



# From Fragmentation to Harmonization of Consumer Law: The Perspective of China

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Received: 10 January 2019 / Accepted: 5 September 2019 / Published online: 7 December 2019  
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## Abstract

Since the appearance of consumer law, its norm production landscape has been highly diversified and fragmented among the countries. The features of “lawlessness in some sectors” and “the lack of efficiency and effectiveness of national legal systems” give rise to the proliferation of norm producing originated by other bodies such as international organizations, industries, traders and even hybrid entities composing the public, the private and the civil society. There are many variations and differences in consumer law and policy between the Global North and the Global South. In recent years, harmonization of standards, codes of conduct and good practices have already taken place through international organizations and global businesses. In relation to harmonization of consumer laws among different countries, there have been skeptical views regarding such feasibility taking into account varying levels of institutional development. Thomas Bernauer explains “variation of consumer protection standards across countries may be a source of trade disputes.” Starting from the past decade, harmonization of consumer law has been achieved or at least advocated at regional levels. Harmonization easily starts within a region since regional integration creates opportunities for approximation of legal infrastructures. The EU is a very successful case in harmonizing consumer laws further guaranteed by a strong judicial system. In Latin America and in Asia, harmonization projects are ongoing and similar initiatives have also been supported. Whilst acknowledging the existing fragmentation and variations of consumer law worldwide, the author highlights the converging environment of consumer protection due to challenges brought by the globalization and advocates the feasibility of the harmonization approach from the perspective of a dynamically emerging and transitional economy such as China. At the outset, it explores the underpinnings of the consumer law which is a fairly modern legal intervention. China, like other countries, has been modernizing its consumer law by adopting a human-centred, rights-centred and social values-centred approach. Then, it examines the more important role played by emerging countries, particularly in areas such as global B2C e-commerce, telecommunication, financial

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services and mass tourism, and examines international dialogues and cooperation with active participation by the developing countries including China. There is a need for harmonization of consumer laws in the Mainland China, Macau and Hong Kong regions. China has made some progress on its own, but achieving harmonization in the wider region presents particular challenges. The author hopes that the harmonization would be achieved not only by creating consistency of rules but also by coordinating enforcement across borders. In conclusion, the author seems optimistic for a possible universal model law, which contains the minimum legal requirements and standards of consumer protection and mechanisms to strengthen cross-border cooperation to maximize the harmonization of consumer protection worldwide.

**Keywords** Fragmentation · Harmonization · Consumer Law · China

## Fragmentation and Variations of Consumer Law

The consumer movement started in the United States of America (USA) at the beginning of the twentieth century, spread to Europe in the 1960s along with the pace of establishing the European Community and then developed worldwide in the second half of the twentieth century (Borrie 1984, p. 51; Bourgoignie 1992, p. 297; Craig and De Búrca 2015, p. 706). In recognizing consumers as an autonomous category with legitimate rights and interests, consumer law has gradually built up some important underpinnings, for instance, necessary regulatory intervention due to market failures, distributive justice, the need to protect the consumers as the weaker party due to information asymmetries and unequal bargaining powers and so forth (Antoniolli 2006, p. 856).

Since the appearance of consumer law, its norm production landscape has been highly diversified and fragmented among the countries. This phenomenon can be attributed to the following reasons. At the outset, just like the legislation scenery of competition law, consumer law evolved and developed worldwide in different periods, firstly in the USA and in Europe, and then in numerous developing countries in Asia and Latin America at large. The legal borrowings and transplants exercised by the “followers” at the early phases, generally speaking, seem more conservative and cautious, compared with the practices of “pioneers countries,” since most developing countries have adopted the consumer law at a later stage and have to deal with new challenges through learning by doing process.

Secondly, the contextual situations vary across jurisdictions and the disparities in economic and legal traditions remain wide. Consumer law has rooted in various dimensions such as politics, economics, cultures and societies. It has an interdisciplinary approach combining both the public law aspects (constitutional, administrative, criminal and procedural) and the private law aspects (civil, contractual and so forth). The differentiated complexities together with widespread inexperience in consumer law enforcement across countries are important barriers for harmonization.

Thirdly, the sources of consumer law have multiplied in both number and type. The features of “lawlessness in some sectors” and “the lack of efficiency and effectiveness of national legal systems” give rise to the proliferation of norm producing originated by other bodies such as international organizations, industries, traders and even hybrid entities composing the public, the private and the civil society. The proliferation of sources leads to a fragmentation of consumer law at different levels.

There are many variations and differences in consumer law and policy between the Global North and the Global South. In very general terms, compared with developed countries, in developing countries, the level of consumer's awareness is relatively low; consumers are poorly organized with low bargaining power; their roles in advocacy, law making and law enforcement are still not active; laws or rules are either absent or ineffective if present; the existing multiple institutions do not possess enough resources nor enough capacity on enforcement. Moreover, in developing countries, policies are often inclined to benefit state-owned enterprises, in particular, in public utility sectors such as water, electricity and telecommunications. Unfair trade practices are common and services standards are not satisfactory, and so on.<sup>1</sup>

Some studies can further prove our general findings. The first example is about product safety. Product safety used to be the one of the main priorities for consumer protection authorities. Nevertheless, due to the emerging technologies and sophisticated selling methods, nowadays, consumers are exposed to more risks. The e-commerce on one hand has facilitated somehow an increase of distribution of dangerous and counterfeit products, and on the other hand, has generated new challenges of enforcements and surveillance. According to a report recently release by the Consumers International entitled "The Challenges of Protection Consumers from Unsafe Products: A Global Picture" (Consumers International 2018, p. 6), the survey from 132 organizations in 100 countries worldwide shows that there are significant variations in the way that different countries protect consumers from unsafe products. Namely, there are still great differences in terms of legal definitions of "safe products" and respective criteria and scope. Numerous jurisdictions do not adopt a general obligation provision on product safety nor any mandatory requirements. Legislative loopholes with low levels of compliance and weak enforcement systems remain the main problems in many developing countries.

The second example is related to consumer sales contact. In accordance with a comparative study on consumer sales law which focuses on 10 jurisdictions including both developed jurisdictions and two Asian developing countries, conducted by Howells and Twigg-Flesner (2018, pp. 4–5), one can find that different approaches to consumer-specific rules exist and they are inspired by different legal instruments (e.g., the British Sale of Goods Act 1893 vs. UN Convention on the International Sale of Goods 1980). Consequently, the experiences in some countries have been more successful. Interestingly, the research further explores the distinction between the subjective nature and the objective nature of the quality standards' in the contractual agreements revealed respectively in the EU law (Goanta 2016, p. 41) and in the common law jurisdictions (Howells and Twigg-Flesner 2018, p. 6).

The third example refers to consumers' right to privacy. The EU and the USA have adopted different attitudes (Movius and Krup 2009, p. 19): The former recognizes privacy as a fundamental human right sheltered by EU Directive 95/46 and now General Data Protection Regulation 2016/679, whilst the latter favours voluntary self-regulation over state regulation. In developing countries, inappropriate legislation and inadequate internet regulations have hampered data protection (Tovi and Muthama 2013, pp. 2–3). In addition, Tiffany Curtiss pointed out more difficulties faced by developing countries, namely, technical inferiority, unsophisticated judicial regimes, eagerness from the private sector to grow and the risk of

<sup>1</sup> A more detailed summary can be found at OECD Roundtable on Corporate Responsibility: Consumer empowerment and responsible business conduct (OECD 2009, retrieved from: <http://www.oecd.org/corporate/mne/oecdroundtableoncorporateresponsibilityconsumerempowermentandresponsiblebusinessconduct.htm>), in particular, views expressed by Pradeep S. Mehta about "Consumers' interest in developed & developing markets: implications for responsible business".

being exploited by more sophisticated organizations. She summarized that the developing countries would have adopted a “co-regulatory approach,” which is similar to the US approach but the data controllers would have to follow standards, otherwise would bear contractual obligation with the government as a contract breach (Curtiss 2016, pp. 107–120).

