

DISCUSSING ENFORCEMENT OF the Consumer Protection Law in Vietnam

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Abstract

After 10 years of implementing the Law on Consumer Protection, most businesses have initially known and applied to different degrees the legal provisions protecting consumers' interests in their business activities. Some businesses have understood and applied well and effectively the legal provisions to protect the interests of consumers, thereby creating competitive advantages for businesses and their products and services, as well as creating opportunities for them to develop their products and services. basis for the sustainable and long-term development of brands, businesses and products.

However, many businesses are still not aware of the meaning and role of consumers and consumer protection laws in their business activities. Since then, these businesses have committed many violations of the law of the state in general and the law on protecting the interests of consumers in particular, such as: smuggling, tax evasion, trading in counterfeit goods, imitation goods, etc. poor quality products, false advertising, deceiving, forcing consumers...

Key words: the Law on Consumer Protection, amending, enforcement, consumers

JEL: K10, K11, K15

1. Introduction

The formation of Consumer Protection Associations is one of the clear and specific results, illustrating the results achieved by the Associations. Accordingly, since 1991, Vietnam has had the Scientific and Technical Association for Standardization, Metrology, Quality and Consumer Protection of Vietnam, referred to as the Vietnam Association for Standards and Consumer Protection. Vinastas). In the period 1999 - 2010, Vietnam has established 30 Consumer Protection Associations operating within provinces and cities and 01 Vinastas Association operating nationwide. By 2011, when the Law on Protection of Consumer Rights took effect, the number of associations nationwide had reached 44, then, in the following years, there was an average of every year. Consumer protection is established in the

provinces and cities. As of the end of 2020, Vietnam currently has 56 Consumer Protection Associations, in which, there is 1 Vietnam Consumer Protection Association (abbreviated as Vicopro - was separated from Vinastas Association in 1999). acting on a national scale.

In the past time, associations have made active and important contributions to creating a bridge between consumers and state agencies through the effective implementation of Law-making Participation activities.

Consumer protection associations have contributed ideas, sent criticisms or directly organized seminars and conferences to exchange, evaluate and propose ideas to participate in the development of consumer protection products. legal documents. The results show that, since 1992, the Consumer Protection Associations have had 353 activities to contribute ideas to draft

legal documents, in which there are many important documents such as the 1992 Constitution, over 20 draft Laws and Ordinances, many Decrees of the Government, circulars of ministries, agencies, ...

2. Methodology

Authors mainly use experience, observations and qualitative analysis with synthesis and inductive methods.

3. Main findings

Achievements and results achieved in the work of consolidating the organization's apparatus, implementing and training, and improving the capacity of cadres

3.1 Building and consolidating the system of enforcement organizations

3.1.1. System of state management agencies

Pursuant to the provisions of the Law on Protection of Consumer Rights and guiding documents:

- The Ministry of Industry and Trade is the central state management agency in charge of protecting consumer interests. The Competition Administration Department (now the Department of Competition and Consumer Protection) is the agency that helps the Minister of Industry and Trade perform the state management of consumer protection.

- The provincial People's Committee in the locality is the state management agency in charge of protecting the interests of consumers in the locality. The Department of Industry and Trade is the agency that helps the Chairman of the Provincial People's Committee perform the state management of consumer rights protection in the locality.

- District-level People's Committees shall decide on units to assist the People's Committees in performing the function of state management of consumer rights protection in their respective districts.

However, besides the system of state agencies that are assigned "focal" responsibilities such as the Ministry of Industry and Trade and the

People's Committees of the provinces (Department of Industry and Trade, the People's Committee of the district, etc.), the protection of people's interests Consumption is also carried out by other government agencies. For example, the participation of specialized state management agencies (Departments such as Agriculture and Rural Development, Science and Technology, Finance, Public Security...) or the judicial system. (Courts, Procuracy...) in the process of handling consumer complaints and requests...

