



# Amending China’s Notion of a “Consumer”: Lessons from Comparative Analysis of the PRC Consumer Protection Law

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## Abstract

Who does the law treat as a “consumer” and why does it matter? How should China’s notion of a “consumer” best be articulated within the law and applied in practice? This article will attempt to answer these intriguing questions by first focusing on the approach taken to define a “consumer” in China’s Law on the Protection of Consumer Rights and Interests before examining the legal notion of a “consumer” in comparative perspective, in order to further understand the competing rationales behind the consumer protection law. This article will explore this Chinese definition of a “consumer” to propose how China’s vague and unworkable statutory definition of a ‘consumer’ should be amended in future.

**Keywords** China · Consumer definition · Consumer protection · Comparative law

Who does the law treat as a “consumer” and why does it matter? How should China’s notion<sup>1</sup> of a “consumer” best be articulated within the law and applied in practice? This article will attempt to answer these intriguing questions by first focusing on the approach taken to define a “consumer” in the People’s Republic of China’s (PRC) Law on the Protection of Consumer Rights and Interests, which was first passed in 1993 and of which the most substantial amendment took place in 2013, before examining the legal notion of a “consumer” in comparative perspective in order to further understand the competing rationales behind the consumer protection law. Examining the normative concept of the “consumer” is highly illustrative; by revealing the type of consumer that the law will protect, it can shine light on the characteristics of a given legal system, as well as its underlying economic model (Cseres, 2016, p. 15). Analysing the notion of “consumer” also helps to establish a benchmark of what is expected of traders and of consumers (Cartwright, 2016, p. 199). Thus, examining the “consumer” in depth can help in further understanding the nature and character of Chinese law generally.

<sup>1</sup> In this discussion, “notion” means both the legal definition of a consumer as well as a broader social concept of a consumer. For further discussion of the significance of the “notion” of consumer, see Aparicio (2013).

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The definition of a “consumer” within China’s Consumer Protection Law in Article 2 is: “The rights and interests of consumers purchasing and using commodities or receiving services for daily consumption shall be protected by this Law.” This definition found in Article 2 has been strongly criticized as it can be difficult to apply to real life situations and is imprecise. This article will explore this Chinese definition of a “consumer” to both consider the notion in comparative perspective and also to propose how China’s vague and unworkable statutory definition of a “consumer” should be amended in future. A number of jurisdictions will be considered within the comparative analysis, focusing on the concept of consumer to be found in the European Union (EU), as well as India and South Korea. China is unique in terms of economic and legal development; “it is a developing country with a developing legal system, but has a booming economy and a vast number of consumers. It is therefore neither a typical emerging market economy nor an equivalent to a Western industrialized economy” (Choi et al., 2013). Thus, it would be difficult if not impossible to select just one comparator for the purposes of analysing consumer law and policy. The EU is selected for comparison because it has a well-debated consumer *acquis* whilst India and South Korea add a more regional Asian perspective to the comparative analysis.

China’s definition of a “consumer” is of interest for several reasons. Firstly, consumers play a fundamental role in China’s economic development and consumption “is the main driving force boosting economic growth”; in 2021, consumption expenditure contributed to 65.4% of China’s economic growth, driving 5.3% of GDP growth (Fan, 2022). Secondly, despite rapid growth in China’s middle class (and corresponding rates of disposable income per capita), there is still huge further potential in consumer spending available to be unlocked, due to historically high household saving rates leading to low private consumption rates internationally (Cheng & Luk, 2021). Additionally, China’s consumers are not only significant within the domestic economy but globally too, with China expected to overtake the USA as the world’s largest consumer market by 2034 (Oxford Economics, 2018). Hence, China’s consumers are of great significance both domestically and internationally. China’s consumer law and policy is also of interest as the correlation between consumer confidence and continued growth in consumer spending is well documented (Ludvigson, 2004). Consumer confidence relies on the law (Twigg-Flesner, 2005, p. 410); thus, strong law and policy is crucial to secure continued growth in consumer spending.

In terms of consumer law more specifically, legal protection for individual consumers in China was completely absent prior to the commencement of the modern “reform and opening-up” (*gaige kaifeng*) period in 1978 with the first comprehensive Consumer Protection Law passed only in 1993 (Lubman, 1999). This means that China has moved swiftly to establish a comprehensive system of consumer protection from the pre-existing legal system in which basic concepts of individual rights and liabilities were previously unknown (Wu, 1983). Furthermore, much of the existing analysis on the foundations of the concept of a consumer is drawn from developed market economies. China, as a socialist economy in transition, can consequently offer a fresh perspective on the theoretical debate underlying consumer protection. In addition, unlike other former socialist states found in Eastern Europe, China continues to transition to the market economy without following the model of the European Union (EU). Thus, exploring the definition of “consumer” in China’s consumer protection law can offer a powerful insight into how consumer protection law can change and adapt to an emerging market economy.

In addition, consumer protection issues have become increasingly internationalized through the EU, the Organization for Economic Co-operation and Development (OECD), and the United Nations (UN) (Reich, 1992). Furthermore, many consumer-related cases in any specific jurisdiction increasingly have international elements due to economic

globalization and the resulting rise in cross-border transactions (Delisle & Trujillo, 2010). Therefore, a key aim of this article is to contribute towards tackling the recognized gap that exists in the consumer law literature (Twigg-Flesner & Micklitz, 2010) by considering the notion of a "consumer" from an international and comparative rather than purely domestic perspective. Therefore, in the first section of this article, China's notion of a "consumer" will be examined in detail. Then, the next part of the article will outline the general notion of a "consumer" and the competing economic and social rationales underpinning the foundations of consumer protection law. The notion of a "consumer" and its legal definition will then be considered in comparative perspective; the issue of how China's notion of a consumer differs from that found in the other major jurisdictions chosen for comparative analysis will be addressed. Finally, I will consider how the Chinese notion of a "consumer" contributes to our understanding of international and comparative perspectives on consumer protection law, before proposing how China's statutory definition could be amended. The article will conclude that by clarifying its statutory definition of a "consumer," China could further encourage cross-border trade as well as providing a more practical definition for the courts and relevant authorities to apply in practice.

