

THE TAIWAN CONSUMER PROTECTION LAW: ATTEMPT TO PROTECT CONSUMERS PROVES INEFFECTIVE

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Abstract. Consumer protection is a relatively new social issue in Taiwan. With the passage of the Taiwan Consumer Protection Law ("CPL"), the government of Taiwan has taken a tremendous step towards the protection of its consumers' rights. However, industry leaders as well as consumers have voiced concerns over many of the provisions and terms in the CPL. Consumers have not taken advantage of the CPL as a means of legal recourse for product-related injuries, and industry groups have asked the government to reexamine particular aspects of the CPL. Such reaction has essentially rendered the CPL an unproductive piece of legislation.

I. INTRODUCTION

The "economic miracle"¹ of Taiwan's growth in the last few decades has led its citizens to the "almost embarrassing dilemma of how to dispose of [their] wealth."² Taiwan's gross national product ("GNP") grew at an average rate of 9.1% annually in the 1960s, 10.2% in the 1970s, and 8% in the 1980s.³ By 1993, Taiwan's overall GNP was US \$226.24 billion and was ranked eighteenth in the world, while its per capita GNP was US \$10,852 and was ranked twenty-fifth in the world.⁴ This per capita GNP was up from US \$3,167 in 1984⁵ and US \$6,053 in 1988.⁶ The result of this growth in income has been an increase in spending. Overall consumption

¹ See Robin Winkler et al., *New Passwords In The VISA And Work Permit Game: A Review Of The New VISA And Work Permit Regulatory Framework In Taiwan*, 12 UCLA PAC. BASIN L.J. 98, 102 (1993). See generally DENIS FRED SIMON et al., *TAIWAN: BEYOND THE ECONOMIC MIRACLE* (1992).

² *Buying The Good Things In Life: Consumer Spending Booms As Focus Shifts From Basics*, E. ASIAN EXECUTIVE REP., Jan. 1994, at 8.

³ Winkler et al., *supra* note 1.

⁴ The source of the GNP and per capita GNP dollar amounts is a brochure entitled *THE REPUBLIC OF CHINA ON TAIWAN 1995: STATISTICS* (1995) [hereinafter *ROC STATISTICS*]. The brochure was prepared by the Bureau of Statistics, Directorate-General of Budget, Accounting and Statistics of the Executive Yuan (the Cabinet) of the Taiwan government.

The rankings of the GNP and per capita GNP were also reported by the Directorate General of Budget, Accounting and Statistics, which based its report on statistics released by the World Bank and the International Monetary Fund. Deborah Shen, *Higher Ranking On World GNP List*, FREE CHINA J., Sept. 8, 1994, at 8.

⁵ *ROC STATISTICS*.

⁶ FCJ Editors, *100-Billion Buck GNP In Taiwan; ROC 22 In World*, FREE CHINA J., Mar. 9, 1989, at 2. This per capita GNP amount was ranked thirtieth in the world for 1988.

increased from US \$113.2 billion in 1990 to US \$151.6 billion in 1992, an average growth of 12% per year; the country's high savings rate fell from 29.5% in 1991 to 28% within one year. Spending is no longer going solely towards simple necessities but also towards sophisticated, luxury items.⁷ The Taiwan consumer market is now filled with a variety of products, which invariably increases the likelihood for consumers to be exposed to danger.

The government of Taiwan, Republic of China ("ROC"), enacted its first national Consumer Protection Law ("CPL") on January 13, 1994.⁸ This law provides consumers who sustain injuries caused by dangerous products or services with a direct route of legal recourse against the responsible business operators.⁹ Business operators are now forced to consider more factors when making various marketing and policy decisions, such as the possibility of higher insurance premiums, legal fees, and damage payments. It thus becomes important for companies currently doing business in Taiwan, and those looking to do business in Taiwan, to familiarize themselves with the CPL. For example, the American Chamber of Commerce ("AmCham") of Taiwan, a group representing a large number of American businesses in Taiwan, held a half-day seminar in April 1994 to explore the ramifications of the CPL and its potential effect on companies and industries doing business in Taiwan.¹⁰

AmCham's concern over the impact of the CPL is valid. The language of the CPL is filled with ambiguous terms and concepts; it also places much power with consumer protection groups. Likewise, consumers should be concerned with the CPL defense provision that allows business operators to reduce the compensation to injured parties if the business

⁷ See *Buying the Good Things In Life: Consumer Spending Booms As Focus Shifts From Basics*, *supra* note 2, at 8.

⁸ Consumer Protection Law (promulgated Jan. 11, 1994, effective Jan. 13, 1994) (1994) [hereinafter CPL]. The Consumer Protection Law Enforcement Rules were subsequently enacted to provide clarification and guidance as to how the CPL will be enforced. See The Consumer Protection Law Enforcement Rules (promulgated Nov. 2, 1994) (1994) [hereinafter Enforcement Rules].

All references to the CPL and Enforcement Rules are derived from an English translation of the CPL and Enforcement Rules. These English versions were translated and copyrighted by Lee & Li, Attorneys-At-Law, Taipei, Taiwan, Republic of China.

⁹ The term "business operators" is defined to mean those who are in the business of providing services or of designing, producing, manufacturing, importing, or distributing goods. CPL, Ch. 1, art. 2. These businesses are not limited to for-profit enterprises. Enforcement Rules, Ch. 1, art. 2.

¹⁰ See John Winzenburg, *Balancing the Scale in Taiwan's Emerging Consumer Society*, TOPICS, (AmCham, Taipei, Taiwan), Apr. 1994, at 26.

operator can show that they did not act negligently.¹¹ Such provisions have rendered the CPL ineffective in protecting consumers.

II. BACKGROUND

A. *Legal Recourse Previously Available To Consumers*

1. *The Civil Code—The Book Of Obligations*

Modern Chinese law has been heavily influenced by European civil law systems, particularly German and Swiss law.¹² The Republic of China Civil Code contains five books: General Principles, Obligations, Rights over Things, Family, and Succession.¹³ The second book of the Code, the Book of Obligations, provided the basis from which consumers could bring products liability actions prior to the enactment of the CPL.

The Book of Obligations names five sources of obligations: contracts,¹⁴ conferring of authority of agency,¹⁵ management of affairs without mandate,¹⁶ undue enrichment,¹⁷ and wrongful acts.¹⁸ The concept of products liability stems from the fifth part, Wrongful Acts, which explains that an actor may be liable for an injury caused "intentionally or by his own fault," or when "done intentionally in a manner contrary to the rules of good morals."¹⁹ This rule implies that any products liability-type claims must be based on either the idea of intent or negligence, a scheme labeled in the United States as "fault" liability. The Wrongful Acts section also addresses such issues as multiple wrongdoers, third-party victims, vicarious liability, damages, non-economic damages, and the statute of limitations.²⁰ Thus, the

¹¹ See discussion *infra* Part III.C.2.

¹² See HERBERT H.P. MA, *READING MATERIALS FOR LAW IN EAST ASIA: REPUBLIC OF CHINA* 11 (1989).

