

Part Two Study on Dispute Resolution Process in Specific Case I. Dispute Resolution in Consumer Protection

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PART TWO

STUDY ON DISPUTE RESOLUTION PROCESS IN SPECIFIC CASE

I. DISPUTE RESOLUTION IN CONSUMER PROTECTION

1. Concept of Consumer

Prior to examining rights of consumer as well as properly determining rights of consumer, I would like to present the concept of consumer.

In our daily life, person may more or less buy goods or services for themselves, their family or group of people. For example, electric fan, television, refrigerator, etc. as basic needs for our daily life.

In addition, person may have other needs such as tourism, movement, goods transportation, etc.

However, depending on the utility of goods/services and needs of specific person, family or group of people, goods and services may be used for different purposes. A large number of goods/services are used for our daily life. However, goods/services are also acquired to be used in production line, for example, a farmer buys fertilizer, pesticide and acquires plough, irrigation services for farming. Therefore, in broad meaning, consumer is defined as buyer/user of goods and services.

Depending on the level of domestic economic development, concept of consumer differs from country to country. For example, Consumer Protection Act in the United States was ratified in order to protect buyer-debtor from credit at exorbitant rates of interest (lending money at interest rate higher than that allowed by the law), disadvantageous position against the debtor and misleading price information in transactions of goods and services. However, the concept of consumer in most countries such as South Korea, Japan, etc. and in Vietnam's proposed Consumer Protection Ordinance is defined in narrow meaning as buyer who purchase goods and services for daily consumption of person, family or group of people.

Other point of view determines consumer as buyer or user of goods and services for business purpose. The reasons are:

- The trader as a buyer is still protected by the law with respect to his or her legitimate interest.
- In many cases, there is no clear distinct at the first stage between "buying to resell" and "buying to consume".

To me and in this paper, I would like to approach the narrow meaning of consumer. With respect to “trader” with profit making, the law also protects his or her legitimate interests. However, the “trader” is not consumer because that the “trader” does not use goods and services directly, hence does not be affected by any defect or unqualified goods and services.

2 Rights of Consumer

Proper determination of consumer rights as the basis for defining consumer protection measures of the State as well as responsibilities of business organizations and persons to the consumer considers. Moreover, in our specific condition of understanding, the determination of consumer rights also does strengthen the consumer’s position and role in transactions of goods and services, and enable the consumer himself to protect his legitimate interests.

Consumer rights which were approved by the United Nations and recommended to implement by countries, are including:

1. Right to safety
2. Right to selection
3. Right to training in consumption
4. Right to information
5. Right to representation
6. Right to compensation
7. Right to satisfaction of basic needs
8. Right to fresh environment.

Consumer Protection Acts in those countries such as Japan, South Korea, due to good understanding of the law, do not clearly determine consumer rights. Eight consumer rights were mentioned and clarified in Vietnam’s proposed Consumer Protection Ordinance.

Other point of view considered that some rights, which have been recognized in other legal documents, are not necessary to mention in Vietnam’s proposed Consumer Protection Ordinance. For example, rights No. 2 and No. 8 may be structured in one article. Article 25 of Ordinance on Quality of Goods has stated shortly and clearly consumer rights in the field of quality of goods, therefore it is sufficient to refer to this Article 25 in Vietnam’s proposed Consumer Protection Ordinance.

Vietnam’s proposed Consumer Protection Ordinance regulates six consumer rights, where right No. 1 and No.2 are structured in one article, and right No. 3 and No.4 are structured in another article.

The combination of consumer rights in one legal document on systematic basis shall enable consumer to understand his/her rights, and also does strengthen the consumer’s position and role in transactions of goods and services. Moreover, clear and proper determination of consumer rights is considered as the basis for defining rights,

responsibilities and consumer protection measures by the relevant State agencies, as well as responsibilities of business organizations and persons.

In term of number of consumer rights, I think that they are the basic and most necessary rights of the consumer in one developing country. However, in our current specific socio-economic circumstance, rights No. 7 and No. 8 are hardly implemented in practice. But in the near future, it is necessary to determine those rights in a developing country.

I would like to examine in the next sections the consumer rights recognized by Vietnam's proposed Consumer Protection Ordinance. For the purpose of clear examination, Articles 8 and 9 are divided into 4 consumer rights.

1. Consumer is ensured to safety in consumption of goods and services.

Safety is understood as the security in health, body in consumption of goods and services. For example, foods and drinking are produced to satisfy the healthy standards of the people. In the other words, there is no chemicals or toxic waste or germ.

This is an important right of the consumer, but this right is always in violation especially in those developing market economies like Vietnam. In order to maximize their profits, some manufacturers may supply out-of-date or low quality products. Those products did cause damage to consumers such as counterfeit mineral water, fruit. In Hochiminh City, one company had imported a dozen thousand Taiwanese bottles of beer, and continued to sell to the market even those bottles were out-of-date, etc. There are a number of legal documents regulating product quality, registration and control:

- Ordinance on quality of products dated 27 December 1990
- Decision 24/TDC on registration of product quality
- Decree 140 HDBT dated 25 April 1991 on examining and dealing with production and trade of counterfeit products.

