

The applicability evaluation and countermeasures of the Law of the People's Republic of China on Product Quality

Yanhui Zhao

Southwest Jiao tong University, Jiao Da RD. Jinniu District, Chengdu 610031, China

*Corresponding Author

Yanhui Zhao

Email: 664323550@qq.com

Abstract: “Good order is the foundation of all good things”, “Product Quality Law” is a regulator to establish good and competitive order. By combing the development process within and outside the Product Quality Law, this paper consider the nature of “Product Quality Law” belongs to social law. In order to improve the “Product Quality Law”, this article for the Product Quality Law’s function and remaining problems are reviewed. To adapt to the rule of law background, proposed the "Product Quality Law" in nature should be focused on the protection of the rights of private citizens, In particular for qualified institutional should improve product quality criteria for the determination, expand the scope of products, the establishment of product recall system and other measures to make China's "Product Quality Law" to achieve the goal of establish the rule of law society.

Keywords: Product Quality Law; rule of law; applicability evaluation; countermeasures

Introduction

“The first worldwide law of commodity producer community” -- Roman law had initially bud provisions of product quality, but with the acceleration of commodity circulation speed, the traditional customary law has no regulatory system to control some bad behaviors of businessmen, market filled with shoddy goods, the British took the lead in the form of jurisprudence so that the code of conduct relating to product liability law, after World War II in Europe and America particularly the United States has been greatly developed. Through reference extraterritorial legislation, combined with national conditions China also states the “Product Quality Law”. While China's Product Quality Law was promulgated not long, but in terms of form or content, are making some wrongdoing nowhere to hide. But with the improvement of people's awareness of rights and diversification violations, the existing “Product Quality Law” has the face of a variety of violations appeared to be inadequate. Therefore, this paper is based on the status quo of China's judicial practice of China's “Product Quality Law” applicability evaluation, and for its shortcomings, combined with extraterritorial legislation, and proposes improvement countermeasures.

The overview of Product Quality Law

The development process of China's “Product Quality Law”

China's first "Product Quality Law" was enacted on February 22, 1993, and became effective from September 1, 1993. Prior to this, China's not a special law to adjust the quality of products. Although China in 1986 formulated the "Civil Law" and with "Industrial

Products Quality Responsibility Regulations" was enacted, the behaviors of shoddy products have lessened, but did not reach the desired results that curb speculative produce shoddy products. On the one hand, the "Civil Law" as a civil area of the basic law, The main adjustment is the personal property rights and interests of the principal of equality, despite related to the terms of responsibility for product quality, but relatively few, and is in favor of liability adjustments of private body, without government management responsibility for product liability be regulated. On the other hand, "Industrial Products Quality Responsibility Regulations" as the administrative rules and regulations, it also has limitations on adjustment range, in favor of public law factors. This various factors are reasons that led to the laws and regulations on product quality play on the trivial function, So that to the late 1980s and early 1990s, product quality problems increasingly serious, Become a hazard to consumers personal and property safety, endanger the whole national economy. Therefore, it is necessary to develop standardized product quality law.

Then our country in 2000 conducted the first modification on the "Product Quality Law", mainly in the following five aspects to improve: clear government responsibility of quality and crackdown; supplement and improve the quality technical supervision, and other coercive measures; increase the intensity of administrative penalties; increase the distributor's responsibility; legal standardize social responsibility of certification bodies, quality inspection institutions and other social intermediary organizations and social groups, especially certification bodies, inspection

agency. he changes follow the recent developments in the economic situation, safeguard the interests of consumers, but in the face of substandard products was in line with the "Product Quality Law" quality requirements, the law still has a lot of "frustration."

Adjustment range of the Product Quality Law

Adjustment range of product quality system generally comprises product quality law and product supervision law two parts, China's "Product Quality Law" encompasses two parts, in the legislative style abroad, these two parts were often part of the legislation. Product quality law only to adjust the products quality legal relationship between the legal persons of principal equality or other organizations; product supervision law mainly standardize products management activities [1]. Taking into account the method of two parts, adjustment having a great difference, so in abroad adopt the way of respectively legislation. While China will adjust the two parts into a unified "Product Quality Law", both public, private property, which is an important part of economic law.

The applicability evaluation of China's Product Quality Law

Evaluation criteria of the Product Quality Law: the effect of the measure

Social effects of law, is whether the "Product Quality Law" to social relations caused favorable, positive influence and role, really responded to the legal regulation of social rationality legitimate expectation. Whether China's "Product Quality Law" promote the improvement of legal thought in product market and the acceptance of citizens are important measure factors to evaluation the social effects of "Product Quality Law".

At the same time, consider the social effects of the law, not only to measure the social consumption of resources and earnings of law that is a measure of the economy, but also consider the earnings in other areas, such as moral benefits. Economic measure, mainly the use of cost - benefit analysis to review the legal rules of design are reasonable, it is on of the indicators to measure the effectiveness of social law and legal effect. Adaptability evaluation of the "Product Quality Law," in addition to examine the economic cost and benefit, but also evaluate relevant citizen inherent moral of product quality implementation.