After nearly 10 years of implementing the Law, the results show that a system of state agencies responsible for protecting consumers' interests has been formed from the central to local levels, specifically:

- At the Central Government: The task of protecting consumer interests at the Ministry of Industry and Trade is assigned mainly to the Competition Administration Department (now the Department of Competition and Consumer Protection (according to Decision No. 3808/QĐ-BCT). dated October 2, 2017 stipulating the functions, tasks, powers and organizational structure of the Department of Competition and Consumer Protection (CT&Consumer Protection)). and the Department of Controlling Model Contracts and General Transaction Conditions are two units that perform the function of protecting consumers' interests.

- At the local level (provincial level): The Ministry of Industry and Trade and the Ministry of Home Affairs have issued Joint Circular No. 22/2015/TTLT-BCT-BNV dated June 30, 2015 guiding the functions, tasks, powers and organizational structure of the specialized agency on industry and trade under the People's Committees of provinces and districts, in which, it is stipulated that "The Department of Industry and Trade is a specialized agency under the People's Committee of the province; perform the function of advising and assisting the Provincial People's Committee in state management of industry and trade, including the following sectors and fields: ..., protecting the interests of consumers...". For implementation, currently, 100% of the Department of Industry and Trade has assigned the task of protecting consumers' interests to specialized departments, for example, Department of Trade Management, Department of Planning and Finance, Department of Inspectorate, ...

- At the district level, Joint Circular No. 22/2015/TTLT-BCT-BNV stipulates: The Economic Division or the Economic and Infrastructure Division under the district-level People's Committee is a specialized agency with the function of advising, assist the district-level People's Committee in performing the state management of industry and trade in the locality. In fact, most of the district People's Committees have now assigned the task of protecting consumers' interests to the Economic Department or the Economic Infrastructure Department. There are a few district-level People's Committees that assign this task to the Agriculture Department or another specialized Department.

3.1.2. Social organization system

Before 2010, there was a system of socio-professional organizations in Vietnam that performed the tasks of standards, measurement, quality and protection of consumers' interests (according to the provisions of the Ordinance on Protection of consumer protection in 1999).

In the period 2011 - 2018, the implementation of the Law on Consumer Protection has resulted in an increase in the number of social organizations involved in consumer protection (consumer protection associations). increased significantly, from 44 associations nationwide in 2012 to 57 associations in 2018[.]. In some provinces and cities, the association network has been developed down to the district and commune level. Some local associations have registered as members of the Vietnam Consumer Protection Association, forming a unified organization, working together for the purpose of consumer protection. The above-mentioned growth in number and network is due to the close attention and coordination from the Central Government, especially the active and proactive activities of localities in the establishment of the Campaign Committee to established associations.

Especially, at the end of 2018, the Vietnam Consumer Protection Association (Vicopro) was established on the basis of restructuring the Vietnam Standards and Consumer Protection Association (Vinastas). The establishment of the Vietnam Consumer Protection Association has a nationwide scope and is a social organization not only creating an important milestone but also an opportunity to perfect the model and name of the Associations. to protect consumers in provinces

and cities, thereby improving the efficiency of enforcement of the Law on Protection of Consumer Rights as well as implementing unified activities among associations nationwide to protect consumers rights

3.2. Training and capacity building of staff

Training and capacity building for staff is a key step that greatly affects the results of the implementation of the Law on Protection of Consumer Rights.

3.2.1. For cadres and civil servants at central agencies

The contingent of cadres and civil servants at central agencies responsible for the protection of consumers' interests are mainly located at the Ministry of Industry and Trade, other ministries, ministerial-level agencies, Governmental agencies and other agencies. other central agencies (such as courts, central agencies of some socio-political organizations, etc.).

At the Ministry of Industry and Trade (Department of Competition and Consumer Protection) there are 12 civil servants who directly perform tasks related to consumer protection. Although the number is too small compared to the requirements for implementing tasks at the central level, it can be said that, in recent years, these cadres and civil servants have been trained in a methodical manner both in literacy and numeracy. culture, professional expertise, and political theory. Specifically, out of 12 civil servants, there are 01 cadres with doctoral degrees, 08 officers with master's degrees, and 03 officers with bachelor's degrees. All cadres are able to speak at least one foreign language, most of them have attended training courses on state management and political theory. For training and learning experiences of developed countries As well as other countries in the region, every year the Ministry of Industry and Trade sends staff to attend the ICPEN Conference (International Consumer Rights Protection Network) and ACCP Conference (Committee to Protect Consumers). ASEAN consumption). In addition, the Ministry of Industry and Trade also organizes many training courses to learn from the experiences of countries with good consumer protection work such as the US, Australia, Japan, Korea, China, the Netherlands, etc. France...

