the case.

Article 23 Public organizations protecting the rights and interests of consumers may suggest that the department concerned dispose of the product quality problems as reported by consumers, and may support consumers in their efforts to bring a suit to a people's court with respect to the damage caused by quality problems of products.

Article 24 The department for supervision over product quality under the State Council and the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall regularly issue Quality Status Bulletin regarding the products which they have conducted random checking.

Article 25 No departments for supervision over product quality, or other State organs, or institutions for product quality inspection may recommend any manufacturer's products to the public, or participate in business activities in the form of supervision over the manufacture or sale of products.

Chapter III. : Liability and Obligation of Producers and Sellers in Respect of Product Quality

Section 1: Liability and Obligation of Producers in Respect of Product Quality

Article 26 Producers shall be liable for the quality of the products they produce. The products shall meet the following quality requirements:

- (1) constituting no unreasonable threats to personal safety or safety of property, and conforming to the national standards or the sectoral standards for ensuring human health, personal safety and safety of property, where there are such standards;
- (2) possessing the properties as required, except for those with directions stating their functional defects; and
- (3) conforming to the product standards marked on the products or on the packages thereof, and to the quality conditions indicated by way of product directions, samples, etc.

Article 27 Marks on the products or on the packages thereof shall be authentic and meet the following requirements:

- (1) with certificate showing that the product has passed quality inspection;
- (2) with name of the product, name and address of the producer, all marked in Chinese;
- (3) with the necessary indications in Chinese regarding the specifications and

grade of the product, the main ingredients and their quantities contained in the product, where such particulars are required to be indicated according to the characteristics and the instructions for use of the product; with the indications on the package of information necessary for consumers to know in advance, or providing consumers in advance with documents indicating such information;

- (4) with production date, safe-use period or date of expiry clearly indicated in easily spotted areas if the product is to be used within a time limit; and
- (5) with a warning mark or statement in Chinese for a product which, if improperly used, may cause damage to the product itself, or may endanger personal safety or safety of property.

Food products without package and other non-packed products which are difficult to be marked due to their special nature may dispense with product marks.

Article 28 The packages of dangerous products, such as fragile, inflammable, explosive, poisonous, corrosive, radioactive products, of products that should be kept upright during storage and transportation, and of other products with special requirements shall meet the necessary requirements in respect of their quality and carry warning marks or statements in Chinese indicating directions for storage and transportation, as required by relevant State regulations.

Article 29 No producer may produce any product that has been eliminated by State orders.

Article 30 No producer may forge the origin of a product, or forge or illegally use another producer's name and address.

Article 31 No producer may forge or illegally use another producer's authentication marks or other product quality marks.

Article 32 In producing products, no producer may mix impurities or imitations into the products, or substitute a fake product for a genuine one, a defective product for a high-quality one, or pass a substandard product off as an up-to-standard one.

Section 2: Liability and Obligation of Sellers in Respect of Product Quality

Article 33 A seller shall establish and practise a check-for-acceptance system for replenishment of his stock, and examine the quality certificates and other marks.

Article 34 A seller shall adopt measures to keep the products for sale in good quality.

Article 35 No seller may sell products which are eliminated and the sale of which is stopped by State organs, or expired and deteriorated products.

Article 36 The marks of a seller's products shall conform to the provisions of Article 27 of this Law.

Article 37 No seller may forge the origin of a product, or forge or fraudulently use another producer's name and address.

Article 38 No seller may forge or fraudulently use another producer's authentication marks or other product quality marks.

Article 39 In selling products, no seller may mix impurities or imitations into the products, or substitute a fake product for a genuine one, a defective product for a high-quality one, or pass a substandard product off as an up-to-standard one.

Chapter IV. : Compensation for Damage

Article 40 A seller shall be responsible for repair or change of the product, or for refund of the purchase price if the product he sold is found to be in any of the following conditions and, if losses are caused to the consumer who bought the product, the seller shall compensate for the losses:

- (1) The product does not possess the properties as required and there are no prior indications of the same;
- (2) The product does not conform to the product standards marked on it or its package; or

- (3) The product does not conform to the quality conditions indicated by way of product directions, samples, etc.

After the repair, change, refund or compensation has been made in accordance with the provisions of the preceding paragraph, if it is the producer or another seller who supplied the product to the seller (hereinafter referred to as supplier) that should bear the liability, the seller shall have the right to recover his loss from the producer or the supplier.

Where a seller fails to make the repair, change, refund, or compensation in accordance with the provisions in the first paragraph, the department for supervision over product quality or the administrative department for industry and commerce shall order the seller to do it.

Where the sale contract or processing contract concluded between a producer and another, a seller and another or between a producer and a seller provides otherwise, the parties concerned shall act in accordance with the provisions of the contract.

