

Revolution or evolution? The development of consumer protection law in contemporary China

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Abstract: China's consumer protection law was first passed in 1993 and was amended significantly in 2013. This paper outlines both the original law and the detailed changes in order to consider whether these legal reforms match the consumer 'revolution' witnessed in urban consumption patterns since the start of the reform era.

1. Introduction

The changes seen in patterns of consumption in China, particularly in urban areas, since the start of the modern reform period in 1978 have been widely referred to as a 'consumer revolution'.¹ Where once basic consumer durables such as washing machines, refrigerators and television sets were unattainable luxuries, now mobile phones are ubiquitous and even private cars are becoming commonplace.² However, such huge increases in wealth and income have not been experienced equally across the whole of China. There is undoubtedly a sharp divide between urban and rural households, with urban residents earning more than three times as much with a per capita income of 24,564.7 renminbi (RMB) in 2012, compared to just 7,916.6 RMB per capita for rural residents.³

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¹ See, for example: Davis, Deborah S. (ed.) (2000), "The consumer revolution in urban China", (London: University of California Press).

² Mobile phone ownership has reached levels of 212.6 per hundred urban households and 197.8 per hundred rural households. Car ownership is at 21.5 per hundred urban households. Figures given are for 2012 and from annual data at the PRC National Bureau of Statistics online, available at: data.stats.gov.cn/workspace/index?m=hgnd

³ Roughly equivalent to £2500 per capita for urban residents versus £800 per capita for rural residents. Annual data from the PRC National Bureau of Statistics online, available at: data.stats.gov.cn/workspace/index?m=hgnd.

In addition, consumer confidence is now widely acknowledged to be a critical issue, as many consumers are growing weary of purchasing shoddy or substandard goods and services.⁴ The President of the People's Republic of China (PRC), Xi Jinping, has made it clear that the defining aim of his presidency is achievement of the 'China Dream'; in his inaugural address in March 2013, he vowed that "all Chinese people deserve equal opportunities to enjoy a prosperous life, see their dreams come true and benefit together from the country's development."⁵ In other words, whilst not deviating from the official policy goal of achieving socialism with Chinese characteristics, Xi is clearly placing more emphasis on increased prosperity for all through sustainable consumerism.

Moreover, the OECD have claimed that "confident, informed consumers who make well-reasoned decisions represent powerful drivers of innovation, productivity and competition."⁶ Thus, the role of the modern consumer is an influential one in the global economy and should not be underestimated as a significant driver towards reform. In China, despite a formal commitment to the rule of law in the Constitutional amendment of 1999, the legal system is widely regarded as remaining an instrumentalist tool of the state.⁷ Consequently, consumer protection law can be an interesting lens through which to examine the progress of the ongoing legal and economic reforms in contemporary China more generally.

⁴ See, for example, widespread coverage of the Sanlu tainted milk scandal in 2008: Liu, Chenglin (2009), "Profits above the law: China's melamine tainted milk incident", 79 *Mississippi Law Journal* 371.

⁵ Zhao, Yinan (2013), "'Chinese dream' is Xi's vision", *China Daily*, March 18, available at: http://www.chinadaily.com.cn/china/2013npc/2013-03/18/content_16315025.htm

⁶ OECD (2010), "Consumer policy toolkit", Chapter 1- "The changing consumer and market landscape", available at: <http://www.oecd.org/berlin/45710126.pdf> p. 28.

⁷ Potter, Pitman B. (2013), "China's legal system", (Cambridge: Polity Press), p. 3.

Furthermore, analysing the development of consumer protection law in contemporary China can also offer a fresh perspective on the wider literature on legal transplants. It is undeniable that whether we talk about transplants, translation, signalling, convergence or selective adaptation,⁸ “the study of legal transplants seems to have reached its saturation point.”⁹ Therefore, it is more useful to proceed through detailed case studies of the evolution of specific laws in individual jurisdictions, given that the concept of legal transplants must be viewed as a long-term process with a multitude of actors.¹⁰ Consumer protection law in China can thus act as a case study of the adoption and adaptation of a legal transplant in an individual jurisdiction because consumer law can reflect the wider position of the consumer in the state’s reform plans, “thus, consumers may be regarded as guinea pigs in countries in transition.”¹¹ In addition, China differs from other former socialist legal systems in transition as the majority of former Soviet jurisdictions found in Central and Eastern Europe have taken the EU as a model for reform. Like many other legal systems in transition, many of the terms, concepts and institutions fundamental to private law were absent from China’s pre-reform legal regime.¹²

⁸ The various terms are discussed in depth in a Chinese context in: Peerenboom, Randall (2006), “What have we learned about law and development? Describing, predicting and assessing legal reforms in China”, *Michigan Journal of International Law*, Vol. 27, pp823-871.

⁹ Cohn, Margit (2010), “Legal transplant chronicles: The evolution of unreasonableness and proportionality review of the administration in the United Kingdom”, *American Journal of Comparative Law*, Vol. 58 issue 3, pp583-629, p. 584.

¹⁰ Chen-Wishart, Mindy (2013), “Legal transplant and undue influence: Lost in translation or a working misunderstanding?”, *International and Comparative Law Quarterly*, Vol. 62, Issue 1 (January), pp1-30, p. 3.

¹¹ Pisuke, Heiki (2000), “The influence of social reforms and the information society on consumers in a transition economy”, pp31-44 in: Wilhelmsson, Thomas, Tuominen, Salla & Tuomola, Heli, (eds.) “Consumer law in the information society”, (The Hague: Kluwer Law International), p. 44.

¹² Tomančáková, Blanka (2012), “Consumer law regulation in the Czech Republic in the context of EU law: Theory and practice”, pp397-411 in: Devenney, James & Kenny, Mel (eds.), “European consumer protection: Theory and practice”, (Cambridge: Cambridge University Press).

