

# **Consumer Protection Policies and Practice of Automobile Industry in China: Explanations and Findings**

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## **I. Abstracts:**

The development of recent consumer protection legislation in China can be traced back to the late 1980s and early 1990s. The Law of the People's Republic of China on Protection of Consumer Rights and Interests released on Oct 31<sup>st</sup>, 1993, was the first law devoted to consumer protection in China. Despite the rapid development of consumer protection legislation since late 1980s, individual consumers in the automobile industry nowadays still complain about how little protection they get after purchasing their passenger cars. This project aims to examine how Chinese consumers in the industry of passenger cars are protected under the current consumer protection legislation through a three-level process analysis of consumer protection policy and practice. First, there will be an analysis on the legislative piece to see what legal principles are adopted in the Law of the People's Republic of China on Protections of Consumer Rights and Interests and Product Quality Law of the People's Republic of China (2000 Amendment). The second level of analysis will focus on China Consumers' Association (CCA) to examine how consumers' complaints are legally resolved and whether CCA has followed the principles of the Law of the People's Republic of China on Protections of Consumer Rights and Interests in the process of complaint resolution. The final level of analysis will focus on consumers' individual behaviors and the interactions between consumers and car dealers in the process of informal dispute resolution. Throughout this multi-level process analysis, I will hopefully answer the question of whether Chinese consumers are adequately protected by the consumer protection law, and if not, why. Besides this explanatory purpose, this study will also generate broader implications on how better consumer protection mechanisms will potentially benefit private businesses and the development of China's automobile industry as a whole.

## **II. Introduction:**

Gene A. Marsh in the *Consumer Protection Law In A Nutshell*, defines consumer transaction as follows: "A consumer transaction occurs when a person obtains goods, real property, credit, or services for personal, family, or household purposes" (Marsh, 1). As free markets develop throughout the world, an international focus on consumer law becomes more and more relevant (Marsh, 3). In 1985, the United Nations adopted *The*

*United Nations Guidelines for Consumer Protection*, which has a significant influence on consumer policy actions undertaken by governments and consumer groups (Marsh, 2).

The surge in consumer protection in China starting 1980s was in part a response to the wave of the international influence. But more importantly, it was a signal that the Party first gave a green light to the free market economy. As more and more products become commercialized commodities, there also emerges great importance of consumer protection policies. The new era in the late 1980s and early 1990s marked the development of specified consumer protection laws in China. The People's Republic of China passed Law of the People's Republic of China on Protection of Consumer Rights and Interests on Oct 31<sup>st</sup>, 1993, which was the first law devoted to consumer protection in China (Xu, 27). However, while Article 45 of the Law of the People's Republic of China on Protection of Consumer Rights and Interests specifically states that "Business operators shall be responsible for repair, replacement or return of goods, if repair, replacement or return of goods is guaranteed by provisions of the State," this provision has not been formally implemented on the cases of passenger cars until the regulation on free repairs, replacement and return for automobiles by the General Administration of Quality Supervision, Inspection and Quarantine was enacted in January, 2013.

This phenomenon raises a controversial question: if The Law of the People's Republic of China on Protection of Consumer Rights and Interests already has the provision of repair, replacement and return, why do we need a separate regulation for automobiles? This leads to the two primary research questions to be answered by this paper:

(1). What are the current consumer protection policies and practice in the automobile industry in China? How are Chinese consumers protected at the current stage?

(2). If consumers are not adequately protected under the current consumer protection policies and practice, how can it be explained given China's uniqueness in its economic and political systems?

### **III. Literature Review:**

#### *Law and Legal System:*

Junkie Xu, in his journal article *Who Will Protect Chinese Consumers? The Past, Present, And Future of Consumer Protection Legislation In China*, lays out the map of

the historical development of consumer protection legislation in China since 1980s. As he points out, the initial stage of the Chinese government's attempt of addressing consumer protection are the Temporary Provision Related to Total Quality Management of Industrial Enterprise in 1980 and the Regulations on Quality Responsibility for Industrial Products in 1986 (Xu, 24). According to Xu, this initial stage demonstrated China's acknowledgement of the necessity for consumer protection (Xu, 24). The new era in the late 1980s and early 1990s marked the development of more specified consumer protection laws. The P.R.C passed The Law of the People's Republic of China on Protection of Consumer Rights and Interests (CRIL) on Oct 31<sup>st</sup>, 1993, which was the first law devoted to consumer protection in China (Xu, 27). The most important development about CRIL is that for the first time in Chinese law, it "outlined the specific rights to which the consumers were entitled, the obligations of the consumers, and the obligations of the providers of goods and services" (Xu, 27). More importantly, it outlines the role of the government in consumer protection. Since the CRIL serves as the "core of China's unique and complex legal system to protect the consumer" (Xu, 36), I will first look into the ways in which it is effective, as well as its insufficiencies in several aspects as Junkie Xu points out to see how they affect the consumer protection in the automobile industry. However, we must also note the national legislation of consumer protection in China only serves as a broad guideline, and much of the actual implementation is subject to local interpretations. Therefore, I am especially interested in finding out how disputes are resolved at the level of dealership by interviewing passenger-car consumers and automobile dealers.

Although Junkie Xu in his study provides a comprehensive historical development of consumer protection legislation in China since the 1980s, he does little study on the consumer protection legislation in the automobile industry specifically. One example is the "Three Guarantees". In China, the term "three guarantees" (*san bao*) is used to describe the warranties on goods sold (King, Tong, 23). The "three guarantees" in the consumer-law context are "repair," "replace," or "refund" (King, Tong, 23). The initial form of "Three Guarantees" was rooted in the *Regulations on Quality Responsibility for Industrial Products* issued by the State Council in 1986 (Xu, 30). In 1995, The State Economic and Trade Commission issued the *Provision on the Liability for the Repair,*

*Replacement, and Return of Some Commodities*, and expanded the kind of commodities regulated by “The Three Guarantees” from six to eighteen types (Xu, 30). However, up until now automobiles are still not covered under *Provision on the Liability for the Repair, Replacement, and Return of Some Commodities* although a separate law on free repair, replacement and return for automobiles is enacted. Moreover, Junkie Xu points out that local legislation plays an important role in China’s consumer protection law. Consumer protection began in city and province levels in the 1980s, with local legislations passed even before the CRIL (Xu, 50). Because of the decentralized structures of local institutions, local regulations are more flexible and thus easy to meet local needs (Xu, 51). However, these local governments are also further from the control of the central government and thus more flexible in the implementation of their laws. This study will set aside the legislative aspect and focus more on the actual implementation of consumer protection laws. Due to the important influence of the local legislation on the actual implementation procedures in the local level, I will also be looking into the local consumer protection legislations of Zhejiang Province, the jurisdiction in which I will conduct my interviews. Whether the consumer protection rights are legally implemented in the local level and how are consumer complaints resolved involve more in-depth study about China’s political and cultural environment, and that is what this study is designed to address.

#### *Government and Economic Enterprises:*

Besides the importance of the consumer protection legislation, whether consumers are adequately protected by the consumer protection law is largely influenced by law enforcement in the local level. In order to delve deeply into the complexity of law enforcement policy by the Chinese government, it is important to examine the relationship between the Communist Party and economic enterprises, including both the State Owned Enterprises and private businesses. This examination will hopefully give us a broad view of how government’s behavior and decisions are influenced by big companies. Richard McGregor, in his *The Party—The Secret World of China’s Communist Rules*, offers a captivating portrait of how the Party controls the government and its businesses. As McGregor points out, the Tiananmen crackdown on June 4<sup>th</sup>, 1989 drew a dividing line between two eras of reform in China (McGregor, 36). The vanities

of relatively open political and economic atmosphere by Zhao Ziyang were out and the Party started to reassert its authority once and for all (McGregor, 36). This redefines the relationship between the Chinese government and businesses: instead of trying to protect the state sector, which was threatening to sink the economy, the Party streamlined government enterprises and pilot them into the global business arena. However, the fact that these businesses become much more global and commercial does not prevent them from being communist. In fact, the transition from the central planning economy to the market economy under Deng's new model does force the Party to pursue free-market reforms, but is "in tandem with recalibrating and tightening political authority in Beijing" (McGregor, 42). The new style of the Party's control over state owned enterprises, according to McGregor, gives top executives of state enterprises a relative freedom to run their businesses, but the Party has retained its influence by maintaining power over all senior appointments (McGregor, 68).

The Party's control over private businesses is a similar story. On one hand, the Chinese Communist Party opens up the market and allows business people to get rich. On the other hand, the Party moves closer to them in order to maintain their political control. One way of doing so is Jiang Zemin's 2002 announcement at the five-yearly party congress that entrepreneurs could officially join the Party (McGregor, 208). These entrepreneurs are invited to the Central Party School in Beijing, but they are kept enough of a distance from the Party so they have no chance to "organize into a rival centre of power" (McGregor, 128). Another way of moving close to the private businesses is to establish Party Committees in every single private business, including foreign enterprises. The permanent aim of doing so, as McGregor points out, is to "have a permanent party presence in every large private company in the country" (McGregor, 214).

McGregor's comprehensive analysis of the relationship between the PRC and economic enterprises serves as a reliable political background for my study. It also supports my hypothesis of why the Chinese government is reluctant to push hard on law enforcement. Because China's major automobile manufacturers are owned by the state, overprotecting consumer rights by enforcing the compensation policies will unavoidably hurt the government's revenue. Similarly, given the large impact of private businesses on China's open market economy, it is of the great importance for the government to keep



close tie with these businesses. Since large private automobile dealers also have close relationships with the PRC (its senior executives are either appointed by the PRC or have close ties with the PRC), the government is unwilling to hurt their benefits by enforcing laws to protect consumers.