However, those legal documents are still inconsistent and scattered, and the examining activities undertaken by competent authorities and inspectors are overlapping and not on frequent basis. In circumstance of purchasing counterfeit or low quality products, less legally understanding consumers did not know how to deal with and where to claim.

Production and trade of toxic, combustible and explosive substances such as firecrackers, petrol, etc. also may lead to unsafety of consumers. However, some substances are necessary for daily activities. Therefore, it is important to stipulate standards and conditions for production and trade of those substances, not to restrict production and trade.

The trade of medicine also causes some damages to health and life of consumers. There are a number of prevailing legal documents such as:

- Law on People's health care
- Ordinance on private pharmaceutical and health care practice

- Regulations on the State inspection in health care issued in conjunction with Decree 23 HDBT dated 24 January 1991.

However, those legal documents are still not properly implemented on the basis of frequent examination and inspection. For example, Article 38 of Law on People's health care stipulated that "The person who has professional degree and is permitted by the Ministry or Department of Health, is allowed to conduct pharmaceutical practice".

However, many traders of medicine did not have professional degree or hired business registration of other person. Even in Hanoi, a blind individual did sell medicine. This situation had led to serious damages of property, life and health of consumers.

There are also a numbers of breaches of laws in the fields of services, tourism, and transportation. For example, unsafe van (overloading, damaged doors, etc.) was still in operation and led to serious traffic accidents.

With respect to tourism, the tourist authority did not fulfill its liability, such as lack of signals, first aid, etc.

In conclusion, the right to safety in consumption of goods and services is an important and necessary right of consumers. There are a number of legal documents regulating this right, but in scattered manner and unclear and overlapping decentralization. Low effectiveness of those legal documents leads to low feasibility. To me, in order to strengthen the administration of the State authorities and ensure effectively safety of consumers, it is necessary to assign the Ministers the power to decide or change, within their duties and functions, standards of goods and services:

- Firstly, content of goods such as ingredients, quantity, and composition.
- Secondly, guidelines and recommendations on how to use
- Thirdly, important notice to prevent risk and danger.

No trader is able to produce and sell any kind of goods or provide any service unsatisfactory to those standards. The competent ministries must examine, inspect and review all goods and services within the framework of their duties and functions, in order to determine the safety.

2. Consumer has the right to selection of qualified goods and services pursuant to the needs and at reasonable prices.

In the centrally planed economy, consumers are not entitled to select goods and services. They only could purchase products, which were distributed by the State. On the other hand, consumers were not able to select because of no various kinds of goods. In the market economy with various kinds of products, consumers have chance to select goods and services appropriate to their needs and at reasonable prices.

In order to ensure the right to selection of qualified goods and services pursuant to the needs and at reasonable prices, the State has issued a number of legal documents on price control:

- Decision 137 HDBT dated 27 April 1992 on price control
- Circular 04 VGNN/KHCS of the State Committee for Pricing making guidelines on registration, negotiation and quotation of prices.

The above-mentioned legal documents have regulated some important goods relating to people's daily life. However, some other less crucial goods are out of control, and no regulation on price quotation, hence harmful to consumers. For example, clothes, prices quoted by traders are higher than real value, that are harmful to consumers.

However, in our daily life, the right of consumers has been appreciated in transactions of goods and services. In addition, in the pressure of competition, sellers (business organizations and individuals) may offer many after sale services, which are favorable to consumers – the kings.

Consumers make use of their right to select and consult reasonable prices, even ordinary goods such as soap, match, bakeries, etc. With respect to luxury goods such as televisions, refrigerators, motorbikes, etc., the guarantee is faced with difficulties: some shops do not voluntarily implement terms of guarantee or do blame on manufacturers.

In order to ensure good fulfillment of the right to selection of qualified goods and services pursuant to the needs and at reasonable prices, the State should issue regulations on price quotation and guarantee, and to require business organizations and individuals to guide and properly implement those regulations with a view to improving consumer's confidence and avoiding any dispute.

3. Consumer is equipped with adequate information for selection, consumption of goods and services, protected from untrue advertisement, trademarks, trading counterfeit goods, fraud in trading goods and services.

This right closely relates to the above-mentioned two rights. Consumers are able to select goods and services appropriate to their needs and at reasonable prices, and to avoid counterfeit goods when they have true information and clear understanding about needed goods and services.

The most important purpose of traders in the market economy is profit. We can not ignore genuine traders, who fairly compete, improve their technology and techniques, and effectively administer their business to reduce prices, improve quality of goods. However, there are some other traders, who adhere to profit, make use of mass media in order to advertise and label untrue, even fraudulent information in business, and to trade counterfeit products.

Information and advertisement of goods and services have contributed to the development of the multi-sector and goods economy in our country. However, there are some weaknesses in advertisement of goods and services, and trade marks (including administration of printing and using labels and trademarks): contents of advertisement are lack of legal and scientific basis, even wrong in quality of products. This situation may lead consumers to information disruption of product quality, and create unequal

competition among traders. There are many cases of trading printed packs and boxes, labels and trademarks, which lead to counterfeit production.

The State has issued Law on Press, Ordinance on Product Quality, Decree on Examination and Dealing with counterfeit products. The Ministry of Culture, Information and Tourism had directed advertisement activities. The State Committee for Science and the Ministry of Culture, Information and Tourism had issued a circular on control of labeling and advertisement of products. In general the application of those legal documents has led to proper advertisement, labeling of goods and services in conformity with the principles:

- Advertisement is to speed up the socio-economic development in accordance with the State and Party's reform policies.
- Advertisement conforms to laws and socio-economic policies of the State and Party.