## The Chinese Notion of a "Consumer"

From the establishment of the People's Republic of China (PRC) in 1949 until the start of the "reform and opening-up" period in 1978, the notion of the "consumer" was completely absent from both the Chinese economy and the Chinese legal system. The central government directed every aspect of the socialist economy and there was consequently no role for market forces in the form of individual consumers exercising choice over goods and services purchased. Individuals were not key stakeholders in the economy; rather, they were organized into *danwei* (work units) through which they received products for day-to-day consumption (Griffiths, 2013). As a result, there was no need for legal protection of individual consumers' rights and interests at this time. China's first comprehensive Consumer Protection Law (*PRC Protection of Consumer Rights and Interests Law*) was passed in October 1993 and contained eight chapters and a total of 55 articles and had been expressly informed by the 1985 UN Guidelines on Consumer Protection (Thomas, 2017, p. 187).

According to Article 1, the purposes of the law were "protecting the lawful rights and interests of consumers, maintaining the order of society and economy, and promoting the sound development of the socialist market economy." These ambitious aims were realized mainly through Article 2 which laid out a number of basic consumer rights. In tandem with the PRC Product Quality Law, passed in the same year, the 1993 PRC Consumer Protection Law established, for the first time, a basic level of protection for consumers against counterfeit, defective, or dangerous goods or services. From the stated aims espoused in Article 1, the primary rationale behind the consumer protection law appears to be economic in nature, matching the key rationale found in many other jurisdictions. However, the explicit mention of "maintaining the order of society" is interesting as it points to more of a social rationale alongside the economic impetus. Indeed, many commentators suggest that social rationales underpinning the law in general reflect traditional philosophical influences in the modern Chinese legal system such as Confucianism and legalism, as well as reflecting the use of the law as an instrument of the Chinese Communist Party to achieve policy goals (Li, 1996). There is, however, no guidance given as to how these (potentially competing) rationales should be prioritized in the implementation of the consumer protection law.

The PRC Consumer Protection Law was subsequently amended in October 2013, twenty years after its initial promulgation, as China had undergone significant social, economic, and legal reforms and the Consumer Protection Law was consequently in need of extensive updating. Technological changes also contributed to the amendments; the motivation behind the 2013 amendments was thus partly driven by a need to adapt to an increasingly sophisticated online retail market, but also to increase consumer confidence in order to boost domestic demand.<sup>2</sup> However, the definition of “consumer” to be found within the PRC Consumer Protection Law did not change as a result of the 2013 amendments. The stated aims of the consumer protection law outlined in Article 1 also did not change as a result of the amendments. The 2013 amendments were criticized for failing to introduce a clear definition of “consumer” and this lack has consequently been labelled the most fundamental defect in the current law (Liao, 2014, p. 171).

As Article 2 of the PRC Consumer Protection Law merely states that consumers purchasing goods or services for daily consumption are covered by this law, rather than clarifying which persons fall under this category, it could be seen as somewhat of a circular definition, rather than a coherent definition, if it even amounts to a definition at all. In other words, the Article “defines” consumers as consumers; the word “person” is not present. Consequently, this Chinese notion of a consumer appears *prima facie* to differ substantially from other formulations of “consumer” to be found in other jurisdictions around the world. Nearly 30 years have passed since the PRC Consumer Protection Law first came into effect, but although the definition of a “consumer” to be found in Article 2 has remained unchanged since the law was originally drafted, the precise meaning of this definition remains a problematic issue in Chinese law.

Chinese courts particularly struggle with clearly defining a “consumer” when punitive damages are claimed by so-called professional consumers, who are people who bulk buy inferior, fake, or out-of-date products with the sole purpose of claiming compensation (Ellis, 2016). Punitive damages can be between three and ten times the cost of the goods if fraud can be proved, so buying goods with the sole aim of claiming damages can be a lucrative endeavour. The courts have to strike “a delicate balance” (Thomas, 2018) between encouraging consumers to tackle shoddy or fraudulent traders, whilst also discouraging individuals from exploiting punitive damages provisions solely for personal gain. Thus, although the legislative definition has been fixed in the PRC Consumer Protection Law for many years, nevertheless, the issue of exactly who qualifies as a “consumer” under Article 2 has not yet been settled in practice. Furthermore, the imprecise definition of a consumer under Article 2 is also exacerbated in practice by the lack of *stare decisis* in China’s legal system; “judges and administrative officials may only rely on their personal views of these concepts and thus determine materially similar cases differently” (Zheng & Liao, 2013, p. 8).

Turning to examine China’s definition of a “consumer” in greater depth, as Article 2 does not mention “persons,” it is consequently unclear whether legal persons such as small businesses or work units may be categorized as consumers or whether the designation is restricted to natural persons only. Although some local and provincial level regulations have made this distinction clear, for example, provincial regulations in Hunan (1997), Henan (1995), Guizhou (1994), Heilongjiang (1995), and Guangzhou (1999) explicitly included organizations within the definition of “consumer.” Nevertheless, there remains

<sup>2</sup> For an overview of the 2013 amendments to the PRC Consumer Protection Law, see Thomas, 2017.

a lack of consensus among Chinese commentators about whether the Chinese definition should include work units or be limited to individuals only. For example, Wang (2002) argues that only individuals should be classified as consumers, but on the other hand, Qian (2006) argues that the definition should incorporate both work units and individuals.

Another problematic feature of the Chinese definition of a consumer in Article 2 of the Consumer Protection Law is the concept of goods and services purchased "for daily consumption." This concept is unclear and somewhat distinct from other definitions. For instance, does this "daily consumption" restriction focus exclusively on *everyday* purchases which would arguably exclude more one-off luxury or exceptional purchases such as automobiles or houses? The PRC Consumer Protection Law itself offers no further guidance as to how "for daily consumption" should be interpreted, although there has been some consideration of this issue within the case law, particularly in relation to so-called professional consumers (Kuever, 2020). If such "professional" purchasers are knowingly purchasing fake or substandard goods solely with the aim of seeking compensation from the seller, then this has not necessarily been viewed as a bar to such purchasers bringing claims. The purpose of such claims in helping to regulate poor quality goods and dishonest sellers is seen as of higher priority than deterring such cynical claimants.