However, at other central-level agencies, there is not a single official who performs duties directly or intensively with respect to consumer protection. This is part of the reason why other agencies, when promulgating and implementing legal regulations within their functions and duties, have not taken into account, or even violated, the provisions of the law on protection of interests of consumers.

In order to provide more information as well as training for cadres and civil servants at the central level in related fields, in the past 9 years, the Ministry of Industry and Trade has organized a number of conferences and meetings, seminars, training courses on consumer protection specifically for a number of subjects.

3.2.2. For the staff who enforce the protection of consumers' interests in the locality

At the provincial level, the Department of Industry and Trade is the unit assigned to advise the Provincial People's Committee on the protection of consumers' interests. In fact, at each Department of Industry and Trade, there will be 03 officials involved in this work, including: 01 Department leader, 01 Divisional leader and 01 specialist in direct charge. At the district level, there will be 01 district leader, 01 economic department leader and 01 specialist. At the commune level, there are 01 Commune Leader, 01 Office Leader and 01 specialist. However, at any level, all three of these officers carry out and carry out many other tasks besides protecting the interests of consumers.

As local civil servants, these cadres will annually participate in training activities on state management and political qualifications according to their working position at the unit.

For officials implementing consumer protection activities in localities, the Ministry of Industry and Trade regularly and annually organizes or coordinates with the Department of Industry and Trade to organize many propaganda, teaching and training activities. training for civil servants and law enforcement officers to protect the interests of local consumers. The professional content is regularly updated according to the latest information of the market. According to statistics, in the period 2011-2019, every year, the Ministry of Industry and Trade organizes 2-3 training activities according to each geographical area across the country, and at the same time, coordinates with localities to

organize the organization. from 10 to 15 training activities, seminars and conferences. Along with that, the Departments of Industry and Trade have also organized thousands of training activities for district and commune officials.

3.3 Achievements and results achieved in the implementation of corporate responsibility towards consumers

Over 30 years of implementing Doi Moi, it can be said that the Vietnamese economy has changed dramatically from a centralized, bureaucratic, and subsidized economy to a developed socialist-oriented market economy. The fastest and most sustainable development in the region. After the reform and equitization activities, the "creaky" state-owned enterprises have been purified and transformed, the remaining state-owned enterprises have been playing a pivotal role in the economy. In addition, private sector enterprises have been making strong strides to become the driving force of the economy.

3.3.1. Responsibility to protect consumer information

Pursuant to the provisions of Article 6 of the Law on Protection of Consumer Rights, in the course of transactions, with the consent of consumers, business organizations and individuals are allowed to collect and use information about consumers and transactions. However, the Law stipulates and sets strict requirements on the scope of collection, use, transfer as well as the collection of consumer opinions.

In fact, after more than 9 years of implementing this group of regulations, it shows that large-scale organizations and businesses (many business establishments, multinational and multi-field enterprises...), do business in the direction of Modern businesses (convenience stores, supermarkets, trade centers) or businesses doing business in fields such as finance, banking, e-commerce, etc. are businesses that better comply with regulations on consumer information protection.

Organizations and individuals doing business on a small scale or doing independent, regular, non-registration businesses hardly do or do collect but pay little attention to protection. consumer information.

The results of the reports of enterprises participating in the summarizing the implementation of the Law on Consumer Protection shows that the websites of most of these enterprises are now public and list content related to the collection policy, information, information protection and consumer information transfer policy to third parties. This is a highlight, on the one hand, showing the compliance with the law of enterprises, on the other hand, showing the timely adjustment of enterprises to the development of the business environment in the digital data era.

