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CHINESE PRODUCT LIABILITY LAW: CAN CHINA BUILD ANOTHER GREAT WALL TO PROTECT ITS CONSUMERS?

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I. INTRODUCTION

The People's Republic of China (PRC) recently amended, enacted, and repealed a large number of laws in an effort to improve its image and standing in the eyes of the international community. These new laws have introduced features to stabilize China's legal system. However, these features have not become uniform and comprehensively applicable rules that address people's needs and values. Along with providing benefits and protection, these new laws also contain serious flaws and impose heavy social costs.¹ Vague statutory construction and ineffective enforcement have caused these statutory defects.

This Note will examine Chinese product liability law, an area of law that largely has been overlooked by foreign companies and legal scholars. The Product Quality Law² and the Consumer Protection Law³ are the two main components of Chinese product liability legal reform. Although promulgated in 1993 and implemented in 1994, both domestic and foreign consumers and manufacturers still ignore these two statutes. This Note is divided into six parts. Part II examines the origin and background of Chinese product liability law. Parts III and IV focus on statutory construction and enforcement mechanisms present in current Chinese product liability statutes. Part V discusses recent improvements. Part VI suggests measures for reform.

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1. See RONALD C. KEITH & ZHIQIU LIN, *LAW AND JUSTICE IN CHINA'S NEW MARKETPLACE* 3 (2001) (discussing the social effects of the PRC's legal transition).

2. *Zhonghua Renmin Gongheguo Chanpin Zhiliang Fa* [Product Quality Law of the People's Republic of China] (1993) (amended 2000) [hereinafter Product Quality Law].

3. *Zhonghua Renmin Gongheguo Xiaofeizhe Quanyi Baohu Fa* [Law of the People's Republic of China On the Protection of the Rights and Interests of Consumers] (1993) [hereinafter Consumer Protection Law].

II. PRODUCT LIABILITY LAW IN CHINA FROM 1949 TO 1993

In the early days of the PRC, centralized product liability laws did not exist.⁴ Producers and sellers of defective products were held liable according to their contractual relationship with the victim or consumer. If no such contractual relationship existed, injured parties relied on a complex system of rights and obligations to receive compensation.⁵ Most of these principles were embodied in the General Provisions of the Civil Law, which was enacted in 1986.⁶

Article 122 of the Chinese Civil Law defines a “defective” product as a product of “substandard quality.”⁷ This legal construction has forced Chinese courts to rely upon “administrative and technical specifications rather than by the general criterion of safety.”⁸ In the early days of the PRC, these “quality requirements” were either too broad or nonexistent.⁹ Due to China’s complex and disorderly bureaucratic machinery,¹⁰ Chinese courts encountered confusion regarding the interpretation and enforcement of these requirements.

Under the Civil Law, to recover for damage caused by a defective product, that damage must have been caused “by the violation of an enumerated right.”¹¹ Recovery was not limited to personal and property damages.¹² Theoretically, pure economic losses such as lost profits also were recoverable.¹³

Prior to 1993, consumers also sought relief in product liability cases under China’s Code of Criminal Procedure,¹⁴ which stated that victims who

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

5. *Id.* at 294.

6. General Provisions of Civil Law of the People’s Republic of China (1987), translated in DOMESTIC LAW REFORMS IN POST-MAO CHINA 199 (Pitman B. Potter ed., 1994) [hereinafter Civil Law].

7. *Id.* at 217.

8. Epstein, *supra* note 4, at 302-03.

9. *Id.* at 304.

10. “Formal legal institutions are neither functionally well-differentiated from other institutions wielding state power nor permitted to operate with a high degree of regularity. Law and policy remain linked, and legality is necessarily weak.” BASIC CONCEPTS OF CHINESE LAW 17 (Tahirih V. Lee ed., 1997). See also Stanley Lubman, *Methodological Problems in Studying Chinese Communist “Civil Law”*, in CONTEMPORARY CHINESE LAW: RESEARCH PROBLEMS AND PERSPECTIVES 243 (Jerome Alan Cohen ed., 1970) (stating that the lack of differentiation of Chinese legal from other administrative activities is especially evident in the criminal process).

11. Epstein, *supra* note 4, at 300.

12. *Id.* at 296.

13. See *id.* at 297-98.

14. *Id.* at 316.

suffered “material losses as a result of the defendant’s criminal act” could file a civil action.¹⁵ Thus, distribution of a substandard product not only could bring criminal penalties for the violating party, but it also enabled the injured party to file a civil claim for compensation.¹⁶

Various local laws aimed at protecting consumer rights also emerged.¹⁷ The Fujian Province introduced one of China’s first consumer protection laws.¹⁸ Promulgation of local legislation also promoted the growth of many local consumer associations.¹⁹ The Chinese Consumer Association (CCA), the only national consumer rights protection agency, emerged during this period.²⁰

III. CONSUMER PROTECTION LAW

A. Statutory Construction

Currently, there continues to be no unified code on product liability in China. However, the Consumer Protection Law and the Product Quality Law operate together to protect Chinese consumers. The Consumer Protection Law, promulgated by the Standing Committee of the National People’s Congress (NPC) in October 1993, became effective in early 1994. This law created rights for consumers²¹ as well as positive duties for “business operators.”²² Unfortunately, some of the law’s language and its main enforcement mechanisms lack effectiveness.

The earlier Civil Law’s contractual liability for defective products is evident in the modern Consumer Protection Law. Article 16 states that “[w]here an agreement exists between a consumer and a business operator, obligations shall be carried out in accordance with that agreement. An agreement between the parties concerned shall not, however, be in contravention of laws and regulations.”²³ This contractual liability is listed first among nine other positive duties imposed on the business operators,²⁴

15. Zhonghua Renmin Gongheguo Xingshi Susong Fa [Criminal Procedure Law of the People’s Republic of China] art. 53 (1979).