However, in order to effectively control advertisement and labeling activities, the State should issue an uniform and highly effective legal document, which stipulates power and duties of organizations, individuals who are permitted to order advertisement, and advertisers, as well as power in examination and inspection of state authorities.

4. Consumer has the right to claim, and is compensated adequately for unqualified goods and unsatisfactory services.

The right to claim of consumers in specific and of citizens in general has been recognized by the Constitution in Article 73, and the Ordinance on Citizens' Claims, in Article 1:

“Citizens are entitled to complain State authorities in any illegal decision or work by the State authorities or public servants, which violates their legitimate rights and interests, within the administrative framework”.

There is no specialized body in charge of dealing with claims of consumers. Some organizations, which are assigned to resolve consumer's claims, do not fulfill their work.

In order to ensure the right to claim, the State should establish a system of quality requirements and other important factors of products and services. Based on that system, consumers are able to fulfill their right.

The State should also establish a system of State bodies in charge of resolution of consumer's claims and dispute in order to enable consumers to exercise their right.

Traders are responsible to implementing all necessary measures related to their goods and services in order to prevent danger, ensure exact measuring activities and provide correct guidelines, and to cooperating with the State in implementation of consumer protection policies.

There is no separate legal document regulating compensation for any damage suffered by consumers from unqualified products, unsatisfactory services. However, the Ordinance on Civil Contracts stated that:

Article 47: Liability for contract implementation unsatisfactory to quality as agreed.

1. In case where one party violates quality standards, which have been agreed or legally stated, the other party is entitled to not accept products, or require price reduction or correction, and claim compensation for damage.
2. If there is any disqualification during guarantee period, the guaranteed is entitled to ask for repair free of charge or price reduction, to change for other goods, or return the goods and get the money back and ask for compensation.

The right to claim and proper compensation is to assist consumers in protection of their interests. To effectively fulfill this right, in on hand, consumers have to disclose, claim, and sue any action, which violates quality of goods and services.

On the other hand, the State should establish a system of unanimous standards in registration, examination of quality, product trademarks, terms of guarantee, etc.

With respect to traders, it is necessary to establish and operate an appropriate organization to examine consumers' claims and opinions related to goods and services, and to deal with compensation.

5. Consumer is equipped with necessary knowledge in consumption, quality of goods and services, and other matters related to consumer protection.

In order to be able to buy appropriately qualified products and needed services at reasonable prices, and to avoid any disputes which may arise in transactions, consumers are entitled to be equipped with necessary knowledge in consumption, quality of products and services, and other legal knowledge relating to consumer protection.

Consumers have to make their efforts to get necessary knowledge to improve safety and interests, and to play important roles in improving and rationalizing their consumption by the way of providing independent and reasonable thinks in consumption.

In addition to getting legal knowledge in consumer protection, such as: terms of guarantee, insurance of goods and services, complaint procedures, etc., consumers have to raise all necessary issues which are appropriate to their own selection at the time of purchasing products.

In Vietnam, due to less legally understanding, consumers are less understanding about goods and services. This situation may lead to mistake or fraud in transactions, purchase of less qualified products or at high prices that are harmful to consumers.

The State currently does not provide any effective measure to ensure this right. There is only the monthly issued Consumer Review. However, this Review is not well known. Local Consumer Associations are less effectively and profoundly working.

To me, in one hand, the State should require manufacturers and traders to make consumers knowledgeable in some fundamental issues such as contents, standards, manufacturer, etc.

On the other hand, the State should provide programs in information dissemination on mass media appropriate to consumers and in conformity with development level of science and technology.

The State may coordinate with manufacturers to present, disseminate information of their products and goods on mass media, as well as clearly state characteristics, usage of those products.

Organizations for consumer protection are liable for equipping knowledge to their members through prints, books, reviews, and providing specialists in scientific and technological research, and answering consumers' requests.

In addition, the State should issue consumption policies in order to encourage mighty consumption appropriate to socio-economic development.

6. Consumer has the right to raise his/her point of view and contribute to making and implementing consumption policies as well as research process.

Article 23 of the Constitution 1992 stated that:

“Citizens are entitled to participate in the State and social administration, to discuss general issues of the whole country and specific locality, and to recommend to the State authorities”.

In the field of consumer protection, consumers are entitled to raise their opinions and contribute to making and implementing consumption policies. This will enable the State to issue appropriate consumption policies, and encourage consumers to equip knowledge in consumer protection.

The State should make and implement consumption policies, work out strategies in product and service development in conformity with the country's socio-economic conditions, tradition and fine custom.

Consumers may, directly or through their representatives, recommend to the State, local authorities and manufacturers, traders, any applicable measures in order to ensure the balance between the national economic development and protection of consumer's basic interests, to supply services to, guide and train consumers.

In order to ensure true opinions of consumers, the State should establish a system, which reflects any opinion of consumers to the public authorities in contributing and implementing appropriate policies of consumer protection.

The State also regulates the mass media in reflecting points of view, opinions and needs of consumers.

