법제교류 연구 13-21-⑥

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

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Abstract

Ⅰ. Purpose and Scope of Research

□ This research aims to examine the consumer protection legislations of Mongolia and South Korea and provides a comparative analysis between the two, in order to derive implications and lessons for emerging economies, such as Mongolia, in which the legal concept of consumer protection and relevant laws are adopted but still requires further legislative measures in order to achieve consumer protection.

□ This research primarily look into and analyzes Mongolia's legal framework on consumer protection legislation, enforcement mechanism, and dispute resolution methods, and then conducts a comparative analysis with those of South Korea in order to derive lessons for Mongolia's consumer protection legislation system.

Ⅱ. Research Content

□ Consumer protection legislation in Mongolia

○ The concept of consumer protection developed in relation to economic growth in Mongolia, and this development process may be reviewed

in chronological order as categorized as the initial period, formation period, growth period, and the new era as Mongolia moved from nomadic economy to market economy.

○ The primary consumer protection legislation in Mongolia includes the Consumer Protection Law, Competition Law, and the Civil Law. While these laws provide definitions and principles for key legal concepts in consumer protection, their non-uniformity hinders effective enforcement which calls for substantial amendment and improvement.

○ Consumer protection policy enforcement mechanism in Mongolia include the AFCCD, whose role is to protect consumer rights and promote a competitive and fair market environment; however this agency requires capacity building and reinforcement of human resource.

○ Violation of consumer protection legislation is inspected by a government agent, the Division of Protection of Consumer Rights, which has detected increasing number of violations and fined violators. However, Mongolian laws lack specific provisions of product liability compensation, and the quality of products remains as the main source of complaints.

□ Comparative Analysis with Consumer Protection Legislation in South Korea

○ Legal framework of consumer protection legislation in South Korea consists of the Consumer Protection Act, consumer transaction legislation such as the Regulation of Standardized Contracts Act and the Door-to-Door Sales etc. Act, the Installment Transaction Act, the Act

on Fair Labeling and Advertising, the Product Liability Act, and the Act on the Electronic Commerce Transaction, etc. Korea has been consistently amending these laws and timely enacted new laws to suit its consumer environment and market.

○ Consumer protection policy enforcement mechanism in South Korea includes the Fair Trade Commission and Korea Consumer Agency.

○ Consumer disputes in South Korea are resolved through various ways, including collective dispute settlement and lawsuits by consumer organizations.

○ Comparative analysis on consumer protection legislation in Mongolia and in South Korea reveals that although South Korea also is struggling with its own issues and has shortcomings in its consumer protection legislation, it has enacted necessary laws and has been amending them to suit its own market and consumers' needs. In comparison, while Mogolia also has adopted the concept of consumer protection and taken legislative measures and established enforcement mechanisms, it still needs to amend and reinforce its laws in order to truly protect consumers' rights.

Ⅲ. Expected Effects

□ This research provides analytical information consumer protection legislation of Mongolia and South Korea, including key issues in, and differences between, the two countries, which may be utilized by foreign business operators and legislative researchers.

□ The outcome of this research may be utilized as basic information for international trade and business, as well as consumer protection law research.

Key Words : Mongolia, Korea, Consumer protection law, Product liability law, Competition law

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Chapter 1. Introduction

Section 1. Purpose and Scope

This research examines the consumer protection legislations of Mongolia and South Korea and provides a comparative analysis. Many of Asian countries may be categorized as emerging economies and characterized by rapid market growth and influx of complex products and services such as electronic goods, automobile, and financial goods, et cetera. At the same time, the number of steps and parties involved for a good to be delivered to the actual consumer has increased. Such a change in the market and increased awareness regarding consumers' rights in general called for protection of consumer rights.

This research purposefully intends for emerging countries, such as Mongolia, to create and abide by trustworthy consumer protection legislation systems at an international level. One of the unsatisfactory factors faced by consumers in Mongolia is the conflict that arises from unreliable consumer protection. Therefore, it is important that Mongolia adopts and conforms to a dependable and effective consumer protection legislation system that guarantees the security and safety of consumers.

The research aims to check how Mongolia’s consumer protection has changed and how consumer laws have been revamped in the course of carrying out the national policy that was geared toward economic growth, and identify the differences with South Korea's consumer protection laws.

This study is composed as follows: Chapter 1 introduces the subject matter of the research along with its purpose and methodology.

Chapter 2 gives a brief historical overview of consumer protection in relation with economic growth in Mongolia. It divides the period into the initial period, formation period, growth period, and new era of consumer legislation, and addresses the relevant background. Then it introduces the legislative framework for consumer protection in Mongolia, including the Consumer Protection Law, Competition Law, and Civil Law. This study includes practical research on the consumer dispute resolution in Mongolia.

Chapter 3 introduces and analyzes the consumer protection legislation of South Korea and make a comparison between Mongolia and South Korea according to the existing relevant legal systems on consumer protection.

Chapter 4 concludes the research by summarizing the research result and suggesting potential research topics to be conducted in the future as a follow-up to this one.

Section 2. 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 six scholars in Mongolia and a research fellow at Korea Legislative Research Institute (KLRI).[1)]

The Mongolian team provided information and insights on the consumer protection legislation of Mongolia and South Korea. The KLRI research fellow designed the structure of this study, worked with the Mongolian team

1) The Mongolian team consists of LUNDENDORJ, Nanzaddorj (Director, National Legal Institute of Mongolia), ARIUNBOLD, Ayush (Vice Director, Government Consumer Agency), BATAA, Temuulen (Head of Civil Law Sector, National Legal Institute of Mongolia), DOLJIN, Sodnom (Professor, National University of Mongolia Law School), and YOO, Insook (Researcher, National University of Mongolia Law School). The KLRI researcher is LEE, Seo Young (Research Fellow, Korea Legislative Research Institute).

continuously in performing the research and preparing this report, while compiling, reviewing, and editing information provided by the members of the Mongolian team.

The research employed methods such as empirical analysis, case analysis, and comparative analysis to derive reasonable comments, solutions, and conclusions that lead to recommendations for an effective and trustworthy consumer protection conflict settlement in Mongolia and other applicable countries of emerging economy.

Chapter 2. Consumer Protection Legislation in Mongolia

Section 1. Development of Consumer Protection in relation to Economic Growth

This section shall elaborate on how Mongolia's consumer policy has changed and how consumer laws have been revamped in the course of carrying out the national policy that was geared toward economic growth.

1. Overview

The term "consumer policy" did not appear side-by-side with other Mongolian government policies until the early 1970s, let alone the mid-1960s when the country's economy was much poorer.[2] Mongolia's economy has been significantly transformed during the twentieth century, starting from a highly agrarian-base economy to collectivization and then to privatization.

The development of competition law and policy in Mongolia can be better understood and considered in the context of the overall economic situation and development goals in the country. Competition policy and consumer protection issues are subject to particular sectors of the Mongolian economy as well for the country's ambitious programs of industrial and regional development. These will be considered further in this Report.

Before the 1921 revolution, Mongolia had an underdeveloped, stagnant economy based on nomadic animal husbandry. Farming and industrialization were practically absent; transportation and communications were poor; foreign

2) UNCTAD, "Study on Competition Law," New York, 2012, p. 212.

entities controlled practically all banking, services, and trades. Most of the people were herdsmen or monks. The livestock was owned primarily by aristocrats and monasteries.

In the centralized planning period following the revolution, the development of the Mongolian economy passed through the following time periods: 1921-1939, 1940-1960,1961-1990, and 2000-until now.

2. Initial Period (1921s-1939s)

In the initial period (1921s-1939s), the economy remained primarily agrarian. After an unsuccessful attempt to collectivize herders, cattle breeding remained in private hands. The State began to develop industries based on the processing of animal husbandry products and the crops raised on State farms. Assisted by the Soviet Union, the Mongolian Government nationalized transportation, communications, domestic and foreign trade, and banking and finance.

These sectors were put under the control of the Mongolian State and cooperative organizations, or Mongolian-Soviet joint-stock companies. Geographically, industrialization projects developed mostly around Ulaanbaatar city.

3. Formation Period (1940s-1960s)

In the formation period (1940s-1960s), agriculture was collectivized. Industrialization developed further and included mining, timber processing, and consumer goods production. Central planning of the economy began in 1931 with yearly planning starting from 1945-1952.[3] The industrial projects

3) Doljin S., "The Mongolian Government Organizations and Legal System," Korea Legal Research Institute, 2009, p. 69.

and development of infrastructure were assisted by the Soviet Union that helped to build the trans-Mongolia railway and numerous industrial plants. China also provided assistance, primarily in the form of labor for infrastructure projects. Although industrial development was still centered in Ulaanbaatar, economic decentralization began with the completion of the railway and the establishment of food processing plants in the local center.

4. Growth Period (1960s-1990s)

Growth period (1960s-1990s) was characterized by further industrialization and agricultural growth, aided largely by the Council for Mutual Economic Assistance (Comecon) that Mongolia joined in 1962 with the help of the Soviet, together with East European financial and technical assistance. Mongolia modernized and diversified industry, particularly in mining, which led to considerable growth of the industrial output particularly in newly built plants in Baganuur, Choibalsan, Darhan, and Erdenet. Crop production substantially increased with the development of virgin lands by State farms. Infrastructure, particularly transportation and communications, improved thus helping to link industrial centers and remote rural areas.

However, in the late 1980s Mongolia started to experience the inefficiencies of centrally planned economies. Combined with the collapse of the Soviet system, it induced the Mongolian established to look to a new market-oriented paradigm of economic development.[4)]

During the period of centralized economy, Mongolia's economic and social development was largely influenced by the Soviet Union, with a large degree of inter-country market integration and a socialist central planning

4) *Supra* note 1.

system being the key characteristic of the Mongolian development strategy. In this period, means of production (mostly agricultural, textile, and natural resource extraction) were brought under State or collective ownership under a central planning regime, and there was an emphasis on the development of heavy industry and extraction-only mining. The industrial sector was dominated by a small number of large-scale and capital-intensive plants, while the development of industries manufacturing consumer goods was neglected. Under this model, small and medium sized enterprises (SMEs) were ignored and so, therefore, was the development of entrepreneurship.

As a result, the Authority for Fair Competition and Consumer Protection (AFCCP) management and staff members, as well as officials from other government agencies and NGOs, demonstrated admirable cooperation and willingness to invite critical inquiry concerning competition legislation, its enforcement, and competition policies in Mongolia.

5. New Era of Consumer Protection Legislation

In the 2000s, the country began to be influenced by consumer issues occurring in Mongolia. The focus of the country's consumer policy switched from consumer protection to the realization of consumer sovereignty. In the past, consumers were regarded as relatively weak; however, now consumer policy began to focus on support such as equal business opportunities, educational opportunities, and provision of safety measures for children and senior citizens in their self-sufficient settlement of problems, rather than enforcing protective, administrative regulations.[5)]

5) Togtohbayr D., "Way of improve function of consumers community to social," UB, 2005, p.14.

Therefore, the Mongolian Government started to pay careful attention on consumer protection and other legislation enacted in conformity with these laws, including the Law on Competition.

Section 2. The Legal Framework of Consumer Protection Legislation

Overall, the current Mongolian Consumer Protection Legislation can be divided into three major laws: Consumer Protection Law (2003), Competition Law (2010), and Civil Law (2002).

