Penn State International Law Review

Volume 27
Number 1 *Penn State International Law Review*

Article 7

6-1-2008

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Does "Made in China" Translate to "Watch Out" For Consumers? The U.S. Congressional Response to Consumer Product Safety Concerns

Julia A. Phillips*

I. The Consumer Product Safety Nightmare: An Introduction

On August 14, 2007, 7.3 million Mattel, Inc. Polly Pocket dolls and accessories were cleared off the shelves of American toy stores.[1] The toys contained small magnets that, when played with, could dislodge from their product and be swallowed[2] or aspirated.[3] If two or more of these magnets attracted themselves and clumped together in the intestines, they could potentially cause tearing and blocking of the walls of the intestine.[4] Several children in the U.S. suffered injuries from this product, and at least three were hospitalized with "intestinal perforations".[5] One child remained hospitalized for seven days, another

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1. *See* Press Release, Consumer Prod. Safety Comm'n, Additional Reports of Magnets Detaching from Polly Pocket Play Sets Prompts Expanded Recall by Mattel (Aug. 14, 2007) [hereinafter CPSC Magnets 2], *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml07/07273.html.

2. *See* Stephanie Desmon, *Rising Tide of Unsafe Imports: Reform is Sought at Federal Level*, BALT. SUN, Aug. 15, 2007, at A1 (stating that "[y]esterday's recall of 9.5 million more brand-name toys made in China on the heels of tainted pet food, contaminated toothpaste and Sesame Street toys covered with lead paint has safety advocates demanding reforms in the way imported products sold in the [U.S.] are tested before they are put in stores.")

3. *See* CPSC Magnets 2, *supra* note 1.

4. *See* Editorial, *And Now, Toxic Toys*, PROVIDENCE J. (R.I.), Aug. 23, 2007, at B-04 [hereinafter *Toxic Toys*].

5. *See* Press Release, Consumer Prod. Safety Comm'n, Serious Injuries Prompt Recall of Mattel's Polly Pocket Magnetic Play Sets (Nov. 21, 2006) [hereinafter CPSC

for twelve.[6] On January 23, 2008, Battat, Inc. of New Jersey instituted a recall of a magnetic play set, because it too, contained small magnets with the potential to be swallowed or aspirated.[7] Both the Polly Pocket dolls and the magnetic play sets were manufactured in the People's Republic of China ("China") and imported to the U.S.[8]

On January 23, 2008, OKK Trading, Inc. recalled 2,000 toy race cars due to the presence of excessive levels of lead paint.[9] The race cars were manufactured in China.[10] One day later, on January 24, 2008, the Christmas Tree Shop, a Massachusetts based company, issued a recall of 15,000 wooden block sets.[11] Those too were painted with lead paint in violation of U.S. lead standards, and were also manufactured in China.[12]

Problems with consumer product safety in the U.S. are not limited to the hazards of small magnets and lead paint.[13] In 2007,

> a slew of oversight and manufacturing problems and shortcuts have turned the words 'Made in China' into America's new warning label. The products read like a nightmarish Saturday morning shopping list: toothpaste containing poison, contaminated seafood, defective tires, baby bibs made with lead, [and] pet food tainted with fillers that killed or sickened hundreds of cats and dogs.[14]

Magnets 1], *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml07/07039.html (preceding the August 14, 2007, voluntary recall for the same Polly Pocket dolls and accessories).

6. *See* CPSC Magnets 1, *supra* note 5.

7. *See* Press Release, Consumer Prod. Safety Comm'n, Battat Recalls Magnetic Construction Sets; Ingested Magnets Pose Aspiration and Intestinal Hazards (Jan. 23, 2008) [hereinafter CPSC Battat]., *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml08/08173.html

8. *See* CPSC Magnets 2, *supra* note 1; CPSC Battat, *supra* note 7.

9. *See* Press Release, Consumer Prod. Safety Comm'n, Toy Racing Cars Recalled by OKK Trading Due to Violation of Lead Paint Standard (Jan. 23, 2008), *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml08/08172.html.

10. *See id.*

11. *See* Press Release, Consumer Prod. Safety Comm'n, Toy Wooden Block and Train Sets Recalled By Christmas Tree Shops Due to Violation of Lead Paint Standard (Jan. 24, 2008) [hereinafter CPSC Wood Blocks], *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml08/08174.html.

12. *See id.*

13. *See* LUCY P. ALLEN ET AL., NAT'L ECON. RESEARCH ASSOC., CHINA PRODUCT RECALLS: WHAT'S AT STAKE AND WHAT'S NEXT 14-15 (2008), *available at* http://www.nera.com/image/PUB_ChinaProductRecalls_2.08_FINAL.pdf (providing a chart of "2007 News Excerpts Regarding China Product Recalls").

14. George Latanzio, *Toys Are But One of the Problems*, STAR-LEDGER (N.J.), Aug. 15, 2007, at 11; *see* Press Release, Food & Drug Admin., Menu Foods Issues Recall of Specific Can and Small Foil Pouch Wet Pet Foods (March 16, 2007), *available at* http://www.fda.gov/oc/po/firmrecalls/menu03_07.html (announcing Menu Food's recall of dog and cat food, though not officially citing the cause of animal sickness associated with its products).

These examples only touch upon the score of defective products originating from China and finding their way to the U.S.[15] Their arrival and subsequent entrance into the consumer markets caused an increase in attention to the U.S.'s protocols on product safety.[16] Both consumers and legislators voiced concerns about the status of the U.S.' product safety oversight committees and their lack of authority, funds, and manpower needed to handle the increasing amount of goods arriving at U.S. ports.[17] The "stakes are high" when achieving a solution to the problem of product safety, as "[t]here are billions of dollars in [U.S.] investment in China, rich contracts between [U.S.] corporations and Chinese contractors to produce goods for export, and the health and safety of millions of consumers in the balance."[18] A poll conducted by Zogby International[19] indicated that nearly eighty percent of responders were apprehensive towards purchasing goods made in China.[20] Nearly sixty-three percent reported they would likely participate in a boycott of China-produced goods until safety regulations are improved by the Chinese government.[21]

This Comment reveals several of the consumer product safety concerns plaguing the U.S. and examines current Congressional proposals to correct these concerns. Part II examines the economic history between China and the U.S. with regard to their extensive trade relationship. Many of the product safety concerns in the U.S. exist because of the economic boom experienced by China over the last few decades, resulting in a lively manufacturing regime in the country and

15. *See* Consumer Prod. Safety Comm'n, Recalls and Product Safety News, http://www.cpsc.gov/cpscpub/prerel/prerel.html (providing links to individual months within the year to review product recalls and alerts instituted during those months) (last visited Aug. 19, 2008).

16. *See* David Armstrong, *China Product Safety Concerns Have High Stakes, Far-Reaching Effects,* S.F. CHRON., Aug. 19, 2007, at A-1 (indicating that Mattel, Inc.'s move to recall nearly one-million Chinese manufactured goods "prompted governments and corporations on both sides of the Pacific to scramble to fix the problem without slowing down the surging process of globalization or triggering a trade war between the United States and China—major powers whose economies are increasingly intertwined.")

17. *See* Editorial, *Better Import Safety, New Federal Plan is Good Step Toward Protecting Food and Goods*, GRAND RAPIDS PRESS, Nov. 15, 2007, at A8; Kristi Ellis, *China Safety Issues Enter Apparel Arena*, WOMEN'S WEAR DAILY, Sept. 4, 2007, at 40.

18. Armstrong, *supra* note 16.

19. Zogby International—Internet Homepage, http://www.zogby.com/ (last visited Feb. 8, 2008) (Zogby International is a polling company with offices in New York and Washington).

20. *See* Hari Bapuji, Toy Recalls—Is China the Problem? 2 (Aug. 31, 2007) (unpublished paper, on file with the University of Manitoba, Asper School of Business), *available at* http://umanitoba.ca/news/images/toys_recalls_report.pdf.

21. *See id.*

increased exports to the U.S.[22] Products manufactured in China are exported to the U.S. in grand proportions,[23] leading to an overburdened bureaucratic system in the U.S. that is incapable of absorbing the influx of imports.[24] This section will also touch upon the history of product recalls in the U.S.

Part III of this piece explores the context in which Chinese products are produced. Corruption, poor regulatory oversight, and abhorrent environmental conditions abound in China,[25] all contributing to the production of tainted and unsafe consumer products.[26] Further, American companies seeking to lower production costs in a country where a complicated and diluted chain of production exists, adds to the problem.[27]

Part IV discusses China's hesitance to admit that problems exist with the safety of consumer products manufactured in its country and considers China's claims that its products are subject to unfair trade practices.[28] China also blames the international press for highlighting Chinese product issues that China says are not as terrible as the press makes them out to be.[29] Part V recognizes that some of the problems associated with unsafe goods, namely design flaws, are not the result of Chinese manufacturing problems, but rather unsafe designs issued by American companies.

Part VI considers the integral role that U.S. federal regulation plays in product safety. The U.S. has seen a dramatic influx of imports and yet has not altered its system of product inspection and enforcement of regulations to ensure products entering the domestic market are safe for

22. *See* WAYNE M. MORRISON, CONG. RESEARCH SERV., CHINA-U.S. TRADE ISSUES 7-10 (July 11, 2007).

23. *See, e.g.*, ALLEN ET AL., *supra* note 13, at 5 (providing a chart that shows the annual U.S. imports from China increasing drastically from 1985 through 2007).

24. *See* Fact Sheet: Import Safety Action Plan: Increasing Protection of American Consumers (Nov. 6, 2007) [hereinafter Fact Sheet: Plan], *available at* http://www.whitehouse.gov/news/releases/2007/11/print/20071106-7.html.

25. *See* MORRISON, *supra* note 22, at 10.

26. *See id.*

27. *See* Melinda Liu, *Unsafe at Any Speed; The Downside of China's Manufacturing Boom: Deadly Goods Wreaking Havoc At Home And Abroad*, NEWSWEEK, July 16, 2007, *available at* http://www.newsweek.com/id/33181/page/1; Andrew Bridges, *Outsourcing Complicates Food Recalls,* ASSOC. PRESS, Sept. 3, 2007, *available at* http://www.commondreams.org/archive/2007/09/03/3589/; Nicholas Zamiska, *Growing Concerns: Tainted Ginger's Long Trip From China to U.S. Stores—Supply Chains Make Finding Source Tough*, WALL ST. J., Nov. 19, 2007, at A1.

28. *See* Ariana Eunjung Cha, Asians Say Trade Complaints Bring Out the Bully in China, WASH. POST, at A01 [hereinafter Cha Bully].

29. *See* Esther D'Amico, *China: Flagging Up Quality Concerns*, CHEMICAL WK., Sept. 12, 2007, at 23.

consumption and use.[30] Part VI provides an overview of the Consumer Product Safety Commission ("CPSC") and its authority to regulate consumer product safety.

In light of the many product safety concerns identified, both China and the U.S. have proposed amendments to their regulatory, administrative, and enforcement protocols. This Comment addresses Chinese governmental proposals in Part VII. Part VIII considers U.S. proposals for reform and provides an analysis of the means and methods that may be most effective in targeting and improving the safety of imported goods prior to their placement on American store shelves. This piece concludes by stating that the U.S. must look within its borders and towards its own Congressional authority to create legislative reforms that alleviate the problem of defective consumer goods.

II. A Brief History of the Relationship of the U.S. and China and of Consumer Product Recalls

China currently ranks as the third-largest exporting country in the world, behind Germany and the U.S.[31] Trade relations between the U.S. and China have expanded considerably over the last decade.[32] In 2006, the trade relationship between the U.S. and China was valued at 343 billion dollars,[33] up from only five billion dollars in 1980.[34] China represents the second-largest trading partner with the U.S. and is the U.S.' second-largest source of imports.[35] Today, approximately eighty percent of all children's toys sold in the U.S. are imported from China.[36] With this expansive trade relationship comes an estimated 232 billion dollar trade deficit; the largest of any trading partner of the U.S.[37] This deficit is largely the result of an increasing amount of imports to the U.S. from China relative to exports from the U.S. to China.[38]

Bilateral economic ties between the U.S. and China began in 1979 when the two countries signed the Agreement on Trade Relations Between the United States of America and the People's Republic of China.[39] In this agreement the U.S. and China agree to "adopt all

30. *See Toxic Toys*, *supra* note 4.
31. *See* D'Amico, *supra* note 29.
32. *See* MORRISON, *supra* note 22.
33. *See* D'Amico, *supra* note 29.
34. *See* MORRISON, *supra* note 22, at 1.
35. *See id.*
36. *See Toxic Toys*, *supra* note 4; Desmon, *supra* note 2.
37. *See* MORRISON, *supra* note 22, at 1.
38. *See id.* at 2.
39. Agreement on Trade Relations Between the United States of America and the People's Republic of China, U.S.-P.R.C., July 7, 1979, 31 U.S.T. 4651 [hereinafter Agreement on Trade Relations]; *see* MORRISON, *supra* note 22, at 1.

appropriate measures to create the most favorable conditions for strengthening . . . economic and trade relations between the two countries . . . to promote the continuous, long-term development of trade between the two countries."[40] The U.S. and China extended most-favored-nation ("MFN") treatment[41] to one another.[42] Bilateral relations were strengthened in 2001, when China entered the World Trade Organization ("WTO").[43] However, as this Comment explains, these relations are beginning to weaken over health and safety issues connected with defective consumer products.[44]

The CPSC and the National Highway Traffic Safety Administration ("NHTSA") both issued high-profile product recalls and alerts on imports from China.[45] The CPSC indicated that as of July, 2007, sixty-seven percent of product recalls instituted in the U.S. were for imported goods, the majority of which were from China.[46]

The U.S. was familiar with contaminated goods and product recalls prior to the spring of 2007.[47] In 2003, for example, the Food and Drug Administration ("FDA") issued 243 safety alerts, recalls, and market withdrawals.[48] The high-profile recalls of 2007 may have gained more

40. Agreement on Trade Relations, *supra* note 39, art. I(1).

41. *See* VLADIMIR N. PREGELJ, CONG. RESEARCH SERV., MOST-FAVORED NATION STATUS OF THE PEOPLE'S REPUBLIC OF CHINA (Dec. 6, 1996), *available at* http://www.fas.org/man/crs/92-094.htm (extending Most Favored Nation status to China means that China enjoys nondiscriminatory trade status with the U.S.).

42. *See* Agreement on Trade Relations, *supra* note 39, art. II(1); MORRISON, *supra* note 22, at 1.

43. *See* MORRISON, *supra* note 22, at 1.

44. *See id.*

45. *See Trade Relations with China: Hearing before the S. Commerce, Science and Transportation Comm. and Interstate Commerce, Trade, and Tourism Subcomm.*, 110th Cong. (2007) (statement of David Spooner, Assistant Secretary Commerce for the International Trade Administration, U.S. Department of Commerce).

46. *See* Doris de Guzman, *Made in China*, ICIS CHEMICAL BUS., Aug. 6, 2007, *available at* http://www.icis.com/Articles/2007/08/06/9049799/china-product-quality-under-spotlight.html; ALLEN ET AL., *supra* note 13, at 5 (indicating that from 1988, when China's share of U.S. toy recalls was 10 percent of the total toy recalls, that share has increased to 98 percent in 2007).

47. *See* Bapuji, *supra* note 20, at 2 (referring to consumer product recalls, this report notes that the CPSC affected its first toy recall in 1974 when it recalled toy chests. From 1974-2007, this report indicates that 680 toy products were recalled, and estimated that 2007 would mark the year with the highest number of recalls in the history of the toy industry); ALLEN ET AL., *supra* note 13, at 1.