Article 41 If a producer's defective product causes physical injury to a person or damage to property other than the defective product itself (hereinafter referred to as another person's property), he shall be liable for compensation.

A producer shall not be liable for compensation if he can prove the existence of any of the following circumstances:

- (1) The product has not been put in circulation;
- (2) The defect causing the damage does not exist at the time when the product is put in circulation; or
- (3) The science and technology at the time the product is put in circulation is at a level incapable of detecting the defect.

Article 42 Where physical injury is caused to a person or damage to another person's property by a product's defect resulting from the seller's fault, the seller shall be liable for compensation.

Where the seller can identify neither the producer of the defective product nor the supplier thereof, he shall be liable for compensation.

Article 43 Where a defective product causes physical injury to a person or damage to another person's property, the victim may claim compensation from the producer or from the seller of such product. Where the seller has made the compensation when it is the producer that should bear the liability, the seller shall have the right to recover the loss from the producer. Where the producer has made the compensation when it is the seller that should bear the liability, the producer shall have the right to recover the loss from the seller.

Article 44 Where physical injury is caused by defects in a product, the person liable shall compensate the victim for the expenses of medical treatment, expenses of nursing care during treatment, and the decreased earnings due to the loss of his working time; where the victim is disabled, the person liable shall, in addition, pay for the self-care equipment, subsistence allowances, disability compensation to the victim, living expenses necessary for any other person(s) supported by the victim, etc. Where such defects cause death to the victim, the person liable shall also pay for the funeral expenses, compensation for death, and the living expenses necessary for any other person(s) supported by the deceased before his death, etc.

Where the damage to the property of the victim is caused by the defect in a product, the person liable shall restore the damaged property to its original state, or pay compensation at the market price. If the victims suffer other serious losses, the person liable shall compensate for such losses.

Article 45 The limitation period for bringing an action claiming compensation for the damage done by the defect in a product is two years, counting from the date on which the party concerned knows of or should know of the infringement of his rights and interests.

The right to claim compensation for the damage done by the defective product shall be forfeited upon the expiry of a period of ten years from the date on which the defective product causing the damage is delivered to the first consumer, except where the clearly stated period of safe-use has not expired.

Article 46 For the purposes of this Law, "defect" means one that constitutes an unreasonable threat to personal safety or to safety of another person's property;

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where there are national or sectoral standards for ensuring human health, personal safety and safety of property to measure up to, 'defect' means failure to measure up to such standards.

Article 47 Where a civil dispute over product quality arises, the parties may seek settlement through negotiation or mediation. If the parties are not willing to do so, or if negotiation or mediation fails, they may apply to an arbitration institution for arbitration, as agreed upon between the parties; if the parties fail to reach an agreement for arbitration or the agreement is invalid, they may bring a suit directly before a people's court.

Article 48 The arbitration institution or the people's court may entrust a product quality inspection institution, as mentioned in Article 19 of this Law, with the inspection of a product quality.

Chapter V . : Penalty Provisions

Article 49 Any producer or seller that produces or sells products not up to the relevant national or sectoral standards for ensuring human health, personal safety and safety of property shall be ordered to discontinue production or sale of such products, the products illegally produced or ready for sale shall be confiscated, he shall be fined a sum equal to the amount of but not more than three times the value of the products illegally produced or ready for sale (including those already sold and those not yet sold, the same hereinafter); the illegal gains, if any, shall also be confiscated; if the circumstances are serious, the business license shall be revoked; if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 50 Where a producer or a seller mixes impurities or imitations into a product, or substitutes a fake product off as a genuine one, or a defective product for a quality one, or passes a substandard product off as an up-to-date one, he shall be ordered to discontinue production or sale, the products illegally produced or for sale shall be confiscated, he shall be fined not less than 50 percent of but not more

than three times the value of the products illegally manufactured or ready for sale; the unlawful earnings, if any, shall be confiscated; if the circumstances are serious, the business license shall be revoked; if a crime is constituted, criminal responsibility shall be investigated in accordance with law.

Article 51 Any producer that produces products which are eliminated by State orders or any seller that sells products which are eliminated and the sale of which is stopped by State orders shall be ordered to discontinue production or sale of such products, the products illegally produced or for sale shall be confiscated, and a fine not more than the value of the products illegally produced or for sale shall be imposed; the illegal gains, if any, shall be confiscated; if the circumstances are serious, the business license shall be revoked.

Article 52 Any seller that sells expired or deteriorated products shall be ordered to discontinue sale, the products for illegal sale shall be confiscated, and fine not more than twice the value of the products for illegal sale shall be imposed; the illegal gains, if any, shall be confiscated; if the circumstances are serious, the business license shall be revoked; if a crime is constituted, criminal liability shall be investigated in accordance with law.

