

## PROCEEDINGS

### Consultation Workshop on the Draft of Consumer Protection Law

Hochiminh, Vietnam, September 08, 2009

#### **Background**

A series of events has been organized by the MOIT in partnership with HRC to collect comments from relevant stakeholders and the public on the draft Consumer Protection Law. This is the fourth draft before the final draft is submitted to National Assembly for consideration and adoption. A consultation for commercial entities/enterprises for the draft Consumer Protection Law of Vietnam in Hochiminh City, Vietnam has been organised by CUTS in partnership with the Vietnam Competition Administration Department (VCAD), Ministry of Industry and Trade (MOIT) and Vietnam Chamber of Commerce and Industry (VCCI) on the 8th of September 2009. Chaired by Mr. Le Danh Vinh, Deputy-Minister of the MOIT, Mr Tran Huu Huynh - Head of VCCI Legal Department, Mr Bach Van Mung – General Director of VCAD, the workshop was attended by representatives from other industries, associations, legal research institutes and commercial enterprises and the press agencies.

The Following is the detailed Proceedings of the workshop:

#### ➤ **Opening Speech – Dr Le Danh Vinh, Deputy Minister of Industry and Trade**

First and foremost, Dr. Vinh expressed his warm welcome to all the participants. He then made a sketchy picture of the Vietnamese economy spotted by vibrant cases of companies violating consumer rights. Consumer protection is becoming hot issues these days and the Consumer Protection Law to be promulgated will help much to protect the legitimate rights and benefits of consumers. He strongly believed that the workshop would be a great success and of great help in improvement of the draft Law.

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

In the first part of his presentation, Mr Hai raised the need of promulgating a Consumer Protection Law for the sake of socio-economic development. The underlying rationale for this can be named as the importance of consumer protection activities, the surge in violation cases of consumer rights, unsynchronised legal system, etc.

In the second part, he introduced the orientation in which the Drafting Committee constructs the draft Law. Most important of all, the draft Law relies on the point of view that consumers in general are always in a disadvantaged position when dealing with traders. Besides, market power is recognized as the major tool ensuring consumers' rights. The benefits will be balanced among consumers, enterprises and the whole society. The whole regulatory system will also be utilised for the purpose of consumer protection.

In the third part, Mr Hai made a brief introduction about the draft Consumer Protection Law which includes 9 chapters and 71 articles. He then pointed out the issues waiting for

comments in the workshop at the end of the presentation. These issues include: the definition of consumer, the scope of the Law, the applicable entities of the Law, disputes resolution methods, model of consumer protection agencies, consumer welfare fund and product liability.

➤ **Comments on the draft Consumer Protection Law – Nguyen Van Hau, Lawyer**

Her approach was an indication of which articles need to be considered and revised. For example in article 4, “Principles on the consumers’ protection” should be changed to “Rights and responsibilities of consumers” as to promote self-protection by consumers. Or in article 7, if third parties via whom a trader provides information to consumers are advertising agencies, which is quite popular these days, how should their responsibilities stipulated? Some articles include unreasonable clauses which should be subject to revision and exclusion such as traders’ refusal to transact with consumers in Article 9 or the withdrawal of dispute parties from the mediation process in Article 28. The conditions set out in Article 64 for consumer protection associations are not rational and relevant. In addition, more clarifications and supplements should be included in some articles such as Article 6, 13, 25, 54, and 61.

To sum up her presentation, she expected that standing on the view point of both consumers and traders, the drafting Committee would create considerable equality. It was also much hoped that as consumer protection is already stipulated in current sectoral regulations, the draft Consumer Protection Law will make a great breakthrough in this regard.

➤ **Comments on the draft Consumer Protection Law – Phan Thi Viet Thu, Lawyer, the Ho Chi Minh Association of Consumer Protection Rights**

She started by urging the pressing need of a new Consumer Protection Law. She observed that Vietnamese consumers are suffering remarkable losses as their rights are currently not well-protected by the law. Her general remark was that compared to the Ordinance of Consumer Protection, many points in the draft Law are much more progressive and follow the United Nations Guidelines for Consumer Protection. For example, the responsibilities of traders with regard to product liability are specified, laying foundations for consumers taking legal actions. However, several points lag behind, especially with the absence of consumers’ responsibilities and obligations which was included in Article 12 and 13 of the Ordinance of Consumer Protection.