16. Epstein, *supra* note 4, at 316.

17. *Id.* at 292-93.

18. *Id.*

19. *Id.*

20. C. David Lee, *Legal Reform in China: A Role for Nongovernmental Organizations*, 25 YALE J. INTL L. 363, 414 (2000).

21. *See* Consumer Protection Law arts. 7-15.

22. *See id.* arts. 16-25.

23. *Id.* art. 16.

24. *See supra* note 22 and accompanying text.

suggesting that contractual liability is the paramount duty binding business operators.

Some Chinese legal scholars interpret consumer rights and business operators' fair dealing obligations in this law as recommendations for contracting parties with less negotiating power.²⁵ This contention is supported by the language of the Consumer Protection Law. For example, Article 4 requires that business operators conduct their transactions with consumers "according to the principles of voluntary participation, equality, fairness, honesty and trustworthiness."²⁶ Article 24 adds: "A business operator shall not be permitted to set unreasonable or unfair terms for consumers or alleviate or release itself from civil liability for harming the legal rights and interests of consumers by means of standard contracts, circulars, announcements, shop notices, etc."²⁷ Thus, Chinese lawmakers have maintained a system whereby product liability is created through consumers' contractual obligations with manufacturers or sellers.

The Consumer Protection Law also has several structural flaws. Much of the law's inability to realize its potential lies in its inadequate construction. For example, Article 18 of the Consumer Protection Law creates a positive duty for business operators to ensure consumer safety and economic interests.²⁸ However, the law does not define the words "business operator" or "consumer."²⁹ This raises a question of coverage. It is unclear whether the rights sections extend to injured parties other than the direct consumer.

The second paragraph of Article 35 vaguely mentions legal protection for any "other injured party whose person or property is harmed due to a commodity defect."³⁰ Thus, the Consumer Protection Law appears to extend to third parties. However, no section of the Consumer Protection Law specifically states whether sellers or producers have a duty of care or protection for the parties that their products might affect.³¹ The consumer rights and business operators' duties sections provide protection only for "consumers" or "a consumer."³² As a result, the addition of the words "other injured party"³³ simply does not harmonize with rest of the statute.

The language of Article 35 also states that the "other injured party" may

25. See QING KAI SHI & WEN HUA LIU, *DIRECTORY OF LIABILITIES IN CHINA* 169-95 (1999).

26. Consumer Protection Law art. 4.

27. *Id.* art. 24.

28. *Id.* art. 18.

29. Donald Paragon, *Product Liability in the PRC*, *CHINA L. & PRAC.*, Sept. 1999, at 29.

30. Consumer Protection Law art. 35.

31. See *id.* arts. 1-34.

32. *Id.*

33. *Id.* art. 35.

“demand compensation from the seller or may also demand compensation from the producer.”³⁴ Here, Article 35 introduces the terms “seller” and “producer.”³⁵ However, the law does not specify whether these terms can be used interchangeably with “business operator.”³⁶ Moreover, the term “business operator,”³⁷ which never is defined clearly, only compounds the confusion.

Under the Consumer Protection Law, liability does not automatically attach when enumerated rights and obligations are violated. The text is silent after proclaiming a right or obligation. Often, it is not clear what will result if a business operator breaches his obligation under the law.³⁸ Instead, Chapter VII creates a new set of liabilities.³⁹ However, several articles on rights and obligations are mutually exclusive of these Chapter VII legal liabilities.⁴⁰ This flaw jeopardizes the law’s effectiveness. When violations of enumerated rights and obligations under the law do not create liability, the provisions lack legal effect.

Currently, no provision of the Consumer Protection Law is subject to more controversy than Article 18.⁴¹ This Article provides that a business operator shall (1) meet requirements for safety, and (2) provide clear warnings and prevention against safety hazards.⁴² However, this Article does not provide liability for violations of the enumerated duties. The civil liabilities chapter of the Consumer Protection Law also is silent with regard to liability.⁴³ No language in the text indicates that liability should be attached to business operators’ failure to provide clear warnings and corrective procedures for possible defects in their products.⁴⁴

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. For example, Article 15 stipulates:

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

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

Id. art 15. Although many of the enumerated consumer rights have corresponding liabilities under Chapter VII, this Chapter did not establish liability for violations of a consumer’s right to report unlawful acts of State authorities. The Consumer Protection Law text simply is silent on the subject.

39. *Id.* ch. VII.

40. *Id.*

41. *See id.* art. 18.

42. *Id.*

43. *Id.*

44. *Id.* ch. VII.

Similarly, a business operator bears civil liability when “a defect exists in a commodity.”⁴⁵ However, the statute does not clarify possible defects.

B. Enforcement

The Consumer Protection Law advocates two approaches to enforcement. In Article 5, the Chinese Government retains the power and duty to protect consumers.⁴⁶ The Article states: “The State shall adopt measures to protect consumers in the legal exercise of their rights and shall safeguard consumers’ legal rights and interests.”⁴⁷ However, the Consumer Protection Law does not contain any provision regarding the way the government will carry out the promised protection. Under Article 26, the government is only obligated to “listen to and take into account the views and requirements of consumers.”⁴⁸ Article 34 provides that consumers may resolve disputes with business operators over their rights and interests in the following ways: (1) negotiate a settlement with the business operator; (2) request a consumer association to mediate; (3) complain to the relevant administrative department; (4) apply to an arbitral body for arbitration in accordance with the arbitration agreement reached with the business operator; or (5) institute legal proceedings in a People’s Court.⁴⁹ Again, the state is not involved in the enforcement of consumer rights. In practice, there is no state-run consumer rights protection agency. The government only prescribes penalties against sellers or manufacturers when criminal laws are violated.⁵⁰ This lack of enforcement mechanisms seriously hinders the effectiveness of the statute.