1. Consumer Protection Law

The current Consumer Protection Law (CPL) became effective in December 2003, and is the main consumer protection statute of Mongolia. According to Article 1.1 of the CPL, the purpose of this Law is to regulate relations connected with protection of the rights of consumers.

Chapter 1 of the CPL ascertains the principles in consumer protection which include: 1) the goods, works, and services being offered at the market shall meet the respective requirements of safety of consumers, quantity, volume, quality, durability, and purpose; 2) consumers shall be ensured the possibilities to obtain true information on goods, works, and services, and respect of consumer culture; 3) any harm caused to the consumer's health, life, property, non-property interests, and environment shall be redressed, the violated rights restored, and losses compensated for.

Chapter 2 of the CPL ascertains basic rights of consumers in Mongolia, which include: 1) consumers' rights to receive quality and safe goods, works,

and services; 2) consumers' entitlement to the redress of harm and compensation for loss suffered at the fault of producers, sellers or contractors; 3) consumers' right to information on goods; 4) consumers' rights defendable in court; 5) consumers' right to develop consumer culture; 6) limitation period for claims concerning defects of goods, works, and services; 7) invalidity of contracts with consumers.

Chapter 3 of the CPL contains the duties and procedures of sellers and contractors, which include: 1) setting of warranty period and rights of producers and contractors; 2) producer's duty to repair and provide other technical services; 3) period for remedying defects of the goods, works, and services.

Chapter 4 of the Law contains the management and organization of consumer protection, which include: 1) powers of the State Central Administrative Body in charge of consumer protection; 2) powers of Aimag, capital city, Soum, and district Hurals of citizens' representatives; 3) powers of Aimag, capital city, Soum, and district Governors; 4) functions of consumer protection non-governmental organizations; and 5) monitoring the implementation of consumer protection legislation. Chapter 5 of the Law contains provisions on administrative liability for breaches of the legislation.

In general, the general principles that are stipulated in Civil Law, such as the right to obtain information, right to buy defect-free good, guarantee period, and consumer and producers' rights and duties are regulated accurately through the CPL. Overall, CPL aims to counterbalance the imbalance of interests between consumers and producers, and uphold the consumer's interests well.

2. Competition Law

Mongolia adopted the Law of Mongolia on Prohibiting Unfair Competition (hereinafter "Competition Law" for short) as early as 1993. Government policy has been directed towards precluding the Government from restricting economic competition, prohibiting monopolies and other restraints of fair competition, prohibiting monopolies and other restrictions on economic competition, establishing guidelines for Government intervention to ensure fair competition, and regulating natural monopolies and introducing legal remedies. The enforcement of the Completition Law effectively started only with the establishment of AFCCP. A new Competition Law of July 2010 provided more powers to the Authority, including strengthened cartel enforcement mechanisms, and increased sanctions.

(1) Structure of the Competition Law

The new Competition Law comprises of 5 Chapters with 28 Articles that include the most important aspects of safeguarding competition. Chapter 1 of the Law includes its general provisions, scope, and major definitions, including that of natural monopoly. Chapter 2 of the Law regulates natural monopoly (AFCCP regulates prices and outputs of natural monopolies by granting them permission to change these characteristics and controls other abuses of dominance by natural monopolies, such as: a) illegal use of the dominant position; b) re-organization of dominant legal entity through merger and consolidation, and purchase of shares of other companies; c) prohibiting the governance position of the competing legal entity, and division and separation of the dominant legal entity; d) prohibiting the establishment of

contracts and agreements (cartels) aimed at restriction of competition; e) activities aimed at restriction of competition; and f) prohibiting State institutions from restricting competition.

Cartels are outlawed in Mongolia since the enactment of Competition Law in 1993. The prohibition of cartels is designed to prevent agreements between enterprises insofar as these perceptibly restrict competition between them. According to Article 11 of the new Competition Law, the establishment of contracts and agreements aimed at restricting competition is prohibited. Article 11.1 prohibits hard-core cartels and Article 11.2 prohibits soft cartels where they are not in the public interest or create circumstances restricting competition. The Competition Law also forbids business entities from supporting and participating in any form, in the contracts and agreements specified under Article 11. In terms of investigatory powers to enforce the ban on cartels, AFCCP has increased its powers compared to the previous law on competition. It may request documents, data, explanations, and any other information from companies, as well as from national or local public authorities and administrators for the purpose of establishing unlawful conduct and understanding the market situation. The authority may inspect business premises, search companies, and seize evidence. Additionally, the authority has at its disposal the leniency program provided for by law, as well as other legal incentives for cartel participants to report violations and to comply therewith.

Chapter 3 regulates powers and functions of AFCCP providing more powers and a wider scope for enforcement and advocacy to AFCCP. In addition, it also entrusts the AFCCP with enforcing additional laws, including the Law on Public Procurement (complaint remedy) and the Law on Advertisement (unfair competition). Thus, in addition to addressing core anti-

competitive types of conduct like cartels, excessive pricing, and other exploitive and exclusionary unilateral practices, the Competition Law also provides for other regulatory norms related to public procurement, State aid, natural monopolies, unfair competition and false advertisement, and powers of the competition authority. There are other laws relevant to the regulation of competition and the implementation of competition policy to a varying degree in various sectors of the national economy. Such laws include the Procurement of Goods, Works and Services with State and Local Funds Law, Patent Law, Copyright Law, Telecommunications Law, and Consumer Protection Law. Despite being relatively concise, the Competition Law of Mongolia provides the basic framework for sanctioning and restricting anti-competitive behavior by market agents. Importantly, the Law applies to both private and public entities participating in the market and prohibits all levels of Government from taking decisions aimed at restricting competition. Likewise the Law prohibits business entities from engaging in certain types of anti-competitive conduct or restriction of entry of competitors to the market. The major provisions of the Mongolian competition legislation will be reviewed further in this Report.

(2) Definition of the Relevant Market

According to the Law of Mongolia on Prohibiting Unfair Competition, the relevant market is defined as “territory on which a supply and sale of a certain product proceed...” For the moment this definition looks suitable for the competition enforcement in the country because of its focus on such characteristics of the market as territory. The domestic product markets in Mongolia are relatively small and in some of them, even a company that cannot be considered big by international standards may have a dominant

position and conduct business in an anti-competitive manner, mainly by engaging in practices of exploitation both upstream and downstream. For example, market intermediaries in the trade in major Mongolian agricultural goods such as meat, wheat, cashmere, and skins are likely to have a dominant position in relevant markets that are geographically limited. Otherwise, it can hardly be explained how such intermediaries manage to raise prices for goods they receive from the nomads by more than twice when selling their products to the grocery stores. Focusing on the territorial characteristic of the relevant market can be helpful in identifying this type of violation.

(3) Anti-competitive Agreements

The anti-competitive agreements are considered in Article 11 of the Law of Mongolia on Prohibiting Unfair Competition. It addresses both horizontal and vertical agreements restricting competition. Article 11.1 provides sufficient legal basis for enforcement. Articles 11.1.1 and 11.1.2 provide for a per se prohibition of horizontal agreements among competitors, such as price-fixing and market allocation by territory, type of product/service, and customer. In addition Article 11.1.3 prohibits per se agreements providing for "restricting the production, supply, sale, shipping, transportation and market accessibility of product investment, technical and technological renovation." Article 11.1.4 provides for the per se prohibition of bid rigging in public procurement. Article 11.2.1 refers to "refusing to establish economic relations without economic or technical justifications." This provision implies refusal to deal with a rival or customer, which is generally considered as a unilateral and not a concerted antitrust violation.

However, it is generally accepted in competition legislation and law enforcement practice that agreements between competitors on price level or

market allocation are socially harmful and lead to a deterioration of consumer welfare. Therefore, it is sufficient to establish this type of conduct to proving its illegality without a need to show its harmful effects on the economy and consumer welfare. The wording of the Law cited above looks misleading and redundant when applied to a hard-core cartel investigation. Furthermore, the Law would benefit from a definition for the terms "cartel" and "anti-competitive agreement" in Article 4. In our view, it is important to delineate between these terms and clarify the meaning of the definitions of the terms used in the Law. Possibly, cartels can be defined as a specific form of anti-competitive agreement that can be only horizontal, provide for price fixing, market allocation or bid rigging, and constituting a per se violation of the competition legislation. It is recommended to restructure Article 11 in a manner that provides for separate treatment of cartel agreements as per se violations on one hand, while other horizontal and vertical agreements to be analyzed on the basis of their effects on competition and consumer welfare, on the other hand.

(4) Abuse of Dominance

The Law of Mongolia on Prohibiting Unfair Competition includes a set of provisions related to abuse of dominance. Article 5.2 of the Law provides for a market share-based definition of dominant position of a business entity: "A business entity shall be considered as having a dominant position where it... occupies one third or more percent of the production and sale."

This provision can be interpreted as a non-refundable presumption of dominance of an entity whose market share exceeds the threshold indicated in this Article. In addition, Article 5.3 provides for the possibility of an entity having a lower market share establishing a dominant position, if it is

"capable of constraining the conditions for other business entities to enter the market or force them out of the market. depending on the scope of the product, geographic boundary of the market, market concentration, and market power." The term "market power" that is used as a synonym to "dominant position" is defined in Article 4.1.10 as "capacity of a business entity's certain product to impact the market." This definition needs to be reconsidered because it is the entity and not the product that can exercise a certain conduct and, therefore, influence the market. The exercise of influence and behavior is characteristic of the human will staying behind the entity activity, while the product-being just a dehumanized material item-cannot behave as such. Therefore, it is advisable for the drafters of further amendments to the Mongolian Competition Law to consider international experience in reformulating the "behavioral" definition of the dominant position of an entity, emphasizing its ability or capacity to profitably raise prices above the competitive level or to receive supra-competitive profits for a sufficiently long period of time (the latter often being established as a period of not less than one year) without facing any competitive constraints, such as new entries to the market, or expansion of sales by existing companies.

The use of this definition may bear the risk of over-enforcement because it lacks some important qualitative characteristics that have found broad international acceptance in antitrust legislation. For example, a broad consensus has been reached at the International Competition Network (ICN) as to the use of the terms "dominance" and "substantial market power" interchangeably, and defining it as "the ability to price profitably above the competitive level." Other important characteristics for establishing a dominant position include the extent to which the product price can exceed the competitive level and the maintainability of such a price. In the Mongolian context, it

might occur that an entity having a market share of about 40 percent, which would be considered as having a dominant position under the Competition Law, may not be able to raise its price to a substantially higher level than the competitive level. If it does so, its share may rather quickly deteriorate due to new entries into the market or production expansion by existing competitors. This situation where a company can temporarily obtain a market share exceeding the dominance threshold laid down in the Law is likely to occur in relatively small Mongolian product markets. However, pursuant to the Law, AFCCP would have to consider such entity as dominant and therefore would not have the possibility to dismiss the case after a dominance assessment exercise.

Article 15.1.6 empowers AFCCP to determine natural monopoly or dominant position of business entities and entitles the Agency to exercise "supervision" of such entities. This may result in additional workload for AFCCP, which already has limited resources. There is need for adopting a regulation, as stipulated in Article 15.1.6, on determining natural monopoly and dominant position, the nature of the "supervision" referred to in the same Article, and how it should be implemented.