After that, she shared her comments in terms of both style and content of the draft Law. With regard to literary style, several terms 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? With regard to the content, she dealt with specific articles which need to be improved one by one and make recommendations accordingly. Sixteen articles were approached and related to such points as consumer harassment, consumer protection policy, guarantee regulation, product liability, defective products, dispute resolution between consumers and trader... All her comments were regarded very detailed and contributive, but according to Mr Le Danh Vinh, these mostly repeated her comments in an earlier event. He then encouraged more new and innovative ideas to come in the rest of the workshop.

➤ **Comments on the draft Consumer Protection Law – MA Phan Thong Anh, Lawyer, Member of Standing Committee of Vietnam Bar Federation, Member of Vietnam International Arbitration Center; Director of Vietnam Law Firm**

His general remark was that the draft Law seems to overdose the protection to the consumers and make the government mechanism more cumbersome. Standing on that view point, he analysed several specific articles in the draft Law.

Besides some comments coincided with others in the earlier workshops, he made some new points which were quite controversial. Regarding null and void clauses in Article 12, it is against basic law principles when the Law stipulated any null and void clause in the contract will immediately lead to null and void whole contract. Regarding standard contracts in Article 13, he agreed that consumers have the right to ask for changes to the contract if they disagree with any contents of the standard contract but argued that traders are not obliged to accept. Moreover, he also added that the requirement that traders register standard in Article 13 is not in accordance with the principle of free bilateral agreement and that it's not the right of consumer protection state regulator to request traders to either cancel or amend the standard contract. Regarding product liability, the Law when stipulating "Traders... are liable for compensating for the damages caused by defective products to consumers even in case such trader is not in error" is contradicting the Civil Code of Vietnam. He then also made objections to some other articles in the draft Law such as traders bear the burden of proof with regard to their innocence as in Article 44 or it is unreasonable when consumers protection association must not advance the court fee when it initiates a lawsuit to protect consumers stipulated in Article 52. He also recommended that dispute resolution by administrative measures should be left out in the draft Law to simplify the government mechanism.

**Floor discussions:**

- **Alice Pham, Director, CUTS Hanoi Resource Centre** – She highly commended the efforts put into drafting this Law by the drafting committee, which is a continued process which CUTS has had the privilege to contribute to. She recognized the progresses that the draft Law has been able to make as compared to the old regulatory system on consumer protection, which is very much in line with the current context. She also recognized that several parts and provisions in the draft Law would need to be revised, restructured and refined. Ms. Pham shared with the audience the significance of the right of consumer associations to initiate representative actions before the court to protect consumer interests, the rationale behind such endowment of right, as well as the experiences of other countries in this regard.
- **Truong Thi Hoa, Lawyer** – In general, she appreciated the general principle of the Law construction, especially with regard to enhancing the role of consumer protection association and promoting consumer welfare fund. This Law will significantly supplement the Competition Law in promoting fair business practices and increasing the benefit of consumers. In detail, she stressed on the role of the Court and Arbitration which had better be stipulated in separate chapters. Such relevant Ministries as the Ministry of Police, the Ministry of Justice should be also involved for better enforcement. Besides, there should be clauses on handling violation of the law by consumer protection associations and consumers. The Law on consumer

protection, in one hand, must protect consumers substantially and effectively, but in other hand consider carefully the interest of business community to avoid imposing strict rules which can be exploited by some individuals for disturbance purpose.

- **Nguyen Duc Vinh, VINASTAS's Southern Office** – It is suggested that a separate chapter on consumer protection in the context of international integration especially in the field of services be included. Consumer protection with regard to e-commerce activities are associated with many sectoral regulations, thus, it, if not stipulated in the draft Consumer Protection Law, must be stipulated in other sectoral regulations. He also added that the current consumer protection state authority, namely the VCAD, is not powerful enough and should have a better presentation of consumer voices. Therefore, he recommended that the Department of Competition Administration be promoted to General Department of Competition Administration which is directly responsible to the National Assembly.

## **CONCLUSION**

At the end of the conference, Mr Le Danh Vinh highly appreciated all the comments from participants to contribute for the completion of the Draft Law, which will come into effect in early 2010 as expected. He acknowledged that it is a very complicated issue to both protect the consumer substantially and ensure the interest of the business community. Thus, the Drafting Committee would look seriously into these comments for better revision. The conference is a real success, marking a remarkable progress in completing and promulgating the Law, which can be seen as a measure to protect the legitimate rights of consumers. He finally gave his heartfelt thanks to the very attentive and contributive audience.