3.3.2. Responsibility to provide information about goods and services

The Law on Protection of Consumer Rights has issued many regulations related to the responsibility of providing information about goods and services to consumers to relevant organizations and individuals, from manufacturing enterprises, /importers, distributors and third parties in providing information to consumers.

In fact, with the development of e-commerce, this group of regulations has become increasingly important when consumers' decisions to buy goods and services largely rely on information received from sellers.

Along with the competitive pressure between businesses and the change in consumer perception, currently, most genuine businesses focus and care about providing correct, sufficient, and convenient information, convenience for consumers. The listing of selling prices is done publicly and clearly, especially at eateries and restaurants in tourist areas. The warranty policy is simple and convenient, in some cases, automatically implemented through electronic activation such as for mobile phones, televisions, etc. Enterprises clearly announce at transaction locations, for example, information security policy, goods return policy are shown right on the homepage of the website or printed and placed at the payment counter... The content of advertising information is always proved by the enterprise by documents of legal value, for example, according to reports, according to experiments of relevant organizations and units...

For third parties that provide information, for example, television and radio stations that advertise goods and services, currently, the

process of reviewing and approving the advertising content of the All third parties are required to provide records and information to prove the accuracy of the advertising content broadcast on the station.

3.3.3. Responsibility for registration, application of model contracts, general trading conditions

The regulatory group on registration and implementation of model contracts and general transaction conditions plays an important role in the Law on Protection of Consumer Rights, contributing to protecting the interests of consumers (usually the disadvantaged party).) in transactions where consumers are less likely to unilaterally negotiate the content of the transaction. From 2012 to the first 9 months of 2020, the Department of Consumer Affairs and Protection has received and processed over 4,480 sets of registration documents. 100% of dossiers are handled within the prescribed time limit and guaranteed not to cause obstacles or difficulties to the production and business process of enterprises. On a separate website on consumer protection at http://www.vca.gov.vn/hopdongmau.aspx?Cate_ID=453, the Department of Civil War and Consumer Protection publishes all accepted commercial contracts and consumer agreements. This job creates conditions for businesses to consult, consumers to monitor and create a channel to connect information with the activities of the Department of Industry and Trade across the country.

In localities, statistics show that, in the period 2012-2020, there were 3,759 dossiers submitted for registration at the Departments of Industry and Trade.

3.4. Warranty Liability

Pursuant to the provisions of the Civil Code and the Law on Protection of Consumer Rights, the warranty of goods and services is not a mandatory responsibility, however, if there is a commitment to the warranty, organizations, individuals must strictly comply because these commitments are an important factor affecting the consumer's decision to buy goods and services.

The results of market monitoring, settlement of consumer complaints and requests in the past time and the results of reports of businesses participating in the summary of law enforcement

to protect consumers' interests show that, most businesses have considered warranty policy as a means to enhance the competitiveness of goods in the market. Most of the products on sale are now actively applied by the enterprise with a warranty policy. Many businesses set up a specialized department or hire an outside unit to perform warranty activities. During the warranty period, businesses actively issue documents to provide and update information on warranty progress to consumers, and provide goods for consumers to temporarily wait for. warranty or provide guiding information for consumers to actively choose a warranty plan suitable for their individual needs. Information about the company's warranty policy is published on the website or attached when consumers buy goods.

3.5. Responsibility for recalling defective goods

The provisions on recalling defective products are considered as one of the new and progressive contents of the Law on Protection of Consumer Rights compared to the Ordinance on Protection of Consumer Rights 1999. At the time of its promulgation. According to the law, the implementation of the program to recall defective goods partly shows the weakness of enterprises in the production of goods. However, the reality of the past years shows that this is a group of institutions that make an important contribution to building a healthy consumption environment. Although the number of cases reported annually is not large, it concerns the interests of a large number of consumers as each recall involves thousands or hundreds of thousands of consumers. At the same time, the results of market monitoring in recent years show that most of the reported cases of recalls of defective products are carried out at the central consumer protection agency (Department of Competition and Security). consumer protection, Ministry of Industry and Trade) and implemented by foreign or foreign-invested enterprises. The data reported by the provinces and cities shows that in the last 9 years, there has not been a case of recalling defective products made in the locality according to the provisions of the Law.

