

Law on Product Quality Control and Product Liability in China

By

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Foreword

I read through this book **“The Law on Product Quality Control and Product Liability in China”** with great enthusiasm and excitement. This is an excellent and comprehensive book on the subject.

Every person who practices Chinese law or does research on Chinese law knows how difficult it is to have a comprehensive understanding of the Chinese laws and regulations on any subject and especially on the subject of the product quality control and product liability. It is so for a number of reasons. First of all, as we all know, China does not have a codification system. The laws and regulations on a subject like product quality control and product liability are scattered in different acts, statues, regulations and rules enacted by the Chinese Government and its various agencies and departments. In addition, the cases decided by the Chinese courts are, generally speaking, not available to the public except under limited circumstances. Therefore, even for those who practices in this field, it is difficult to collect all the Chinese laws, regulations, rules, policies, notices and cases. Secondly, since the Chinese legal system on product quality control and product liability is still very young, it evolves and changes quickly. It takes a great effort to follow the changes in this legal system. Thirdly, because the Chinese legal system is still very young, we frequently come across a situation where no laws, regulations or rules exist on a subject. Under such circumstances, only a thorough understanding of the Chinese legal system and government system will help to guide to the right direction. The author of this book graduated from Peking University School of Law with LLB and LLM degrees and was a lecturer at Peking University School of Law before he came to the US to pursue his JSD degree. His rich knowledge and life experiences of the Chinese society, government and legal system is all shown in this book, which will help readers understand the relevant laws, regulations, rules and situations discussed in the book. With the above in our mind, we can be sure that this book will make good contribution to the legal education and legal practice on the Chinese legal system regarding product quality control and product liability.

This book is a very comprehensive book on this subject. It is broad in coverage and has the depth in research. For legal researchers and academic professionals, this book provides comprehensive references to the Chinese laws, regulations, rules and policies on the subject and also to the academic discussions and research papers on the subject. For legal

practitioners, this book can be viewed as a comprehensive introduction to and an excellent research result on the Chinese legal system on the product quality control and product liability. The comparison of the Chinese and US legal systems on this subject in the book will help US legal professionals understand the Chinese system and help Chinese legal professionals understand the US system. In this aspect, this book will work as a bridge between the Chinese and US legal professionals and will help US companies in doing business or making investment in China. Also, I firmly believe that this book will help China in perfecting its legal system on the area of product quality control and product liability.

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Esquire

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Beijing

May, 2006

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INTRODUCTION

Prior to the start of the economic reform in 1979, China had a planned economy.¹ Under the old system, an enterprise was a part or an extension of the government establishment and had no economic interest of its own.² Thus they had no incentive to intentionally make fake or inferior products, nor any incentive to produce goods of high quality.³ At that time, the quality of products was not a serious social problem,⁴ even though the quality of many Chinese products was not high and often quite poor due to obsolete technology, short supply in finance, and the lacking of incentive and pressure on the part of the enterprises.⁵ The main problem then was the scarcity of consumer products and the unmet demand for such products.⁶ Since the start of the economic reform, the economy of China has seen rapid growth leading

¹ LI CHANGQI & XU MINGYUE, XIAOFEIZHE BAOHU FA [李昌麒 & 许明月, 消费者保护法] [THE LAWS ON CONSUMER PROTECTION] 22 (1997).

² *Id.* See also Xue Muqiao, *Cong Hongguan Jingji Lai Kan Zenyang Tigao Jingji Xiaoguo* [薛暮桥, 从宏观经济来看怎样提高经济效益] [From the Perspective of Macroeconomics to See how to Raise Economic Effect], [1981] 3 JINGJI LILUN YU JINGJI GUANLI [经济理论与经济管理] [ECONOMIC THEORY AND BUSINESS MANAGEMENT] 1, 1.

³ LI CHANGQI & XU MINGYUE, *supra* note 1, at 22. See also Li Wu, *Bixu Dali Fazhan Shehui Zhuyi Shangpin Jingji* [李武, 必须大力发展社会主义商品经济] [Must Develop Socialist Commodity Economy greatly], [1985] 2 JINGJI WENTI TANSUO [经济问题探索] [INQUIRY INTO ECONOMIC PROBLEMS] 1, 4.

⁴ JIA JUNLING & ZHANG ZHIYONG, ZHONGGUO XIAOFEIZHE QUANYI BAOHU FA JIANGZUO [贾俊玲 & 张智勇, 中国消费者权益保护法讲座] [A Course on Consumer Protection Law of PRC] 6 (1995). See also LI CHANGQI & XU MINGYUE, *supra* note 1, at 22.