48. *See* Susan Abram, *Trend of Recalls Continues For Many Products in U.S.*, SAN BERNARDINO COUNTY SUN, Sept. 7, 2007; *see also* U.S. Food and Drug Admin.—Recalls, Market Withdrawals and Safety Alerts Archive, http://www.fda.gov/oc/po/firmrecalls/archive_2003.html (last visited Feb. 5, 2008) (archiving the FDA's recalls, market withdrawals, and safety alerts for the year 2003. The same categories of information are available for the years 1990-2008); ALLEN ET AL., *supra* note 13, at 4 (providing a chart showing the number of toy recalls increasing from 1988-2007).

media and government attention than those of previous years because the recalled items of 2007 and the health and safety consequences thereof, evoked impassioned outcry from the American public.[49] As one consultant indicated, "Mattel is the straw that broke the camel's back,"[50] highlighting the fact that toys and other products discovered to be dangerous and life threatening to innocent children have an emotional impact on the American population that is more prone to attention than other, more "benign," defective products.[51]

The U.S. did not focus attention on consumer product safety until 1969, when the Child Protection and Toy Safety Act[52] became the first piece of legislation to advocate a national safety standard for children's toys.[53] In 1973, John Lofton, a syndicated columnist asked,

> Why, pray tell, ban a battery-operated "Cheerful Daschund No. 256" simply because it has a sharp pointed nose? Should it not be assumed that the average buyer will notice the shape of the nose and decide for himself whether or not it is too dangerously sharp?[54]

Mr. Lofton advocated for parental decision-making rather than governmental decision-making.[55] His thirty-five year old statement, however, does not consider the hazards discovered with some children's toys that are not as obvious as a sharp pointed nose. Many health risks associated with product safety are not visible to the naked eye, and parental decision-making is inadequate to protect children from such dangers. Lead,[56] for example, discovered in paint slathered on children's toys,[57] can only be detected with testing.

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49. *See* Joe Nowlan, *Distributors Eye Mattel Recalls; Experts Say Due-Diligence and Attention to Detail Are Vital When Developing Private-Label Programs With Overseas Partners*, INDUS. DISTRIBUTION, Oct. 1, 2007, at 13; Ted McKenna, *Ogilvy Partnership Helps Counsel Chinese Officials*, PR WEEK (US), July 23, 2007, at 1 (quoting Scott Kronick, President of Ogilvy PR/China, "I think the level of interest comes from the fact that the issues are now entering the consumer domain. When it comes into the living rooms of people like you and me, it takes on a greater degree of gravity and it gets people more responsive.").

50. Nowlan, *supra* note 49, at 13 (quoting David Gordon, principal of the Channel Marketing Group, a Raleigh, N.C.-based consulting firm).

51. *See, e.g.*, *id.* David Gordon, principal of the Channell Marketing Group, a Raleigh, N.C.-based consulting firm indicated that privately labeled products for the electrical industry that do not carry current are "effectively benign as far as their consequential aspects" and issues with these products will not be "overly significant" because they carry less emotional impact to the American public. *Id.*

52. Child Protection and Toy Safety Act, 15 U.S.C. § 1261 (2006).

53. *See* Cynthia Grossen, *It Dawned on Adults After WWII: "You'll Shoot Your Eye Out!,"* WALL ST. J., Dec. 3, 2007, at B1.

54. *Id.*

55. *See id.*

56. *See* Centers for Disease Control and Prevention, Division of Laboratory Sciences, *Exposure to Lead*, http://www.cdc.gov/nceh/dls/lead.htm (last visited Feb. 10,

As unsafe products tainted with lead and other contaminates surface, the U.S. must consider its trade relationship with China and how best to continue that cooperation. This is particularly important at a time when the American public is urging lawmakers to protect them from faulty Chinese imports.

III. Chinese Product Manufacturing Problems

A look at the environment in which Chinese goods are manufactured provides insight into why so many Chinese imports are recalled.[58] There are deficiencies in China's governmental oversight both in terms of the integrity of the officials charged with oversight, and of the stability of their product safety regulations to provide a systematic approach of instituting quality regulations nationwide.[59] Further, pressure from American companies exerted on Chinese manufacturers to produce products with speed and at low-costs, increase the probability of quality concerns.[60] Insufficient and cheaper materials may be used to satisfy the low-costs demanded by American companies, and subcontractors may be called upon to produce goods where the primary supplier is overburdened.[61] Use of subcontractors is not disclosed to the American company[62] and problems with traceability preclude these subcontractors from suffering penalties for failing to comply with product quality standards.[63]

A. Government Corruption

China's weak health and safety oversight for manufactured goods is partly the result of extensive government corruption.[64] Corruption in China's manufacturing sector is rampant in part due to the immense

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2008) [hereinafter CDC *Exposure to Lead*] (stating that exposure to even small amounts of lead can lead to serious and even fatal consequences, especially in young children. It also states that, "Children whose blood lead levels are greater than 10μg/dL are at increased risk for learning and behavioral problems.")

57. *See, e.g.*, CPSC Wood Blocks, *supra* note 11.

58. *See, e.g.*, Ariana Eunjung Cha, *Farmed in China's Foul Waters, Imported Fish Treated With Drugs; Traditional Medicine, Banned Chemicals Both Used*, WASH. POST, July 6, 2007, at A01 [hereinafter Cha *Farmed*] (reporting that some rivers in the south of China are so contaminated with "heavy metals from industrial byproducts and pesticides, including DDT" that they are too dangerous to touch. Other items found in the rivers include twisted metal and clothing).

59. *See* de Guzman, *supra* note 46.

60. *See id.*

61. *See* D'Amico, *supra* note 29.

62. *See id.*

63. *See* Bridges, *supra* note 27.

64. *See* MORRISON, *supra* note 22, at 10.

number of factories that require policing,[65] and the lack of government regulation to oversee production in these factories.[66] Big businesses often enjoy preferential treatment from officials charged with the duty of monitoring them,[67] and local police are known to accept bribes from these companies in exchange for the companies paying the salaries of the individual police officers.[68] However, with international exposure to the problem of corruption and erupting product safety concerns the Chinese government has become more vigilant about fixing its corruption problem.[69] Yan Jiangying, spokeswoman for China's State Food and Drug Administration ("SFDA"), stated that the "corrupt officials of the SFDA are the shame of the whole system and their scandals have revealed some very serious problems."[70] The execution of top officials, including that of Zheng Xiaoyu, the former head of China's SFDA,[71] is certainly a strong indicator that China is taking this crisis seriously.[72] The Chinese Xinhua News Agency printed that Zheng Xiaoyu's execution was "with the approval of the Supreme People's Court."[73]

B. Environmental Conditions

The environmental conditions in China are not on par with U.S. environmental standards and many Chinese imports, especially food imports, are contaminated because of these substandard conditions.[74] A leading Chinese environmental concern relates to polluted water systems caused by the unrestrained industrial boom of the last forty years.[75] In August 2007, a Chinese news source reported that 88,000 pounds of fish

65. *See* Toxic Toys, supra note 4.

66. *See* Liu, *supra* note 27.

67. The Chinese government lays penalties against product quality testing institutions that issue fabricated test certifications or inspection results. *See* Product Quality Law (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 22, 1993, effective Sept. 1, 1993), ch. 5, art. 57 [hereinafter Product Quality Law], *available at* http://www.saic.gov.cn/english/Laws%20and%20Regulations/t20060227_14633.htm. Fines may be levied of "not less than 50,000 yuan but not more than 100,000 yuan" upon the testing institution and of "not less than 10,000 yuan but not more than 50,000 yuan" against the individual(s) of the institution directly responsible for the fake certificate. *Id.*

68. *See* Liu, *supra* note 27.

69. *See* Alexa Olesen, *China Executes Food and Drugs Official*, TURKISH DAILY NEWS, July 11, 2007, *available at* http://www.turkishdailynews.com.tr/article.php?enewsid=77984.

70. *Id.*

71. *See infra* notes 264-69 and accompanying text.

72. *See* Olesen, *supra* note 69.

73. *Former Head of China's Watchdog Executed*, XINHUA NEWS AGENCY, July 10, 2007 [hereinafter *Watchdog Executed*], *available at* http://news.xinhuanet.com/english/2007-07/10/content_6353536.htm.

74. *See* Latanzio, *supra* note 14.

75. *See id.*

were poisoned and killed by wastewater that was dumped into rivers by upstream factories.[76] One catfish farmer on China's Yangtze River reported that his employees remove trash daily from the water.[77] Even worse, the water qualities in seven out of nine Chinese lakes under surveillance in 2006 by the State Environmental Protection Administration ("SEPA")[78] were polluted to the extent that they were dangerous to human skin upon contact.[79] The environmental concern is worst in southern China where industrial runoff builds up.[80] To counteract diseases that thrive in these conditions, fish farmers feed their stock antibiotics and treat the carcinogen and pesticide-infected waters with fungicide.[81] The use of drugs in Chinese fisheries is standard practice: "[e]veryone uses them to keep fish healthy."[82]

In a review of farmed ("aquacultured") Chinese seafood in 2007, the FDA found that one out of seven lots of Chinese seafood tested positive for unapproved drugs.[83] In August 2007, the FDA issued an Import Alert (the "Alert") on various aquacultured seafood imported from China "due to the presence of animal drugs and/or unsafe food additives."[84] The FDA reported that the use of unapproved antibiotics and chemicals during the aquaculture process may contribute to an increase in resistance to antibiotics in human beings,[85] rendering those antibiotics less effective when used in the event of illness.[86] The FDA relied on scientific data that showed that prolonged exposure to

76. *See id.*

77. *See* Cha *Farmed*, *supra* note 58.

78. *See* State Environmental Protection Administration ("SEPA")—Homepage, http://www.chinacp.com/eng/cporg/cporg_sepa.html (last visited Feb. 7, 2008) (explaining some of the responsibilities of this ministry include formulating the "national policy, laws and administrative regulations of major economic and technological policies," coordinating and organizing "pollution prevention and control of key river basis at the national level," and formulating "national standards for environmental quality and for pollutants emission and discharge.").

79. *See* Sun Xiaohua, *Ban Slapped on Polluting Cities, Zones; Inspection Reveals Alarming Contamination in Major Rivers*, CHINA DAILY, July 4, 2007, at 1 (dumping of fluorine, phosphare and arsenium into the rivers); *see* Latanzio, *supra* note 14 (sewage and other pollutants also contaminate the waterways); *see* Cha *Farmed*, *supra* note 58.

80. *See* Cha *Farmed*, *supra* note 58.

81. *See* Latanzio, *supra* note 14.

82. Cha *Farmed*, *supra* note 58 (quoting Zhu Zhiqiu, a catfish farmer in the southern half of China on the Yangtze River).

83. *See* Latanzio, *supra* note 14.

84. *See* FDA Import Alert #16-131, Aug. 3, 2007 [hereinafter FDA Alert #16-131], *available at* http://www.fda.gov/ora//fiars/ora_import_ia16131.html.

85. *See id.* Some unapproved antibiotics and chemicals used during China's aquaculture process include: malachite green, nitrofurans, fluoroquinolones and genation violet. *See id.*

86. *See* Cha *Farmed*, *supra* note 58.

antibiotics and chemicals have a carcinogenic affect.[87] In the Alert, the FDA warned that the chemicals are not recognized as safe and that they may not reasonably be included as a component of food and if used would render the food "adulterated."[88] In a study conducted by the FDA from October 1, 2006, through May 31, 2007, twenty-two of eighty-nine samples of seafood imported from China had drug residue within them.[89] Some of these chemicals, nitrofurans and malachite green, were banned from use in China since 2002;[90] however, five years after their prohibition they continue to appear in Chinese aquacultured seafood.[91] Yet, as one reporter noted, "[it is] use antibiotics or go out of business."[92] The water quality will not support seafood life without antibiotics and chemicals to kill the disease and pesticides that infest it.[93]

The Alert observes that "[a]s the aquaculture industry continues to grow and compete with wild-caught seafood products, concerns regarding the use of unapproved animal drugs and unsafe chemicals and the misuse of animal drugs in aquaculture operations have increased substantially."[94] Ironically, while it is known that China exhibits dangerous environmental conditions, the country remains the leading exporter of seafood to the U.S.[95] The aquacultured seafood sector of the world economy accounts for nearly half of the seafood production worldwide.[96] China represents the largest producer of aquacultured seafood in the world (seventy percent) and dominates fifty-five percent of the aquacultured seafood export community.[97] The percentage of aquacultured fish imported to the U.S. is over forty percent of the U.S.' total imported seafood consumption.[98] In 2007, even with such a high

87. *See* FDA Alert #16-131, *supra* note 84; *see also* David Bennett, *Import Ban Bolsters U.S. Catfish Farmer Claims*, W. FARM PRESS, Aug. 18, 2007, at 16.

88. *See* 21 U.S.C. § 351 (2006) (explaining that a drug is "adulterated," when it (a) has poisonous or insanitary ingredients or was manufactured in inadequate conditions, (b) its "strength, quality or purity" differs from the "original compendium", (c) there is a misrepresentation of the purity and strength of the drug, (d) a drug is mixed with another substance so as to reduce its quality, (e) the device does not perform up to standards, (f) it is a "Class III" device requiring special approval, (g) it is a banned device, (h) the manufacturing, packing, storage or installation of the device is not up to standards, or (i) the device is used in a manner out of form with the investigational use it was approved for); *see* FDA Alert #16-131, *supra* note 84.

89. *See* FDA Alert #16-131, *supra* note 84.

90. Flouroquinolones have not been banned. *See id.*

91. *See id.*

92. Latanzio, *supra* note 14.

93. *See id.*

94. FDA Alert #16-131, *supra* note 84.

95. *See* Latanzio, *supra* note 14.

96. *See* FDA Alert #16-131, *supra* note 84.

97. *See id.*

98. *See id.*

percentage of imported seafood originating from China where unapproved chemicals are used, the U.S. still imported more than one million pounds of Chinese seafood.[99] That seafood was not inspected or tested before or after arrival in the U.S.[100]

C. *Complicated Chain of Production*

A contributing factor to the problem of contaminated goods produced in China is the enormity of the supply chain.[101] After China entered the world export market and its manufacturers met the demand for cheaper goods,[102] more requests for production were sent to its factories.[103] Soon, the primary suppliers contracting for production became overloaded with orders and those suppliers delegated their duties to subcontractors.[104] American companies deal only with the primary supplier, and after this contact the supply chain can become diluted and span across numerous factories located throughout the region.[105] The concern is that not enough due diligence and personal attention is paid to the supply chain once a product passes beyond the primary supplier to numerous secondary manufacturers.[106] U.S. importers are often unaware that their products are being outsourced to secondary suppliers.[107] The Mattel, Inc. recall of toys painted with lead paint rather than paint approved by Mattel exemplifies the lack of attention paid by contractors beyond the primary supplier.[108] It was the subcontractor, a Chinese company named Hong Li Da, and not the primary supplier with whom Mattel contracted,[109] that applied the lead paint, violating both Mattel's standards and those of the U.S.[110] Robert Eckert, CEO of Mattel, in response to the August, 2007, recall of millions of its toys, stated, "[w]e wouldn't have faced this problem if our suppliers followed the rules."[111]

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99. *See* Latanzio, *supra* note 14.

100. *See id.*

101. *See* Nowlan, *supra* note 49.

102. The Consumer Product Safety Act, 15 U.S.C. § 2052(2)(4) (2006) (defining "manufacturer" as "any person who manufacturers or imports a consumer product.").

103. *See* D'Amico, *supra* note 29.

104. *See id.*

105. *See* Nowlan, *supra* note 49.