One more example is the Report on Consumer Protection Enforcement in a Global Digital Marketplace by the Organisation for Economic Co-operation and Development (OECD) based on questionnaire responses from 31 countries (OECD 2018, pp. 10–21). The report shows significant differences among countries regarding enforcement actions and required conditions for application against fraudulent and deceptive practices in cross border e-commerce. In many developing countries, authorities are not able to fully share information with foreign counterparts due to insufficient resources, lack of legal powers and language barriers.

## Regional and International Efforts of Harmonization of Consumer Law

### The Need for Harmonization of Consumer Law for the Global Justice and Fairness

Harmonization of consumer law is primarily concerned with the approximation of the fundamental principles of national laws and seeks to eliminate major differences and create minimum requirements or standards in order to achieve consistency of rules.

Nowadays, with the constant reduction of barriers for international trade in goods and services, a global citizen is also a global consumer. The globalization and new environment of digital economy have reshaped marketplaces and brought disruptive changes for consumer behaviours and traditional notion of consumers. However, it is worth mentioning that the current period is rather one of the increasing barriers, particularly between China and the USA. Eventually, trade wars will have disproportionate negative effects on the welfare of consumers.

It is true that consumers throughout the world face distinct problems depending on their country of residence and the legal protection of consumers depends on the milieu in which they live. Consumer protection legal standards and substantive rules are different across different countries. Take for example the European countries, as to the remedies to protect consumers and the regulatory models, discrepancies still remain. Some European countries opt for “administrative control approach” (either under government control such as the United Kingdom (UK) or under independent control like the Swedish case), others opt for “general legal framework” or a hybrid of these two options, or even a more liberal approach of self-regulation in the hands of economic players (Farah and Cima 2016, Chapter 30). Some jurisdictions prefer sectoral regulations (such as the French system), whilst others prefer a horizontal approach (such as the German system, see Farah and Cima 2016, Chapter 31). In general, consumers in developing countries always have the less protection and face more tasks of effective enforcement. Compared with developed countries, the level of consumer protection in developing countries is less sophisticated and there are still many challenges to improve consumers’ access to justice in national and global markets. Empirical studies show that differences in national consumer law have impacts on the development of cross-border consumption. Producers, service providers and traders adapt sales practices to suit each country’s legal setting (Farah and Cima 2016, Chapter 30). Thomas Bernauer explains “variation of consumer protection standards across countries may be a source of trade disputes” (Bernauer and Meins 2002, p. 9). In our view, such phenomenon also constitutes a serious problem for global justice. Many multinational companies might respond differently to consumers affected by the same

problems, depending where they are in the world, or adopt “discriminatory measures” against consumers in developing or the least developed countries where the level of protection for consumers is relatively lower.<sup>2</sup>

International trade is borderless, but consumers’ interest do not stopover at national borders. In transnational context, the challenges of transnational consumer transactions merit an international solution, in particular, an international consumer protection framework applicable to cross-border transaction (Twigg-Flesner and Micklitz 2010, p. 202), which requires a more harmonized and concerted international consumer law agenda.

### Efforts at Regional Level and International Level

Harmonization of consumer protection rules, standards, codes of conduct and good practices has already taken place through international organizations and global businesses. However, in relation to harmonization of consumer laws among different countries, there have been skeptical views regarding such feasibility taking into account varying levels of institutional development. Since the past decade, harmonization of consumer law has been achieved or at least advocated at regional levels. Harmonization easily starts within a region since regional integration creates opportunities for approximation of legal infrastructures. The EU is a very successful case in harmonizing consumer laws further guaranteed by a strong judicial system. In Latin America and in Asia, harmonization projects are ongoing and similar initiatives have also been supported.

At the international level, in the absence of a universal instrument that contains specifically rules vis-à-vis international consumer protection, the United Nations Guideline on Consumer Protection (UNGCP) (adopted in 1985, revised in 1999 and 2015) is the most important reference. The UNGCP provide policy advice for member states and leave them enough flexibility when transposing principles into national laws. More than one hundred countries now have laws based on the Guidelines. The very recent revision of UNGCP in 2015 aimed to achieve an effective protection for consumers at the national, regional and international levels, whilst maintaining the balance between a high level of consumer protection and the competitiveness of businesses. Now, the Preamble of UNGCP sets out expressively the Millennium Development Goals and the areas covered by UNGCP are much broader by adding new themes such as state-provided services, privacy, e-commerce, financial services, energy, public utilities, travel and tourism and so forth. Moreover, in implementing one of the objectives of the Guidelines which is to further international cooperation in the field of consumer protection, the revision of the Guidelines in 2015 encourages national enforcement agencies to coordinate and cooperate in cross-border cases, to utilize existing international networks, to enter into bilateral and multilateral arrangement and to improve international judicial and interagency cooperation. Finally, the Guidelines also guarantee the establishment of international institutional machinery (an Intergovernmental Group of Experts on Consumer Protection Law and Policy) to provide capacity building and technical assistance to developing countries and economies in transition in formulating and enforcing consumer protection laws and policies, among other mandates. In sum, compared with the previous version in 1999, the

<sup>2</sup> See, for example, a report about Samsung “recall discrimination,” “Samsung slammed by Chinese state TV over Note 7 recall discrimination,” (Jiang 2016, available at <http://www.reuters.com/article/us-samsung-china-idUSKCN1200LD>). Another case study about the “country-by-country” strategy of Samsung can be found Consumers International (2018, p. 27).

new UN Guidelines revised in 2015 have improved in building capacity through forming an expert group with participation of consumer authorities, in building international cooperation with more interactions at the governmental level and in building an environment favourable for digital economy and many services.

## Observations

Even though the projects towards the harmonization of consumer law at regional level and international level have already taken place, these efforts remain fragmented and incoherent.

The UNGCP has served universally as an inspiration and a direction for national authorities worldwide to modernize their consumer laws. However, due to the diversity of priorities and the wide range of broad and general principles, the UNGCP has a limited role in harmonizing specific rules of national consumer laws.

Large number of sources made by different international organizations may have diverse focuses or priorities even for the same subject. For instance, e-commerce is one of the fastest developing areas of economic growth, but national legislations are country-specific and have limited scope.<sup>3</sup> On the other hand, international organizations such as United Nations Conference on Trade and Development (UNCTAD), OECD, the International Consumer Protection and Enforcement Network (ICPEN), the International Organization for Standardization (ISO) and regional blocs including the European Union (EU) and Mercosur and other international arenas such as G20 consumer summit are all making progresses on institutional building on consumer protection in the digital world. For example, the UNCTAD's Working Group on e-commerce (WG) is helping "to develop broad Guidelines for countries to consider when developing frameworks to manage e-commerce, and that these Guidelines specifically speak to and take into account the needs of vulnerable consumers." The WG on e-commerce has released information on the efforts regarding consumer protection in cross-border cases, and on the work of two other networks: International Mass Marketing Fraud Working Group (IMMFWG) and Unsolicited Communications enforcement Network (UCENET). OECD, through recent publications, aims to support a review of the 2003 OECD Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders, as well as to inform work to implement the 2016 OECD Recommendation of the Council on Consumer Protection in E-Commerce, which contains updated provisions on enforcement cooperation. ISO 10008:2013 provides guidance for planning, designing, developing, implementing, maintaining and improving an effective and efficient business-to-consumer electronic commerce transaction (B2C ECT) system within an organization.<sup>4</sup>

As for the available toolkits, many developing countries might still be conservative or reluctant to implement directly the OECD toolkits or policies and experiences of the developed countries without any adjustments taking into consideration their specific challenges as developing countries.

<sup>3</sup> Normally, national legislations are "limited in relation to consumer protection and re-dress in the nature of the circumstances of the internet economy and the consequent borderless world." See the 2018 Report of the Committee on International Protection of Consumers of the International Law Association, available at <http://www.ila-hq.org/index.php/committees>.

<sup>4</sup> See the 2018 Report of the Committee on International Protection of Consumers of the International Law Association, available at <http://www.ila-hq.org/index.php/committees>.