Individual Behaviors and Decision-Making:

A. Transformation of Disputes Theory:

In the article *The Emergence And Transformation of Disputes: Naming, Blaming, Claiming*, Felstiner, Abel and Sarat (1980-1981) provide a framework within which the emergence and transformation of disputes are described. The study focuses on the three stages from which dissatisfactions develop into disputes: naming, blaming and claiming. Disputes first emerge from its first stage naming, “This first transformation-saying to oneself that a particular experience has been injurious –we call naming” (Felstiner, Abel and Sarat, 635). The stage of naming is transformed into its second stage, blaming, when “the transformation of a perceived injurious experience into a grievance” (Felstiner, Abel and Sarat, 635). The third stage, claiming, is “when someone with a grievance voices it to the person or entity believed to be responsible and asks for some remedy” (Felstiner, Abel and Sarat, 635). The stage of claiming is finally transformed into disputes when claims are rejected in whole or in part.

Felstiner, Abel and Sarat’s study of dispute transformation will serve as an important theoretical guideline for my research because their study approaches disputing through individual perceptions, behaviors, and decision-makings. In my analysis of the interactions between consumers and automobile dealers, I am also interested in examining the early stages of conflict transformation with a focus on individual behaviors in decision-making. The study of these un-institutionalized disputes will provide another layer of analysis underneath the formal legislation. The downside of this study is that it provides a rather broad theory of dispute transformation, with little in-depth examination on how specific culture and political background of a country can influence individuals’ behavior in decision-making. Since China is a unique nation with specific culture and Party-centered political environment, individual behaviors of its people will unavoidably reflect this. Thus in my research, I plan to integrate the insight of Chinese culture and legal consciousness into this general theory of dispute transformation in order to conduct

a relatively comprehensive analysis on how individual behaviors of consumers and their interactions with the dealers influence the level of protection consumers receive from law.

#### B. Individual Legal Consciousness Theory:

Another reason why Chinese consumers are not adequately protected by the Consumer Protection Law can be explained by whether they are willing to actively seek legal remedies and whether informal dispute resolution remedies work for them at the level of dealerships. This is fundamentally a question of how people understand and make use of law in their everyday life. One of the classic studies about this is by Patricia Ewick and Susan S. Silby. In *The Commonplace of Law*, Patricia Ewick and Susan S. Silby investigate the presence and consequences of law in social relations. In order to discover this, they try to understand “how legality is experienced and understood by ordinary people as they engage, avoid, or resist the law and legal meanings” (Silby, 35). This is how legal consciousness is defined. Patricia Ewick and Susan S. Silby developed a cultural analysis of legal consciousness, and my study about how Chinese automobile consumers seek legal remedies is strongly related to this theory. In the cultural analysis, they point out that societies provide us with specific opportunities for thought and action, and these schemas include cultural codes, logics, hierarchies of values, and conventions (Silby, 40). In other words, culture and societal values serve as important factors on how people react to law and legal remedies. In addition to schemas, societies also “produce and distribute resources, material assets, and human capacities used to maintain or enhance power” (Silby, 41). Resources, according to Ewick and Silby, include “diverse objects and abilities as legal knowledge, capital, property, political connections” (Silby, 41). The differential distribution of resources, together with the differential access to schemas, underwrites how people view law and legality.

Patricia Ewick and Susan S. Silby’s theory on legal consciousness will serve as the theoretical guide for my study on the consumer side of the story. I am interested in examining how cultural schemas and distribution of resources in China affect the legal consciousness of individual consumers. In other words, by conducting interviews and surveys with individual automobile consumers who have experienced problems on their newly purchased passenger cars, I am interested in examining how cultural schemas and

resources affect whether or not they are willing to take legal approach to resolve their complaints.

### C. Cultural Skepticism of Rule of Law:

Chinese consumers' disfavor towards formal legal remedies may also be explained by China's implicit cultural assumption against the rule of law. In contrast to the Western view, China historically and contemporaneously views the rule of law with skepticism (Chew, 47). The Chinese skepticism of the rule of law can historically be traced back to two approaches: the Legalist approach (*fazhi*) and the Confucian approach (*renzhi*) (Chew, 49). The Legalist approach is what the West considers as the rule of law, while the Confucian approach is what the West considers as the rule of people. The debate between the rule of law and the rule of people first occurred over two thousand years ago and emphasized the following arguments: Legalists argue that rulers should rely on formal statutes and codes of the government rather than their intellect, intuition, or arbitrary preferences (Chew, 49). The Confucians, on the other hand, argue that the rulers should be guided by social and cultural norms (Chew, 49). The rules of proper conduct called *li*, should be the basis of governing (Chew, 49). Throughout the history, the clear tendency of who has won the debate has been for a preference towards the rule of people. As Chew points out, "Chinese society and government have opted repeatedly for moral guidance and cultural norms to trump over the rigidity of formal laws" (Chew, 53).

I believe that the Chinese cultural skepticism of the rule of law has influential impact on how individual consumers behave in the process of dispute resolution. China's specific culture on the rule of law and the rule of people will provide more insight into the theory of legal consciousness to explain that although individual consumers may behave differently based on cultural schemas and resources the society provides them, their behaviors do rely on a certain level of common ground due to the culture they are embedded in. Moreover, this study will also integrate the theory of transformation of disputes to examine the role of culture in each stage of dispute transformation: naming, blaming and claiming.

### *Interpretation of Public Legal Rights in Alternative Disputing Forums:*

Shauhin A. Talesh in his article *Lost In Translation: How Competing Organizational Field Logics Mediate The Meaning of Rights*, addresses the issue of conflicting field

logics over the purpose and meaning of lemon laws and the goal of dispute resolution structures (Talesh, 1). “Procedural attack on rights” is a term that refers to the “legal strategies and court decisions that trim or erode the procedural and practical mechanisms concerning civil and consumer rights enforcement” (Talesh, 2). According to Talesh, the most notable procedural attack is reflected in “the court’s willingness to re-route claims from courts into private disputing forums often with varying degrees of business involvement” (Talesh, 2). The procedural attacks significantly impact consumer rights enforcement as consumers often “resort to informal non-legal methods of dispute resolution” (Talesh, 2). Given that the previous scholarly inquiries concerning the procedural attack on rights all focus on the results of legal decisions on the rights themselves, Talesh in his study, focused rather on how rights are enforced, interpreted and implemented once they have been routed away from courts (Talesh, 2). By studying the private dispute resolution processes, he was also able to address of issue of how organizations (as opposed to courts) shape the meaning of public legal rights in alternative disputing forums they create (Talesh, 2).

Talesh’s study shows that field actors from across the United States agree that alternative dispute resolution venues are preferable to courts for resolving lemon law disputes (Talesh, 6). There is also consensus that lemon laws are ambiguous with respect to their meaning, and thus create much room for interpretation by field actors (Talesh, 6). More importantly, Talesh points out that “public (state regulators, state lemon law administrators, policymakers) and private (automobile manufacturers, automobile dealers) actors conflict regarding the goals of informal dispute resolution and the purpose of lemon laws” (Talesh, 6). According to Talesh’s interviews, private actors view goals and purposes of lemon laws and dispute resolution through a “business” logic that focuses on efficiency and allowing managerial discretion, while public actors adhere to a “consumer” logic that focuses on public safety, consumer protection and values such as rights, transparency, and following formal law (Talesh, 6).

Talesh’s study on the contestation in field logics in the realm of informal dispute resolution is central to my research because I am also interested in examining how disputes are resolved informally outside of courts. By comparing how consumer complaints are formally resolved by the China Consumers’ Association with how

disputes are resolved privately between consumers and automobile dealers, I will be able to test Talesh's research result in the contestation in field logics between "public" actors and "private" actors within the context of China. However, given that my study will be taken place in China, a country with unique political and economical environment, my study will also be subject to various factors (eg. culture) that may affect the results. Although the two countries are significantly different in various aspects, China's national legislation on consumer protection is also ambiguous with respect to its meaning, and thus is subject to interpretation by different field actors. Moreover, given the fact that consumer protection rights are largely influenced by the interactions between public and private actors in the consumer protection law field, Talesh's study provides me with a new perspective on understanding China's consumer protection policies and practice.

#### **IV. Methodologies:**

##### Law and Legislation:

My first level analysis will focus on the textual analysis of Law of the People's Republic of China on Protection of Consumer Rights and Interests released on Oct 31<sup>st</sup>, 1993 and Product Quality Law of the People's Republic of China (2000 Amendment). I am interested in examining what legal principles are adopted in the Laws regarding what rights consumers ought to have in a general sense. Moreover, I will be looking into the roles business operators ought to play under both Laws and compare this with what businesses actually do over the issues of defective automobiles. Finally, I will analyze what the Laws require administrative departments and agencies to do in order to reach the State goal of consumer rights protection.

Moreover, my preliminary research has shown that although automobiles are generally not covered by the current national consumer protection legislation (Law of the People's Republic of China on Protection of Consumer Rights and Interests), the local consumer protection legislation of Zhejiang Province has incorporated consumer protection of automobiles into its provincial measures. Therefore, besides the national legislative pieces, I will also examine the local legislative piece: *Procedures of Zhejiang Province on the Law of the People's Republic of China on Protection of Consumer Rights and Interests*. The local legislative piece will serve as important supplementary materials to gain insights on law enforcement process.

### Law Enforcement Agency:

My second level of analysis will focus on China Consumers' Association. The CCA is "a national organization legally registered to protect consumers' interests by means of supervision of commodities and services" (China Consumers' Association). According to the Law of Protection of Consumers' Rights and Interests of the People's Republic of China, the CCA is responsible to "receive, inspect and mediate the complaints of consumers" (China Consumers' Association). If the complaint refers to the qualities of commodities or services, the CCA is also responsible to "require appraisal department to appraise the quality of commodities or services" (China Consumers' Association). Furthermore, if the complaint reaches a higher level, the CCA is responsible to "support the infringed consumers in making lawsuits on violations of consumers' interests" (China Consumers' Association).