Therefore, there are a variety of reasons why examining the development of consumer protection law in China since the modern reform period began in 1978 can be valuable. Such analysis is also timely because the most recent amendments to the PRC Consumer Rights and Interests Protection Law ('Consumer Protection Law') were passed in October 2013 and became effective from March 15 2014.¹³ The original Consumer Protection Law was first passed on October 31 1993 and became effective from January 1 1994.¹⁴ In conjunction with the PRC Product Quality Law (PQL) also promulgated in 1993,¹⁵ the 1993 Consumer Protection Law created a solid foundation not only of basic consumer rights for the purchase of both goods and services for the first time, but also laid out key obligations on business operators and outlined the main enforcement mechanisms.

However, China had undergone dramatic changes in both society and economy in the twenty years since the Consumer Protection Law was first passed and therefore, significant amendments were required to adapt it to the modern consumer context. The 2013 amendments included, for example, detailed regulations covering transactions completed online, as well as stricter rules concerning data protection. The maximum available penalties for breaching consumer rights were also significantly increased. This paper will seek to outline the changes made to the system of consumer protection in China through both the 1993 Consumer Protection Law and the 2013 amendments in order to consider whether these legal reforms match the 'revolution' witnessed in urban consumption patterns since the start of the reform era or whether these legal

¹³ For the 2013 amendments to the PRC Law on the Protection of Consumer Rights and Interests 1993 and the full text of the amended law, see: http://www.gov.cn/flfg/2013-10/25/content_2516547.htm

¹⁴ For the full text of the PRC Law on the Protection of Consumer Rights and Interests 1993, see: http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383812.htm

¹⁵ For the full text of the PRC Law on Product Quality 1993 (amended in 2000), see: http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383813.htm

changes are more evolutionary in nature. Further, despite extensive changes to the substantive consumer protection law, has the rationale behind the law shifted significantly?

The paper will be divided into five subsequent sections. Firstly, I will give a brief background regarding the status of consumer protection issues in China prior to the passing of the first comprehensive Consumer Protection Law in 1993. Then, the 1993 Consumer Protection Law will be discussed in detail; I will first outline some of the key provisions, before considering the rationale behind the law and the criticisms that emerged following the law's implementation. Thirdly, I will review the more recent 2013 amendments to the Consumer Protection Law, again outlining the key changes as well as considering the motivation behind these changes. The fourth section will draw together some observations on the overall process of reform in the field of consumer protection law in contemporary China: to what extent does the law now converge with international standards and to what extent does it retain uniquely Chinese characteristics? How has the rationale behind the Consumer Protection Law changed since 1993? The final section will conclude with some observations about whether the wide-ranging developments in consumer protection law witnessed since 1978 amount to a legal revolution or merely a slow piecemeal evolution.

2. Background: The development of consumer protection law in China prior to 1993

Consumer protection law was absent from the founding of the People's Republic of China (PRC) in October 1949 until the commencement of the 'reform and opening-up period' in December 1978. This absence was largely due to ideological reasons; "consumerism implied reliance upon capitalist means of production,

rather than upon the collective norms of socialist production.”¹⁶ Furthermore, on a theoretical level, consumer protection was unnecessary as it relied upon an “opposition of interests between the consumer and the trader”,¹⁷ which was completely absent in a centrally planned economy. Indeed, during the Maoist period immediately prior to 1978, “consumption as an end-in-itself was regarded negatively.”¹⁸ Thus, in an economic system devoid of individual consumers, there was no perceived need for any formal consumer protection law.

However, after the ‘reform and opening-up period’ began under Deng Xiaoping from late 1978 onwards, the country began to experience rapid growth in gross domestic product (GDP) and a corresponding rise in the standard of living for many, particularly urban, citizens. During the 1980s, these initial steps to liberalise the economy were accompanied by a series of significant legal reforms. This first wave of preliminary legal reforms focused on economic development in order to create a basic framework within which economic reforms in general, and foreign investment in particular, could prosper. Thus, at a national level, key legislation in the civil law passed at this early stage of reform included: amending the Constitution in 1982, passing a provisional Civil Procedure Law in 1982 and drafting the General Principles of Civil Law in 1986, as well as implementing specific laws to support economic development such as the 1979 Joint Venture Law.

¹⁶ Williams, Mark (2000), “Foreign business and consumer rights: A survey of consumer protection law in China”, *UCLA Pacific Basin L J*, Vol. 18, pp252-272, p. 253.

¹⁷ Mańko, Rafał (2012), “Resistance towards the Unfair Terms Directive in Poland: The interaction between the consumer acquis and a post-socialist legal culture”, pp412-433 in: Devenney, James & Kenny, Mel (eds.), “European consumer protection: Theory and practice”, (Cambridge: Cambridge University Press).

¹⁸ Griffiths, Michael B. (2013), “Consumers and individuals in China: Standing out, fitting in”, (Abingdon, Oxon: Routledge), p. 1.

The 1993 Consumer Protection Law was later passed in the second wave of legal reforms which followed Deng Xiaoping's Southern Tour of 1992. This tour of the southern provinces by China's leader was seen as significant because it "galvanised those elements in the political and governance leadership that supported intensified market reforms."¹⁹ Accordingly, deeper and wider legal reforms were required to support the renewed emphasis on economic liberalisation and the role of individual consumers became increasingly important. Even before the promulgation of the 1993 Consumer Protection Law, the issue of consumer protection was beginning to be addressed through provincial and city-level rules and regulations,²⁰ demonstrating the rapid development of modern consumption patterns particularly amongst urban citizens. Such coverage of consumer protection issues in local legislation was necessary because, in a similar pattern to that witnessed in other economies in transition,²¹ consumers were initially euphoric about the sudden freedom to choose goods and services, then disillusionment quickly set in as they recognised the issues such as false or fraudulent labelling, defective and even harmful products and counterfeits which were common in the marketplace. As a result, a more comprehensive framework of consumer protection became necessary in order to support the drive towards deeper economic reforms in the 1990s.