Realizing the enormous responsibility of protecting all Chinese consumer rights, the government turned to the consumers for help. Article 6 of the Consumer Protection Law introduces the second approach to enforcement: “[t]he whole society shall bear responsibility for the protection of consumers’ legal rights and interests.”⁵¹

The CCA exemplifies this approach. Although not specifically mentioned in the text, the CCA has become the primary independent enforcement body under the Consumer Protection Law.⁵² The CCA was founded by the State Council in 1984, nearly a decade before the enactment of the Consumer

45. *Id.* art. 40(1).

46. *Id.* art. 5.

47. *Id.*

48. *Id.* art. 26.

49. *Id.* art. 34.

50. *Id.* art. 29.

51. *Id.* art. 6.

52. *See Lee, supra* note 20, at 414.

Protection Law, in response to a joint proposal by three central governmental agencies.⁵³ However, the CCA remains independent of governmental organs.⁵⁴ The Consumer Protection Law acknowledges the importance of the CCA and other local consumer associations already in existence.⁵⁵ As a result, the Consumer Protection Law dedicates an independent chapter to “consumer organizations.”⁵⁶

Article 31 states that the main objectives of CCA and like organizations are “to carry out social supervision of commodities and services and protect the legal rights and interests of consumers.”⁵⁷ The CCA engages in four categories of activities: (1) research on consumer issues; (2) dissemination of knowledge to the public; (3) mediation of consumer disputes; and (4) advice to the government on consumer related issues.⁵⁸ The CCA functions as an accessory to the Consumer Protection Law separate from the government apparatus.⁵⁹ Thus, the CCA lacks the effective disciplinary and regulatory authority held by official state organs.⁶⁰ When the CCA discovers a serious violation of consumer rights, its only recourse is to refer the discovery to appropriate government administrative agencies.⁶¹ According to Article 32, Section 3, a consumer rights organization may “report to, inquire of, or make suggestions to relevant administrative departments on issues concerning the legal rights and interests of consumers.”⁶² Additionally, the CCA does not possess the power to directly pass new regulations related to consumer protection.⁶³

One of the CCA’s most important duties is to educate consumers about their rights,⁶⁴ and the CCA has accomplished a great deal since its inception. Since 1996, the CCA has “received over three million complaints and successfully settled approximately ninety-seven percent of them.”⁶⁵ In 2000 alone, “178,849 [complaints] were solved, and the rate of solution reached 96.9 percent, in which 94.55 million yuan (US\$11.39 million) of consumers’

53. *Id.*

54. *Id.*

55. *See* Consumer Protection Law ch. V.

56. *Id.*

57. *Id.* art. 31.

58. Lee, *supra* note 20, at 415.

59. *Id.* at 417.

60. *Id.* at 418.

61. *Id.*

62. Consumer Protection Law art. 32(3).

63. Lee, *supra* note 20, at 418 (stating “[t]he feature most frequently raised . . . to distinguish the organization from its state counterpart was the lack of formal regulatory authority over the subject matter to which they were assigned.”).

64. *Id.* at 416.

65. *Id.*

losses were recovered.”⁶⁶ Despite the organization’s ability to resolve a large number of complaints and its commitment to improvement, there are still serious complaints about the CCA from consumers.

Chinese consumers can be divided into two categories: rural and urban. Urban consumers make up a large portion of the Chinese consumer market, totaling more than two hundred million people.⁶⁷ A 1997 survey conducted jointly by the State Statistics Bureau, People’s Bank of China, All-China Federation of Trade Unions, and ministries of Labor, Public Health, and Civil Affairs demonstrated that urban consumers are not particularly satisfied with the CCA’s performance.⁶⁸ The results of the survey disclosed that one fourth of all urban consumers reported infringements of their rights resulting in a combined economic loss of 6.8 billion yuan (US\$819 million).⁶⁹ The survey also found that only 22% of victimized urban consumers actually expressed their concerns.⁷⁰ Of the 22% who complained, only 1.1% resorted to legal action.⁷¹ However, the survey did not disclose the percentage of consumers who utilized consumer associations to hold manufacturers or sellers liable.⁷² This vast majority of silent victims leads to a simple conclusion: limitations on the CCA’s regulatory and disciplinary authority cost consumers, and the Chinese government has not provided additional resources or means to enforce the Consumer Protection Law.

A national survey conducted by the CCA among rural consumers reached similar discouraging conclusions.⁷³ From January to February 1996, the CCA interviewed fifty-five hundred rural consumers across China.⁷⁴ Of those interviewed, 66% reported infringements of their rights as consumers.⁷⁵ Based on these alarming results, the CCA realized that “immediate and great efforts are needed to improve the rural consumption environment . . .”⁷⁶ A subsequent investigation found that most dissatisfied consumers had purchased defective and inferior products from small business shops where counterfeit or substandard products are more common.⁷⁷

66. Jia Hepeng, *Association Answers Complaints*, CHINA DAILY, July 15, 2000.

67. *China Sets Up Legal Framework to Protect Consumers*, CHINA BUS. INFO. NETWORK, Mar. 14, 1997.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Rural Consumers of China Complain Fraud Commodities*, XINHUA, Mar. 12, 1998, available at 1998 WL 4800012.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* “More than 71 percent of the rural residents involved said they suffered losses from

