

PROCEEDINGS

Consultation Workshop on the Draft of Consumer Protection Law

(Project: Strengthening the consumer movement in Vietnam)

Danang, Vietnam, July 31, 2009

Background

CUTS Hanoi Resource Centre (CUTS HRC), in partnership with the Vietnam Standards & Consumers Association (VINASTAS), is implementing a two-year project entitled “Strengthening the Consumer Movement in Vietnam” starting from 6/ 2008. The overall goal of this project is to promote a healthy and vibrant consumer culture in Vietnam, which ensures the meeting, in the long term, of the eight legitimate rights of consumers as set out in the United Nations’ Guidelines for Consumer Protection.

The specific objectives of the project include:

- Structured development of the consumer movement in Vietnam, with the core being VINASTAS, its provincial branches and subordinate institutions, based on clear strategies and innovative activities;*
- Positive developments/changes in consumer protection laws and regulations; and*
- Effective mechanisms for engagement of all relevant stakeholders, most of all consumers, and ensure active participation channels for better representation of consumer voices.*

Within the framework of the project, a national consultation to collect feedbacks from consumers and consumer associations on the draft Consumer Protection Law of Vietnam has been organized on July 31st 2009 in Da Nang, Vietnam. There were 33 consumer protection associations as well as consumer complaint bureaus nation-wide. The event also drew the attention of relevant stakeholders such as business community, senior state officials, and especially the media (including print media and national television channels), etc.

The Following is the detailed Proceedings of the workshop:

➤ **Opening Speech – Dr Le Danh Vinh, Minister of Industry and Trade, VINASTAS’s VICE President**

First and foremost, Dr. Vinh expressed his warm welcome to all the participants. He stressed on the importance of consumer protection in socioeconomic development. And the Consumer Protection Law is a legal document of vital role to protect the legitimate rights and benefits of consumers. He trusted that the workshop will be a great success and of great help in improvement of the Law.

➤ **Introduction about the draft Consumer Protection Law – Mr Dang Hoang Hai, Deputy Director General, Vietnam Competition Administration Department, Ministry of Industry and Trade**

He then made a brief introduction about the draft Consumer Protection Law (the draft Law) new points such as: rights of consumer protection association to initiate a lawsuit, consumer welfare fund...He also pointed out the issues that should be discussed in the consultation which are: the name of the Law, the definition of consumer, applicable entities of the Law, the disputes resolution procedures by state administrative agencies, fast track procedures, the State management of protections of consumers, Consumer Welfare Fund and so on. :

➤ **Comments on the draft Consumer Protection Law - Dr. Ho Tat Thang, Vice President of VINASTAS**

He, on behalf of VINASTAS, provided some comments, remarks and recommendations regarding the draft Law, based on VINASTAS's own research and the opinions compiled from its provincial branches. According to Mr. Thang, the name of the Law and the definition of "Consumers" are agreed upon, whereas the definition of "Businessmen" should be revised. Besides, he mentioned a number of supportive ideas regarding subject exemption, consumer rights, responsibilities of manufacturers and businessmen in goods and services, misleading practices, consumer harassment. Moreover, he suggested some additional points and clarifications to be included with regard to unfair terms, direct selling, distance selling, supply of spare parts, quality and measurement standards... The "guarantee" regulation needs to be in more detail. He also added some remarks on the term "dispute" as well as "mediation" stipulated in the Law. He geared the audience to different types of "dispute resolution" such as via arbitration, administrative measures, or filing lawsuits in courts. Regarding the consumer welfare fund (CWF), he strongly called for the finance support from the state, corporations and individuals as the consumer protection associations are in dire need of additional funding. Finally, he made some objections and recommendations regarding the rights of consumer protection associations as stipulated in the draft Law.