Article 53 Anyone producer or seller that forges or fraudulently uses another producer's name and address, or forges or fraudulently uses authentication marks or other product quality marks shall be ordered to rectify, the products illegally produced or for sale shall be confiscated, a fine not more than the value of the products illegally produced or for sale shall be imposed; the illegal gains, if any, shall be confiscated; if the circumstances are serious; the business license shall be revoked.

Article 54 Where the marks of a product do not conform to the provisions of Article 27 of this Law, the producer or seller concerned shall be ordered to make rectification. Where the marks on a packed product do not conform to the provisions of sub-paragraphs (4) and (5) of Article 27 of this Law, if the circumstances are serious, the producer or seller concerned shall be ordered to discontinue production

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or sale of such products, and a fine not more than 30 percent of the value of the products illegally produced or for sale shall be imposed; the illegal gains, if any, shall be confiscated.

Article 55 A seller who sells products prohibited for sale as specified in the provisions from Article 49 to Article 53 of this Law presents sufficient evidence to show that he is ignorant of the fact that sale of the products is prohibited and gives true information about the source of the products may be given lighter or mitigated punishment.

Article 56 Any producer or seller that refuses to undergo supervision and inspection over product quality conducted in accordance with law shall be given a disciplinary warning and be ordered to rectify; if he refuses to rectify, he shall be ordered to discontinue operation for overhaul; if the circumstances are especially serious, his business license shall be revoked.

Article 57 Any product quality inspection institution or authentication body that forges an inspection result or issues an unauthentic certificate shall be ordered to rectify and be fined not less than 50,000yuan but not more than 100,000 yuan, the persons who are directly in charge and the other persons who are directly responsible shall be fined not less than 10,000 yuan but not more than 50,000 yuan; the illegal gains, if any, shall be confiscated; if the circumstances are serious, the inspection institution or authentication body shall be disqualified for the job; if the a crime is constituted, criminal responsibility shall be investigated in accordance with law.

Any product quality inspection institution or authentication body that issues an untruthful inspection result or certificate and thus causes losses shall bear liability of compensation for the same amount of losses caused; if major losses are caused, the inspection institution or the authentication body shall be disqualified for the job. Where a product quality authentication body that, in violation of the provisions of the second paragraph of Article 21 of this Law, fails to demand, as required by law, rectification with respect to a product which is not up to the standards for authentication buton which the authentication mark is used, or disqualify the product

from using the mark, if losses are caused to consumers due to the fact that the product is not up to standard, the said body shall bear joint and several liability with the producer and the seller; if the circumstances are serious, the authentication body shall be disqualified for the job.

Article 58 Where a public organization or an intermediary agency undertakes to guarantee the quality of a product, if the product is not up to the quality standard as guaranteed and losses are caused to consumers, it shall bear joint and several liability with the producer and the seller of the product.

Article 59 Where false advertisements regarding product quality are published to cheat or mislead consumers, the advertiser shall be investigated for legal responsibility in accordance with the Advertisement Law of the People's Republic of China.

Article 60 The raw and supplementary material, packaging material and production tools specially used for the production of products as mentioned in Articles 49 and 51 of this Law or for the production of fake products shall be confiscated.

Article 61 Where a person who knows or should know that the manufacture or sale of a product is prohibited by this Law offers conveniences for the transportation, keeping and storage of such product, or offers technologies for the manufacture of the products, all his earnings therefrom shall be confiscated, and he shall be fined not less than 50 percent of but not more than three times the unlawful earnings; if a crime is constituted, he shall be investigated for criminal responsibility.

Article 62 Any operator in the service industry who uses in services the products prohibited for sale, as mentioned in the provisions from Articles 49 to Article 52 of this Law, shall be ordered to discontinue their use; those who know or should know that sale of the products they use is prohibited by this Law shall be punished in accordance with the provisions of this Law for the punishment of the seller of such products and on the basis of the value of the illegally used products (including those all ready used and those not yet used).

Article 63 Anyone who conceals, moves to other places, sells or destroy goods sealed up or seized by departments for supervision over product quality or administrative departments for industry and commerce shall be fined not less than the amount of but not more than three times the value of the said goods; the illegal gains, if any, shall be confiscated.

Article 64 If the property of a person who violates the provisions of this Law and who therefore shall bear the civil liability of compensation and is required to pay a fine, is insufficient for paying both the compensation and the fine, such person shall first bear the civil liability of compensation.