⁵ Ning Yushan, *Zili Gengsheng he Kuoda Duiwai Jingji Jishu Jiaoliu* [宁玉山, 自力更生和扩大对外经济技术交流] [Self-reliance and the Expansion of Economic and Technical Interchanges with Foreign Countries], [1983] 2 JINGJI LILUN YU JINGJI GUANLI 25, 27. See also Lu Luping, *Woguo Shipin Gongye de Xianzhuang Jiqi Fazhan Tujing* [吕律平, 我国食品工业的现状及其发展途径] [The Present Situation and Developing Ways of China's Food Industry], [1985] 1 JINGJI LILUN YU JINGJI GUANLI 48, 51.

⁶ JIA JUNLING & ZHANG ZHIYONG, *supra* note 4, at 6; LI CHANGQI & XU MINGYUE, *supra* note 1, at 22, 42.

to a tremendous increase on the supply side of goods, both in kinds and in quantity.⁷ The increased availability of goods has raised rapidly the living standard and working conditions of the Chinese people.⁸ But during the course of this rapid growth, some enterprises, particularly those newly established small enterprises, produced huge quantities of poor-quality products and flooded the market with them. Those enterprises did not have the necessary capital, technology, and equipment for the production of high-quality goods.⁹ In particular, many enterprises were gradually freed from the direct control of the state and had their own economic interest.¹⁰ To make the biggest profits possible with the lowest cost of production, some enterprises began to intentionally produce fake goods or goods of inferior quality.¹¹ Because China was in the early stages of a market economy, there was not a legal institution that would ensure conditions for fair competition, nor was there a market completely open to competition.¹² Therefore, beginning from the early 1980's, the increase of fake and inferior products

⁷ See COMPREHENSIVE STATISTICAL DATE AND MATERIALS ON 50 YEARS OF NEW CHINA 40, 42 (Department of Comprehensive Statistics of National Bureau of Statistics of PRC ed., 1990); LI CHANGQI & XU MINGYUE, *supra* note 1, at 22.

⁸ XIE CICHANG ET AL., XIAOFEIZHE BAOHU FA TONGLUN [谢次昌 ET AL., 消费者保护法通论] [COMPREHENSIVE DISCUSSION ON CONSUMER PROTECTION LAW] 16 (1994).

⁹ See Guo Wenxuan, *Cong Hongguan Jingji de Jiaodu Kan Zenyang Tigao Liutong Jingji Xiaoyi* [郭文轩, 从宏观经济的角度看怎样提高流通效益] [From the Perspective of Macroeconomics to See how to Improve the Results in Economic Circulation], [1984] 5 JINGJI LILUN YU JINGJI GUANLI 20, 22; He Jianzhang & Zhang Zhuoyuan, *Danqian Woguo Jingji Xiaoguo Di de Zhuyao Yuanyin Hezai?* [何建章 & 张卓元, 当前我国经济效果低的主要原因何在] [What is the Main Reason for the Low Economic Effect in Current Economy of PRC], [1981] 4 JINGJI LILUN YU JINGJI GUANLI 1, 3-4.

¹⁰ LI CHANGQI & XU MINGYUE, *supra* note 1, at 22.

¹¹ LIU FUQIAN, CHANPIN QIZHA JIQI FANGZHI [刘福谦, 产品欺诈及其防治] [FRAUDULENT ACTIONS ON PRODUCTS AND COUNTERMEASURES] 39, 42 (1997).

¹² *Id.* at 37-38.

became a serious social problem accompanying the ever-increasing availability of goods on the market.¹³

To raise the quality of Chinese products, to curb the production and sale of inferior goods, to protect consumers, and to protect the social economic order,¹⁴ China, beginning from the early 1980's, promulgated a number of laws and regulations concerning product quality control and product liability.¹⁵ After tremendous effort over twenty years, China has established a relatively comprehensive legal system governing product quality supervision and product liability. What does this legal system include? How was it started and how did it evolve? What are the current provisions of this system, their main characteristics, and their effectiveness in terms of achieving the purpose and design of their architects? What are the main defects or flaws of this system that need improvement? This book attempts to provide some answers to these questions through the introduction and analysis of various sources of Chinese laws on product quality supervision and product liability. The author hopes that it will provide a relatively comprehensive picture to those who are interested in the legal framework of Chinese laws on product quality supervision and product liability.