Therefore, there is an urgent need to do the systemic mappings of all regional and international efforts of harmonizing the consumer law and to identify appropriate paths for developing countries to modernize national consumer laws with more effectiveness and enhance international cooperation for cross-border transactions in the global world.

## From Fragmentation to Harmonization: The Perspective of China

China is a dynamically emerging and transitional economy. As one of the largest consumer markets in the world, it would be interesting to study the legal transplants' experiences of China and try to, by making the empirical research on China's case, answer the question if harmonization or a uniform approach for consumer law (or at least harmonization of some substantive provisions) could fit the needs of different countries, or at least advocated at regional levels. Harmonization easily starts within a region since regional integration creates opportunities for approximation of legal infrastructures. The EU is a very successful case in harmonizing consumer laws further guaranteed by a strong judicial system. In Latin America and in Asia, harmonization projects are ongoing and similar initiatives have also been supported. China has made some progress on its own consumer law, but achieving harmonization in the wider region presents particular challenges.

### Converging Consensus on the Underpinnings of Consumer Law

The first Law on the Protection of Rights and Interests of Consumers in the People Republic of China (abbreviated as Consumer Law) was promulgated in 1993, the same year in which the Constitution of the PRC was amended and when it was explicitly determined, for the first time that "the State practices a socialist market economy." During the time of the planned economy, products and services were manufactured and supplied essentially by public enterprises. Due to the lack of economic stimulus of their own interests, infringement of consumer rights was not a common phenomenon. The adoption of modern market economy aimed at the gradual reduction of government intervention in the market. Since then, private economy and other non-public economies have gained more prominence in economic activities. Whilst the supplies of products became more and more abundant and diversified, fake and shoddy products, false and misleading advertising, acts of unfair competition and other abusive practices have also proliferated and become the concern of the society. In order to better regulate the market order, two more laws were approved in the same year, namely, the Product Quality Law and the Anti-Unfair Competition Law, together with the Consumer Law. The Consumer Law was formulated for the purpose of protecting the legitimate rights and interests of consumers, maintaining the socio-economic order and promoting the healthy development of the socialist market economy.<sup>5</sup>

The Consumer Law of 1993 originally had a total of 55 articles, structured in seven chapters, referring to the General Provisions, Consumer Rights, Duties of Business Operators, State Protection of Consumers' Rights and Legitimate Interests, Consumers' Organizations, Dispute Resolution, the Legal Responsibility and Supplementary Provisions. After 20 years of existence, its protection regime lagged behind and the consumers were not given sufficient protection.

<sup>5</sup> Article 1 of Consumer Law of China of 1993 (adopted at the Fourth Meeting of the Standing Committee of the Eighth National People's Congress on October 31, 1993, and entered into force as of January 1, 1994).

As the largest developing country in the world, China has experienced a galloping economic development over the past decades, accompanied by major changes within the form, structure and mentality of consumption. Nevertheless, China's economic development model has also evidenced a market disorder, which has been historically experienced by many of the transitioning countries (Liu et al. 2012). The main factor that gives cause to the economic chaos is called the "information gap," translated in incompleteness, asymmetry, lack of clarity and transparency of information (Xie Qingkui 2003, p. 149), resulting in an emergence of a "crisis of confidence" and a "lack of confidence" in various sectors of life (including of course in the context of consumer relations) (Wang Gang 2007).

Over the past few years, Chinese economy has been relying more on domestic consumption rather than exports and foreign investment. It was in this scenario that has become imperative to undertake a review of China's Consumer Law. To recover consumers' confidence would stimulate domestic consumption and economic development. The new Consumer Law of 2013 came to integrate a total of 63 articles, by introducing changes essentially at five levels:

First, there have been an explanation, clarification and thickening of consumer rights, eliminating the legal vacuum in the area of financial consumption by the express affirmation of the possibility of defending the rights and legitimate interests of consumers in the financial sector in accordance with the law.<sup>6</sup> Also for the first time, the Law came expressly to enshrine the protection of personal data as an important right and interest of the consumer, ruling on the respective civil and administrative liability of offenders.<sup>7</sup> On the other hand, the law has provided a cooling off period for the consumer, allowing, in the absence of a State provision or agreement to the contrary, the product to be returned within seven days counting from the consumers' reception.<sup>8</sup>

Second, the responsibilities and obligations of business operators have been reinforced. The Law came to solve the issue of difficult gathering of evidence by the consumer in his defense, with the reversal of the burden of proof to the operator in disputes arising from the discovery of defects in durable goods or decorating services or property repair within six months from the date of acceptance by the consumer. On the other hand, the recall scheme was extended to defective products, which initially covered only the automotive<sup>9</sup> scope to any product or service, to protect personal and property security of the consumer.<sup>10</sup> Another aspect, which differs from the majority of the compensatory mechanisms provided for in civil law, is the introduction of a penalty compensation scheme. The Consumer Law came to aggravate the penalties applicable to operators when providing counterfeit products or services, from the old "plain return and compensation of such" to the limit "plain return and treble compensation," that is, an operator must increase the amount of compensation according to customer requirements, which should be at least 500 uan and a maximum of three times the price of the product or service purchased by the consumer.<sup>11</sup>

Third, in line with the trend of development of e-commerce and the digital economy, the new Consumer Law came to regulate new forms of consumption, including cyber consumption, also strengthening the protection of rights of free choice, information and fair negotiation. In particular, it establishes that the consumer is entitled to return the product without justified reason, within seven days of his receipt whenever there is use of the Internet, broadcast, telecommunications or

<sup>6</sup> Art. 28 of Law on Protection of Consumer Rights and Interests (amended in 2013).

<sup>7</sup> Arts. 14, 29, 50 and 56 of the Law on the Protection of Rights and Interests of Consumers (amended in 2013).

<sup>8</sup> Art. 24 of the Law on the Protection of Rights and Interests of Consumers (amended in 2013).

<sup>9</sup> Regulation for the Administration on the Recall of Defective Automotives of the 1st of January 2013.

<sup>10</sup> Arts. 19, 33 and 56 of the Law on the Protection of Rights and Interests of Consumers (amended in 2013).

<sup>11</sup> Art. 55 of the Law on the Protection of Rights and Interests of Consumers (amended in 2013).



mail by the operator for the sale of his products.<sup>12</sup> To enhance the effectiveness of the Law, policy makers did not fail to list the situations that discourage the return of products and to state a requirement that the product to be returned must be in good condition and the respective expenses are to be borne by the consumer. On the other hand, operators of cyber platforms must also assume limited legal responsibility, anticipating the payment of compensation due to the consumer whenever it cannot provide the actual name, domicile and effective ways to contact the seller or service provider. In the event that the seller or service provider is or should be aware of the injury of rights or legitimate interests of the consumer by the use of the cyber platform, the respective platform operator must respond jointly if he did not adopt the necessary measures.<sup>13</sup>

Fourth, the new law has come to strengthen the supervisory powers and administrative responsibilities of the state and administrative bodies. When the old law empowered the industrial and commercial administration services to impose fines to business operators two to five times the amount illegally obtained, the new law raises the penalty intensity and the illegality of the operators' costs, allowing the fine to be 10 times the amount illicitly obtained. Similarly, the upper limit of the fine in the absence of product illicitly obtained was raised from 10,000 RMB under the old law to 500,000 RMB under the new law. On the other hand, to increase transparency in law enforcement, increase participation and public scrutiny and, also, to create an environment where agents can interact in good faith, the sanctioning bodies should, under the new law, record and publish all unfair acts in the individual history of each business operator.<sup>14</sup> In 2017, China's State Administration for Industry and Commerce (SAIC) formally launched an online complaint platform, which allows consumers to lodge their complaints online and follow-up online, alongside the phone complaint system.

