

Analyzing the Recent Recall of Chinese-Made Products:

UNDERSTANDING THE PROBLEMS AND CREATING EFFECTIVE SOLUTIONS

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The “Made in China” label suffered a major setback in 2007. A number of highly-publicized recalls of such widely diverse products as pet food, seafood, toothpaste, tires, and children’s toys have focused Americans’ attention on the potential dangers of products imported from China.¹ In the wake of widespread media attention and heightened public concern, the perceived lack of safety regulations has inspired one journalist to dub Chinese manufacturing as the “Wild West.”² The questions facing American companies include why Chinese manufacturers are producing unsafe products, the gravity of the threat, and how American consumer safety laws can be enforced effectively.

The Chinese economy resembles the United States market of the late 19th century more than any 21st century financial system. In America during the “gilded age,” the U.S. government was purposefully laissez-faire. In China today, the lack of regulation appears more to be a result of an explosive, but fragmented, economy.³ Such publications as Upton Sinclair’s *The Jungle* spearheaded a grassroots movement that brought about reform in the United States.⁴ In China, however, the only pressure to increase consumer protection has come from the outside, most conspicuously the United States, which depends on China for forty percent of its imported consumer goods.⁵

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Is it possible for China to institute higher standards without a free exchange of ideas? Chinese officials and businessmen have something to fear if they are caught cutting corners and putting potentially dangerous products on the market—in July, the former head of the Chinese FDA was put to death under a charge of corruption⁶ and, more recently, the owner of a company involved in a toy recall was found dead of an apparent suicide.⁷ But what does this mean for whistleblowers? There is a strong disincentive to coming forward because, if a person bears any taint of corruption himself, he may be punished.

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China has a less than stellar reputation for how it treats individual activists. A number of activists have been prosecuted and/or imprisoned, allegedly on trumped-up charges, sometimes for no apparent reason.⁸ Often, local governments do this because an outspoken citizen can do the most harm to a lower-level politician, such as a mayor or governor.⁹ A grassroots movement cannot flourish in this kind of environment.

On top of the persecution of whistle-blowers, Chinese citizens do not have access to the type of information necessary to reveal hazardous conditions. The communist government controls the media and does not allow that information into the pipeline.¹⁰ Even the Internet is strictly controlled in China. For example, Google has a Chinese language site that filters out search results restricted by the government, and Wikipedia has been completely banned in China.¹¹ There is little, if any, access to a neutral point of view—only the government’s official word is widespread. It is therefore questionable whether Chinese citizens even know about the recalls that are so highly publicized in the West.¹²

Without proper information and a fear of harassment, any movement to increase product safety will not come from the bottom up, but rather must occur from the top down. Whether the Chinese government has the desire or ability to carry out reforms remains to be seen. In some statements to the Western press, Chinese officials have outright denied that safety issues exist, but other times they have appeared apologetic even stating that “[c]orruption in the food and drug authority has brought shame to the nation.”¹³ Most often, however, officials have been defensive, proclaiming the safety of Chinese products. For example, a spokesman for the Chinese foreign ministry recently stated “[c]onsumers shouldn’t be scared of Chinese products. They should have a reputation of being good quality, cheap and safe.”¹⁴ Officials have also tried to emphasize that any issues with

Chinese-made products are due to rogue individuals that the government aims to punish. The General Administration of Quality Supervision, Inspection, and Quarantine of China went so far as to release a statement that “[t]he government will never tolerate, [and will] crack down firmly on individual cases of making exports in violation of the law.”¹⁵

In order for the Chinese government to solve this product safety crisis, it must first acknowledge that there is a systemic problem. At the very least, this would help alleviate the public relations problems China now faces. In addition, it would reassure the United States government, American companies, and consumers that China will work towards ensuring its products meet the highest safety standards. Instead of facing trade restrictions or boycotts, China could clean its own house while avoiding the intense scrutiny that is now focused on it. There is little chance, however, of China admitting anything. Instead, Chinese officials prefer to blame the West for exaggerating the threat these supposedly dangerous products pose.

Complicating matters is the fact that China’s accusations are not completely baseless. Headlines such as “China, Unregulated,”¹⁶ “Shopper Offered Few Safeguards Against ‘Wild West’ Imports,”¹⁷ and “Tainted Toothpaste Took Unchecked Route”¹⁸ that have appeared on CNN.com, the *Washington Post*, and in the *New York Times* evoke fear of Chinese products. At least in the case of the “tainted toothpaste,” the threat is actually minimal. Despite the menacing headline, the article itself states, “[e]xperts say it’s unlikely that anyone—even a child—could ingest enough tainted toothpaste to become seriously ill.”¹⁹ The nominal or non-existent hazards of the Chinese toothpaste have not deterred any media outlets from repeatedly including the toothpaste on a list of dangerous Chinese products without any qualifications.²⁰ Similarly, approximately 255,000 Chinese tires that met United States safety standards, but did not meet the distribution company’s standards, were also recalled.²¹ The media has tended to neglect this fact as well and has baldly reported that Chinese tires, among other unsafe products, were recalled.²²