106. *See id.*

107. *See* D'Amico, *supra* note 29.

108. *See* CDC *Exposure to Lead*, *supra* note 56 (reporting that exposure to even small amounts of lead can lead to serious and even fatal consequences, especially in young children. It also states that, "Children whose blood lead levels are greater than 10 μg/dL are at increased risk for learning and behavioral problems"); Nowlan, *supra* note 49.

109. *See* Nowlan, *supra* note 49.

110. See Lou Dobbs Tonight: New Recall Issued for Chinese Toys (CNN television broadcast Aug. 14, 2007) [hereinafter Dobbs: Toys].

111. Bapuji, *supra* note 20, at 2.

Local subcontractors receiving outsourced production are culprits of lackadaisical quality-control standards. Attention must be paid to these manufacturers to ensure product safety.[112]

In November 2007, the product Aqua Dots, also known as Bindeez, was recalled when it was discovered that the Wangqi Product Factory in Shenzhen, China manufactured the beads with a glue that changed its chemical form into gamma hydroxy butyrate ("GHB"), the "Date Rape" drug, upon ingestion.[113] This drug can cause unconsciousness and even death.[114] According to the CPSC, a number of children across Asia and Europe were sickened by the beads.[115] The beads were manufactured by JSSY Ltd., a Hong Kong company, who produced the beads at the Wangqi Product Factory in mainland China.[116] Moose Enterprise, an Australian distributor, gave Spin Master, a Toronto company, a license to distribute the beads in North America.[117] Spin Master further contracted with a Taiwanese manufacturer to supply the beads from the Wangqi Product Factory in China.[118] When Moose Enterprise was asked to comment on the poisonous beads, the company indicated that it was not informed that its supplier altered the ingredients in the glue to create an alternative that cost less than one-third the original.[119] The Chinese manufacturer claims it did not alter the ingredients out of concern for price, but rather, for functionality purposes.[120] This chain of production and visible inattention to product manufacturing highlights the complexity of the Chinese supply chain and both the occurrence and ability of manufacturers to cut costs to make their own profits larger.[121]

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112. *See* Armstrong, *supra* note 16.

113. *See* Keith Bradsher, *Chinese Company Says It's Sorry for Making Poisonous Toy Beads*, N.Y. TIMES, Nov. 20, 2007, at C4 [hereinafter Bradsher *Sorry*].

114. *See* Keith Bradsher, *China Confirms Poison Was on Toy Beads*, N.Y. TIMES, Nov. 11, 2007, at 114 [hereinafter Bradsher *Poison*]; Bradsher *Sorry*, *supra* note 113.

115. *See* Bradsher *Sorry*, *supra* note 113 (reporting that at least fourteen children were sickened by these beads upon ingestion and some were briefly in comas).

116. *See id.*

117. *See* Bradsher *Poison*, *supra* note 114.

118. *See* Bradsher *Sorry*, *supra* note 113.

119. *See* Bradsher *Poison*, *supra* note 114.

120. *See id.*

121. Similarly Menu Foods, Inc. contracted with ChemNutra, Inc. for the supply of wheat gluten to be included in its pet food products. *See Hearing Before the U.S. House of Representatives Comm. on Energy and Commerce and Subcomm. on Oversight and Investigations* (Apr. 24, 2007) (written statement of Paul K. Henderson) [hereinafter *Henderson*], *available at* http://www.menufoods.com/recall/ (select "10. U.S. House of Representatives Paul Henderson Written Testimony 4-27-07"). Menu Foods was diligent to give ChemNutra specific safety requirements for wheat gluten which expressly prohibited "foreign material contamination." *Id.* Paul K. Henderson, CEO of Menu Foods Income Fund testified before the U.S. House of Representatives that "[e]ach shipment of wheat gluten Menu Foods received from ChemNutra was accompanied by a Certificate of Analysis representing that the wheat gluten complied with Menu Foods'

D. Insufficient Regulations

Three decades ago, and prior to the industrial boom, China's government owned all of the country's large manufacturers and could effectively watch over and guarantee the quality output of the enterprises.[122] As China begins to embrace a more privatized economic mode, "there are clear indications that Beijing cannot effectively control the rest of the country," says Wenran Jian, a sinologist at the University of Alberta.[123] Many of the previously-controlled government manufacturing companies are now part of the private sector, which is not adequately regulated.[124] The Chinese economy of the last decade has evolved at a rapid pace on "foundation(s) of hundreds of thousands of small, unregulated factories and farms."[125] There are, for example, approximately 8,000 toy companies in China, making oversight of that manufacturing sector difficult.[126]

The Chinese rules and regulations concerning product manufacturing vary among different jurisdictions.[127] There is no streamlined system for regulating product manufacturing and different government agencies issue and enforce different guidelines.[128] The following excerpt of the Product Quality Law of the People's Republic of China (the "Product Quality Law") is an example of the disjunctive nature of China's product quality regulations.[129] Chapter I, Article 8 reads:

> The product quality supervision and administration departments of the State Council are responsible for the supervision and administration of the quality of products of the whole country. All relevant departments of the State Council shall be responsible for the supervision of product quality within their own functions and duties.
>
> Local administrations for the supervision of product quality at and above the county level are responsible for the supervision of product

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Material Specification." *Id.* One issue contributing to this false certification was that testing standards did not include the protocol to test for melamine because there had been no history of melamine contamination in wheat gluten. *Id.* This is an example of a weakness in the supply chain—ChemNutra contracting with a Chinese manufacturer who provided a substandard product, and a weakness in U.S. product testing.

122. *See* Liu, *supra* note 27.

123. *Id.*

124. *See id.*

125. de Guzman, *supra* note 46 (quoting Jay Timmons, Senior Vice President, Policy and Government Relations for the National Association of Manufacturers).

126. *See* Armstrong, *supra* note 16.

127. *See* Liu, *supra* note 27.

128. *See id.*

129. *See* Product Quality Law, *supra* note 67.

> quality within their own administrative jurisdictions. The relevant departments of the local people's governments at and above the county level are responsible for the product quality within their respective functions and duties.
>
> *If there are different provisions concerning the supervision departments of product quality, such provisions shall be applied.*[130]

This provision permits provincial administrations to apply product quality regulations and allows the different departments of government in local jurisdictions to comply with provisions of their own product quality laws, regardless of differences between those regulations and the Product Quality Law.[131]

Moreover, the regulations that are in effect are poorly enforced.[132] This is, in part, the result of corruption amongst those charged with enforcement.[133] The Product Quality Law[134] provides regulations on product quality and safety.[135] The law was enacted "with a view to reinforc[e] 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."[136] The law makes it illegal to place a forged quality certification mark on an uncertified product, or to place inaccurate information on the product, including the origin of the product and the identity of the manufacturing factory.[137] It is also illegal to "use fake goods as genuine or sub-standard products as standard."[138] As the Product Quality Law indicates, China has regulations in effect to promote product quality. However, those regulations may not be effective in asserting nationwide safety standards[139] and may still be futile where corruption of government officials overrides safety.[140]

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130. *Id.* ch. I, art. 8 (emphasis added).

131. *See id.*

132. *See* MORRISON, *supra* note 22, at 10.

133. For a discussion of corruption among officials charged with oversight of product safety, see *supra* notes 64-73 and accompanying text, and *infra* notes 264-78 and accompanying text.

134. Product Quality Law, *supra* note 67.

135. The current version of the Product Quality Law of China was amended from the old version in 2001. *See id.*

136. *Id.* ch. I, art. 1.

137. *See id.* ch. I, art. 5.

138. *Id.* ch. I, art. 5.

139. *See* Product Quality Law, *supra* note 67, ch. I, art. 8. This regulation allows the different localities of China to apply their own product quality standards, even where they are different from the Product Quality Law of the nation. *See id.*

140. *See supra* note 133.

One key issue China faces with amending its current product regulations comes from its own reluctance to admit the existence of a problem in its system.[141] For example, in 2003, China hesitated to acknowledge the outbreak of Severe Acute Respiratory Syndrome ("SARS").[142] Rather than admit that the disease had broken out and that it was the cause of thousands of deaths, China put its own, and the rest of the worlds', people at risk by denying the disease's presence and severity.[143] China has exercised the same irresponsibility and lack of accountability with respect to product recalls.[144]

One such example concerns Chinese exports of pet food in which two Chinese producers added melamine, a common additive in antifreeze,[145] as an inexpensive means to increase the protein content of wheat gluten[146] in dozens of wet and semi-moist[147] pet foods.[148] In April 2007, traces of melamine were discovered when cats and dogs in the U.S. suffered kidney failure[149] and perished from ingesting the contaminated food.[150] However, when animals began dying, China

141. *See* Latanzio, *supra* note 14.

142. *See id.*

143. *See id.*

144. *See id.*

145. *See Safety of Chinese Imports: Hearing before the S. Commerce, Science and Transportation Comm.*, 110th Cong. (2007) (statement of Jay Timmons, Senior Vice President Policy and Government Relations, National Association of Manufacturers).

146. According to Paul K. Henderson, CEO of Menu Foods Income Fund, the company that initiated a voluntary recall on pet foods contaminated by melamine, wheat gluten is a "natural vegetable protein extracted from wheat grains or flour and is a by-product of wheat starch. Only about 20% of the wheat gluten used by human food and pet food manufacturers in the [U.S.] is produced in the [U.S.]. Most of the wheat gluten is imported from Europe or Asia. [U.S.] plants buy wheat gluten from several suppliers around the globe. Wheat gluten is used by some pet food manufacturers, including Menu, as an ingredient in formed meat products. It is a source of protein and also has unique properties that help to hold together the chunks of meat. Wheat gluten is also used by manufacturers of human food products, mostly for baking." Henderson, *supra* note 121.

147. *See* Jeremy Mullman, *Brands Blind to China Crisis; Experts Slam Marketers For Sticking Their Heads in the Sand*, ADVERTISING AGE, Aug. 20, 2007, at 1.

148. *See* Latanzio, *supra* note 14; *Henderson*, *supra* note 121 (explaining that Paul K. Henderson is CEO of Menu Foods Income Fund and testified before the U.S. House of Representatives that Menu Foods purchased contaminated wheat gluten from ChemNutra, Inc., a U.S. supplier of ingredients to food, feed, and pharmaceutical companies throughout the U.S. Mr. Henderson testified that ChemNutra, Inc. imported the contaminated wheat gluten from Xuzhou Anying Biologic Technology Development Co., Ltd, a Chinese company).

149. *See* Mullman, *supra* note 147.

150. *See* Latanzio, *supra* note 14; Olesen, *supra* note 69; GEOFFREY S. BECKER, CONG. RESEARCH SERV., FOOD AND AGRICULTURAL IMPORTS FROM CHINA 10 (July 17, 2007), *available at* http://www.fas.org/sgp/crs/row/RL34080.pdf (discovering melamine in other animal feed including hog, chicken and fish feed); Terry J. Allen, *Food*

initially denied having exported wheat gluten and generally denied that a problem existed because, as one Chinese official claimed, melamine "[would not] hurt animals in any case."[151]

As more animals began to die the controversy over melamine-tainted wheat gluten became known internationally, and China was forced to react.[152] As Scott Silverman, Asia/Pacific regional director for Godfrey Q Partners in Beijing stated, the official Chinese response to the melamine-tainted pet food scandal was "petulant, passive-aggressive, a lot of denial. After they realized it was not just an issue of pet food and that internationally China was under a bright spotlight, they grew more concerned."[153] Melamine was thereafter banned from pet food products[154] and the officials from the factory that produced the melamine were detained.[155]

Still, other cases may be identified that indicate China's reluctance to admit that problems associated with its consumer goods exist. History indicates that China hesitates to admit the truth of claims of contamination until those claims and consequences of contamination resound throughout the world.[156] It is when its "Made in China" stamp is at risk of being tarnished that China admits to problems.[157] As deaths from unsafe food and products in the U.S. and China reveal, admitting to problems too late can have devastating consequences.[158]

E. The Search for Lower Costs

Over the last ten years, U.S. outsourcing of product manufacturing increased by around seventy-percent.[159] The lower costs associated with manufacturing in China have induced some companies to move their entire operation overseas.[160] The world's largest toy manufacturer, Mattel, Inc.,[161] manufactures all of its products in China.[162]

Poisoning for Thought, IN THESE TIMES, July 2007, at 45 [hereinafter Allen *Food Poisoning*].

151. Latanzio, *supra* note 14.

152. *See id.*

153. *See* Madden Normandy, *Is China Turning Into The Land of Tainted Products?; Slew of Mainland-Made Goods Have Recently Been Recalled, and Country's Image is Suffering as a Result*, ADVERTISING AGE, Aug. 20, 2007, at 16.

154. *See* Latanzio, *supra* note 14.

155. *See* Liu, *supra* note 27.

156. *See* Normandy, *supra* note 153.

157. *See* Latanzio, *supra* note 14.

158. *See id.*; Olesen, *supra* note 69; Mullman, *supra* note 147.

159. *See* Abram, *supra* note 48.

160. *See, e.g., id.*

161. *See Mattel Recalls 800,000 Toys Worldwide*, TURK. DAILY NEWS, Sept. 6, 2007, *available at* http://www.turkishdailynews.com.tr/article.php?enewsid=82705.

162. *See* Abram, *supra* note 48.

American companies utilize Chinese manufacturing because of its lower labor and material costs.[163] Production costs are also lower because inferior regulatory oversight lends itself to companies engaging in bribery when, for example, an inferior material is available to lower the price of the product.[164] An improper material or ingredient may also reduce costs, as seen in 2007, when a Chinese toothpaste manufacturer used diethylene glycol, a poisonous industrial solvent[165] used as antifreeze,[166] in its toothpaste.[167] Diethylene glycol can cause kidney failure, paralysis, and death.[168] This toothpaste was found in South Africa and in prisons in the U.S.[169]

The consumer demand for less-expensive products in the U.S. is affecting Chinese product quality and safety.[170] This effect is not only due to lax Chinese regulations but also because American companies are not located in the country to oversee quality control.[171] "[It is] impossible for [American companies] to oversee the nitty-gritty details of production," stated Christopher Tang, professor at UCLA's Anderson School of Management.[172] Tang states that the problem is caused by the search for reduced costs—"As the supplier is pressured to lower the cost, something has to give. The bottom line is, you get what you pay for."[173] Consequently, relentless attempts to cut costs have meant a wave of unsafe consumer products.

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163. *See id.*; Latanzio, *supra* note 14.

164. *See* Latanzio, *supra* note 14.

165. *See* Mullman, *supra* note 147.

166. *See* Consumers/Product Safety: Kuneva Positive About Discussions with Chinese Authorities in Beijing, EUR. REP., July 25, 2007, *available at* http://www.highbeam.com/doc/1G1-166753897.html.

167. *See* Latanzio, *supra* note 14; *Henderson*, *supra* note 121. Paul K. Henderson postulated before the U.S. House of Representatives a possible motive for the use of melamine in wheat gluten: "Menu Foods' Material Specification for wheat gluten contains a chemical requirement that the wheat gluten contain no less than 75% protein. This is a typical specification for wheat gluten for both human and animal food. In the human food and pet food industry, protein levels are customarily estimated by determining the quantity of nitrogen in a product. Melamine has a high concentration of nitrogen and, as a result, the inclusion of melamine into the wheat gluten would make substandard wheat gluten appear to meet industry standards for protein content." *Id.* This testimony reveals that lower costs for ChemNutra, Inc. translated into substandard meat products mixed with melamine to give the impression of industry-approved protein levels.

168. *See China Bans Antifreeze Agent in Toothpaste*, WINNIPEG FREE PRESS, July 12, 2007, at B8.