It may be illustrative to see how the notion of "consumer" outlined in Article 2 is applied in judicial practice. For example, in the recent retrial civil judgment of *Guangzhou Vipshop Information Technology Co Ltd v Chen Changqing* (2020), the Article 2 definition of "consumer" was discussed in some detail. The case involved a purchaser of a large quantity (nine boxes containing a total of 108 cans) of nut powder, which, after being sent for detailed examination and analysis, did not meet the nutritional values published on the packaging. The purchaser, Chen Changqing, claimed for punitive damages and part of the seller's defence relied on Chen's status as a non-consumer under the Article 2 definition to defend against his claim. However, the court at second instance held that the seller had not produced sufficient evidence to show that Chen was indeed a non-consumer. The court stated that consumers include not only those who purchase items for their own needs, but also those who purchase items for collection, preservation, and gifting, as well as those who purchase items for family members and friends, and those who purchase daily necessities on behalf of others. The court further stated that as long as the purpose of anyone buying goods and receiving services is not to resell the goods or services, or to engage in specialized commodity trading activities, then their purchases can amount to daily consumption. This case illustrates that although the wording of the legislation itself offers little guidance about who may qualify as a "consumer," in practice, the courts take quite a broad approach to the definition and it appears that the burden of proof lies on the seller to disprove the status of a purchaser as a consumer.

In addition to a relative lack of clarity around the daily consumption requirement, the Chinese notion of a "consumer" also does not appear to consider the person carrying out the transaction and to what extent that may have expertise relating to the goods or services for which they are contracting. In other words, even if the putative "consumer" is an individual, if they have a particular expertise related to the goods or services that they are purchasing, should they still be considered to be a "consumer" or is the designation solely based on an unequal relationship between the contractual parties? Likewise, the Chinese notion of a "consumer" does not feature any qualification that the non-consumer party with whom the consumer is contracting should be acting "in the course of a business." However, arguably this notion of the consumer protection law being built upon the unequal relationship between the two parties is nevertheless implicit within the Chinese notion of a "consumer" as the non-consumer party is referred to consistently within the PRC Consumer

Protection Law as a “business operator.” For example, Article 3 states: “In providing commodities produced or sold by them or services to consumers, business operators shall comply with this Law; or comply with other relevant laws and regulations if this law is silent.” Consequently, there appears to be an inherent or implied commercial relationship between a consumer on the one hand and the business operator on the other hand. The concept of this (potentially unequal) commercial relationship appears embedded throughout the PRC Consumer Protection Law, but the lack of coherent definitions of both “consumer” and “business operator” makes the relationship difficult to define more clearly.

In summary, China’s definition of a consumer has been labelled as “fuzzy” (Chen, 2006), but it has been suggested that this vagueness is intentional. The notion is defended as broad enough to incorporate all manner of consumption and also be flexible enough to change over time (Ge, 2019, p. 77). It is evident that as a result, the definition of a “consumer” found within Chinese consumer protection law and policy is problematic; there is little clarity on a number of key issues such as whether the concept is restricted to natural persons only and how the test of whether goods and services have been purchased “for daily consumption” should be applied. The next section will first take a step back and examine the concept of the “consumer” from a broad sense of looking at the rationales underpinning the legal definitions. This overview will then lead into an outline of how China’s notion of a “consumer” fares under the spotlight of comparative analysis.

## Rationales Underpinning the Notion of “Consumer”

Defining a “consumer” might be thought of as a deceptively straightforward task. Clearly in everyday language, a “consumer” can be defined as “any member of society who is engaged in consumption of goods or services” (Whitman, 2007). However, there is a “profound ambiguity” (Bourgoignie, 1992) at the heart of consumer law: are the rules aimed at protecting individuals or collective interests? Are such rules aimed at intervening in transactions for the sake of protecting the “weak” consumer from harm or are they aimed at minimising interference to the operation of an otherwise efficient market? First, in neo-classical discourse, the economic rationale behind consumer protection law is based on the key concept of market failure (Haupt, 2003; Maynes, 1979; Muris, 1991). In other words, intervention in the market is only justified to the extent that the market is operating inefficiently, due to, for example, insufficient competition. This standard justification for intervening in the operation of the market is based on the economic concept of market failure which is defined as “failure of one of the conditions for the optimal operation of a competitive market” (Ramsay, 1984). Thus, the economic basis of consumer protection law could be viewed simply as a mechanism for allocating losses between the consumer on the one hand and the producer or seller on the other hand (Merrilees & Cotman, 1976). The specific market failures which are commonly used to justify intervention on consumer protection grounds are either information gaps regarding price, quality, or terms of the deal or a failure of the institutional framework to ensure the effective and timely enforcement of market exchanges (Ramsay, 1984). On the other hand, a key drawback of the economic rationale behind consumer protection law is that there is no such thing as a “perfect” market or “perfect” information; real-world complexities must be acknowledged in any economic model of the law (Meyerson, 1990).

A key economic rationale commonly used to justify intervention in the market in the form of consumer protection is the asymmetry of information between the seller and



consumer. Any intervention based on asymmetry of information between the parties seems at odds with the "laissez-faire" *caveat emptor* approach to contract law which predominated in the nineteenth century common law development of contract law principles, and which held that freedom of contract was paramount (Atiyah, 1985). In other words, this principle of freedom of contract proposes that contractual parties are free to negotiate and conclude contracts with whichever suppliers of goods and services they choose and the law should not interfere. On the other hand, the principle of freedom of contract was never held to be absolute and consumers clearly need to be well-informed in order to be able to negotiate contracts effectively. Indeed, according to Trebilcock 1993, asymmetric information imperfections are an acknowledged limit to the principle of freedom of contract. Therefore, information asymmetry would justify interfering with the operation of the market in order to place consumers and traders in a more equal negotiating position.

Although individual consumers may be the weaker contractual party, the laws of supply and demand would suggest that any individual imbalance should be negated through the overall collective demands of consumers as a class (Everson, 2005). In other words, suppliers of poorer quality goods and services should theoretically be "weeded out" by consumers, over time, selecting other (better) suppliers. Nevertheless, consumer issues are frequently more fragmented than can be conquered by simple supply and demand forces; some consumers may prefer to pay a higher price for top quality goods, whereas others are prepared to accept shoddy goods for a bargain price. As a result, it becomes unrealistic to think that consumers can collectively join together as a homogenous class to pressure for greater power and protection (Akerlof, 1970). Therefore, legal intervention may be required as market forces alone do not appear sufficient to counter any fundamental imbalance between consumers and producers (Bar-Gill, 2012).