This book consists of nine chapters. Chapter 1, Evolution and Current Status of the Laws on Product Quality, introduces the history of Chinese product legislation, the main enactments currently in effect and the relationships among them. Chapter 2, Administrative Supervision of Product Quality, introduces and analyzes the Chinese administrative agencies in charge of product quality supervision, the forms of supervision, the system of product standards, and the administrative liabilities of producers and sellers.

¹³ JIA JUNLING & ZHANG ZHIYONG, *supra* note 4, at 6; LI CHANGQI & XU MINGYUE, *supra* note 1, at 22.

¹⁴ Chanpin Zhiliang Fa [产品质量法] [Product Quality Law] § 1 (1993) (2000 revised § 1) (PRC).

¹⁵ LIU WENHUA ET AL., ZHONGGUO CHANPIN ZHILIANG FA JIANGZUO [刘文华 ET AL., 中国产品质量法讲座] [A COURSE OF PRODUCT QUALITY LAW OF PRC] 11 (1995); LI CHANGQI & XU MINGYUE, *supra* note 1, at 42-44.

Chapter 3, Remedies for Resolving Disputes with Administrative Agencies, introduces and discusses several administrative procedures and mechanisms China established in recent years to ensure administrative agencies act within the bounds of law, including administrative review and judicial review of administrative actions and related judicial procedures. Also covered in this chapter are the causes of action that producers and sellers commonly raise in challenging administrative actions. Chapter 4, Criminal Responsibility in Regard to Product Quality, deals with the evolution of Chinese law on criminal responsibility for product quality and the major provisions currently in effect in this area. Chapters 5 to 8 discuss civil liability related to product quality. Chapter 5 discusses the warranties in cases of purely economic loss. Chapter 6 is devoted to fault liability and warranty liability for products causing personal injury and property damage. Chapter 7 deals with strict product liability. Chapter 8 discusses liability for product misrepresentation and Chapter 9 is on conclusions and suggestions. In the final chapter, this author reaches several conclusions. First, in order to adapt to new economic conditions, China has developed a basic legal system dealing with product quality supervision and product liability. Second, having borrowed extensively from the legal experience of developed countries, China's legal system on product quality supervision and product-related liability in many aspects increasingly approaches the counterparts of the developed countries. Third, in terms of curbing fake or poor-quality goods and improving product quality, the activities of the government, in particular, the enforcement activities of the administrative agencies play a far more important role than private tort actions, although the impact and influence of such actions is becoming increasingly notable. Fourth, the Chinese legal system on product quality supervision and product liability is still in its early stage of development and needs significant improvements in many aspects. Therefore, in the latter part of Chapter 9, this author, based on his study of Chinese law and American law and in view of the conditions of China, made some suggestions for the correction of certain flaws that exist in the current Chinese legislation and judicial practices.

In studying the sources of law in the Anglo-American legal system, this author will start his research by analyzing decided cases because of the general assumption that law consists of rules and principles created or recognized by the courts as law and applied by them in deciding cases.¹⁶ In the history of those common law systems, law first was created by judges through precedents, later, statutory law emerged.¹⁷ Legislators modify the laws created by the courts and adjust the direction of the development of the laws by passing legislation.¹⁸ However, it is the function of the courts to interpret the law written by the legislature.¹⁹ Therefore, in the end it is the precedents of the courts that are the ultimate authority.²⁰ This model of law places the judiciary at the center of the legal system.²¹ As a result, the study of law must begin with the analysis of the precedents.²² Nevertheless, for the following reasons, the study of Chinese law on product quality supervision and product liability can not start with analyzing “decided cases,” although the Chinese courts have decided quite a number of cases in these areas since the 1980s.²³ First of all, China is not a country that is in the case-law (or

¹⁶ ALBERT HUNG-YEE CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 77 (1998).

¹⁷ PETER HAY, LAW OF THE UNITED STATES: AN OVERVIEW 7, 9 (2002).

¹⁸ *Id.* at 11.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 9, 11. See also ALBERT HUNG-YEE CHEN, *supra* note 16, at 77.

²² PETER HAY, *supra* note 17, at 11.