In addition, the State and manufacturers should encourage consumers to participate into research of goods and services. This will, in one hand, enable manufacturers to produce goods appropriate to consumers, and train consumers in selection of proper goods and services on the other hand.

7. Consumer has the right to benefit basic needs on goods and services relating to feeding, wearing, residence, movement, study, and health care.

This is the right of consumers in specific and of the citizens in general, which has been recognized by the Constitution 1992 in Articles 59, 60, 61, 62 and 68. This right also is made in details in the Law on People's Health Care dated 30 June 1989, the Ordinance on Housing, etc.

Article 23 of the Law on People's Health Care stated that:

“All people who are sick, diseased, injured, are entitled to be examined and cured at hospitals, where they reside, work or study”.

Patients also are entitled to select doctors, physicians as well as hospitals abroad in conformity with regulations of the Government.

The Ordinance on Housing stated that:

“Citizens are entitled to have houses”.

It may be said that the right to benefit fundamental needs in goods and services relating to feeding, wearing, dwelling is the necessary and basic right of all people.

However, the protection of this right is dependent on specific socio-economic condition of the country. The State shall create favorable conditions to consumers with a view to ensuring those fundamental needs in the circumstances of consumers. For example, in the circumstances of the country's difficulties and high population, the State may work out appropriate policies on capital mobilization in order to build houses and resell to consumers at reasonable prices.

In order to create favorable and safe conditions for transportation, especially in crowded routes, the State may have subsidy policies for transportation fares.

There are also a number of regulations on health care. However, it is recommended that there may have special treatment or health care policies for difficult persons in order to ensure good health care.

In Vietnam, there are a lot of foods and clothe. Therefore, it is recommended that the State should encourage processing production and services in order to meet demands of all consumers.

In conclusion, the State should work out and implement all necessary policies and measures in order to ensure basic life of consumers, and rationalize their consumption.

8. Consumer has the right to live in fresh environment and recommend any applicable measure to improvement of environment.

The right to live in fresh environment is the right of not only consumers but all people around the world as well, which has been recognized by the UN Treaty on Environmental Protection.

There is an opinion that environmental issue should not be discussed within the framework of consumer protection. The reason is that our country is less developed, and in transitional period to the market economy. Therefore it is acceptable where consumers are entitled to use qualified products and in good value. The environmental issue is applicable to developed countries, where consumers are at highly qualified demands. However, this argument is not completely true because, in the newly developing market economy like Vietnam, many manufacturers produce and import environmentally polluted products.

There are a number of legal documents relating to the right of consumers to live in the fresh environment.

Law on People's Health Care dated 30 June 1989

Article 7 said that:

“Sanitary conditions of food, drinking products and alcohol

1. All State organizations, collectives, individuals must satisfy sanitary requirements when producing and processing packs and boxes, reserving and transporting food, drinking products and alcohol.

2. All food, drinking products and alcohol, which are not satisfactory to sanitary requirements, are prohibited from production, transportation, and import.

3. Diseased individuals are not allowed to work in any stage which is directly relating to food, drinking products and alcohol”.

Article 8 said that:

“Sanitary conditions of water supply in people's daily life”.

Article 9 said that:

“Sanitary condition in production, reservation and utilization of chemicals”.

Article 11 said that:

“Sanitary conditions in husbandry”.

With a view to protection and quarantine of plants, strengthening State administrative effectiveness, improving effective protection from harmful creatures, protecting and developing production, protecting public health and ecological

environment, the State has approved the Ordinance on protection and quarantine of plants, and the Ordinance on Veterinary Activities.

The Government also issues a number of regulations for the implementation of those laws and ordinances:

- Regulations on sanitary conditions issued in conjunction with Decree 23 HDBT dated 24 January 1991
- Regulations on administrative penalties in health care issued in conjunction with Decree 341 HDBT dated 22 September 1992.

In general, with respect to protecting the right to live in the fresh environment, and to recommending any applicable measure on protection and improvement of the environment, the State has promulgated a number of legal documents. However, due to many different reasons, the application of those legal documents is not highly effective and efficient.

The above-mentioned 8 rights of consumers have been recognized by the Decision of UN Economic and Social Council (ECOSOC) dated 24 July 1990 in Geneva. Each right plays a distinguished role in consumer protection, and relates and complements to other rights. Therefore, the protection of the overall interests of consumers is based on the fulfillment of the above-mentioned 8 rights.

3. Mechanism in Consumer Protection

This section will discuss in detail responsibilities of the State, business organizations and individuals, as well as measures to protect consumer. The responsibilities and measures undertaken by the State are the most significant ones affecting responsibilities and measures of the other bodies in consumer protection.

I will analyze responsibilities and measures of each body.

3.1 Responsibilities and measures undertaken by the State

a) Issuance and implementation of laws, policies on consumer protection

Article 12 of the 1992 Constitution stated that “The State rules the society by laws and continuously strengthen the socialist legality”. To effectively, unanimously and comprehensively protect consumers, the State has to issue regulations and policies on consumer protection in conformity with the level of the socio-economic development. The State does make and shall make sound consumption policies applicable to daily life of consumers.

Based on those sound policies and guidelines, the State shall issue and direct the implementation of laws and regulations.