More recently, consumer law scholars have begun to draw on emerging scholarship from behavioural economists (such as Howells, 2005; Shafir et al., 2008; Sovern, 2006; Trzaskowski, 2011) who seek to explain consumer behaviour which is often irrational, even when provided with the necessary information which should theoretically enable them to make a rational choice. Behavioural economics challenges certain key assumptions of neo-classical economic theory including unbounded rationality, unbounded willpower, and unbounded self-interest (Mullainathan & Thaler, 2000). In other words, experiments have frequently and repeatedly shown that consumers do not behave rationally; they are over-optimistic and do not learn from mistakes: for example, Jolls et al. (1998, p. 1541) stated that "over-optimism leads most people to believe that their own risk of a negative outcome is far lower than the average person's." Again, application of behavioural economics to the consumer protection arena, like the other economic rationales discussed above, would justify intervention in the marketplace to even out such imbalances between consumers and the commercial parties with whom they are transacting.

In addition to economic rationales underpinning the emergence of consumer protection law in the mid-twentieth century, a central impetus behind the development of consumer protection laws at a national level "has usually been to protect the weaker party in contracting" (Hondius, 2006). Indeed, this moral or social impetus for consumer protection provides the "emotional steam behind the consumer movement and the drive for consumer protection" (Maynes, 1979, pp. 98-99). Thus, economic rationales of market failure, asymmetry of information, and behavioural economics behind the initial development of consumer protection law have been increasingly supplemented, and even supplanted, in the past couple of decades by the inclusion of social factors or by a more explicit consideration of the wider public interest (Cartwright, 2001, p. 27). Accordingly, consumer protection laws have also been justified on the grounds of distributive justice or paternalism,

particularly in the European context where consumer protection is sometimes seen as a natural extension of the welfare state; for example, it could be argued that the Scandinavian model sees consumer law as a tool of social justice (Schuller, 2011). Paternalism as a social rationale behind consumer protection law suggests that intervention is justified if the cost of making a product better or safer is less than the benefit to consumers of the extra margin of health, safety, or efficiency (Reich, 1979). Such social justifications for consumer protection can also be observed in the 1999 addition to the UN Guidelines on Consumer Protection of the principle of “sustainable consumption” (United Nations, 1999).<sup>3</sup> This amendment reflected the growing need for lawmakers to consider the wellbeing of future generations of consumers as well as purely economic considerations about the efficient operation of the marketplace.

Closely linked to the thorny issue of defining the notion of a “consumer” in law is the question of who is the particular “consumer” that the lawmaker has in mind—the credulous consumer, the well-informed and rational consumer, or the vulnerable consumer? Various attempts have been made to categorize consumers, see, for example: “circumspect,” “responsible,” and “vulnerable” consumers discussed by Micklitz (2013); and “the rational decision-making consumer,” “the seduced consumer,” “the status-seeking consumer,” “the politically active consumer citizen,” and “the ecological, social, and cultural responsible consumer” outlined by Röpke and Reisch (2004). Indeed, it is debatable whether one standard of protection could ever be appropriate for these multiple conceptions of the consumer. In other words, are all potential “consumers” in need of protection and if so, are they all worthy of the same standard of protection?

This lack of a clear economic or social rationale underpinning the notion of the “consumer” as outlined in this section signal a clear lack of global consensus around the notion of a “consumer.” It could be argued that this lack of theoretical consensus makes it difficult to propose concrete reforms to China’s definition of a “consumer.” Nevertheless, as the next section will demonstrate, examination of the notion of the “consumer” in comparative analysis does highlight certain inconsistencies with China’s notion, suggesting that refining China’s definition would indeed be a positive step forward for its substantive consumer protection law.

## The Notion of “Consumer” in Comparative Perspective

It is clearly beyond the scope of this article to consider the definition of a “consumer” in every country around the world, but it is nevertheless instructive to consider how different countries have articulated their notion of a “consumer” within their domestic legislation. From a comparison of a variety of different definitions of a “consumer” from consumer protection-related legislation from around the world, a number of elements generally begin to emerge: firstly, whether only natural persons can qualify as a “consumer”; secondly, whether the notion of “consumer” can be used as a developmental tool; thirdly, whether the notion of “consumer” relies on the (non-commercial) nature of the transaction or rather on the (everyday/consumable) nature of the goods or services in question; fourthly, whether a “consumer” transaction can be defined by the monetary value of the transaction; and

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<sup>3</sup> The explicit inclusion of sustainable consumption in the UN Guidelines on Consumer Protection also accords with the broader UN 2030 Agenda for Sustainable Development. For more details on the UN sustainable development agenda and goals, see: United Nations, 2020.



finally, whether the notion of "consumer" necessitates consideration of the other party to the transaction, i.e., the producer, seller, or trader. These elements appear to be the main ways in which the definition of the notion of a "consumer" can differ according to the demands of individual jurisdictions.

To illustrate some of these differences in depth, the notion of a "consumer" in the EU, South Korea, and India will now be considered in more detail. As China's legal development diverges considerably from the path of legal reform taken in many other countries, it would be impossible to select just one comparator for the purposes of analysis. Hence, the EU is selected as it has a long history of consumer law and policy which can illuminate the notion of a "consumer" in an advanced developed economy with many years of jurisprudence related to the development of the concept. Within the EU, consumer protection is tied to the development of the internal market which rests at the heart of the entire EU project (Leczykiewicz & Weatherill, 2016, p. 1). As a result, consumer protection frequently relies on the provision of information to level the playing field between consumer and trader in terms of information asymmetry. This intrinsically market-based model offers a useful contrast to China's state-led economic model. India is chosen as another comparator as, although not directly comparable, both China and India have faced similar challenges in their paths to modernization (Li & Zhang, 2008) and both are grouped together in the widely recognized grouping of BRICS countries. Finally, South Korea can help to bring an East Asian perspective to the comparative analysis, as the Korean legal system drew upon the Chinese legal tradition steeped in Confucianism, at least prior to the twentieth century reforms (Kim, 2012). Korea's consumer protection law is also selected as a comparator because, at least in the e-commerce context, it is recognized as a model law and worthy of emulation (Blythe, 2006, p. 657).