169. *See* Latanzio, *supra* note 14.

170. *See* Abram, *supra* note 48.

171. *See id.*

172. Abram, *supra* note 48.

173. *Id.*

F. *Insufficient System to Trace Defective Products and to Log Complaints*

China does little to track contaminated products back to the place of production once those products are distributed.[174] As Caroline Smith DeWaal, Director of Food Safety for the Center for Science in the Public Interest stated, "[i]f people cannot trace a product back to a supplier, the supplier has no incentives to keep their processes as clean and effective, in terms of food safety, as possible."[175] Traceability "is critical," Ms. DeWaal remarks,[176] because without a system to trace defective products, manufacturers use practices that are not sufficient to promote safety since they are "probably not going to get caught."[177] Adding to the problem of traceability is the issue of labeling and distribution.[178] Not only are there multiple manufacturers contributing to a single product, but a single product may be sold under different labels and distributed by multiple suppliers.[179]

Furthermore, without a productive tracing system, the ability to recall unsafe products is dampened.[180] The extensive supply chain in China, including many subcontractors, makes it difficult to identify which manufacturer contributed what and with whom that manufacturer contracted.[181] Consequently, determining who is responsible for the defective product can delay both recalls and public health warnings.[182] Dr. David Acheson, Director of the Food Safety and Security Staff of the FDA, admitted that some recalls my "dribbl[e] on for two months," but that a long and drawn-out recall is better than "not saying anything and waiting for two months" to initiate a recall while the manufacturer of the defective product is traced.[183] Without an adequate system for tracking and thereby recording quality-control complaints, the Chinese government can easily evade knowledge of the defective manufacturing as if it did not happen.[184]

The manufacturing and environmental problems in China contribute to the context in which tainted consumer goods arise. Without effective regulations and enforcement procedures, China's manufacturing sector

174. *See* Liu, *supra* note 27.
175. Bridges, *supra* note 27.
176. *Id.*
177. *Id.*
178. *See id.*
179. *See id.*
180. *See* Bridges, *supra* note 27.
181. *See id.*
182. *See id.*
183. *Id.*
184. *See* Liu, *supra* note 27.

has spun out of control, and it is now, when the global community is applying pressure on China, that measures must be taken to assure China's trading partners that amendments will occur to bring safety and quality to its products. Though China has indicated that it is willing to cooperate with the international community,[185] it is important to consider its passive response to recalls of its goods and corresponding media attention.

IV. China Playing the "Blame Game"

China responded to some Asian countries' recalls of Chinese products by claiming that its products fall victim to unfair trade practices.[186] This is a weighty argument in a region where many Asian countries are not only customers of China, but also competitors.[187] Malaysia instituted a ban on Chinese fungus-infested nuts and dried fruit containing a carcinogenic sweetener, and China met this ban by issuing an alert on lychee-favored yogurt from Malaysia, indicating that the Malaysian yogurt did not meet labeling requirements.[188] China argues that recalls and bans of its products amount to trade barriers as a way to legitimize otherwise unfair trade practices.[189] Gao Yongfu, a law professor and the Assistant to the President of the Shanghai World Trade Organization Affairs Consultation Center, rallied behind the theory of unfair trade practices.[190] Ms. Yongfu stated, "I [do not] really believe that Chinese products fail to meet their basic standards. That [is] not true. There is competition between Chinese products and those from [other] countries."[191] She argues that competition leads countries to allege that Chinese products exhibit low product standards in order to promote their own products and gain superiority in the marketplace.[192] Similarly, Desmond O'Toole, a member of Hong Kong Special Administrative Region's Expert Committee on Food Safety and an adjunct professor of biology and chemistry at the City University of Hong Kong, considered government bans on products for health-related

185. *See China Will Tackle Product Safety, President Says*, MSNBC, Sept. 6, 2007 [hereinafter *China Will Tackle*], *available at* http://www.msnbc.msn.com/id/20626488/.

186. *See* Cha *Bully, supra* note 28.

187. *See id.*

188. *See id.*

189. *See id.*; Wu Yi, *China Stands for Quality*, WALL ST. J., Dec. 11, 2007, at A27 (writing, in support of the Chinese government, that "individual cases involving product quality . . . ought to be handled for what they are, and one should resist the temptation to jump to sweeping conclusions about them. In particular, attempts to politicize these issues and use them to erect new trade barriers should be firmly opposed.")

190. *See* Cha *Bully*, *supra* note 28.

191. *Id.*

192. *See id.*

reasons and opined that "you must always question whether there might be a trade issue involved. So the government can legitimately ban something, but in fact their motivation may be with trade."[193]

Beyond its claims of unfair trade practices, China engages in draconian tactics against countries that recall or place a ban on Chinese products.[194] For example, in July 2007, a Chinese company threatened to sue the Philippines for defamation after the Philippine government released a public warning that a popular candy imported from China was contaminated with formaldehyde.[195] Weng Mao, the general manager of Guan Shen Yuan, the Shanghai-based company that manufactured the candy, refused to believe that its candy could be contaminated.[196] He instead insisted that the candy was counterfeit and that the Philippines made false accusations to damage the brand name.[197] Weng Mao threatened to sue the Philippines unless the country took "corrective action."[198]

Similarly, China applied an absolute ban on Indonesian seafood claiming tests of the country's seafood showed heightened levels of dangerous chemicals including mercury and cadmium.[199] This ban was an ironic response that occurred shortly after Chinese seafood came under its own international scrutiny for safety concerns.[200] The FDA performed testing on Indonesian seafood and gave it an eight out of ten rating, concluding that the seafood met U.S. standards on food quality.[201]

In Hong Kong, China pressured the Special Administrative Region to reconsider its recall of toothpaste alleged by other countries to be poisonous, because China insisted that the particular chemical found in the toothpaste was present at levels suitable for human consumption.[202] In response to this recall, China ordered Hong Kong to submit a written explanation on how and why it recalled the toothpaste.[203]

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193. *Id.*

194. *See China Will Tackle*, *supra* note 185 (reporting that "Chinese officials tried to bully Indonesia, Malaysia and the Philippines into reconsidering separate import bans on substandard or dangerous food products and consumer goods").

195. *See* Cha *Bully*, *supra* note 28.

196. *See id.*

197. *See id.*

198. *Id.*

199. *See RI Seafood Meets US Standards, Official Says*, JAKARTA POST, Sept. 15, 2007, at 2.

200. *See, e.g.*, Cha *Farmed*, *supra* note 58 (indicating that in May 2007, Alabama and Mississippi stopped grocery store sales of Chinese catfish because some contained levels of antibiotics. This was only months before the U.S. Food and Drug Administration instituted its own ban on Chinese catfish.).

201. *See RI Seafood Meets US Standards*, *supra* note 199.

202. *See* Cha *Bully*, *supra* note 28.

203. *See id.*

In light of international attention on the issue of product safety and its backlash, China attempted to relieve the pressure by insisting that "[e]xaggerating, complicating and politicizing relevant issues should be avoided."[204] China blames the international press for exasperating product safety issues.[205] Li Changjiang, Minister of the General Administration of Quality Supervision, Inspection and Quarantine ("AQSIQ"), stated that "some foreign media, especially those based in the [U.S.], have wantonly reported on so called unsafe Chinese products. They are turning white to black."[206] China claims that by printing cautionary articles regarding Chinese goods, the press magnified the alarm and aroused "unnecessary fears"[207] beyond the true seriousness of the problem.[208]

V. To be Fair: U.S. Product Designs are to Blame for Some of the Recalls

There may be some truth to China's allegations that its manufacturers should not be held responsible for *all* of the recalls of Chinese-produced goods. Very little of what is produced in China is inspected before it enters the borders of the U.S.[209] Much of what governs product safety is based on the honor system, with companies testing their own products for contaminants and setting their own safety standards.[210] Carter Keithley, President of the Toy Industry Association, stated that China should not be blamed for many of the recent product recalls.[211] She suggests that those who should be blamed are the American companies that fail to test their products before they leave

204. de Guzman, *supra* note 46 (quoting Qin Gang, China's foreign ministry spokesman).

205. *See China Will Tackle*, *supra* note 185 (reporting that upon recognition that tainted ingredients in pet food was responsible for the deaths of dogs in the U.S., China "released little public information and accused Western media of exaggerating the problem." China was later advised by a consultant to "stop blaming the foreign media.")

206. Anita Chang, *China Blames Food Fears on Foreign Media*, USA TODAY, July 16, 2007, *available at* http://www.usatoday.com/news/world/2007-07-16-17176399 57_x.htm.

207. *Id.* (quoting Li Chuanging, the "top Communist Party boss in the northeastern port city of Tianjin" as saying that international media were "arousing unnecessary fears.").

208. *See id.*

209. *See* Desmon, *supra* note 2.

210. *See id.*

211. *See id.*

China, and many retailers[212] in the U.S. which test imported products before consumers can purchase them.[213]

Additionally, not only should the testing companies be responsible for tainted product recalls, but the companies that design products should share the blame.[214] It is the toy companies who develop designs and send them overseas for production.[215] A problem in the design of a product makes a product dangerous no matter who manufactures it.[216] This is in contrast to the situation where the design of a product is good, but the manufacturing faulty.[217] Chinese safety officials indicate that most of the recalled toys that pose a danger to children are recalled because of flaws in design, rather than flaws developed through faulty manufacturing.[218] For example, Mattel, Inc., designed the Polly Pocket toy with small, powerful magnets that could be fatal if swallowed or aspirated.[219] Mattel products, including 18.2 million toys, were recalled during the middle of August 2007, because they contained these small magnets.[220] Where design flaws are to blame for faulty products, American companies must make changes in their design protocols.[221] China should not be blamed for manufacturing products according to contractual specifications.[222] Yet it should be noted that while problems with U.S. designs should be

212. The Consumer Product Safety Act, 15 U.S.C. § 2052(a)(13) (2006) (defining "retailer" as "a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer").

213. *See* Desmon, *supra* note 2.

214. *See* Toxic Toys, *supra* note 4.

215. *See* Bapuji, *supra* note 20, at 4.

216. *See id.* (indicating that a design problem "is reflected in sharp edges of a toy which pose laceration hazard. Another common design problem is small detachable parts such as balls and beads, which pose a swallowing and choking hazard. Other examples of design flaws include open tubes and spaces, which can entrap children's body parts, long strings that pose strangulation hazard, and sewn buttons and glued eyes on stuffed toys").

217. *See id.* (indicating that manufacturing problems "can occur as a result of using poor material, such as toy stuffing that contains bits of wire or broken sewing needles. Other examples of manufacturing problem are poorly fitted parts that break, batteries that overheat, and faulty electrical circuits. Using unacceptable material or chemicals such as lead paint that are not part of the design is yet another manufacturing problem.").

218. *See Toxic Toys*, *supra* note 4; *Lou Dobbs Tonight: New Standards for Chinese Imports?* (CNN television broadcast Sept. 11, 2007); ALLEN ET AL., *supra* note 13, at 6.

219. *See* Toxic Toys, *supra* note 4.

220. *See id.*; ALLEN ET AL., *supra* note 13, at 1, 7 (indicating that 25 percent of Chinese-produced products recalled were recalled due to aspiration and intestinal concerns).

221. *See Toxic Toys*, *supra* note 4.

222. *See* Gordon Fairclough, *After the Recalls, Two Toy Stories—For Chinese Manufacturers, Product Safety Concerns Bring Struggle or Shutdown*, WALL ST. J., Dec. 21, 2007, at B1 (reporting that "[e]xecutives from Mattel, who have said some of the recalled toys had design flaws, apologized to Chinese government officials and the public in September").

ameliorated, a breakdown of the hazards discovered of China-made products indicates that the presence of lead in products accounted for thirty percent of recalls in 2007, the "most common hazard among China-related consumer products recalled."[223] Using lead paint is not a design flaw, but rather a manufacturing defect.[224]

VI. The Consumer Product Safety Commission: U.S. Regulatory Authority for Product Safety

In 2006, the U.S. imported nearly two trillion dollars worth of goods from more than 825,000 importers[225] through 300 ports of entry.[226] President Bush, in November 2007, declared that the majority of these imports are safe and that the U.S. has strong food and product safety standards.[227] In the same breath, however, President Bush advised the nation that more needs to be done to ensure the safety of imported goods.[228] There are various regulatory bodies charged with the oversight of imported food,[229] drugs,[230] and products.[231] This Comment addresses the CPSC, which is the central federal authority charged with overseeing the quality of consumer products in the American market.[232] Consideration of the CPSC reveals downfalls that must be addressed to grant consumers the confidence they deserve in the safety of the products they welcome into their homes.

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223. *See* ALLEN ET AL., *supra* note 13, at 7 (outlining that other hazards and their relative percentages of Chinese-produced products subject to recall include: aspiration and intestinal 25 percent; choking 8 percent; chemical 8 percent; fire 7 percent; other 22 percent).

224. *See supra* note 217 and accompanying text.

225. *See* President George W. Bush, Discussion of Import Safety (Nov. 6, 2007) [hereinafter Bush], *available at* http://www.whitehouse.gov/news/releases/2007/11/print/20071106-8.html

226. *See* Press Briefing by Dana Perino and Secretary of Health and Human Services Michael Leavitt (Nov. 6, 2007) [hereinafter Perino], *available at* http://www.whitehouse.gov/news/releases/2007/11/print/20071106-11.html

227. *See* Bush, *supra* note 225.

228. *See id.*

229. *See* Allen *Food Poisoning, supra* note 150 (stating that the FDA has jurisdiction over 80 percent of U.S. food).

230. The FDA is responsible for overseeing the safety and effectiveness of drugs that are marketed in the U.S. from both domestic and foreign manufacturers. *See* Government Accountability Office, DRUG SAFETY: PRELIMINARY FINDINGS SUGGEST WEAKNESSES IN FDA'S PROGRAM FOR INSPECTING FOREIGN DRUG MANUFACTURERS 4 (2007), *available at* http://www.gao.gov/new.items/d08224t.pdf.

231. *See Toxic Toys, supra* note 4 (explaining that the Consumer Product Safety Commission is responsible for overseeing consumer product safety).

232. *See Toxic Toys, supra* note 4.

The CPSC, created by the Consumer Product Safety Act ("CPSA"),[233] is charged with overseeing product safety,[234] including the importation of children's toys.[235] The goals of the CPSC identified in the CPSA include:

> 1. to protect the public against unreasonable risks of injury associated with consumer products; 2. to assist consumers in evaluating the comparative safety of consumer products; 3. to develop uniform safety standards for consumer products and to minimize conflict in State and local regulations; and 4. to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.[236]

The U.S. enacted the CPSA in 1972[237] after findings by Congress that consumer products[238] distributed in commerce were unacceptably injurious to the public health, and that existing federal authority to protect consumers was inadequate.[239] The CPSC has the authority to

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233. Consumer Product Safety Act, 15 U.S.C. § 2053 (2006). Section 2053(a) reads, "[a]n independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate." *Id.* § 2053(a).

234. *See* Toxic Toys, *supra* note 4.

235. *See Reform and Consumer Safety*, N.Y. TIMES, Nov. 19, 2007, at A22 [hereinafter *Reform and Safety*].

236. 15 U.S.C. § 2051(b).

237. Consumer Product Safety Commission—Consumer Product Safety Act, http://www.cpsc.gov/businfo/cpsa.html (last visited August 22, 2008).

238. 15 U.S.C. § 2052(a)(5). The Act defines "consumer product" as

> any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. . . .

Id.