Given the CCA's legal responsibilities under the Consumer Protection Law, I am interested in examining how the CCA resolves consumers' complaints in the cases involving automobile quality issues, and whether the real practices align with what was written in the Law. The cases I have obtained currently are approximately twenty written cases within the timeframe between 2002 and 2008. They are the past cases resolved by the CCA provided by a CCA official, whose name will not be disclosed in my research. I have also contacted the official to request more recent cases. But since these cases are not yet published, they are only available on the CCA's internal website. Therefore, I will need to sit in the CCA's office in order to review them.

### Individual Behaviors and Decision-making:

My third level of analysis will focus on individual consumers' behaviors and decision-making with respect to the following questions: how do disputes emerge and how are they transformed before they have reached the stage of formal remedy? Research methodologies employed for this part of the analysis are largely in-depth interviews with individual consumers who have bought passenger cars recently and who have experienced quality issues of their newly purchased passenger cars. The format of the interviews will be a combination of phone surveys and in-person in-depth interviews. In-person in-depth interviews will follow phone surveys, and the sample of in-person interviews will be determined by the results of phone surveys. The theoretical foundation

of my interview questions will be based on the three stages of dispute transformation described in Felstiner, Abel, and Sarat's *The Emergence And Transformation of Disputes: Naming, Blaming, Claiming...* Besides the interviews with individual consumers, I will also conduct in-depth interviews with local passenger-car dealers in order to analyze the interactions between individual consumers and car dealers with respect to dispute resolution. The style of interviews will be semi-structured. That is, I will ask standard questions related to my research question, as well as give my interviewees enough room to expand on any issue they want to express. Semi-structured interviewing is beneficial in my study due to the following reasons. Firstly, I will not get more than one chance to interview the consumers (Qualitative Research Guidelines Project). Secondly, the inclusion of open-ended questions will help me identify new ways of seeing and understanding the topic (Qualitative Research Guidelines Project). Due to the limited resources and networks I am exposed to in China's automobile industry, a Snowball Sampling technique will be used in my interviews with the car dealers. That is, I will start from one local passenger car dealer and will later get referred by him to other dealers.

*Semi-structured In-Depth Interviews:*

A. Individual Consumers:

The pool of interviewees will consist of individual consumers who have bought passenger cars from local dealers. This pool of consumers will be divided into two large subgroups: one group of consumers has already experienced quality issues of their new-purchased cars and have already reported their complaints to the China Consumers' Association, while the second group of consumers have expressed no intention for dispute resolution. I will first get access to the contact information of the first group of consumers through CCA's internal case documents. Phone surveys will then be conducted to each one of the consumers whose complaint was received by the CCA. The goal of the phone surveys is to invite each consumer to an in-person interview. However, if a consumer refuses to meet in person, a phone interview will be conducted instead. For this group of consumers, my questions will be focused on the process of how disputes emerged and developed. Given that the process of dispute development has three stages: naming, blaming, and claiming (Felstiner, Abel, and Sarat, 635), my questions will focus

on each individual stage. Moreover, I am specifically interested in how the last stage--claiming, has developed into disputes when consumers' claims are rejected by the dealer. This methodology will provide a close examination of Felstiner, Abel, and Sarat's theory on dispute transformation, and specifically, how this general theory is applied within the context of China.

My sampling strategy is slightly different for the second group of consumers. First, I will gather the contact information of a set of consumers who have recently purchased passenger cars in the past three years. The list of contact information will be provided by a local car dealer. Phone surveys will then be conducted to every consumer who is chosen. The goal of the phone surveys is to identify the consumers who have experienced quality issues but have not yet expressed intention to seek remedies. These consumers will then be invited to an in-person interview. For this group of consumers, my interview questions will focus on the three stages of the transformation—naming, blaming and claiming. This is based on the assumption that certain consumers who have experienced quality issues have gone through the stages of naming and blaming (or both), but have never reached the stage of claiming. For consumers who have reached the stage of claiming, I will focus on why they decide not to go forward with their claim. Under this situation, I am interested in examining the reasons underneath it and specifically, what is the impact of “social structural variables, as well as personality traits” on dispute transformations (Felstiner, Abel, and Sarat, 635). Finally, my interview with individual consumers will also incorporate questions on Chinese culture to reflect how much an impact culture can play in the early stages of dispute emergence and transformation.

#### B. Car Dealers:

The second set of interviews will be conducted with local passenger-car dealers, with a purpose to understand the process of dispute transformation from claiming to dispute. According to *The Emergence And Transformation of Disputes: Naming, Blaming, Claiming...*, “a claim is transformed into a dispute when it is rejected in whole or in part” (Felstiner, Abel, and Sarat, 636). Therefore, my first part of the interview will involve questions concentrating on interactions between consumers and car dealers in the stage of claiming. Among the cases that reached the stage of claiming, I am interested in how the car dealers resolve these cases and whether they have evolved into disputes.



I plan to recruit interviewees using Snowball Sampling. I will start with one local dealer and ask him to refer me to other dealers. Considering the fact that foreign dealerships in China also have to follow international warranties constructed by their foreign parent companies, I am interested in learning whether foreign dealerships, under the constraint of international warranties, resolve disputes differently from Chinese dealerships. Therefore my intention is to start with the foreign dealership that I have been in contact with, and asks him to refer me to at least one Chinese dealership. One limitation of this interview method is the validity of the responses from the dealers, as most dealers are concerned about their reputation and may be reluctant to uncover any information regarding disputes with their clients. However, since the responses of car dealers will be balanced by the viewpoints of individual consumers, there shall be no significantly negative impact on my study.

#### **V. Anticipated Findings:**

I expect to find, through my multi-level process analysis, the answer to the question of whether Chinese consumers in the automobile industry are adequately protected by the consumer protection law. So far through my preliminary research on Chinese news articles and online consumer discussion forums, consumers are not receiving adequate protection under the scope of the consumer protection legislation. My task of this research therefore, is to conduct a comprehensive analysis on the level of legislation, law enforcement agency, and individual consumer behaviors to reach possible explanations.

First, China's consumer protection legislation is in itself not comprehensive enough to be enforced without discretion. Law of the People's Republic of China on Protection of Consumer Rights and Interests serves as a broad guideline without specific enforcement mechanisms. Moreover, since consumer protection began in city and province levels in the 1980s, with local legislations passed even before the CRIL (Xu, 50), government organizations in the local level are more likely to enforce their own power and will onto the actual law implementation process. Therefore, to adequately provide consumer protection, there should be more comprehensive national legislation on consumer protection. Besides the incomprehensiveness of the law itself, there are also limitations and problems in terms of the implementation of certain specific provisions. For example, the Article 32 of The Law of the People's Republic of China on Protection

of Consumer Rights and Interests states the functions of consumer associations: “In case quality of commodities or services is involved, to submit for appraisal the points of complaints to appraisal departments which shall inform them of the expert conclusions” (The Law of the People’s Republic of China on Protection of Consumer Rights and Interests). Although the provision is specific enough on paper, there still exist problems in the process of actual implementation due to the fact that there is no unified quality appraisal standard in China.

Second, the adequacy of consumer protection in automobile industry can largely be explained by China’s automotive history and policy development. The automotive sector in general was beginning to grow at a rapid clip in early 1980s, with total production value of vehicles and parts production doubled from 8.84 billion in 1980 to 16.45 billion in 1984 (Harwit, 27). However, despite the success, the drive to foster a domestic passenger car industry had only become unstoppable by the mid-1980s (Harwit, 35). Given the fact that the passenger car industry has developed fairly late, overly protecting consumers may result in pragmatic considerations. The most pervasive consideration by the Chinese government is its priority to develop its own automobile production industry. Given the low production technology in the late 1980s and early 1990s, developing the automobile industry, rather than consumer protection, is the first priority by the Chinese government. Moreover, in view of the fact that the government owns almost all major auto-manufacturing factories back then, it may seem that asserting consumers’ rights against the manufacturers would be asserting rights against the government itself. Finally, the underdeveloped consumer protection mechanisms in the automobile industry can also be explained by the level of commercialization of passenger cars in China. Back in the late 1980s and early 1990s, passenger cars are mainly owned by a small number of government officials. As the standard of living of average people in China begins to increase, passenger car market has become more and more commercialized. Thus the importance of consumer protection must also be recognized.

Third, whether consumers are adequately protected by the consumer protection law also depends on how people understand and make use of law. This can be measured by whether consumers are willing to actively seek legal remedies when problems occur. I anticipate that a large portion of Chinese consumers don’t actively seek legal remedies

and rather keep the problems to themselves. This, in part, is due to the lack of legal consciousness and the cultural skepticism of the rule of law demonstrated by the average Chinese consumers. In order to raise Chinese consumers' awareness of the importance of law, legal education is very important. For instance, all students should receive training in consumer protection law so that they may be aware of their rights. Moreover, consumer education about the quality of goods and service should be offered at all levels of school systems, as well as in adult educational programs.

Regardless of the weaknesses of consumer protection laws and mechanisms, consumer protection is rather a new concept in China that is intertwined with China's economic development and modernization. As long as China continues to grow economically, the concept of consumer protection is also in a state of constant change. While the current stage of consumer protection has flaws and weaknesses, I am almost certain to say that due to the uniqueness of China's political structure, consumer protection policies are always aligned with the economic priorities in the current period. With that being said, as the passenger car industry in China becomes more mature, it is time to recognize the importance of consumer protection within a new and innovative socialist framework.