¹³ CIVIL CODE [C. CIV.], translated in *MAJOR LAWS OF THE REPUBLIC OF CHINA: CHINESE AND ENGLISH BILINGUAL EDITION* 101 (1991). The Civil Code of Taiwan, Republic of China, originated in mainland China. After losing the civil war on mainland China to the communist party, the Nationalist government, the Kuo Ming Tang (KMT), retreated to Taiwan. Thus, the Civil Code continued to be in force in Taiwan, Republic of China. See MA, *supra* note 12, at 3.

¹⁴ C. CIV. tit. I, pt. 1 (ROC).

¹⁵ C. CIV. tit. I, pt. 2 (ROC).

¹⁶ C. CIV. tit. I, pt. 3 (ROC).

¹⁷ C. CIV. tit. I, pt. 4 (ROC).

¹⁸ C. CIV. tit. I, pt. 5 (ROC).

¹⁹ C. CIV. tit. I, pt. 5, art. 184 (ROC).

²⁰ C. CIV. tit. I, pt. 5, art. 184-198 (ROC).

Civil Code established the idea of consumer protection prior to the enactment of the CPL.

2. *The Fair Trade Law*

Three years before the passage of the CPL, the Fair Trade Law ("FTL")²¹ of Taiwan was enacted on February 4, 1991.²² The FTL was passed to appease U.S. threats of protectionism, as well as to preserve the principles of competition within Taiwan's increasingly liberalized economy.²³ Articles 21 and 23 of the FTL contain concepts of consumer protection. Article 21 forbids an enterprise from making false or misleading presentations about its products in advertisements, labeling, and packaging.²⁴ Article 23 prohibits conducting multi-level sales (i.e., pyramid schemes).²⁵ Although both of these articles are presented within the scope of maintaining fair trade, they maintain fair trade by protecting consumers. In this way, legitimate enterprises are safeguarded from competition from "sham" companies which only generate business by misleading and manipulating consumers.

B. *Previously Reported Products Liability Cases*

Many of the well-known products liability cases have been handled and publicized by the Consumer Protection Foundation ("Foundation"). Established in 1980, it was one of the first consumer protection groups formed in Taiwan.²⁶ The Foundation's first case came in its first year of

²¹ Fair Trade Law (promulgated Feb. 4, 1991) (1991) [hereinafter FTL].

All references to the FTL are derived from the English translation of the FTL. The English version was translated and copyrighted by Lee & Li, Attorneys-At-Law, Taipei, Taiwan, Republic of China.

Article 1 of the FTL states: "This Law is enacted to maintain order in transactions, to protect the interest of consumers, to ensure fair competition, and to promote the stability and prosperity of the national economy." FTL, Ch. 1, art. 1.

²² The FTL of Taiwan became effective for private companies on February 4, 1991. See generally Jeffrey V. Crabill, *Taiwan Keeps Antitrust Torch Burning By Enacting Fair Trade Law*, 2 IND. INT'L & COMP. L. REV. 449 (1992).

²³ Crabill, *supra* note 22, at 450.

²⁴ FTL, Ch. 3, art. 21.

²⁵ FTL, Ch. 3, art. 23.

²⁶ The Consumer Foundation was founded in 1980 by Legislator Jaw Shao-Kang along with other lawyers and scholars. The Foundation focuses on research and education as well as on lobbying. It has a laboratory to check a wide range of consumer goods and publishes a monthly Consumer Report with up-to-date information for its mainly middle-class readers. It has built a reputation for mediating consumer-

establishment. A jar of jam purchased at a supermarket had an expiration date which had expired more than one year prior to its purchase.²⁷ Once the Foundation publicized this case, the government, consumers, and manufacturers began to recognize consumer protection as a legitimate issue.²⁸

One of the Foundation's claimed triumphs took place in 1985. The Foundation launched a campaign against Japan Asian Airways ("JAA") claiming that the aircrafts flying the Taiwan-Japan route were very old. JAA renewed its fleet under pressure from this campaign.²⁹ Another hugely publicized Foundation case involved Honda Civics sold by the Nan Yang Industrial Co. In November 1987, Nan Yang was discovered selling flood-soaked Honda Civics at sticker prices. Upon threat of suit and increased publicity, Nan Yang agreed to replace all 370 flood-damaged cars and give owners cash payments equal to thirty percent of the sticker price.³⁰

The Foundation reports that the annual number of consumer complaints filed rose from 2,559 in 1981 to 4,576 in 1990.³¹ In the early 1980s, food complaints comprised the largest category of complaints. In the late 1980s, the top category changed to automobiles; in the early 1990s, the top category was housing purchases.³² Foundation leaders view the increase in complaints as an indication of an increase in awareness in consumer rights and also as an indication that manufacturers have not adequately responded to the consumer protection movement.³³

C. *The Development Of The Republic Of China Consumer Protection Law*

Although the Civil Code and the Fair Trade Law provided some legal channels through which consumers could seek protection, the Taiwan

manufacturer disputes. See Allen Pun, *Consumer Rights Movement Gathers Force*, FREE CHINA J., Oct. 29, 1993, at 7. See also Xiao Ji Hui, *Qing Sheng Hui Shou Guo Qu Shi Wu Sui Yue (As The Consumer Foundation Celebrates Its Birthdate, It Looks Back On The Past Fifteen Years)*, SHI JIE RI BAO (WORLD DAILY NEWSPAPER), Nov. 5, 1995, at 7.

²⁷ Yu Shiao-min, *No Complaint Too Small; Group Protects Buying Public*, FREE CHINA J., Nov. 8, 1990, at 3.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Pun, *supra* note 26.

³¹ See Yu, *supra* note 27.

³² See Pun, *supra* note 26.

³³ See Yu, *supra* note 27.

government still received domestic and international economic and political pressures to establish a specific consumer protection law.

1. *Economic And Political Forces Within Taiwan*

In the early 1980s, the Foundation proposed the drafting of a consumer protection law, but this idea received very little attention by the government.³⁴ However, by the mid 1980s, the movement for legislation similar to the CPL began to gather momentum. This phenomenon is attributed to Taiwan's rapid political and social development in the 1980s.³⁵

During this time, the governing Kuo Ming Tang ("KMT") party began to relax its tight control over Taiwan's political and social movements.³⁶ This relaxation culminated in the lifting of martial law on July 15, 1987.³⁷ At the same time, many previously "discouraged" political and social issues, including consumer protection, were being discussed and gaining attention.³⁸ The consumer protection movement became one of the most popular social trends during this time, and despite some initial resistance, the Executive Yuan³⁹ drafted consumer protection legislation and introduced a bill in May 1988. However, the bill proposed by the Executive Yuan was seen as too moderate by consumer advocates such as the Foundation. It was dismissed in favor of a stricter and more aggressive bill introduced directly into the Legislative Yuan in March 1989 by the Foundation⁴⁰ and sponsored by Legislator Jaw Shao-Kang.⁴¹

³⁴ See Lawrence S. Liu, *Taiwan's New Consumer Protection Law*, INT'L BUS. LAW., Nov. 1994, at 466.