The unilateral abuses resulting from the dominant position of an entity in the market are addressed in Article 7 of the Law. The abuse is characterized as "monopolizing activity" in accordance with the definition given in Article 4.1.5. The major features of the "monopolizing activity" are "pressuring the consumers and restricting the competition" by manipulating price and quantity of the product sold in the market, reducing possibilities for new entries into the market and forcing existing competitors out of the market. Apart from a rather limited exception in Article 7.1.3 of price discrimination that can be justified by differences in transportation costs in different locations, wholesale

discounts, and refusal to deal, unilateral abuse of dominance seems to be treated as a per se violation. Taking into account that enforcement of Competition Law is relatively young in Mongolia this approach may work on a temporary basis since it is important for the jurisdiction to eliminate the most evident and harmful unilateral violations by establishing them and applying the necessary sanctions and remedies. Establishment of the violation as such would be much easier for AFCCP than making a decision on its legality based on the analysis of its effects. However, in a longer perspective the per se violation approach may carry a risk of over-deterrence in the course of consideration of vertical restraints of competition compared to the effect-based or «rule of reason» approach.

A private entity whose behavior has been reorganized illegally by an AFCCP decision has the right to challenge that decision in the courts, which can, in turn, overrule the decision. In cases where unilateral abuses were considered by the courts based on an analysis of economic, welfare, and competitive effects of the behavior in question, this would facilitate the case for the largest companies in Mongolia, which have sufficient funds to hire experienced foreign lawyers to defend them. It would make it even more challenging for less experienced AFCCP staff to prepare adequate arguments. Putting stricter legal frameworks on the decision-making process of unilateral abuses reduces the pressure on AFCCP officials and the courts and, therefore, contributes to more independent decision-making. This strengthens the argument in favor of using the per se approach in the consideration of most of the unilateral violations in Mongolia, at least for a period of time until the enforcers' skills and the independence of decision-making bodies will become insufficient so as to prompt the use of the more flexible effect-based approach.

Similar considerations apply to using the "rule of reason" doctrine in Competition Law enforcement practice, since this approach requires a more in-depth economic analysis and goes by the mere establishment of unilateral violation in accordance with the law. Rule of reason is a judicial doctrine of antitrust law according to which a trade practice violates competition law only if the practice unreasonably restrains trade based on economic factors. In order to determine whether there is unreasonable restraint, the court must consider the facts particular to the business to which the restraint is applied; its condition before and after the restraint was imposed; and the nature and effect of the restraint, actual or probable. The history of the restraint, the harm believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. Thus, the application of the "rule of reason" approach leaves much more space for judicial interpretation of the unilateral violations compared to the per se rule and, therefore, may create more difficulties for a young agency like AFCCP when defending its decisions in the courts vis-à-vis violators that may have more resources and expertise than the Agency.

(5) Mergers and Acquisitions Structuring

The merger review procedure is regulated by Article 8. According to Article 8.1, dominant business entities should submit an application to AFCCP when they are restructuring by means of mergers and/or acquisitions, purchasing 20 percent of common or 15 percent of preferred stock in a company competing in the relevant product market, or merging with "related business entities." Companies that have purchased the indicated shares of the competitor's stock without authorization from the Agency are liable to a fine of up to 20 million togrogs (roughly $15,000), according to Article

27.1.5. The wording of Articles 8.1 and 27.1.5 does not provide sufficient clarity on whether this rule applies to stock purchase leading to upstream or downstream integration, i.e. vertical mergers, or if it is effective for horizontal mergers only.

The term “related business entity” as used in Article 8.1 has not been specified in the Law unlike the term “related party,” which is defined in Article 4.1.6 of the Law with reference to Articles 6.1.1 – 6.1.3 of the Corporate Income Tax Law, as the party is actually controlled by the same holding company and considered as a part of the same entity for taxation purposes.

This suggests that the term “related business entity” may mean a company related to the enterprise in question by other means than common corporate control and includes a supplier or customer.

3. Consumer Protection Principles in Civil Law

Passage 3 of Article 2 of the Constitutional Law of Mongolia declares the basic human rights that Mongolian citizens enjoy freely, such as the right to live in a safe and healthy environment, and to obtain, to own, to possess, and to demise movable and immovable property in a just manner. Mongolian legal researchers define these rights and the meaning of “safe and wealthy environment” commonly as ecologically clean living environment where life and health are protected from any harm and there is less chance of facing any danger. In this case, to define the meaning of the afore-mentioned right, a healthy environment shall be considered as not only the surrounding environment but circumstantially, the right to use healthy and competent products. Whereas buying and using property in order to satisfy one’s needs

depends on the individual's free choices and decision. Simply, it could be interpreted that an individual has a right to make the decision to buy and to choose independently.

Whereas constitutional basic human rights directly affect public law or those laws related to public law, they affect private law indirectly according to the theory of third-person's impact of basic rights. In other words, by features of systematization and the methodology of regulation, basic human rights affect private laws and regulations indirectly or by the third-person's method. As an example, we will introduce how these rights are impacted in the laws that contain private law principles in Civil Law.

Pursuant to the Civil Law of Mongolia, under a sale and purchase contract, a seller shall be obliged to deliver the goods and to transfer the property in the goods, without any violation of rights and physical deficiency, and with all relevant documentation to the buyer for buyer's ownership. In turn, a buyer shall be obliged to pay the agreed price to the seller and receive the purchased goods.[6] Further, the seller shall be obligated to provide the buyer with complete, true and accurate information about the designation, characteristics of usage, storage, use, transportation condition and procedures, duration of warranty, and durability of the goods sold.[7]

(1) Standard Condition of Contract

Regulation of "standard condition of contract" was stipulated pursuant to Civil Law provisions in Articles 200-202, which was adopted in 2002 for the first time. There had been no regulation about the standard condition of contract before the 2002 Civil Law.

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6) Civil Law 2002, Article 243.1.
7) Civil Law 2002, Article 243.2.

However, Mongolian jurists and researchers have come to no agreement their views and opinions on whether this standard is intended to protect consumers' interests. Rather, practical cases have reached cogitation on the matter. It is worthy of mention that the Administrative Court settled a relevant matter in 2012; however, the judgment has not been abated yet for approval. The case is as such. According to a contract condition, commercial banks[8] covenant with their debtor, and require payment of a withholding from 0.1 to one percent depending on quantity of the debt. Several debtors made a complaint about the condition of the contract to the Agency for lack of fair competition and consumer protection. Inspectors deemed that the banks through conspiring, creating cartel, and using illegal commercial methods, caused injury to the consumers, and the case was transferred to the Administrative Court as a result.

It would have been more appropriate using Article 200 to 202, provisions that regulate the standard condition of contracts in the Civil Law, rather than using the above provisions.

Article 200.1 of the Civil Law defines "standard condition of contract" as, "Conditions offered by a party to another; that is not determined by law, but which specifies a procedure clarifying law provisions, and that shall be used permanently and determined beforehand, shall be standard conditions of contract."[9]

In comparison, the legal definition of standard condition is the same as paying a withholding, which is the condition of a loan contract. Loan contracts have the following conditions. First, the bank offers a condition, which is

8) In Mongolia 12 commercial banks operate and supply financial service to their consumers.

9) Civil Law 2000, Article 200.

preconditioned to the debtor. Second, there are no regulations written into law for paying a withholding. Finally, banks use the condition of paying a withholding at each contract. In conclusion, the condition of paying a withholding is a standard condition of the loan contract.

But the given standard condition, whether deemed illegal or void, depends on whether a precedent condition of Article 202 of the Civil Law is allowed. Article 202 of the Civil Law regulates the limitation of the effect of a standard condition. According to Article 202 of the Civil Law, "even if standard conditions are in the contract, if they contradict mutual trust and fairness principles and are harmful to the other party, accepting these conditions, then the conditions shall be deemed void. In this case, the circumstances forcing their inclusion into the contract, interests of parties, and other circumstances shall be taken into account."

It is possible to compare this provision with the aforementioned conditions of paying a withholding. Accordingly, it is necessary to clarify by law, why the debtor needs to pay a withholding according to the contract condition.

In conclusion, the definition of standard condition, and the limitation of effect of standard condition from Articles 200 to 203 of the Civil Law are intended to prevent unequal situations between larger monopolies, which can be producer or servicer, and the consumer. It further aims to limit prevailing situations of companies and to prevent one-sided opinions. Therefore, the aforementioned provision of the Civil Law is indeed regulation intended to protect consumers' interests. But in a practical sense, this regulation cannot be effective because qualified entities, hence, courts and notaries do not know the meaning or usage of the regulation.

The theory of ethics, or respecting personal interests known as "ethical personalism," which was established by Immanual Kant, greatly influenced

the development of private law, especially Civil Law, which is deemed as the foundation of private law.[10] According to this theory, it is important that the individual can define and implement the task and objective of their actions.

In relation to Civil Law, and furthermore in relation to private law, an individual has a right to exercise a legal act as long as it does not break a public concern or violate another's rights.

This principle of economic, legal liberalism is defined as a legal entity or person that engages in a legal action without the State's governance and help, which is not in contradiction to implementations of private independence under the principle of private autonomy in Civil Law. The principle of private autonomy is when the legal entity or person that has a right to decide whether to contract or not to contract, with any party, and to any type of agreement. Further, if ever entered into a contract, the contracting party may fix the content and terms according to one's own declaration of intention, free of any State intervention. This is also known as the principle of freedom of contract, one of the main principles in Civil Law accepted throughout the world. In the Mongolian Civil Law, the principle of freedom of contract is enumerated in Article 189 that stipulates, "Parties may enter into agreements freely within the framework of law and determine for themselves the content thereof."

It is a given that the right to enter into contract freely may be bound for the protection of another's interest allowed by Civil Law, such as in Articles 56, 57, and 58.

In certain cases, the person concerned should receive permission from an official organization of the State that is provided in Articles 189.2 and 189.3

10) Toivgoo S., Buyankhishig S., "City association for consumer," UB 2009, p.18.

of the Civil Law. Thus, the person that independently enters into a contract must receive permission from an official organization of the State in these cases. Outside this narrow exception, there are no rules for dispute settlements that reach beyond this principle of contracts. This concept is accepted by Article 189.4 of the Civil Law.

The Civil Law primarily stipulates that a person privy to a contract is obligated to the contract. However, sections that protect consumers' interests and rights have some shortcomings. This is essentially because suppliers of goods and services, as well as legal entities are likely to be in a superior position over the consumer in their knowledge of the goods, services, and the market.

Civil Law is at the bedrock of private law and particularly in certain sections of private law, such as laws regulating banks, protection of consumer interests and rights, and Competition Law, which contains relatively independent information. Nevertheless, Civil Law has less influence now that it is possible to read into other frameworks and texts of regulations mentioned above.

Accordingly, in order for the above principle of freedom of contract to influence sections that concern consumers, it is crucial for there to be balance between the positions of service supplier, who is an expert in the subject matter, and the consumer, who is an inexpert. This issue arises from the fact that consumers have no access to practical or complete information about goods and services. In order to keep such equilibrium between the two counterparts, information about goods and services need to be made public and sufficiently prescribed in the Law to protect consumer rights, particularly in Chapters four, five, and six.

