

# EXISTING LEGAL TRANSPLANT OF A NORM FROM ONE JURISDICTION TO ANOTHER: THE CASE OF VIETNAM'S CONSUMER PROTECTION LAW

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## ***Abstract***

*The research considers the concept of legal transplantation and how to transplant of a norm from one jurisdiction to another. The findings reveal the overview of legal transplantation and theory, the combination of native customary law and other foreign legislations or legal norm through legal transplantation to create the own legal system. In addition, as internationalization and globalization are the key features in modern world, the legal transplantation will impact not only on the legal systems but also on socio-political ideologies between countries. The scope has been extended to the effect context and difficulties of legal transplants of norms into one jurisdiction. Furthermore, emphasizing the case of Vietnam's consumer protection law is mentioned as an example of legal transplantation. The document will discuss and analysis the impacts of foreign jurisdiction such as China and western countries to Vietnam as well as the impacts of the transplant to Vietnam's society and economy. Hence, it leads to enact codes or particular statutes in numerous sectors like economy and society. Last but not least, the norm of consumer protection as the existing legal transplant into Vietnam is to carefully discuss and evaluate. Understanding the origin of this norm and its effects enables us to investigate whether Vietnam borrows this norm successful or not.*

## **I. INTRODUCTION**

Comparative law plays an important role in allowing lawmakers to study and develop their own jurisdiction. This method involves the legal background and concepts based on which a norm or any rule could be transplanted from foreign jurisdiction to host country.<sup>1</sup> It leads to enact codes or particular statutes in numerous sectors like economy and society. Hence, the development of law indicates the process of inherited law, legal borrowing and recycling.<sup>2</sup>

In most countries, they create their own legal system based on combining native customary laws and other foreign legislations or legal norms through legal transplantation. In addition, as internationalization and globalization are the key features in modern world, the legal transplantation

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<sup>1</sup> Peter de Cruz, *Comparative Law in a Changing World* (Routledge-Cavendish, 3rd ed, 2015) 23.

<sup>2</sup> John Stanley Gillespie, *Transplanting Commercial Law Reform: Developing a "Rule of Law" in Vietnam* (Ashgate Publishing Limited, 2006), 23.

will impact not only on the legal systems but also on socio-political ideologies between countries<sup>3</sup>. It means that the more society and economy develop, the more legal transplants occur between these countries. So, the questions are: Are legal transplants occur in certain country good or bad? How does a norm or a law transfer from one country to other country? What are the impacts on the transplanted countries? There are negative or positive effects when we put the foreign law in different social and economic conditions.

In the scope of this document, I chose Vietnam and the norm of consumer protection as the existing legal transplant into Vietnam to carefully discuss and evaluate. Understanding the origin of this norm and its effects enables us to investigate whether Vietnam borrows this norm successful or not. Special protection of consumers was created as the formal law in Vietnam when the old Soviet Empire was collapsed<sup>4</sup> in end of 1990s and the Vietnamese ideology had been changed to suit with new conditions. In addition, this essay refers to some of other transplantation examples to thoroughly understand the issue of legal borrowing and the effective transplantation under different circumstances.

## II. CONCEPT OF LEGAL TRANSPLANTATION

### 1. Concept of legal transplant

The term legal transplant was coined in the 1970s by the Scottish legal scholar W.A.J. 'Alan' Watson to indicate the moving of a rule or a system of law from one country to another (A. Watson, *Legal Transplants: An Approach to Comparative Law*, Edinburgh, 1974). The notion of legal transplantation is diffusionism-based and according to this concept most changes in most legal systems occur as the result of borrowing. As maintained by Watson, transplantation is the most fertile source of legal development<sup>5</sup>. The term “Legal transplants” is commonly used to designate the dissemination of legal models from an exporting legal order to a receiving one. In a wider perspective, reception, transplants, or borrowings may either refer to the process, or to the results of a project of legal reforms, which is in turn initiated by a plan of legal change based upon an imitation of laws, doctrines and theories, and judicial decisions, already in place in different legal orders<sup>6</sup>. Others show that legal transplant is the term used to refer to the method of adopting and enacting some laws of another country, by some other country on the same line of the provisions existing in

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<sup>3</sup> John Stanley Gillespie, *Transplanting Commercial Law Reform: Developing a “Rule of Law” in Vietnam* (Ashgate Publishing Limited, 2006) 23

<sup>4</sup> Peter de Cruz, *Comparative Law in a Changing World* (Routledge-Cavendish, 3rd ed, 2015), 184.