The function of the China's Product Quality Law

The Product Quality Law plays an irreplaceable role. Implementation of the "Product Quality Law", play a role in curbing fake and shoddy products flooding, make quality of industrial products increased gradually. Through the behaviors of punish product manufacturers and sellers, reduce the number of accidents which cause consumers injuries and deaths.

Enterprises and consumers benefit from Product Quality Law. With the implementation of the "Product Quality Law", more and more enterprises pay more attention to product quality work. On the one hand, give producers and sellers stringent quality obligations, to ensure product quality, encouraging producers and sellers to establish a sound mechanism for self-restraint, to do legitimate business, and continuously improving technology to promote the upgrading of products in the market competition to survive and develop in and out of the country; On the other hand, through the strict constraints to producers and sellers, consumers also shared equity from high-quality products. Therefore, the implementation of "Product Quality Law," both enterprises and consumers from sharing revenue reached "Pareto optimality."

The problems of China's Product Quality Law

Legislative orientation targeting biased

Legislative orientation of the current "Product Quality Law" is to follow the traditional private and public indiscriminate since 1949, in fact, the practice of the planned economy era, the administration unilaterally orders to obey thought and personality of today's respect for freedom of social market economy is not adapt. Despite the current "Product Quality Law" factors of both public and private law, the property belong to social law, This fusion of public and private law of China's Product Quality Law in content, comprehensive use of various economic law adjustment means to regulate the behavior of the government and market players, the state intervention in economic life, in order to safeguard the interests reflect the philosophy of the community as a whole [2]. But as a whole, the legislator tried to establish a thought which quality management as the center, mainly to supervise beforehand, afterwards supplemented by the disciplinary, too much emphasis on the content of public law factors. The provision of Product Quality Law emphasis on administrative measures, have a direct impact on the administrative law enforcement, resulting in biased and defects of administrative law enforcement, which is "Product Quality Law" in order to protect the legitimate interests of consumers contrary to the purposes [3]. Such as excessive focus on price monitoring functions of government, contrary to the current Chinese policy of consumers, contrary to the spirit of civil society stressed liberalism, is not conducive to protecting the interests of consumers. The current "Product Quality Law," ignoring the role of the market to regulate itself, slightly unbalanced in both government and the market play the function on. All these need to be combined with the future perfect.

The design of specific system behind the development of the times

Product Quality Law does not establish a genuine system of punitive damages. It still finds the practice of taking the actual loss, low compensation amount. Despite China's "Product Quality Law" have the factors of private law, but is not totally private, which is a social law, and therefore can't be legal relief system of private law copying in the "Product Quality Law", based on product management functions, suppression of inferior quality from the overall height of the community, it is necessary to establish a system of punitive damages in the true sense. Although the "Product Quality Law" in Chapter V supplementary terms of administrative penalties of fines, on the one hand its relatively light punishment, on the other hand it is part of a fine to the state treasury, not compensation to injured consumers. Further, "Consumer Protection Law", "Food Safety Law" provides for a 3 times or 10 times the compensation standard, the amount of compensation may seem large, but it increases the amount of compensation to consumers to purchase goods or accept the price service charges anchored calculated, compared to the producers because of the cost and benefits of illegal income, this amount of compensation is simply a drop in the bucket, simply can't be given to illegal manufacturers psychological deterrent. Some scholars let automobile sales price as an example to demonstrate the considerable amount of punitive damages, consumers receive compensation far higher than the price of the car, but not all of the products have a high value, sales of most consumer goods are relatively low. This is to some extent also shows that punitive damages can't be used across the board approach and needs based on product characteristics and the choice of the floating of the amount of compensation [4].

China's Product Quality Law behind the Western rule of law: Take the USA as an example

In the West, the product quality of legislation nearly a hundred years of history. Especially the United States, it is one of the highest legislative levels the Product Quality Law of the countries in the world, the United States with more emphasis on product quality theoretical protection of the rights of the parties, US Product Liability Law for all sectors of the flow of products specified responsibilities and obligations is very clear and specific, but also for other issues related links are also more clearly stated. The United States' Uniform Commercial Code" provides for three specific programs for the states choose in determining whether there is no contractual relationship of the parties to follow the issue of the breach of warranty claim compensation [5]. For the scope of compensation, the United States punish reparation efforts can be relatively curb acts of bad faith. But also in the United States, punitive damages do not determine the specific amount determined by the judge under specific cases. For larger

malignant intentional fraud, and selling behavior, particularly in drug production, generally heavier punishment, there is no upper limit, some up to several times or a hundred times, even up until counterfeiter bankruptcy, thus malicious fraud in the United States, selling rare behavior. Compared to the above discussed our relatively flexible "Product Quality Law", which in terms of legislative technique, the content of the law and effect on the implementation of the law have a larger gap with the western countries guided by the rule of law.

To sum up, China's "Product Quality Law," to maintain product quality during certain times of the goodness of the order of competition played a role in history can't be undone, but with the number of claims because of product quality problems have appeared in a rare situation, but the problems on the law applicability is obviously, with respect to the rule of law countries such as the United States, China's "Product Quality Law" surviving larger space for development.