3. The 1993 Law on Protection of Consumers' Rights and Interests

The PRC Consumer Rights and Interests Protection Law ('Consumer Protection Law') was passed on 31 October 1993 and entered into force from 1 January 1994.²²

¹⁹ Potter (2013), (fn. 7), p. 34.

²⁰ Gao, Tong (1991-1992), "Chinese consumer protection philosophy", *Journal of Consumer Policy*, Volume 14, Issue 3, pp337-350.

²¹ For example, Estonia, discussed in: Pisuke, Heiki (2000), (fn. 11), p. 34.

²² Consumer Protection Law 1993, (fn 14).

3.1 Main provisions of the 1993 Consumer Protection Law

The 1993 Consumer Protection Law contained a total of 8 chapters and 55 individual articles, representing a compelling attempt to put in place a comprehensive framework for the protection of consumer rights. The aims of the law were outlined in Article 1: "to protect the legitimate rights and interests of consumers, maintain social and economic order, and promote the healthy development of the socialist market economy." Thus, the law had multiple, potentially contradictory aims. Not only were the concepts of 'rights' and 'interests' not clearly delineated, but also the conflation of individual and collective goals could be problematic if these aims conflicted. For example, what if social order could only be maintained by suppressing individual consumers' rights? Or if promoting economic development was at odds with maintaining social order due to uneven development between urban and rural areas? There is no clear hierarchy within these aims. Nevertheless, the official aims outlined in Article 1 are similar to other civil laws and reflect the nature of Chinese legislation, that "legislative norms are frequently intended more for edification than for litigation."²³

Chapter 2 of the 1993 Consumer Protection Law outlined a number of rights available to consumers in Articles 7-15. Article 7 stated that, in purchasing and using commodities or receiving services, consumers shall enjoy the inviolable right to their personal and property safety. Article 8 provided that consumers shall enjoy the right to obtain true information about commodities purchased and used or services received. Relevant information which could be demanded by consumers included: the commodities' price, origin, manufacturers, usage,

²³ Clarke, Donald (2006), "Lost in translation? Corporate legal transplants in China", *GWU Law School Public Law Research Paper*, No. 213, p. 7.

functions, specification, grade, main ingredients, date of production, term of validity, certificate of inspection, operation instructions or manual, after-sales service or information relating to contents, standards and costs of services.

Article 9 declared that consumers enjoy the right to choose the commodities or services of their choice. Examples given of where a consumer should have the right to exercise their free choice included: the right to select freely among a variety of goods and services; to accept or reject any item; and to make comparisons amongst different commodities and services. Article 10 dealt with the consumer's right to a fair deal. Examples of fair dealings are given, such as a guarantee of quality, a reasonable price, accuracy in measurements, and the right to refuse any compulsory transaction. Article 11 stated that consumers who suffer personal injury or property damage resulting from their purchase or use of commodities or receipt of services shall have the right to demand compensation in accordance with the law. Article 12 enshrined the right of consumers to form social organisations to safeguard their legitimate rights and interests according to law.

Article 13 dealt with the right to education, namely that consumers enjoy the right to acquire knowledge and information about consumption and about the protection of consumers' rights and interests. Article 14 went on to state that consumers should have their human dignity, national customs and traditions respected when purchasing and using commodities or when receiving services. Finally, Article 15 provided the right of consumers to exercise supervision over commodities and services, as well as supervising the protection of consumer rights and interests. If consumers found any breaches of the law, Article 15 further

specified that they have the right to raise criticisms or make suggestions for the protection of consumer rights and interests.

Chapter 3 dealt with the parallel obligations on business operators in Articles 16-25. For example, Article 18 dealt with the safety requirement and provided that for hazardous goods and services, operators should provide accurate descriptions and clear warnings to consumers. Article 19 required operators to provide true information about goods and services, answer consumers' questions truthfully and label prices on commodities clearly. Article 22 required operators to guarantee the quality, performance, purpose and term of validity for goods and services under normal use. The obligations placed on business operators within Chapter 3 of the 1993 law mirrored the provisions on consumer rights found in Chapter 2 and ensured that the consumer protection law overall sought to strike an equitable balance between consumers and traders.

In addition, Chapter 4 dealt with how the state would actually protect consumers' rights and interests through the available enforcement mechanisms. This section is of crucial significance; clearly, the substantive law on paper is worthless without effective mechanisms through which it can be enforced against unscrupulous traders. Under Chapter 4, the state administrative departments of industry and commerce (SAICs) are empowered as the main governmental body to enforce the Consumer Protection Law. Article 28 was the key provision which conferred the power on the SAICs at various levels to not only listen to consumer complaints, but also investigate potential breaches of the law and impose administrative penalties where necessary.

In addition, individual lawsuits could be brought to the People's Courts under Article 30 and finally, Chapter 5 authorised the China Consumers

Association (CCA) to act as a 'watchdog' body to oversee consumer protection. Chapter 5 is of great significance because it outlines various statutory duties which the CCA should perform, such as providing information to consumers (Article 32(1)); working with relevant administrative departments in supervision (Article 32(2)) as well as reporting to them and putting forward suggestions (Article 32(3)); investigating and mediating consumer complaints (Article 32(4)); supporting consumers who wish to bring lawsuits (Article 32(6)); and exposing through the mass media acts infringing consumer rights and interests (Article 32(7)).

However, the precise legal status of the CCA was not clearly explicated within the 1993 consumer protection law itself. Set up in 1984, the CCA obviously pre-dated the formal passing of the 1993 Consumer Protection Law by a number of years. It occupied an interesting position within the institutional framework of consumer protection in reform-era China as it was clearly a non-governmental body, yet nevertheless had important statutory functions to perform. The uncertain status of the CCA under the consumer protection framework was finally clarified by the 2013 amendments and will be discussed further below.