Countries that subscribe to a continental legal system have generally drifted from the principle of freedom of contract in Civil Law by limiting laws that protect consumer interests; however, we hope these limitations do not exist in Mongolia's Law that protects consumer rights.

(2) Related Settlement of Sales Contract

The persons privy to contract have a duty pursuant to Civil Law to give information to the other parties in the contract. The parties that retrieve information, have a right to access the same, but bears the burden of cost related to the giving of information. This is provided for in the general Article on goods and service suppliers. The person subject to giving information must give true and actual information about the goods and or services that will be rendered in actuality.

Furthermore, Article 243 of the Civil Law stipulates that consumers should be protected in Sales contracts. Also, Article 251 of the Civil Law regulates situations where there is substantial/material deficiency on the sold goods. Sold goods should reckon no material deficiency under Article 251.1 of the Civil Law, which says, "Goods with fixed contract number, measure, quality reckon no material deficiency." Article 251.2 of the Civil Law stipulates, "If there is no mention about quality of goods in the contract, goods are assumed to be without deficiency by virtue of the contract."

In conclusion, parties could specify the quality of goods and services in the contract, or decide by questioning the middle buyer on issues of delay, usage and material deficiency of the goods.

The case above describes the sale of new goods. If goods are used however, one must take into account the natural depreciation of goods in determining

the material deficiency of the goods.

In some instances, the seller of goods that is sold with material deficiency is responsible for the manner in which those goods were carried. The consumer may carry out a claim against the seller under the Civil Law's provision for protection of consumers' interest.

Especially according to Article 253 of the Civil Law, if the vendor sells a defective thing, the vendor's liability is eliminated if the defected part is replaceable or the property is fungible in nature and a replacement is available for the purchaser at the time of purchase. In order for execution of vendor's liability to be binding, the purchaser and consumer's claim must satisfy the provision on vendor's liability in Article 254 of the Civil Law. According to Article 254.1 of the Civil Law, a purchaser has a right to claim and void the contract of sale. The regulation of a void contract is used for long-term contracts, and parties' liability of a contract is frequently found. This is true for examples of contract of hire, of property, or of tenancy.

In a case like this, the liability that is determined before a contract is void shall be reserved; however, after the contract is void any subsequent liability shall be expired. Otherwise, the legal consequence of a void contract continues on to the future.

If contract of sale is deemed void, the purchaser that pays vendor is free from the contract, and the defective good is taken from the purchaser. However, this legal consequence of a void contract does not protect the purchaser and consumer's interests; in fact it seriously violates their interests. For this reason, regulation that has the power to void contract in Article 254.1 of the Civil Law should be amended.

Section 3. Consumer Protection Policy Enforcement Mechanism

In Mongolia, the AFCCD protects consumer rights and promotes a competitive and fair market environment. AFCCD was established in 2003 with the following five departments: 1) Department of Public Administration, 2) Department of Inspection and Regulation, 3) Department of Consumer Protection, 4) Department of International Cooperation, and 5) Department of Market Studies Department.

The major AFCCD department involved in Competition Law enforcement is the Department of Law, Inspection and Regulation. It is in charge of conducting investigations and preparing AFCCD's legal initiatives. Upon completion of an investigation, the department reports its result to the Board of Directors and seeks its approval of the decision taken in a case where a decision has been disputed by a defendant.[11)]

It presents legal initiatives to the Board of Directors, then further to the Regulatory Board or to the Chairman of the Agency, then to the Government and the Parliament. In addition, the Department also has a duty to consider cases of violation of Public Procurement Law.

The concentration of these heterogeneous duties in the department leads to an increase in its workload and insufficient specialization in core antitrust violations such as cartels, abuses of dominance, and merger reviews. For example, in 2011 the Department conducted very few investigations on unilateral and concerted abuses of dominance because it dedicated most of its resources to public procurement cases. It is recommended to set up separate

11) Ibid.

investigation teams specializing in cartels and bid rigging, unilateral abuses of dominant positions in the market, and merger reviews.

Department of Consumer Protection oversees compliance with the relevant provisions of competition law and consumer protection legislation and addresses complaints by citizens on violations of their consumer rights. Typical violations considered by the department include selling of expired food products, substandard quality of service, counterfeiting, violation of commodity storage rules, and deceptive labeling.

The Department of Market Studies is supposed to conduct market studies supporting AFCCD competition advocacy and law enforcement efforts by obtaining better understanding of the functioning of markets. Priority research targets are chosen among the markets having greater social and economic significance.

The latest comprehensive studies were made in the fuel and food markets. However, due to insufficient resources and lack of skills-there are only three staff members working in the department, including its director-the department has to rely on the assistance of international donors to conduct more in-depth market studies.

The Department of International Cooperation plays a very important role in transferring foreign skills and methodologies of antitrust investigations into AFCCD practice. For this purpose it maintains an ongoing liaison with international organizations having a presence in Mongolia, as well as participation in international forums on competition issues, such as ICN, the Organization for Economic Cooperation and Development (OECD) and UNCTAD. Due to the lack of own funding, AFCCD may need to rely on international organizations' resources for its global participation (e.g. ICN funded the Mongolian participation in some of its annual conferences and

workshops). The department also engages in building bilateral relationships with foreign competition authorities.

Section 4. Consumer Dispute Resolution

On October of 2009, the Division of Protection of Consumer Rights has been set up in Mongolia with a mission to protect consumer rights. Since its establishment the unit has conducted 64 inspections, revealed 1707 cases of violation in total, imposed fines of 69.4 million tugrugs over 74 entities and officials that violated consumer rights, and sanctioned reimbursement of 146.6 million tugrugs of damages to consumers.

Although the number of inspections carried out in the first half of year 2013 is almost on the same level with that of the previous year, the number of claims settled has increased by 2.1 times. As most of the claims for the first half of the year were related to housing and communal services (HCS), activities of homeowners associations (HOA) have been placed on this sector as the main focus of inspections. Inspections for 2009 to the first half of 2013 by AFCCP and claims settled are as follows.

<Table-1: Inspections by AFCCP Amount of Fines Imposed in 2009-1st Half of 2013>

No	Content	Unit of measure	2009	2010	2011	2012	2013
1	Inspections	Num.	4	4	12	23	21
2	Settlement of claims	Num.	32	78	120	186	433
3	Violations	Num.	45	186	354	545	577

No	Content	Unit of measure	2009	2010	2011	2012	2013
4	Fined entities and individuals	Num.	1	5	48	8	12
5	Fines imposed	1,000 tugrugs	200,0	3350,0	7250,0	23300,0	38887
6	Damages reimbursed	1,000 tugrugs	975,0	46849,5	36100,0	51360,0	1154.9

If we divide claims made by consumers for the first half of year 2013 by economic sectors, claims relating to activities of HCS and HOA amount to 32.2 percent of the total; claims of sale of food and consumer goods is 22.8 percent; and claims relating to quality, price and floor space of building is 15.7 percent. Also there are over 200 claims, unrelated to the mission of the agency, asking for apartments, plot of land and aid-in-kind, seeking settlement of disputes among NGOs, review of decisions by courts, police department, and legal entities. Some of them have been given advice and recommendations while others have been referred to relevant authorities.

<Table-2: Claims by Sector in the Year of 2013>

No	Sector	Num.	Percentage
1	Activities of HCS and HOA	123	32.2
2	Trade and services	87	22.77
3	Price, quality and floor space of building	60	15.71
4	Telecommunications sector	10	2.62
5	Others	102	26.7
	Total	382	100

Based on the above situation, an inspection has been carried out covering a total of 527 homeowners associations, 50 housing and communal service companies representing 30 large housing services registered in six districts of the capital city. The inspection revealed widespread violations in homeowners associations such as: all member and board meetings are not held on a regular basis; failure to report its activities, execution of funds and budget; board chairman and executives do not settle claims from homeowners; poor registration, use and maintenance; misuse of commonly-used assets and facilities; and illegal restriction of access to sewage, water, heat, and electricity. A total of 144 cases of violations have been detected, which was caused by an unclear legal environment of the sector, its vague organization, and lack of information for citizens due to poor advocacy work.

<Table-3: Types and Portion of Violations in 2013>

No	Violations revealed	Violations	
		Num.	Percentage
1	Illegal foundation of HOA, forgery of attendance list, failure to inform all members	8	5.56
2	All member and board meetings are not conducted on a regular basis	42	29.17
3	Disputes over services, fees, charges, and fiscal issues	38	26.39
4	Do not respond to opinion, request, and claims from homeowners	12	8.33
5	Poor cleaning, maintenance, and security	26	18.06
6	Others	18	12.50
	Total	144	100.00

Following measures have been taken to correct the above-mentioned violations. 1) In support of views expressed by some members of parliament on improvement of legal environment for and creation of optimal organization of homeowners associations, a detailed proposal has been formulated and submitted for their review. Contributions to the draft of the Regulation of Activities of Homeowners Association being developed by municipal council have been made; 2) suit against Supreme Council of Homeowners Associations NGO being brought in the Chingeltei District Court; 3) under suspicion of possible grave violations of law, eight HOA cases have been filed to police department; 4) official demand of state inspector to eliminate commonplace violations have been given to 92 HOAs; 5) as a result of inspection, there are improvements in implementation of relevant rules and regulations, legal knowledge of homeowners. HOA started to correct their wrongdoings and cooperate with citizens.

Inspections under consumer protection legislations are carried out in line with the Law on State Inspection and the Law on Administrative Responsibility, and in case of rejection of decision made by the Agency it may be appealed according to the above laws. So far no appeal has been made against the Agency.

However, there have been many appeals against the Agency's decision by companies within the frame of the Agency's main legislation, the Law on Competition, which have been settled by court rulings.

Chapter 3. Comparative Analysis with Consumer Protection Legislation in South Korea

Before we compare the legal regulation on consumer protection of Mongolia and Korea, we are obliged to mention the specialty of South Korean consumer policy, and consumer protection legislation.

Section 1. Legal Framework of Consumer Protection Legislation in South Korea

In Korea, the law of consumer protection is characterized by the regulatory intervention of the Korean Fair Trade Commission. Though a lot of Acts contain some clauses fit for consumer protection, the regulatory consumer laws are as follows: the Framework Act on Consumers, the Regulation of Standardized Contracts Act, the Door-to-Door Sales, etc. Act, the Installment Transactions Act, the Act on Fair Labeling and Advertising, and the Act on Consumer Protection in Electronic Commerce, etc.

1. Consumer Protection Act

The Consumer Protection Act, which was enacted in January 1980,[12] is composed of Chapter 1 (General Provisions), Chapter 2 (State's Consumer Protection Measures), Chapter 3 (Consumers' Safety), Chapter 4 (Faithful Labeling), Chapter 5 (Propriety of Transactions), Chapter 6 (Consumer Protection Committee), Chapter 7 (Supplementary Rules), and Chapter 8 (Punitive Measures).

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

Article 1 of the Act says that its purpose is to ensure consumer protection. Article 2 says that the central and local governments have the obligation to take measures designed to protect consumers' rights and interests. Article 3 stipulates that businesses are obligated to cooperate positively with the Government in consumer protection measures.