239. *See id.* § 2051(a). The CPSA reads:

> (a) The Congress finds that
>
> 1. an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce;
>
> 2. complexities of consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate risks and to safeguard themselves adequately;
>
> 3. the public should be protected against unreasonable risks of injury associated with consumer products;
>
> 4. control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers;
>
> 5. existing Federal authority to protect consumers from exposure to consumer products presenting unreasonable risks of injury is inadequate; and

stop imports at the borders of the U.S., but cannot do so without first acquiring information that an unsafe product is en route.[240]

The state of the CPSC is weak.[241] It does not have the staff to oversee a nationwide inspection system with the capability to bring product safety concerns under control.[242] The staff of the CPSC has been reduced considerably in recent years.[243] The CPSC currently employs approximately 400 individuals, down from 978 in 1980.[244] Eighty of those positions have been eliminated since 2002.[245] The agency is not able to meet its quorum.[246] Without a quorum, the CPSC can only operate for six months and cannot vote on safety standards, although the agency can still recall unsafe products.[247] Scott Wolfon, a spokesman for the CPSC, indicated that the agency is doing "as good a job as we can do in terms of using the resources we have to find products that have a violation."[248] However, some are skeptical that without additional funding and staff the agency cannot perform adequately.[249] Currently, the CPSC regulates more than 15,000 consumer products.[250] Operating with minimal staff and with a large group of products to oversee, the CPSC is stressed to perform its regulatory duties.[251] As many contaminated products escape initial testing because of staff shortages and inability to keep up with the number of imports coming to the U.S.,

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6. regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this chapter.

Id.

240. *See* Desmon, *supra* note 2.

241. *See Lou Dobbs Tonight: New Recall for Chinese Issued Toys* (CNN television broadcast Aug. 14, 2007) (reporting that the CPSC is "simply stretched to the breaking point" and "facing its biggest crisis ever"; that the CPSC is suffering from staff cuts and resource reductions, which limit the CPSC's ability to carry out its missions; and citing Rachel Weintraub of the Consumer Federation of America's comments that without funds, resources, staff and an improvement of statutory authority to better protect consumers, consumers are not adequately protected at present).

242. *See* Toxic Toys, *supra* note 4.

243. *See* Desmon, *supra* note 2.

244. *See* Safety of Chinese Imports: Oversight and Analysis of the Federal Response: Listening Session of the S. Comm. on Commerce, Science and Transportation, 110th Cong., July 18, 2007 (statement of Sen. Amy Klobuchar) [hereinafter Listening: Federal Response].

245. *See* Dobbs: Toys, *supra* note 110.

246. *See* Listening: Federal Response, *supra* note 244; Annys Shin, U.S. Safety Agency's Powers to Diminish; End of Quorum Cuts Authority, WASH. POST, Feb. 3, 2008, at A01.

247. *See* CPSC Entering Legal Limbo; Agency Can Still Do Recalls, http://blogs.consumerreports.org/safety/2007/01/cpsc_entering_l.html (Jan. 12, 2007, 18:28 EST).

248. Desmon, *supra* note 2.

249. *See* Reform and Safety, *supra* note 235; Lou Dobbs Tonight: New Recall for Chinese Issued Toys, *supra* note 241.

250. *See Reform and Safety*, *supra* note 235.

251. *See* Lou Dobbs Tonight: New Recall for Chinese Issued Toys, *supra* note 241.

the CPSC has not been able to allay consumer fears regarding product safety.

VII. Chinese Product Safety Reforms

In the wake of international outcry over tainted Chinese products appearing in imported food, apparel, and consumer product industries, China responded with commitments to amend its current product safety standards.[252] China intends to invest about 1.2 billion dollars toward increased monitoring and inspection of products made within its borders.[253] Hu Jintao, President of China, indicated that his country "is willing and ready to work together with the international community to step up cooperation in quality inspections and examinations."[254] Towards this end, China has taken measures, including the discharge of corrupt officials, closing of factories, and amendments to its product quality regulations and means of enforcement, to ensure the quality and safety of its products.[255]

A. Five-Year Plan

The Chinese government, through the SFDA, implemented an overall five-year program to deal with the quality of its exports.[256] Yan Jiangying, SFDA spokeswoman, stated that the Five-Year Plan, aimed at supervising the production of food and drug products, should "significantly reduce the number of incidents caused by substandard food or drug products."[257] Immediate measures already adopted by the Chinese government include the establishment of the China Food Safety website,[258] publishing regular press releases concerning supervisory activities, banning chemicals and additives from products that do not rise to international standards, preparing to institute a product recall system, "blacklisting" companies that violate the law, and cracking down on "rogue factories."[259]

Much of the 1.2 billion dollar investment provided for in the Five-Year Plan for quality inspection is earmarked for upgrading the quality

252. *See* de Guzman, *supra* note 46.
253. *See* D'Amico, *supra* note 29.
254. *China Will Tackle*, *supra* note 185.
255. *See* de Guzman, *supra* note 46.
256. *See* Normandy, *supra* note 153.
257. *See* Watchdog Executed, *supra* note 73.
258. *See* China Food Safety website, http://www.chinafoodsafety.com/ (last visited July 12, 2008).
259. *See China: Consumer Safety*, INT'L HERALD TRIB., July 27, 2007, *available at* http://www.iht.com/articles/2007/07/27/news/27oxan-china.php.

control structural framework of China.[260] This project includes updating drug and medical product testing facilities.[261] Finances will be put toward providing Chinese oversight committees to supervise and potentially close manufacturers that are not operating according to health and safety standards.[262] If China is able to modernize and upgrade its infrastructure, presumably the demand for Chinese-made goods will increase[263] as foreign investors feel comfortable that "Made in China" products are safe.

B. Removing Corrupt Officials

In order for China to achieve the goals of its Five-Year Plan and ensure product safety throughout the manufacturing process, China must rid itself of corrupt officials. China made clear its intention to remove corrupt officials from government positions when the Supreme People's Court prosecuted and sentenced to death[264] Zheng Xiaoyu, the former director of China's SFDA.[265] In July 2007, China executed Zheng for taking nearly one million dollars in bribes from pharmaceutical firms in exchange for his approving untested and tainted drugs.[266] During Zheng's time in office as Director of the SFDA, from 1998 to 2005, the SFDA approved half a dozen medicines that were fabrications.[267] One drug that Zheng approved was responsible for the deaths of at least ten individuals.[268] China's No.1 Intermediate People's Court found Zheng guilty of accepting bribes and for "dereliction of duty."[269] Where consumer product quality is concerned these types of offenses are violations of Chapter I, Article 9 of the Product Quality Law of the People's Republic of China,[270] which makes it illegal for all members of the Chinese government to "abuse their power, neglect their duties,"[271] or take involvement in any actions that advance their private interests above those of the State.[272] This law makes the government official found

260. *See* D'Amico, *supra* note 29.
261. *See id.*
262. *See id.*
263. *See* MORRISON, *supra* note 22, at 5.
264. *See id.* at 10.
265. *See* Listening: Federal Response, *supra* note 244; Latanzio, *supra* note 14; D'Amico, *supra* note 29; Liu, *supra* note 27; Olesen, *supra* note 69.
266. *See* sources cited *supra* note 265.
267. *See* Olesen, *supra* note 69.
268. *See* de Guzman, *supra* note 46.
269. Watchdog Executed, *supra* note 73.
270. Product Quality Law, *supra* note 67.
271. *Id.* ch. I, art. 9.
272. *See id.*

guilty of these practices legally liable.[273] Further, a government official may be subject to criminal liability under Chapter 5, Article 65 of the Product Quality Law, if he "covers up or gives loose"[274] to an act that is in contravention of the Product Quality Law while in the process of production or selling.[275]

The Supreme People's Court approved Zheng's death sentence, stating that "Zheng's dereliction of duty has undermined the efficiency of China's drug monitoring and supervision, endangered public life and health and has had a very negative social impact."[276] It is speculated that this act was a "signal to both other suppliers and to the international community that China is concerned about the growing number of safety quality cases" affecting its nation.[277] Two other Chinese officials were executed in 2007 after similarly being found guilty of corruption.[278]

C. *Closing Factories*

Removing corrupt government officials is only part of the battle that China faces in its endeavor to ameliorate product quality concerns. There are many factories that engage in substandard practices and that have been implicated in tainted product cases that require attention.

In response to problems associated with facilities, China is closing and revoking the business licenses of several companies involved in the identified tainted products cases.[279] The Binzhou Futian Co. is a notable example of a company that the Chinese government closed upon learning of the company's connection to tainted pet food.[280]

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273. *See id.*

274. *Id.* ch. 5, art. 65(1).

275. *See* Product Quality Law, *supra* note 67, ch. 5, art. 65. The Product Quality Law indicates that

> [i]f a government official engaging in product quality supervision and control is found to have abused his/her power or neglected his/her duties or sought personal gains and the case is serious enough to constitute a crime, criminal responsibility shall be affixed. If the case does not constitute a crime, administrative penalties shall be meted out.

Id.

276. Watchdog Executed, *supra* note 73.

277. *See* de Guzman, *supra* note 46 (quoting Kent Kendl, General Manager of Shanghai consultant group Tecnomic Asia).

278. *See* D'Amico, *supra* note 29.

279. *See* de Guzman, *supra* note 46; Kate Phillips, *U.S. Product Recalls Prompt Some Shutdowns in China*, CHEMICAL WK., Sept. 12, 2007, at 26.

280. *See* Daniel J. Herling, *The New China Syndrome: How to Litigate Tainted Chinese Imports Cases*, PRODUCT LIABILITY L. & STRATEGY, Nov. 8, 2007, http://www.law.com/jsp/article.jsp?id=1194429836233.

The Chinese government, by way of the Product Quality Law has wide discretion to inspect factories.[281] Through this legislation the Chinese government can suspend the business licenses of manufacturers found to have produced goods not meeting quality standards.[282] However, the process identified in the Product Quality Law reveals a drawn-out procedure. Chapter II, Article 17 of the Product Quality Law reads:

> Where any product is found to be unqualified by any supervision and inspection that is carried out according to this law, the producer or seller shall be ordered to make corrections within the time limit by the product quality supervision administration that carries out the supervision and inspection. Where the producer or seller fails to make corrections within the time limit, he shall be publicized by the product quality supervision administration of the people's government on or above the provincial level; if the product quality is still not qualified after reexamination, the producer or seller shall be ordered to suspend business for rectifications within the time limit; if the product quality is still proved unqualified by reexamination after the period for rectifications, the business license of the producer or seller shall be canceled.[283]

When products are discovered that do not meet quality standards, the manufacturer of those products is given many opportunities to correct the problem.[284] However, this scheme of product correction does not recall the faulty products already dispersed into the consumer market.[285] While eventually production by faulty producers shall be ceased entirely and their licenses cancelled, consumers are not protected by those producers' violation of safety standards.[286] Under Article 18(4) of the same chapter, the Chinese government may detain products suspected of not meeting safety standards,[287] but again, this provision makes no reference to the recall of products already sold to consumers. This is

281. *See* Product Quality Law, *supra* note 67, ch. II (concerning quality testing of products in the State). Chapter II of the Product Quality Law grants random inspection authority to the State and allows for the creation and use of "product quality testing organizations" and "social intermediary institutions" and "product quality testing institutions," all of which may be consulted for product quality testing. *Id.* However, as noted *supra* in notes 122-26 and accompanying text, giving authority to all of these organizations dilutes the regulatory scheme and makes it difficult to enforce.

282. *See* Product Quality Law, *supra* note 67, at ch. II, art. 17.

283. *Id.*

284. *See id.*

285. *See id.* (requiring only that corrections to products be made were products do not meet quality standards. There is no indication that products that do not meet quality standards may be recalled).

286. *See id.* ch. II, art. 17.

287. *See* Product Quality Law, *supra* note 67, ch. II, art. 19(4).

alarming, especially after the results of a Chinese nationwide inspection of the food production industry discovered that some operations used recycled or expired food in their productions.[288]

Yet, as a result of China's resolve to close factories involved in product quality investigations, as of August 2007, more than 180 manufacturers were shut down for producing unsafe products.[289] The Chinese government arrested many plant owners and operators who were responsible for serious product safety violations.[290] More than 23,000 food safety violations were discovered.[291]

D. Establishment of Product Safety Standards

Still, with so many unsafe products being turned out of Chinese factories, the time is right for China to bring its manufactured products in line with the quality standards of the countries it exports to. China must establish and enforce product safety standards. Recall the case of the Aqua Dots scandal to understand the importance of having, reviewing and enforcing product safety standards.[292] In the Aqua Dots matter, the chairman and owner of JSSY, Ltd., the Hong Kong manufacturer of Aqua Dots, indicated that the company considered the choking hazard of the beads it produced, but that it did not contemplate harm to children from the chemical component of the beads.[293] He indicated that JSSY, Ltd. had not considered the food aspect of the beads and did not refer to the FDA's guidelines on banned chemicals in the U.S.[294] When reports of child illness surfaced, JSSY inspected those FDA regulations and quickly discovered that the harmful chemical used in the toy's paint is banned in the U.S. for any product that has the potential to be consumed.[295] JSSY's belated reference to the FDA's regulations was irresponsible and is evidence that China must implement food and product safety standards to coincide with the countries to which it exports.

With regard to product safety standards, China's State Administration for Industry and Commerce ("SAIC") is charged with supervising the quality of goods marketed in the country, and for

288. *See* MORRISON, *supra* note 22, at 11 (reporting that materials such as formaldehyde, malachite green, and paraffin wax were used as ingredients in candy, seafood, biscuits and bean curd).

289. *See id.*

290. *See* Normandy, *supra* note 153.

291. *See* Bennett, *supra* note 87.

292. *See supra* notes 113-21 and accompanying text.

293. *See* Bradsher *Sorry*, *supra* note 113.

294. *See id.* (quoting Liao Chu-yuan, Chairman and Owner of JSSY as saying "[w]e really didn't look into the F.D.A. part, the food part").

295. *See id.*

investigating the distribution of counterfeit goods in violation of public laws.[296] The Consumer Protection Bureau of SAIC is specifically responsible for drafting and administering regulations aimed at protecting consumer interests.[297] The Consumer Protection Bureau's enforcement prerogative includes penalizing "the selling of fake and/or substandard goods and other irregularities."[298] To make these regulations effective, Chinese manufacturers should be made aware of the standards to which they must adhere. It is upon this information that manufacturers can avoid irregularities.

E. Recall System

In the event Chinese manufacturers fail to heed product safety standards and release a defective product into the marketplace, China must have an effective system to recall those products. China has announced plans for such a system through its General Administration of Quality Supervision, Inspection & Quarantine ("AQSIQ"). China's AQSIQ is the administrative body responsible for consumer product inspection and certification and accreditation standards.[299] The AQSIQ indicated on August 31, 2007, that it would create a nationwide product recall system requiring producers and vendors to keep abreast of quality problems and, in turn, report those problems to retailers and consumers.[300] Producers would also be required to notify quality control authorities and to institute a recall.[301] The agency reported that it would complete the groundwork for this system by the end of 2007.[302] Any producers and retailers who do not follow these commands face fines and possible revocation of operating licenses.[303] For example, retailers who are informed of the existence of unsafe products must cease selling those

296. *See* State Administration for Industry and Commerce ("SAIC"), About SAIC, http://www.saic.gov.cn/english/About%20Us/t20060225_14598.htm (last visited Jan. 26, 2008).

297. *See* SAIC, Departments, http://gsyj.saic.gov.cn/wcm/WCMData/pub/saic/english/About%20Us/t20060225_14599.htm (last visited Jan. 26, 2008).

298. *Id.*

299. *See* General Administration of Quality Supervision, Inspection and Quarantine, About AQSIQ, http://english.aqsiq.gov.cn/AboutAQSIQ/Mission/ (last visited Jan. 26, 2008).