Currently, the National Assembly has approved a number of laws, such as:

- Law on People's Health Care
- Law on Press
- Ordinance on Civil Contracts
- Ordinance on Claims of Citizens
- Ordinance on Quality of Products

Within the framework of power, functions, responsibilities stated by the Constitution, the Government – as the highest body in administration and execution - unilaterally administers consumer protection in the following areas:

1) Issuance of regulations on consumer protection: in accordance with laws and ordinances approved by the National Assembly, the Government issues decrees, directives to make effective and unanimous implementation in details. Regulations issued by the Government are also based on the stage of the socio-economic development.

Ministries and equivalent agencies, agencies under the Government, depending on their relationship, power and duties, shall issue circulars, directives in conformity with the governmental decrees.

Local authorities, depending on their power and duties, are responsible for preparing measures, making plans and issuing regulations in conformity with the stage of the local socio-economic development. The Government has issued a number of regulations on consumer protection to make in detail and implement laws and ordinances.

- Decree 115 HDBT dated 13 April 1991 of the Council of Ministers on implementation of the Ordinance on Measuring Activities
- Decree 327 HDBT dated 19 October 1991 of the Council of Ministers on examination and dealing with trade and production of counterfeit products.

However, the above-mentioned legal documents lead to overlaps and unclear provisions in determining power and duties of different agencies with respect to consumer protection. This situation has resulted in less effective implementation. Therefore, it is our responsibility to review all those legal documents and to assign a single agency (Department, Ministry, and Committee) specialized in consumer protection.

2) Approving State programs on consumer protection based on the socio-economic development plan, supervising and ensuring budget to implement those programs.

To implement laws, policies on consumer protection, the Government assigns Ministries, Departments, Committees to prepare State programs on consumer protection based on the socio-economic development plan. Those programs must be compiled with feasibility studies, appraisal reports, and other necessary documents upon the submission to the Government.

3) The Government directs organizations responsible for consumer protection.

The Government assigns a single specialized agency to protect consumers with clear functions, duties and structure.

This specialized agency shall implement the duties of consumer protection, and report frequently to the Government.

Based on recommendations by this consumer protection agency, the Government shall direct various authorities to coordinate and complete legal documents on consumer protection.

4) The Government directs various authorities to undertake international cooperation with respect to consumer protection. Various branches and localities, within their power and duties, shall be liable for implementation the prevailing legal documents on consumer protection. The government shall supervise and examine the implementation and unanimous application of legal documents issued by the Government.

The Government assigns a single specialized agency to chair the international cooperation activities in consumer protection.

This specialized agency shall be responsible for giving comments on international agreements on consumer protection, international forum of consumers, as well as for cooperating with other countries in consumer protection in the effective manner, for propagating documents, newspapers to increase consumers' knowledge.

Vietnamese Government has made efforts in international cooperation activities in consumer protection. Vietnamese Government and other 14 Governments from 5 continents have sponsored, in Geneva, a resolution raised by Australia on consumer protection, which latter has been approved by the UN Socio-economic Council. Vietnamese Government and other 7 Governments from Pacific Asia have sponsored, in April 1992, a resolution also raised by Australia, which latter has been approved by the ESCAP on application of regional consumer protection program.

5) Supervising, inspecting, and dealing with claims of consumer, violations of consumer protection regulations which seriously affect consumers' health.

The Government not only issues regulations to make effective implementation of laws and ordinances, but also supervises, inspects thereof implementation by Ministries, local authorities. The Government issues guidelines for implementation, corrects any mistake, stipulates the power of supervision and inspection among branches, localities.

In cases of serious breaches of laws, which materially affect health, life of consumers, the Government shall take effective measures to minimize any damage to the consumers.

For example, implementing on time any measure to confiscate unqualified products, which materially affect health, life of consumers.

- b) The State is responsible for issuing and implementing standards on safety and quality; examining and inspecting goods and services; inspecting and correcting measuring tools and equipment in order to ensure proper measuring activities.**

In order to prevent products or services, which cause damages and danger to life, bodies of consumers, the Government has to issue necessary standards with a view to limit the danger, and to take all measures to ensure proper application of those standards.

The State must provide applicable measures ensuring proper measuring products and services in order to protect consumers' interests in transactions with manufacturers/traders.

The State recently publicized the Ordinance on Measuring Activities and other relevant legal documents. This Ordinance is to protect legitimate rights and interests of consumers:

1) All measuring tool and equipment, which involve in measuring quantity of goods in transactions, delivery, labor security, health care and environment protection, must be periodically examined.

In cases of satisfaction of required standards, those measuring tools and equipment are certified (or labeled or stamped) to take in operation. After a period of time in operation, those measuring tools and equipment must be re-examined.

The General Department for Standards – Measuring – Quality has stipulated a detailed list of measuring tools and equipment, which must be examined periodically.

Along with this examination, the Ordinance also prohibited the operation of measuring tools and equipment in cases of:

- No examined stamp or certificate.
- Invalid examined stamp or certificate.
- Unsatisfactory to measuring requirements.

2) The Ordinance also provided measuring methods:

Article 26 of the Ordinance required that “All organizations, individuals, who use measuring tools and equipment, must strictly follow regulations on operation and maintenance of measuring tools and equipment in order to ensure measuring consistency and properness”.