<sup>5</sup> A. Watson, *Legal Transplants: An Approach to Comparative Law*, Edinburgh, 1974 see [https://en.wikipedia.org/wiki/Legal\\_transplant](https://en.wikipedia.org/wiki/Legal_transplant)

<sup>6</sup> Ajani, G. (2019). Legal Transplants. In: Marciano, A., Ramello, G.B. (eds) *Encyclopedia of Law and Economics*. Springer, New York, NY. [https://doi.org/10.1007/978-1-4614-7753-2\\_731](https://doi.org/10.1007/978-1-4614-7753-2_731), see [https://link.springer.com/referenceworkentry/10.1007/978-1-4614-7753-2\\_731](https://link.springer.com/referenceworkentry/10.1007/978-1-4614-7753-2_731)

the adoptive country. This borrowing of laws or enactment of new laws, on inspiration by some foreign examples is called legal transplant which also known as legal diffusion<sup>7</sup>.

## **2. A preliminary of legal transplant in Vietnam**

In Vietnam, the term of legal transplant translated in “*chuyển hóa pháp luật*” or “*tiếp nhận pháp luật*” which were meant to receive or transform the laws from foreign country to Vietnam laws.

From XV century, The Le Code (Luật Hồng Đức) show us the typical model of legal transplant in Vietnam. Within the Chinese legal influence, Vietnamese have made their own laws from Vietnam customs<sup>8</sup>. For an example, Bui show us the Confucius influence in making rules and legal institutions in Vietnam’s Nguyen Dynasty such as “Ngự sử đài” (Historian House), “Đô sát viện” (Censorate), “Viện Tập hiền” (Imperial Lecture)<sup>9</sup>. In the other hand, under Chinese influence, Phạm pointed out that Vietnam local government have made the “cell” government call “*làng*” ruled by their own regulations called “*hương ước*” (the code of village)<sup>10</sup>.

Under policy “Đổi mới”, the more The more deeply Vietnam integrates with the world economy, the stronger the legal transplant in Vietnam’s laws and regulations such as the Vietnam Civil Code<sup>11</sup>. So that Part III and Part IV shall point out the legal transplant of a consumer protection law from western and Asian countries to Vietnam.

### **III. THE TRANSPLANTATION OF A CONSUMER PROTECTION LAW FROM WESTERN AND ASIAN COUNTRIES INTO VIETNAM**

#### **1. The content of consumer protection in the world, the definition and its origin**

In a certain economy, traders and customers are intertwined. They are two main features of commercial market. The relationship between them depends on the quality of products and commercial interests. Therefore, most countries have enacted the law to regulate this relationship and protect consumers. Thus, law on protection of consumers means that the government passes the formal legislation to regulate the consumers and traders’ rights and responsibilities in which protects consumers’ right and their commercial interests through the trading activities and contracts with producers and traders.

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<sup>7</sup> See <https://definitions.uslegal.com/l/legal-transplant/>

<sup>8</sup> Đinh Gia Trinh, *Sơ thảo lịch sử nhà nước và pháp quyền Việt Nam: Tập I Thời đại trước phong kiến và Thời đại phong kiến (Từ nguồn gốc đến thế kỷ thứ XIX)* [Draft history of State and Laws of Vietnam: Part I Feudal era and before (From origin to XIX century)], (Hà Nội: Khoa học xã hội, 1968), 252.

<sup>9</sup> Vietnam Office of National Assembly (2016), “The Challenges and Practices of Legal Transplant in Vietnam: Sharing European Experiences”, Hong Duc Publisher, pp 85.

<sup>10</sup> Phạm Quang Huy, “Bình luận Hương ước theo giác độ luật hợp đồng” [Comment on village covenants from the perspective of contract law], *Luật học* [Jurisprudence] 4 (April 2016): 42-49

<sup>11</sup> Vietnam Office of National Assembly (2016), *Ibid*, pp 245.