300. *See* Kristi Ellis, *China's Exports Come Under Fire*, WOMEN'S WEAR DAILY, Sept. 18, 2007, at 2S [hereinafter Ellis *Fire*].

301. *See* Zhu Zhe, *Toy and Food Recalls Introduced,* CHINA DAILY, Sept. 1, 2007, *available at* http://www.chinadaily.com.cn/china/2007-09/01/content_6072802.htm. This system of informing the government that defective products are found in the marketplace is similar to the notice requirement in the U.S.' CPSA when a "substantial hazard product" is found. *See* 15 U.S.C. § 2064(b) (2006).

302. *See* MORRISON, *supra* note 22, at 11.

303. *See* Ellis *Fire*, *supra* note 300.

products or they themselves will face a fine of 132 dollars to 6,600 dollars.[304] If a producer fails to recall a dangerous product that causes serious public harm, that producer may face criminal charges.[305] Fines levied against producers of unsafe toys and foodstuffs could total three times the value of the products.[306] The act of fining enterprises that create products falling outside the accepted safety practices is currently legal in China under its Product Quality Law;[307] however, the Product Quality Law states that fines must be "less than three times the value of the products illegally produced or sold."[308] Accordingly the new law would substantially increase the penalty for recalled products.

There is acknowledgement among Chinese regulations of varying international standards on quality and safety.[309] One such regulation requires producers to recall products that are *potentially unsafe*, even if the products would pass the Chinese quality safety regulations.[310] The Policy and Legislation Director of AQSIQ, Liu Zhaobin, indicated that these new regulations "make it clear that producers must take prior and major responsibility for preventing and eliminating unsafe products."[311]

The Chinese proposals for reform indicate that the country is taking the issue of its product quality shortcomings seriously. Certainly, the execution of one of its highest officials is a sign China is embracing a no-nonsense stance towards government corruption. The reassuring comments of China's President that the country will cooperate with the world community to bring China's product inspections and examinations up to international standards is a sign that the quality of products imported from China may increase. Yet even with these reforms, the U.S. must do its own part to upgrade its failing consumer product safety regime. The following section provides analysis of proposals set forth by Congress to tackle product safety concerns associated with imported products.

VIII. U.S. Proposals for Reform

In light of the many consumer product recalls instituted in the U.S., it is important that the U.S. take a proactive approach towards refining its regulatory authority to control import safety and enforce quality control regulations. The U.S. government has investigated the health and safety

304. *See* Zhe, *supra* note 301.
305. *See id.*
306. *See id.*
307. *See* Product Quality Law, *supra* note 67, ch. 4, art. 49.
308. *Id.*
309. *See* Zhe, *supra* note 301.
310. *See id.*
311. *See* Ellis *Fire*, *supra* note 300.

concerns of imported Chinese consumer products, and advanced legislative reforms to address the problem of import safety.[312] Additionally, President Bush, in Executive Order No. 13439, created the Interagency Working Group ("IWG"), a task force to investigate import safety and "ensure that the executive branch takes all appropriate steps to promote the safety of imported products."[313] Addressing the extensive issue of defective Chinese imports is said to require a "multi-pronged approach"[314] and several options for attack have been advanced.[315] The following considers a combination of government proposals and integrates analysis regarding the means and methods most effective in targeting and improving the safety of imported goods prior to their placement on American store shelves. Attention is paid to the manner in which consumers and American companies can be protected if defective consumer goods are found in the marketplace.

A. The Bush Administration Action Plan

A starting point in addressing the proposals of the U.S. to combat consumer product safety concerns is the Bush Administration Action Plan (the "Plan"), which includes many suggestions for change in the CPSC structure and authority. The Bush Administration unveiled its Plan in November 2007. The plan aims at strengthening the CPSC so that imported goods are safe for American consumers.[316] The Plan enhances the CPSC's mandatory recall power[317] and its power to compel companies engaged in recalls of consumer goods to disclose this information to their suppliers and recipients. [318] The President hopes that this authority will allow the CPSC to act quickly if a problem product is discovered in the future.[319]

Under the Plan the CPSC has the ability to levy weighty fines on foreign producers who violate U.S. import laws and regulations.[320]

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312. *See id.*

313. *See* Exec. Order No. 13439, 72 Fed. Reg. 40,053 (July 18, 2007).

314. *See* de Guzman, *supra* note 46 *(quoting* CPSC acting chairman Nancy Nord in her comments to the Senate Commerce Committee).

315. *See infra* notes 316-437 and accompanying text.

316. *See* Bush, *supra* note 225; Action Plan for Import Safety, Interagency Working Group on Import Safety, Nov. 2007 [hereinafter Action Plan for Import Safety], *available at* http://www.importsafety.gov/report/actionplan.pdf.

317. *See* Fact Sheet: Plan, *supra* note 24; Action Plan for Import Safety, *supra* note 316.

318. *See* Anna Wilde Mathews, *Food and Consumer-Goods Agencies May Gain Muscle*, WALL ST. J., Nov. 3, 2007, at A5; Action Plan for Import Safety, *supra* note 316.

319. *See* Bush, *supra* note 225.

320. *See id.*; Editorial, *Toward Greater Import Safety*, N.Y. TIMES, Nov. 9, 2007, at A26 [hereinafter *Greater Safety*]; Action Plan for Import Safety, *supra* note 316.

Presently, the CPSC may impose fines up to 1.8 million dollars.[321] The Plan grants the CPSC authority to fine producers up to ten million dollars.[322] Strengthening the penalties against foreign entities in violation of U.S. safety regulations poses a strong incentive for those foreign entities to amend their practices so as to continue to enjoy the lucrative trade relationship between the U.S. and China.

However, to be truly effective, these fines must be enforced. Mike Leavitt, Secretary of Health and Human Services, admits that many times government agencies levy fines but do not collect on them.[323] The Plan must contain a proactive enforcement effort to ensure the deterrent effect of these fines.

The Plan emphasizes the importance of preventing product safety problems at their source, rather than relying on U.S. government inspectors at the borders to catch dangerous imports and intercept them before they enter ports.[324] President Bush acknowledged that with the growing volume of products imported to the U.S. yearly, identifying unsafe products at the border is increasingly burdensome and unreliable.[325] The IWG relied on experts to predict that while in 2006 nearly two trillion dollars of goods were imported to the U.S.; by 2015 the value of imports will triple.[326] With an increase in imports, the IWG indicates that "physically inspecting every item would bring international trade to a standstill and divert limited resources from those items posing the greatest threat."[327] To achieve better and more efficient identification of unsafe products, the Plan proposes stationing U.S. inspectors in foreign exporting countries to check goods prior to shipment.[328]

Stationing U.S. inspectors in foreign facilities to perform random inspections of those facilities should be a necessary component of U.S. efforts against consumer product concerns. Random inspections catch manufacturers off-guard denying them time to bring their facility in line with safety regulations prior to a scheduled visit. The U.S. government should work with the Chinese government to perform inspections of facilities and to institute a system of civil penalties levied upon Chinese

321. *See* Perino, *supra* note 226 (statement of Secretary Mike Leavitt); Action Plan for Import Safety, *supra* note 316.

322. *See Greater Safety*, *supra* note 320; Action Plan for Import Safety, *supra* note 316.

323. *See* Perino, *supra* note 226 (statement of Secretary Mike Leavitt).

324. *See* Bush, *supra* note 225.

325. *See id.*

326. *See* Fact Sheet: Plan, *supra* note 24.

327. *Id.*

328. *See Greater Safety*, *supra* note 320; Action Plan for Import Safety, *supra* note 316.

manufacturers who do not pass random inspections of their facilities, or who deny inspectors access.[329]

Prevention is the focus of the Plan, achieved by incorporating safety mechanisms into every step of the supply chain and by increasing the training of inspectors in foreign countries.[330] Adherence to U.S. safety standards must be ensured in foreign manufacturing countries prior to shipment of goods to the U.S.[331] The Plan suggests providing incentives to importers to promote maintenance of safety practices for products that carry great risks of harm.[332]

Transparency and availability of information to the consumer public on imported products is a way to ensure that the public makes informed decisions on product purchases.[333] The Plan suggests encouraging foreign governments and manufacturers to submit to a voluntary certification procedure to certify that their products adhere to product safety regulations.[334]

The U.S. government should grant the CPSC the authority to work with China to create a certification procedure whereby China can create, monitor, and enforce product safety standards at least as protective as those in the U.S..[335] There are three certification methods upon which

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329. *See, e.g.*, Human and Pet Food Safety Act of 2007, S. 1274, 110th Cong. § 2(a) (2007); Human and Pet Food Safety Act of 2007, H.R. 2108, 110th Cong. § 2(a) (2007) (proposing § 419(b)(9) to the FDCA). Under § 419(b)(9), the FDA would be authorized to:

> (A) deny importation of food from any foreign government that does not permit United States officials to enter the foreign country to conduct such audits and inspections as may be necessary to fulfill the requirements under this section;
>
> (B) deny importation of food from any foreign government or foreign manufacturer, importer, distributor, or retailer that does not consent to an investigation by the Administration when food from that foreign country or foreign firm is linked to a food-borne illness outbreak or is otherwise found to be adulterated or mislabeled; and
>
> (C) promulgate rules and regulations to carry out the purposes of this section, including setting terms and conditions for the destruction of products that fail to meet the standards of this Act.

Id.

330. *See* Bush, *supra* note 225; *see also* Fact Sheet: Plan, *supra* note 24 ("[i]mplementing the Action Plan's recommendations will result in a system that builds safety every step of the way into the products on which American consumers depend"); Action Plan for Import Safety, *supra* note 316.

331. *See* Bush, *supra* note 225.

332. *See* Fact Sheet: Plan, *supra* note 24; Action Plan for Import Safety, *supra* note 316.

333. *See* Fact Sheet: Plan, *supra* note 24.

334. *See id.*

335. This type of bilateral interactive dialog is suggested between the U.S. and major trading partners of the U.S. to work collaboratively to create a certification program. The Food Import Safety Act of 2007 proposes to amend § 418(h) of the FDCA, titled

the CPSC certification procedure could be modeled. The first is proposed in the Food Import Safety Act of 2007 ("Food Safety Act"),[336] currently before the U.S. House of Representatives.[337] The second is proposed in the Human and Pet Food Safety Act of 2007 ("Human and Pet Food Act"), and a third model for a CPSC certification procedure is that employed by the U.S. Department of Agriculture ("USDA").

Before an entity, be it a foreign government or manufacturer, can export food to the U.S., the Food Safety Act states that foreign governments and manufacturers involved in the production process must receive certification from U.S. inspectors indicating the governments and manufacturers follow food safety standards compatible with those of the U.S..[338] The Food Safety Act allows the Secretary of Health and Human Services ("Secretary") to revoke certificates if foreign governments and facilities do not maintain food safety standards, or prohibit U.S. inspectors from conducting periodic inspections.[339] When considering whether to issue or revoke a certificate, the Food Safety Act gives the FDA authority to conduct its own inspection of foreign facilities,[340] or review and rely on the product of independent testing services.[341]

A second certification program that the CPSC certification system could be modeled after is proposed in the Human and Pet Food Act.[342] The Human and Pet Food Act provides the FDA the authority to inspect the statutes, regulations and inspection regime of foreign governments,[343] or the programs and procedures of requesting foreign establishments, for safety.[344] Testing is to ensure that foreign programs are equivalent to safety standards of the U.S.[345] Under the Human and Pet Food Act, only

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"Cooperation with Foreign Countries," to bring about this interactive dialog. This method of cooperation could be implemented to ensure the quality control standards of both the U.S. and China are compatible with regard to consumer products. *See* Food Import Safety Act of 2007, H.R. 3937, 110th Cong. § 2(b) (2007) (proposing amendment of the FDCA by adding § 418(h), "Cooperation with Foreign Countries").

336. Food Import Safety Act of 2007, H.R. 3937, 110th Cong. (2007).

337. *See id.*

338. *See id.* § 2(b) (amending the FDCA by adding § 418, "Certification of Foreign Facilities and Foreign Countries").

339. *See id.* (amending the FDCA by adding § 418(d) "Revocation of Certification").

340. *See id.* (amending the FDCA by adding § 418(g)(1), "Inspection; Inspection Audits").

341. *See* Food Import Safety Act of 2007, H.R. 3937, 110th Cong. § 2(b) (2007) (amending the FDCA by adding § 418(g)(2), "Inspection: Inspection Audits"); *see infra* notes 369-78 and accompanying text for a discussion of independent third-party testing.

342. Human and Pet Food Safety Act of 2007, S. 1274, 110th Cong. (2007); Human and Pet Food Safety Act of 2007, H.R. 2108, 110th Cong. (2007).

343. *See id.* § 2(a) (proposing addition of § 419(b)(3)(A) to the FDCA).

344. *See id.* (proposing addition of § 419(b)(3)(B) to the FDCA).

345. *See* Human and Pet Food Safety Act of 2007, S. 1274, 110th Cong. § 2(a) (2007); Human and Pet Food Safety Act of 2007, H.R. 2108, 110th Cong. § 2(a) (2007) (proposing addition of § 419(b)(3) to the FDCA).

food that is specifically approved by the FDA may be exported to the U.S., and only for a period of up to five years,[346] at which time the Secretary shall audit the certificate holder for continued compliance with food safety regulations.[347]

Finally, the CPSC can be modeled after a third certification procedure that has proven effective in the U.S. by the USDA. The USDA has the legal authority to conduct inspections, verifications, and certifications in foreign countries to ensure the quality and safety of agricultural products.[348] The USDA withdraws its inspectors from a foreign food-processing facility when the agency determines that the facility is producing products that pose a threat of serious health consequences or death, and that the company is not undertaking a voluntary recall or is acting too slowly to achieve that recall.[349] This effectively disables the producing company from exporting its contaminated products to the U.S. because without certification from the USDA, the producing company's products are barred entry into the U.S.

A combination of these certification procedures should be implemented within the CPSC to create a certification program that ensures the production and export of safe consumer goods. As an incentive towards cooperation, the U.S. should clarify that China cannot export goods to the U.S. unless its manufacturing facilities and products are certified to conform to U.S. standards. In light of the expansive trade relationship between the U.S. and China, it is in both countries' interest to facilitate cooperation towards product quality.

Further, the Plan suggests that products that receive certification should enjoy expedited entry into the U.S.,[350] without having to go through inspections at the border. Not only would this reduce shipment times, but inspectors at U.S. borders would not be required to inspect those products imported from certified manufactures.[351] This would relieve the workload of CPSC inspectors.

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346. *See id.* (proposing addition of § 419(b)(4) to the FDCA).

347. *See id.*

348. *See* Fact Sheet: Actions Requested of The People's Republic of China by the U.S. Government to Address the Safety of Food and Feed (May 24, 2007), *available at* http://www.hhs.gov/news/facts/20070524.html.

349. *See* Fact Sheet: Plan, *supra* note 24.

350. *See id.* (discussing the added authority of the FDA that where high-risk foods are concerned, the FDA could be espoused with the power to require foreign producers to certify that they comply with FDA standards on safety and quality. Products that adhere to U.S. standards could enjoy expedited entry into the ports of the U.S.).

351. *See* Perino, *supra* note 226 (quoting Perino when she stated that, "[a]n FDA inspector said to me, our job is to find the needle in the haystack, and our first job is to shrink the haystack. If we can minimize the number of things that we have to look at because they're unsafe, then it allows us to take our resources and focus it.")