According to reported data, in the period 2011-2020, the Ministry of Industry and Trade received and supervised a total of 159 cases of recalling defective products related to hundreds of millions of products of automobiles,

motorcycles, computers, phones, batteries, fans, cosmetics, children's toys...

3.6. Responsibility for handling consumer requests and complaints

According to the provisions of the Law on Protection of Consumer Rights, enterprises are responsible for receiving and handling consumer complaints and requests related to their operations, goods and services provided by the enterprise. supply as well as other issues arising during the interaction between the two parties.

In general, now, the process of reflecting and processing information of consumers with businesses has been made more convenient, simpler and faster. Having this result, on the one hand, is because the development of information technology has made the application of contact methods with costs more reasonable and convenient for businesses, on the other hand, it is also necessary to recognize the Actively in the awareness of the business towards listening and resolving the opinions of customers. The results of market monitoring and reports of enterprises participating in the Summary of the implementation of the Law on Protection of Consumer Rights show that the majority of enterprises (especially large-scale enterprises, business in modern methods or in fields such as e-commerce, finance, banking, etc., currently all promulgate policies to receive and handle consumer requests, and have a specialized department in charge of receive and resolve complaints, build a database system on consumer complaints and apply a variety of methods to receive and exchange information with consumers (Hotline, Email, online chat). , Facebook).

In addition, according to statistics from state agencies and social organizations, the successful complaint settlement rate is at least 80% of the number of cases. That shows, the goodwill and effective coordination between businesses and related units in receiving and resolving consumer complaints.

4. Discussion and conclusion

Key principles and specific requirements

Firstly, institutionalize the tasks and solutions expressed by the Party Central Committee in

Directive No. 30CT/TW dated January 22, 2019 on strengthening the Party's leadership and the State's management responsibility. country for the protection of consumer rights.

Second, perfecting the system of legal documents in the direction of overcoming inadequacies, limitations and inheriting valid regulations; selectively absorbing and catching up with international practices on consumer protection.

Third, ensure the uniformity and feasibility of the legal documents protecting the interests of consumers in our country with international commitments.

Proposals to improve the provisions of the law protecting the interests of consumers.

4.1. Amendment and supplementation of current regulations

4.1.1 Amendments to the Group of General Regulations (Chapter I of the Current Law)

4.1.1.1 Amend and supplement Articles 1 and 2 to regulate consumer relations, consumer disputes involving foreign or cross-border elements.

4.1.1.2 Additional content of Article 3 (Explanation of terms)

Adding some concepts such as: Third parties involved in providing information to consumers, (personal) information of consumers, essential goods and services...

Improve regulations on Defective Goods; Finalize the definition of standard contract, general transaction conditions.

4.1.1.3 Supplementing provisions on Consumer Protection in e-commerce and in platform-based business models.

4.1.1.4 Add a provision on cross-border consumer dispute resolution.

4.1.1.5 Supplementing a number of prohibited acts in Article 10.

4.1.1.6 Amending and supplementing to create a basis for criminal handling of some groups of acts of violating consumer rights.

4.1.2 Amendments to Chapter II (Responsibility of organizations and individuals trading goods and services towards consumers)

4.1.2.1 Amending and supplementing Articles 12 and 13 to ensure the provision of information to consumers, especially in the context of e-commerce development and the emergence of many business models on the basis communication.

4.1.2.2 Amendments and supplements from Article 14 to Article 19 to improve the control mechanism for signed contracts as well as model contracts, general transaction conditions, including: (i) Need to specify expenses details on the post-inspection mechanism; (ii) Supplementing general terms to determine invalid terms; (iii) Amending and supplementing the scope of review of model contracts and general transaction conditions; (iv) Amending and supplementing regulations related to the decentralization between the central and local governments (v) adding a number of regulations to ensure the rigor of the formality contract registration procedure, delivery conditions general translation; (vi) supplementing a number of provisions to protect the interests of consumers in specific contracts.