³⁵ See Crabill, *supra* note 22, at 454.

³⁶ See Crabill, *supra* note 22, at 454.

³⁷ Yeh Jiunn-Rong, *Changing Forces Of Constitutional And Regulatory Reform In Taiwan*, 4 J. OF CHINESE L. 83, 88 (1990).

³⁸ The relaxation of control over the printed media by the Taiwan government has led to an increase in the number of newspapers, as well as the liberalization of reportable topics. See Yeh, *supra* note 37, at 89 n.26.

³⁹ The government structure of Taiwan consists of an elected National Assembly as the supreme government organ, a President who is head of state, and five branches of national government, each of which is called a "Yuan." The five branches are the Executive Yuan, the Legislative Yuan, the Examination Yuan, the Control Yuan, and the Judicial Yuan. See Crabill, *supra* note 22, at 450 n.10. The Executive Yuan is the Cabinet. See generally David G. Pierce, *The Legal And Administrative Framework For Foreign Investment In Taiwan*, 7 UCLA PAC. BASIN L.J. 1, 2 (1990) (describing Taiwan's government structure).

⁴⁰ The Foundation bill became the actual forerunner to the current CPL. See Lawrence S. Liu, *The Empire Strikes Back . . . On Taiwan's New Consumer Protection Law*, TOPICS, (AmCham, Taipei, Taiwan), Apr. 1994, at 23.

2. *Economic And Political Forces Beyond Taiwan's Borders*

The astounding economic growth in Taiwan over the last few decades has not been ignored by the international community. With less than 0.4% of the world's population and less than 0.03% of the total land,⁴² Taiwan has become the world's thirteenth-largest trading country.⁴³ The New Taiwan Dollar (NT) appreciated from the rate of NT \$40:US \$1 in the mid-1980s to NT \$25:US \$1 in 1992.⁴⁴ Yet, because mainland China regards Taiwan as a renegade province and has engaged a diplomatic boycott, the government of Taiwan has had few opportunities to participate in international organizations,⁴⁵ such as the United Nations.⁴⁶ Because of its economic strength and its desire to join a prestigious international association, the Taiwan government looked to acceptance into the General Agreement on Tariffs And Trade ("GATT") at the end of the 1980s.⁴⁷ Taiwan applied to enter GATT in January 1990.⁴⁸

In spite of its solid economic strength, Taiwan's generally unregulated consumer market was seen as disorderly and unstable.⁴⁹ This sentiment was reinforced by the United States Trade Representative's ("USTR") placement of Taiwan on the "Special 301 Priority Watch List" in 1989 for its failure to protect U.S. intellectual property rights.⁵⁰ The Taiwan

⁴¹ Legislator Jaw Shao-Kang is one of the original founders of the Consumer Foundation and is now the leader of the Chinese New Party. This party spun-off from the KMT after a fallout with the KMT mainstream. See Liu, *supra* note 4, at 8.

⁴² Shen, *supra* note 4, at 8.

⁴³ Julian Baum, *Final Hurdle*, FAR E. ECON. REV., Apr. 6, 1995, at 72.

⁴⁴ Winkler et al., *supra* note 1, at 103.

⁴⁵ See Julian Baum, *What Price Glory?*, FAR E. ECON. REV., Apr. 6, 1995, at 66.

⁴⁶ See Susan Yu, *ROC On Hunt For UN Seat*, FREE CHINA J., July 30, 1993, at 7.

⁴⁷ The Uruguay round of the Trade Liberalisation Talks of 1994 founded the World Trade Organization (WTO), which is to supersede the General Agreement on Tariffs and Trade (GATT). To allow GATT members to prepare for the automatic entry into WTO, GATT co-existed with WTO until the end of 1995. See Victor Ego Ducrot, *Trade: Birthday of New World Trade Forum To Be Decided In December*, INTER PRESS SERVICE, Oct. 25, 1994. See also *Delays Dash Taiwan's Hopes of Becoming WTO Founding Member*, AGENCE FRANCE-PRESSE, Nov. 2, 1995.

⁴⁸ Taiwan was one of the 23 founding members of GATT in 1948. But Taiwan withdrew from GATT in 1950 after losing control of the mainland and retreating to Taiwan. Taiwan reapplied to GATT in January 1990 as "Customs Territory of Taiwan, Penghu, Kinmen, and Matsu." Taiwan agreed to change this title to "Chinese-Taipei" in 1992 because the previous title seemed too long and it wanted to avoid creating any dispute over political sovereignty. See Baum, *supra* note 43. See also *Taiwan Will Accept Title 'Chinese-Taipei' To Join GATT: Report*, AGENCE FRANCE-PRESSE, Sept. 27, 1992.

⁴⁹ See Crabill, *supra* note 22, at 454 n.49.

⁵⁰ Paul C.B. Liu, Ph.D., *Computer Software And Intellectual Property Law In The Pacific Rim Countries*, Mar. 1991. Prepared for the Office of Technology Assessment, the Congress of the United States.

government was prepared to make a number of necessary changes before its bid to enter GATT/ WTO would be accepted.

Since the time of its GATT bid in 1990, Taiwan has lifted its decades-old ban on the establishment of new banks by foreigners,⁵¹ opened most government procurements to international bidding, eased restrictions on employment of foreign professionals,⁵² engaged in bilateral negotiations with its trading partners as required by GATT,⁵³ and cut its average real tariff rate.⁵⁴ The government also reluctantly agreed to gradually allow more foreign imports in the tobacco and spirits markets, as well as in some of the agricultural markets.⁵⁵ The enactments of the Fair Trade Law and the Consumer Protection Law, intended to increase financial liberalization, are also aimed at entry into the WTO. Although establishment of the CPL might seem contrary to the reduction of trade restrictions, it is commonly believed that a consumer protection law is a necessary component of a sophisticated consumer market.⁵⁶ Many countries and international organizations have recognized the importance of consumer protection and have followed an international trend of establishing consumer protection laws.

The Special 301 provision of the Omnibus Trade and Competitiveness Act of 1988 gives the USTR the authority to target trading partners of the United States for their unsatisfactory protection of U.S. intellectual property rights. The Special 301 provision is designed as a threat of unilateral retaliation by the United States toward its trade partners. See Allen Pun, *USTR Watch List Decision On Taiwan "Disappointing,"* FREE CHINA J., May 5, 1995, at 3. See also Y. Kurt Chang, *Special 301 and Taiwan: A Case Study of Protecting United States Intellectual Property In Foreign Countries*, 15 NW. J. INT'L L. & BUS. 206 (1994).

⁵¹ In *GATT Entry Bid, Taiwan Lets Foreigners Start Banks*, ORLANDO SENTINEL, June 4, 1994, at B10.

⁵² *Focus On Taiwan: Financial Reforms Planned To Help Entry To WTO, Official Says*, ASIAN WALL ST. J., Mar. 16, 1995, at 6.

⁵³ See Baum, *supra* note 45.