Fifth, it expressly enshrines the status and nature of consumer associations and extends their powers. Consumer groups differ from the majority of civil society groups because they are semi-official organizations setup on the initiative of governments, led by the Industrial and Commercial Management Services of the corresponding level and financed by the respective government. The old law assigned them the nature of "social group," the doctrine also agrees that these associations were "social government communities" (Liang 2000, p. 21).<sup>15</sup> However, the new law came to replace the term for "social organization" following and in line with the new definition of "association" given by Art. 2 of the Regulations on Registration Administration of Associations, promulgated by the State Council in 1998 and revised in 2016, according to which associations refer only to "as non-profit-making social organizations voluntarily composed of Chinese citizens that perform activities in accordance with the articles of association for the realization of the common desires of the membership." The new Consumer Law had especially in view to clarify the "duties of public interest" of consumer associations by giving them in particular the legitimacy for bringing collective actions. When facing the injury of rights or legitimate interests of a plurality of consumers, they have standing to bring an action before the people's courts, the China Consumers' Association and consumer associations established by the provinces, autonomous regions and municipalities directly dependent on the Central Government.<sup>16</sup> It is clearly a demonstration of manifestation in the area of consumption, the system of "collective action" introduced with the reform of China's

<sup>12</sup> Art. 25 of the Law on the Protection of Rights and Interests of Consumers (amended in 2013).

<sup>13</sup> Art. 44 of the Law on the Protection of Rights and Interests of Consumers (amended in 2013).

<sup>14</sup> Art. 56 of the Law on the Protection of Rights and Interests of Consumers (amended in 2013).

<sup>15</sup> For the analysis of the doctrinal concept of social collectivities in China, see also Yu (2006, pp. 109–122).

<sup>16</sup> Art. 47 of the Law on the Protection of Rights and Interests of Consumers (amended in 2013).

Civil Procedure Law of 2012, specified to the field of consumer relations. On the other hand, the new Consumer Law also provides that consumer groups can participate in the lawmaking process, regulations and normative standards relating to the rights and interests of consumers, thus broadening the scope of action of consumers in legislative process. In support of the defense of consumer rights, the associations now also have the power to hire qualified experts to conduct expertise.<sup>17</sup>

The review of the Consumer Law was guided by the legislative design of consumer rights protection as the weaker party in consumer relations. Whereas consumer protection is a joint responsibility of the State and society in general and as it is an important civil right, the Consumer Law has clear characteristics of a social law, whose legal system is to ensure the safety, loyalty and justice in consumer relations. China, like other countries, has been modernizing its consumer law by adopting human-centred, rights-centred and social values-centred approaches, which reflect the common consensus worldwide on the underpinnings of the consumer law. The human-centred approach inspires a change of thinking pattern from a mercantilist one to a more humanitarian one and requires that consumers' fundamental rights (such as access to basic goods and services, health rights, dignity rights, liberty rights and equality rights) should be taken into full consideration at par with objectives of economic dimension. The rights-centred approach requires a balance between economic efficiency and social justice, and perhaps more importantly, a holistic mode of operation aiming to incorporate consumer rights into other areas of law (such as trade law, investment law, competition law, intellectual property law and many more). The social values-centred approach requests the awareness of social rights as well as the implementation of corporate social responsibility through ethic management system.

In China, consumer movements grew out of the bedrock of the fight against socioeconomic conditions. The first consumer organization was established in the Xinyue District of Hebei Province in May 1983, followed by consumer commissions in Guangzhou City and Harbin City. At the national level, on 26 December 1984, the Chinese Consumers' Association (CCA) was founded. It became a full member of Consumers International on 13 September 1987. CCA is funded by Chinese government's financial appropriation and donations. Consumer education started quite late in China, but it has become more and more popular in recent years. Every year, starting from 1991, China's state-run media company, China Central Television (CCTV), broadcasts the well-known "March 15<sup>th</sup> Consumer Day Gala" programme, which highlights the consumer rights and reports the consumer campaign. The theme of the 315 Gala Programme varies from year to year, for instance, "life and safety," "healthy order, healthy life," "responsibilities," "empowerment of consumers," "new rules and new dynamics," etc. CCTV usually send their undercover journalists to investigate across the country and companies are named and shamed for their misdeeds. When targeted by Chinese media, the companies would face the government actions. The State Administration for Industry and Commerce supervises and regulates market practices for consumer protection; the CCA handles consumer complaints on a case-by-case basis. According to the official statistics, in 2017, CCA received 726,840 complaints and 76% of them were solved.

The counterbalance between consumers and business depends on the country's leading socio-economic policy (Szyber 2001, p. 145). As far as the evolution of Chinese consumer protection is concerned, economic factors played a dominant role in the enactment and subsequent revision. In the context of transition from an investment-driven to a consumption-driven economy, consumer law in China is being understood as a tool to build the economy, which is very similar to EU law by the way – leaving out the political dimension of consumer law. As China improves the effectiveness

<sup>17</sup> Art. 37 of the Law on the Protection of Rights and Interests of Consumers (amended in 2013).

of its consumer protection regime and empowers its consumers, the ongoing interaction among economic, political, social and legal factors will certainly have a constant impact on the growth of Chinese consumerism and legal regime in the future (Ip and Marshall 2014, p. 18).

## Lessons Learnt in Legislative Exercises

Largely speaking, the regulatory model of consumer protection in China has been inspired and influenced by the UNGCP. When drafting and revising the Consumer Law respectively in 1993 and 2013, Chinese legislators took reference from numerous regulatory models of comparable regimes rather than following the practices of any single jurisdiction as a main orientation (Liang 2000, p. 20). Such a learning process illustrates that China sought to reduce the legislative laps with other more sophisticated jurisdictions and used the legal transplant as a way to modernize its own consumer protection system.

According to the official sources released by the National People's Congress, China has learnt practices and experiences of other jurisdictions as a start point to reform its Consumer Law, which are summarized as follows:

### Provisions in China's Consumer Law and Some Inspiring Sources

China's Consumer Law	Lessons learnt from other jurisdictions
Art. 13: Consumer's right to knowledge and consumer education	Consumer Protection Charter (Consumer 1973), Consumer Basic Act of Japan
Art. 14: Personal data	German Federal Data Protection Act
Art. 18: Requirements on personal and property safety	EU Directive on General Product Safety (Art. 3)
Art. 19: Defects of commodities or services	South Korean Framework Act on Consumers (Art. 17), Consumer Law of Taiwan (Art. 10)
Art. 20: Duty to provide accurate information	EU Council Directive 90/314 on Package Travel, Package Holidays and Package Tours (Art. 3)
Art. 21: True names and signs of business operators	Directive 97/7/EC of the European Parliament and of the Council on the Protection of Consumers in respect of Distance Contracts (Art. 4), Act on Specified Commercial Transaction of Japan (Art. 3)
Art. 22: Duty to issue invoices and other purchase receipts	Consumer Law of Mexico (Art. 12)
Art. 23: Burden of proof to be assured by business operators	EU Consumer Sales and Guarantees Directive (1999/44/EC, Art. 5), German Civil Code (BGB, Art. 476)
Art. 25: Cooling-off period	Consumer Rights Directive 2011/83/EU (Art. 13), Consumer Contract Act of Japan, Act on the Consumer Protection in Electronic Commerce of South Korea, Act on Specified Commercial Transaction of Japan, EU Directive on the Distance Marketing of Consumer Financial Services, Consumer Law of Taiwan, Cooling-off Rule of Federal Trade Commission of USA
Art. 26: Unfair terms	Unfair Terms in Consumer Contracts Directive 93/13/EEC, Directive 2000/31/EC on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce, Standard Contract Regulation Act of South Korea
Art. 28: Duty of disclosure (general)	Directive 2000/31/EC on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce, Consumer Law of Taiwan, Directive 97/7/EC on the Protection of Consumers in respect of Distance Contract, Directive 2000/31/EC on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce

China's Consumer Law	Lessons learnt from other jurisdictions
Art. 28: Duty of disclosure (financial sector)	The Gramm-Leach-Bliley Act (Financial Services Modernization Act) of 1999 of the USA, Financial Services and Markets Act 2000 of UK, Law on Sales of Financial Products of 2000 of Japan, Financial Instruments and Exchange Act of 2006 of Japan, Taiwan's Financial Consumer Protection Act
Art. 29: Personal information of consumers	OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, Act on Specified Commercial Transaction of Japan, Directive 97/7/EC on the Protection of Consumers in respect of Distance Contracts
Art. 44: Internet service provider's liability	Numerous precedents, e.g., <i>Hendrickson v. eBay,inc</i> (2000, USA), <i>Rolux v. eBay</i> (2007, Germany), <i>L'Oréal SA v. eBay</i> (2011, European Court of Justice)
Art. 47: Class action	Act on Cease and Desist Actions of Germany, Unfair Competition Act of Germany, Civil Procedure Law of Taiwan
Art. 55: Punitive damages	The American Restatement of Torts, Second, Taiwan Consumer Law (Art. 51)

Because of the same legal tradition of Civil Law, many European Union's experiences have been referred during the amendment of Chinese consumer law, for example, unfair terms and unfair commercial practices and product liability. On the other hand, one can see that some institutions that Chinese legislator have learned are not identical with those applied in other jurisdictions. For instance, according to Article 2 of China's Consumer Law, "the rights and interests of consumers purchasing and using commodities or receiving services for daily consumption shall be protected by this Law; or be protected by other applicable laws and regulations if this Law is silent." The notion of "consumers" in China's Consumer Law can be described as a positive definition (different from the negative definition adopted by the European Law) (Micklitz and Weatherill 1993, p. 285) and is closer to the US notion (with a similar focus on the nature of the transaction and if the transaction was carried out for personal purposes) (Thomas 2018). Another example, punitive damages, which was inspired by the US experiences, is conceived and applied in China as a contractual responsibility especially for contract fraud, instead of being a tort liability. Nevertheless, China took into consideration of its own special socioeconomic context and made necessary adaptation in relation to compensation amount.

Overall, the legislative exercises in China clearly illustrate that China has already taken necessary efforts to transplant the institutions of other jurisdictions, which itself is a footstep towards legal harmonization.

## Converging Environment of Consumer Protection Due to Global Challenges

### General Comments

For all economies including China, harmonization of consumer law has significant implications because it may reduce transaction costs, make dispute settlement cheaper and easier, and provide greater consumer confidence. Equally important, no matter how sophisticated the national protection system is, it is alone no longer sufficient to cope with the complexity of the situations caused by the globalization. Many times, global problems have surpassed national sovereignty's capacity; they require non-traditional forms of deliberation with border-crossing regulatory reach and coordination and cooperation among enforcement authorities. The increasing

interdependence of national economies makes the ineffectiveness within a single jurisdiction. As the second largest economy in the world, China plays an important role in multilateral trading system and is expected to bear international trade obligations and international cooperation.

In the dynamic consumer markets in Asia, more and more similarities are found across different jurisdictions, as far as legal policies and social awareness of consumer protection (Tanase 2006, p. 873).<sup>18</sup> From a comparative law perspective, Asian countries belong to largely three groups of consumer protection models. The first group includes Singapore and South Korea, the second one includes all other emerging economies such as China and Thailand and the third one includes developed economies such as Japan, Australia and New Zealand. The neighbouring countries of China, which adopt the models of the developed countries, on one hand, have been influenced by Chinese culture and thought (e.g., Confucianism), on the other hand, also affect China in the way of consumer laws are enforced and in the way consumer law are drafted (Farah and Cima 2016, Chapter 31). Moreover, the constant regionalization in Asia will not rule out the possibility of future harmonization.

In a more converging global environment of consumer protection, one can find that China, as an example of emerging economies, based on the market size, potentials and dynamics, is using its leverage and influence to contribute for the harmonization consumer protection standards or to participate in cross-border enforcement cooperation.

## E-commerce

As for the e-commerce, China is the largest and the most innovative retail e-commerce market in the world. Nearly a decade ago, China accounted for less than 1% of the global e-commerce market, but today, its share represents 42%, in comparison, the US share of the market is 24%.<sup>19</sup> Consumption-related mobile payments reached \$790 billion in 2016, which corresponded to 11 times that of the USA.<sup>20</sup>

On August 31, 2018, China adopted its first E-Commerce Law, which contains provisions on online transaction security, intellectual property rights protection, the legal responsibilities of the platform and the protection of consumer's rights. As a world leading market of e-commerce, Chinese E-Commerce Law is a pioneering and innovative work based on its own experiences of development. By adopting a holistic and comprehensive approach, the law clearly defines the internet service provider's responsibility. Chinese legislator emphasizes a "balanced protection system" for the consumers, e-commerce third-party platforms and e-commerce business operators, recognizing that consumers are the weakest party among the e-commerce relations. It is interesting to note that the Article 73 provides that "The State promotes cross-border e-commerce exchange and cooperation with various countries or regions, participates in the formulation of international rules of e-commerce, and promotes the international recognition of electronic signatures, electronic identities and so on. The State promotes and establishes cross-border e-commerce dispute settlement mechanisms with various countries or regions." China's E-Commerce Law will probably be a very useful reference for other jurisdictions.

<sup>18</sup> See also the ASEAN Strategic Action Plan for Consumer Protection 2016–2025 (ASAPCP) in ASEAN (2018, p. 14).

<sup>19</sup> See World Economic Forum (2018), retrieved from: <https://www.weforum.org/agenda/2018/04/42-of-global-e-commerce-is-happening-in-china-heres-why/>.

<sup>20</sup> See World Economic Forum (2018), retrieved from: <https://www.weforum.org/agenda/2018/04/42-of-global-e-commerce-is-happening-in-china-heres-why/>.

In addition to E-Commerce Law, the Administrative Measures for Online Trading is the other key regulation relating to electronic commerce and online dispute resolution in China. For consumers' redress for online shopping disputes, Alibaba and Taobao are two typical electronic commerce platforms, which provide online dispute resolution service. In practice, different from Alibaba which mainly deals with B2B transactions, Taobao is the electronic commerce platform operator which mainly deals with B2C transactions and provides online dispute resolution service. In order to protect consumers' rights and interests, Taobao provides commodities and service quality assurance mechanism favourable to consumers' rights and interests, such as trust mark of "speed refund" and "authentic guarantee." Generally, the goods purchased on Taobao can be returned for no reason within seven days of receipt of them.<sup>21</sup> At the same time, for Taobao users who meet the requirements of Credit Sesame Score,<sup>22</sup> Taobao would provide speed refund service, namely refunding the purchase price immediately even before the sellers receive the returning goods. At the same time, Taobao as an electronic commerce platform operator also provides authentic guarantee for approved sellers. The sellers which provide fake products would be punished by Taobao.<sup>23</sup> These measures facilitate consumers to proactively prevent disputes with sellers. At the same time, "speed refund" helps consumers to receive the refunding price immediately once purchased commodities have to be returned.

The European Union, the USA and China are three typical jurisdictions where electronic commerce and online dispute resolution mechanisms are well developed; hence, their relevant experiences are significant in establishing an integrated online dispute resolution system. From the perspective of private law making, the European Union holds the leading position in cooperation between online dispute resolution providers and official authorities. The authorities of the USA are cautious about attempting to regulate the Internet, yet they prefer to leave room for private solutions or new technology. In China, electronic commerce platform operators that also provide online dispute resolution service are relatively powerful, and large numbers of disputes relating to electronic commerce transactions could be resolved at this stage. From the perspective of consumer protection, the central focus of online dispute resolution mechanisms in the European Union is consumer protection, and its legislation and legal practice are both showing this trend. In the USA, consumer education is a vital complement to law enforcement efforts on the Internet. At the same time, the USA seems to prefer encouraging existing law enforcement tools to be used successfully in online context. In China, relevant regulations require that electronic commerce platform operators should protect consumers' rights and interests both in transaction process and in dispute resolution process. Considering the previous failed attempt to develop a model law on consumer online dispute resolution at the United Nations Commission on International Trade Law (UNCITRAL) and the converging global e-commerce environment nowadays, a more harmonized approach might contribute for the eventual establishment of an integrated system for online dispute resolution.