## **VI. Findings and Analysis:**

### a. Law in the Book:

#### Relationship between *Law of the People's Republic of China on Protection of Consumer Rights and Interests* and *Product Quality Law of the People's Republic of China*:

The Consumer Protection Law and The Product Quality Law are the two important laws on the national level that help regulate the market economy of China. With the effective date around 1993, both laws can be viewed as direct response to China's transformation from planned economy to market economy. After the detailed analysis of both laws, I have reached the conclusion that on one hand, the two laws are closely related as both serve an important role in terms of consumer rights protection; on the other hand, the two laws are different as they have different legislative intents and principles.

Article I of The Product Quality Law states that "The Law has been formulated with a view to reinforcing the supervision and regulation of product quality, improving the

quality of products, clarifying the liabilities for product quality, protecting the legitimate rights and interests of consumers and safeguarding the social and economic order” (Product Quality Law of the People’s Republic of China). By reinforcing the supervision and regulation of product quality, The Product Quality Law also reinforces the responsibilities and obligations of producers and sellers: “Producers and sellers are responsible for the product quality according to the provisions of the law” (Product Quality Law of the People’s Republic of China). Since product quality is a major issue in the realm of consumer protection rights, The Product Quality Law, therefore, plays an important role in protecting consumer rights, and thus is supplementary to The Consumer Protection Law.

The two laws are interrelated in the following aspects. First, both laws address two major relationships: the relationship between consumers and business operators and the relationship between government agencies and business operators. The first relationship is addressed in Chapter Three: Responsibilities and Obligations of Producers And Sellers of The Product Quality Law, and Chapter Two: Rights of Consumers and Chapter Three: Obligations of Business Operators of The Consumer Protection Law, respectively. Likewise, the second relationship is addressed in Chapter Two: Supervision and Control Product Quality and Chapter Five: Penalty Provisions of The Product Quality Law, and Chapter Six: Settlement of Disputes and Chapter Seven: Legal Responsibilities of The Consumer Protection Law. Second, both laws have contents that supplement and support each other. This is reflected in two ways:

(1). The Product Quality Law has comprehensive provisions with regard to the obligations and responsibilities of business operators as addressed in Chapter Three: Responsibilities and Obligations of Producers And Sellers. The Consumer Protection Law, however, lacks the comprehensive provisions regarding obligations of business operators. But it refers to The Product Quality Law as Chapter Seven of The Consumer Protection Law states that “Business Operators shall, if the commodities and services they supply involve the following circumstances, bear civil liabilities in accordance with the provisions of the Law of the People’s Republic of China on Product Quality” (Law of the People’s Republic of China on Protection of Consumer Rights and Interests).

(2). One of the major issues in the process of consumer protection rights enforcement is the quality supervision and control. Without proper quality supervision and control mechanisms, consumer rights cannot be successfully enforced. That is to say, quality control mechanisms serve as the standards to determine whether consumer rights are violated or not. Therefore, while The Consumer Protection Law offers no comprehensive provisions on quality control and examination procedures, Chapter Two of the Product Quality Law provides comprehensive procedures of quality examination and supervision mechanisms.

As every individual law has its own legislative intent and emphasis, the differences between The Consumer Protection Law and The Quality Law include the following aspects. First, the two laws are guided by different principles. As Article 1 of the Product Quality Law states: “The Law has been formulated with a view to reinforcing the supervision and regulation of product quality, improving the quality of products, clarifying the liabilities for product quality, protecting the legitimate rights and interests of consumers and safeguarding the social and economic order” (Product Quality Law of the People’s Republic of China). In accordance with this principle, the Product Quality Law clarifies the quality supervision mechanisms, which includes quality control standards, supervision and inspection system, and damage penalty. On the other hand, the Consumer Protection Law is formulated “for the protection of the legitimate rights and interests of consumers, maintenance of the socio-economic order and promotion of the healthy development of socialist market economy” (Law of the People’s Republic of China on Protection of Consumer Rights and Interests). Second, the two laws offer different levels of compensation for damage. Although both laws claim that sellers and producers shall be responsible for losses incurred to the consumers, The Consumer Protection Law imposes more severe penalties on business operators in the case of fraudulent activities. As Article 49 of the Consumer Protection Law states: “Business operators engaged in fraudulent activities in supplying commodities or services, shall, on the demand of the consumers, increase the compensations for victims’ losses; the increased amount of the compensations shall be two times the costs that the consumers paid for the commodities purchased or services received” (Law of the People’s Republic of China on Protection of Consumer Rights and Interests). The increased compensation in

the Consumer Protection Law perfectly reflects the principle of the law as protecting consumers' rights and interests due to the vulnerable position Chinese consumers are in compare to business operators.

Relationship between *Law of the People's Republic of China on Protection of Consumer Rights and Interests* and *Procedures of Zhejiang Province on the Law of the People's Republic of China on Protection of Consumer Rights and Interests*:

Due to the fact that there is currently no English version I can find on Procedures of Zhejiang Province on the Law of the People's Republic of China on Protection of Consumer Rights and Interests, specific provisions used to illustrate my findings will be translated to English by myself.

The Procedures of Zhejiang Province is the local legislation formulated under the guidelines of the Consumer Protection Law, and thus shares the same general principles and purposes with the national legislative piece. While the general principles are the same between the two laws, the Procedures of Zhejiang Province makes more detailed inquiries into the national provisions based on the actual situation of Zhejiang Province. My research has indicated that the local legislative piece, while preserves most of the provisions of the national law, emphasizes the following aspects:

(1). The Procedures of Zhejiang Province emphasizes the role of public media in consumer rights protection. As Article Six states: "The public media shall fulfill the responsibility of consumer rights protection by supporting the work of China Consumers' Association and exposing the activities of consumer rights violation. No public organization or individual can suppress the media exposure about consumer rights protection" (Procedures of Zhejiang Province on the Law of the People's Republic of China on Protection of Consumer Rights and Interests). The indication of emphasis on public media in The Procedures of Zhejiang Province reflects the increasing importance of social force in the process of law enforcement, which strongly affects business operators' reputation.

(2). Article Two of Law of the People's Republic of China on Protection of Consumer Rights and Interests states that "The rights and interests of consumers in purchasing and using commodities or receiving services for daily consumption shall be under the protection of the present law, or under the protection of other relevant laws and

regulations in absence of stipulations in this law” (Law of the People’s Republic of China on Protection of Consumer Rights and Interests). Therefore, the general principle of The National Legislation is to enforce consumer rights and interests for the purpose of purchasing and using commodities or receiving services for daily consumption. Under this general principle, Procedures of Zhejiang Province on the Law of the People’s Republic of China on Protection of Consumer Rights and Interests provide more details regarding what specific activities are qualified as “purchasing and using commodities or receiving services for daily consumption” (Law of the People’s Republic of China on Protection of Consumer Rights and Interests).

(3). Procedures of Zhejiang Province on the Law of the People’s Republic of China on Protection of Consumer Rights and Interests set more clear standards for consumer compensation if the commodities and service provided by business operators led to harm, disability, or death of the consumers.

b. Law in Action:

(1). The China Consumers’ Association:

My second level analysis involves studying how disputes are actually resolved by China Consumers’ Association.

China Consumers’ Association:

Chapter Five of Law of the People’s Republic of China on Protection of Consumer Rights and Interests states the role of China Consumers’ Association: “Consumer associations and other consumer organizations are public organizations formed according to law to exercise social supervision over commodities and services and to protect the legitimate rights and interests of consumers” (Law of the People’s Republic of China on Protection of Consumer Rights and Interests). That is to say, China Consumers’ Association is a public organization that exercises social supervision to protect consumer rights and interests without the control of the government. While the CCA, as a public organization, does not have the legal authority over consumer dispute resolution and thus can only exercise the function of mediation, is nevertheless subject to the General Administration of Quality Supervision, Inspection and Quarantine. As the CCA Official revealed in the in-depth interview:

Our organization does not have the legal authority over consumer complaints. Therefore, most cases are resolved by us through informal mediation. However, we are part of the General Administration of Quality Supervision, Inspection and Quarantine, and are subject to the government regulation. For example, the chief officer of CCA in the City of Ningbo is also the chief officer of the General Administration of Quality Supervision, Inspection and Quarantine of Ningbo, the government department that regulates the product quality supervision. Unlike the U.S where public organizations possess relative autonomy from the government, CCA does not possess complete autonomy from the Chinese government. However, compare to other government agencies, CCA does provide relative freedom to consumers because consumers are free to report any complaints regarding the violations of their legitimate rights, with the expectation that we will provide them the right direction to resolve their cases.

This special relationship between the CCA and the local government provides the CCA with additional methods for dispute resolution. When I asked the CCA Official how they resolve the consumer complaints, he said the following:

Besides the informal mediation, we often use two other methods to increase the effect of dispute resolution. First is the government enforcement. Unlike the U.S where there exists the phenomenon of “Small government and big society,” in China we have “Big government and small society,” which means the so-called public organizations such as CCA is also subject to government regulation. For example, if we find through consumer complaints the fraudulent activities that violate the consumer rights, we can inform the corresponding government agency for administrative punishment. The second method is through media exposure. The primary function of media exposure is to ensure fair competition between business operators.

In order to further examine whether CCA, as China’s primary public organization for consumer rights protection, adequately protects consumers’ legitimate rights and interests, I have conducted a close analysis on the cases resolved by the CCA. These cases are collected from two major sources and are thus sorted into two categories: five cases related to automobile disputes from 2002 to 2006 are collected from *The Case Studies By China Consumers’ Association* (全国消协组织投诉调解案例选编), and twenty-six cases resolved by the CCA from Jan 1<sup>st</sup>, 2012 to Dec, 31<sup>st</sup>, 2012 in the City of Ningbo are collected from the CCA’s internal website by random sampling. I will start my analysis from the five cases published in *The Case Studies By China Consumers’ Association*:



#### Case 1:

Brief facts: In July 2006, Mr. Huang purchased a China-manufactured passenger car in Shenzhen Province. Within one month after the car is purchased, the speed meter of the car is broken, resulting in the speed violation penalty of 400RMB. Mr. Huang reported his complaint to the dealer where he purchased the car, claiming for monetary compensation. After receiving no response from the dealer, Mr. Huang filed his complaint to the CCA.