⁵⁴ Deborah Shen, *Taiwan To Cut Average Tariff Before GATT Entry*, FREE CHINA J., Dec. 24, 1993, at 3.

⁵⁵ See Baum, *supra* note 45.

Although Taiwan argues that subsidies for rice farmers and rice self-sufficiency are matters of national security, the government has already agreed to remove price supports for corn, soy beans, and sorghum. Taiwan has expressed its willingness to conform to the Uruguay Round calling for an overall 20% reduction in agricultural supports by 2001.

Taiwan's tobacco and spirits market is a sensitive issue, as the Taiwan Tobacco and Wine Monopoly Bureau is the sole legal producer and importer of tobacco and alcohol products. In response to foreign pressure, the Ministry of Finance has agreed to open this market to foreign competition. Within three years of joining the WTO, foreign brewers and distillers will be allowed to own local production plants.

⁵⁶ See James P. Nehf, *Empowering The Russian Consumer In A Market Economy*, 14 MICH. J. INT'L L. 739, 746 (1993).

In the emerging consumer markets of the late twentieth century, governments in the United States, Canada, and most of the European Union have come to view market-regulating mechanisms, standing alone, as inadequate safeguards of consumer interests.⁵⁷ To compensate for this market failure, these governments have produced various forms of legislation to ensure the protection of consumer interests. For example, in the United States, the Restatement (Second) of Torts section 402A Special Liability of Seller of Product for Physical Harm to User or Consumer, was published by the American Law Institute in 1965.⁵⁸ In the 1970s and 1980s, domestic consumer protection legislation was passed in Germany, France, and the United Kingdom.⁵⁹ Other countries and regions have followed this trend.

A number of consumer protection statutes were reformed or passed in South America in the late 1980s and early 1990s.⁶⁰ The Mexican Federal Consumer Protection Act of 1975 influenced many of these statutes.⁶¹ The Brazilian Consumer Protection Code of 1990⁶² has influenced more recently proposed and enacted consumer protection laws in South America. Governments of the former Soviet states believe consumer protection legislation is very important as their countries develop market-based economies. In 1992, the Russian Parliament enacted a consumer protection law, which focuses primarily on remedies for the sale of defective goods and services.⁶³ Similar legislative projects in other former Soviet states are either pending or have recently been enacted.⁶⁴ Continuing this trend towards greater consumer protection during the late 1980s and early 1990s, the European Community implemented many of the points emphasized in the European Council's 1975 "Preliminary Programme of the European Economic Community for a Consumer Protection and Information

⁵⁷ *Id.*

⁵⁸ See JAMES A. HENDERSON, JR., ET AL., *THE TORTS PROCESS* 575-577 (4th ed. 1994).

⁵⁹ Jerome Huet, *Recent Developments In The Field Of Consumer Protection In The European Community*, 16 HASTINGS INT'L & COMP. L. REV. 583 (1993).

⁶⁰ Examples of consumer protection legislation passed during this time period in South American countries include: The Brazil Consumer Protection Code of 1990, the Ecuador Consumer Defense Law of 1990, and the Venezuela Law of Consumer Protection of 1992. Robert G. Vaughn, *Consumer Protection in South America*, 17 HASTINGS INT'L & COMP. L. REV. 275, 277 n.6 (1994).

⁶¹ Mexican Federal Consumer Protection Act of 1975.

⁶² Brazil Consumer Protection Code of 1990.

⁶³ *Law On Consumer Rights*, Feb. 7, 1992, ROSS. GAZETA, Apr. 7, 1992, at 4. See Nehf, *supra* note 56, at n.2.

⁶⁴ See Nehf, *supra* note 56, at 741.

Policy.”⁶⁵ Additionally, the General Assembly of the United Nations adopted the “United Nations Guidelines for Consumer Protection” in 1985.⁶⁶

Given this flurry of consumer protection legislation in the international community, Taiwan could not overlook the importance of enacting similar legislation. Taiwan’s establishment of the CPL was necessary to demonstrate the strength and sophistication of its consumer market for its bid for admission into the World Trade Organization.

III. A BRIEF OVERVIEW OF TAIWAN’S CONSUMER PROTECTION LAW⁶⁷

The scope of the CPL is very broad. It covers not only the American concept of “products liability,”⁶⁸ but it also attempts to regulate such things as the use of standard contracts,⁶⁹ the protocol of special purchases and sales⁷⁰ (e.g., mail order), the disbursement of consumer information,⁷¹ and the role and rights of consumer groups.⁷² Many of these provisions contain undefined and ambiguous terms which make it difficult for both consumers and business operators to thoroughly assess the scope of the regulations and their effects. The main topics of the CPL are briefly discussed below in three categories: General Provisions, Consumer Protection Groups, and Products Liability.

⁶⁵ The Maastricht Treaty of 1992 introduced into the European Community founding treaty, the Treaty of Rome, a specific title dealing with the subject of consumer protection. The Maastricht Treaty provides that the European Community will attempt to attain a high level of consumer protection through the future adoption of specific protective measures. This title in the Maastricht Treaty led to the implementation of a number of directives intended to protect consumer interests. See Huet, *supra* note 59, at 585. See also *Treaty on European Union*, Feb. 7, 1992, 31 I.L.M. 247, art. 129a.

⁶⁶ Vaughn, *supra* note 60, at 283.

⁶⁷ This section presents a general overview of the main topics addressed by the CPL outside of the product liability segment; it is meant to be descriptive and not interpretive, as its purpose is to introduce and familiarize foreign readers with the CPL. Included in this discussion are the additional clarifications to the CPL given by the November 2, 1994, enactment of the Consumer Protection Law Enforcement Rules.

⁶⁸ CPL, Ch. 2, art. 7-9.

⁶⁹ CPL, Ch. 2, art. 11-17.

⁷⁰ CPL, Ch. 2, art. 18-21.

⁷¹ CPL, Ch. 2, art. 22-26.

⁷² CPL, Ch. 3, art. 27-32.

A. *General Provisions*

The stated purpose of the CPL is to protect and improve the quality of life for consumers in Taiwan.⁷³ The government has reserved the right to periodically review, coordinate, and improve certain aspects of the CPL and its enforcement.⁷⁴ Articles 4, 5, and 6 encourage safety, fairness, and competence in business operators, consumers, and the authorities.

1. *Standard Contracts*

A "standard contract" is not limited to written contracts but may include expressions through postings, signs, or other means of publication.⁷⁵ Articles 11 through 16 stress equality and reciprocity between business operators and consumers. Standard contract terms which violate the principles of good faith are "unconscionable."⁷⁶ Terms which are hard to

⁷³ Article 1 of the CPL states:

This law is enacted for purposes of protecting the interests of consumers, facilitating the safety of the consumer life of the nationals, and improving the quality of the consumer life of the nationals.

The protection of consumers shall follow the provisions of this law. Where this law does not provide, other laws shall be applicable. CPL, Ch. 1, art. 1.

⁷⁴ CPL, Ch. 1, art. 3.

⁷⁵ Enforcement Rules, Ch. 2, art. 10.