As far as the consumer data protection in e-commerce and online payment, China has increased the awareness of comparative experiences and participated actively along with Brazil

<sup>21</sup> Except for several commodities unsuitable for return by nature, *see* Taobao Rules (2017), retrieved from <https://rule.taobao.com/detail-5507.htm?spm=a2177.7231193.0.0.2fa817eaBX3eTB&tag=self>.

<sup>22</sup> Sesame Credit, or Zhima Credit, is a private credit scoring and loyalty programme in China, which is developed by Alibaba Group.

<sup>23</sup> Taobao Platform Dispute Handling Rules.



and Germany in a comprehensive comparative research programme initiated by German Agency for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit – GIZ). This initiative serves as a condition for future cooperation between China, Brazil and Germany in the field of consumer data protection.<sup>24</sup>

## Rules of Applicable Law to International Consumer Contracts

Since 2013, China has proposed a Belt and Road Initiative (Silk Road Economic Belt and 21st-Century Maritime Silk Road – BRI), which will integrate nearly 2/3 of world population and half of world GDP, and create opportunities for both consumers and business. In recent years, China has intensified the investment and trade with other parts of the world, in particular, Africa, where there are still many price-sensitive consumers (Condon 2012, p. 10). China realized that its manufacturers would need to satisfy regional and international standards and promised to make quality products for Africa.<sup>25</sup>

Harmonization of consumer laws can occur either with reference to the substantive law or to the choice of law rules.

In relation to the rules of applicable law to international consumer contracts, even though in different regions of the world there does not yet exist a consensus so far about essential philosophies of conflict of laws and conflict of jurisdiction rules applicable to transnational consumption relations, China has proposed its model in its Law on Choice of Law for Foreign-related Civil Relationships through Article 42, “The laws at the habitual residence of consumers shall apply to consumer contracts; If a consumer chooses the applicable laws at the locality of the provision of goods or services or an operator has no relevant business operations at the habitual residence of the consumer, the laws at the locality of the provision of goods or services shall apply.” Chinese legislator have learnt the experiences of the EU and aim to restrict the party autonomy and provide special protection to consumers as a weaker party, as it is believed that the law of the habitual residence of the consumer is normally considered more favourable to protect the consumer’s rights.<sup>26</sup>

In 2016, the International Law Association (ILA) adopted the No.1/2016 Resolution, which includes “Johannesburg Recommendations and Guidelines on the Best Practices on International Protection of Consumers” and “Guidelines on the Best Practices on the Law Applicable to International Protection of Consumers.”<sup>27</sup> The Committee on International Protection of Consumers of ILA proposed a model of law applicable to international protection of consumers integrating European model, Chinese model, Brazilian model and Panama model.<sup>28</sup>

<sup>24</sup> Metz, R, Binding, J., Haifeng, P., Huber, F., German Federal Ministry of Justice and Consumer Protection, State Administration for Industry and Commerce of the People's Republic of China et al. (Eds.) (2016, pp. 8–9).

<sup>25</sup> Nam (2017), retrieved from <https://www.businessdailyafrica.com/news/ea/uganda/China-promises-to-make-quality-products-for-Africa-/4003148-4227842-g4g4jc/index.html>

<sup>26</sup> About the possible improvements of Article 42 of Choice of Law for Foreign-related Civil Relationships of China, see Yu (2011, p. 65).

<sup>27</sup> Committee on International Protection of Consumers of the International Law Association (2018), retrieved from: <http://www.ila-hq.org/index.php/committees>.

<sup>28</sup> Committee on International Protection of Consumers of the International Law Association (2018), retrieved from: <http://www.ila-hq.org/index.php/committees>.

## Protection of Tourists

China is also the largest out-bound consumer country for tourism and the largest spender in international travels.<sup>29</sup> In recent years, the Chinese government has awarded to more than 146 countries or regions the Approved Destination Status (ADS), among which 113 countries or regions are receiving Chinese tourists. As regards the protection of international tourists as consumers, China aims to enhance bilateral cooperation for better protection of tourists and improve the access to justice. The scheme of ADS refers to a bilateral cooperation mechanism between the National Tourism Administration of China and its counterpart, in which informs both a list of travel services designed to operate in conjunction to Chinese tour group agencies. One of the important reasons for the ADS is to help protect the legitimate rights of Chinese tourists, because tourism institutions or tourist service providers in the country with ADS should mount “lines of telephone service” for consultation and, assistance in case of emergency for Chinese tourists and provide relevant information to travel agencies designated by China on possibilities of domestic tourism, important services and prices and other information. In recent years, China has manifested its strong support for a possible Convention on Cooperation and Access to Justice for International Tourist to be included in the working agenda of the Hague Conference on Private International Law. China is in favour of a multilateral hard law instrument, not only because of the need to protect more effectively the access to justice of world consumers as tourists, but also because of its willingness to support the harmonization of different legal systems.

### A Closer Look at the Consumer Laws’ Coordination in the Guangdong–Hong Kong–Macao Greater Bay Area

On 1 July 2017, the governments of nine municipalities of Guangdong Province of mainland China, Hong Kong and Macau signed a Framework Agreement on Deepening Guangdong–Hong Kong–Macao Cooperation in the Development of the Greater Bay Area, which covers a total area of 56,000 km<sup>2</sup> with a combined population of nearly 70 million at the end of 2017 (which is even bigger than G20 countries). On 18 February 2019, the Central Government released Outline Development Plan for the Guangdong–Hong Kong–Macao Greater Bay Area, a document guiding the current and future cooperation and development of the Greater Bay Area from now to 2022 in the immediate term and extends to 2035 in the long run.<sup>30</sup>

The Greater Bay Area faces a number of legal challenges for consumer laws’ coordination. First, the area composes of one sovereign country, two systems (socialist system and capitalist system), two legal families (civil law and common law), three jurisdictions (Mainland China, Hong Kong and Macau), three currencies (RMB, Hong Kong dollars and Macau Patacas) and three custom unions as members of the WTO (Mainland China, Hong Kong and Macau). Second, the first priority of developing the Greater Bay Area is to deepen the economic integration of the region and to create a single market, in which all economic activities should be eventually to the benefit of consumers because consumer confidence leads to constant economic growth and sustainable economic development and consumers have a great impact on the regional

<sup>29</sup> Zhao (2016), see [http://paper.people.com.cn/rmrhwb/html/2016-12/12/content\\_1734904.htm](http://paper.people.com.cn/rmrhwb/html/2016-12/12/content_1734904.htm).

<sup>30</sup> For detailed information, see Guangdong-Hong Kong-Macao Greater Bay Area Official Website (2018),-retrieved from: <http://bayarea.gov.hk>.

economy.<sup>31</sup> Thirdly, the full integration of the three different political and jurisdictions still requires further coordination and harmonization of social institutions including legal discrepancies.

When one scrutinizes the origins of the development of the consumer law in Mainland China, Hong Kong and Macau, it can be found that the functions of the consumer law vary across diverse parts of China. Different from social movements and campaigning until consumer rights found their way into law in the western countries, in the Mainland China, due to considerations of productivity and stability, consumer politics takes the form of “a stable non-aggression pact” as described by Frank Trentmann (2016, p. 394 and pp. 396–398), according to which governments at different levels take the lead to educate and empower the consumers, in particular, urban shoppers and rural farmers. The concept of consumers in Chinese law stands more broadly going far beyond the “end-user” and incorporates consumption of using raw materials. Both in Hong Kong and Macau, the consumer laws were results from legal transplants and localization of western laws under the colonial contexts. Compared with some western models of consumer laws, there is still much room for the existing laws in Hong Kong and Macau to reinforce the effective protection of vulnerable consumers.