## European Union (EU)

In Europe, the definition of a "consumer" within the consumer law *acquis* focuses on the potential consumer as the person carrying out the transaction<sup>4</sup> and commonly seems to consider whether the transaction falls outside of their expertise by defining a consumer negatively as a natural person acting outside of their trade, business, craft, or profession.<sup>5</sup> For example, Article 2(b) of the Unfair Contract Terms Directive 93/13/EEC states that: "'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession." Similarly, the Unfair Commercial Practices Directive 2005/29/EC Article 2(a) states: "'consumer' means any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession." Thus, although different instruments may use slightly different wording depending on the objectives of the instrument; nevertheless, from a first glance, there appears to be a settled normative concept of "consumer" within EU law.

However, despite this initial appearance of clarity within the EU definition of consumer, in practice, there have been a number of cases raising different circumstances in which the definition has been called into question. For example, in *Johann Gruber v Bay Wa AG*

<sup>4</sup> For discussion of the history of European consumer law generally, see Micklitz & Weatherill, 1993.

<sup>5</sup> Comparison of how a "consumer" is defined in different Member States can be found in European Commission, 2017.

(2005), the issue of so-called mixed or dual purpose contracts was considered; if a purchaser is acting partly for personal and partly for professional purposes, should they still be treated as a consumer? The European Court of Justice (ECJ) held that a farmer's purchase of roof tiles for a building used partly for private and partly for business purposes could only amount to a consumer contract if the trade or professional purpose is so limited as to be negligible. This restrictive approach has been criticized as too strict and indeed, some national jurisdictions do take a less restrictive approach to dual purpose contracts, accepting consumer status if the purpose is primarily non-professional (Terry, 2016, p. 276).

Another area that has provoked discussion is whether a person may always qualify as a consumer regardless of the transaction at hand. It is evident that determining the status of a party as a consumer or otherwise is not solely based on the notion of inequality between the contractual parties. In *Francesco Benincasa v Dentalkit Srl* (1997), the court acknowledged that “the same natural person may be a consumer for certain purposes and an entrepreneur for others. The decisive factor is, therefore, not the personal characteristics of the individual but rather his position under a particular contract, having regard to its scope and purpose” [para 38]. Thus, in determining consumer status, the mere fact that one party is in an inferior position compared to the other party to the contract does not entitle them to protection [para 52]. The EU notion of consumer therefore requires that the specific transaction at issue is examined to analyse the position of the individual under that particular contract.

Most of the multiple European Directives commonly considered as relating to consumer protection<sup>6</sup> rely on a definition of a consumer based on the nature of the transaction (Nebbia, 2007) which, as outlined above, seems to show some consistency in approach. Nevertheless, the EU has been said to demonstrate a “double-headed approach towards consumer protection” (Unberath and Johnston 2007), with on the one hand, a neoliberal concept of the consumer as reasonably well-informed, reasonably observant, and circumspect (*Gut Springenheide GmbH and Rudolf Tusky v Oberkreisdirektor des Kreises Steinfurt - Amt für Lebensmittelüberwachung* (1998), para 31). This model is based on the idea that consumers should be able to make informed choices. *Verband Sozialer Wettbewerb eV v Clinique Laboratoires SNC and Estée Lauder Cosmetics GmbH* (1994) exemplifies this line of case law relying on the consumer's own responsibilities in the market; in this case, a German court prohibited the use of “Clinique” as it could mislead consumers to believe that it is a medical product. The ECJ held that the alleged consumer confusion did not justify the rule's impact on trade and restriction of the market. Thus, this neoliberal notion of the consumer effectively restricted national law from offering a higher degree of protection than EU consumer protection offered

<sup>6</sup> Such relevant Directives include Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21 April 1993, Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers, OJ L 80, 18 March 1998, Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees OJ L 171, 7 July 1999, Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, OJ L 11, 15 January 2002, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, OJ L 149, 11 June 2005, Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising OJ L 376, 27 December 2006, Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, OJ L 165, 18 June 2013, Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes, OJ L 165, 18 June 2013.

(Cseres, 2016, p. 19) and instead shows the centrality of market forces to the operation of the market.

On the other hand of the so-called double-headed approach, there are various measures on harmonization that diverge from the reasonably well informed and reasonably observant and circumspect standard, to instead elicit much greater concern for "weak" or "vulnerable" consumers. The issue of the "vulnerable" consumer as distinguished from the average consumer and as the recipient of extra protection has come to the fore in EU law in recent years with the passing of the Unfair Commercial Practices Directive (UCPD) and the subsequent attempts to harmonize the crucial definition of an "average consumer" (Collins, 2010). Thus, a clear distinction is beginning to emerge, at least in European consumer law, between an average consumer and a vulnerable consumer with different levels of protection applying to each (Cartwright, 2015; Reich, 2016; Waddington, 2013).

Clearly, the normative concept of the consumer to be found in EU law is not homogenous and instead recognizes that account may need to be taken of linguistic, cultural, and social differences between the Member States (*Estée Lauder Cosmetics GmbH & Co OHG v Lancaster Group GmbH* (2000)). The EU notion of a "consumer" is consequently said to be "suspended somewhere between two paradigms of the consumer" (Leczykiewicz & Weatherill, 2016, p. 8), with significant tension between party autonomy and consumer protection. In summary, although the *acquis* emerging from the EU relating to the normative concept of "consumer" appears initially to be straightforward and clear, a deeper examination of the concept demonstrates that more than one approach to the consumer is present within EU jurisprudence.

## India

India's current legal definition of a consumer can be found in Section 2(7) of the Indian Consumer Protection Act 2019, which provides that:

"(7) 'consumer' means any person who—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation- for the purposes of this clause,

- (a) the expression ‘commercial purpose’ does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- (b) the expressions ‘buys any goods’ and ‘hires or avails any services’ includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.”