Publication of the certification process and of companies who import products only from certified producers would allow the public to learn about product safety and help them make decisions about who to purchase from. This disclosure may provide additional incentives to exporting companies to have their facilities and products certified if they expect that the public will purchase only from certifiably safe producers.[352] Where consumers are able to identify products imported from companies that underwent inspections and received certifications indicating their compliance with safety standards, consumers are likely to feel assured that Chinese goods are safe, and will purchase those items without apprehension.[353]

B. Reforms for Testing Prior to Shelving

Stepping up scrutiny of goods imported into the U.S. may be the best solution to the spate of unsafe products entering the country.[354] Children's toy retailer Mattel, Inc. engages in voluntary, private quality testing and through these efforts the company discovered tainted China-made products and determined the need for a product recall.[355]

Gap, Inc., an American specialty retailer, also performs its own inspections on products imported from China.[356] The company employs more than ninety people around the world to visit factories, conduct inspections and document violations of Gap's corporate safety standards.[357] David Henkle, Gap's Senior Vice President for Social Responsibility, indicated that the company tests imported products for toxic materials.[358]

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352. *See id.* (discussing transparency, Secretary Leavitt stated, "Consumers deserve to know who it is that imports safe products. They deserve to know who it is that is going through the best practices to assure safety. And the market will punish anyone who does not provide safe and quality products. We just need to assure that they have that information.").

353. This concept relates to a Zogby International poll, *see supra* notes 19-21 and accompanying text, which indicates that consumers are apprehensive about purchasing goods produced in China, and would even consider boycotting Chinese goods until assured that the Chinese government has improved their product safety regulations. *See* Bapuji, *supra* note 20, at 2.

354. *See* Toxic Toys, *supra* note 4.

355. *See* Robyn Meredith, *The China Tax*, FORBES, Oct. 1, 2007, at 35; Mullman, *supra* note 147 (indicating that Mattel's website includes a description of the company's new three-point check system that requires testing of "every batch of paint, unannounced random inspections and testing of finished toys before they reach the consumer.").

356. *See* Armstrong, *supra* note 16.

357. *See* GAP, Inc. 2005-2006 Social Responsibility Report 25, *available at* http://www.gapinc.com/public/documents/CSR_Report_05_06.pdf.

358. *See* Armstrong, *supra* note 16.

Requiring companies to perform their own quality-control testing may increase their production costs at the outset, but in the end may have the effect of lowering costs, especially in light of the current litigation pending against American companies.[359] American wholesalers, distributors and retailers regularly anticipate indemnification from the manufacturers of tainted products.[360] However, where the manufacturers are China-based companies, American firms enjoy little success when attempting to enforce judgments against them.[361] As seen in the case of Foreign Tire Sales,[362] smaller companies that are insufficiently funded often cannot initiate a recall without the fear of bankruptcy.[363] American wholesalers, distributors and retailers may not be capable of funding their own litigation or providing compensation to plaintiffs injured by defective products manufactured in China.[364]

Attorney Daniel J. Herling of San Francisco introduces the issues rising from American companies litigating products liability suits against Chinese manufacturers of defective products.[365] These concerns include questions of jurisdiction, *forum non conveniens*, judgment enforcement in China, and the applicability of U.S. defenses of product liability or tort to the multi-jurisdictional lawsuit.[366] Ensuring companies perform testing according to their own safety standards may reduce their exposure to litigation and the accompanying financial strain.[367] Companies lured by the low-costs associated with Chinese manufacturing are losing that

359. *See* Herling, *supra* note 280 (explaining that plaintiff in *Quintana v. Binzhou Futian Biological Tech. Co., Ltd*, No. C07-465924 (Cal. Super, S.F.), specifically alleges "in violation of Chapter 2 *et seq.* of the Laws of the People's Republic of China on the Protection of the Rights and Interests of Consumers, Binzhou Futian failed to 'make truthful' presentations or 'clear warnings' to consumers regarding the melamine contained in the pet food that it manufactured. The complaint also alleges that the defendant failed to provide 'truthful' information regarding the pet food. Under Chapter 7 of the Chinese Consumer Law, it is alleged that the pet food at issue was defective and did not function as 'expected.' Further, plaintiff Quintana alleges that pursuant to Chapter 7 of the Chinese Consumer Law, Binzhou Futian is obligated to compensate class members for injuries suffered as set forth in articles 41, 42, and 50 of the law.").

360. *See id.*; *see, e.g.*, Foreign Tires Sales, Inc. v. Hanzhou Zhongce Rubber Co., Ltd., No. 2:2007cv02532 (D.N.J. filed May 31, 2007); *see also infra* notes 389-95 and accompanying text (discussing the *Foreign Tire* case).

361. *See* Herling, *supra* note 280.

362. *See infra* notes 389-95 and accompanying text (explaining the Foreign Tire recall).

363. *See* Roger Parloff, *China's Newest Export: Lawsuits*, FORTUNE, July 23, 2007, at 48.

364. Herling, *supra* note 280.

365. *See id.*

366. *See id.* ("Chinese law does exist to protect consumers against inferior and low-quality products.") This article discusses not only the general issues identified in pursuing litigation against a Chinese manufacturer, but also relevant Chinese laws concerning products liability cases, and available defenses. *See id.*

367. *See id.*

economic advantage when required to initiate a product recall or to defend judicial action. Testing products prior to their entry into the marketplace may allow companies to ensure their own financial stability, rather than trusting in Chinese manufacturers who may be difficult to pursue in the courts.[368]

C. *Independent Third-Party Testing*

Where companies do not have the manpower or other resources to conduct their own quality product testing, they may seek the testing services of third-parties. Requiring product manufacturers and retailers to submit to independent third-party testing[369] may block the infiltration of corruption in the production process and give peace of mind to consumers that there are multiple bodies testing each product for safety. This type of quality assurance is modeled after the independent testing services of Underwriters' Laboratories ("UL").[370] Underwriters' Laboratories is an independent product safety testing company in existence since the 1890s.[371] UL develops its own rigorous safety standards for millions of products with the goal of "ensur[ing] public safety and confidence, reduc[ing] costs, improve[ing] quality and market[ing] products and services."[372] Products that pass UL safety standards[373] are given UL certifications which are searchable online.[374] Approximately 71,000 manufacturers' products are certified each year by UL.[375]

Third-party testing services like those of UL are helpful to provide an unbiased entity within the foreign nation to inspect the country's facilities and products. While these services may add to the price of the product offered for sale to the American consumer, independent testing helps safeguard against product contamination, and may prevent the

368. *See id.*

369. *See* Desmon, *supra* note 2.

370. *See* Listening: Federal Response, *supra* note 244 (statement of Sen. Bill Nelson).

371. *See* Underwriters' Laboratories—History, http://www.ul.com/about/history/1890/ (last visited Feb. 8, 2008). Underwriters Laboratories was first founded as the Underwriters' Electrical Bureau to test electrical fittings and devices.

372. Underwriters' Laboratories—Standards for Safety, http://www.ul.com/info/standard.htm (last visited Feb. 8, 2008).

373. *See* Comm 2000—Listing of Underwriters' Laboratory's Safety Standards, http://www.comm-2000.com/category.aspx?sendingPageType=BigBrowser&CatalogID=Standards&CategoryID=UL+Standards(ULStandards2) (last visited Feb. 8, 2008).

374. *See* Underwriters' Laboratories—Online Certifications Directory, http://database.ul.com/cgi-bin/XYV/template/LISEXT/1FRAME/index.htm (last visited Feb. 8, 2008).

375. *See* Underwriters' Laboratories—About, http://www.ul.com/about/ (last visited Feb. 8, 2008).

added costs associated with litigation. Litigation would be limited because third-party testing would detect defective products prior to their entry into consumer markets and before damages occur. In addition, third-party testing may be an appropriate mechanism to generate cooperation between the U.S. and China because neither country would be asserting its authority over the other. The problem of Chinese corruption and the fear of U.S. intrusion would both be avoided through use of third-party testing services.

However, this method of ensuring products are tested by a non-biased and skilled testing administrator is challenged by New York Senator Charles Schumer, who remarked that the Chinese government could presumably object and deny inspectors from the U.S. access to Chinese manufacturing facilities.[376] Further, third-party testing and the testing of all products arriving at U.S. ports may lead to added costs in the line of production and ultimately to the consumer.[377] Increased production costs could wind up adding two to five percent to the purchase price of products.[378]

D. Detain All Products Ever Known to be Defective

In light of the numerous recalled children's toys tainted with lead paint, some suggest that the U.S. should follow the FDA's example and impose a nationwide ban on particular Chinese products.[379] The FDA issued a "detention without physical examination" alert for Chinese aquacultured basa, shrimp, dace and eel.[380] These products could not enter the U.S. without first being proven to be safe[381] and free from unapproved drugs.[382] The U.S. could assert the same temporary embargo on Chinese products merely because those products contain paint, for example.[383] The Food Import Safety Act of 2007, currently before the U.S. House of Representatives,[384] proposes this type of action. The Food Import Safety Act amends the Federal Food, Drug, and Cosmetic Act

376. *See* Toxic Toys, *supra* note 4.

377. *See* de Guzman, *supra* note 46.

378. *See* Meredith, *supra* note 360 (relying on speculations of Jean-Pierre Lehmann, an Asia specialist and professor at IMD Business School in Lausanne, Switzerland).

379. *See* Bennett, *supra* note 87.

380. *See* Press Release, Food & Drug Admin., FDA Detains Imports of Farm-Raised Chinese Seafood (June 28, 2007) [hereinafter FDA Seafood], *available at* http://www.fda.gov/bbs/topics/NEWS/2007/NEW01660.html.

381. *See* FDA Import Alert #16-131 Q&A, June 28, 2007, *available at* http://www.cfsan.fda.gov/~frf/seadwpe.html#q4.

382. *See* FDA Seafood, *supra* note 380.

383. *See* Desmon, *supra* note 2.

384. Food Import Safety Act of 2007, H.R. 3937, 110th Cong. (2007).

("FDCA")[385] by, *inter alia*, granting the Secretary the authority to prohibit imports from a particular country identified to be a repeat offender of the FDCA.[386] Food generally, or a specific type of food, from a country identified as an offender of the FDCA, may be refused admission to the U.S. based solely on the status of the country.[387] This type of ban could be applied to consumer products as well. Illinois Senator Richard J. Durbin is a key proponent of this proposition, stating that denying overall admission of products "is a strong step, but one that will catch tainted and dangerous toys before they hit store shelves."[388]

The above proposals to conduct foreign and third-party inspections, and institute a certification procedure for foreign governments and manufacturers complying with U.S. safety standards, help ensure that quality and safety is built into products throughout the manufacturing process. Further, detaining products known to be defective or manufactured by companies that have violated safety standards ensures tainted products do not enter U.S. ports. However, were any of these means of assurance to fail, products could arrive at the ports of the U.S. in a faulty condition. Congress has set forth proposals to tackle consumer product safety issues once products enter the U.S.

E. Require Companies Post Bonds

With so many product recalls the question arose as to who should pay for the risk companies take in importing goods from foreign countries. To answer this question Congress considered examples of product recalls like that ordered by the NHTSA in 2007. In June 2007, the NHTSA[389] ordered New Jersey tire distributor,[390] Foreign Tire Sales ("FTS"), to recall thousands of defective tires imported from Chinese

385. Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 381 (2006).

386. *See* Food Import Safety Act of 2007, H.R. 3937, 110th Cong. § 2(a) (2007). The Act amended § 801 of the FDCA by adding:

> (p) If there is a pattern of violations of this Act with respect to food generally or any type of food imported or offered for import into the United States from a particular country, the Secretary by regulation may prohibit the importation of food or such type of food, respectively, from such country, as determined appropriate by the Secretary to protect the public health.

Id.

387. *See id.*

388. *See* Desmon, *supra* note 2 (acknowledging that the National Highway Traffic Safety Administration is charged with setting safety standards for motor vehicles).

389. *See* Listening: Federal Response, *supra* note 244 (statement of Nicole Nason, Administrator, National Highway Traffic Safety Commission).

390. The Consumer Product Safety Act, 15 U.S.C. § 2052(a)(8) (2006), defines "distributor" as "a person to whom a consumer product is delivered or sold for purposes of distribution in commerce".

manufacturer, Hanzhou Zhongce Rubber Co., Ltd.,[391] because the tires made with insufficient or non-existent gum stripping,[392] literally shredded on American roadways.[393] FTS is a small family-run company with sixteen employees and may not be able to afford to finance the estimated 90 million dollar recall.[394] A declaration of bankruptcy is likely.[395]

To ensure that companies taking the risk of importing products from China have the financial means to pay for a product recall, Ohio Senator Sherrod Brown suggested that third parties post bonds to declare that importing companies have enough money to afford necessary recalls.[396] The 2007 CPSC Reform Act[397] sets forth such a proposal. Section 20 of the 2007 CPSC Reform Act proposes to amend the CPSA[398] by adding the following language:

> The Commission, in a rulemaking proceeding, may require manufacturers or distributors of a consumer product, a category or class of consumer products, or any product or substance regulated under any other law enforced by the Commission, to post a bond (or other security acceptable to the Commission) in an amount sufficient to cover the costs of an effective recall of the product or substance, or, in the case of an imported product or substance, to cover the costs of holding the product or substance at the port and destruction of the product should such action be required by the Commission under this Act.[399]

The 2007 CPSC Reform Act would amend the CPSA to grant the CPSC authority to demand companies post bonds if under investigation for violations of product safety regulations.[400] This procedure may effectively relieve the financial pressure asserted on American wholesalers, suppliers, and retailers who presently are forced to defend themselves in product liability actions asserted by consumers harmed by faulty products. Small companies, like FTS, would be protected by the posting of bonds because the money used to secure the bonds would

391. *See* Parloff, *supra* note 363.
392. *See* MORRISON, *supra* note 22, at 8.
393. *See id.*
394. *See* Parloff, *supra* note 363.
395. *See id.*
396. *See* Listening: Federal Response, *supra* note 244 (statement of Sen. Sherrod Brown); Desmon, *supra* note 2.
397. *See infra* notes 418-37 and accompanying text (discussing the 2007 CPSC Reform Act).
398. Consumer Product Safety Act, 15 U.S.C. § 2051 (2006).
399. CPSC Reform Act of 2007, S. 2045, 110th Cong. § 20 (2007) (proposing addition of § 39 to the end of 15 U.S.C. 2051).
400. *See id.*

cover recalls—something FTS is being forced by the NHTSA to fund itself. If Hanzhou Zhongce Rubber Co., Ltd. were forced to post bond while investigations ensued into its participation in the hazards of the 450,000 imported tires manufactured at its Chinese facilities, FTS would not be financially devastated by the recall of those tires. Effectiveness of this proposed amendment to the CPSA is contingent on the disclosure of the identity of manufacturers. An elaborate Chinese supply chain[401] causes inherent dilution of manufacturer identity, which results in an inability to track down the appropriate manufacturer to demand bond payment.[402] Without a measure to ensure the traceability of manufacturers, the 2007 CPSC Reform Act looses effectiveness, much to the chagrin of companies like FTS.

The 2007 CPSC Reform Act fails in another regard. Section 20 gives the CPSC the authority to require distributors (as well as manufacturers) to post bond.[403] By requiring distributors to post bond, the CPSC may simply be attempting to find an alternative entity to post bond where the manufacturer is not traceable. These distributors may not be the appropriate entities to post bond for investigation of products from foreign, and sometimes unidentified, manufacturers. It is the manufacturers who produce the goods using methods and ingredients in violation of the CPSA and distributors may be unaware of such violations. Hence, the 2007 CPSC Reform Act may appear to grant the CPSC effective authority to police manufacturers alleged of violating the CPSA, yet in reality, this legislation may merely move the liability from the innocent supplier to the innocent distributor, and not to the manufacturing facility actually at fault for the product safety violations. A system to trace products to their manufacturing facilities is required to ensure the appropriate company posts bond while product safety violations are investigated.