⁷⁶ The CPL defines "unconscionable terms" as those that include any one of the following circumstances:

- (1) where the terms violate the principle of the equality and reciprocity;
- (2) where the terms are obviously contradictory to the legislative intent of the discretionary provisions sought to be excluded by such terms; or
- (3) where the primary rights or obligations of the contract are restricted by such terms and as a result, the purpose of the contract cannot be achieved. CPL, Ch. 2, art. 12.

The Enforcement Rules attempts to define which terms and conditions are deemed to violate the principle of equality and reciprocity:

- (1) If the considerations between the involved parties are obviously unequal;
- (2) Where the consumer shall bear danger which is not within his control;
- (3) When consumers shall bear obviously excessive compensatory liabilities for failing to perform their obligations;
- (4) Other matters obviously unfavorable to consumers.

read (i.e., very small print) shall not constitute part of the contract.⁷⁷ Any general terms and conditions⁷⁸ which cannot be foreseen by consumers under normal circumstances are void.⁷⁹

This section of the CPL contains ambiguous terminology which is supposed to serve as the criteria for an acceptable "standard contract." Terms and provisions, such as "principle of good faith,"⁸⁰ "general terms unforeseeable to consumers,"⁸¹ and "matters obviously unfavorable to consumers"⁸² are open to interpretation and will be interpreted in favor of consumers,⁸³ according to the CPL. Yet when this section is read as a whole, the intent is clear. The drafters of the CPL wanted to prevent consumers from being misled and deceived by unclear, difficult, and surprising terms and conditions in generic, standard-form contracts.

2. *Extraordinary Purchases And Sales*

Mail order purchases and visitation (door-to-door) sales are regulated by Articles 18 through 21. Consumers have the right to terminate such purchases within seven days of receiving the goods, either by written notice or directly returning the goods.⁸⁴ Consumers are not responsible for safely keeping uninvited, delivered goods.⁸⁵ If the consumers do not express acceptance of these products within a reasonable period of time and there is no attempt to repossess them, the goods are deemed abandoned, and the consumer can keep the products without charge.⁸⁶ It is unclear whether this section applies to purchases made from advertisements on the radio or television, since this section of the CPL only refers to mail order purchases and visitation sales.

Enforcement Rules, Ch. 2, art. 15.

⁷⁷ Enforcement Rules, Ch. 2, art. 13.

⁷⁸ "General terms and conditions" are contract terms unilaterally prepared by business operators for entering into contracts with nonspecific, multiple parties. Enforcement Rules, Ch. 2, art. 11.

⁷⁹ CPL, Ch. 2, art. 14.

⁸⁰ CPL, Ch. 2, art. 12.

⁸¹ CPL, Ch. 2, art. 14.

⁸² Enforcement Rules, Ch 2, art. 13.

⁸³ CPL, Ch. 2, art. 11.

⁸⁴ CPL, Ch. 2, art. 19.

⁸⁵ CPL, Ch. 2, art. 20.

⁸⁶ *Id.*

Contracts that include installment payments⁸⁷ must be in writing and must clearly articulate the down-payments, the difference between the cash price and the total of the installment payments, and the interest rate.⁸⁸ Installment payment contracts must also articulate the interest rate calculation method used to obtain the payment schedule.⁸⁹ Should the contract fail to state the interest rate, a default rate of five percent per annum will be used instead.⁹⁰ Again, the intent of the CPL drafters in this section was to prevent consumers from being misled by difficult terms, provisions, and technical installment payment calculations.

3. *Regulation Governing Consumer Information*

Articles 22 and 23 very generally address a broad range of video, audio, and print advertisements. Business operators are required to accurately describe their products or services in their advertisements.⁹¹ The CPL does not discuss which organization will be responsible for determining the accuracy of such advertisements, but it is likely that the consumer protection groups will take on this responsibility as part of their monitoring activities.⁹²

Companies involved in the advertising industry now have a greater role in the protection of consumer interests. Those involved in the production of advertisements who know or should have known that the contents are false will be held jointly and severally liable for damages.⁹³ The CPL does not state specifically what an advertisement producer must do to prove that it does not "know" or "should [not] have known"⁹⁴ that the contents of its clients' advertisements are false. Thus, it is unclear what level of scrutiny must be performed by an advertisement producer on its clients' products and services.

In addition, all imported goods or services must bear labels written in Chinese and instructions equivalent in content to the labels and instructions

⁸⁷ The installment payments shall mean installment payments including interest. Enforcement Rules, Ch. 2, art. 23.

⁸⁸ CPL, Ch. 2, art. 21.

⁸⁹ Enforcement Rules, Ch. 2, art. 23.

⁹⁰ CPL, Ch. 2, art. 21.

⁹¹ CPL, Ch. 2, art. 22.

⁹² See discussion *infra* Part III.B.

⁹³ CPL, Ch. 2, art. 23.

⁹⁴ *Id.*

found in the countries of origin.⁹⁵ Article 25 provides standards that business operators must follow should they choose to provide warranties concerning the quality of goods or services.⁹⁶

4. *Administrative Supervision*

The Executive Yuan has established the Consumer Protection Commission ("CPC") to study, propose, and review issues regarding consumer protection.⁹⁷ The CPC will also supervise the enforcement divisions of local governments, but it is not an enforcement agency itself.⁹⁸ Currently, the CPC consists of seventeen members with the Vice Premier of the Executive Yuan serving as chairperson. Eight of the members are other high-ranking government officials, and eight members are from the private sector.⁹⁹

Most of the CPL's enforcement power lies with the municipal or county governments. These local governments may conduct investigations of business operators whom they believe to be providing goods or services that might endanger the lives, bodies, health, or properties of consumers.¹⁰⁰ They may also petition the prosecutor to seize objects (subject to the Code of Criminal Procedure) to be used as test samples and evidence.¹⁰¹ Once an

⁹⁵ CPL, Ch. 2, art. 24.

⁹⁶ Written warranties shall provide the following information:

- (1) the name, type and quantity of goods or services and, where there are manufacture number or batch numbers, such manufacture numbers of batch numbers;
- (2) contents of such warranties;
- (3) the period of the warranties and the method for calculating commencement of such warranty period;
- (4) the name and address of the manufacturer;
- (5) if sold by a distributor, the name and address of the distributor; and
- (6) the date of the transaction.

CPL, Ch. 2, art. 25.

⁹⁷ CPL, Ch. 4, art. 40.

⁹⁸ CPL, Ch. 4, art. 41.

⁹⁹ The Executive Yuan announced the members of the CPC on June 23, 1994. Peter Fei Pan, *Consumer Protection Law Developments*, LEE AND LI BULLETIN (Taipei, Taiwan), July 1994, at 1.

¹⁰⁰ CPL, Ch. 4, art. 33.