Dispute resolution procedures and results: The dealer first claims that when Mr. Huang has his car maintenance on August 10<sup>th</sup>, the speed meter works just fine. Therefore, the car dealer has no responsibility over the 400RMB penalty. But the dealer agrees to replace the speed meter for free. In order to keep the evidence, Mr. Huang rejects this offer. On October 24<sup>th</sup>, the local CCA officer, the representative of the manufacturer, and Mr. Huang gathered in the CCA office for an informal mediation. As a result, the manufacturer proposes to compensate Mr. Huang through providing a 500RMB coupon for car maintenance but still refuses to take the responsibility of the case. Mr. Huang accepts the proposal.

#### Case 2:

Brief Facts: On April 27<sup>th</sup>, 2007, Mr. Yang purchased a “luxury” passenger car with a price of 97150 RMB. After several days, Mr. Yang suspected that his “luxury” car is not manufactured by the manufacturer, but rather a “modified” version with a cheaper cost. Mr. Yang argued with the dealer several times, requesting for return, but the dealer simply ignored his complaint.

Dispute resolution procedures and results: The local CCA, after receiving Mr. Yang’s complaint, immediately started an investigation. The CCA found the receipt indicating that Mr. Yang was supposed to purchase the “luxury” type. The CCA also found out that the “standard” type Mr. Yang purchased is 5000RMB cheaper than the “luxury” type, but the cost for modification is only 2000RMB. That is to say, the dealer can earn a profit of 3000RMB per car through this fraudulent activity. Because this activity was found to be fraudulent, the local CCA reported the case to the General Administration of Quality Supervision, Inspection and Quarantine for administrative punishment.

#### Case 3:

Brief Facts: On August 4<sup>th</sup>, 2004, Mr. Bao purchased a passenger car from the local dealer with a price of 209800 RMB. Two years after purchasing the car, the car went through a spontaneous combustion. Mr. Bao believed that the combustion was caused by quality issues. Mr. Bao thus filed the complaint with the dealer and reported the case several times to the manufacturer. But the dealer and the manufacturer both tried to avoid the responsibility. In the end, the dealer offered Mr. Bao a new car with half of the original price. Mr. Bao rejected the offer.

Dispute resolution procedures and results: Due to the fact that the car was completely burned into pieces and the quality inspection agency had no legitimate ways to assess the quality issues, it is hard to determine whose responsibility it is in this case. However, after the investigation, the CCA maintained a position that this car indeed had potential for accident because it went through maintenance for 29 times during one year after purchasing. After several round of mediation, the dealer agreed to offer a one-time compensation of 160000 RMB.

Case 4:

Brief Facts: On July 3<sup>rd</sup>, 2005, the Liang Couple purchased a Mazda passenger car with a price of 127000 RMB. When they went pick up the car, they found that the windshield was broken. While the consumer requested a car replacement or a full refund, the dealer only offered to replace the windshield.

Dispute resolution procedures and results: After several times of mediation by the CCA, the dealer agreed to replace the car with a new one.

Case 5:

Brief Facts: On April 15<sup>th</sup>, 2002, Mr. Cai signed a purchasing contract with a dealer. After Mr. Cai paid the full price of the car and due to the unavailability of the car, the dealer signed a purchasing contract with a manufacturing company. Within the four months after purchasing the car, the car suffered through a series of quality problems. In July, Mr. Cai filed his complaint to the CCA.

Dispute resolution procedures and results: The quality inspection conducted by the CCA demonstrated that this car didn't meet the national quality standard. The CCA then filed the quality report to the manufacturing company, but received no response. On October 14<sup>th</sup>, Mr. Cai sued the dealer and the manufacturing company. On February 24<sup>th</sup>, 2004,

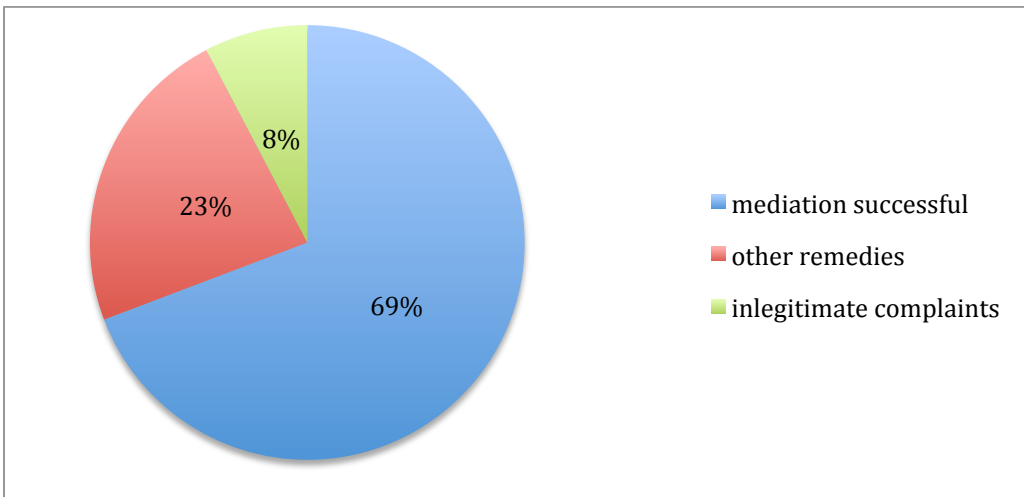
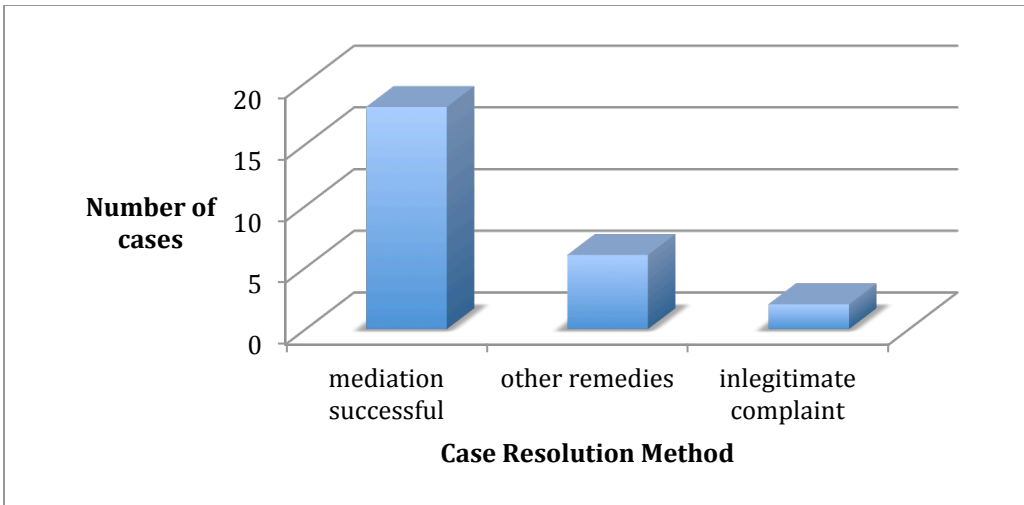
the court of second instance ruled against the manufacturing company, but the dealer also had joint liability.

Although the sample of five cases is not large enough to draw any reliable conclusion, two major themes emerged from the first set of case analysis:

(1). Three out of five cases involving automobiles are resolved by mediation, which aligns with Consumer associations' functions according to The Consumer Protection Law: "Consumer associations shall perform the following functions: (4) to accept and hear complaints of consumers and offer investigations and mediations with respect to points of complaints" (Law of the People's Republic of China on Protection of Consumer Rights and Interests). The favor of alternative dispute resolution of mediation over the court system may result from various factors and interactions between different actors in the field (consumers, automotive dealers, manufacturers, government agencies), as Talesh suggests in his article (Talesh, 18). Details of why mediation is favored over courts and the logics of each field actor will be further explored in the section of Law in Mind.

(2). All five cases published in *The Case Studies By China Consumers' Association* are successfully resolved either by CCA's mediation or court rule favoring consumers' rights and interests. On one hand, it can be viewed as a signal that the Chinese government recognizes the importance of consumer rights protection and has already made steps to enforce consumer rights strictly in accordance with the law; on the other hand, the published cases might be biased with an intention for government publicity and advertisement. Therefore, in order to deeply understand the current situation of China's consumer rights protection enforcement, I will compare the published cases with another 26 cases actually resolved by the CCA of Ningbo from Jan 1<sup>st</sup>, 2012 to December 31<sup>st</sup>, 2012.

The following diagrams help illustrate relevant findings of the 26 cases:



From Jan 1<sup>st</sup>, 2012 to Dec 31<sup>st</sup>, 2012, the China Consumers' Association in the City of Ningbo received a total of 1249 consumer complaints regarding passenger cars. A random sample of 26 cases out of 1249 cases has been obtained and analyzed in this study. As the graphs show, 18 out of 26 cases are indicated by the CCA as successful mediation, reflecting a 69% of total cases; 6 cases are resolved by other remedies due to the failure of CCA mediation, indicating a 23% of total cases; only 2 cases out of 26 cases are illegitimate complaints due to the misconduct of consumers (The CCA Consumer Complaints Report).