Almost half of the rural consumers surveyed did not know that the four-year-old Consumer Protection Law even existed.⁷⁸ Of those consumers who were familiar with the Law, many did not know where to turn for help.⁷⁹ As for those consumers who actually located the appropriate agency with which to file their complaint, many doubted that their complaints would be settled successfully.⁸⁰ During their interviews, many rural consumers complained that top business managers knew about the Consumer Protection Law but chose not to follow it.⁸¹ In addition, rural consumers felt that penalties prescribed by the national government for violating the Consumer Protection Law were too insignificant for manufacturers or sellers to take notice.⁸²

As previously mentioned, the CCA is not an official government organization and it lacks disciplinary and legislative powers.⁸³ The insufficient government support contributes to the CCA's inability to address consumer complaints.⁸⁴ When the CCA was created, "many of the CCA's top-level personnel [were] former government officials, particularly from the National Bureau of Industry and Commerce . . . and the National Bureau of Standards . . . both of which have regulatory authority over some consumer affairs and both of which were instrumental in the formation of the CCA."⁸⁵ Over the years, the CCA's increased independence has caused a significant reduction in the supply of manpower from the government.⁸⁶ The Consumer Protection Law vaguely provides for some governmental assistance.⁸⁷ Article 32 concludes: "People's Governments at all levels shall support the consumer associations in the implementation of their duties and functions."⁸⁸ However, subsequent language provides no concrete details about the level of support to be provided.⁸⁹ There is no indication of the types of future government support.

The Consumer Protection Law provides limited resources to the CCA and other consumer rights organizations to protect consumers. The Law "charges

buying daily commodities with quality problems, and 35 percent of those surveyed reported losses while buying substandard farming materials." *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. See Lee, *supra* note 20, at 418.

84. See *id.* at 415-17.

85. *Id.* at 415.

86. *Id.*

87. Consumer Protection Law art. 32.

88. *Id.*

89. See *id.*

the CCA with supporting consumer-initiated lawsuits against violators.”⁹⁰ Legal assistance is the sixth of the seven listed remedial functions of the CCA,⁹¹ and the CCA is still unclear about “how extensive a role it should play in this regard.”⁹² This is the result of yet another statutory ambiguity—the text “does not define what the CCA’s duty to support consumer-initiated litigation actually entails.”⁹³

Without real and effective government support, consumer associations are not effective vehicles for consumer protection. The text of the Consumer Protection Law indicates that the Chinese government wants consumers to rely on these associations as the primary means to resolve their concerns. Article 31 states that consumer associations shall be “established in accordance with the laws that carry out social supervision of commodities and services and protect the legal rights and interests of consumers.”⁹⁴ Therein lies the problem. The CCA desperately needs state delegation of regulatory and disciplinary powers. While the government wants the CCA to act as its official enforcer, it is either unwilling or unable to provide the support the CCA needs. A Chinese government that is unwilling to spend the energy and resources to enforce its own laws hinders the CCA’s ability to assist consumers.

C. *The Toshiba Case*

The ongoing Toshiba case⁹⁵ reveals serious flaws in statutory construction and enforcement mechanisms under the Consumer Protection Law. Toshiba, the Japanese electronics giant, refused to compensate Chinese consumers for possible glitches in its laptop computers, while at the same time agreeing to pay up to US\$1.05 billion to its users in the United States.⁹⁶ Toshiba ignited a legal controversy by failing to publish a Chinese language notice to its users concerning the possible glitches.⁹⁷

The first issue raised by the Toshiba case concerns compensation for potential damages.⁹⁸ Toshiba asserted that Chinese consumers were denied compensation because “China does not have concrete laws concerning this

90. Lee, *supra* note 20, at 417.

91. Consumer Protection Law art. 32.

92. Lee, *supra* note 20, at 417.

93. *Id.*

94. Consumer Protection Law art. 31.

95. See Jin Zeqing, *Toshiba knows little of China’s laws*, CHINA DAILY, June 1, 2000.

96. *Id.*

97. *Id.*

98. *Id.*

kind of compensation as does the United States.”⁹⁹ The CCA responded, claiming that “China’s Law on the Protection of Consumers’ Rights, Contract Law and Product Quality Law all stipulate that manufacturers are obliged to tell the truth and compensate consumers whenever at-large problems loom.”¹⁰⁰ The CCA further asserted that “[t]he right to know the truth is a basic consumer right” and a violation of this right creates civil liability.¹⁰¹ Toshiba’s strongest defense stems from the lack of concrete language attaching liability to the “right to know” section of the Consumer Protection Law.¹⁰²

A more troublesome issue in the Toshiba case revolves around the Consumer Protection Law’s definition of “defect” and whether potential defects fall within the general definition.¹⁰³ Toshiba charged that the Consumer Protection Law lacks a definition for “defect,” and that the alleged glitch in their computer program constitutes a potential defect.¹⁰⁴ More importantly, Toshiba argued that a business operator’s duty does not extend beyond foreseeability.¹⁰⁵ Thus, if the possible glitch was not foreseeable, then Toshiba is not bound under Article 18’s disclosure requirement.¹⁰⁶ Toshiba’s defense found support within the Chinese legal community.¹⁰⁷ Several Chinese legal scholars also have criticized the construction of the Consumer Protection Law as providing a loophole for Toshiba.¹⁰⁸ Wu Jingming, assistant professor of the Chinese University of Political Science and Law, was quoted as saying that “the law was ‘general and rough’ under which Chinese Toshiba customers could hardly claim compensation from the company.”¹⁰⁹

The Toshiba case also challenges the strength of the enforcement means provided by the Consumer Protection Law. Article 29 requires relevant state authorities to “penalize, in accordance with laws and statutory regulations, business operators for illegal and criminal acts that infringe upon the legal rights and interests of consumers during the provision of commodities and

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. Consumer Protection Law art. 40(1).