Article 65 Functionaries of the people's governments at various levels or of State organs who commit any of the following acts shall be given administrative sanctions an accordance with law; if the act constitutes a crime, criminal responsibility shall be investigated an accordance with law:

- (1) shielding or conniving at violations of this Law committed in the process of manufacture or sale of products;
- (2) divulging information to the parties who engage in production or sale activities in violation of the provisions of this Law and helping them to evade investigation and handling; or
- (3) obstructing or interfering in the investigation and handling of the violations of this Law committed in the process of manufacture and sale of products conducted by departments for supervision over product quality or administrative departments for industry and commerce, and thus causing serious consequences.

Article 66 If a department for supervision over product quality, when conducting random checking, asks for samples in excess of the specifies amount or charges fees from the inspected, it shall be ordered by the department for supervision over product quality at a higher level or the supervisory organ to return the extra samples or the fees; if the circumstances are serious, the persons who are directly in charge and the other persons who are directly responsible shall be given administrative sanctions in accordance with law.

Article 67 If a department for supervision over product quality or any other State organ, in violation of the provisions of Article 25 of this Law, recommends to the public a manufacturer's product, or participates in business activities in the form of supervision over the manufacture or sale of products, it shall be ordered by its superior or the supervisory organ to rectify to offset the negative effect, and its unlawful earnings, if any, shall be confiscated; if the circumstances are serious, the persons who are directly in charge and the other persons who are directly responsible shall be given administrative sanctions in accordance with law.

If a product quality inspection institution commits the illegal activities mentioned in the preceding paragraph, it shall be ordered by the department for supervision over product quality to rectify to offset the negative effect, and its unlawful earnings, if any, shall be confiscated and it may also be fined not more than the amount of its unlawful earnings; if the circumstance are serious, it shall be disqualified for quality inspection.

Article 68 Any functionary of the department for supervision over product quality or of the administrative department for industry and commerce who abuses his power, neglects his duty, or engages in malpractices for personal gains, if a crime is constituted, shall be investigated for criminal responsibility in accordance with law; otherwise he shall be given administrative sanctions in accordance with law.

Article 69 Anyone who obstructs, by means of violence or intimidation, functionaries of the departments for supervision over product quality or of the administrative departments for industry and commerce from performing their duties according to law shall be investigated for criminal responsibility in accordance with law; anyone who prevents or obstructs, without resorting to violence or intimidation, the said functionaries from performing their duties shall be punished by the public security organs in accordance with the provisions of the Regulations on Administrative Penalties for Public Security.

(Note: According to the Decision of the Standing Committee of the National People's Congress on Revising Certain Laws promulgated by the Standing Committee of the National People's Congress on August 27, 2009, "Regulations on Administrative Penalties for Public Security" in this Article is revised to "Law of

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the People's Republic of China on Penalties for Administration of Public Security".)

Article 70 An administrative sanction involving revocation of business license, as provided for in this Law, shall be decided by the administrative department for industry and commerce, and the administrative sanctions, as provided for in the provisions from Articles 49 to Article 57 and in Articles 60 to 63, shall be decided by the department for supervision over product quality or the administrative department for industry and commerce within the scope of their functions and powers prescribed by the State Council. Where laws or administrative regulations provide otherwise as to the authorities exercising the power of administrative sanction, the provisions of such laws and administrative regulations shall apply.

Article 71 Products confiscated in accordance with the provisions of this Law shall be disposed of or handled by other means in accordance with the relevant regulations of the State.

Article 72 The value of the products mentioned in the provisions from Article 49 to Article 54, Articles 62 and 63 shall be calculated on the basis of the marked prices of the products illegally manufactured or for sale; where such prices are not available, it shall be calculated on the basis of the market prices for similar products.

Chapter VI. : Supplementary Provisions

Article 73 Measures for supervision over the quality of military industrial products shall be formulated separately by the State Council and the Central Military Commission.

Where laws or administrative regulations provide otherwise as to the liability of compensation for damages caused by nucleus facilities or products, the provisions of such laws or regulations shall apply.

Article 74 Law shall come into force as of September 1, 1993.

Supplement C: Chinese Laws directly related to Product Liability
and Consumer Protection (English version)

ENGLISH TRANSLATION BY THE GENERAL OFFICE OF THE LEGISLATIVE
AFFAIRS COMMISSION, THE STANDING COMMITTEE OF THE NATIONAL
PEOPLE'S CONGRESS.

LICENSED FOR USE AS OF MARCH 2009.