¹⁰¹ CPL, Ch. 4, art. 34.

investigation is complete, business operators may be ordered to take necessary measures to protect consumers (i.e., cease distribution).¹⁰²

The CPL is extremely vague regarding enforcement. Questions exist as to who or what will trigger a government investigation and whether local governments will have the proper expertise to test products adequately.¹⁰³ Even the Foundation agrees that the proper provisions for enforcement are lacking and that it will take time to better develop the scope and responsibilities of enforcement.¹⁰⁴

5. *The Handling Of Consumer Disputes*

Consumers may lodge complaints directly with the business operators, consumer protection groups, or the local government's consumer service center.¹⁰⁵ Business operators are given fifteen days to "properly handle" consumer complaints.¹⁰⁶ If a complaint is not properly addressed, a consumer may complain to a consumer protection official of the local government.¹⁰⁷ If neither of these two complaints is properly addressed, the consumer may petition for mediation by a Consumer Dispute Mediation Commission to be established by each local government.¹⁰⁸ The validity of the mediation results will be subject to Articles 22 through 26 of the Statute for Mediation at Village, Township and City Levels.¹⁰⁹

What is sufficient to "properly handle"¹¹⁰ or "properly address"¹¹¹ a complaint is unclear from the language of the CPL. Must a business completely settle a complaint or may it merely acknowledge the receipt of a complaint within fifteen days? This question is not clearly answered in the CPL or Enforcement Rules.

¹⁰² CPL, Ch. 4, art. 36.

¹⁰³ Winzenburg, *supra* note 10, at 27.

¹⁰⁴ *Id.*

¹⁰⁵ CPL, Ch. 5, art. 43.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ CPL, Ch. 5, art. 44.

¹⁰⁹ CPL, Ch. 5, art. 46.

¹¹⁰ CPL, Ch. 5, art. 43.

¹¹¹ CPL, Ch. 5, art. 44.

6. Penalties

Business operators must immediately recall goods or discontinue services that are found to endanger the safety and health of consumers unless a treatment is adopted that is sufficient to remove such danger.¹¹² An example of such a treatment would be to replace a part found to be defective in a specific make or model of automobile.¹¹³ Goods or services must also be recalled or discontinued if they fail to have conspicuous labels with methods for emergency handling in situations where the goods or services might pose a threat to the safety and health of consumers.¹¹⁴

Enforcement agencies may serve administrative fines on business operators who fail to comply with the orders of competent authorities.¹¹⁵ Fines may be no less than NT \$20,000 and no more than NT \$1,500,000,¹¹⁶ depending on the violation.¹¹⁷ In the case of a business operator violating a material provision, the competent authority, with the approval of the Consumer Protection Commission of the Executive Yuan, may call for the suspension of all operations.¹¹⁸ Should the violation of a CPL provision also constitute a violation of another law, the punishment of the most severe law will supersede.¹¹⁹

Punitive damages of up to three times the amount of actual damages may be sought for injuries caused by willful misconduct.¹²⁰ If it is found that the business operator engaged in negligent misconduct, punitive damages of up to one time the amount of actual damages may be received.¹²¹

¹¹² CPL, Ch. 2, art. 10.

¹¹³ See generally Pun, *supra* note 26.

¹¹⁴ CPL, Ch. 2, art. 10.

¹¹⁵ CPL, Ch. 6, art. 56-59.

¹¹⁶ Using the January 10, 1996, exchange rate of NT \$27.397:US \$1, the range of fines that may be ordered range from US \$730 to US \$54,751. *Currency Trading: Exchange Rates*, WALL ST. J., Jan. 11, 1996, at C15.

¹¹⁷ CPL, Ch. 6, art. 56-59.

¹¹⁸ CPL, Ch. 6, art. 60.

¹¹⁹ CPL, Ch. 6, art. 61.

¹²⁰ CPL, Ch. 5, art. 51.

¹²¹ *Id.*

B. Consumer Protection Groups

Consumer protection groups ("CPG") must be accredited by the CPC of the Executive Yuan¹²² and must be formed with the purposes of protecting consumer interests and promoting consumer education.¹²³ Responsibilities of consumer protection groups include surveying, comparing, and testing the prices and quality of goods and services.¹²⁴ They are also responsible for monitoring the labeling of goods and services and announcing their findings.¹²⁵ Other tasks include accepting consumer complaints and mediating disputes.¹²⁶ CPGs will also inform and advise the government and consumers on consumer protection issues.¹²⁷

Consumer protection groups have been given a tremendous amount of responsibility which has put them in a very influential position. They will now serve as "watch-dogs" for the interests of consumers. A great concern by business operators, however, is who is watching the "watch-dog."¹²⁸ Now that the CPL has codified the right of CPGs to monitor, test, compare, and report their findings on goods and services, as well as advise the government, it is important that these groups use the proper scientific methods for testing, report unbiased findings, and represent the genuine concerns and complaints of consumers. Other than stating that consumer protection groups must be accredited by the CPC, the CPL does not address whether the CPC will monitor the activities of such groups. Likewise, the CPL does not describe the accreditation process.

The unsupervised power that the CPL places with consumer protection groups is not a mistake or an oversight by the drafters of the law. It is a result of the influential strength of the Consumer Protection Foundation. The Legislative Yuan adopted the Foundation's bill as the basis for the CPL. The influence of the Foundation extends not only to the government but to consumers as well. The United Daily News' Public Opinions Survey Center found that nearly fifty percent of the people surveyed said that they would believe the Foundation over other sources, should the information offered by the Foundation and other sources

¹²² Enforcement Rules, Ch. 3, art. 28.

¹²³ CPL, Ch. 3, art. 27.

¹²⁴ CPL, Ch. 3, art. 28.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ See Winzenburg, *supra* note 10, at 27.

conflict.¹²⁹ There is no indication that the influential power of the Foundation is diminishing.

Furthermore, the CPL directs the government to financially support consumer protection groups. Consumer protection groups may request government assistance to engage in the researching of goods and services.¹³⁰ The government is required to maintain an annual budget devoted to providing financial aid to CPGs.¹³¹ It may not refuse to give this assistance without proper reason.¹³²

This is again an apparent example of the influence of the Foundation in the drafting of the CPL. This kind of government support has led some members of the Taiwan business community to question whether the government's intention is for CPGs, like the Foundation, to act in a quasi-government role.¹³³

1. *Consumer Litigation Through Consumer Protection Groups*

Consumer protection groups have been given much leverage regarding the right to bring lawsuits. A qualified CPG may bring class action suits on behalf of twenty or more consumers in its own name.¹³⁴ A CPG that has been established for more than three years with an excellent rating by the CPC may be considered "qualified" if it has membership exceeding 500 members or total registered assets of NT \$10 million or more.¹³⁵ In essence, only approved, large, and wealthy consumer protection groups, like the Foundation, can have this right. By limiting the number of CPGs that may bring class action lawsuits, however, the onslaught of a large volume of litigation is greatly reduced.

Damages received from class action suits must be distributed to the consumers represented by the group after necessary expenses are deducted.¹³⁶ A cap of NT \$600,000¹³⁷ is placed on court fees when a

¹²⁹ See Yu, *supra* note 27.

¹³⁰ CPL, Ch. 3, art. 31.