Especially the Ordinance also stipulated duties of organizations and individuals who produce, trade quantitatively packed goods as follows:

- Clear statement of quantity
- Difference between real and stated quantity must not exceed the permitted limit in Vietnamese Standards or regulations by The General Department for Standards – Measuring – Quality

3) The Ordinance also emphasized inspection activities and penalties:

According to stipulations of the Ordinance, the State measuring bodies at all levels are responsible for inspection activities through Inspection Teams and State inspectors in measuring activities. Conclusions resulted from those inspection activities shall be legal basis for penalties on any violation of measuring regulations. The “breaches” of measuring regulations as well as penalties in the form of money and administrative measures have been stipulated in details in Articles 35 and 36 of Decree 115/HDBT. This is one important landmark in the State measuring administration.

The “breaches” are as follows:

- Use of measuring tools and equipment in cases of prohibitions
- Trade of quantitatively packed goods not satisfactory to the stated requirements
- Selling wrongful or mistaken measuring tools and equipment

The combination of the State inspection activities, and economic and administrative penalties shall prohibit effectively any violations of measuring regulations.

This Ordinance in general has expressed the State commitment in protection of legitimate rights and interests of consumers in the market economy.

In order to ensure macro-administration in measuring activities, the Ordinance has stipulated power and duties of the Government, including:

- a) Preparing plans, master plans on measuring activities, stipulating measuring regulations.
- b) Organizing competent bodies responsible for measuring activities, and stipulating thereof duties and power.
- c) Stipulating measuring units, providing and administering the system of measuring standards, tools and equipment, and samples.
- d) Examining measuring standards and units, tools and equipment.
- e) Approving samples, allowing to produce and import measuring tools and equipment.
- f) State inspecting in measuring activities and penalties.

In the field of labeling administration, the Government has issued regulations on labels of goods.

The regulations stipulated procedures of labeling registration, competent bodies, labeling activities, etc.

There are a number of legal documents:

- decree on Quality of Products
- Decree 327 HDBT dated 19 October 1991 making detailed implementation of the Ordinance on Quality of Products
- Decree 115 HDBT making detailed implementation of the Ordinance on Measuring Activities.

In general, the State has issued sufficient legal documents on measuring and controlling quality of products. However, the above-mentioned legal documents are not effectively implemented and supervised. Traders do not fulfill their liabilities, and consumers do not be aware of protecting their interests in accordance with laws.

The Government should have effective measures to review all above-mentioned legal documents and assess thereof application.

c) Ensuring correct advertisement on goods and services

In the market economy, advertisement is crucial to manufacturers and traders, as well as consumers. However, advertising activities must adhere to the following principles:

(a) Advertisement is to improve socio-economic development in conformity with the Party and State's reform policies.

(b) Advertisement must be in accordance with laws, socio-economic development policies of the Party and State.

Advertisement must be true, properly reflecting works, quality of products. In case of wrong information, both person who orders advertisement and advertiser are joint and several liable.

Form of advertisement must be country-oriented, transparent. Place and level of advertisement must be limited in specific area.

(c) Advertisers must be permitted.

Legal documents are:

- Law on Press
- Decree 133 HDBT dated 20 April 1992 making detailed implementation of the Law on Press
- Joint Circular 1191 –TT/LB dated 29 June 1991 of the State Scientific Committee and Ministry of Culture, Information and Tourism on label and advertisement of products, goods.

Specifically:

- i) Advertisement of products, goods is activities of equipping consumers with information on products, trade, services, quality, methods of maintenance, terms of guarantee, etc. through posters, mass media, prints.
- ii) Products, goods must satisfy the following conditions for advertisement:
 - Permits issued by the competent authorities

- Products and goods, which are required to register quality, must be certified by the Agencies for Measuring and Quality Standards.
 - The General Department must certify products and goods, which are required to satisfy Vietnamese standards, for Standards – Measuring – Quality.
 - Products and goods or medicine must be permitted by the Authorities of Health Care
 - Competent authorities must permit sample of label.
- iii) Competent authorities must permit printing houses, which are printing labels, advertising products and goods.
- iv) Contents of advertisements must comply with laws, truth and accuracy according to registered contents or permits issued by competent authorities.
Printing houses must comply with samples, permitted quantity, and approved plans.
- v) The following agencies, in accordance with their powers and duties, are responsible for inspection and dealing with any breach in printing and using labels, and advertisement of goods and products.
- People’s Committees at all levels
 - Ministry of Culture, Information and Tourism
 - Market Control Agencies
 - Agencies for Measuring and Quality Standards
 - Agencies for industrial properties
 - Agencies for internal affairs and other administrative bodies.
- vi) All organizations and individuals are prohibited from trading labels of goods and products, printed packs and boxes.
- vii) Organizations and individuals that breach those regulations, upon levels of violations, shall be punished at administrative measures or sued according to criminal laws.
- viii) In order to ensure rights and interests, and improve legal awareness of consumers, the Circular stipulated that all organizations and individuals are entitled to inform breaches in printing and using labels, and advertisement of goods and products to competent authorities in accordance with sub-paragraph v), and be awarded according to the prevailing regulations.