Based on the report by the Vehicle Administrative Office in the City of Ningbo, the total number of passenger cars in Ningbo in the year of 2012 is 8.952 million. That is to say, the percentage of consumer complaints reported to the CCA consists only of 0.01% of the total number of passenger cars. This number has a positive indication on the

overall satisfaction of consumers towards their new passenger cars. However, several issues may raise the suspicions upon this conclusion: First, consumers who experience dissatisfactions may resolve their cases using other remedies than reporting to the CCA. For example, most consumers will negotiate with their dealers, and if successful, do not have the need to go through the CCA. Second, some consumers who encountered the problems choose not to claim due to the inconvenience of the process. This is reflected in my interviews with the consumers:

Interviewer: Why did you choose to resolve the case by yourself rather than using the CCA?

Consumer A: We didn't go through the CCA process or formal legal procedures. They are too time-consuming and costly.

Interviewer: Why did you not choose the CCA to help resolve the your case?

Consumer B: I never thought about using the CCA. They receive so many complaints each day and you know, would most likely ignore my case since it is so minor.

## (2). Individual Behaviors and Decision-Making:

The second part of Law In Action focuses on the analysis of individual consumer behaviors and their relationship with the dealer in the process of informal dispute resolution. This part of research is heavily relied on the interviews I have conducted with consumers and dealers in the City of Ningbo.

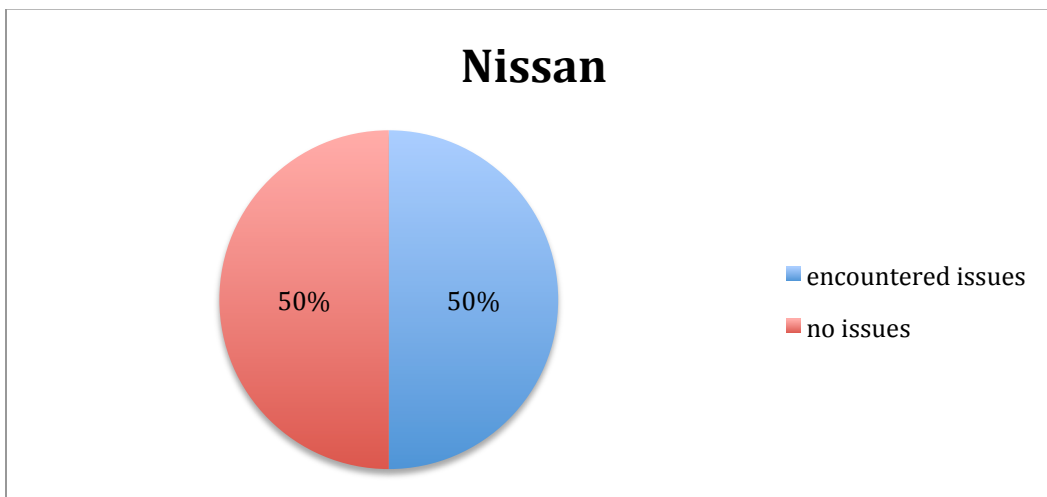
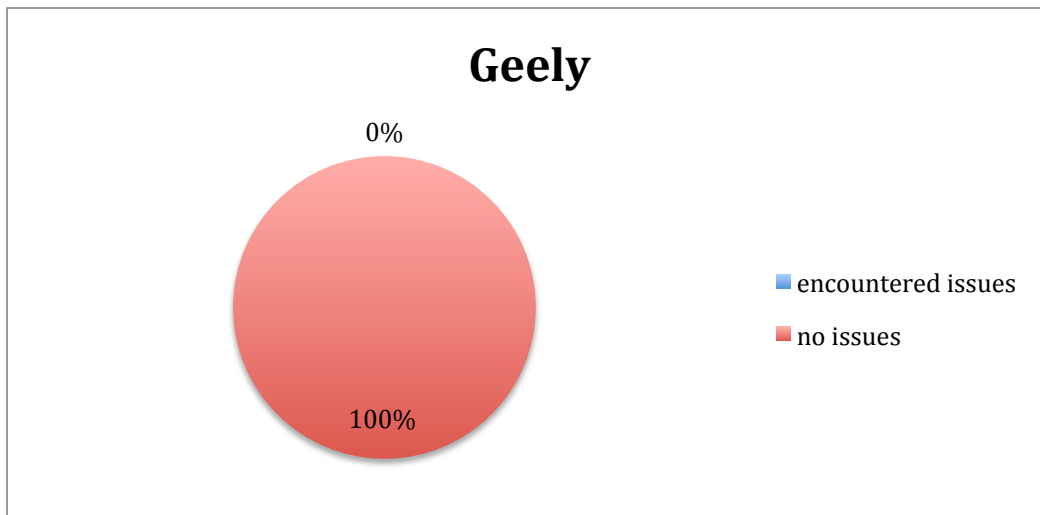
I have obtained consumer contacts from two major sources. The first group of consumer contacts is obtained from four automobile dealers in the area: a BMW dealer, a Geely dealer, a Nissan dealer and a Buick dealer. Out of the four brands, Geely is the only Chinese automotive manufacturing company. I have obtained the second group of contacts from the 26 cases I have obtained from the CCA. Due to the large sample size and the unwillingness consumers expressed in the phone surveys, only phone interviews are conducted with each one of the contacts.

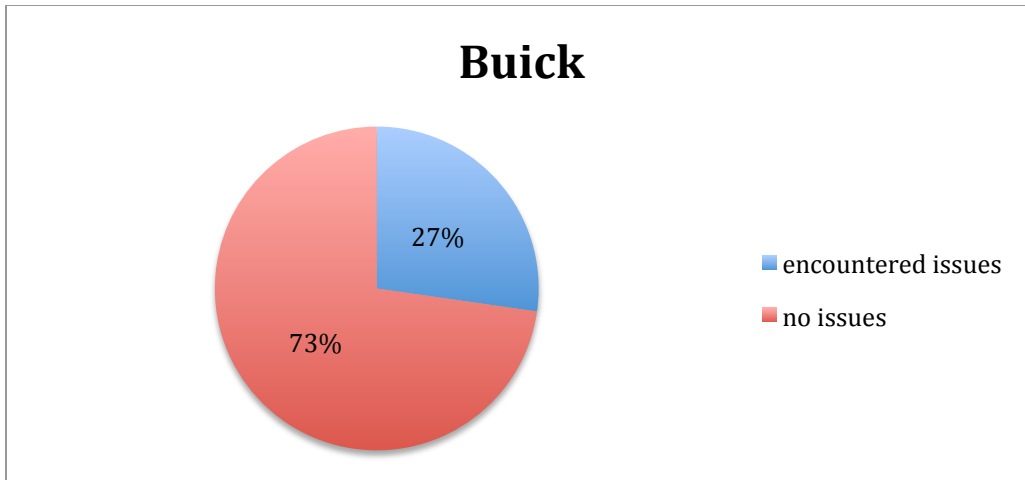
First Group of Consumers:

30 Geely consumers, 20 Nissan consumers, 20 Buick consumers, and 10 BMW consumers are interviewed by phone respectively. Out of the 80 phone calls, only 16

consumers are willing to answer my interview questions. The majority of consumers expressed distrust and anger over the phone and questioned me where I had obtained their contact information.

Of the three Geely consumers who answered my interview questions, none of them indicates that they have encountered quality issues or related problems that may lead to complaints. Of the four Nissan consumers who answered my questions, two indicated that they have encountered quality issues. Of the eleven Buick consumers who answered my questions, three indicated that they have encountered quality issues. Of the ten BMW consumers I interviewed, only one responded to my survey and indicated to have quality issues with his car. The following graphs will help illustrate this relationship:





As it reflects in the pie charts, a large proportion of consumers who have purchased passenger cars recently have encountered quality issues or other related issues that may lead to consumer complaints, with an exception with Geely consumers. The fact that Geely consumers report no quality issues may be subject to several reasons: (1). Since the number of Geely consumers who respond to my survey is so small, the sample may not be as representative as we expect. (2). Due to the general distrust of Chinese consumers towards research institutions, consumers may misrepresent themselves in the survey. The survey result of BMW consumers is also viewed as unrepresentative due to similar reasons. The following section will focus on the major theme emerged in my study on individual consumer behaviors using the theoretical framework of Dispute Transformation Theory.

The Emergence and Transformation of Disputes within the Context of China:

According to *The Emergence And Transformation of Disputes: Naming, Blaming, Claiming...* by Felstiner, Abel, and Sarat, disputes first emerge from its first stage naming: “This first transformation-saying to oneself that a particular experience has been injurious –we call naming” (Felstiner, Abel and Sarat, 635). According to the definition of naming, all consumers who indicate the experience of quality issues have gone through the stage of naming by saying to themselves that “a particular experience has been injurious” (Felstiner, Abel and Sarat, 635).

The stage of naming has transformed into blaming when “a person attributes an injury to the fault of another individual or social entity” (Felstiner, Abel and Sarat, 635). My research shows that almost all of the consumers who experienced the stage of naming

have also experienced the stage of blaming, where they attribute the quality issues to the fault of another entity. The two major entities consumers blame are the dealer and the manufacturer.

The third transformation, claiming, occurs when “someone with a grievance voices it to the person or entity believed to be responsible and asks for some remedy” (Felstiner, Abel and Sarat, 635). Although consumers attribute the problems they encountered to both the dealer and the manufacturer, my interview results show that they often voice their grievances to the dealer instead of the manufacturer.

Interviewer: When you encountered quality issues with your car, what did you do?

Consumer: I went to the 4S company (dealer) directly and asked for compensation.

When being asked the relationship with the manufacturer, the Geely dealer answered the following:

Mostly dealers face the consumers directly and deal with the issues. If the core parts of a car are broken, manufactures will compensate. For those small issues, dealers compensate and manufacturers pay nothing.