Back to the history of the norm - “consumer protection”, United States is the original country where the early form of protection of consumers’ rights was created.<sup>12</sup> The right of consumers was first raised in US Congress in 1962 and the bill was issued in 1972, including four matters: “right to safety”, “right to information”, “right to choose” and “right to be heard”.<sup>13</sup> Later, it expanded with four more rights for consumers in 1985.<sup>14</sup> It is obvious that when the economy develops, consumers will have more rights to be protected. Until now, the consumers’ rights have regulated a set of rules in legal systems, ranging from Acts, statutes, case laws and administrative law with precisely adequate protection. The collaboration between government, variety of institutions and agencies got significant goals of consumer protection. They have regulated clearly duties of producers and traders as well as criteria of products’ quality.

These rules were studied and examined in other legal documents. For instance, United Nations (UN) realized the importance of consumer protection in new global economic model. As a result, in 1985, UN issued the guideline to protect consumers in 1985 and modified it in 1999 with expanded principles. They consisted of six consumers’ rights like in American law, including: “right to consumer education”, “right to safety”, “right to information”, “right to heard”, “right to choose” and “promotion of economic interests of consumers”<sup>15</sup>

The other international organization is the Organization for Economic Cooperation and Development (OECD). In Europe, OECD established the International Organization Protection and Enforcement Network, attracting 40 members participated in.<sup>16</sup> Therefore, consumers could protect their interests not only in their country but also other nations where they had cross-border purchasing activities. In 1991, European Community created European consumer protection law in 1991 and the Green Paper <sup>17</sup> in 2001 as the crucial legislations that all members have to follow to maintain connection and equal benefits between consumers and traders in EU.<sup>18</sup>

In some European countries, for example, Italy enacted law to protect consumers’ health and prohibited commercial behaviours that caused the damages. In terms of fault goods, consumers have rights to turn back them within 7 days (Legislative Decree n.50/91). As an association of European Community, Italian jurisdiction has been affected by European rules and complied with the general

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<sup>12</sup> Antonella Corradi, ‘International Law and Consumer Protection: The History of Consumer Protection’ [2015] *Hauser Global Law School Program*.

<sup>13</sup> ‘A History of Consumer Rights and Improvements’ *Lexington Law* <<https://www.lexingtonlaw.com/blog/credit-repair/history-consumer-rights-improvements.html>>.

<sup>14</sup> ‘A History of Consumer Rights and Improvements’ *Lexington Law* <<https://www.lexingtonlaw.com/blog/credit-repair/history-consumer-rights-improvements.html>>.

<sup>15</sup> Antonella Corradi, ‘International Law and Consumer Protection: The History of Consumer Protection’ [2015] *Hauser Global Law School Program*.

<sup>16</sup> Antonella Corradi, ‘International Law and Consumer Protection: The History of Consumer Protection’ [2015] *Hauser Global Law School Program*.

<sup>17</sup> Green Paper on European Union Consumer Protection 2001.

<sup>18</sup> Antonella Corradi, ‘International Law and Consumer Protection: The History of Consumer Protection’ [2015] *Hauser Global Law School Program*.

principle of European Community. In the legislative Decree n.174/95, Right of consumers to withdrawal products changes to 30 days. In addition, the other rule is controlling the good pricing, meaning sellers are constrained to raise the cost when consumers pay by cards.<sup>19</sup>

## **2. The needs of enacting Consumer protection law 2010 in Vietnam**

There were many reasons why Vietnamese government considered conducting and enacting Law on Consumer protection in 2010. The Law has combined various foreign legal rules in different countries, especially Western countries' influences and followed the traditional legal process.

Regards as socioeconomic condition, after ending the war in 1975, devastating damages related to human and property impacted both Vietnamese society and economy. The national polices focused on recovering them from the poor conditions. Since 1986, Renovation police was adopted to change the economy from closed economy to market-based economy. It meant that beside state corporations, foreign investor, private company and private property have been enhanced and got more incentives. The economic relationship has become complex. In 2001, Vietnamese economy transferred to new one, namely "the socialist-oriented market economy"<sup>20</sup> where two main features that are the leading roles of economy and Communist Party of Vietnam have come from different models. Although the operating the new economy based on Vietnam's legal experiences and socioeconomic conditions, policy makers referred to China and other Asian countries where had the same social conditions.