The 2019 revision replaced the previous Consumer Protection Act 1986 which itself had been labelled as a “magna carta” in the field of consumer protection for tackling unfair trade practices rampant in the Indian economy at that time (Shah, 2014, p. 3). A key driver behind the revision of the consumer protection legislation was the growing vulnerability of the consumer from new and emerging unfair and unethical trade practices (Ashiya, 2017), but in terms of the wording of the definition of “consumer” to be found in the revised 2019 Act, the main change was the explicit inclusion of those purchasing goods and services in an e-commerce transaction (Saha & Khanna, 2021, p. 124).

It is notable that India’s definition of a “consumer” “does not include a person who obtains such goods for resale or for any commercial purpose” but nevertheless, commercial purpose is further defined in such a way that it “does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.” In other words, the Indian definition includes self-employed rickshaw drivers and subsistence farmers as consumers despite their transactions appearing to be commercial in nature (Rachagan, 2010) due to their importance in the local economy. The boundary of the notion of “consumer” drawn to firmly exclude those persons acting for a commercial purpose outside of those acting for self-employment is said to demonstrate the social welfare impetus underpinning the legislation (Satagopan, 2015, p. 78).

Examining the Indian definition in more detail, it also becomes apparent that the term “consumer” “has a wide definition, whose scope far exceeds that of the definition ascribed to the term consumer in common parlance” (Satagopan, 2015, p. 77) to include final users. This wide scope arises due to the inclusion of persons other than just the purchaser; despite a lack of privity between third parties and the provider of the goods or services, if these third parties are using the goods or services with the approval of the purchaser, then they can also fall under the definition of “consumer.” The 1986 Act which incorporated third parties in the definition of “consumer” has been recognized by the courts in the case of *Jagdamba Rice Mills V. Union of India* (1991) as introducing “a new concept and class of consumers.” The rationale behind this broad class of persons qualifying as a “consumer” is that goods and services are frequently used by other people such as friends and family. The wide scope of the definition was also recognized in *B. S. Sidhu V. Central Govt. Post and Telegraph Dept* (1991) in which the court described the definition of “consumer” as “an inclusive and extensive one.”

Despite the Indian notion of “consumer” being recognized as relatively expansive, nevertheless, there has been discussion around cases where potential claimants have fallen outside of the definition of “consumer” and have thus been unable to claim. For example, a small number of poor citizens receiving rice under a government sponsored distribution programme sought to bring cases to their district consumer fora. However, the state Consumer Commission “decided that those receiving the subsidized rice under the plan are not consumers under the CPA” (Moog, 2015, p. 17). This exclusion of the very poorest in society from legal redress as “consumers” may undermine the

broadness of the definition previously praised. Another category of potential claimant excluded from the definition of "consumer" are those persons who receive goods or services (typically digital content or service) nominally for free but in fact in exchange for their personal data. As the legislative definition in the Consumer Protection Act requires that consideration is given by the consumer in exchange for goods or services in order to qualify, then such "free" digital transactions would not be covered (Silvia, 2021, p. 427).

Furthermore, unfair trade practices may be raised prior to a contract being formed; as the Consumer Protection Act 2019 requires the sale of goods or services to have already taken place in order for a claimant to qualify as a "consumer" and bring a claim, these group of pre-contractual potential claimants also falls outside of the legislative definition (Mittal et al., 2016, p. 108). Consequently, it has been claimed that the Indian definition, despite its already wide scope, may need further revision or even expansion to ensure that consumer interests are effectively protected and advanced (Silvia, 2021, p. 431).

## Korea

The term "consumer" is defined in the Framework Act on Consumers (No. 15015 last amended 31 October 2017). Article 2(1) provides that: "The term 'consumers' means those who use (including utilization; hereinafter the same shall apply) the goods and services (including facilities; hereinafter the same shall apply) provided by enterprisers for their daily lives as consumers or for their production activities, who are designated by Presidential Decree."

The relevant Presidential Decree provides that:

"Article 2 (Scope of Consumers)

The scope of those who use (including to utilize; hereinafter the same shall apply) any goods or services (including facilities; hereinafter the same shall apply) for production activities from among the consumers provided for in subparagraph 1 of Article 2 of the Framework Act on Consumers (hereinafter referred to as the "Act") shall be as follows: <Amended by Presidential Decree No. 20351, Oct. 31, 2007; Presidential Decree No. 20587, Jan. 31, 2008; Presidential Decree No. 20683, Feb. 29, 2008>

1. A person who finally uses any goods or services (hereinafter referred to as 'goods, etc.')
- supplied: Provided, that those who use the furnished goods, etc. as raw materials (including intermediate materials), capital goods, or other equivalents for production activities shall be excluded; and
2. A person who uses the furnished goods, etc. for agricultural (including the livestock industry; hereinafter the same shall apply) and fishery activities: Provided, that the person who carries on the livestock industry on or beyond the scale of livestock husbandry as prescribed by Ordinance of the Ministry of Food, Agriculture, Forestry and Fisheries under Article 21 (1) of the Livestock Industry Act, and the deep-sea fisherman who has obtained the permission of the Minister of Food, Agriculture, Forestry and Fisheries under Article 6 (1) of the Development of Deep-sea Fishing Industry Act, shall be excluded."

Thus, the Korean definition of "consumer" demonstrates some similarities to the Indian definition described above in that both incorporate the final user of the product rather than solely considering the original purchaser of the goods or services. The Korean definition

is also similar to the Indian definition in its inclusion of some small-scale commercial uses, namely agricultural and fishery. This demonstrates that certain jurisdictions have also moulded the definition of a “consumer” to their own developmental needs or specific demands of their domestic economy. The definition of “consumer” in the Korean law has been expanded in order to include small-scale agricultural enterprises or fisheries, which again might appear on the surface to be commercial enterprises but yet are deemed worthy of protection by the consumer protection law.

Compared to the EU and India, there is a relative paucity of case law from the Korean courts relating directly to the notion of consumer. Nevertheless, the publicly available jurisprudence does give us some guidance on how the notion of “consumer” is applied by the courts. For example, in the product liability case of *Park Chang-hee v Kim You-sik* (2004), “ordinary consumers” and their expectations were discussed by the Supreme Court in judging whether the car met the expected safety standard. In *Italfarmaco S.P.A. Italy V. Daewoong Bio Co., Ltd.* (2017), the Patent Court referred to “general consumers” and their likelihood of possible confusion in determining the similarity of two pharmaceutical trademarks. The notion of “consumers” seems to be interpreted broadly in these cases as a homogenous class.