The stage of claiming is crucial because that is where the informal dispute resolution between the dealer and consumers takes place. My interviews with the car dealers show that most complaints are resolved in this level and will thus not rise to disputes. Moreover, all of the dealers I interviewed with indicate that they often compensate the consumers more than they would get reimbursed from the manufacturer in order to preserve the company reputation. When being asked how they solve consumer complaints, three dealers made the following comments:

Nissan: Consumers often find the sales person first. The Consumer Service Department will then conduct a primary inspection on the quality issues. If we find that the problems are caused by consumers’ own mistakes, our Consumer Service Department will inform consumers and provide instruction for future use. If there indeed exist quality issues, we will provide maintenance service free of charge.

Interviewer: What will you do if the consumers are not satisfied with your initial compensation, and is intended to resolve their complaints formally?

Nissan: We will mediate again with the consumers with larger compensation. We usually don’t like consumer complaints rising into disputes.

Buick: Consumers have several ways to complain: (1). Consumers file the complaints to the Sales Consultant. (2). We will conduct phone surveys regularly to old customers, and during the surveys, consumers can report the complaints. For



small issues, sales consultant will report back to consumers. But for the problems that need quality inspection by the 4S dealer, we often negotiate with consumers until consumer needs are satisfied. For big problems, we will report to manufacturers.

Interviewer: What will you do if the consumers are not satisfied with your initial compensation, and is intended to resolve their complaints formally?

Buick: I usually let them go first and think again. Usually they will come back and (1). Still don't compromise. (2). Will compromise a bit and ask for better compensation (a little more). (3). Accept the original compensation. We will usually offer larger compensation when consumers don't accept the original offer.

Geely: We try to satisfy the customer needs by providing free fixing and free services, etc. But we usually offer few cash compensations.

Interviewer: What will you do if the consumers are not satisfied with your initial compensation, and is intended to resolve their complaints formally?

Geely: The headquarter will call the consumer and negotiate. If it is still not resolved, we will compensate consumers ourselves. Most cases are informally resolved finally. For violent consumers whose cars are not fixed, we will give them some small money and they will be satisfied as well. For those consumers who regret buying Geely and try to return the car, they will go through CCA (those cases are hard to resolve). But even if they go through CCA, they will often lose the case.

All three dealers indicate that the percentage of consumer complaints being resolved through formal remedies (CCA or court system) is incredibly small. ie. 2% of consumer complaints in Nissan, 20% of consumer complaints in Buick, and 0.2% of consumer complaints in Geely are resolved by CCA and formal adjudication. The Buick dealer also indicates that among the 20% of consumer complaints that are not resolved informally between consumers and the dealer, the majority of them are resolved by CCA mediation, with very few cases going through formal adjudication.

The final stage occurs when "a claim is transformed into a dispute" (Felstiner, Abel and Sarat, 636). A dispute matures when a claim "is rejected in whole or in part" (Felstiner, Abel and Sarat, 636). We noticed here that "delay that the claimant construes as resistance is just as much as a rejection as is a compromise offer (partial rejection) or an outright refusal" (Felstiner, Abel and Sarat, 636). In other words, rejection does not necessarily have to be expressed explicitly by words, and consumers who have filed their cases to CCA have all experienced some kind of rejection, even if dealers might have

offered compromise. Therefore, while the article *The Emergence And Transformation of Disputes: Naming, Blaming, Claiming...* is focused on the early stages of dispute transformation and is thus deficient in studying the stage of dispute, I intend to enrich and complete the theory by relying on the cases from the CCA and the online complaint forum. The question I am interested in in this stage is to compare the dispute transformation process by the dispute institutions such as the CCA with that of the private channel, ie. the online complaint forum.

The 26 cases I have studied indicate that most cases are resolved by mediation. The successful mediation often involves awarding only monetary damages to consumers. In other words, the CCA transforms disputes by “individualizing remedies” (Felstiner, Abel and Sarat, 648). While consumers often walk away with satisfactory monetary damages, the victims’ concept of an acceptable outcome is transformed from “a collective good into individual enrichment” (Felstiner, Abel and Sarat, 648). This type of transformation, while on its face resolves the majority of consumer complaints peacefully, is likely to lead to a violation of CCA’s principle purpose of “protecting the rights and interests of consumer from the perspective of an independent third party,” as the CCA official asserts in the interview.

The transformational effect of the private media channel (In my case, a major Chinese online automobile consumer complaint forum) sharply contrasts with that of the CCA. In the forum, consumers are encouraged to describe the conflict and express their feelings freely. For example, consumers may include the exact names of the dealers in their complaints as well as subjective feelings towards them. There is also a section at the bottom of the forum that encourages readers’ comments. Although the facts presented in the online forum are highly likely to be subjective and are thus less accurate than the facts presented during the CCA mediation, these private channels are indeed more interactive and engaging. Therefore, where the outcome of successful mediation by the CCA achieves maximum resolution rates and high profits for the consumers, the outcome of a successful online forum may result into the improvement of consumer rights awareness, namely, collective good.

c. Law In Mind:

This section will focus on how consumer protection law is perceived by different actors in the field, namely, consumers, automobile dealers, and the CCA. The theoretical framework that I will rely and build up on is the idea of the conflicting field logics over the purpose and meaning of the law addressed in Shauhin A. Talesh's *Lost In Translation: How Competing Organizational Field Logics Mediate The Meaning of Rights*. The purpose of this section is to identify how private and public actors view the purpose of the consumer protection laws and goals of informal dispute resolution in the context of China, and how these different views impact the consumer protection rights in China.

I have concluded from my previous sections the prevalent presence of informal dispute resolution including the preference of the CCA mediation over formal court adjudication. This phenomenon is referred as “the most notable procedural attacks” by Talesh (Talesh, 2). According to Talesh, these procedural attacks “significantly impact rights enforcement going forward” (Talesh, 2), which are strongly reflected in my research. My interviews with the consumers indicate that a very small portion of consumers who have injurious experiences have filed complaints or even recognized that they have been wronged. Those who do take actions end up resorting to informal dispute resolutions or mediation by the CCA. The actions consumers often take are self-help, media exposure, violence, and negotiation with the dealers. When being asked what actions they take after encountering an issue, one consumer responded the following:

I told them [the dealer] that I will go through four steps. First, we will negotiate. If it doesn't work out, my second step is to use media exposure. Thirdly, I will tell the dealer that since the car I bought is for the use of the company, I will urge my employees to go on a strike. My final resort will be to paint the car (with insulting words) and park the car in the dealer's parking lot.

Clearly the four approaches this consumer mentioned have nothing to do with formal remedies. The reason that the consumer decides not to go through the CCA process or formal legal process is the fact that they are “too inefficient and time consuming.” Clearly consumers value individual benefits and results more than the processes of rights enforcement. Most consumers indicate in their interviews that they are “satisfied” with the results of informal dispute resolution or even self-help through violence and illegal actions. In fact, many of them indicate that these self-help actions are more effective than

the law. Next I will discuss the different “field logics” operating in the consumer protection law field from the perspectives of private actors (consumers and the dealers) and public actors (the CCA as a branch of government agency) (Talesh, 2). Although there is a general consensus between dealers, consumers, and the CCA that prefers informal dispute resolution venues to formal legal remedies, the field logics behind that vary.

#### Private Actors:

*The Dealers:* My study shows the adhering results as what Talesh concluded in the article that businesses “view the purpose of lemon laws and goals of informal dispute resolution around adhering to business logics of efficiency, cost-effectiveness, allowing for managerial discretion and control, and customer retention” (Talesh, 1). This is partly reflected in the dealers’ preference of informal negotiations with the consumers, even though this will cost them more in terms of monetary compensation. My study shows that dealers in China are extremely concerned about their reputation and corporate image, and having consumer filed their complaints to the CCA or the courthouse will inevitably affect their corporate image negatively, especially that the media is often involved in such cases. That is primarily the reason why dealers are willing to offer larger monetary compensations to “violent” consumers (consumers who explicitly express their dissatisfaction to the dealers and use threats in order to achieve their goals). In addition to preserve corporate image, dealers indicate that their goal is customer retention. This is partly why dealers often value their customers as “God”. The dealer representative of Geely explains how offering larger monetary compensations to its consumers through informal dispute resolution often works better than formal venues:

Geely: Most cases are informally resolved finally. For violent consumers, we will give them some small money and they will be satisfied. We are willing to offer larger monetary compensation if they are not initially satisfied. I think both consumers and us do not like going through the CCA and the court system, because it is not cheap (for consumers as well) and also time consuming. Our goal is to make them [consumers] happy, and we will do our best to make them happy and preserve our corporate image.

While Chinese automobile dealers mostly indicate a preference of informal monetary compensation, they also indicate that the current consumer protection law lacks the necessary protection to the consumers, which is indeed also harmful to the dealers:

Buick: Because now without the law, there are no precise regulations we can strictly follow. Consumers can ask for whatever they want. Some consumers know that we care about our reputation, so they start asking for ridiculous amount of compensation.

In conclusion, the dealers consider the value of informal dispute resolution as customer retention and corporate image improvement, but at the same time desire more rigorous consumer protection laws to prevent consumers from taking advantage of the ambiguity of the law.

*Consumers:*

Consistent with the findings by Talesh that “private actors transform the meaning of lemon laws away from rights and protection and toward solving problems and addressing the underlying problem” (Talesh, 25), my interviews show that Chinese automobile consumers view productivity and short-term monetary benefits more valuable than their long-term consumer rights and interests. Most consumers who have encountered quality issues with their cars state that they are “very satisfied” with the compensation they get from the dealer and none of them mentions any dissatisfaction with the original problem they have encountered. Due to their interest of productivity and problem solving, consumers prefer informal dispute resolution and view the beauty of informal dispute resolution as “being able to agree on anything, as well as being very efficient.” When being asked whether they have pursued formal dispute resolution venues or the CCA mediation, the majority of consumers indicate that they prefer solving problems by themselves:

Consumer: You have to provide all sorts of evidence in order to proceed formally, which is too time consuming for me. The existence of the CCA does not provide convenience for consumers. I still have to reply on myself to solve the problem.