To me, to effectively administer information and advertisement, the State should approve Advertisement Law. Most countries have Advertisement Acts. For example, the US Commercial Committee Act said that:

“Fraudulent advertisement is the main target of this Act in the area of: fraudulent and not genuine actions and practice”

d) Dealing with complaints of consumers and penalties

Article 74 of the Constitution 1992 stated that:

“Citizens are entitled to claim State competent authorities about any legal violations made by State authorities, social and economic organizations.

Claims and disputes must be reviewed and resolved within a period of time permitted by laws.”

- Measures dealing with unqualified and counterfeit products and goods.

However, due to subjective and objective reasons, inspection and resolution of claims are not determined and clear.

In order to improve resolution of claims and deal with breaches of consumer protection regulations, the Government must frequently examine and urge competent authorities to resolve on time claims and disputes by consumers in order to improve public confidence. In cases of many transactions, People’s Committees at all levels shall coordinate with Divisions for Standards – Measuring – Quality to establish task force (one or two persons) specializing in dealing with claims and disputes of consumers, and enabling consumers to inform any breach of regulations on products and goods.

e) Propagating and training consumers

Article 35 of the Constitution 1992 stated that:

“The State is to develop education in order to improve public understanding, train human resources, nurse talent persons”.

This is an important measure where good and regular implementation of the State authorities shall avoid any mistake, dispute among consumers, state authorities and manufacturers, traders.

In addition, with the process of social development and civilized people, consumption needs shall be modern and complicated. Therefore, it is necessary for the State to train and propagate knowledge to consumers.

The State authorities shall train and propagate knowledge to consumers in the following aspects: providing accurate and complete knowledge about the State regulations and policies on consumer protection, quality of products and services, and other necessary consumer-related information.

The State authorities are liable to explaining, clarifying contents and implication of all legal regulations on consumers, quality of products and services, etc., as well as responsibilities and protective measures conducted by the State authorities, traders.

The State is liable to establishing a separate program on mass media, such as “Consumer Forum”; in order to propagate and publicize all legal documents related to consumer protection like the system of measuring standards, quality of products and services.

The State authorities shall be liable to organizing and training knowledgeable, specialized staff for Consumer Associations and the State organism.

The State authorities less effectively and inappropriately conduct the propagation of knowledge to consumers. The State should provide propagating and training measures appropriate to consumers' life and habits.

f) The State authorities should provide applicable measures to gather, synthesize, and deal with consumers' opinions in the process of making and implementing consumer-related regulations and policies

This is a practical measure, that, in one hand, encourages consumers participate actively into State operations, and understand legal regulations and their rights as well. On the other hand, it makes the process of preparing and implementing consumer-related regulations and policies feasible and objective.

The State authorities, within their power and duties, are liable to making orientations and policies, stipulating legal documents relating to consumer protection.

During implementing those power and duties, the State authorities must have appropriate measures to gather, synthesize and deal with opinions of consumers, such as seminars; contributions to proposed legal documents in oral or written forms.

The State authorities at various levels and branches must establish a specialized body to gather and deal with opinions of consumers.

Article 21 stated that:

“Organizations, individuals who utilize measuring tools and equipment, must adhere to regulations on maintenance and operation of measuring tools and equipment in order to ensure correct and unanimous measuring methods”.

Business units must create favorable conditions for consumers to check quantity upon delivery.

In general, business organizations and individuals have implemented those legal documents. However, the State authorities should strengthen activities of examination, inspection, especially small business units.

g) Business organizations and individuals must ensure true information, price quotation, publication of place, time and terms of guarantee, usage of goods and services in labels, information and advertisement in order to avoid mistakes and difficulties to consumers in selection, purchase and use of goods and services.

Organizations, individuals who sell goods, must know exactly origins and quality of those goods, and present true information in quality, guide consumers to select, use and maintain goods, and be liable to consumers for product quality.

It is compulsory to quote prices of goods in shops in conformity with quality and quantity in case of goods required quoting prices by the State.

It is compulsory to business organizations and individuals publicize place, time and terms of guarantee in case of guaranteed goods.

Organizations and individuals, which trade, import or pack goods, must present fundamental issues to consumers such as manufacturer, effect, contents, usage, standards, and other necessary information.

h) Business organization and individuals must effectively and reasonably deal with complaints and claims for compensation of consumers due to unsatisfied goods and services.

There are a number of legal documents relating to dispute resolution and compensation for consumers.

Article 25 of the Ordinance on Quality of Products stated that: “Consumers are entitled to claim business organizations and individuals to compensate for any damages resulted from unqualified products”.

Article 21 of the Ordinance on Measuring Activities stated that:

“Business units must create favorable conditions for consumers to check quantity upon delivery.”

The Ordinance on Civil Contracts also stipulated liabilities in case of implementation unsatisfactory to the quality as agreed. Article 47 state that:

1. In case where one party violates quality standards, which have been agreed or legally stated, the other party is entitled to not accept products, or require price reduction or correction, and claim compensation for damage.
2. If there is any disqualification during guarantee period, the guaranteed is entitled to ask for repair free of charge or price reduction, to change for other goods, or return the goods and get the money back and ask for compensation.

In general, business organizations and individuals have fast and reasonably resolved and compensated consumers in order to improve public confidence, expanded terms of guarantee.