Additionally, Vietnam signed in various treaties, bilateral and multilateral agreements like the US-Vietnam Bilateral Trade agreement (BTA)<sup>21</sup> to attract foreign investors and trading. Vietnam also participated in the World Trade Organization in 2007 to open more benefits and challenges for the economy and domestic companies. It is obvious that the new market gave an opportunity for Vietnamese manufactories and companies to establish and provide diversity products.

Ministry of Trade is the government organ that was given power to draft the consumer protection law to replace the consumer protection ordinance 1999 (the Ordinance). It is clear that there were two reasons led to the demand. Firstly, after eight years of adopting the Ordinance, it had appeared many issues existing and become inconsistent. In other words, the Ordinance did not get legal goals of solving the claims raised by consumers and it was failure at that time. The other reason is that because the new market economy emerged, shifting economy from former command economy to market-based economy, the relationship between consumers and traders was more

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<sup>19</sup> I Antonella Corradi, 'International Law and Consumer Protection: The History of Consumer Protection' [2015] *Hauser Global Law School Program*.

<sup>20</sup> Communist Party of Vietnam, 'Documents of the 10th National Congress of Vietnam' (National Political Press, 2006) 86.

<sup>21</sup> John Stanley Gillespie, *Transplanting Commercial Law Reform: Developing a "Rule of Law" in Vietnam* (Ashgate Publishing Limited, 2006), 94.

complex with more transactions. Despite the fact that consumers could receive a chance to choose variety of services and products from traders and manufactures,<sup>22</sup> they also had more challenges. There was significant increase in misleading advertising and defective products. It led to the reduction of consumers' health and corrosion of their trust on goods. As a result, many customers believed that these issues happened because government did not have any good legal policies to protect customers and deter the negative behaviours from traders who want to earn more benefits without thinking about consequences. Thus, enacting the effective law on protection of consumer was necessary to handle this situation.

### **3. The transplant of consumer protection into Vietnam from Western jurisdictions**

According John Stanley Gillespie, he said: "legal transplantation into Vietnam is not a new phenomenon"<sup>23</sup>. It is true because various foreign countries influenced Vietnamese legislations, such as China, Soviet Union, France, and Western countries.<sup>24</sup> In the other words, the development of Vietnamese legal system and legal reform has been based on a number of legal borrowings.

Regards to end of 19<sup>th</sup> century and early 20<sup>th</sup> century, many rules came from Western countries were adopted in Vietnam as the main resources of reform law. This happened in all social and economic sectors, including commercial law<sup>25</sup> and consumer protection law. Especially, in 2010, the Vietnamese national Assembly passed Consumer Protection Law 2010<sup>26</sup> to replace the old one (Ordinance on Protection for Consumer's Interests 1999)<sup>27</sup>. So, how Vietnam' consumer protection was transplanted from other jurisdictions?

Firstly, legal transplants play an important role in legal reform in Vietnam. It is part of law-making process under Law on Promulgation of Legal Normative Documents of 1996. In fact, the drafting of Law on consumer protection had undertaken from 2008 to 2010 by Ministry of Industry and Trade of Vietnam. One of five important steps in legal process is comparing with foreign consumer protection laws to learn their experiences. The edit group preferred the original countries that had similar conditions or more experiences in making and implementing consumer laws and conducted the report of comparative study. They were included France, European Union, Quebec, The United Kingdom, China, Taiwan, Malaysia and other Asian countries.<sup>28</sup> It was a value source

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<sup>22</sup> Le Thi Hoang Oanh, 'To Build Competition Law in the Context of the Transition to Market Economy in Vietnam' <<http://www.jftc.go.jp/eacpf/05/APECTrainingProgram2002/Vietnam1.pdf>>.

<sup>23</sup> John Stanley Gillespie, *Transplanting Commercial Law Reform: Developing a "Rule of Law" in Vietnam* (Ashgate Publishing Limited, 2006), 39.

<sup>24</sup> John Gillespie, *Private Commercial Rights in Vietnam: A Concise Analysis* (Stanford Journal of International Law, 1994) 325–333.

<sup>25</sup> John Gillespie, 'Globalisation and Legal Transplantation: Lessons from the Past' (2001) 286 *Deakin Law Review*.