F. Mandatory Recall Authority Granted to the CPSC

A proposal that will grant the CPSC mandatory recall authority is necessary to remove defective products from store shelves. Currently the CPSC gives American companies the opportunity to voluntarily recall defective products by giving them the option to repair, replace, or purchase defective products.[404] Voluntary recalls may be drawn-out and

401. *See supra* notes 101-21 and accompanying text for discussion of the extensive Chinese supply chain.

402. *See* Bridges, *supra* note 27.

403. *See* CPSC Reform Act of 2007, S. 2045, 110th Cong. § 20 (2007).

404. *See* 15 U.S.C. § 2064(d) (2006); Annys Shin, *Infant Deaths Lead to Big Crib Recall; Actions of CPSC Face New Criticism*, WASH. POST, Sept. 22, 2007, at D01.

ineffective to remove the defective product from store shelves and from American households because companies may not have the financial means to institute a recall, the knowledge available to determine the scale of the recall, or know which consumers to target or how to target them. When recalls take too long or when companies are unwilling to institute a voluntary recall, there is longer opportunity for the unsafe product to move into the market.

Currently, the CPSC may mandate recalls only after the agency convenes a formal hearing with the manufacturers of the product.[405] This hearing may delay the recall while dangerous products remain in the consumer market.[406] Under the proposed SAFE Consumer Product Act[407] introduced in the House of Representatives, the CPSC would have authority to require sellers to remove defective products from store shelves[408] and demand the manufacturer, distributor or retailer inform the public of the product defect.[409] However, the efficacy of product recalls may be dampened by a lack of information about purchasers of defective products. Discussed below is a piece of legislation pending in the U.S. House of Representatives which may alleviate the problem.

G. Danny Keysar Child Product Safety Notification Act

The Danny Keysar Child Product Safety Notification Act ("Notification Act") [410] requires manufacturers of durable infant or toddler products[411] to aid consumers' knowledge of product recalls with a

405. *See* 15 U.S.C. § 2064(d), (f); Safety Assurance for Every (SAFE) Consumer Product Act, H.R. 3691, 110th Cong. (2007)—Summary, http://www.house.gov/delauro/SAFE_Consumer_Product_Act_Summary.pdf.

406. *See* 15 U.S.C. § 2064.

407. Safety Assurance for Every (SAFE) Consumer Product Act, H.R. 3691, 110th Cong. (2007).

408. *See id.* § 5(a).

409. *See id.*

410. Danny Keysar Child Product Safety Notification Act, H.R. 1699, 110th Cong. (2007).

411. *See id.* § 3(2). The Act stated that "durable infant or toddler product"

> (b) means a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years; and
> (c) shall include
>
> i. full-size cribs and nonfull-size cribs;
> ii. toddler beds;
> iii. high chairs, booster chairs, and hook-on chairs;
> iv. bath seats;
> v. gates and other enclosures for confining a child;
> vi. play yards;
> vii. stationary activity centers;
> viii. infant carriers;
> ix. strollers;
> x. walkers;

product registration system.[412] Under Section 4 of the Notification Act, the CPSC has the authority to demand manufacturers of durable infant or toddler products:

> (1) to provide consumers with a postage-paid consumer registration form with each such product;
>
> (2) to maintain a record of the names, addresses, email addresses, and other contact information of consumers who register their ownership of such products with the manufacturer in order to improve the effectiveness of manufacturer campaigns to recall such products; and
>
> (3) to permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product.[413]

The Notification Act attempts to protect children from defective products subject to recall by mandating that product manufacturers provide "customer registration forms" so the company knows the name and address of customers at risk when recalls are made.[414] The success of this system depends primarily on consumer attention to the registration form which, according to the Notification Act, is supposed to be placed on the product in a conspicuous position so consumers are forced to "notice and handle" the form upon opening product packaging.[415]

Yet the Notification Act's product registration system has foreseeable problems. Consumers may not bother to read the attached registration form, they may dispose of the form with product packaging, and the possibility exists that the form may become lost in the postal system. Were any of these events to occur, the Notification Act will not effectively achieve its goal to inform consumers of recalled products. There are several alternative approaches that may provide a better mechanism of product registration rather than relying on the consumer to see, read, and fill out the product registration form.

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xi. swings; and
xii. bassinets and cradles.

Id.

412. *See* H.R. 1699.

413. *Id.* § 4(a).

414. *See id.* § 4(b) (listing required information for the product registration form). Required information includes: spaces for consumers' names, address, telephone number and email address; identity of the manufacturer's name, number of the product and the date of manufacture, and a message explaining the purpose of the registration card in the hopes that information would prompt consumers to fill out and mail the card to the manufacturer for record-keeping. *Id.*

415. *Id.* § 4(b)(3).

An alternative approach may be to provide a means to register the product at the retailer premises during the time of purchase.[416] This could be achieved through automatic registration accomplished through credit card scanning devices that retrieve consumer information when used as payment. This information could automatically be transferred to the manufacturer's electronic database. Like the Notification Act, which ensures consumers that personal information entered on the registration cards is not disclosed "for any purpose other than to facilitate a recall of or safety alert regarding that product,"[417] this disclosure could be made at the time of purchase. Consumers purchasing the targeted products could also be prompted by a computer provided at the cashier that their new product requires a product registration form be completed prior to completion of the credit card transaction. Consumers purchasing with cash, or any other non-traceable method of payment, could manually complete product registration forms provided by the retailer's cashier. These forms could be offered in electronic format or by hardcopy and mailed to the manufacturer by the retailer, alleviating any problem of consumer error. Offering a more consistent method and place for consumers to register their product would make the Notification Act more effective in compiling consumer contact data to be used in the case of a recall. The Notification Act incorporated into all consumer product laws would increase the chance that consumers are informed of instituted recalls.

H. 2007 CPSC Reform Act

Perhaps the piece of proposed legislation that provides the CPSC the broadest scope of heightened authorities, including many of the proposals discussed above is the CPSC Reform Act of 2007. The CPSC Reform Act of 2007[418] includes a myriad of reforms in both the CPSC structure and its abilities. The Act increases funds to hire employees totaling at least 500 by October 1, 2013,[419] and stations some of those

416. *See, e.g., Brandstamp Launches the First Online, Point-of-Purchase Product Registration System*, ALLBUSINESS.COM, May 16, 2000, http://www.allbusiness.com/company-activities-management/product-management/6367885-1.html (identifying a product registration system available immediately when products are bought from online retailers).

417. H.R. 1699, §§ 4(b)(7), 4(c) (explaining that consumer information collected by a manufacturer under this Act may not be used by the manufacturer, nor disseminated by such manufacturer to any other party, for any purpose other than notification to such consumer in the event of a product recall or safety alert).

418. CPSC Reform Act of 2007, S. 2045, 110th Cong. (2007).

419. *See id.* § 4(a). Section 4(a) states, "[t]he Consumer Product Safety Commission shall increase the number of fulltime personnel employed by the Commission to at least 500 by October 1, 2013." *Id.*

agents at various domestic ports.[420] Additionally, funding is apportioned to improve and update CPSC testing centers.[421] The CPSC is given a higher cap on civil penalties in an effort to fine violators of the CPSA.[422] Furthermore, the CPSC Reform Act mandates independent third-party testing[423] of both imported and domestically-produced children's products,[424] the application of a certificate of safety on all children's products imported to the U.S.,[425] and the institution of a tracking system to streamline the recall process.[426] This tracking system would be required of all manufacturers of children's and consumer products[427] and require that manufacturers place "distinguishing marks on the product or its packaging" that would sufficiently enable consumers to determine the "source, date and cohort" of production.[428]

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420. *See* Ruth Mantell & Angela Moore, *Toy Companies Move To Improve Safety: Executives Testify On Measures Taken To Safeguard Consumer Safety*, MARKETWATCH.COM, Sept. 12, 2007, http://www.marketwatch.com/news/story/toy-companies-move-improve-safety/story.aspx?guid=%7BCAA90BD7%2DC3A2%2D4F9B%2DB824%2DB3DD48C39A42%7D.

421. *See* S. 2045, § 3(b). Proposed § 3(b) reads:

> There are authorized to be appropriated to the Commission for the purpose of renovation, repair, reconstruction, re-equipping, and making other necessary capital improvements to the Commission's research, development, and testing facility (including bringing the facility into compliance with applicable environmental, safety, and accessibility standards), $20,000,000 for fiscal years 2009 and 2010.

Id. See also Mantell & Moore, *supra* note 420.

422. *See* S. 2045§ 17 (amending 15 U.S.C. 1264 to attach civil penalties upon violators of 15 U.S.C. 1263). Section 17 suggests increasing civil fines from $5,000 per violation to $250,000 and increasing the overall cap on civil penalties from $125,000 to $100,000,000. *Id. See also* Mantell & Moore, *supra* note 420.

423. S. 2045, § 10(e)(2) (defining "Independent Third Party" as an "independent testing entity that is physically separate from any manufacturer or private labeler whose product will be tested by such entity, and is not owned, managed, controlled, or directed by such manufacturer or private labeler.").

424. *See Reform and Safety*, *supra* note 235.

425. *See* S. 2045, § 10(a)(2). Section 10(a)(2) reads:

> (2) Every manufacturer of a children's product (and the private labeler of such product if it bears a private label) which is subject to a consumer product safety standard under this Act, or a rule under this or any other Act enforced by the Commission declaring a consumer product a banned hazardous product, shall
>
> (A) have the product tested by a nongovernmental independent third party qualified to perform such tests or testing programs; and
>
> (B) issue a certification which shall
>
> (i) certify that such product conforms to such consumer product safety standard or is not a banned hazardous product under such rule; and
>
> (ii) specify the consumer product safety standard or such rule.

Id.

426. *See* Mantell & Moore, *supra* note 420.

427. *See* S. 2045, § 11(6).

428. *Id.*

Section 16 of the 2007 CPSC Reform Act[429] makes illegal the act of selling, offering for sale, manufacturing for sale, distributing in commerce or importing any product that is:

(a) not in conformity with an applicable consumer product safety standard under this Act, or any similar rule under any such other Act;
(b) subject to voluntary corrective action taken by the manufacturing, in consultation with the Commission, of which action the Commission has notified the public; or
(c) subject to an order issued under section 12 or 15 of this Act, designated a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).[430]

Without proposed Section 16, it is currently not a violation of U.S. law to sell a product that is subject to a voluntary recall.[431] This creates a concern in instances where tainted products are sold on some internet auction sites, such as eBay.com.[432] eBay puts its sellers on notice if sellers are advertising for sale a product subject to a recall by informing the seller that the product's brand name is subject to a product recall and requesting the seller determine whether the particular item for sale has been recalled.[433] eBay also provides a hyperlink from the eBay website to the CPSC's recall site[434] for consumers to visit to learn information on recalled products.[435] eBay spokeswoman Nichola Sharpe insists that the company responds in this manner following major product recalls.[436] Yet, one study shows that eBay's efforts to keep recalled products from being sold on its site are not enforced and many recalled products remain for sale.[437] The 2007 CPSC Reform Act would make such sales illegal

429. *Id.* § 16.
430. *Id.*
431. *See* Deborah O'Connor, *Watchdog/Buyer Beware: Toxic Toys Get Resold Online*, PIONEER PRESS (Minn.), Nov. 25, 2007, at A1, *available at* http://www.twincities.com/contactus/ci_7558228?nclick_check=1 (explaining that in contrast to the U.S., the illegality of the sale of products subject to a mandatory recall is practiced in China). *But cf.* Product Quality Law, *supra* note 67, ch. IV, art. 35 (making it illegal in China to sell products subject to recall). China's Product Quality Law, Article 35 of Chapter IV reads, "[s]ellers may not sell any product that has been put into disuse by order of the state and therefore the sale of which has been prohibited or those that have lost effect or have deteriorated." *Id.*
432. *See* O'Connor, *supra* note 431.
433. *See id.*
434. *See* Consumer Product Safety Commission, Recalls and Product Safety News, http://www.cpsc.gov/cpscpub/prerel/prerel.html (last visited January 25, 2008).
435. *See* O'Connor, *supra* note 431.
436. *See id.*
437. *See Recalled Toys Resold on Internet Auction Sites, Study Says*, CBC NEWS (Can.), Aug. 21, 2007, *available at* http://www.cbc.ca/consumer/story/2007/08/21/auction-recall.html (indicating that about 70 percent of recalled items tracked on eBay's

and provide government authority to prosecute individuals offering tainted products for purchase.

The above pieces of legislation represent the U.S.' efforts to achieve better quality of goods imported from foreign suppliers and provided for sale to American consumers. The many congressional proposals aimed at strengthening the CPSC exemplify the government's attention to the issue of product safety and its understanding that the CPSC is not vested with the appropriate authority, funding, or manpower to control the great number of imports coming to the U.S. Both Houses of Congress have demonstrated an aggressive response to the spate of product recalls instituted in the U.S. since the spring of 2007.

IX. Conclusion

There are strong reasons for the U.S. government to amend its federal legislation to address the consumer product safety issues affecting American consumers. Strengthening the administrative and enforcement mechanisms of the CPSC by implementing authority to negotiate with foreign entities to create a mutual understanding of product safety and inspection policies, would enhance the government's ability to ensure quality goods are imported to the U.S.. From the start of the production process to the finish, the CPSC could effectively manage product quality and safety and the enforcement of safety regulations and penalties for violations. It would take communication between the U.S. and China to institute a collaborative effort to understand mutual safety regulations, and to inspect manufacturing facilities to ensure compliance with those regulations. Where both countries have an interest in maintaining their lucrative trade relationship, neither the Untied States nor China will act to derogate that relationship.

There have been multiple recalls of defective products just within the first two months of 2008.[438] These are clear signs that the American government must act quickly to protect consumers from future discoveries of contaminated products. The U.S. government, through legislative hearings and proposals, has started to exert leadership over the process by which consumer products are created, so as to protect consumers from faulty products in the marketplace. While legislative enactments will not automatically evaporate the unsafe products that are sitting on American store shelves, the process of building quality into all

internet auction site were found for sale, including 141 items that were sold in at least 144 auctions); Martha L. Arias, *Online Auction Sites are Selling Recalled Children's Products*, Internet Business Law Services, Aug. 27, 2007, http://www.ibls.com/internet_law_news_portal_view.aspx?s=latestnews&id=1834.

438. *See* Consumer Product Safety Commission – Recalls and Product Safety News, *supra* note 15.

future products can begin as quickly as protective and proactive legislation is enacted into law.

The U.S. should continue to work with the Chinese government to eliminate corruption amongst Chinese officials, to clean up the environment, and to create a system to track products through the manufacturing process. Building quality into China-made products is the ideal solution to the spike of product quality issues of late. Given President Hu Jintao's expressed interest in working with the international community to coordinate safety regulations, and his country's implementation of its Five-Year Plan to overhaul its quality control structure, it appears China will work with the U.S. to ensure the quality of the products it exports.

The problems affecting the Chinese manufacturing sector are deeply-rooted and will require time to mend. In the meantime, the U.S. should pass the proactive legislation pending before Congress to provide the CPSC the authority to work with the Chinese government, and protect American consumers through measures taken within our own borders. This Comment does not suggest that cooperation between the two countries will not occur, but asserts that American legislators should do their part to increase protection at home while negotiations between the countries unfold. America's children, pets and consumers deserve protection from problems that the U.S. can more effectively alleviate through the proposals set forth above.