➤ **Eight Consumer Rights to be incorporated in the draft Consumer Protection Law ” – Do Gia Phan, Vice President and General Secretary of VINASTAS**

Mr. Phan started by reiterating the history of consumer rights. At the early establishment of Consumers International, (formerly known as International Organisation of Consumers Union - IOCU), only four consumer rights were mentioned. They are: Right to safety; Right to be informed; Right to choose; Right to be heard. In 1985, the concept of consumer rights was endorsed by the United Nations and expanded to include eight basic rights. Four other rights which had been added are Right to redress, Right to education, Right to basic needs, and Right to healthy environment. He stressed on the importance of those rights, which have been included in the majority of consumer protection laws all over the world. That's why it is deemed that the draft Law, lacking 3 among those 8 rights, is insufficient and unspecific. To illustrate his points, Mr. Phan brought a deeper analysis into three lacking rights. Regarding the right to education, it is very important that both the consumers and enterprises be educated. This right should not only stipulate general principles of education but also stress on consumer education with regard to healthy consumption manner, consumption skills as well as consumption knowledge. Regarding the right to basic needs, it should be also specified, to assure that the highest objective of our Party and government's policies is consumer welfare. Finally, the right to healthy environment has two implications: (i) consumers are entitled to live in a healthy and sustainable environment; and (ii) consumers are liable for environmental protection via their consumption practices. This right is not appropriately mentioned in the draft Law, which needs to be reconsidered.

➤ **Comments on Chapter V of the draft Consumer Protection Law on “Dispute resolution between Consumers and Businessmen” – Dr. Dinh Thi My Loan, Member of VINASTAS Board of Directors**

Her general remark was that this 4th draft Law includes many new and innovative ideas, aiming directly at protecting consumer rights. However, there are still some points which need to be taken into further consideration. Her presentation focuses on chapter V of the draft Law on “Dispute resolution between Consumers and Businessmen”. For example, regarding negotiation, specific types of negotiations should be clearly identified other than stated “in all types” as in the draft Law. Regarding mediation, clearer requirements are required for the third party involving in the mediation process. Other methods of dispute resolution; i.e., arbitration, administrative measures, fast track procedures were also under question. Besides, relevant issues such as costs, consumer procedural rights, and product liability...should be specified.

➤ **Violation Handling of Consumer Protection Law stipulated in the draft Consumer Protection Law – Nguyen Manh Hung, Deputy Manager, Market Management Branch, Ministry of Industry and Trade**

His comments focused on several shortcomings regarding violation handling, stipulated in chapter VIII. For example, article 66 stipulates that “Organizations and individuals violating any provisions of this Law shall be dealt with in accordance with the existing law on dealing with administrative offences”. The first point is that in this article, this phrase “Organizations and individuals” (both who registered or unregistered) is in contradiction with the term “Businessmen” (only who registered) used throughout the Law. The second point is that the phrase “the existing law on dealing with administrative offences” does not provide sufficient legal tools. In practice, there is no separate regulation on dealing with administrative offences with regard to consumer protection. Therefore, he recommended a Decree on dealing with administrative offences in terms of consumer protection should be devised.

➤ **Several Legal Issues and International Experiences – Alice Pham, Director, CUTS Hanoi Resource Centre**

Her presentation was divided into four parts: (i) Regarding the regulatory scope of the draft Law, it is a question how to define the jurisdiction if “foreign-related elements” or “e-commerce transactions” are included. This issue is even not specified in the consumer protection law of other countries. Therefore, it is suggested that “effects doctrine” (jurisdiction is provided over foreseeable and sustainable effects within a territory regardless of where the conduct occurred) or “conduct doctrine” (jurisdiction is provided over acts performed within a territory regardless of where the case is sustained) be applied; (ii) Consumer class action versus initiation of a lawsuit of consumer protection organisations were discussed. It is a new issue in our country that consumer protection organisation are entitled to initiate a lawsuit as stated in the draft Law. She then opined that consumer class action will help to enhance the effectiveness of in legal implementation regarding consumer protection. Furthermore, she also provided various types of consumer class action in the world as well as several points such as the legal status and representation of the plaintiff, the role of solicitors...which should be taken into serious account; (iii) The need of applying Consumer Protection Law in reference to relevant regulations such as the Law on Advertisement, the Law on Intellectual Property, the Law on E-Commerce, ... and international treaties was observed; (iv) Regarding consumer welfare fund (CWF), this regulation is a real progress in the draft Law. From India’s experiences, the CWF is under the control of the Ministry of

Finance, but operated by the Ministry of Consumer Affairs. The fund is sourced mainly from part of the excise tax collected by the government and partially from bank accounts with no inheritor after the loss of the owner, public interest litigations, etc. Proposals shall be evaluated by an Appraisal Committee, which would put forward its recommendation to the Standing Committee of the CWF, which would then make a decision. And to be funded by CWF, a consumer organization has to meet strict criteria such as its credibility, its innovativeness and subjects to severe surveillance and accounting.