However, the State also should stipulate unanimous legal documents making in details the process of dispute resolution and compensation by business organizations and individuals.

i) Gathering consumer’s opinions

Business organizations and individuals must actively gather consumers' opinions relating to goods and services during the process of research, production and supply, in order to amend and improve quality of products and services.

In order to get consumers' acceptance on their supplied goods and services, business organizations and individuals must actively gather consumers' opinions during the process of research, production and supply of goods and services. Consumers, who directly use products and services, understand clearly good and bad things of those products and services. Therefore, their opinions are very precious and necessary.

Manufacturers and traders must appreciate consumers, and follow the principle of "Customers are always right" for their development.

Each consumer has his/her own needs, financial condition and style. Manufacturers and traders must accept consumers' opinions on selected basis in order to improve quality and form satisfactory to the needs and styles of different consumers during the process of research, production and supply of goods and services.

Business organizations and individuals are recommended to establish systems of gathering consumers' opinions at trading areas, which will create favorable conditions for consumers to contribute their comments.

3.2 Responsibilities and measures undertaken by social organizations, public associations

a) Supervising activities taken by the State, business organizations and individuals in resolution of consumers' claims and disputes

Social organizations and public associations - the representatives of their members, are liable to protecting consumer's rights and legitimate interest.

Article 4 of the Ordinance on Quality of Product stated that:

" All organizations, individuals are entitled to claim and make known any violation of regulations on product quality to People's Council and Committees at all levels, State authorities in charge of product quality or other competent agencies.

Those agencies, within their power and duties, are liable to reviewing and resolving disputes, claims and recommendations in accordance with laws and regulations".

Article 4 of the Ordinance on Measuring Activities stated that:

" All State authorities, social organizations, business and production units, within their power and duties, are liable to examining, supervising and creating favorable conditions for unanimous and correct measuring activities".

In order to implement their rights as well as duties to their members, social organizations and public associations should study all prevailing legal documents; supervise dispute and claim resolution of the State authorities, business organizations and individuals; recommend and request the State authorities, business organizations and individuals to resolve disputes in conformity with laws.

b) Propagating knowledge and training consumers

Social organizations and public associations, through training courses, prints, mass media, should conduct all necessary activities to improve knowledge and understanding of consumers.

Social organizations and public associations representing consumers in different areas, branches, professions, gender, shall be responsible for, within their power and duties, training, providing information on State policies and regulations with respect to consumer protection. Trainees shall be liable for re-informing their members and participants.

In addition, social organizations and public associations, especially Consumer Associations, must publish information, prints to consumers.

Mass media like radio; newspapers, etc. should have special programs on propagation and provision of information to consumers.

Consumers in our country are less understanding about laws and regulations on consumer protection.

Consumer Association has only the monthly issued Consumer Review. Therefore, it is necessary to strengthen provision and contents of information appropriate to different consumers.

In order to make training activities efficient, prints and information of social organizations and public associations useful to consumers, the State should have some assistant measures in providing trainers, especially funds.

c) Gathering opinions and comments of all members

Social organizations and public associations shall be responsible for gathering opinions and comments of all members as consumers, and recommending all consumer-related issues to State authorities, business organizations and individuals.

Social organizations and public associations as representatives of consumers shall participate into making state consumption policies, legal documents.

Social organizations and public associations shall consolidate opinions and comments of their members to recommend to the State through the forms of contribution to preparing laws and ordinances.

In addition, social organizations and public associations shall consolidate opinions and comments of their members on goods and services to recommend business organizations and individuals for amendment and efficient measures in consumer protection.

3.3 Responsibilities and measures undertaken by consumers

Consumer protection is responsibilities of the State, business organization and individuals, social organizations and public associations, and consumers as well.

Consumers must actively protect their rights and legitimate interests.

a) Consumers participate actively into preparing and implementing policies and regulations on consumer protection

Consumers participate actively into preparing proposed state policies and regulations, providing measures and requirements on standards of goods and services, such as the Ordinance on Measuring Activities, the Ordinance on Product Quality, etc.

Consumers also request business organizations and individuals to fulfill their responsibilities for consumer protection; disclose unqualified and counterfeit goods and services, and any fraud in measuring activities; claim and sue any violation in consumer protection.

b) Consumers participate into Consumer Protection Organization

Consumers have to improve their understanding about quality of goods and services, effect of consumption on ecological environment in order to ensure safety and interests, and improve and rationalize consumption.

Consumers also have to support qualified goods and services in order to create a level of playing field for business.

Article 29 of the Constitution 1992 stated that:

“Citizens are entitled to associate in accordance with laws”

In the filed of consumer protection, consumers always face inequity in financial conditions, knowledge and negotiation. Therefore, it is recommended that consumers should establish Consumer Association in order to represent, protect and reflect their opinions and comments. The State should pay attention to enabling consumers to establish and participate into that organization.

Consumer Association is responsible for propagating information to its members through publications, seminars, etc. Consumer Association is responsible for propagating State consumption policies to its members, guiding its members for appropriate needs and measures in order to ensure consumer interests, no bad effect on

ecological environment, and to improve and rationalize consumption. For example, obsolescent motorbikes are not permitted in operation.

Consumers should play an important and active role in stabilizing and improving their life through the ways of studying and gathering consumption-related information in conformity with the socio-economic development, confident and reasonable treatment.