The countermeasures to promote the China's Product Quality Law perfection Improve the legislative nature

The legislative nature of "Product Quality Law" should change too much emphasis public right property to focus on private right factors, and pay attention to the role of market mechanism, so that product quality is mainly composed of survival of the fittest mechanism to restrict competition in the market, in order to comply with the development trend of modern society. The functions of government should make corresponding changes, not directly involved in the campaign but the market macro-control. For the quality of products, take a comprehensive control, otherwise, not only the executive limited resources (human, material and financial resources) is not sufficient to achieve this control, but also the consequences of a large number of controls generated are: market transaction costs greatly increased, market inefficiencies, decrease of market operators competition and even more harms[6]. Meanwhile, as the external manifestation of a legislative nature, the legal text of China's "Product Quality Law" on some inaccurate terms such as "sales" should be replaced by "circulation." "Product Quality Law" as rigorous social science, should highlight their professional legislation, for what is manufacture should make further explanation in favor of consumers, in order to highlight the "Product Quality Law" biased private property.

Improve the system of punitive damages

Although China has established treble damages, compensation tenfold in the food industry, but compared to the United States and other developed countries, the amount of compensation still seems low,

not enough to make people aware of their bad behavior illegal costs. Therefore, according to different product sectors, according to the nature of the harm behavior, plot, sentenced to floatingly amount of compensation, the amount of punitive damages high enough to allow violations or potential violations prohibitive. At the same time learn from the US system of punitive damages, the burden of proof is allocated in favor of sellers, there is no upper limit on the amount of compensation, up to several times or a hundred times, even up until counterfeiters bankruptcy. Based illegal cost considerations, the use of the weapon to curb human evil in the quality of products in the field of development.

Further clarify the scope of the product and the definition of defective products

In 2007, "Property Law" will be "intangible property" clearly as "objects", into its adjustment range. Therefore, the "intangible property" clearly defined as "products" category, is one of the inevitable developments of the times, which can effectively improve the quality of intangible products, more effectively promote the health development of the market economy, the rule of law and society [7]. Similarly, today's society is accelerating the velocity of real estate, its value is increasingly highlighted, so the quality of their products has become even more attention has been paid, so in the new market economy conditions necessary to the real estate included in the scope of its adjustment. Therefore, it is necessary to "defective product" definition be expanded to explain its unreasonable risk, not only to the national standards, industry standards as identified its "legitimate" possessed character. By expanding explained that if in the course of the product, if they meet the national standards, industry standards, but still caused damage to consumers, but also in the general public opinion is unreasonable risk of such damage, if the producer, consumer is no reasonable grounds to reply, it can be presumed that the product is "defective product."

Clear the product recall system

"Defective auto product recall regulations," "Food Safety Law" are on the recall system were clearly defined, while China's "Product Quality Law," which does not expressly provide. On the one hand in order to maintain the logical consistency of content with other relevant laws, as the fundamental law of adjust product quality, it is necessary to clarify the product recall system. On the other hand, Chinese national standards in some sectors is below the standard of developed countries, while some foreign brands sell products to China, take "double standards" damaged the legitimate rights and interests of Chinese consumers, by modifying the Product Quality Law, the provisions of the defective product recall system, and clearly defined product

imported goods should clearly indicate the criteria applied in order to regulate foreign products play the "Product Quality Law" the "play edge ball" [8].

Conclusion

For countries in society transition and reconstruction of the rule of law, recognize the current problems existing in "Product Quality Law", and learn from good experience of the United States and other Western countries which guided by the rule of law, reasonable system transplantation is a better way to improve currently China's "Product Quality Law". At present, the problem of China's "Product Quality Law" relate to our nation legislation of technology underdevelopment, immature and the legal texts behind judicial practice. In this regard, our nation needs to seriously reflect and learn a lesson, in the theoretical level of "Product Quality Law" achieve "power" and "reason" in combination, and especially in the aspects of specific institutional, legislative nature, punitive damages system, the identification of product and defect product, establish recall system and other aspects to seek countermeasures to achieve the goals of good law.

REFERENCES

1. Zhang qi. The origin and comparison between China and Western of Product Quality Law, Peking University Law Journal, 1997; 6:81-88.
2. Xu mengzhou, Xie zengyi. Comments on the amendment of the "Product Quality Law" - a considerable economic law idea Product Quality Law. Jurists Review, 2001; 1(5):60-65.
3. Sun bo. Legislative defect remedy of "Product Quality Law". Forward Position, 2003;11:97-101.
4. Liang huixing. Chinese Product Liability Law--on the Origin and Countermeasures of Counterfeits. Law Science Magazine, 2001;6:38-44.
5. Zhang yan. Product Quality Law Compared with Western product liability law. The journal quality of goods: Theory Research, 2011; S6:6-7.
6. Li li, Hu jie. Chinese Legal six decades - Summary of Product Quality Law Theory. Economic and Social Development, 2009;7(11):138-140.
7. Hao peipei, Liu xiantao. Define the product scope of China's "Product Quality Law". Legal System and Society, 2010;1:90-90.
8. Pangkun. Legislative defect and perfection of "Product Quality Law". The journal quality of goods, 2011;4:154-155.