104. Jin Zeqing, *supra* note 95.

105. *Id.*

106. Consumer Protection Law art. 18.

107. *See* Jin Zeqing, *supra* note 95.

108. Meng Yan, *Toshiba Case Triggers Debate Over Consumer Law*, CHINA DAILY, Mar. 29, 1999.

109. *Id.*

services.”¹¹⁰ However, the law does not specify the “relevant State authorities.”¹¹¹ So far, no Chinese government agency has taken the initiative under Article 29 to “punish” Toshiba, and the government did not even protest Toshiba’s actions until the Chinese media publicized the case.¹¹² Many legal scholars have blamed the Toshiba controversy on inadequate enforcement and implementation by the local government.¹¹³ As Wu Hongwei, an assistant professor at Renmin University of China said “better implementation of the consumer protection law needs more involvement of local legislators.”¹¹⁴

In the absence of government enforcement, some citizens are turning to private suits. Three Chinese consumers have filed a lawsuit against Toshiba in a Beijing court, seeking at least 80,000 yuan (US\$9,660) in compensation for the company’s alleged failure to inform owners about flaws in some of its notebook computers and provide a remedy.¹¹⁵ In addition, over one hundred consumers from Northeast China “have organized a class-action lawsuit to seek compensation from the Japanese company.”¹¹⁶

The CCA has experienced difficulties in teaching consumers their rights. However, consumer awareness is not the cause of product defects. The manufacturers and sellers themselves are the source of the defects. The Toshiba case raises other challenges for the CCA: Is the CCA accountable for educating manufacturers about their obligations under the Consumer Protection Law? If not, what organization or government agency carries this burden? The Product Quality Law, enacted in conjunction with the Consumer Protection Law, addresses some of these issues.

IV. PRODUCT QUALITY LAW

A. Statutory Construction

The Product Quality Law, enacted in 1993, is a significant improvement over the Consumer Protection Law. It is intended to reinforce the “supervision and regulation of product quality” and clarify “the liabilities for product quality.”¹¹⁷ The text of the law explicitly provides that supervision

110. Consumer Protection Law art. 29.

111. *Id.*

112. Meng Yan, *supra* note 108.

113. *Id.*

114. *Id.*

115. Jin Zeqing, *supra* note 95.

116. *Id.*

117. Product Quality Law art. 1.

and control are its two main enforcement components.¹¹⁸ While the Product Quality Law offers comprehensive coverage for consumers, there are fewer references to the word “consumer.”¹¹⁹ Instead, Article 41 reflects a legislative intent of broad coverage by holding producers responsible for “damages done to the person or property except the defective products themselves (hereinafter referred to as ‘property of others’) due to the defects of products.”¹²⁰ This focus on the end user surpasses the contractual privity hurdle encountered in previous product liability laws and mitigates the confusion created by the vague term “consumer” in the Consumer Protection Law.¹²¹

Despite the progress and improvement stated in the previous paragraph, the Product Quality Law still contains serious flaws. For example, it does not define “producers” or “sellers.”¹²² Article 4 provides only that “[p]roducers and sellers are responsible for the product quality according to the provisions of the law.”¹²³ In reality, a product may require several stages of production by several manufacturers.¹²⁴ The Product Quality Law does not recognize the possibility of multiple producers expressly. Even if the law recognizes this possibility, the ambiguity is likely to confuse parties and courts.

Article 43 provides a prime example of the procedural flaws in the Product Quality Law. It enumerates consumer compensation and the indemnity rights of breaching parties.¹²⁵ Article 43 states that a victim may seek compensation from either the seller or producer, but it does not impose any duty on the plaintiff to identify or select the correct party.¹²⁶ It is likely that certain opportunistic plaintiffs will file claims against the parties with the strongest financial status, regardless of their actual culpability. Even if the wrongly-accused party is shielded from liability, Article 43 does not prevent the opportunistic plaintiff from bringing these suits. This omission may result in unnecessary litigation and waste of judicial resources.

118. *Id.*

119. *Compare* Product Quality Law *with* Consumer Protection Law.

120. Product Quality Law art. 41.

121. *Compare* Civil Law *and* Consumer Protection Law *with* Product Quality Law.

122. *See* Product Quality Law art. 4.

123. *Id.*

124. *See* Paragon, *supra* note 29, at 29.

125. Product Quality Law art. 43. Article 31 stipulates:

If damages are done to the person or properties of others due to the defects of products, the victims may claim for compensation either from the producers or sellers. If the responsibility rests with the producers and the compensation is paid by the sellers, the sellers have the right to recover their losses from the producers. If the responsibility rests with the sellers and the compensation is paid by the producers, the producers have the right to recover their losses.

Id. art. 31.

126. *Id.*

Article 43 also places the word “or” between “producers” and “sellers.”¹²⁷ Even in the absence of opportunistic plaintiffs, the “or” becomes a source of further confusion. The most likely interpretation is that the plaintiff can sue only one party. If either a seller or producer wins a judgment, the plaintiff might bring another suit against the party previously unnamed, thereby creating excessive litigation. The extra court costs and time likely will erase whatever benefit is derived from the implementation of the Product Quality Law.

Article 43 also provides a right of contribution between sellers and producers.¹²⁸ Because the Article does not explain why a liability-free party should compensate an injured party, the text seems to encourage the initial defendant to commit to a voluntary settlement:

If the responsibility rests with the producers and the compensation is paid by the sellers, the sellers have the right to recover their losses from the producers. If the responsibility rests with the sellers and the compensation is paid by the producers, the producers have the right to recover their losses.¹²⁹

This process is not only confusing but also inherently unfair. For example, it is possible for an initial defendant seller to compensate a profiteering plaintiff as part of a judgment, but the seller is unable to recover the same amount from a liable producer who is financially unable to contribute. Sellers who lack liability then would bear the cost of the damages inflicted by producers. Adding explicit language to Article 43 allowing the plaintiff to join all possible tortfeasors in one suit would improve judicial efficiency.