Article 21 provides for the operation of the Consumer Protection Committee within the EPB for deliberation of matters concerning consumer protection and improvement of the people's lives. Article 28 says that the application of this Act may be overruled by a special clause in other laws.[13)]

In 2007, this act was amended and renamed as the Framework Act on Consumer in order to reflect the change from the traditional notion that consumers are passive group that requires protection to an evolved notion that consumer right demands mid and long term policy making at a national level.

2. Consumer Transaction Legislation

(1) The Regulation of Standardized Contracts Act

Enactment of the Regulation of Standardized Contracts Act[14)] was in 1986. Standardized contracts used in business transactions, which became a common scene in a modern period characterized by mass production/ consumption, has been useful in many respects.[15)] The South Korean Government

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

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

15) West Germany became the first country in the world to adopt legal regulation on standard contract terms. In December 1976, the country enacted Gesetz zur Regelungdes Rechts der Allgemeinen Geschäftsbedingungen (AGBG) (Standard Contract Terms Act /

checked the status in 1984, jointly with consumer organizations, and found that consumer damages due to standardized contracts were at such a serious level that it required a drastic remedial action. The enactment of an all-inclusive law was required in connection with a need to improve the existing hundreds of standard contracts. Thus, the Regulation of Standardized Contracts Act was enacted in December 1986.[16)]

The Regulation of Standardized Contracts Act contained clauses with the following contents: obligation for businesses to provide consumers with an explanation about such a contract; adoption of the principal of objective interpretation and the contra proferentem principle; invalidation of clauses that lack fairness under a bona fide principle; establishment of the Standard Contracts Inspection Committee within the EPB to make recommendations on a remedial action concerning a business applying a clause in violation of the Act.

Under the December 1992 Amendment to the said Act (Law No. 4515), (1) the FTC was authorized to issue a remedial action order to a business engaging in a transaction in violation of the Act and impose a penalty on a business not complying with the order, and, (2) a system for pre-review under which a request could be made to the FTC to see if a standard contract applied by a business was in compliance with the Act.[17)]

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implemented in April 1977, setting an example for regulation on standard contract terms. The said Act was incorporated into Article 305 onwards, the Law of Obligations under the German Civil Code, which went into effect on January 1, 2002. (Kwon Oh-seung, Economic Laws, Beopmunsa, February 20, 2010, p. 446; Kim, Dae-gyu, "Incorporation of AGBG of Germany into the Civil Code in Germany, The Study of Competition Law, Vol.8, February 2002, p. 591.

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

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

The March 2001 Amendment to the Act (Law No. 6459) inserted a clause for issuance of a remedial action order against a non-compliant business, and increased the number of factors that could lead to a remedial action order for a more strict execution of the Act.[18)]

The January 2004 Amendment to the Act (Law No. 7108) included the following: 1) authorizing consumer organizations and the Korea Consumer Protective Board to ask the FTC for presentation of standard contracts for each area, and 2) making it a requirement for businesses to present standard contracts if requested by consumer organizations, or if a large number of consumers suffered damages in given areas of transactions.[19)]

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

Enactment of the Door-to-Door Sales, etc. Act in 1991.[20)] The Wholesale and Retail Trade Promotion Act, which was enacted in December 1986, contained clauses concerning the requirement for disclosure of the name of the door-to-door salesperson on her visit to each household, the obligation of issuance of a contract document, and advertisement in mail order sales. The May 1991 Amendment to the Act said added the following: definition of “door-to-door sales” (Article 1); the obligation to give notice about a door-to-door salesperson’s visit (Article 36); and the obligation of issuance of a contract document/purchaser’s right to withdraw a contract (Article 37). With the rapid increase of cases of consumer damages concerning multilevel marketing and pyramid sales near the end of the 1980s, the Door-to-Door

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

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

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

Sales, etc. Act was enacted in December 1991 in order to regulate such transactions.[21)]

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

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

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

The March 2002 Amendment (Law No. 6688) included the following: 1) rearrangement of the Act with the focus on door-to-door sales or mail order sales, in connection with enactment of the Act on Consumer Protection in the Electronic Commerce Transactions, etc., by making some improvements in the clauses concerning mail order sales, and (2) transactions, in which

21) Kim, Seoung-cheon, How to improve consumer laws, Korea Legislation Research Institute, 1994, p. 107.

consumer damages occur frequently, i.e. phone marketing and continuous transaction, were added to the Act's scope of application.

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

3. The Installment Transactions Act[22)]

Enactment of The Installment Transactions Act[23)] took place in 1991. At first, the Government attempted to apply administrative regulations on installment sales by inserting a few clauses in the Wholesale and Retail Trade Promotion Act, which was enacted in December 1986. However, the primary purpose of the Act was to develop wholesalers/retailers and did little for consumer protection.[24)] As a result, the Government enacted the Installment Transactions Act in December 1991 (implemented on July 1, 1992) to protect consumers engaging in installment transactions.

The Installment Transactions Act was enacted to protect consumers' rights and interests and establish a healthy order in commercial transactions. Its major contents are as follows: requiring parties to an installment contract to sign the contract in writing; allowing consumers to withdraw a contract within seven days from the receipt of the contract document or handover of the goods; requiring the business to give at least a 14 days' notice to the

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

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

24) Kwon, Oh-seung, Economic Laws, Beopmunsa, 2010, pp. 479-480.

consumer in the event of the business cancelling the contract due to the consumer's default in payment, and finally; setting reasons for which the consumer could refuse to make installment payment to the business.

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

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

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

4. The Act on Fair Labeling and Advertising

Enactment of the Act on Fair Labeling and Advertising[25] was in 1991. Amid the shift in the market structure to consumer-centeredness and the newly adopted thought that consumers' right to their choice of goods is the key promotion of competition in the market, it was necessary to correct dishonest labeling and advertising more efficiently, and provide consumers with correct and useful market information. In February 1999, the Act on Fair Labeling and Advertising was enacted (implemented in July 1999) in effort to make up for deficiencies in the Monopoly Regulation and Fair Trade Act.[26]

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

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

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

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

5. The Product Liability Act[27)]

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

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

No. 9121 enacted in June 2008), and the Framework Act on Product Safety (Law No. 10028 enacted in February 2010).[28)]

The Korea Consumer Protective Board started research in early 1994 in connection with a need to enact the Product Liability Act. In June 1994, the Board made a proposal on the direction of a law concerning product liability at a policy seminar. The Presidential Committee on Government Innovation checked the proposal and recognized a need for the relevant legalization. The relevant bill was submitted to the National Assembly.[29)]

The proposal for enactment of the relevant law was aimed to protect consumers' rights by having the manufacturers pay for damages incurred by consumers due to their defective goods, while contributing to the safety of the people and the healthy development of the national economy. It was also aimed to help enhance businesses' competitiveness through promotion of safety consciousness.[30)]

Products covered by the Act are set as "movable property manufactured or processed including those constituting part of other movable property or real estate." Under the Act, the key responsible parties for compensation of damages are: a business that has manufactured, processed, or imported the relevant products; a party that has labeled itself, or attached a label that can make others take it as the manufacturer of the relevant product; and the supplier, when the manufacturer is not known. The Act stipulates that the manufacturer compensate damages, including loss of life or property or bodily injury, incurred by consumers due to defective goods. The manufacturer can

28) Lee, Ji-yoon, Consumer Protection law, Korea Legal Research Institute, 2012, p. 69.
29) Gang, Chang-gyeong, Jeong, Sun-hui, and Huh, Gyeong-ok, Consumer Laws and Policies, Sigma Press, 2003, p. 185.
30) A report on the review of the bill for The Product Liability Act, September 2007, p. 3.

avoid responsibility if it can prove that the relevant defect is something not known under the level of prevalent scientific or technological development. Joint and several liabilities are imposed when there is more than one party responsible for the same damages. A contract that stipulates that the manufacturer is free from the responsibility for compensation or limits the manufacturer's responsibility shall be invalid under the Act. The statute of limitation for asking for compensation of damages is three years from the time the consumer has come to know of her damages and has identified the manufacturer.[31)]

6. The Act on the Electronic Commerce Transactions, etc.

The Act on the Electronic Commerce Transactions, etc. was enacted in March 2002 (implemented in July 2002) to establish fair trade order in e-Commerce and protect consumers.[32)] Major provisions of the Act on Consumer Protection in the Electronic Commerce Transactions, etc. cover the following. In e-Commerce, businesses were unable to claim its rights unless transmitting electronic documents to the address agreed to with the consumer, with the exception of a case in which the consumer printed out the electronic document transmitted to an address other than what was agreed. Businesses were required to operate a procedure to check content accuracy before issuing invoice payments to prevent damages caused by consumers' errors in device manipulation. Consumers were allowed to cancel a purchase contract signed with a mail order business within seven days from the delivery of the contract

31) A report on the review of the bill for The Product Liability Act, September 2007, pp. 3-4.

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

document or from the supply of goods if the supply of goods came after the delivery of the contract document.

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

Section 2. Consumer Protection Policy and Enforcement Mechanism in South Korea

In Korea, the Economic Planning Board (EPB) was in charge of consumer policy as an agency generally in charge of the country's economic policy at the time the Consumer Protection Act was enacted in January 2008. In February 2008, the duty was transferred to the Fair Trade Commission (FTC), which was in charge of competitive policy, under the amendment to The Framework Act on Consumers.

1. Fair Trade Commission

The TEC, which is an agency reporting directly to the Prime Minister,[33] regulates cases of unfair transactions, including the act of abusing the status

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

of market dominance, and handles matters stipulated in The Monopoly Regulation and Fair Trade Act (Law No.114006 amended on March 21, 2012), Article 35. The said Act, Article 35.7 stipulates that the FTC handles matters set as its duties in other laws, including: the Framework Act on Consumers, the Installment Transactions Act, the Regulation of Standardized Contracts Act, the Act on Fair Labeling and Advertising, the Door-to-Door Sales, etc. Act, the Act on Consumer Protection in the Electronic Commerce Transactions, etc., and the Product Liability Act.

The Framework Act on Consumers (Law No. 10678 amended in May 2011) presents the FTC, which the competition authorities[34] assigned the mission of maintaining competition order in the market, or its Chair with consumer-related policies in general. The policies include the following: establishment of Consumer Policy Committee (Articles 21 and 22); establishment and operation of a Consumer Policy Committee (Article 23 through 26); registration or cancellation of registration concerning consumer organizations (Article 29 and 30), and, supervision of the Korea Consumer Agency (Article 42). It can be said that the foregoing displays the country's legalization policy to the effect that the country's competition policy is closely associated with the philosophy pursued by the country's consumer policy and that the two should exist in harmony.[35]

As the FTC was also assigned the function of providing support to consumer organizations, the relationship between consumer organizations and the FTC will get closer.[36] Moreover, the FTC will be able to provide direct

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

35) Lee, Ho-yeong, Ibid. p.16.