¹³¹ Enforcement Rules, Ch. 3, art. 31.

¹³² The Enforcement Rules do not give any examples of what might be "proper reasons." See Enforcement Rules, Ch. 3, art. 30.

¹³³ Winzenburg, *supra* note 10, at 27.

¹³⁴ CPL, Ch. 5, art. 50.

¹³⁵ The currency exchange rate on Wednesday, January 10, 1996, for the Taiwan NT and US Dollar is NT \$27.397:US \$1. *Currency Trading: Exchange Rates*, *supra* note 117.

Thus, the NT \$10 million of total registered assets needed for a qualified consumer protection group would equal US \$365,003. CPL, Ch. 5, art. 49.

¹³⁶ CPL, Ch. 5, art. 50.

consumer protection group brings a class action suit.¹³⁸ By waiving court fees above NT \$600,000,¹³⁹ the CPL again shows its favoritism towards these CPGs.

It is also interesting to note that the Handling of Consumer Disputes¹⁴⁰ section of the CPL does not mention the ability or possibility of a single consumer or a group of consumers to bring an independent lawsuit. The fact that the CPL only addresses legal action by consumer protection groups is yet another indication of how the CPL focuses on these groups.

C. PRODUCTS LIABILITY

1. *Strict Liability*

The products liability segment of the CPL can be found in Subchapter One, Safeguard of Health and Safety. The first two paragraphs of Article 7 set the general premise of this section:

Business operators engaging in the design, production or manufacture of goods and the provisions of services shall ensure that the goods and services provided by them shall be free from any danger to safety or sanitation.

Where goods or services may endanger the lives, bodies, health or properties of consumers, a warning and the methods for emergency handling of such danger shall be labeled conspicuously.¹⁴¹

The CPL Enforcement Rules explain the phrase "danger to safety or sanitation" as encompassing those goods and services which do not possess the standard of safety which may be "reasonably expected." This "reasonably expected" standard is used in U.S. products liability law as a

¹³⁷ Using the exchange rate of NT \$27.397:US \$1, the NT \$600,000 cap on court fees for consumer protection groups equals US \$21,900. *Currency Trading: Exchange Rates*, *supra* note 117.

¹³⁸ CPL, Ch. 5, art. 52.

¹³⁹ CPL, Ch. 5, art. 52.

¹⁴⁰ CPL, Ch. 5, art. 43-art. 55.

¹⁴¹ The term "goods" is defined as "chattel or real property which are objects of transactions, including finished products, semi-finished products, raw materials and components or parts, provided that agricultural, forestry, fishery, and pastoral products which have not been processed are not included." Enforcement Rules, Ch. 1, art. 4.

definition of defective products and as a basis for the theory of strict liability.

The "reasonably expected" standard also grounds a new theory of strict liability for defective goods and services in Taiwan.¹⁴² Although strict liability is a new concept in Taiwan's legal regime, proponents of consumer protection see it as a necessary change.¹⁴³ Hunson Chiang, Secretary-General of the Foundation, described the problems faced when companies were punished only if found guilty of negligence or malice: "It [was] very difficult to prove that a manufacturer actually cause[d] harm. Therefore, a lot of victims could not secure compensation, even if the damages were real."¹⁴⁴

Because Taiwan is a civil law legal system,¹⁴⁵ judges determine whether goods and services are reasonably safe. Judges are the fact-finders in Taiwan; there are no juries. There are valid concerns that judges might abuse their discretion through varied concepts of what may be "reasonably expected," but these concerns might be mitigated through the judicial review process by implementing a series of appeals.¹⁴⁶

2. *Defenses*

Although the "danger to safety or sanitation" phrase in Article 7 has been interpreted to impose strict liability on business operators, the same

¹⁴² Peter Fei Pan, *Consumer Protection Law Follow-Up*, LEE AND LI BULLETIN (Taipei, Taiwan), March 1994, at 1.

¹⁴³ See Venny Chan, *New Law Stresses Quality And Safety Of Products*, FREE CHINA J., Jan. 7, 1994, at 4.

¹⁴⁴ *Id.*

¹⁴⁵ See MA, *supra* note 12.

¹⁴⁶ Taiwan uses a three-tiered court system (Supreme, High, and District Courts) in civil and criminal litigation. In District Court, cases are tried by a single judge or a three-judge panel, depending on the weight of the case; High Court decisions are rendered by a three-judge panel. Supreme Court Judgments are made by a five-judge panel.

District Court holdings may be appealed to the High Court. A second appeal to the Supreme Court is available for controversies involving claims over NT \$300,000 or possible sentences of more than three years in prison. The courts of first and second instance each try the case on the facts as well as on the law. However, the Supreme Court limits its review to the law and hears oral argument only in exceptional cases. Even after final judgment, a case may be reopened and subject to retrial or extraordinary appeal for any of several causes, prescribed by law, which include error on the facts or on the law.

Although Taiwan is a civil law jurisdiction, and as such does not adopt the general concept of binding precedent, judicial authorities are widely consulted, and any Supreme Court Judgment may be selected to be a "Precedent" and, thus, be binding on subsequent Judgments. Supreme Court Judgments contrary to a Precedent are cause for retrial. See Liane Newton & Wang Jong, *A Research Guide To Taiwan (ROC) Law*, 3 J. OF CHINESE L. 257, 266-273 (1989).

Article contains a provision that allows a business operator to absolve itself from paying all or any damages to an injured consumer or third party:

Business operators . . . causing injury to consumers or third parties shall be jointly and severally liable, provided that if business operators can prove that they are not in negligence, the court may reduce their liability for compensation.¹⁴⁷

Thus, a business operator strictly liable for any injury to a consumer or third party caused by its defective product or service might not have to pay full or any damages if it can prove that it was not negligent. This is a gaping loophole in the CPL for business operators. A business operator that does a sufficient job in preventing injuries caused by its products or services and complying with the CPL may end up paying little to nothing for any injuries that actually do occur. Such a defense actually negates the effect of true strict liability and does much to take the effectiveness out of the CPL. The presence of this defense is perhaps an indication that Taiwan's lawmakers were not completely comfortable adopting a foreign no-fault concept.¹⁴⁸

The CPL contains other defenses that may absolve business operators from liability. If the products or services, at the time they were released into the market or when the services were performed, fulfill the standards of the state-of-the-art or professional standards, they are not considered a "danger to safety or sanitation."¹⁴⁹ Likewise, products and services cannot be considered dangerous solely because better products and services are subsequently produced.¹⁵⁰

3. *Parties With Liability*

The CPL has divided business operators into functional groups with varied levels of liability. Business operators engaging in the design, production, or manufacturing of products have full liability in cases of injury to consumers or third parties.¹⁵¹ Included in this group are those business operators that engage in repackaging goods, packaging bulk goods

¹⁴⁷ CPL, Ch 2, art. 7.

¹⁴⁸ See generally Liu, *supra* note 40, at 24.

¹⁴⁹ Enforcement Rules, Ch. 2, art. 5.