²³ Although no direct statistics of cases for judicial review of disputes on administrative product supervision and cases for product liability of PRC have been found by this author, the amount of such cases should be quite large which can be inferred from the statistics of all cases for judicial review of administrative disputes and cases of torts. *E.g.*, Chinese courts in 1998 accepted 98,350 cases for judicial review of administrative disputes and 3,375,069 first-instance civil law cases nationwide, including 332,708 cases on torts. See 1999 ZHONGGUO TONGJI NIANJIAN [中国统计年鉴] [CHINA STATISTICAL YEARBOOK] 757-758. Chinese courts in 1999 accepted 35,192,244 first-instance civil law cases nationwide, including 366,931 cases on torts. See 2000 ZHONGGUO FALU NIANJIAN [中国法律年鉴] [CHINA LAW YEARBOOK] 124.

common-law) tradition but a civil-law country that relies on the written law as the primary source of law.²⁴ In the several thousand-year history of China, the primary source of laws of the feudal dynasties was always written law.²⁵ During some dynasties, for instance, the Ming and Qing Dynasties, cases were treated as one of the sources of law,²⁶ but in general, cases have never risen to and occupied the position as their counterparts in the Anglo-American legal system.²⁷ Beginning from the late nineteenth century, China started to learn from the West.²⁸ The laws made during the waning years of the last dynasty, Qing Dynasty, and during the Republic of China, which succeeded the Qing Dynasty, all followed the continental European civil law system.²⁹ The European civil law system also had "written law" as its primary sources of law.³⁰ The People's Republic of China (PRC) which replaced the Republic of China on the mainland of China in 1949 took over this tradition of having "written law" as the primary source of law.³¹ The legal system of the PRC is based principally on the legislation and regulations passed by the legislative and administrative bodies at various levels of the government hierarchy.³² The decided cases of the courts do not constitute precedents.³³ Decided cases

²⁴ SHEN ZONGLING, *BIJIAO FA ZONGLUN* [沈宗灵, 比较法总论] [SUMMA ON COMPARATIVE LAW] 448-449, 499 (1987).

²⁵ *Id.* at 449.

²⁶ *Id.* See also R. Randle Edwards, *The Role of Case Precedent in the Qing Judicial process as Reflected in Appellate Rulings*, in UNDERSTANDING CHINA'S LEGAL SYSTEM 180, 194 (C. Stephen Hu ed., 2003).

²⁷ SHEN ZONGLING, *supra* note 24, at 449.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 449-450. See also Owen D. Nee, Jr. et al., *Business Operation in the People's Republic of China*, in TAX MANAGEMENT, 957-2ND, at A-2 (2001).

³³ SHEN ZONGLING, *supra* note 24, at 448.

of a higher court have no binding legal effect on a lower court, neither do decided cases of a court bind the same court in a case pending before it. Decided cases have nothing but reference value.³⁴ Of all the decisions of the courts, only the judicial interpretations by the Supreme People's Court has binding legal effect.³⁵ The judicial interpretations of the Supreme People's Court, however, are not decisions in a particular case, but take one of the two forms. In one form they are similar to the numbered legal provisions in legislation and are often titled or referred to as *JieShi* (interpretations) and *GuiDing* (provisions).³⁶ In the other, they are *PiFu* (replies) by the Supreme People's court to the inquiries of lower courts concerning specific legal issues.³⁷ In short, there is no case law in China, and the decisions of the courts are not a source of law.³⁸ Secondly, regular publication of court decisions in China is neither institutionally required nor is carried out as a practice. It is therefore impossible to study Chinese law relying primarily on court cases. The judicial decisions in China are generally not open to the public. At present time, a researcher outside the government usually depends on newspapers, magazines, legal treatises and monographs to find a limited number of brief reports of cases. Among the collectable periodicals, the major ones are those circulating within the legal community, such as "the Supreme People's Court Bulletin" (*Zuigao Renmin Fayuan Gongbao*) published quarterly, "Selected Cases of People's Courts" (*Renmin Fayuan Anli Xuan*) published by the

³⁴ *Id.* See also Owen D. Nee, Jr., *supra* note 32, at A-2.

³⁵ See *Zuigao Renmin Fayuan Guanyu Sifa Jieshi Gongzuo de Ruogan Guiding* [最高人民法院关于司法解释工作的若干规定] [Provisions of Supreme People's Court on Judicial Interpretations] §§ 4, 14 (1997), 3 *Zhonghua Renmin Gongheguo Zuigao Renmin fayuan Gongbao* [中华人民共和国最高人民法院公报] [Gazette of Supreme People's Court of PRC] 96, 96. See also Zhou Daoluan [周道鸾], *Preface* to *ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN FAYUAN SIFA JIESHI QUANJI* [中华人民共和国最高人民法院司法解释全集] [COMPREHENSIVE COLLECTION OF JUDICIAL INTERPRETATIONS OF THE SUPREME PEOPLE'S COURT OF PRC] 2, 4 (*Zuigao Renmin Fayuan Yanjiu Shi ed.*, 1994).

³⁶ Provisions of Supreme People's Court on Judicial Interpretations § 9 (PRC).

³⁷ *Id.*