3.2 Rationale and critique of the 1993 Consumer Protection Law

It is clear that the central rationale behind the passing of the 1993 Consumer Protection Law was economic; when Liu Min, the Director of the State Administration for Industry and Commerce presented the draft of the 1993 law, he stated in his introductory comments that the passing of a comprehensive consumer protection law was necessary for the maintenance of the socialist market economy.²⁴ As the 'consumer citizen' began to emerge, particularly in

²⁴ NPC (2000), "On the description of the PRC Consumer Protection Law (Draft)" (*Guanyu zhonghua renmin gongheguo xiaofei zhe quanyi baohu fa (cao'an) de*

urban areas, it became obvious that a national level law was required in order to support the further development of individual consumers. The promulgation of the 1993 law also dovetailed neatly with the push towards deeper economic reforms taking place in early 1990s. Furthermore, the passing of the 1993 Consumer Protection Law added to the overall development of the civil law framework in China. The General Principles of Civil Law 1986 had been widely credited with introducing key concepts of civil law into the Chinese legal system, but there was a clear need for these concepts to be fleshed out into more comprehensive and specific laws, in order for them to be of any practical use.²⁵

In terms of the drafting process which culminated in the 1993 Consumer Protection Law, it is clear that China expressly chose to learn from both international norms and the experiences of other countries. Thus, the drafting group collected and analysed information on both domestic and international legislation and typical cases, sought comments from relevant governmental departments, consumer associations and scholars, as well as undertaking fact-finding trips to the United States, Britain and the Netherlands.²⁶ In addition, the 1993 law was expressly informed by the 1985 UN Guidelines on Consumer Protection, particularly in the formulation of the basic rights of consumers.²⁷ The purpose of the 1985 UN Guidelines was two-fold: first, "to create an international framework within which national consumer protection policies and measures can be worked out" and secondly, to "further international co-operation in this field."²⁸

shuoming), *Renda Gongbao* (Gazette of the National People's Congress), 28 December, available at: http://www.npc.gov.cn/wxzl/gongbao/2000-12/28/content_5003026.htm

²⁵ Jones, William C. (1987), "Some questions regarding the significance of the general provisions of civil law of the People's Republic of China", *Harvard International Law Journal*, Vol. 28, 309-332, p. 309-10.

²⁶ NPC (2000), (fn. 24).

²⁷ *Ibid.*

²⁸ Harland, David J. (2001), "The consumer in the globalised information society: The impact of the international organizations", pp3-29 in: Wilhelmsson, Thomas, Tuominen,

Indeed, the UN Guidelines proved especially useful in countries where consumer law was previously little developed, for example, in Latin America.²⁹ Accordingly, China's use of the UN Guidelines reflects many other countries' experiences in developing a modern consumer protection law.

Nevertheless, the wholesale transplant of legal principles and concepts which had not previously existed in China was not straightforward. For instance, an example of a well-intentioned provision that suffers from a lack of clarity can be found in Article 24, which prohibits business operators from including "unfair and unreasonable regulations against consumers". No guidance is included as to what contractual provisions would be 'unfair' and 'unreasonable' and without such guidance the provision is rendered almost useless.³⁰ Furthermore, it was unclear if the Consumer Protection Law itself should be used as the basis for a claim, or whether it should be seen more akin to an enabling piece of legislation and the correct basis for a claim should thus be one of the consequent administrative regulations. In addition, "data from the China Consumer Association website showed there were 193 national laws and regulations, 177 local rules and regulations, and 37 local activist provisions."³¹ As a result, the Consumer Protection Law was just one of a plethora of consumer-related laws in operation in China and because of this volume of consumer protection related rules and regulations, there was clear potential for overlap and inconsistencies.

Salla & Tuomola, Heli, (eds.) "Consumer law in the information society", (The Hague: Kluwer Law International).

²⁹ Harland, David J. (1997), "The United Nations guidelines for consumer policy: Their impact in the first decade" in Ramsay, Iain (ed.), "Consumer Law in the Global Economy—National and International Dimensions", (Aldershot: Ashgate).

³⁰ Discussed further in: Williams (2000), (fn. 16), p. 264.

³¹ Xu, Junke (2011), "Who will protect Chinese consumers? The past, present and future of consumer protection legislation in China", *Loyola Consumer Law Review*, Vol. 24, issue 1, pp22-64, p. 50.

These inconsistencies in practice were heightened by the opaque definitions of many of the key concepts contained within the 1993 law such as that of a 'consumer'. The 1993 Consumer Protection Law Article 2 defined a 'consumer' as people who purchase commodities or services for the purpose of meeting the consumption needs of daily life. However, this definition was criticised as too vague and proved difficult to apply to real life situations.³² This definition of consumer was also criticised for its focus on 'everyday' purchases; by focusing on daily consumption needs, is the definition found in Article 2 seeking to exclude purchasers of luxury goods who would not fall under a common-sense interpretation of such everyday needs? For example, would a purchaser of a car fall under this definition of 'consumer' as it is debatable whether a car meets the consumption needs of daily life. With the growth of the Chinese middle class leading to the rapid development of the luxury goods and automobile sector in China, this definition of consumer was problematic. Other criticisms of the 1993 Consumer Protection Law included that the nine basic consumer rights protected within the law were too narrow, the burden of proof was unreasonable and that enforcement was inadequate.³³

Overall, the criticisms surrounding the 1993 Consumer Protection Law primarily concerned the vague and abstract nature of many of its provisions. Although it must be lauded for introducing a wide-ranging framework of basic consumer rights into China for the first time, without clearly defining the meaning

³² Particularly when applied to so-called 'consumer activists' who seek to exploit the punitive damages clauses in the Consumer Protection Law and the Food Safety Law by purchasing fake or expired goods solely to claim compensation. See: Thomas, Kristie (2014), "The (re)birth of the consumer activist in China: The 'Wang Hai phenomenon' in the light of guiding case No. 23", *China Guiding Cases Project*, available at: <https://cgc.law.stanford.edu/commentaries/12-kristie-thomas>

³³ Li, Shigang & Zhou, Guangyan (2012), "The problems of China's consumer protection law in legal practice", *International Journal of Business and Social Science*, Vol. 3, No. 14, pp65-72, p. 68-9.

of such basic rights and concepts, it was extremely difficult to utilise the legislation to enforce these rights.