36) Under the whole amendment to The Framework Act on Consumers (Law No.7988 in

support for consumer organizations engaging in consumer protection activities, fully utilizing the function of execution of consumer protection activities that it has carried out in special transactions, standardized contracts, and matters concerning labeling and advertising.[37]

2. Korea Consumer Agency

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

The Korea Consumer Agency, which was established in 1987 with the name the "Korea Consumer Protective Board" under the amendment to the Consumer Protection Act in December 1986, got its current name under the enactment of the Framework Act on Consumers in September 2006. The right to supervise the Agency was transferred from the Finance/Economy Minister to the FTC. The FTC is authorized to supervise the activities of the Korea Consumer Agency (including the Consumer Safety Center under the Framework Act on Consumers, Article 51,) and issue instructions or orders concerning the business carried out by the Korea Consumer Agency when required by the Framework Act on Consumers.[38]

The Korea Consumer Agency is required to obtain the FTC's approval concerning its annual business plan and budget, and submit its annual

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September 2006), the right concerning registration and cancellation of registration of consumer organizations was transferred from the MOFE to The Fair Trade Commission.

37) Yeo, Jeong-seong, Choi, Jong-won, and Jang, Seung-hwa, Consumer and Rule of Law, Seoul University Press, 2008, p. 30.

38) Consumer Protection Act, 1980, Article 42.1.

accounting settlement report, along with the auditor's opinion to the FTC. When necessary, the FTC may have the Korea Consumer Agency submit a report on matters concerning its operation, accounting, and property or may audit it.

At present, the Korea Consumer Agency serves as an agency engaging in consumer policy-related research/surveys, provision of remedies for damages, test/inspections, consumer education, and consumer information collection.[39] Its role as an agency in charge of remedying consumers' damages is important as a model of South Korea's administration of the ADR system. It is not an exaggeration to say that the history of the Korea Consumer Agency is equivalent to South Korea's history of consumer laws.[40]

Meanwhile, the Korea Consumer Agency is required to disclose facts that it has acquired in the course of carrying out business if it is needed for the enhancement of consumers' rights and interests, prevention or spread of consumer damages, upgrade of the quality of goods, or improvement of the people's lives. However, it may not do so if required to protect a business or business association's business secret or for the public good.[41]

The Consumer Protection Act used to stipulate the Consumer Dispute Mediation Commission in Chapter 6 (The Korea Consumer Agency), the September 2006 amendment to the Framework Act on Consumers. Chapter 8 (Settlement of Consumer Disputes) stipulates the operation of the Consumer Dispute Mediation System (the Consumer Dispute Mediation Commission still remains an agency belonging to the Korea Consumer Agency) as a tool

39) The Framework Act on Consumers (Law No.10678 partially amended on May 19, 2011), Article 35 (Business).

40) Consumer Protection Act, 1980, Article 42.2.

41) Consumer Protection Act, 1980, Article 35.2.

for settlement of consumer disputes. This can be interpreted as an intention contained in the Framework Act on Consumers to stipulate a system of compensating consumer damages while keeping it separated from the system of policy promotion in the Korea Consumer Agency.[42)]

Section 3. Consumer Protection Dispute Settlement in South Korea

The FTC has expressed great determination to introduce or devise new instruments for effective enforcement of consumer protection as illustrated in the following.[43)] Their effectiveness has not been proven because of its short history.[44)]

1. Collective Dispute Settlement

The Framework Act on Consumers, revised in 2006, provides a special mediation procedure for dispute involved by a group of consumers (Article 68). For cases specified by a presidential decree, in which a number of consumers claim to have suffered injury of the same type or in a similar pattern, the central government, a local government, the Korea Consumer Agency, a consumer organization or an undertaking may request the Settlement Commission for a collective resolution of such disputes. Article 56 of the enforcement decree specifies that cases should have all of the following elements:

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

43) The recently revised Act on Subcontractor Contracts of 2011 introduced up to treble damage action dueto unfair exploitation of subcontractor's technologies (Article 35 II).

44) Lee, Bong-eui, Recent Developments of Consumer Law in Korea, UT Soft Law Review No.4 2012, The Global Centers of Excellence of the University of Tokyo, 2012, p. 7.

1. The number of consumers injured in the same or similar manner by a product, etc. shall be 50 or more;[45] and
2. the cases shall share the same point of contention in practical and legal sense.

If an undertaking accepts a settlement mediated by the Settlement Commission, the Settlement Commission may recommend the undertaking to submit a plan for compensating other injured consumers who are not participating in the procedure. In the event one or more consumers who are a party to a Collective Dispute Settlement case initiates a legal proceeding with respect to the case, the Settlement Commission shall exclude those consumers without suspending its procedure itself.

2. Lawsuits by Consumer Organization

The Framework Act on Consumers, which was revised in 2006 and came into force in January 1, 2008, introduced "organization lawsuits" for the first time in Korea. Under the Act, an organization falling under any of the following categories may file a lawsuit, seeking an injunction prohibiting or suspending an undertaking's act that directly or repeatedly infringes on consumers' right to the safety of their lives, bodies, and property in violation of Article 20 (Compliance with Standards for Enhanced Consumer Rights).

45) Consumers specified below are excluded from the procedure; (1) a consumer whose injury dispute with the undertaking in question has been resolved or who has reached an agreement on compensation with the undertaking, through Autonomous Dispute Settlement under Article 31 I of the Act, a settlement recommended by the President of the Korea Consumer Agency under Article 57 of the Act and other arrangements (2) a consumer whose dispute with the undertaking is in the process of being handled by any of the dispute settlement bodies mentioned in Article 25 (3) a consumer who has filed a lawsuit with a court concerning an injury sustained from the product, etc. in question.

1. A consumer organization registered with the KFTC, which satisfies the following requirements;
   a. engaged in consistent efforts to enhance consumer rights as their main purpose
   b. having a membership of a 1,000 or more
   c. having been existence for at least 3 years after registration
2. The Korea Chamber of Commerce & Industry, the Korea Federation of Small & Medium Enterprises and other nationwide trade associations
3. A non-profit civil organization, which satisfies the following requirements;
   a. having received a request from 50 or more consumers to file an organization lawsuit on their behalf for infringement of their rights, which are legally and practically considered of the same nature
   b. stating the enhancement of consumer rights as its purpose and having worked for the last 3 years or longer
   c. having a membership of 5,000 or more
   d. registered with the competent central government agency.

The organization that brings a lawsuit shall, together with a complaint, submit an application for permit of a lawsuit to the court and the court shall allow that lawsuit to proceed, if (1) it is necessary to serve public interests, (2) there are no questions about the integrity of the submitted information, and (3) 14 days has passed since the organization requested an injunction to the undertaking of that infringement in written form (Article 73 and 74). If the court dismisses the cause of action offered by the plaintiff organization, no other organization could bring a lawsuit on the same basis, except for certain circumstances (Article 75).

For this sort of lawsuit concerns only the prohibition or injunction of the questioned infringement, individual consumers should bring additionally a damage action or file an application for the afore-mentioned Collective Dispute Settlement in order to redress their actual damages.[46)]

Section 4. Comparative Analysis on Consumer Protection Legislation in Mongolia and South Korea

Each country has its own economic situation, including one concerning consumer damages. This means that international discussions about consumer protection should be carried out in consideration of each country's own situation. This study relied on literature-based survey with a focus on the current status and problems of Mongolian consumer legislation enacted in the course of its economic growth.

Korea has taken various legislative measures to overcome its consumer protection problems and has developed its laws in such a way that preserves the individuality of the nation.

Mongolia is currently at a stage in which it needs to consider what measures and policies are appropriate in order to overcome the problems of consumer protection legislation by investigating its own situation, as did Korean consumer protection legislation.

1. Legislation on Product Liability in Mongolia and South Korea

Mongolia is a developing country with a developing legal system, but has been receiving foreign related products with a booming economy and has a

46) The class action as of U.S. type, which is contained in the Securities Transactions Act of Korea, has not been adopted in Korea's consumer law.

vast number of consumers. These attributes pose many challenges for the effective implementation of a legal regime for consumer protection. 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.

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

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

In Mongolia, there is a need to enact a Product Liability Act such as Korea. Mongolian Civil Law needs reinforcement in the area of product liability. In Mongolia, the choice of law statute covers aspects of application of law and choice of law rules in foreign related product liability cases; the Civil Law contains adjustments to substantive law regarding product liabilities.

Current Mongolian Civil Law is not clear in defining the product liability determinations standard as Korea. Korean PLA is quite specific in defining the product liability determination standards.

Korean PLA defines three types of defects, namely, defect in manufacture, defect in design, and defect in labeling. “Defect in Manufacture,” means a flaw in the manufacture of a product that 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 that 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.[47)]

In terms of compensation, Mongolia has four types of product liability compensations: physical injury compensation, property damages, mental damages, and punitive damages. The subjects of duty are expanded, in that 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.[48)] Most importantly, the Civil Law allows punitive damages awarded to all kinds of product defects, whereas previously they were only allowed in specific areas such as food defects.

However, above provisions in Mongolian laws lack specific provisions of product liability compensation, and Mongolia needs to look into and learn from the Korean product liability compensations, which can be categorized as physical injury compensation, property damages, and mental damages. The PLA states that a manufacturer shall be liable to compensate for any

47) Product Liability Act, 2002, Article 2.2.
48) Civil Law 2002, Article 227, 228.

injury that their product has caused to the lives, bodies or property of its users.[49] In the torts chapter of Civil Law (2009) it pointed out that a person who has injured the person, liberty or fame of another, or has inflicted any mental anguish to another person shall be liable to make compensation for damages arising therefrom.[50] The subject of duty includes manufacturer, supplier, and all parties who are liable for compensation assume joint and several liability.[51]

2. Implications for Mongolia

As mentioned above, current Consumer Protection Law of Mongolia was enacted in 2003. This Law applies to protect consumer rights while transactions are made in a sale of goods or services between a business and a consumer. Indeed, this Law was stipulated to protect consumer rights generally and not regulate specifically to protect consumer rights from the business of certain products and services. In Mongolia, the legislation of product liability started late, and is yet to develop a single line of product liability law. This legislative system of Mongolia may lead to conflicting legal provisions, and issues of law application. Based on the study of consumer protection legislation between Mongolia and Korea, we offer some suggestions on improving the consumer protection legislation in the following section.

(1) Product Liability Legislation

The current Mongolian Consumer Protection Law's provisions on product liability are far from perfect; they cannot keep up with modern economic

49) Tort Liability Law 2010, Article 47.
50) Civil Law 2009, Article 751.
51) Product Liability Act, Article 5; 760.1.

development. To promote with international standards, promote a healthy development of the Mongolian economy, and protect the legitimate interests of consumers effectively, it is necessary to study the product liability legislative system.

There are two main factors that reflect the degree of consumer protection: one is the subject of liability; another is the scope of responsibility. The more weight given to the subject of liability, the higher the chance of compensation for the consumer. Because even if the main liability is subject to compensation, consumers can also obtain compensation from others that are joint and severally liable. At the same time, the scope of responsibility is wider; the absolute compensation consumers obtain will be greater, otherwise the compensation is also less.

Although the product liability legislation in Mongolia stipulates that producers and sellers shall bear joint liability, in the area of responsibility, compensation for mental suffering is excluded. To protect legitimate rights and interests of consumers, there is a need for an improved products liability law, and the problems of product quality is an important issue of concern for the community in general related to the vital interests of the masses.