Floor discussions: Comments from member associations of VINASTAS in localities

- **VINASTAS's Southern Office** – An independent “consumer protection body” should be stipulated. Besides, for the Law to be effective, a nation-wide campaign is required, spreading from the centre to the localities. State budget should be part of consumer welfare fund (CWF), and be allocated based on the amount of citizens. On the whole, the draft Law is still unfeasible and undrastic. It is much hoped that these comments collected in this consultation and elsewhere would provide the Law a more strategic and comprehensive vision.
- **Binh Duong** - Mediation: Consumers Complaint Bureau of consumer protection organisation should be taken use of, rather setting up a Mediation Centre, which might not work well. Besides, it is not appropriate to require 100 members at least for consumer associations to bring collective actions to courts, especially in remote areas. Redressal mechanisms, especially penalty and fine, as well as compensation of damages, are still unclear.
- **Kien Giang** – The word “can” is supposed to be replaced by “assigned by the government” when stipulating consumer organisations carrying out their tasks.
- **Ho Chi Minh** - Compared to the OPN, many points in the draft Law are much more progressive whereas several lag behind, especially with the absence of consumers’ obligations. Several terms and literary style are obscure, unclear and foreign, which may cause troubles for understanding and legal interpretation. For example, in the draft Law, consumers are defined as who buy and use goods and services. Does it mean that who buy goods for using in small businesses are not protected by the Consumer Protection Law? Or regarding unpublicized mediation, if a mass of consumers are involved, how can they be informed? Several wording should be changed; i.e, “encourage”, “harass”, “businessmen”...
- **The Centre of Technology Transfer and Consulting, VINASTAS** – Article 63 should be revised to include the obligation of consumer organisations in doing research, carrying out investigation and issuing publications for the purpose of consumer education. There should be more concrete regulations regarding the CWF such as fund management, support of other ministries.
- **Ha Noi** - The term “businessmen” and the general approach of the draft Law are agreed upon. Regarding the law structure, it is suggested that chapter 2, 3, 4 should be merged into one Chapter – Obligations of Businessmen . More transactions methods should be also mentioned, in addition to contractually-based transactions as stipulated in the draft Law.

- **Ba Ria, Vung Tàu** – It is unreasonable that consumer organisations are not allowed to receive support from enterprises (as stipulated in Article 61). Moreover, those organisations should receive grants from the government other than be “supported” (as stated in the draft Law).
- **Phu Yen – The draft Law** should regulate state agencies in consumer protection. Currently, there is no body specialised on managing consumer protection.
- **The Centre of Consumer Research and Consulting, VINASTAS** – It should be taken into consideration that the CWF be managed by either consumer organisations or state agencies but be operated by an Appraisal Committee. Regarding the condition of a consumer organisation filing complaints, the 5-year term should be omitted.
- **Nghe An** - It is suggested that the draft law clearly stipulates both consumer rights and obligations. Chapter 8 is still too general and unfeasible. There should also be a separate chapter regarding the CWF.
- **VINASTAS’s Consumer Complaint Bureau** – The definition “consumer protection” should be specified. Moreover, in the draft Law, only businessmen are mentioned as the entities of filing lawsuits, meanwhile other entities such as state authorities, consumer organisations are ignored.
- **Hai Phong** – The initial name “The Law on Protection of Consumer Rights” should be kept. And the language in the draft Law should be more straightforward and concise.

CONCLUSION

Dr Doan Phuong - President of VINASTAS highly appreciated the responsibilities of all consumer organisations in contributing comments to the draft Consumer Protection Law. He hoped that the Drafting Committee will look seriously into these comments for better revision and adoption.

Dr Le Danh Vinh reported that 114 feedbacks had been collected in this consultation. He gave his word that all these will be referred to in the improvement process of this draft Law. More consultations will be carried out to ensure the feasibility and effectiveness of the Law in the future, after it has been passed. He finally gave his heartfelt thanks to the very attentive and contributive audience.