Similarly, in Notification of Import Health Requirements for US Beef Case (2008), the majority of the Constitutional Court interpreted the standing requirements flexibly to hold that “consumers” as general consumers of beef had a concrete stake in the official notification at issue and so had standing. Again, this case supports the observation that the court takes a broad flexible view of “consumers” as a class rather than drilling down into individual consumers and their classification or otherwise as consumers. Nonetheless, whilst this selection of case law is useful in giving a sense of how “consumers” may be viewed generally by the courts, it offers less insight into key aspects of the definition of consumer, particularly the requirement that goods and services need to be for use in their daily lives.

In summary, this brief overview of different definitions from three jurisdictions around the world has demonstrated that the notion of a “consumer” may differ in a number of different aspects. The definition may be restricted to natural persons, or may extend to (certain) legal persons. The definition may focus on the putative “consumer” and their expertise in the transaction by specifying that they must be acting outside of their trade, business, or profession. Alternatively, the definition may focus instead on the putative consumer transaction and consider whether the goods or services at the heart of that transaction are being purchased for personal, family, or household purposes, or for their daily lives. Finally, the definition may even be modified to fit the developmental needs of the domestic economy or society to include certain categories of workers who would otherwise fall outside of the definition of a “consumer.”

## **Analysis of China’s Notion of “Consumer”**

The next part of this article will now turn back to the Chinese notion of a “consumer” to see how China’s definition fits into the rationales and comparative examples outlined in these preceding sections. In terms of the rationales underpinning consumer protection generally, it is clear that China does not follow a neo-classical economic perspective on consumer protection as a means through which markets can operate more efficiently (Lin, 2005). Instead, China seems to rely on a mix of social and economic rationales to justify the consumer law and policy implemented in the legal system. This mix of social and

economic rationales is evident in the stated aims of the PRC Law on the Protection of Consumer Rights and Interests, outlined in Article 1 as follows: "This Law is formulated for the purpose of protecting the legitimate rights and interests of consumers, maintaining the social and economic order, and promoting the healthy development of the socialist market economy." This blend of policy goals also reflects the acknowledged instrumental role of the Chinese legal system more generally, which is aimed first and foremost at protecting the power of the state, but also aimed at achieving other priorities including supporting economic development, maintaining social stability, and supporting further engagement with international trade and institutions (Potter, 2013, p. 2). Although all laws could be said to be instrumental to some extent as a means to promote or secure certain ends (Green, 2010), China's instrumental use of the law to achieve policy goals is said to undermine its stated rule of law and the blend of goals expressed within the Consumer Protection Law may prove problematic because the goals themselves may conflict leading to uncertainty in interpretation and implementation. In other words, some of the lack of clarity around exactly how China's notion of a "consumer" is defined may result from the lack of clarity around the law's overall aims or goals.

It is arguably significant that China's normative concept of a "consumer" has not changed in nearly thirty years, whilst the definitions to be found in the EU, India, and Korea have all evolved in that time to better reflect the prevailing economic and social conditions in those specific jurisdictions. India's definition was revised to take account of electronic transactions and the EU concept was widened to take particular account of vulnerable consumers in certain circumstances. In contrast, although it had been suggested that the definitions of consumer and business operator to be found in Articles 2 and 3 could be amended when the Chinese law was revised in 2013, these suggestions were not heeded to the regret of some commentators (Wu, 2013). This suggests that China's definition is likely to need updating considering the widespread sweeping changes witnessed in China during the past three decades. The concept of consumers as initially articulated in 1993 may no longer reflect the market or the specific economic and social conditions at play in China today.

Looking at the Article 2 definition of a consumer more closely, the first element for attention is the lack of clarity within the Chinese definition about whether the concept is limited to individuals only or whether any legal persons such as small businesses (or work units in the Chinese context) can ever qualify for protection as a "consumer." Such a clarification is a common feature of definitions in other jurisdictions as discussed above; the common European definition explicitly focuses on natural persons only. The lack of clarity within the Chinese definition as to whether the notion includes legal persons or is restricted to natural persons only consequently sets the Chinese notion of a "consumer" apart and suggests that clarity would be welcome on this point, particularly as there are numerous regional regulations allowing for legal persons to be included.

Secondly, from a comparative perspective, the focus on goods or services for "daily consumption" arguably seems to draw upon definitions which look at whether the goods or services for which the parties are transacting are usually of a consumer nature. The focus within the Chinese law on "daily consumption" is very different from the EU focus on whether the putative consumer is acting for purposes outside of their business or profession. On the other hand, the Chinese concept is very similar to the Korean definition on this point due to the matching focus on whether the goods and services consumed or used are for the consumers' daily lives. Consequently, although it would be beneficial to have a greater degree of certainty about how this test may be applied in practice, nevertheless, it



may be seen as an accepted formulation to be found elsewhere within Asian consumer law and practice.

Thirdly, unlike the stark differences noted above in China's notion of a "consumer" compared to other jurisdictions, there is one area which shows more similarity. China's legal notion of a "consumer" does seem similar to that found in other jurisdictions in one important element: the explicit inclusion of agricultural workers as "consumers." Article 62 of the PRC Consumer Protection Law states that: "This Law shall apply, by reference, to farmers' purchase and use of means of production directly for agricultural production."<sup>7</sup> The explicit inclusion of farmers within the notion of the consumer differs from the EU definition where the case of *Johann Gruber v Bay Wa AG* (2005) firmly shows that farmers would be excluded from coverage, even if the contract is partly also for personal purposes. By expressly widening the definition of a "consumer" to incorporate farmers who might otherwise fall outside of the definition of "consumer" under Article 2, because clearly purchases of agricultural equipment would not normally be considered as being for "daily consumption," China is following the model of India and South Korea in expanding the definition of a "consumer" for wider developmental, societal, or economic reasons.