In terms of the current Mongolian situation, the quality of products is a serious problem, especially since there are some fake and inferior products. Consumers complain most strongly that product quality cannot be guaranteed, and they cannot get timely and reasonable compensation when their interests are infringed. That is to say, no effective protection of legitimate consumer interests exists. Mongolia needs to establish product quality law as soon as possible. The quality of the products is related to the quality of the nation. To improve the quality of the products motivates the progress of human

society, and is also the whole society's common goal and responsibility. Therefore, the establishment of this law is very necessary.

(2) Definition and Scope of Product

First, the current scope of the definition of "product" in Mongolia is too narrow. The definition of "product" forms the basis of a product liability legal system. The definition of the scope of product also is extremely important to parties in litigation.

For example, in the Mongolian general principles of Civil Law, there is no clear explanation of the term "product" while its definitions in the Consumer Protection Law and in the Competition Law are not unified, which easily lead to the confusion of the application of the term in judicial practice

In order to protect the interests of the consumers, Mongolia should learn from foreign countries with advanced legislation, and further expand the scope of the definition of products.

(3) Compensation for Damages

In terms of the compensation system for damages, product liability legislation of Mongolia must encapsulate the following three areas: compensation for mental damages, punitive damages, and the limit of indemnity.

In a legal society, the human spirit is an integral part of human rights. And although it cannot be measured by money, by legislation of compensation for mental damages, the law may be used to defend human dignity, and to comfort the victims in psychology.

In addition to strengthening administrative punishment, Mongolia should also set up a system of punitive damages in product liability legislation in

order to protect the legitimate rights and interests of consumers. Given the previous law, the provisions of the scope of damages in Mongolia is not clear; it is easy to cause the different treatment of similar cases in the judicial practice. Therefore, we should set the maximum or minimum limit of compensation for damages in the future, to enhance the operability.

(4) Protective Measures for Consumers' Rights

First, Mongolia needs to simplify the procedure. In practice, because the amount of most consumer rights disputes is small, even through litigation claims, these programs are usually more complex and costly; usually the case cannot be solved in time at a low cost. Therefore, many countries have set up a small claims procedure for when the consumer rights are violated to solve the disputes in a timely manner. It is worthy of learning from them.

Second, Mongolia needs to set up special consumer protection courts. Special courts can deal with some small lawsuit cases, and effectively resolve consumer disputes. At present, some local courts have specifically set up consumer courts; however, the experience is in need of affirmation. In the process of modifying the Consumer Protection Law, it is necessary to make specific provisions of these procedures.

Chapter 4. Conclusion

For many decades, the classic notion that considers a consumer as a “king” that regulates market relations has been a popular belief. Mongolia's first step for consumer protection was to develop a market in which consumers in fact are the “king.” In order for this to materialize, the right legal framework must be set in place first.

This research reveals that although South Korea also is struggling with its own issues and has shortcomings in its consumer protection legislation, it has enacted necessary laws and has been amending them to suit its own market and consumers' needs.

In comparison, while Mogolia also has adopted the concept of consumer protection and taken legislative measures and established enforcement mechanisms, it still needs to amend and reinforce its laws in order to truly protect consumers' rights. Most importantly, Mongolia needs a unified law on consumer protection in order to establish a uniform legal definition and scope of key terms, such as “protect” and “defect”. It also needs to enact product liability law either as a separate law or incorporated in the unified law on consumer protection.

An investigation on Mongolian consumer protection legislation reveals the following. Firstly, businesses are currently not enjoying a healthy business environment which is often threatened by unstable banking system, tax fluctuation, inaccurate privatization of property, and unreliable monetary policies.

Secondly, state conglomerates engage in businesses, which leads to increase in monopoly, division of interest groups that have shares in the market, and prejudice to national security and the interest of the country. This has caused heavy loss for consumers and their becoming victims of fictitious price

inflations, sales of fake goods and disorder of services, and defective systems that lack conformity to customs and supervisory offices.

Thirdly, the conformity between laws is deficient and therefore there is no guarantee of the implementation of Consumer Protection Law (especially economic guaranty). The Consumer Protection Law has only symbolic value as an effort to transform into a free-market democracy and has the appearance of upholding human rights.

Fourthly, consumers demand the safety of every product and all services. There are no safeguarding laws, standards or polices to regulate safety. As an example, some eggs have been stored and sold like bread – at a high price and without adequate care.

Finally, producers and trades people who do not consider the importance of maintaining a quality brand name and tags have a tendency to overlook potential risks. Thus brand names and tags are circled freely on the black market and there is a vast growth of businesses that produce counterfeit products.

These lessons may be applicable to any emerging economy which has adopted various legislative measures and legal concepts in consumer protection but has not yet established an effective consumer protection system and mechanisms.

With globalization and opening of markets, products and services cross boarder ever more freely. Questions such as “How should consumer rights be guaranteed?”, “What kind of environment should be made available?” call for assessment the market environment from the consumer’s perspective.

In addition, comparative legislative analysis between the laws of bordering and neighboring countries provide important lessons on how one nation's consumer protection legislation needs to be improved. This is especially

important, as bordering and neighboring countries frequently are also trade partners in which goods and services are imported and exported. From the perspective of potential consumer dispute resolution, certain level of equalization between bordering and neighboring countries' consumer protection standards should be achieved.

Bearing this in mind, this research concludes by stating that further comparative analysis between Asian countries, especially between emerging economies and established economies, as well as amongst neighboring countries, should be conducted.

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Supplement

Supplement A: Key Legal Phrases Table

English	Korean	Mongolian
A Comparative study on consumer protection in Mongolia and South Korea	몽골과 한국의 소비자 보호에 관한 비교 연구	МонголбаСолонгосулсынхэрэглэгчдий нэрхашгий гхамгаалахэрхзүй гзохицуулалтынхарьцуулсансудалгаа
consumer protection legislation	소비자보호법제	хэрэглэгчдй инэрхашгий гхамгаалах
safety of customer	소비자안전	хэрэглэгчдй инаюулгүй бай дал
Constitutional law	헌법	Үндсэн хууль
Civil law	민법	Иргэний хууль
Consumer Protection law	소비자보호법	Хэрэглэгчдй ин эрх ашгий г хамгаалах хууль
developing countries	개발도상국	хөгжиж буй орнууд
fairtrade	공정 거래	чөлөөтбашударгахудалдаа
marketplace	시장	захзээл
government	정부	Засгий нгазар
collectivization	공영화 (共營化)	төрөөс хүраан авах төрий н өмчлөлд бай лгах
privatization	민영화(民營化)	хувьчлах
industrial	산업의	ажүй лдвэр

English	Korean	Mongolian
regional development	지역발전	бүсий нхөгжмилт
animal husbandry product	축산품	түүхий эд
consumer	소비자	хэрэглэгч
seller	판매자	худалдагч
producer	생산자	боловсруулагч
contractor	계약자	гэрээний талууд
goods	상품	бараа
services	서비스	үй лчилгээ
material deficiency	자재 결함	чанбрын шаардлага хангаагүй бараа
esteem human rights	인권을 존중하다	хүний эрхий гхамгаалах
Consumers safety product	소비자 안전 제품	үй лчлүүлэгчий нбат алгаатай бараа

Supplement B: Consumer Protection Law of Mongolia (English version)

LAW OF MONGOLIA ON CONSUMER PROTECTION

December 26, 2003

Ulaanbaatar city

CHAPTER ONE
GENERAL PROVISIONS

Article 1. Purpose of the Law

1.1. The purpose of this Law shall be to govern relationships concerning consumer protection arising from sale and purchase of goods and products (hereinafter referred to as "goods"), performance of works and provision of services.

Article 2. Legislation on Consumer Protection

2.1. The legislation on consumer protection shall consist of the Constitution of Mongolia, the Civil Code, this Law, and other acts of legislation enacted in conformity therewith.

2.2. If an international agreement to which Mongolia is party provides otherwise than this Law, then the former shall prevail.

Article 3. Definitions

3.1. For the purposes of this Law:

3.1.1. "Consumer" shall mean an individual who orders, purchases goods, receives or uses any services for personal and family use only rather than for commercial purpose;

3.1.2. “Seller” shall mean business entity or organization irrespective of the form of organisation, sole proprietor or individual offering the goods to consumers;

3.1.3. “Producer” shall mean business entity or organization irrespective of the form of organisation, sole proprietor or individual producing the goods with the purpose of to sell to consumers;

3.1.4. “Contractor” shall mean business entity or organization irrespective of the form of organisation, as well as sole proprietor or individual performing work or providing services, either for consideration or for free to consumers;

3.1.5. “Warranty” shall mean a guarantee period of quality and safety of the goods, works or services provided by producer, seller, or contractor;

3.1.6. “Contract for work and services” shall mean any work defined in Articles 343 and 359 of the Civil Code.

Article 4. Principles of Consumer Protection

4.1. The following principles shall be adhered to in consumer protection:

4.1.1. The goods, works, and services being offered at the market shall meet the respective requirements of consumer’s safety, quantity, volume, quality, durability and purpose;

4.1.2. Consumers shall be ensured the possibilities to obtain true information on goods, works, and services and to acquire consumer culture;

4.1.3. Any harm caused to the consumer’s health, life, property, non-property interests and environment shall be redressed, the violated rights restored, and losses compensated for.

CHAPTER TWO
CONSUMER RIGHTS

Article 5. Consumer Rights to Receive Quality and Safe Goods, Works and Services

5.1. Consumers shall have the right to use goods, receive works and services that match the consumer protection standards established by relevant authorities, technical conditions, building and hygiene norms, pharmacopeias and prescriptions, as well as the quality, quantity and safety requirements set forth in the legislation and contracts.

5.2. Consumers shall be entitled to the guarantee and durability period of quality and safety of goods.

5.3. If producer does not provide a warranty period for durable goods, unless otherwise provided in the law, buyer shall be entitled to a six months warranty quality and safety period commencing from the date of purchase.

5.4. The person who causes harm to the consumer's life, health, property or environment due to the failure to ensure the quality and safety of goods, works or services, shall be liable to compensate the harm as provided in Chapters 18 and 52 of the Civil Code.

5.5. Consumers shall be entitled to the protection of their rights violated due to the goods, works or services of inadequate quality through non-governmental organizations operating in the field of consumer protection.

5.6. Consumers shall have the right to demand from producers numbers of relevant documents, information on the license granting authority, as well as the permits and conclusions on the quality and safety of the goods issued by an inspection authority.

Article 6. Consumer's Entitlement to the Redress of the Harm and Compensation for the Loss Suffered at the Fault of Producers, Sellers or Contractors

6.1. Consumers shall protect their economic interests by having the harm redressed or the loss compensated for which they suffer at the fault of producers.

6.2. In case of physical defects (as to the quantity, volume, size, quality or period) in the goods or violation of rights, a consumer shall be entitled to demand the redress of the harm or compensation of the loss within the period set forth in contract or if such period is not set forth in the contract, to demand from the seller to immediately redress the harm or compensate the loss.