<sup>26</sup> Law on Protection of Consumers' Rights 2010.

<sup>27</sup> Ordinance on Protection for Consumer's Interests 1999.

<sup>28</sup> Cuc Quan ly Canh Tranh, 'So Sanh Luat Bao ve Nguoi Tieu Dung Mot so Nuoc Tren the Gioi – Bai Hoc Kinh Nghiem va de Xuat Mot so Noi Dung Co Ban Quy Dinh Trong Du Thao Luat Bao ve Nguoi Tieu Dung Cua Vietnam' (2008).

of information to support legal transplant in Vietnam. Thanks to research and compare different foreign jurisdictions in terms of consumer law, the formulators noticed the way they prepared and adopted law effectively and considered which one was more suitable to apply in Vietnamese consumer protection law. However, in this stage, it was a self-conduct process so that researchers' perspectives could impact the finding.

In the same year of preparing the first draft, the formulators went to France to study directly. The two main reasons for the decision are that the consumer code in France was large and crucial; and France has strong influences in Vietnamese legal system because of colonization in the past. During the trip, the role of authorities and associations were more and more important to require preparing some new articles. Other example is that the new issue is the dispute settlement. Vietnamese editors gave different options to consumers, consists of mediation, negotiation, arbitration or rising to the court. Because consumers can solve these disputes by themselves, so the role of government is really important and necessary. Furthermore, Vietnam also receipted some public advance advices from foreign experts of EU-Vietnam MUTRAP and American professional relating to US and European Union' consumer regulations.

Secondly, although many consumer protection ideas regulated was born by Western legal professionals, not by Vietnamese lawmakers, legal meaning transferred after transplanting law has totally different effects. In Vietnamese law, apart from foreign ideas, transplanting them in Vietnam has based on society and economy requirements. Thus, the other step of consumer legal process are reviewing and evaluating the current socioeconomic conditions as well as the effects of the Ordinance on Consumer protection.

In different of protection levels, the drafters could outline the real difficulties and problems in consumer-trader relationship and the key policies concentrated on consumers and how to maintain their interests, comparison with the rights and responsibilities of businesses. It is deny that when Vietnam has become part of global market member, the distance between traders and consumers is widen. Consumers had faced with the highest prices of goods, misleading advertising, shortage of information, high transaction costs, and unsafe or defective products without guarantee. On the other hand, lawmakers based on foreign experiences had to handle these issues in new consumer law. If the information of product is clear, trusts and fulfil, it is easy for consumers to decide choosing products and services.

After examining the problems, Vietnamese legal situations and having foreign lessons in consumer laws, the lawmakers compared these lessons, rules between countries, even Vietnam to find the best solution. For example, "consumers" defines in Article 3, Consumer protection Law is "the buyer or user of a goods or service for consumption or day-to-day activities of a person, a

household or an organization”.<sup>29</sup> The definition is not clear to understand that whether or not the principle includes both “natural person” and “legal person”. When looking to other foreign legal lessons, in Western countries, “consumers” means “natural persons”<sup>30</sup> while in India, consumers are both “natural persons” and “legal persons”.<sup>31</sup> It meant that although Vietnamese lawmakers referred to other jurisdiction, they still not regulated definition of “consumers” clearly.

The other example is transaction between consumers and manufactures/traders or suppliers. Difference from the past, instead of buying products without contracts, consumers will sign in commercial contracts or guarantee documents with traders to retain their rights. These contracts can exist in distinct styles depending on traders’ policies. These provisions of contracts regarded as the legal borrowings from five countries: Canada, European Union, Malaysia, France and Taiwan.<sup>32</sup> There included the principles in terms of consumer arbitration, language, contract principle interpretation, prohibited behaviors, future services and direct sale contracts. Transplanting these rules because in these countries, the legal framework is detail, clear and easy to transplant into Vietnam, especially France’s consumer code and Taiwan’s consumer protection law.

To sum up, the transplant consumer protection into Vietnam is more complex. There is to imitate and combine different regulations from various jurisdictions to create the specific principles in Vietnamese law, not borrow from only one state. Law of Vietnam uses both foreign perspectives and problem-solving method to meet law-making requirement. In different part of content law, consumer protection law borrowed rules from both western and Asian countries. Although most of transplanted laws based on developed countries (European Union and Canada), the principles of Asian countries where had the same conditions also play an important role to complete the law. In many situations, Vietnamese drafted the rule that combined the advantages of both developed and developing jurisdictions to create new one more suitable for Vietnam.