4. The 2013 amendments to the Consumer Protection Law

Following the implementation of the Consumer Protection Law in 1994, the number of consumer complaints received by the China Consumers' Association (CCA) rose steadily. For example, "in 1998 the Consumers' Association of China reported that it had handled 667,000 formal complaints, a 6.7% increase on the previous year,"³⁴ with a total of over 800,000 complaints received in 1999. By the start of the new millennium, a survey conducted in several large cities revealed that "84% of respondents said that they would complain to the Consumers' Association if they suffered from poor quality goods or services and 56% said they would go on to use the courts if they could not achieve satisfaction."³⁵ This growing willingness to pursue business operators for failing to provide good quality goods and services was seen as a welcome sign that the 1993 Consumer Protection Law was having a real impact on consumers' rights awareness.

Nevertheless, despite this evidence of the successful implementation of the 1993 Consumer Protection Law, "in October 2008, the NPC Standing Committee put the modification of the [consumer protection law] into its 5-year legislation plan."³⁶ The amendments were necessary to bring the law up to date in terms of recognising the magnitude of electronic transactions, as well as harnessing two decades of practical experience of how the law operated in reality. The Consumer Protection Law 1993 was finally amended in October 2013 and has been in force

³⁴ Williams (2000), (fn. 16), p. 270.

³⁵ Ibid, p. 270.

³⁶ Xu (2011), (fn. 31), p. 56.

since March 15 2014.³⁷ The 2013 amendments made significant changes to the original 1993 law; over thirty changes were made.

4.1 Main provisions of the 2013 Amendments to the Consumer Protection Law

The key changes are:

a) Strengthening the role of the Consumers' Association

In 1984, the State Council approved the setting up of the China Consumer Association (CCA). Since that time, the CCA has played an increasingly important role in resolving consumer disputes. From 1994 when the Consumer Protection Law was first implemented until 2012, the CCA received a total of 120,089,766 complaints, with a resolution rate of 94.8%.³⁸

However, the precise legal status of the CCA remained unclear.³⁹ On the one hand, the CCA matched the definition of a 'social organisation' (*shehui tuanti*) as it is clearly a non-profit altruistic organisation. However, on the other hand, the CCA is also a statutory body so cannot wholly be classified as a non-governmental organisation. As the government lacks a single institution to enforce the Consumer Protection Law, it has delegated various official functions to the CCA to perform, as outlined above.⁴⁰ Thus, the CCA was expected to play a hugely significant role in terms of overseeing consumer protection in China, but without a clear legal

³⁷ Full text of the amendments and the law, (fn. 13).

³⁸ Bao, Lingling (2013), "20 years, 20 events: Major milestones since the implementation of the Consumer Protection Law" (*20 nian 20 jian shi: Xiaofei zhe quanyi baohu fa shishi yilai weiquan dashiji*), 23 April, available at: http://www.npc.gov.cn/npc/cwhhy/12jcw/2013-04/23/content_1792854.htm

³⁹ Zhang, Baoshan (2013), "Consumers' Association: Resolving their difficult position" (*Xiaofei zhe xiehui: Youwang zouchu dingwei zhi kun*), 6 November, available at: http://www.npc.gov.cn/npc/zgrdzz/2013-11/06/content_1812759.htm

⁴⁰ Also discussed at: Simon, Karla W. (2013), "Civil society in China: The legal framework from ancient times to the 'New Reform Era'", (Oxford: Oxford University Press), p. 21-2.

foundation to achieve such oversight. This has now been clarified by the change to Article 36 in the amended law.⁴¹

The main significance of clarifying the legal status of the CCA is in terms of funding; as a social organisation, it would be expected to fund itself which would be difficult without a fee-paying membership. Consequently, although the change to Article 36 (previously Article 31) appears to be a minor change of wording from 'social organisation' (*shehui tuanti*) to 'social association' (*shehui zuzhi*), it means that people's governments at all levels now have a duty to financially support the CCA (Article 37, paragraph 2), as opposed to the vague 'support' which was previously necessary.

Another important change to the role of the CCA is the clarification of the body's power to bring public interest litigation. The PRC Civil Procedure Law was amended in 2012 to expand the potential use of public interest litigation; Article 55 of the amended law provides that with respect to acts that prejudice the public interest such as the pollution of the environment and infringement of the lawful rights and interests of numerous consumers, the authorities and relevant organisations defined by law may institute legal action in the people's court.⁴² This role of the CCA in bringing public interest litigation on behalf of groups of disgruntled consumers is reinforced by the formal inclusion in the list of duties of

⁴¹ Chang, Zhipeng & Guo, Yujing (2013), "From social organisation to social association: Precise definition for consumer associations" (*Cong 'shehui tuanti' dao 'shehui zuzhi': Wei xiaofei zhe xiehui jingzhun dingwei*), 21 October, available at: http://www.chinadaily.com.cn/hqcj/xfly/2013-10-21/content_10383758.html

⁴² Standing Committee of the National People's Congress' decision on amending the PRC civil procedure law (2012), (*Quanguo renmin daibiao dahui changwu weiyuanhui guanyu xiugai <Zhonghua renmin gongheguo minshi susong fa> de jueding*) August 31, available at: http://www.gov.cn/flfg/2012-09/01/content_2214662.htm

the CCA in Article 37 that they should support litigation or other proceedings where the legitimate interests of consumers have been harmed.

b) Raising damages available for dishonest or fraudulent business practices

During the debates surrounding the drafting process of the amended consumer protection law, it became clear that tackling dishonest and fraudulent business practices was a key priority, as such activities are estimated to have led to direct and indirect losses totalling 600 billion RMB.⁴³ Consequently, the damages available to consumers who find themselves the victims of fraudulent operators have been increased substantially, in order to act as a deterrent.