Supplement

**Law of the People's Republic of China on the Protection of Consumer
Rights and Interests**

Promulgating Institution: Standing Committee of the National People's Congress
Document Number: Order No.11 of the President of the People's Republic
of China
Promulgating Date: 10/31/1993
Effective Date: 01/01/1994
Validity Status: Revised

**Order of the President of the People's Republic of China
No.11**

The Law of the People's Republic of China on the Protection of Consumer Rights and Interests, adopted at the Fourth Meeting of the Standing Committee of the Eighth National People's Congress of the People's Republic of China on October 31, 1993, is hereby promulgated and shall enter into force as of January 1, 1994. Jiang Zemin
President of the People's Republic of China
October 31, 1993

**Law of the People's Republic of China on the Protection of Consumer
Rights and Interests**

(Adopted at the Fourth Meeting of the Standing Committee of the Eighth National
People's Congress and promulgated by Order No.11 of the President of the
People's Republic of China on October 31, 1993)

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Chapter I . : General Provisions

Article 1 The present Law is formulated for the protection of the legitimate rights and interests of consumers, maintenance of the socio-economic order and promotion of the healthy development of the socialist market economy.

Article 2 The rights and interests of consumers in purchasing and using commodities or receiving services for daily consumption shall be under the protection of the present Law, or under the protection of other relevant laws and regulations in absence of stipulations in this Law.

Article 3 Business operators shall, in their supply of commodities produced and sold by them or services to consumers, abide by the present Law, or abide by other relevant laws and regulations in absence of stipulations in the present law.

Article 4 In transactions between business operators and consumers a principle of voluntariness, equality, fairness, honesty and credibility shall be followed.

Article 5 The State shall protect the legitimate rights and interests of consumers from infringement.

The State shall adopt measures to safeguard consumers' exercise of their rights in accordance with the law and to maintain the legitimate rights and interests of consumers.

Article 6 It is the common responsibility of the whole society to protect the legitimate rights and interests of consumers.

The State shall encourage and support all organizations and individuals to exercise social supervision over acts infringing upon consumer rights and interests.

Mass media shall conduct propaganda defending the legitimate rights and interests

of consumers and, through public opinion, exercise supervision over acts infringing upon the legitimate rights and interests of consumers.

Chapter II . : Rights of Consumers

Article 7 Consumers shall, in their purchasing and using commodities or receiving services, enjoy the right of the inviolability of their personal and property safety. Consumers shall have the right to demand business operators to supply commodities and services up to the requirements for personal and property safety.

Article 8 Consumers shall enjoy the right to obtain true information of the commodities they purchase and use or the services they receive. Consumers shall have the right to demand business operators, in light of the different conditions of commodities or services, to provide their prices, origin, manufacturers, usage, functions, standards, grades, main ingredients, date of production, term of validity, certificates of inspection, operation instructions, after sale services or information relating to contents, standards and costs of the services.

Article 9 Consumers shall enjoy the right of free choice of commodities or services.

Consumers shall have the right to make a free choice of business operators for supply of commodities or services, select freely among varieties of articles or forms of services and decide independently to buy or not to buy any kind of commodities, or to accept or not to accept any item of services.

Consumers shall have the right to make comparisons, differentiations and selections when they make a free choice of commodities or services.

Article 10 Consumers shall enjoy the right of fair deal.

Consumers shall, in their purchasing commodities or receiving services, have the right to obtain fair deal prerequisites such as guarantee of quality, reasonable prices and correct measurement, and have the right to refuse any compulsory transaction of business operators.

Article 11 Consumers suffering from personal injury or property damage resulting from their purchasing or using of commodities or receiving of services shall have the right to demand compensations in accordance with the law.

Article 12 Consumers shall have the right to form public organizations for the maintenance of their own legitimate rights and interests according to law.

Article 13 Consumers shall have the right to acquire knowledge concerning consumption and protection of consumer rights and interests.

Consumers shall make efforts to master the knowledge of their necessary commodities or services and the skill in operation thereof, apply the commodities in a correct way and raise their consciousness of self-protection.

Article 14 Consumers shall, in their purchasing and using commodities or receiving services, have the right that their human dignity, national customs and habits are respected.

Article 15 Consumers shall have the right to exercise supervision over commodities, services as well as the work of protection of consumer rights and interests.

Consumers shall have the right to inform and charge against the infringement upon consumer rights and interests and the breach of law or neglect of duty on the part of State organs and their functionaries in the work of protection of consumer rights and interests, and have the right to raise criticism of or proposals for the work of protection of consumer rights and interests.

Chapter III. : Obligations of Business Operators

Article 16 Business operators shall, in their supply of commodities and services to consumers, fulfill their obligations stipulated in the Law of the People's Republic of China on Product Quality and other laws and regulations concerned.

In case an agreement is reached between business operators and consumers, the business operators shall fulfill the obligations agreed upon in the agreement; but the agreement between the two parties shall not contravene the provisions of laws and regulations.

Article 17 Business operators shall listen to the consumers' opinions on the commodities and services they supply and accept consumers' supervision.

Article 18 Business operators shall guarantee that the commodities and services they supply meet the requirements for personal or property safety. As to commodities and services liable to harm personal or property safety, business operators shall give the consumers truthful explanation and clear-cut warnings, and shall explain or indicate the correct ways of using the commodities or receiving services as well as the methods of preventing damage.