#### **4. The impacts of the transplant to Vietnam’s society and economy**

It is important to analyse and examine both drawbacks and benefits of the legal borrowing into recipient countries. During the process of transplantation of consumer protection law in Vietnam, the drafters had undertaken the effects of legal borrowing and how consumers, trader react the new one. They accepted, refused it because the legal meaning of transplanted law can be changed, lost or distorted. It enables lawmakers to understand the both domestic and international contexts where the rules applied. Because of its importance, legal transplant brings both negative effects and benefits to economic growth and social improvement through legal influence.

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<sup>29</sup> Law on Protection of Consumers’ Rights 2010.

<sup>30</sup> Quebec’s Consumer Protection Act 1999.

<sup>31</sup> India’s Consumer Protection Act 1986.

<sup>32</sup> Cuc Quan ly Canh Tranh, ‘So Sanh Luat Bao ve Nguoi Tieu Dung Mot so Nuoc Tren the Gioi – Bai Hoc Kinh Nghiem va de Xuat Mot so Noi Dung Co Ban Quy Dinh Trong Du Thao Luat Bao ve Nguoi Tieu Dung Cua Vietnam’ (2008)..

a) The positive effects

In comparison with the Ordinance of consumer protection, the new law addressed many legal issues that existed in the Ordinance as well the new one that had appeared because of new market economy. According Mayer Brown, the new law has many benefits to protect consumers and manage the relationship between them and traders through using new provisions.<sup>33</sup>

The first positive effect is that the legal transplant allows lawmakers to create the same rules easily. As the voluntary countries in legal transplant process, Vietnam took the initiative to study and borrow foreign legislations. As the result, it is easy to transplant law successfully. In fact, foreign countries have influenced many consumer contract rules in consumer protection law. For example, article 17 was similar with article 27 of Québec's Consumer Protection Act and article 11.1 of Taiwan's Consumer Protection Law. Therefore, the consumer protection has enough articles and rules to manage the rights and duties of both consumers and suppliers. It was contribution for lawmakers to develop Vietnamese legal systems.

The other benefit is that new provisions regulate new emerging issues of Vietnam's society and economy, for example, adopting the dispute settlement mechanisms and courts between consumer and suppliers following Canada, France, Malaysia, Taiwan, China and South Korea. It means that the legal gap and barriers between rules and practices has reduced.

Additionally, legal borrowing enables not only Vietnam but also the exporters to reduce significantly transactional and commercial costs. Borrowing law means the same principles adopts in these countries, even different culture, society and economy. They save the procedure fees and time. Especially, when the consumers or traders' complains become more serious, they have same dispute settlement mechanisms to do it convenience.

b) The negative effects

The legal transplant of consumer protection law in Vietnam has some drawbacks. When evaluating the Law on consumer protection 2010, although it regulated some new provisions, it still incomplete because the economy has growth dramatically and change a lot until now.

Firstly, although legal transplant contributes to legal reform in Vietnam, not all transplanted legislations got effectiveness. Because of reasons: some general provisions like slogan rather than rules and constrained the legal success; the role of business associations and consumer protection organization was not clear; the issues of transparency, effectiveness sand integrity are not improvement than the old legal principles. The law still provides basic rules in consumer protection,

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<sup>33</sup> Mayer Brown, 'Consumer Rights Protection Law in Vietnam'  
<[https://www.mayerbrown.com/files/Publication/f01d2aa1-4cd1-4c46-963a-8027d3165ea6/Presentation/PublicationAttachment/1b8e4608-cc50-433e-acbe-8114022b785d/Consumer\\_Rights\\_Protection\\_Law\\_Vietnam.pdf](https://www.mayerbrown.com/files/Publication/f01d2aa1-4cd1-4c46-963a-8027d3165ea6/Presentation/PublicationAttachment/1b8e4608-cc50-433e-acbe-8114022b785d/Consumer_Rights_Protection_Law_Vietnam.pdf)>.

not focus on benefits of consumers as the main aim to protect them. The other important thing is that this Law has not regulated enough the rules of authorities' enforcement when serious behaviors occur or the penalty is too slight to prevent trader breaking laws. For example, contaminated food currently is a big social issue in Vietnam and cannot solve in a short-term. The law is not effective to protect consumers when their health reduces significantly and caused by many serious diseases like cancer.