Article 55 in the amended law now raises the damages available to consumers who have purchased substandard goods or services from twice the purchase price to three times the purchase price or RMB 500, whichever is the higher amount. This is a straightforward increase from the previous Article 49 in the 1993 law which allowed for twice the purchase price to be refunded. Furthermore, the new Article 55 also contains an additional second paragraph which applies only where the substandard goods or services have caused death or harm to the health of the users. In this circumstance, consumers can claim punitive damages of twice the actual losses suffered.

Although much of the focus has been on the rise from two times to three times purchase price in the first section of Article 55, the second paragraph is

⁴³ Around US \$96 billion dollars. Zhang, Weiwei (2013), "Second reading of the draft consumer protection bill: Promoting honest practices" (*Xiao fa xiugai 'ershen', jifa shehui chengxin zheng nengliang*), *Zhongguo Renda Zazhi* (China National People's Congress Magazine), 6 November, available at: http://www.npc.gov.cn/npc/zgrdzz/2013-11/06/content_1812753.htm

arguably of more significance⁴⁴ because actual losses suffered will be far in excess of RMB 500 in the vast majority of cases. However, the new Article 55 has caused some controversy by imposing a maximum level of damages available, rather than stipulating a minimum level of damages which could be exceeded depending on the scale of the business operator's fraud.⁴⁵ Thus, China is striving to strike an appropriate balance between tackling unscrupulous traders, yet without encouraging 'consumer activists' who exploit the punitive damages provisions within the consumer protection legislation in order to make a living.

By increasing the levels of punitive damages imposed for business operators supplying substandard goods and services, China is seeking to send a clear signal that defrauding consumers is unacceptable. However, by placing a relatively low ceiling on the maximum level of damages available, China is also seeking to discourage opportunist claimants abusing the punitive damage provisions. This compromise struck in the new Article 55 demonstrates the inherent tension between the multiple aims of the Consumer Protection Law in China in action.

c) Ensuring better regulation of e-commerce

As the number of transactions completed over the internet continues to grow exponentially, the difficulties inherent in purchasing goods and services without being able to see them become more frequent. Consequently, the amendments agreed in October 2013 help consumers of e-commerce in several ways. Firstly, for non-perishable goods, Article 25 now provides for a seven-day 'cooling-off'

⁴⁴ According to Yanfang Zhang, vice-president of the Beijing Consumer Protection Law Research Association. Zhang, Baoshan (2013), "Second reading of the draft consumer protection bill: Punish business fraud" (*Xiao fa xiugai ershen: Yancheng jingyong qizha*), *Zhongguo Renda Zazhi* (China National People's Congress Magazine), 6 November, available at: http://www.npc.gov.cn/npc/zgrdzz/2013-11/06/content_1812763.htm

⁴⁵ Ibid.

period in which consumers have the right to return the product for a refund without having to give a reason for goods bought over the internet, via television, telephone or mail order. Further, although consumers bear the cost of returning the goods, the business operators then only have a further seven days to refund the consumer upon receipt of the returned goods.

An additional layer of protection for consumers is offered by Article 28 which stipulates that for goods and services sold through the internet, television, telephone or mail order, those business operators must provide consumers with relevant information including their business address, contact details, the quantity and quality of the goods and services, the price, and the time for delivery.

d) Mandating a seven-day return period for substandard goods

One of the key priorities of the 2013 amendment was to improve the quality of goods and services and as a result, the revised Article 24 gives consumers a right to return any sub-standard goods within seven days of receipt. After the expiry of the seven-day mandatory return period, consumers will still have the right to repair or exchange the substandard goods, on top of any contractual provisions for later refunds. Furthermore, any costs attributable to return, repair or exchange should be borne by the business rather than the consumer. This would cover delivery or return postage costs, for example.

e) Clarifying the requirement to recall defective products

Article 19 of the consumer protection law deals with product recalls and has been amended in three significant aspects. Previously, if a serious defect was discovered which could cause personal injury or property damage, the business operator had a duty to notify the relevant administrative department. Following

the 2013 amendments, the word 'serious' is omitted, expanding the number of defective goods and services which may be subject to a product recall. In addition, the duty to notify has been expanded to include the notification of consumers, as well as informing the relevant administrative department. Thirdly, the measures that a business operator should take once a defect is discovered are clarified. The business operator must cease production and sales of the defective good or service, issue warnings, and initiate a recall. The operator shall also bear the cost of any recall.

Clearly, the changes made to product recalls are intended to widen the system to incorporate a greater number of defective goods and services, reinforcing the aim of legislators to clamp down on shoddy consumer goods and services. However, by removing the requirement for defects to be 'serious', a product recall could potentially be triggered by any level of potential harm and it will be interesting to witness how strictly this provision is enforced in practice.

f) Reversing the burden of proof for certain durable goods

If consumers have to prove when and how a defect came into existence in their substandard good or service, it can place an insurmountable barrier in the way of their claim as specialised technical knowledge is often required. In order to make it easier for consumers to claim for defective goods and services, the burden of proof has been switched to lie upon the business operator in certain circumstances.

Article 23 section 3 of the amended law reverses the burden of proof if the good or service is found to be defective within six months of purchase. In other words, the burden of proof does not fall on the consumer to prove how the defect was caused; rather it is for the business operator to prove that they are not liable

for the defect. However, this reversal of the usual burden of proof only applies to certain categories of goods, namely: motor vehicles, computers, televisions, air conditioners, washing machines and other durable goods or services such as decoration, largely due to the level of technical knowledge required to prove the origin of any defect.