So far, even though the substantive provisions of the consumer laws of the Mainland China, Hong Kong and Macao remain different, we believe that there is a need for harmonization of consumer laws in the Mainland China, Macau and Hong Kong regions. One can note that there is a tendency of harmonization and more and more similarities have replaced the differences. For example, Macau’s Legislative Assembly has initiated the reform of Macau Consumer Law some years ago and the new Consumer Law was approved in general terms by Legislative Assembly plenary session on 20 March 2019. Under the new Consumer Law of Macau, just like the one of China, more consumer rights have been enhanced explicitly, namely, the right to be informed, the right to health and safety, the right to obtain goods and services with quality, the right to acquire invoices and the right to get compensations and many more.<sup>32</sup> The bill of the new Macau Consumer Law suggested recognizes that both misleading commercial practices and intimidating commercial practices are unfair commercial practices and thus should be prohibited. In addition, Macau draftsmen also took the reference of Chinese law to include the “cooling-off period.”

The harmonization would be achieved not only by creating consistency of rules but also by coordinating enforcement across borders. The Consumer Agencies in Guangdong, Hong Kong and Macau have celebrated a number of enforcement cooperation agreements that aim to facilitate consumers’ complaints, access to justice including online dispute resolution’s platform and online arbitration.<sup>33</sup>

<sup>31</sup> “Sustainable consumption” is one of the topics being raised for the UNCTAD Working Group. Undoubtedly, “sustainable consumption” is gaining more relevance in the development of consumer law in China and “Sustainable production and consumption” is part of China’s national strategy during the 13th Five Year Plan (2016–2020). See a report on China Daily (n.a. 2017), “Over 70 percent of Chinese consumers aware of sustainable consumption,” available at [http://www.chinadaily.com.cn/business/2017-08/23/content\\_31009090.htm](http://www.chinadaily.com.cn/business/2017-08/23/content_31009090.htm).

<sup>32</sup> See Executive Council of Macao SAR Government (2019), retrieved from <https://www.gov.mo/zh-hans/news/235584/>.

<sup>33</sup> See Consumer Council of Guangdong Province (2019), retrieved from [http://amr.gd.gov.cn/zwdt/gzdt/content/post\\_2528084.html](http://amr.gd.gov.cn/zwdt/gzdt/content/post_2528084.html).

## Concluding Remarks: What Are the Proposed Next Steps?

Since Consumer Law became an autonomous discipline, national consumer laws worldwide have already shared a common origin of conceptual underpinnings. Consumer confidence leads to constant economic growth. In a global market, consumers should not be a forgotten protagonist anymore. Despite the common perception on the importance to protect consumer's lawful rights, there are great variations among national legislations that have hindered an effective protection of consumers as global citizens. If a need to harmonize consumer protection standards worldwide is always debatable, perhaps the one certainty is that a comparative legal exercise aiming at deepening mutual understanding and facilitating mutual learning will benefit everyone, in addition to the need of international cooperation and cross border enforcement mechanisms.

Assessing the ongoing regional and international projects, we can be optimistic as for the possibility of more progress of harmonization. When we look more closely in the empirical case study on China, as a fast-growing and dynamic emerging economy, we further have reached the below conclusions.

Firstly, there is a need to have more coordinated action among all the countries and it will be necessary to transcend the old distinction between the "North" and the "South." The mechanisms that were originally developed for a set of developed economies will need perhaps to be adapted for broader application in more diverse circumstances. On the other hand, developing countries should be recognized as a source of good practice in a number of policy fields, which can serve as alternative models for references. The China's case well demonstrates that a later comer of consumer law making is becoming more mature and enthusiastic in engaging more actively in international exchange and cooperation.

Secondly, the efforts towards harmonization do not mean to achieve "one sizes fit for all" as the final objective. None of any national law is identical to the law of other countries. In a transition country like China with many economic, social and political differences, perhaps, incoherence might be a strength instead of a weakness for the time being. However, as stated above, in Consumer Law, the transformation from fragmentation to harmonization is ongoing. Specific features of national economies will need certain choices aiming to satisfy its uniqueness and cultural background. Because of China's diversity, a move towards a bottom-up system of aggregating consumer consciousness might not be the first best choice. On the other hand, major trading nations such as China that open domestic markets and integrate deeply with the world economy have the responsibility to protect the interests of global consumers. The common conceptualization, technical instruments and cross-border cooperation will certainly facilitate the possible harmonization of consumer laws. Nevertheless, it is realist to say that other interests (domestic business' productivity and competitiveness, and so forth, in addition to citizens' welfare and consumer protection) are also being taken into consideration, which makes our objectives more difficult to achieve.

Thirdly, we propose to build step-by-step a model Consumer Law as a starting point to increase the awareness of comparative experiences and to facilitate technical dialogues. Just like the UNCTAD's Model Law on Competition that have served for national legislators, a future Model Law on Consumer Protection with an attached compilation of existing legislative references worldwide could be a basis for the development of domestic legislation and improve the harmonization process. Such a soft law instrument is technically neutral that

allows the legislative draftsmen of developing countries to freely adopt or to improve their domestic institutions. Compared with the UNGCP, a future Model Law could be more specific with concrete devices. A detailed and precise comparison on the wordings of the same topic could also facilitate the harmonization process.

The suggested key provisions for a future Model Law<sup>34</sup> should include (1) deceptive and unfair practices; (2) product safety; (3) conformity of goods and services (minimum performance obligations for suppliers); (4) responsibility of providers in financial services; (5) refund/redress; (6) consumer administration/enforcement powers; (7) new tech and cross-border issues; (8) conflict of law; and (9) e-commerce issues (data privacy).

The final objective of drafting a Model Law is not to achieve complete uniformity but to coordinate different legal systems by eliminating major differences and creating minimum requirements or standards of consumer protection worldwide.

## References

- Antonioli, L. (2006). Consumer law as an instance of the law of diversity. *Vermont Law Review*, 30, 855–882.
- ASEAN Secretariat. (2018). Handbook on ASEAN consumer protection laws and regulations. Retrieved from: <https://asean.org/wp-content/uploads/2018/05/Handbook-on-ASEAN-Consumer-Protection-Laws-and-Regulation.pdf> (accessed 2 November 2019).
- Bernauer, T., & Meins, E. (2002). *Consumer protection in a global market* (Working Paper). Retrieved from: [https://www.researchgate.net/publication/241075756\\_Consumer\\_Protection\\_in\\_a\\_Global\\_Market](https://www.researchgate.net/publication/241075756_Consumer_Protection_in_a_Global_Market) (accessed 2 November 2019).
- Borrie, G. J. (1984). *Development of consumer law and policy: Bold spirits and timorous souls (Hamlyn Lecture Series)*. London: Stevens.
- Bourgoignie, T. (1992). Characteristics of consumer law. *Journal of Consumer Policy*, 14, 293–315.
- Committee on International Protection of Consumers of the International Law Association. (2018). Interim report of the Committee on International Protection of Consumers of the International Law Association. Retrieved from <http://www.ila-hq.org/index.php/committees> (accessed on 2 February 2019).
- Consumer Council of Guangdong Province. (2019). Guangdong Provincial Consumer Council actively promotes Guangdong-Hong Kong interregional cooperation on consumer rights. Retrieved from [http://amr.gd.gov.cn/zwdt/gzdt/content/post\\_2528084.html](http://amr.gd.gov.cn/zwdt/gzdt/content/post_2528084.html) (accessed 29 July 2019).
- Consumer Protection Charter. Consultative Assembly of the Council of Europe, Resolution 543 of 17 May 1973
- Condon, M. (2012). *China in Africa: What the policy of nonintervention adds to the Western development dilemma*. Praxis: The Fletcher Journal of Human Security: Praxis, 27, 5–25.
- Consumers International. (2018). *The challenges of protection consumers from unsafe products: A global picture*. Retrieved from: <https://www.consumersinternational.org/media/155104/productsafetyreport-full.pdf> (accessed on 2 November 2019).
- Craig, P. P., & De Búrca, G. (2015). *EU law: Text, cases and materials*. New York, NY: Oxford University Press.
- Curtiss, T. (2016). Privacy harmonization and the developing world: The impact of EU's General Data Protection Regulation on Developing Economies. *Washington Journal of Law, Technology & Arts*, 12(1, Fall), 97–120.
- Executive Council of Macao SAR Government. (2019). The Executive Council finished discussion on the draft bill of Consumer Law. Retrieved from: <https://www.gov.mo/zh-hans/news/235584/> (accessed 29 July 2019).
- Farah, P. D., & Cima, E. (Eds.) (2016). *China's influence on non-trade concerns in International Economic Law*. Abingdon: Routledge Ebook.
- Goanta, C. (2016). Convergence in European consumer sales law. In *A comparative and numerical approach, Intersentia, Ius Commune Europaeum* (Vol. 154).
- Guangdong-Hong Kong-Macao Greater Bay Area Official Website. (2018). Retrieved from: <http://bayarea.gov.hk> (accessed 12 June 2019).
- Howells, G., & Twigg-Flesner, C. (2018). Comparative consumer sales law - Introduction. In G. Howells et al. (Eds.), *Comparative Consumer Sales Law* (pp. 1–14). London: Routledge Taylor & Francis Group.