Many Chinese legal scholars and victims of defective products complain that the law does not compensate for pain and suffering resulting from defective products.¹³⁰ Although Article 44 explicitly provides compensation for bodily injuries, it says nothing about emotional or mental injuries.¹³¹

127. *Id.*

128. *Id.*

129. *Id.*

130. See Paragon, *supra* note 29, at 29-31.

131. Article 44 stipulates:

If bodily injury is caused by the defect of products, the party responsible shall pay for medical expenses and nursing expenses during medical treatment, the lost income due to absence from work; if the bodily injury has resulted in disability, the party responsible shall also be responsible for the expenses of self-supporting equipment including allowances, compensation of the disabled person and the living expenses necessary for those under the support of the disabled person; if death has resulted, the party responsible shall pay for funeral expenses, compensation and the living expenses necessary for those supported by the dead.

Product Quality Law art. 44.

Furthermore, the second paragraph notes that if “the victims sustain other major losses, the party responsible shall compensate for the losses,” but it provides no definition of “major losses.”¹³²

In a recent interview with *China Daily*, Yang Shukun, secretary-general of the CCA, criticized the current Product Quality Law’s lack of a clear compensation provision: “[I]nadequate laws and regulations have stopped the [CCA] and courts from working out satisfactory settlements for consumers who demand compensation for mental suffering.”¹³³ Yang pointed out that both the General Principles of Civil Law and the Consumer Protection Law “stipulate that consumers are entitled to compensation for psychological damages.”¹³⁴ The Product Quality Law is silent on this issue. Moreover, no consumer protection law clarifies a basis for compensation.¹³⁵ “Due to the loopholes, many of those held responsible for psychological damage done to consumers are let off easily, leaving consumers in humiliating mental suffering.”¹³⁶

For the most part, Chinese courts have not awarded damages for pain and suffering. For example, a Shanghai appellate court reduced an award of 250,000 yuan (US\$30,120) to only 10,000 yuan (US\$1,200) for a woman who claimed mental suffering after physically being searched by staff members of a drugstore, who suspected her of shoplifting.¹³⁷ Despite such setbacks, Chinese consumers continue to claim psychological damages. In Hunan Province, local consumer associations handled more than thirty-seven hundred complaints in 1999, of which more than 80% demanded compensation for psychological damage.¹³⁸

B. Enforcement

Unlike the Consumer Protection Law, the Product Quality Law has an independent enforcement agency: the State Bureau of Quality and Technology Supervision.¹³⁹ The government relies heavily on the Bureau. Article 7 of the Product Quality Law provides the relevant statutory support: “The product quality supervision and administrative departments of the State Council are responsible for the supervision and administration of the quality

132. *Id.*

133. *Suffering Requires Protection*, CHINA DAILY, Sept. 7, 1999.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. Liang Chao, *Quality Not Quantity Stressed*, CHINA DAILY, Sept. 2, 2000.

of products of the whole country. All relevant departments of the State Council shall be responsible for the supervision of product quality within their own functions and duties.”¹⁴⁰ The same Article also delegates responsibilities to local supervision departments.¹⁴¹

China’s certification system is an example of the state’s exercise of the supervision and control duties. Article 14 of the Product Quality Law establishes China’s modern product certification system: “The State shall institute the system for certifying quality control system of enterprises according to the quality control standards commonly accepted internationally.”¹⁴² Previously, the Chinese government maintained direct supervision over the certification process. However, since 1994, the government no longer directly supervises quality certification.¹⁴³ In its effort to match international standards, the Chinese government adopted a common international practice, entrusting “third party organs to carry out certification . . .”¹⁴⁴ Currently, “14 independent quality system registration and auditing bodies have been accredited by the National Accreditation Committee for Quality System Registration Bodies.”¹⁴⁵ However, the Product Quality Law does not provide for liability of certification bodies that fail to make proper certification.

State agencies also conduct various publicity campaigns for quality control.¹⁴⁶ The State Quality and Technical Supervision Administration has sponsored such campaigns for the past seven years.¹⁴⁷ For example, the Administration has requested greater media participation in encouraging manufacturers and consumers alike to drive out all inferior products from the market.¹⁴⁸ Pan Yue, Vice Director of the State Quality and Technical Supervision Administration, explained that “[m]edia reports have proved to be an effective way of supervising product quality and informing consumers of legal weapons to protect themselves against substandard products.”¹⁴⁹

These campaigns against fake and shoddy products have won visible support from top government officials. For example, China’s Vice Premier

140. Product Quality Law art. 7.

141. Article 7 states: “Local administrations . . . are responsible for the supervision of product quality within their own administrative jurisdictions. The relevant departments . . . at and above the county level are responsible for the product quality within their respective functions and duties.” *Id.*

142. *Id.* art. 14.

143. Ma Zhiping, CHINA DAILY, Nov. 16, 1994.

144. *Id.*

145. *Id.*

146. *Media Good Aid to Ensure Quality Products*, CHINA DAILY, Aug. 11, 1999.