Business operators shall, upon discovery of serious defects of the commodities or services they supply which are liable to harm personal or property safety even though the commodities are correctly applied or services are received in a correct way, immediately report to the administrative departments concerned and inform the consumers, and adopt measures to prevent damage.

Article 19 Business operators shall provide consumers with authentic information concerning their commodities or services, and may not make any false and misleading propaganda.

Business operators shall give truthful and definite replies to inquiries from consumers about the qualities of the commodities or services they supply and the operation methods thereof.

Shops shall mark clearly the prices of the commodities they supply.

Article 20 Business operators shall indicate their real names and marks.

Business operators who lease counters or grounds from others shall indicate their own real names and marks.

Article 21 Business operators who supply commodities or services shall make out for consumers invoices for purchases or documents of services in accordance with relevant regulations of the State or commercial practices; business operators must produce such invoices or documents where consumers so demand.

Article 22 Business operators shall guarantee the quality, functions, usage and term of validity which the commodities or services they supply should possess under

normal operation or acceptance, except that consumers are aware of the defects before they buy the commodities or receive the services.

Business operators who employ advertisements, product instructions, samples or other ways to display the quality state of their commodities or services shall guarantee that the actual quality of the commodities or services they supply is in conformity with that demonstrated.

Article 23 Business operators who are under the obligation of repair or caveat venditor, or other responsibilities in accordance with regulations of the State or agreements with consumers shall carry out such obligations correspondingly according to such regulations or agreements, and may not deliberately delay or unreasonably refuse to do so.

Article 24 Business operators may not, through format contracts, notices, announcements, entrance hall bulletins and so on, impose unfair or unreasonable rules on consumers or reduce or escape their civil liability for their infringement of the legitimate rights and interests of consumers.

Format contracts, notices, announcements, entrance hall bulletins and so on with contents mentioned in the preceding paragraph shall be invalid.

Article 25 Business operators may not insult or slander consumers, may not search the body of consumers or the articles they carry with them, and may not violate the personal freedom of consumers.

Chapter IV. :Protection of the Legitimate Rights and Interests Consumers by the State

Article 26 The State shall heed to the opinions and demands from consumers when making laws, regulations and policies concerning consumer rights and interests.

Article 27 People's governments at various levels shall strengthen their leadership, and organize, coordinate and supervise the administrative departments concerned to do their work well in the protection of the legitimate rights and interests of consumers. People's governments at various levels shall strengthen supervision to prevent

occurrence of acts damaging the personal or property safety of consumers and promptly check any such acts.

Article 28 Administrative departments for industry and commerce of the people's governments at various levels and other administrative departments concerned shall adopt measures to protect the legitimate rights and interests of consumers within the scope of their respective functions and duties in accordance with the provisions of the laws and regulations.

Administrative departments concerned shall listen to the complaints of consumers and their public organizations as to the transactions of business operators and the quality of their commodities and services, and carry out timely investigation and disposition.

Article 29 State organs concerned shall, in accordance with the provisions of laws and regulations, punish any law-breaking or criminal activities of business operators infringing upon the legitimate rights and interests of consumers in their supplying commodities or services.

Article 30 The people's courts shall adopt measures to facilitate consumers to take legal proceedings and must entertain and handle without delay cases of disputes over consumer rights and interests that meet the conditions for a lawsuit specified in the Civil Procedure Law of the People's Republic of China.

Chapter V . : Consumer Organizations

Article 31 Consumer associations and other consumer organizations are public organizations formed according to law to exercise social supervision over commodities and services and to protect the legitimate rights and interests of consumers.

Article 32 Consumer associations shall perform the following functions:

- (1) to provide consumption information and consultative services to consumers;
- (2) to participate in supervision over or inspection of commodities and services conducted by relevant administrative departments;

- (3) to make reports, inquiries and suggestions to relevant administrative departments about issues relating to the legitimate rights and interests of consumers;
- (4) to accept complaints of consumers and offer investigations and mediations with respect to issues of complaints;
- (5) where complaints are about commodities or services, to submit for appraisal issues of complaints to appraisal departments which shall inform them of the expert conclusions;
- (6) to render support to victims in their legal proceedings against infringement upon the rights and interests of consumers;
- (7) to expose and criticize through mass media the acts infringing upon the legitimate rights and interests of consumers.

People's governments at various levels shall give support to consumer associations in the performance of their functions.

Article 33 Consumer organizations may not be engaged in commodity transactions or profit-making services, and may not recommend to the society commodities or services for the purpose of making profits.