Chinese consumers’ overly reliance on business values when thinking about the purpose of consumer protection law and goals of dispute resolution has negative impacts on the enforcement of consumer protection rights. Chinese consumers’ obsession with short-term monetary compensation over advocacy of consumer protection rights shows their lack of legal consciousness. In other words, they are not fully aware of the facts that solving problems informally will hinder the advocacy of consumer protection rights, which may also affect their long-term benefits.

## Public Actors:

### *China Consumers' Association:*

The public actor such as the CCA claims that the purpose of the consumer protection law is to protect consumers' rights and interests: "The CCA, as an independent party, serves the purpose to protect our consumers. That means, we will favor consumers over the dealers in the cases that both parties are sort of equal." Besides the purpose of protecting consumers' rights and interests, the CCA also claims to provide a neutral forum for consumers to voice their concerns, especially with the involvement of social media.

However, unlike the public actors in the U.S. who emphasize less on efficiency than due process protections (Talesh, 28), my study reveals that the CCA still puts much effort on problem solving and efficiency. This is shown mainly through the CCA's preference of mediation and money damage compensation. As the dealer of Geely comments in his interview:

Government agencies such as the CCA always encourages "peaceful resolution" by asking the dealers to compromise more to the consumers. The CCA solves most of their cases by mediation and discourages consumers to go to court because they do not want consumers to create trouble to the government.

CCA's overly reliance on mediation and informal resolution also leads to its "flexible adherence to substantive provisions of formal law" (Talesh, 29). Whereas Talesh points out in his article that U.S. "public actors indicate that formal law should govern the outcome of dispute despite being in an informal setting" (Talesh, 30), public actors in China such as the CCA reflect a logic that emphasizes more on efficiency and problem-solving than the substantive formal law.

Besides the field logic that emphasizes on efficiency and problem solving, the reason of why the CCA prefers informal resolution can also be explained by the Chinese culture. Unlike "the West's implicit cultural assumption that the rule of law is an inherently positive goal" (Chew, 45), and the rule of law is supposed to "bring order and predictability to how a country functions" (Chew, 45), the Chinese cultural assumption values the rule of people and views the rule of law as not sufficient to bring order and

transparency to the society. The CCA official mentions in his interview that the CCA is in the process of establishing a “Social Honesty and Credit” system:

China has its unique culture that is derived from its two-thousand-year tradition. Unlike the U.S. who values contracts and rule of law, we see the rule of law as a necessary, but not sufficient part. I view public morality as an equally important element of consumer rights protection. The CCA is in its process of establishing “Social Honesty and Credit” system where we rank every company in terms of its moral reputation. Then we will publish it and inform our consumers.

Although the establishment of “Social Honesty and Credit” system cannot be viewed as a step towards the rule of law, it sets the step towards the “systematization of morality,” where the measure of morality becomes more transparent, and almost becomes more “law like.” While the establishment of “Social Honesty and Credit” system is still relied on the Chinese cultural assumption of “rule of people” rather than “rule of law,” it serves as a beneficial supplement of consumer protection law.

## **VII. Discussion and Further Questions:**

### **a. Limitations:**

While this study provides a new, and much needed, approach to research the effects of consumer protection policies and practices on consumer rights enforcement, there exist significant limitations. First, the study is based on a small sample of interviews that might be unrepresentative. I have interviewed a total of five professionals: three local automobile dealers, one lawyer and one CCA official. These professionals are all introduced by one person, and their perspectives may be biased. Although I have interviewed a large number of consumers, due to the fact that these interviews are conducted by phone, most of the respondents refused to answer my questions. Thus because the majority of individuals cannot be interviewed, it was not possible to have a complete grasp of their perspectives in this study.

Second, most of the fieldwork and interviews are finished in the City of Ningbo, a medium-sized city in Zhejiang Province. Due to the fact that Ningbo is located in an area that has more advanced economy than the rest of the country, the results of my study may not well represent China as a whole.

Finally, the responses of my interviews may reinforce the pre-existing set of ideas that Chinese people get from mass media or simply pre-assumptions about consumer

protection policies. In other words, these ideas may well represent the public perspectives but can easily be proven wrong. Therefore, if my study heavily relies on qualitative interviews, the results may be biased.

b. Future Research:

Future research is necessary to compensate for the limitations of my study in order to fully comprehend the current status of consumer protection policies in China and its implications on consumer rights and interests. Future researches must include participants from a more diverse background and should be recruited from a wider variety of sources, in order to ensure that the participants are representative enough.

While this study is mainly qualitative and thus is highly likely to fall into the trap of pre-existing set of ideas in the interview responses, future researches can compensate this weakness by focusing on a more quantitative study, in order to achieve a more neutral conclusion.

Future researches can target towards the following directions. First, if time allows, a nation-wide study including a wide variety of provinces will be very helpful in comparing the level of consumer protection in each province to fully comprehend the consumer protection policies and practices in China as a whole. Second, since my study mainly focuses on the level of individual decision-making and informal dispute resolution between consumers and dealers, future researches focusing on the level of government agencies will be a valuable piece of information providing another side of the story. Finally, although I have conducted some preliminary research on the newly released regulation on free repairs, replacement and return for automobiles by the General Administration of Quality Supervision, Inspection and Quarantine, few results can be drawn due to the fact that the piece of legislation has been in effect for less than six months. Therefore, future studies are needed in order to more deeply understand the effect of the law.

### **VIII. Conclusion and Implications:**

There is no doubt that as China transforms itself from planned economy to market economy, the adequate protection of consumer rights and interests becomes more and more important. My study indicates that although the consumer protection law in China is not yet complete enough to adequately protect the consumers, it is in the upward trend of



becoming more comprehensive. For example, the enactment of the new regulation on free repairs, replacement and return for automobiles by the General Administration of Quality Supervision, Inspection and Quarantine is a supplementary regulation for the general guidelines provided by The Law of the People's Republic of China on Protection of Consumer Rights and Interests. Despite this positive trend, the enforcement of the consumer protection law is still lacking. As my study shows, the dispute resolution process of the public actors such as the CCA relies too heavily on informal mediation. That can possibly be explained by the public actor's "business logic" as the informal mediation is usually faster and more efficient in terms of problem solving. However, relying too heavily on efficiency inevitably undermines the long-term goal of consumer rights protection and law enforcement.

On the other hand, my interviews with automobile dealers and consumers clearly indicate the preference for the same field logic. Unlike the businesses that have a clear goal to maximize profit and increase customer retention, consumers choose "efficiency" simply due to the fact that going through formal remedies is too costly and time consuming. Moreover, Chinese consumers generally lack the legal consciousness to fight for their rights and interests, manifested in their obsession with the one-time monetary compensation and problem solving.

Therefore, given the results of my study, I propose the following to better enforce the consumer protection law and protect Chinese consumers' rights and interests. First, the public actors must adopt a new field logic that puts public safety and consumer protection over efficiency and problem solving. This may require not only the CCA to strictly follow and enforce the written text of law, but also the effort from regulators, legislators and other government agencies. Second, businesses shall recognize the importance of consumer protection because if the consumers are better protected, they will create benefits for the businesses as well. Third, consumers must improve on their legal consciousness by recognizing the rule of law as more important than private negotiations. Although going through the formal remedies may be more costly and time consuming, it is effective for raising the awareness of public actors and will thus benefit consumers in the long run.

## **IX: Interview Protocol**

CCA official:

1. Around how many complaints regarding automobile quality issues has CCA received each year? Has this number increased in recent years?
2. If so, what do you think is the reason?
3. How does CCA resolve consumer complaints regarding automobile quality issues?
4. What laws or regulations do CCA follow when resolving consumer complaints?
5. Does CCA follow the Law of the People's Republic of China on Protection of Consumer Rights and Interests or local legislations?
6. In the process of resolving complaints, are laws strictly enforced or there is some leeway in which CCA has discretion over?
7. As a CCA official, what do you think of the new "Three Guarantee" Law? If the law passes this year, what effect will it have on how CCA resolves automobile consumer disputes?
8. From CCA's standpoint, what is your goal when resolving consumer complaints?
9. Seems CCA can only resolve complaints through negotiation/mediation. Does CCA have some sort of executive/legal power that goes beyond the power of private negotiation?

Automobile Dealer:

1. How often have you experienced complaints from individual consumers?
2. For those consumers who filed the complaints to your company, what problems have they encountered?
3. What do you usually do first when a consumer complains about their issues?
4. What percentage of consumer complaints is informally resolved?
5. What will you do if the consumer is not satisfied with your initial compensation, and is intended to resolve their complaints formally?
6. What do you think of the current consumer protection law in Zhejiang Province?
7. As a foreign car dealer, do you have to be subject to international warranties constructed by your foreign parent company? Do you follow international warranties during the process of dispute resolution with your consumers?

8. About what percentage of claims have evolved into disputes?
9. What's your opinion on the newly drafted regulation on free repairs, replacement and return for automobiles? What affect do you think it will have on the relationship between your company and your consumers if it is passed?
10. What's your relationship with manufactures in terms of consumer complaints? Will your manufacturer compensate you for consumer complaints?

Consumers:

1. Have you encountered quality issues of your new purchased car in the past three years?
2. What's the issue?
3. What kind of car have you purchased? Chinese manufactured car or foreign manufactured car?
4. If you encountered an issue with your car, what did you do?
5. What is your experience with the dealer? Is your claim resolved?
6. What did you do when your claim was rejected by the dealer?
7. Why did you decide not to go forward with your claim?
8. Do you think you are adequately protected by the local consumer protection law? What's your opinion about the law?

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