6.3. Consumers shall be entitled to demand from the seller who has sold defective, incomplete, or inadequate in quantity, volume, or quality goods to eliminate the harm or compensate for the loss as provided in Article 254 of the Civil Code one of the following:

6.3.1. To demand remedy of the defect free of charge or compensation of the cost incurred by consumer him/herself or by third party to remedy such defect;

6.3.2. To reduce the price of the goods in proportion to the defects;

6.3.3. To refuse to accept or re-calculate the price due for the goods which fail to meet the quantity or volume specified in the contract;

6.3.4. To replace the defective goods or return the goods and make refund; or

6.3.5. To terminate contract;

6.3.6. In case of failure of the seller to notify the consumer of the defects or incompleteness of the goods, the seller shall immediately

replace the goods at the consumer's demand, or if that is not possible, within a time period agreed with the consumer replace or complete the goods, and if that is still not possible and if the consumer demands so, to partially or fully refund the price;

6.3.7. If within the warranty period goods fail to satisfy the purpose not at fault of the consumer or if the consumer discovers hidden defects, the seller shall replace or repair the goods free of charge within a time period agreed with the consumer. If that is impossible and the consumer demands so, the price or the difference shall be fully refunded.

6.4. The loss incurred by the consumer due to inadequate quality of works or services or non-performance of contractual obligations shall be compensated as follows:

6.4.1. by reducing the contract price in proportion to the loss incurred by the consumer due to the performance of work or service which fails to meet the contractual terms and conditions;

6.4.2. in case of consumer's refusal to accept the work or services due to the failure to meet the contractual conditions when performing work or providing services using consumer's materials, the contractor shall, unless the consumer otherwise provided for in the contract, perform the work or services meeting the contractual conditions by using materials of the same kind and quality.

6.5. If a consumer's complaint about inadequate quality, defects or incompleteness of goods, works or services is proved to be groundless by an opinion of a competent person, and if the consumer has violated the rules of transportation, storage or use of the goods pursuant to Article 255.1.3 of the Civil Code, then the seller shall not be liable for the relevant costs and expenses.

Article 7. Consumer Right to Information on Goods

7.1. Consumers shall have the right to be ensured objective information on goods to assist them in making a right choice.

7.2. Producers shall provide to consumers the following information regarding their goods:

7.2.1. Name and address of producer, trademark and other identification marks, bar code of the goods;

7.2.2. Purpose and consumption features of the goods;

7.2.3. Ingredients and components, methods of storage and use of the goods;

7.2.4. Description of the goods and price;

7.2.5. Amount and unit of measurement of the goods;

7.2.6. Guarantee and usage periods of the goods; and

7.2.7. Instructions for proper use of the goods.

Article 8. Consumer Right Defendable In Court

8.1. Consumers shall be entitled to claim to court in case of refusal of producer, seller, or contractor to satisfy their demands to redress the harm caused or compensate for the loss incurred.

Article 9. Consumer's Right to Acquire Consumer Culture

9.1. Consumers shall have the right to acquire consumer culture and to have opportunity to learn about it.

Article 10. Limitation Period for Claims Concerning Defects of Goods, Works and Services

10.1. In case of detecting defects in goods, works or services consumers shall have the right to make claim within the time period set in Articles 254 and 349 of the Civil Code.

10.2. In case of seasonable goods, the guarantee period shall run from the beginning of the given season.

10.3. In case of delivery of the goods by mail the period for making claim shall run from receipt of the claim by the consumer.

10.4. Producers, sellers and contractors shall be obliged to remedy defects in the goods, work or service within a reasonable period. The reasonable time period and the amount of a penalty shall be set out in the contract and certified by signatures of the both parties.

10.5. A producer, seller, or contractor who fails to perform its duty to timely remedy the defects in the goods, work or service shall be subject to a penalty pursuant to Article 232 of the Civil Code.

Article 11. Invalidity of Contracts with Consumers

11.1. Consumers, producers and contractors may conclude contracts of sale or supply of goods, or performance of work or services in writing or orally.

11.2. If the terms of a contract concluded with a consumer are less favourable than those set forth in the Law on Consumer Protection and other acts of legislation, then the former shall be null and void.

CHAPTER THREE
DUTIES OF PRODUCERS, SELLERS AND CONTRACTORS

Article 12. Duties of Producers, Sellers and Contractors

12.1. Goods, works, and services offered in the market by producers, sellers and contractors shall meet the requirement of not causing harm to consumers' life, health and environment, obligatory standards and the requirements of technical regulations.

12.2. When putting goods into circulation sellers shall be obliged to have contracts concluded with the producer (supplier) for supplying the goods that meet the requirements set forth in this Law.

12.3. Producers, sellers and contractors shall be obliged to dispose the consumers' complaints on the quality of the goods, works and services in accordance with law.

12.4. If it is established that goods, works or services offered in the market are potentially hazardous to consumers' life, health, property or environment, then the producer, seller or contractor shall immediately inform the public.

12.5. Producers and the sellers shall be obliged to sell the goods that meet the requirement of the guarantee period. In case of sale of goods of inadequate quality the producer or seller shall take back the goods at consumer's demand and refund the price.

12.6. Producers, sellers and contractors shall eliminate in accordance with law the harm caused to the consumer's health, property and environment due to violation of the safety requirements of the goods.

12.7. Producers, sellers and contractors shall immediately terminate supply or sale of goods and withdraw them from circulation in the case where it is proved that in spite of the consumer's observing the rules of transportation, storage and/or use, the goods have caused harm to the consumer's life, health, property or environment.

12.8. Producers, sellers and contractors shall be prohibited from giving to consumers false information regarding the goods, works and services.

12.9. It shall be prohibited to conclude sales contracts or contract for works or services by misleading or using force which violate consumer rights.

Article 13. Contractors

13.1. Unless otherwise provided in the law, producers and contractors shall set a guarantee period for goods, works and services.

13.2. When offered to the market, goods, works and services shall carry clear and easy for consumers safety instructions of use, storage and transportation, attention remarks, production date, sale documentation, address and label.

13.3. If the law or standards set the requirements for the goods to be harmless to consumers' life, health, property and environment, then the meeting of such requirements shall be certified by an independent relevant authority.

Article 14. Producer's Duty to Repair and Provide Other Technical Services

14.1. Producers shall be obliged to arrange repair and technical services of the goods with the purpose to ensure reliable working within the period of usability, as well the production period, and in the case of cessation of production of the goods until the expiration of the wearing out period. If no such period is set, the producer shall be obliged to supply the respective spare parts of the goods within 5 years from putting of the goods into circulation.

Article 15. Period for Remedying Defects of the Goods, Works and Services

15.1. In case of complaint concerning defects in goods, works or services, such defects shall be remedied within the following period:

15.1.1. A seller shall immediately redress the possible harm caused due to incorrect setting of durability of foodstuffs or daily consumption goods;

15.1.2. In the case of a valid reason (public quarantine), or in case of seller (producer or contractor)'s sickness, death, bankruptcy, dissolution, or suspension or termination of its business during the disposing of the complaint concerning the goods, works or services the seller (producer or contractor) shall agree with the consumer to postpone the period for remedying the defects of the goods.

15.2. If the period for remedying the defects is missed without any valid reason, the seller (producer or contractor) shall pay a penalty equal to 0.1 percent of the total price of the goods, works, or services per each day of such delay.

CHAPTER FOUR
MANAGEMENT AND ORGANIZATION OF CONSUMER PROTECTION

Article 16. Powers of the State Central Administrative Body in Charge of Consumer Protection

16.1. The state central administrative body in charge of consumer protection shall exercise the following powers:

16.1.1. To implement state policies related to consumer protection;

16.1.2. to undertake measures to promote fair competition with the purpose to provide consumers with a wide possibility to select cheap, safe, and quality goods according to their demand;

16.1.3. to have the implementation of consumer protection legislation monitored, inspections conducted jointly with state inspection agencies, provided information and promotion activities, organized trainings and other activities by non-governmental organizations, provide them professional and methodological support.

Article 17. Powers of Aimag, Capital City, Soum, and District Hurals of Citizens' Representatives

17.1. Aimag, capital city, soum, and district Hurals of Citizens' Representatives shall exercise the following powers:

17.1.1. To consider and approve the policies for, plans, and budget of consumer protection activities to be conducted within the respective territory;

17.1.2. To support non-governmental organizations operating in the area of consumer protection within the respective territory and assess their activities;

Article 18. Powers of Aimag, Capital city, soum, and district Governors

18.1. The aimag, capital city, soum, and district Governors shall have the following powers:

18.1.1. To organize and monitor the implementation of policies and legislation on consumer protection;

18.1.2. To organize trainings on consumption culture;

18.1.3. To cooperate on the contract basis with non-governmental organizations operating in the area of consumer protection within the respective territory and support them.

Article 19. Functions of Consumer Protection Non-governmental Organizations

19.1. Non-governmental organizations operating in the area of consumer protection shall have the following functions:

19.1.1. To make proposals to the relevant authorities to terminate the production or sale of the goods that can be hazardous to consumers' life, health, property and environment and warn the public about such goods through the mass media;

19.1.2. To require to improve the quality of and to obtain respective guarantees for the goods;

19.1.3. To have the quality and safety of goods examined and conclusions drawn by authorized laboratories;

19.1.4. To conduct informal trainings of consumers on consumption culture;

19.1.5. to submit to the respective authorities the matters of imposing liability onto the individuals, business entities and organizations that produce goods, perform works, or provide services hazardous to consumers' life, health, property or environment or fail to fully perform works or services under contracts;

19.1.6. To submit to the relevant authorities proposals to modify or rescind the procedures and regulations that breaks the legislation on consumer protection;

19.1.7. To submit proposals to the relevant inspection authorities or make claims to court to impose sanctions on the officials who failed to take measure despite the receipt of justified complaints about serious violations of consumer protection;

19.1.8. To monitor the implementation of the consumer protection legislation and inform the public of the results of monitoring;

19.1.9. To make proposals on the activities of the state inspections agencies on the basis of consumers' complaints and proposals and submit to the relevant authorities;

19.1.10. To provide consumers with information and counseling on the quality, safety, and market price of the goods.

Article 20. Monitoring the Implementation of Consumer Protection Legislation

20.1. The state bodies and inspections agencies shall monitor the implementation of the legislation on consumer protection.

CHAPTER FIVE
MISCELLANEOUS

Article 21. Administrative Liability for the Breaches of the Legislation

21.1. A state inspector shall impose the following sanctions for the breaches of the consumer protection legislation, unless the person responsible is subject to criminal liability:

21.1.1. a fine of 100,000 – 150,000 togrogs on a business entity or organization, and 10,000- 50,000 togrogs on an individual for breach of 12.5 or Article 13 of this Law;

21.1.2. confiscation of the goods and a fine of 100,000-200,000 togrogs on a business entity or organization and 20,000-50,000 togrogs on an individual for breach of 12.1 of this Law;

21.1.3. a fine of 100,000-250,000 togrogs on a business entity or organization, and 10,000-30,000 togrogs on an individual for breach of 12.8 this Law;

21.1.4. a fine of 100,000 – 250,000 togrogs on a business entity or organization, and 10,000-50,000 togrogs on an individual breach of 12.9 of this Law;

21.1.5. a fine of 50,000 – 100,000 togrogs on a business entity or organization, and 20,000-50,000 togrogs on an individual for breach of 6.1, 6.3 and 6.4 of this Law.

VICE-CHAIRMAN OF THE STATE
IKH KHURAL J. BYAMBADORJ