When comparing the notion of consumer to be found in China to that of the EU, an immediate observation is that the entire focus of the definition appears to be different, with the EU definition focusing on the person and their role in the marketplace (Reich and Micklitz, p. 53), whereas the Chinese definition instead focuses on the purpose of the transaction. The Chinese notion arguably focuses on the nature of the transaction by focusing on whether the purpose of the transaction is for goods or services for daily consumption. On the other hand, it could perhaps be argued that the focus on the transaction is a proxy by which the position of the party in the marketplace can be judged. In other words, by restricting the application of consumer protection law to those purchasing goods or services solely to meet their daily needs, the Chinese definition could in effect be seen as restricting legal protection to those who lack expertise in that market. Furthermore, China's focus on the purpose of the transaction as opposed to the position of the party is not unique. As seen in the preceding section, both India and Korea also focus more on the nature of the transaction as non-commercial as the primary determinant in establishing consumer status rather than the status of the individual. Consequently, the focus of the Chinese notion of consumer on the purpose of the transaction is not unusual but the expression of the test as centring around whether the goods or services were purchased to meet daily consumption needs would still benefit from greater clarity around how daily consumption is defined in practice.

In summary, it is clear from examining China's notion of a "consumer" in comparative perspective that the definition to be found within Article 2 of the PRC Consumer Protection Law is significantly different from more concrete formulations to be found in other jurisdictions. The only aspect in which direct parallels can be drawn between the Chinese notion of a "consumer" and the notion as expressed in other jurisdictions is the inclusion of farmers within the definition of a "consumer" under Article 62 of the PRC Consumer Protection Law. By focusing on whether the goods or services at the heart of the transaction are for "daily consumption," the Chinese notion of a "consumer" seems closer to the Korean definition. However, the exact wording of the test "for daily consumption," particularly combined with the lack of further guidance as to this phrase's precise meaning,

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<sup>7</sup> Previously Article 54 in the original 1993 PRC Consumer Protection Law. The 2013 amendments did not change the wording although the article number was shifted.

ensures that China's definition of a "consumer" remains frustratingly opaque. There is a clear need for clarification on whether only natural persons can qualify as consumers under Article 2 and for how the "daily consumption" test should be interpreted.

## Discussion and Conclusion

Despite significant increases in cross-border trade and the widespread adoption of modern consumer protection laws around the world, there is no clear harmonized notion of a "consumer" in universal use, and instead, each jurisdiction has formulated its own definition. The divergent approaches taken to defining the notion of the "consumer" show the difficulty of clearly delineating who is worthy of protection. In addition, there is also little consensus around the interlinked difficulty of explaining exactly why "consumers" should be subject to enhanced protection, with various economic and social rationales such as market failure, information asymmetry, and behavioural economics proposed as theoretical foundations. Nevertheless, there are certain common considerations or themes in the notion of a "consumer." Many jurisdictions around the world appear to have implemented a definition of "consumer" based on one of two fundamental approaches: either defining a "consumer" from a consumerist perspective focusing on the *competence* of the party making the contract, as in EU consumer law *acquis*, or defining a "consumer" from a producerist perspective focusing on the *nature* of the goods or services at the heart of the transaction, as in the USA (Whitman, 2007). However, the approach taken to defining the notion of a "consumer" within the PRC Consumer Protection Law is strikingly different to either of these two main approaches found elsewhere in the world. Article 2 of the 1993 PRC Consumer Protection Law, as amended in 2013, has been condemned as a circular definition of a "consumer" at best and merely states that consumers purchasing goods or services for daily consumption are covered by the law.

The Chinese definition of the notion of the "consumer" in comparative perspective demonstrates clearly that each jurisdiction has to deal with consumer issues within its own society, economy, and wider stage of development. For example, China's 1993 PRC Consumer Protection Law extended its coverage to farmers purchasing means of production for agricultural purposes. This explicit inclusion of agricultural workers within the definition of "consumer" demonstrates how consumer protection law can be used as a developmental tool to boost the legal position of certain groups (Rachagan, 2010, p. 56) and echoes attempts made in other countries such as India to use consumer protection law as a tool to fulfil wider policy goals. The treatment of agricultural workers as consumers for the purposes of the PRC Consumer Protection Law also demonstrates how consumer law more generally can be used by the state as a tool to direct support to groups of persons in society who are perceived as lacking bargaining power. Although not an exclusively Chinese concern, such an inclusion does demonstrate that the emergence of a harmonized notion of a "consumer" is not on the horizon in the short term and indeed may not be desirable if it prevents states from adapting the consumer laws to their own local unique conditions and needs.

The central aim of China's consumer protection law remains firmly focused on promoting consumer confidence in order to support and further stimulate domestic consumption. As an emerging economy, China has to deal with the specific problem of completing its transition from a seller's market under the former command economy to a buyer's market in a market-based economy. Thus, it is conceivably inevitable that as an instrument of

change, the consumer protection legislation in China contains some unique features, particularly the opaque definition of a “consumer.” Indeed, Wei (2020, p. 52) has argued that whilst China is still in economic, political, and social transition, then “perhaps, incoherence might be a strength instead of a weakness for the time being.” Furthermore, it is well recognized that many Chinese laws are intentionally vague in order to allow for flexibility in interpretation and implementation (Potter, 2005, p. 24), so the vague nature of Article 2 of the Consumer Protection Law defining consumers could well be seen as deliberate.

Overall, the wider comparative analysis of the notion of a “consumer” outlined in the second part of this article combined with scrutiny of the specific Chinese definition highlights different approaches to the normative concept of a “consumer.” There is no clear unifying rationale behind the use of a specific consumer protection law to protect certain parties, and consequently, no coherent concept of a “consumer” can be articulated. Furthermore, without a clear understanding of who a “consumer” is and why they are in need of protection, the formal definition of such a notion in the law is inevitably going to remain problematic. However, I would argue that such a high level of ambiguity as found in the Article 2 definition of “consumer” goes beyond simply offering flexibility to officials in implementation to an unreasonable level of incoherence in practice.

Consequently, the Chinese definition of a “consumer” remains highly problematic and should be further clarified in any future revisions of the law. China should consider drawing on definitions to be found in other jurisdictions to clarify two key issues: firstly, whether legal persons can ever qualify as a “consumer” and secondly, how the test of whether the goods or services are purchased for daily consumption should be applied. Such a proposed definition would offer much needed clarity to this key legal issue and would not only be easier to apply in practice, but would also support economic growth and consumer confidence through ease of understanding and possible convergence with the definitions used in trade partners’ laws and regulations.

## Declarations

**Conflict of Interest** The author declares no competing interests.

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