4.1.2.3 Amendment and supplement to Article 20 on Responsibility to provide transaction proof

Transaction evidence is an important basis for protecting consumer interests and resolving disputes between businesses and consumers. At the same time, the variety of current transaction methods also leads to complexity in storing and using transaction proof. Therefore, it should be strictly regulated in the direction of attaching the responsibility of creating and keeping enterprises.

4.1.2.4 Amendments and supplements from Article 22 to Article 24 on defective goods

It is necessary to regulate the participation and supervision of state agencies, social organizations and consumers from the very beginning of the recall of defective goods.

It is necessary to add the responsibilities of a number of other subjects who are also involved in the production process and bring goods to consumers in addition to producing and importing organizations and individuals.

The law should specify the concept to determine the deadline for ending the program for recalling defective goods, the time limit, and

the process and procedures for organizations and individuals to report the results of the program implementation to the agency. competent state management agency in charge of protecting the interests of consumers.

4.1.2.5 Amending and supplementing Articles 25 and 26 on requests and settlement of requests for consumer protection

Currently, the mechanism of request and settlement of claims to resolve consumer protection claims is general and vague, not creating a consistent and transparent mechanism. There must be provisions to clarify the difference (if any) of the settlement of this request with the normal settlement of complaints and denunciations. Complaint settlement responsibilities need to be supplemented by other administrative levels, not just the current regulations at the district level. On that basis, it is necessary to establish a smooth mechanism so that consumers in all localities and fields can look to administrative agencies as a tool to assist in resolving disputes with organizations and individuals. business people.

4.1.3 Amendments to Chapter III (Responsibility of social organizations in participating in the protection of consumer rights)

To amend and supplement provisions from Articles 27 to 29 to clarify the principle that all individuals and organizations in society are encouraged to participate in consumer rights protection activities, but only social organizations are allowed to participate in consumer protection activities. Associations legally established under the New Law may carry out activities of a "special" nature. At the same time, research creates the basis for a number of activities such as the "right to boycott"...

4.1.4 Amendments to Chapter IV (Dispute settlement between businesses and consumers)

4.1.4.1 Amending and supplementing Article 30 in the direction of removing the regulation "No negotiation or conciliation is allowed in case the dispute causes damage to... the interests of many consumers" because this is not in accordance with the practice. international practice and consumer dispute settlement in recent times.

4.1.4.2 Amending and supplementing Articles 31 and 32 to increase the efficiency of dispute settlement of the negotiation method, for example, regulations on time limit for dispute settlement, handling with arising costs, etc.4.1.4.3 Amendments and supplements from Article 38 to Article 40: Similar to the conciliation method, for the arbitration method, it is necessary to clarify where the procedures are performed, the order and procedures to be applied, and the value. of the minutes of agreement, enforcement mechanism, etc. It is inappropriate to consider arbitration procedures in consumer dispute settlement as in commercial arbitration.

4.1.4.4 Amendments and supplements from Article 41 to Article 46: Dispute settlement at the Court is an effective method in many countries, but in Vietnam, in the eight years of implementation of the Law, there are very few disputes. Consumer disputes are resolved through the Court. This comes from the fact that the provisions of the Law on Protection of Consumer Rights and the legal system and procedures of the Court are not synchronized and smooth. The Civil Procedure Law has not provided that consumer complaint cases can be applied with simple and shortened procedures as well as there is no specialized court system (or at least a single application handling procedure). simply implemented by the Economic Court and the Civil Court). Therefore, it is necessary to amend and supplement to create a premise for these contents.

4.1.5 Amendments to Chapter V (State management responsibility for protecting consumer interests)

Amendments and supplements from Article 47 to Article 49 to better position the role of the state management agency in protecting consumer interests (center, regulation, coordination) as well as the responsibilities of other agencies. , other ministries and agencies (mainly local, sectoral, and regional responsibilities; responsibility for coordination).

Create the basis for the establishment of the National Database and the National Portal on consumer rights protection.

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