Chapter VI. : Settlement of Disputes

Article 34 In case of disputes with business operators over consumer rights and interests, consumers may settle the disputes through the following approaches:

- (1) to consult and conciliate with business operators;
- (2) to make a request to consumer associations for mediation;
- (3) to appeal to relevant administrative departments;
- (4) to apply to arbitral organs for arbitration according to the arbitral agreements with business operators;
- (5) to institute legal proceedings in the people's court.

Article 35 Consumers whose legitimate rights and interests are infringed upon in their purchasing or using commodities may demand compensation from the sellers concerned. In case the liability is on the manufacturers or other sellers who supply the commodities to the said sellers, the said sellers shall, after paying the com-

pensations, have the right to recover the compensations from the said manufacturers or the other sellers.

Consumers or other victims suffering personal injuries or property damage resulting from defects of commodities may demand compensations either from the sellers or from the manufacturers. If the liability is on the manufacturers, the sellers shall, after paying the compensations, have the right to recover the compensations from the manufacturers; if the liability is on the sellers, the manufacturers shall, after paying the compensations, have the right to recover the compensations from the sellers.

Consumers whose legitimate rights and interests are infringed upon in receiving services may demand compensations from suppliers of the services.

Article 36 Consumers whose legitimate rights and interests are infringed upon in purchasing or using commodities or receiving services may, if the enterprises supplying the commodities or services have been split-up or merged, demand compensations from the enterprises succeeding to the rights and obligations of the original ones after the modifications.

Article 37 In case a business operator unlawfully uses another's business license to supply commodities or services and infringes upon the legitimate rights and interests of consumers, the consumers may demand compensations either from such business operator or from the holder of the business license.

Article 38 Consumers whose legitimate rights and interests are infringed upon in purchasing commodities or receiving services at trade fairs or leased counters may demand compensations from the sellers or suppliers of the services. In case the fairs are over or the lease of counters expires, they may also demand compensations from organizers of the fairs or lessors of the counters. Organizers of the fairs and lessors of the counters shall, after paying the compensations, have the right to recover the compensations from the sellers or suppliers of the services.

Article 39 Consumers whose legitimate rights and interests are infringed upon on account of commodities or services supplied by business operators by means of

false advertisement may demand compensations from the business operators. Consumers may demand the competent administrative departments to punish the advertising agents who make false advertisements. Advertising agents who cannot provide the real names and addresses of the business operators shall be liable for compensation.

Chapter VII. : Legal Responsibility

Article 40 Business operators shall, if the commodities and services they supply involve any of the following circumstances, bear civil liability in accordance with the provisions of the Law of the People's Republic of China on Product Quality and other relevant laws and regulations, except as otherwise provided in the present Law:

- (1) there existing defects in the commodities;
- (2) not possessing the properties for use they should possess and no declaration thereabout is made at the time of sale;
- (3) not conforming to the standards indicated on the commodities or on the packaging thereof;
- (4) not conforming to the state of quality indicated by the product description or by physical samples;
- (5) producing commodities that have been formally declared by the State to be eliminated or selling commodities that are no longer effective or deteriorated;
- (6) commodities sold being short of weight or quantity;
- (7) contents and costs of services being not in conformity with the agreements;
- (8) deliberately delaying or unreasonably refusing consumers' requests for repair, remanufacture, replacement, return of goods, makeup for the short commodities, return of payment for goods or services, or compensation for losses;
- (9) other circumstances infringing upon consumer rights and interests as specified by laws and regulations.

Article 41 Business operators shall, if the commodities or services they supply have caused personal injuries to consumers or other victims, pay for the victims' medical expenses, nursing expenses during medical treatment, the reduced income

for loss of working time and other expenses. And business operators shall, if the commodities or services they supply have disabled the consumers, also pay for the victims' expenses on self-help devices, living allowances, compensations for disability and the necessary living cost of the persons supported by the disabled. Business operators shall, if the case constitutes a crime, be investigated for criminal responsibility according to law.

Article 42 Business operators shall, if the commodities or services they supply have caused death of consumers or other victims, pay funeral expenses, death compensation and the necessary living cost of the persons supported by the deceased during their lifetime. Business operators shall, if the case constitutes a crime, be investigated for criminal responsibility according to law.

Article 43 Business operators who violate the provisions of Article 25 of the present Law and violate the human dignity or personal freedom of consumers shall stop the violations, rehabilitate consumers' reputation, eliminate the bad effects, make apologies and compensations therefor.

Article 44 Business operators shall, if the commodities or services they supply have caused damage to the properties of consumers, bear civil liabilities by means of repair, remanufacture, replacement, return of goods, makeup for the short commodities, return of payment for goods and services, or compensation for losses and so on as demanded by consumers. If consumers and business operators have otherwise agreed upon, such agreements shall be fulfilled.