¹⁵⁰ *Id.*

¹⁵¹ CPL, Ch. 2, art. 7.

into small units, or altering the nature of services.¹⁵² Another group of business operators who are jointly and severally liable for injuries to consumers are those that import goods and services into Taiwan.¹⁵³ This Article may be interpreted as treating the importer as the manufacturer.¹⁵⁴ Thus, foreign companies cannot relieve themselves of responsibility by attempting to define themselves as mere importers of goods or services into Taiwan.

Business operators engaging in the distribution and sale of products and services are to be held jointly and severally liable for compensation in cases of damages paid to consumers for injuries caused by those goods and services. Yet distributors and retailers have a lower standard of liability than manufacturers. If this group of business operators can show that they exercised due care to prevent such injury, they will be absolved from liability.¹⁵⁵ Additionally, these distributors and sales agents will be absolved from liability if they can show that injuries would have occurred regardless of whether or not they had exercised due care.¹⁵⁶

4. *Parties Who May Invoke Liability*

The term "consumers" is not limited to parties in a direct or contractual relationship with business operators. The Enforcement Rules specifically list those parties that should be encompassed in the term "consumer":

[H]is family, employees, co-residents, guests, and other persons with permission of the party to the contract, or persons with the permission of the permittee to use the goods or accept the services.¹⁵⁷

A business operator's liability also extends to those third parties¹⁵⁸ a business operator might reasonably foresee being injured by the danger

¹⁵² CPL, Ch. 2, art. 8.

The term "alteration" is defined as "the change, decrease or increase of the contents or package of the original design, production or manufacture of the goods," Enforcement Rules, Ch. 2, art. 9.

¹⁵³ CPL, Ch. 2, art. 9.

¹⁵⁴ Liu, *supra* note 40, at 24.

¹⁵⁵ CPL, Ch. 2, art. 8.

¹⁵⁶ *Id.*

¹⁵⁷ Enforcement Rules, Ch. 2, art. 7.

¹⁵⁸ CPL, Ch. 2, art. 7.

created by its goods or services.¹⁵⁹ This theory of privity within products liability, which has taken many painful years to develop in the American legal system, has been instantaneously adopted in the Taiwan Consumer Protection Law. What began as the initial English ruling of *Winterbottom v. Wright* in 1842¹⁶⁰ has grown through the common law process to be the current standard of products liability unrestricted by contractual relationships.¹⁶¹ Discussions about the scope of third party claimants considered to be within a reasonable "zone of danger" continue in American courtrooms and classrooms. Perhaps the strict liability defense provision which allows business operators to reduce the compensation of injured parties¹⁶² evidences Taiwanese lawmakers' desire to keep the benefits of the CPL in check and is an indication that the "zone of danger" will be severely limited.

Additionally, political agendas may stimulate theoretical debates over who is a "consumer" and which injured parties are "reasonably" foreseeable. Because consumer protection groups, such as the Foundation, are affiliated with certain political parties,¹⁶³ it is not unforeseeable that a group might take up controversy in the name of "consumerism" to gain the sympathy and support of the public. Since a consumer protection group is able to file a class action suit on behalf of twenty or more injured consumers in its own name,¹⁶⁴ opportunities exist for such theoretical debates, as well as opportunities for consumer protection groups to use the CPL to gain political support.

5. *The Burden Of Proof*

Injured consumers and third parties alike bear the burden of proving the danger of the products or services, the damages suffered, and a causal

¹⁵⁹ Enforcement Rules, Ch. 2, art. 7.

¹⁶⁰ *Winterbottom v. Wright*, 10 M. & W. 109 (Exch. 1842), is one of the most significant early products liability decisions. It held that for duty to exist there must be privity of contract between the manufacturers and suppliers of defective goods and the injured parties. The rule in the *Winterbottom* case came generally to be recognized in the United States by the second half of the nineteenth century. A number of exceptions to the privity requirement were judicially developed, and through a line of famous product liability cases, by 1965 courts in every United States jurisdiction recognized the rule of privity-free strict products liability. See HENDERSON, PEARSON, AND SICILIANO, *supra* note 58, at 562-577. See generally, *Greenman v. Yuba Power Products, Inc.*, 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1962).

¹⁶¹ See generally HENDERSON, PEARSON, AND SICILIANO, *supra* note 58, at 562-577.

¹⁶² See discussion *supra* Part III.C.2.

¹⁶³ See discussion *supra* n. 41.

¹⁶⁴ CPL, Ch. 5, art. 50.

relationship between the danger and the damages.¹⁶⁵ This difficult burden is yet another obstacle to recovery for injured parties. As more claims are filed under the CPL, consumers, third parties, and business operators will have a better understanding of what evidence is necessary to meet this burden.

Business operators bear the burden of proof when relying on the state-of-the-art or professional standards defenses.¹⁶⁶

IV. CONCLUSION

Until the last few decades, signs posted in shops often stated, “[c]hu men bu ren huo,” which translates into English as “the goods are not recognized once they are out the door.” This precluded any refunds or replacements, and certainly any claims of injury by goods sold in most shops.¹⁶⁷ The enactment of the Consumer Protection Law should be viewed as a great milestone towards the protection of consumer interests in Taiwan.¹⁶⁸ The CPL has empowered consumers by giving them a direct channel of recourse for injuries sustained from goods and services.

Yet consumers in Taiwan have not taken advantage of this route of recourse, as there have been no legal claims filed under the CPL.¹⁶⁹ Consumer protection groups, such as the Foundation, have failed to file a single class action lawsuit under the CPL.¹⁷⁰ These groups might be hesitant to take such action since industry leaders are currently attempting to persuade the Legislative Yuan to review the CPL’s ambiguous terminology, as well as the tremendous power the CPL gives to consumer protection groups.¹⁷¹ Thus, if consumer protection groups take legal action now, it might be in vain should the Legislative Yuan decide to amend some portions of the CPL. Another deterrent to litigation under the CPL may be the compensation defense provision available to business operators.¹⁷² If

¹⁶⁵ Enforcement Rules, Ch. 2, art. 6.

¹⁶⁶ *Id.*

¹⁶⁷ See Pun, *supra* note 26.

¹⁶⁸ See generally Chan, *supra* note 144.

¹⁶⁹ Interview with Peter Fei Pan, Attorney with Lee & Li, Attorneys-At-Law, Taipei, Taiwan, ROC (Jan. 19, 1996).

¹⁷⁰ Interview with Peter Fei Pan, Attorney with Lee & Li, Attorneys-At-Law, Taipei, Taiwan, ROC (Jan. 19, 1996).

¹⁷¹ *Id.*

¹⁷² See discussion *supra* Part III.C.2.

consumers do not believe they will be adequately compensated for their injuries, they will forego litigation as a means of recourse.

Although many agree that the intent of the CPL is fair,¹⁷³ the CPL's various problems, such as ambiguous terminology, favoritism towards consumer protection groups, and the compensation liability defense, must be addressed before the CPL becomes a truly effective piece of legislation that will protect consumers.

¹⁷³ See Winzenburg, *supra* note 11 at 27.