147. *Id.*

148. *Id.*

149. *Id.*

Wu Bangguo participated in a 1999 campaign.¹⁵⁰ At the commencement of this campaign, Wu suggested that the upcoming campaign focus on “fake farm chemicals, composite fertilizers, seeds, construction materials, automobile parts, cigarettes, medicine, disposable injectors and cosmetics.”¹⁵¹ Groups of “reporters, business representatives and quality-control experts” throughout the country supervised quality-control efforts at grassroots levels and raised public awareness of quality-control improvements and necessities.¹⁵² The results of the campaign were disheartening. “More than 250 million yuan (US\$30 million) worth of products were discovered to be fake or of poor quality and 2,261 production facilities for these items were closed during the inspection.”¹⁵³

In Zhejiang province, the inspection team located a common source of local enforcement inadequacies.¹⁵⁴ The team discovered that many local leaders feared an aggressive effort to root out fake and defective goods would jeopardize local economic growth, especially in the private economy.¹⁵⁵ Zhejiang Province’s private economy is one of the strongest in the country, but “its product quality is below the national average.”¹⁵⁶ “Some even think it is inevitable for self-employed people and private enterprises to make fake and sub-standard goods during a certain period of their development,” said Chen Guangyi, head of the Zhejiang investigating team and chairman of the Economic and Financial Affairs Committee of the NPC.¹⁵⁷ The province conducted a survey in 1998 and “found only 40 percent of the food products, 58.9 percent of the electric appliances, 57.1 percent of the agricultural materials and 43.8 percent of the construction materials were up to the standard.”¹⁵⁸

This lack of enforcement is not unique to Zhejiang Province. In Chongqing, lack of local enforcement of quality control has had disastrous consequences. “Poor construction projects have a major hindrance in China’s economic development and at a cost of many innocent lives.”¹⁵⁹ On January 4, 1999, “at least 40 pedestrians died and 15 were hurt in the collapse of a

150. Meng Yan, *Fake, Mediocre Goods Reported*, CHINA DAILY, May 13, 1999.

151. Dian Tai, *Campaign to Eradicate Fake Goods*, CHINA DAILY, Oct. 27, 2000.

152. Liang Chao, *supra* note 139.

153. Meng Yan, *supra* note 150.

154. Xu Yang, *Higher-quality Products Urged, Long Battle Looms Over Shoddy Goods*, CHINA DAILY, July 6, 1999.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Poor Quality Costs Lives*, CHINA DAILY, Jan. 22, 1999.

footbridge in Qijiang County.”¹⁶⁰ After the bridge tragedy, an intense investigation of 305 construction projects in the Chongqing municipality revealed that forty-seven required immediate closure.¹⁶¹ “It has been found that many of the flimsy projects have been built without license or without following the bidding procedures required by the construction authorities.”¹⁶² A criminal investigation was also conducted to determine the identity of responsible parties; it found that several local officials completely ignored quality control and supervision requirements.¹⁶³

Some of the most shocking defective products cases involve alcoholic beverages. Through July of 1999, beer bottle safety ranked as the number one consumer complaint in China, and “[b]ottle explosions in the April-June period claimed the lives of five and injured 52.”¹⁶⁴ Moreover, these bottle defects “resulted in more than 154,000 yuan (US\$18,600) of financial losses” for Chinese consumers.¹⁶⁵

During its investigation of consumer products, the State Bureau of Quality and Technical Supervision discovered more than 250 million yuan worth of products that were fake or of poor quality.¹⁶⁶ These findings came a year after fake white liquor killed or injured more than 100 in Shanxi Province in 1998.¹⁶⁷ The Bureau concluded that despite a strict market rectification following the Shanxi tragedy, fake liquor continues to be sold in rural areas.¹⁶⁸

These cases suggest that more meaningful control and supervision of products are necessary to combat persistent and widespread disregard for the Product Quality Law. Enforcement measures under the Product Quality Law need not be perfect to achieve effectiveness. However, China must improve enforcement in order to avoid similar tragedies in the future.

V. RECENT ATTEMPTS AT IMPROVEMENT

The Beijing Industrial and Commercial Bureau (BICB) is now concentrating on providing greater access to consumers so that they may protect their rights.¹⁶⁹ The BICB has established websites and a hotline,

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Complaints by Consumers Rising*, CHINA DAILY, July 14, 1999.

165. *Id.*

166. Meng Yan, *supra* note 150.

167. *Id.*

168. *Id.*

169. Xiao Su, *More Ways to Protect Rights*, CHINA DAILY, Mar. 15, 1999.

providing convenient channels for consumers to air their grievances.¹⁷⁰ These advances allow consumers to file complaints with the BICB from the comfort of their home.¹⁷¹ The hotline, staffed by officials from the BICB, provides consumers with “information and measures to be taken in order to better protect consumer rights.”¹⁷² Both channels highlight the increase support provided to consumers by the BICB to correct questionable business practices.

The CCA also is trying to strengthen ties with consumer rights organizations in Hong Kong and Macao.¹⁷³ These other consumer rights associations have helped the CCA identify vulnerable areas and plug loopholes created by the language of the Consumer Protection Law.¹⁷⁴ The CCA has attempted to clarify the ambiguities that create those loopholes by requesting that the Supreme People’s Court issue an official interpretation.¹⁷⁵ The efforts by the CCA and BICB have proven to be a useful tool to restore consumer confidence in the Chinese marketplace.

In addition to these efforts, the new Product Quality Law amendments enacted in recent months provide a more aggressive quality supervision system.¹⁷⁶ The amendments set forth rules and penalties regarding spot check failures.¹⁷⁷ In addition, state and local product quality, industry, and commerce departments and administrations were granted search, investigation, and seizure powers.¹⁷⁸ The amendments also increased monetary damages for violators¹⁷⁹ and adopted more stringent labeling and packaging requirements.¹⁸⁰ Under the new amendments, certification bodies can be held liable for consumer losses caused by their failure to inspect.¹⁸¹ Finally, the newly amended law includes new clauses on reporting offences.¹⁸² “The revised law further defines the government’s responsibility to improve product quality and stresses that enterprises must accept

170. *Id.*

171. *Id.*

172. *Id.*

173. *Teamwork Protects Consumers*, CHINA DAILY, Dec. 30, 1999.