4.2 Rationale and critique of the 2013 Amendments of the Consumer Protection Law

Official pronouncements made when the draft amendment to the Consumer Protection law was proposed outline the motivations behind the revision. It is notable that none of these official pronouncements referred to a desire to adopt or converge towards international legal norms in the field of consumer protection, rather the reasons given focused on domestic concerns such as: strengthening protection of consumer rights; tackling new and emerging problems in the consumer sector; enhancing consumer confidence; reducing and preventing consumer disputes; and guiding sustainable consumption.⁴⁶

For example, according to Jia Dongming, director of the civil law working committee under China's Standing Committee at a press briefing to announce the changes, one reason for the amendment is that increasing consumer confidence can help to boost domestic demand and thus aid economic development more generally.⁴⁷ Boosting domestic demand is necessary in order to rebalance China's economy; economic growth is currently predominantly driven by investment,

⁴⁶ Chen, Yu (2013), "China's first comprehensive revision of the Consumer Protection Law" (*Woguo shouci quanmian xiugai xiaofei zhe quanyi baohu fa*), *Legal Daily*, 24 April, available at: http://www.npc.gov.cn/npc/xinwen/lfgz/2013-04/24/content_1792943.htm

⁴⁷ Jourdan, Adam (2013), "China overhauls consumer protection laws", *Reuters*, October 25, available at: <http://www.reuters.com/article/2013/10/25/us-china-consumer-law-idUSBRE99005E20131025>

which is unsustainable in the long-term. Domestic consumption presently accounts for about 30% of GDP and will likely rise to 40% over the next few years. However, this still lags far behind, for example, the US where domestic consumption accounted for 69% of GDP in 2012.⁴⁸ Jia also noted that internet sales rose almost 50-fold from 2006 to 2012, “while analysts predict e-commerce will account for a fifth of total retail sales in China within five years.”⁴⁹

Therefore, the rationale for the latest amendments is a combination of national economic policy in seeking to strengthen domestic demand to rebalance the export-driven economy, and a need to reform and expand the existing framework of consumer protection to adapt to the increasingly sophisticated retail landscape. Thus, whilst the public rationale given for the 1993 consumer protection law was more explicit about drawing upon the model laid down by the 1985 UN Guidelines, the 2013 amendments were seeking to learn from nearly twenty years of implementation of the consumer protection law to adapt the existing law to local Chinese conditions.

However, the predominant motivation behind the expansion of the consumer protection law in China, both in the 1993 law and the 2013 amendments, remains economic development. This exclusive focus on further economic development is in sharp contrast to, for example, the EU. The rationale behind the evolution of consumer protection in the EU is recognised as including a political rationale of “embedding citizens/ consumers into the European project”,⁵⁰ as well

⁴⁸ Robertson, Benjamin (2014), “China urged to increase domestic consumption to rebalance economy”, *South China Morning Post*, 20 January, available at: <http://www.scmp.com/business/economy/article/1409982/china-urged-increase-domestic-consumption-rebalance-economy>

⁴⁹ Ibid.

⁵⁰ Schüller, Bastian (2012), “The definition of consumers in EU consumer law”, pp123-142 in: Devenney, James and Kenny, Mel (Eds.), “European consumer protection: Theory and practice”, (Cambridge: Cambridge University Press), p. 127.

as an economic rationale. In other words, the political concept of consumer protection as 'civic rights' also contributed to the development of consumer protection in Europe in its current form.

Nevertheless, despite China seemingly following its own domestic priorities, it is notable that many of the concerns found in the recent Chinese amendment, such as regulating transactions completed online, tackling false advertising, and strengthening data protection requirements, are also the concerns which surface in the ongoing review of the 1985 UN Guidelines.⁵¹ Since they were originally agreed in 1985, the UN Guidelines on Consumer Protection have not been subject to major revisions, bar the inclusion of sustainable consumption in 1999. As a result, the UN Guidelines are currently under review to ensure that they are fit to guide consumer protection regimes around the world into the twenty-first century, particularly in relation to coverage of the digital economy and financial services. Consequently, although the 2013 amendments to the Consumer Protection Law remain focused on adapting the 1993 law to meet the demands of modern Chinese consumers in a still-reforming economy, it is notable that China's Consumer Protection Law may nevertheless be converging with international norms in this field, suggesting that future harmonisation in the field of consumer protection may be inevitable.⁵²

5. Revolution or evolution? Analysing the development of the consumer protection law

⁵¹ UNCTAD (2013), "Implementation report on the United Nations Guidelines on Consumer Protection (1985-2013)", 29 April, available at: http://unctad.org/meetings/en/SessionalDocuments/ciclpd23_en.pdf, p. 19.

⁵² Howells, Geraint, Ramsay, Iain & Wilhelmsson, Thomas (2010), "Consumer law in its international dimension", pp1-17 in: Howells, Geraint, Ramsay, Iain, Wilhelmsson, Thomas & Kraft, David (eds.), "Handbook of research on international consumer law", (Cheltenham: Edward Elgar), p. 16.

Following the implementation of the 2013 Consumer Protection Law amendments from March 2014, the consumer protection system in China demonstrates various features of convergence with international norms in this field. The basic framework of consumer rights and obligations placed on business operators laid down in the 1993 law were drafted explicitly to mirror the UN Guidelines on Consumer Protection 1985. In addition, the product recall system now reflects similar systems found in various other jurisdictions around the world in its basic obligations. Furthermore, the focus on extending the coverage of consumer protection law to online transactions, as well as the explicit inclusion of sustainable consumerism, mirrors the concerns found in international discussions about the role of consumer protection.

Generally, it is undeniable that strong signs of convergence between legal systems in Asia and in the West have been witnessed since the mid-twentieth century. Such convergence cannot be attributed to any one factor, but rather has arisen due to several interrelated dynamics, including: the internationalisation of law especially in the field of international commerce, the increasing degree of political convergence as more states move from authoritarian governments towards democracy, and an economic trend towards global and international markets.⁵³ In the field of consumer protection, it is probable that the convergence observed between the Chinese law and international norms is largely due to the influence of globalisation in the economy. As consumers find it easier to shop across borders, so countries must remain competitive in the level of consumer protection offered or they will potentially lose out.