Article 45 Business operators shall be responsible for repair, replacement or return of goods, if repair, replacement or return of goods is guaranteed by provisions of the State or agreed upon between business operators and consumers. Business operators shall be responsible for replacement or return of goods if the commodities still malfunction after being repaired twice within the term of guaranteed repair. As to large-sized commodities guaranteed for repair, replacement or return, business operators shall bear the reasonable costs such as expenses for carriage if consumers demand repair, replacement or return.

Article 46 Business operators who supply commodities by mail-order shall provide their commodities according to the agreements. Business operators who fail to provide their commodities according to the agreements shall fulfill the agreements or return the consumers' payment for the commodities on the demand of the consumers, and bear the reasonable expenses that the consumers have to pay.

Article 47 Business operators who supply commodities or services in the form of advance payment shall provide their commodities or services according to the agreements. Business operators who fail to provide their commodities or services according to the agreements shall fulfill the agreements or return the advance payment on the demand of the consumers, and shall also bear the interest of the advance payment and other necessary expenses that the consumers have to pay.

Article 48 Business operators shall, on the demand of the consumers, be responsible for return of goods determined to be substandard commodities by administrative departments concerned according to law.

Article 49 Business operators engaged in fraudulent activities in supplying commodities or services shall, on the demand of the consumers, increase the compensations for victims' losses; the increased amount of the compensations shall be one time the costs that the consumers paid for the commodities purchased or services received.

Article 50 If business operators are under any of the following circumstances and the Law of the People's Republic of China on Product Quality and other laws and regulations have provided for punitive organs and forms therefor, the provisions of the laws or regulations shall be applied; in absence of such provisions in the laws or regulations, administrative departments for industry and commerce shall order them to make corrections, and may, in light of the circumstances, punish the offenders exclusively or concurrently with warning, confiscation of unlawful earnings, or imposition of a fine not less than one time but not more than five times the value of the unlawful earnings; in case there involves no unlawful earnings, the offenders shall be punished with a fine of 10,000 yuan or less, and if the

circumstances are serious, they shall be ordered to suspend business for rectification, and their business licenses shall be revoked:

- (1) producing or selling commodities failing to meet the requirements for the protection of personal and property safety;
- (2) mixing adulterations into their commodities, or passing fake commodities off as genuine ones, or passing defective commodities off as good ones, or passing substandard commodities off as standard ones;
- (3) producing commodities which have been formally declared by the State to be eliminated, or selling commodities no longer effective or deteriorated;
- (4) forging the origin of commodities, forging or counterfeiting the names and addresses of other factories, and forging or counterfeiting the authentication marks or famous-and-excellent-product marks;
- (5) selling commodities not inspected or quarantined against the requirement therefore, or forging the result of inspection or quarantine;
- (6) making false or misleading propaganda about their commodities or services;
- (7) deliberately delaying or unreasonably refusing consumers' demand for repair, remanufacture, replacement, return of goods, makeup for the short commodities, refundment of payment for goods or services, or compensations for losses;
- (8) violating human dignity or personal freedom of consumers;
- (9) other circumstances wherein punishment shall be given for infringement of consumer rights and interests as stipulated by laws or regulations.

Article 51 Any business operator who is not satisfied with the decision on punishment may apply to the organ at the next higher level for reconsideration within 15 days from the date of receipt of the decision; and the person who is not satisfied with the reconsideration decision may bring a lawsuit in the people's court within 15 days from the date of receipt of the reconsideration decision; or he may take legal proceedings directly in the people's court.

Article 52 Anyone who, by means of violence or threats, hinders functionaries of the administrative departments concerned from performing their duties according to law, shall be investigated for criminal responsibility according to law; and those who refuse or hinder functionaries of the administrative departments concerned

from performing their duties according to law, without resorting to violence or threats, shall be punished by public security organs in accordance with the stipulations of the Regulations of the People's Republic of China on the Administrative Penalties for Public Security.

(Note: According to the Decision of the Standing Committee of the National People's Congress on Revising Certain Laws promulgated by the Standing Committee of the National People's Congress on August 27, 2009, "Regulations of the People's Republic of China on the Administrative Penalties for Public Security" in this Article is revised to "Law of the People's Republic of China on Penalties for Administration of Public Security".)

Article 53 Any functionary of the State organs, who neglects his duties or shields any business operator guilty of infringement of the legitimate rights and interests of consumers, shall be given administrative sanctions by the unit he belongs to, or by an organ at a higher level; if the circumstances are serious enough to constitute a crime, he shall be investigated for criminal responsibility according to law.

Chapter VIII. : Supplementary Provisions

Article 54 The present Law shall be applicable *mutatis mutandis* to peasants' purchase or application of means of production used directly in agricultural production.

Article 55 The present Law shall go into effect as of January 1, 1994.

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