Secondly, legal transplant relies on drafters' abilities when they study and borrow foreign law. If the lawmakers lack legal experiences and knowledge leads to incomplete legal transplants of a norm. Legal transplantation requires comparative abilities, analysis and statute interpretation. Reality, legal transplant in Vietnam depends lawmakers' perspectives. In the case of consumer protection law, drafters who chose the original countries to conduct and apply in Vietnamese legality. They drafted all the documents to support and enact the law. So it was risky if drafters would not understand or transfer the law.

#### **IV. THE EFFECT CONTEXT AND DIFFICULTIES OF LEGAL TRANSPLANTS OF CONSUMER PROTECTION LAW AND OTHER NORMS INTO ONE JURISDICTION**

Legal transplants have been a crucial approach to improve legal systems in many jurisdictions. It reflects the legal background of laws and the way law has been created and adopted. Despite the different legal tradition, culture and legal ideology, there are many successful cases of legal borrowing. In order to get successful results, the importers should examine the norm and predict the negative effects that related to host ideologies, societies and economies in order to constrain negative impacts. Many critics or lawyers raise the question that whether adopting foreign law in transplant jurisdiction will get the same effects as in origin country or not because they have different cultures, social and economic requires as well as distinct politics.<sup>34</sup> What are the difficulties and the context where legal transplant is successful?

In terms of the difficulties, firstly, legal transplant depends too much on drafters' perspectives and abilities. If they borrow foreign rules without understanding or considering the social and economic require, it causes some negative issues and legal conflicts. For example, this is difficult to borrow foreign laws if the lawmakers put them in distinct conditions and demands, exception that they can choose the best one to fit the particular conditions because the same rule still bring the different effective.<sup>35</sup>

The other difficult is that how citizens react the foreign laws, accepting or refusing.

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<sup>34</sup> John Gillespie, above n 24.

<sup>35</sup> Pierre Legrand, 'The Impossibility of "Legal Transplants"' (1997) 4 *Maastricht Journal of European Comparative Law* 111,119.

Finally, finance is the key value to contribute to successful legal transplant. Each country spends a lot of money to educate potential lawmakers, evaluate the real situations and implement of legal systems. Other costs focus on conduct comparative foreign laws. That is the reason why many countries, Vietnam for example, need support finance from other international organizations to make law. Although many countries prefer transplanted laws as the important source of law reform, it should meet the host country ideology and moral criteria. The successful transplanted process depends on the ideological relationship between borrowed legislation and host countries. Additionally, the legal borrowing is effective if legal professionals determine the relationship between statutes and their socio-political contexts as well as recognizing the differences and similarities between import and export country.<sup>36</sup> By contrast, the transplant process will be fail if the lawmakers refuse the role of legal context.<sup>37</sup> Therefore they tend to transplant the rules from jurisdictions where have similar socio-political conditions and culture background.

## V. CONCLUSION

To enhance the legal system in one country, legal transplantation plays increasingly an important role in legal process, especially when the relationships between countries and areas are closer and more intertwined. Legal professions prefer foreign ideas carefully as well as assessing its in real context of transplant country, including social-political ideologies and economy. It means that they have to understand the norm and its effects, including negative and positive ones even whether or not have the same conditions. In Vietnamese case, particularly transplant of consumer protection law into Vietnam from other Western and Asian jurisdictions, understanding the domestic demand and new legislation is necessary to make them effectively to push the economy up. In other words, when the foreign rules have been converted new legislation into importer country, they have influenced directly on economic growth.

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<sup>36</sup> Loukas A. Mistelis, 'Regulatory Aspects: Globalization, Harmonization, Legal Transplants, and Law Reform - Some Fundamental Observations' (2000) 34 *International Lawyer*.

<sup>37</sup> Daniel Berkowitz and Jean-Francois Richard, 'Economic Development, Legality, and the Transplant Effect' <<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/pistor-transplants.pdf>>.

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