<sup>34</sup> The author would like to thank Gail Person, Luke Nottage and Claudia Lima Marques for the very fruitful discussion on this issue at the 78th Biannual Conference of the International Law Association, in Sydney.

- Ip, Mary and Marshall, Brenda, (2014), "Evolution of Chinese consumer protection: Through the lens of product quality laws", *Bond Law Review*, 26, 2.
- Jiang, S. (2016, 30 September). Samsung slammed by Chinese state TV over note 7 recall discrimination. *Reuters Business News*. Retrieved from <http://www.reuters.com/article/us-samsung-china-idUSKCN1200LD> (accessed 3 July 2018).
- Liang, H. (2000). The policy and consumer legislation in China. *Law Science*, 5.
- Liu, Y., Zhang, L., & Fu, C. (2012). The institutional problems of transition countries and strategic choice of China. *Journal of Central University of Finance & Economics*, 10, 86–86.
- Metz, R., Binding, J., Haifeng, P., Huber, F., German Federal Ministry of Justice and Consumer Protection, State Administration for Industry and Commerce of the People's Republic of China et al. (Eds.) (2016). Consumer data protection in Brazil, China and Germany. Göttingen University Press.
- Micklitz, H.-W., & Weatherill, S. (1993). Consumer policy in the European Community: Before and after Maastricht. *Journal of Consumer Policy*, 16(3), 285–321.
- Movius, L. B., & Krup, N. (2009). US and EU privacy policy: Comparison of regulatory approaches. *International Journal of Communication*, 3(2009), 169–17.
- N.a. (2017, 23 August). Over 70 percent of Chinese consumers aware of sustainable consumption. *China Daily*. Retrieved from [http://www.chinadaily.com.cn/business/2017-08/23/content\\_31009090.html](http://www.chinadaily.com.cn/business/2017-08/23/content_31009090.html) (accessed 16 August 2019).
- Nam, J. (2017, December 14). China promises to make quality products for Africa. *Business Daily Africa*. Retrieved from: <https://www.businessdailyafrica.com/news/ea/uganda/China-promises-to-make-quality-products-for-Africa-4003148-4227842-g4g4jc/index.htm> (accessed 5 August 2019).
- OECD. (2018). *Consumer protection enforcement in a global digital marketplace*. OECD Digital Economy Papers No. 266.
- OECD. (2009). Roundtable on corporate responsibility: Consumer empowerment and responsible business conduct. Retrieved from: <http://www.oecd.org/corporate/mne/oecdroundtableoncorporate-responsibilityconsumerempowermentandresponsiblebusinessconduct.htm>. (accessed 2 November 2019)
- Szyber, W. B. (2001). Market and state in times of globalisation. *European Journal of Law & Economics*, 12(2), 145–150.
- Tabao. (2017). Taobao Rules. Retrieved from <https://rule.taobao.com/detail-5507.htm?spm=a2177.7231193.0.0.2fa817eaBX3eTB&tag=self> (accessed on 6 December 2018).
- Tanase, T. (2006). Global markets and the evolution of law in China and Japan. *Michigan Journal of International Law*, 27(3), 873–893.
- Thomas, K. (2018). Analysing the notion of 'Consumer' in China's Consumer Protection Law. *The Chinese Journal of Comparative Law*, 6(2), 294–318.
- Tovi, M. D., & Muthama, M. N. (2013). Addressing the challenges of data protection in developing countries. *European Journal of Computer Science and Information Technology*, 1(2), 1–9.
- Trentmann, F. (2016). *Empire of things: How we became a world of consumers, from the fifteenth century to the twenty-first*. United Kingdom: Allen Lane of Penguin Random House.
- Twigg-Flesner, C., & Micklitz, H.-W. (2010). Think global – Towards international consumer law. *Journal of Consumer Policy*, 33(3), 201–207.
- Wang Gang. (2007). The crisis of confidence and the regulation of market order in transition economies. *Russian, East European, and Central Asian Studies*, 1.
- World Economic Forum. (2018). 42% of global e-commerce is happening in China. Here's why. Retrieved from: <https://www.weforum.org/agenda/2018/04/42-of-global-e-commerce-is-happening-in-china-heres-why/> (accessed 23 June 2018).
- Xie Qingkui, coord. (2003). *WTO and government response*. Beijing: Citic Publishing House.
- Yu, K. (2006). The civil collectivities in China: Concept, classification and institutional. *Social Sciences in China*, 1, 109–122.
- Yu, Y. (2011). Comments on Article 42 of choice of law for foreign-related civil relationships of China, (in Chinese). *Law Review*, 2, 65–70.
- Zhao, S. (2016, 12 December). Impact of outbound tourism of 700 Million people. *People's Daily*. Retrieved from [http://paper.people.com.cn/rmrbhwb/html/2016-12/12/content\\_1734904.htm](http://paper.people.com.cn/rmrbhwb/html/2016-12/12/content_1734904.htm) (accessed 31 July 2019).

## Cases

### European Union

*L'Oréal SA v. eBay* [2011]



**Germany**

*Rolex v. eBay* [2007]

**United States of America**

*Hendrickson v. eBay, Inc.* [2000]

**Legislation****China**

Law on Protection of Consumer Rights and Interests, 1993

Law on Protection of Consumer Rights and Interests, 2013

Regulation for the Administration on the Recall of Defective Automotives 2013

**European Union**

Consumer Protection Charter (European Council, 1973)

Directive 90/314 (EU) on Package Travel, Package Holidays and Package Tours (1990) OJ L 158

Directive 93/13/EEC on unfair terms in consumer contracts (1993) OJ L 95

Directive 97/7/EC on the protection of consumers in respect of distance contracts (1997) OJ L 144

Directive 2000/31/EC on electronic commerce (2000) OJ L 178

Directive (EU) on general product safety (2002) OJ L 11

Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (1999) J L 171

Directive (EU) concerning the distance marketing of consumer financial services (2002) OJ L 271

Directive (EU) on consumer rights (2011) OJ L 304

**Germany**

German Civil Code 2002

Act against Unfair Competition 2004

Federal Data Protection Act 2017

**Japan**

Consumer Basic Act 1968

Consumer Contract Act 2000

Law on Sales of Financial Products 2000

Financial Instruments and Exchange Act 2006

Act on Specified Commercial Transaction 2016

**Mexico**

Consumer Law 1976

**OECD**

Guidelines on the Protection of Privacy and Transborder Flows of Personal Data 2013

**South Korea**

Standard Contract Regulation Act 2001

Framework Act on Consumers 2010

Act on the Consumer Protection in Electronic Commerce 2010

**Taiwan, China**

Consumer Law 2003

Civil Procedure Law 2009

Financial Consumer Protection Act 2016

**United Kingdom**

Financial Services and Markets Act 2000

**United States of America**

Financial Services Modernization Act 1999

Cooling-off Rule of Federal Trade Commission 2015

The American Restatement of Torts, Second

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