174. *Id.*

175. Lee, *supra* note 20, at 417. This interpretation is expected to be issued soon. *Id.*

176. Wu Yan, *Legislature to Amend Product-Quality Law*, CHINA DAILY, Apr. 27, 2000. The Decision of the Standing Committee of the National People’s Congress Concerning Amendment of the Law of the People’s Republic of China on Product Quality, was adopted on July 8, 2000. It was promulgated on the same date and came into force on September 1, 2000.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

supervision from quality control departments.”¹⁸³

Top-level government officials are acting to speed up product liability enforcement as well. According to Vice-Premier Wu Bangguo, local quality supervision bureaus, currently administered by local governments, will be placed under the administration of provincial-level quality supervision departments.¹⁸⁴ “The reforms are expected to remarkably improve the management and training of quality supervision officials.”¹⁸⁵ Wu also promises to close loopholes to corruption.¹⁸⁶ These actions reflect a concerted government effort to increase consumer confidence and hold industry and government officials accountable for substandard products.

The new additions to the Product Quality Law signal progress toward greater protection for Chinese consumers. However, the amendments still exclude pain and suffering damages and fail to establish a more concrete basis for compensation. As a result, the Chinese courts have filled in the gaps. Recently, the Supreme People’s Court of China ruled that victims of mental pain and suffering should be compensated.¹⁸⁷ This ruling defined the range and application of such compensation liability, making it easier for aggrieved consumers to receive compensation for mental suffering.¹⁸⁸ “The interpretative ruling did not put a ceiling on the financial compensation for mental suffering, but stressed that factors such as the results of the suffering, the economic capacity of the perpetrators and local living conditions should be taken into consideration when judges decide on the amount of compensation.”¹⁸⁹ After issuing the interpretation, Tang Dehua, Vice President of the Supreme People’s Court, reminded the public that the purpose behind this type of compensation is “to console the victims, educate and punish the perpetrators and establish among the public the idea of respecting other people’s personal rights and dignity.”¹⁹⁰

183. *Id.*

184. *Quality to Be Put Under Independent Supervision*, CHINA DAILY, Mar. 29, 1999.

185. *Id.*

186. *Id.*

187. Shao Zongwei, *Personal Rights Protected*, CHINA DAILY, Mar. 13, 2001.

188. *Id.*

189. *Id.* The personal rights that are protected by the new ruling include the right to life, to health, to name, to portrait, to reputation, to dignity and to freedom.

190. *Id.*

VI. SUGGESTIONS FOR REFORM

While China has made great strides to improve its product liability laws, further improvements are needed. First, the legislature should amend the Consumer Protection Law to remove its confusing ambiguities. A new amendment should define terms such as “consumers” and “business operators.” If it is the intent of the NPC to cover “other injured parties” as rightful claimants, then the definition of “consumer” should include them.

Second, the government should establish a more affirmative role for itself in the new amendments. Empty language such as “listen” and “take into account” should be replaced with provisions that entrust specific government agencies with clearly delineated powers.

Third, with or without a new amendment, the CCA should take a more aggressive approach in protecting consumer rights by lobbying the appropriate government organs to enforce tougher penalties against violators. In addition to its current operations, the CCA should actively solicit official government support to strengthen the CCA’s ability to protect Chinese consumers. The Consumer Protection Law itself should remove roadblocks and greatly expand consumer associations’ role in protecting consumer rights.

Fourth, the Chinese government must work to eliminate corruption at the local level. The CCA can help consumers negotiate better settlements with manufacturers or sellers; however, it cannot supervise production facilities or confiscate shoddy goods. Real and effective attacks against substandard products must come from official state agencies. To enforce the Product Quality Law, corruption among local officials must be checked.¹⁹¹ Top Chinese government organs already have recognized the effect of local corruption,¹⁹² and government sponsored campaigns have begun to target this area. Law enforcement agencies should increase efforts to crack down on repeated malpractice in the manufacturing and selling of counterfeit and inferior goods.

Finally, the media should continue to act as a watchdog. Since the Toshiba case unfolded, Chinese media have played a positive role in protecting consumer rights. Only after exposure by media reports did government officials speak out against the Japanese producer.¹⁹³ The Quality Inspection Bureau should continue its unofficial cooperation with Chinese media to strengthen the supervision and control of the quality of products as

191. Gao Jin’an, *Legislators Draft Laws To Fight Corruption*, CHINA DAILY, Aug. 31, 1994.

192. *Id.*

193. *See, e.g.*, Meng Yan, *supra* note 108 and accompanying text.

intended by Article 1 of the Product Quality Law. The Chinese media not only should publicize cases of shoddy or defective products after the defects are discovered, but also should focus on educating the manufacturers and consumers to prevent such cases. These suggestions are by no means exhaustive. Nevertheless, they should prove useful in protecting China from defective or substandard products.

The Great Wall of China is one of the great wonders of the world, built to protect the ancient Chinese dynasties from marauding tribes from the North. It was constructed by building and rebuilding a series of walls and fortifications over a span of several dynasties lasting more than 1,000 years. If constructed properly, Chinese product liability law can become another great wall, protecting consumers against invasions of their rights. The Consumer Protection Law and Product Quality Law have laid a foundation for the protection of those rights. However, China's product liability law needs continuing reform. Changes might not come easily, but China has laid the foundation by recognizing the importance of these laws. China is now on course to achieve greater control over product quality and safety.