⁵³ Pistor, Katharina & Wellons, Philip A. (1999), "The role of law and legal institutions in Asian economic development, 1960-1995", (New York: Oxford University Press), p. 14.

China has clearly sought to build legitimacy through engaging widely with both international bodies and legal standards.⁵⁴ Nevertheless, it is important to recognise that China has not just been a passive observer in its engagement with international legal regimes; rather China has been and remains an active participant.⁵⁵ Thus, it will be interesting to observe in the future how China may influence consumer protection norms through a collaborative process of international exchange. Moreover, it is important to recognise that even if international guidelines or codes of conduct are not binding under international law, they can still play an important role in developing a core of 'soft law' norms in the international arena by putting national governments under pressure to conform.⁵⁶ One way in which international (soft law) norms in the field of consumer protection have conceivably influenced China is through the activities of the China Consumers Association (CCA). The CCA recognises that the issue of consumer rights crosses borders and thus, has always been actively engaged in foreign exchanges. "In fact, the founding of China Consumers' Association was pushed by the international movement of consumers' rights."⁵⁷

Nonetheless, the development of the modern Consumer Protection Law in China has necessarily differed from the development witnessed in other countries. The driving force behind the development of consumer law in many Western jurisdictions was the notion of distributive justice, particularly in the EU; as the

⁵⁴ Potter (2013), (fn. 7), p. 186.

⁵⁵ This is evident in China's interactions with the WTO dispute settlement body, for example: Thomas, Kristie (2011), "China and the WTO Dispute Settlement System: From Passive Observer to Active Participant", *Global Trade and Customs Journal*, Vol.6 (10), pp. 481-490.

⁵⁶ Harland, David J. (1992), "International agreements and guidelines as a means of consumer protection", *Journal of Behavioural and Social Sciences*, Vol. 38, pp14-31.

⁵⁷ China Consumers' Association (2003), "Current situation of China's consumer rights protection movement", 15 July, available at: <http://www.cca.org.cn/english/EnNewsShow.jsp?id=39&cid=984>

welfare state grew, states accepted responsibility for delineating the boundaries around individual autonomy.⁵⁸ The driving force behind the development of consumer law in China, on the other hand, has been primarily economic. Therefore, perhaps China has taken a more instrumental approach to its borrowing from international norms in this area as its aims are pragmatic rather than ideological.

As a result, the consumer protection framework in China does retain certain features which are more unique to the Chinese context, such as the definition of a 'consumer' based on the everyday nature of the transaction and the important role that the CCA consistently plays in the enforcement of the substantive laws and regulations. Although the number of consumer-related court cases has shown relatively strong growth in the past few years (with 15,000 more in 2013 than three years earlier),⁵⁹ this pales into insignificance when compared to the number of complaints received by the administrative State Administration of Industry and Commerce (SAIC) of more than one million in 2013.⁶⁰ In turn, the number of complaints received by the SAIC is dwarfed by the number of visits paid by consumers to CCA offices at all levels of 1.9 million in 2013.⁶¹ Thus, the CCA remains a key player in the consumer protection arena in China, perhaps reflecting

⁵⁸ Micklitz, Hans-W. (2009), "The targeted full harmonization approach: Looking behind the curtain", pp47-83 in: Howells, G. and Schulze, R. (eds.), "Modernising and harmonising consumer contract law", (Munich: Sellier European Law Publishers), p. 76.

⁵⁹ Yin, Cao (2014), "Consumer-related court cases surge in past 4 years", *China Daily*, 12 March, available at: http://www.chinadaily.com.cn/china/2014-03/12/content_17342887.htm

⁶⁰ Xinhua (2014), "Consumer complaints surge in China," *China Daily*, 14 March, available at: http://www.chinadaily.com.cn/business/2014-03/14/content_17347038.htm

⁶¹ China Consumers' Association (2014), "Analysis of complaints handled by the national Consumers' Association in 2013" (*2013 nian quanguo xiao xie zuzhi shouli tousu qingkuang fenxi*), 15 March, available at: <http://www.cca.org.cn/web/xfts/newsShow.jsp?id=66800>

cultural preferences towards mediation rather than more formal court-based dispute resolution.⁶²

6. Conclusion

The development of consumer protection law in contemporary China has shown an interesting blend of drawing from international norms such as the 1985 UN Guidelines on Consumer Protection with adapting the law to fit the unique Chinese legal system and wider economic reforms. Since the modern reform-era began in 1978, the process of developing a comprehensive framework of consumer protection has not proved to be a linear one-way road. In terms of whether this process could best be described as a revolution or an evolution, it is clear that although changes in consumption patterns, particularly in urban areas, have been characterised as a 'consumer revolution', the corresponding changes in legal protection for consumers in China could better be described as incremental in nature. One of the key trends identifiable in the development of consumer protection law in China in the reform era is that the law has evolved in a piecemeal fashion; "for the most part, this law has been reactive to perceived abuses... rather than proactive or seeking to prevent the abuse from occurring in the first place."⁶³

The 1993 Consumer Protection Law offered a combination of local features in the aims and the definition of a consumer, mixed with consumer rights and obligations on business operators which converged with international standards. The 2013 amendments to the Consumer Protection Law have further adapted the law to local conditions, with their clear emphasis on online commerce, as well as

⁶² Huang, Phillip C. C. (2006), "Court mediation in China: Past and present", *Modern China* 32, no. 3.

⁶³ Clark, Eugene (1997-8), "Consumer law and economic development in the PRC: Overview and brief commentary", *Canberra Law Review*, Vol. 4, No. 1, pp125-150, p. 128.

clarifying the legal status of the CCA for example. Although the 2013 amendments made sweeping changes to the substantive Consumer Protection Law, yet the rationale behind the law remains primarily driven by economic motivations. Nevertheless, China has made impressive progress with developing a solid foundation in consumer protection law and although the current law in operation retains some uniquely Chinese characteristics, it is not incongruous with the rights and obligations laid out in consumer protection laws in many other jurisdictions.