Additionally, there are major problems with Chinese manufactured merchandise, particularly with the use of lead in various products. Between January and June 2007, the United States Consumer Product Safety Commission recalled 120 Chinese manufactured items.²³ Of those, twenty-two recalls were due to



potential lead poisoning and nearly all of the lead-containing items were children’s jewelry or toys. In August 2007, both Fisher Price and Mattel recalled over a million toys because they were coated in lead paint.²⁴ Because China makes eighty percent of the world’s toys²⁵ and children are susceptible to lead poisoning, the most urgent need right now is for the Chinese government and American toy companies to do everything they can to prevent the use of lead paint on children’s toys.

In addition to denying the problem, the Chinese government is unable to closely regulate the country’s farming and industry. Despite our notions of their communist government as an all-powerful monolith, China’s vast size, both geographically and population-wise makes it difficult for the Chinese government to closely regulate all aspects of its economy. More importantly, however, the Chinese economy is incredibly fragmented.²⁶ There are “200 million farms in China, many of them less than an acre in size.”²⁷ Furthermore, there are more than 8,000 toy manufacturers, most of which are small businesses that produce upwards of 30,000 different types of toys.²⁸ On top of the enormous number of very small businesses that make up the economy, the national government has far less control than the regional governors and mayors, and it is not unusual for the local governments to simply ignore laws handed down from Beijing.²⁹

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The effects of the fragmented economy and weak regulation have been particularly acute in the Chinese toy industry. The profit margins for Chinese toy manufacturers are extremely thin and the costs of doing business have drastically

increased over the past few years.³⁰ Therefore, owners and managers are under enormous pressure to cut costs and increase profits. In a weak regulatory environment, these demands were an invitation to cut corners. As a result, companies sought out cheaper materials even though they were illegal and potentially harmful.³¹ Hence, they used lead paint on toys because it is cheaper and dries faster than other paints.³²

The Chinese government has attempted to put a strong regulatory scheme into effect to screen toys. As of June 1, 2007, the national government imposed a certification program that only permits toys meeting certain standards to be sold at home or abroad.³³ This program, however, was instituted to ensure that shabbily made products did not hit the market, not to test for lead content. Regardless, at this point, the certification program seems to be too little too late.

Beyond inspecting every toy for quality and the presence of lead, the Chinese government has few potential courses of action available. It could consolidate the toy manufacturers into larger corporations that can be more easily regulated. This is not particularly free market-esque and it is contrary to many of the government's economic goals. Despite its potential benefits, it is not likely that the European Union or the United States would support such an un-democratic policy. The other option is to let the market play itself out. As companies that use lead products are exposed, foreign corporations will refuse to grant them contracts and the corrupt manufacturers will eventually go out of business, leaving the honest brokers behind.

How long are the Chinese government and the consumers willing to wait for the market to sort itself out? If the Chinese government adopts too much of a laissez-faire approach, it could destroy the entire Chinese toy market. Foreign companies may grow impatient if they suffer the costs of more recalls and choose to turn to manufacturers in other developing countries like Taiwan and India. Furthermore, if the Chinese government is unable to resolve these problems quickly and provide sufficient assurance to the European Union and the United States that its products are safe, particularly for children, those countries may impose severe trade restrictions on China. A number of American politicians are calling for the suspension of the importation of Chinese toys and other products.³⁴ Therefore, Chinese government may have to choose between continuing its experiment with a free market economy and, to the extent it is able, more strictly enforcing safety requirements.

The more likely sources of reform are the American and European toy companies. A few of the larger companies have sophisticated inspection systems already in place in Chinese factories that can detect lead.³⁵ However, as is evident from the two major recalls this year, those systems can and do fail.³⁶ For certain items, such as children's jewelry, companies often only test the beginning of a production run or simply do not test enough of the items to detect the presence of high levels of lead.³⁷ Therefore, the first thing toy companies can do is step up inspections by examining all lots, instead of merely spot checking if they already have a system in place. This will increase costs, which will likely be passed on to the consumers, and the price of toys could rise significantly.

A potentially less expensive solution may be for the toy companies to provide the paint to the manufacturer themselves. In addition, the companies could test the paint before supplying it to the manufacturers to ensure that it is lead-free. Companies should be warned, however, that they should not buy paint from Chinese companies. Currently, China has an enormous lead

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problem that will likely take longer to fix than the more isolated issues involving toy manufacturing.³⁸ Leaded gasoline was only recently banned in China and it is estimated that nearly one-fifth of Chinese children tested have dangerous levels of lead in their blood.³⁹ Although there are regulations in place in China restricting the use of lead, similar to the many other regulatory schemes in China, they are not well enforced.⁴⁰ Furthermore, there is a substantial Chinese underground industry in producing counterfeit goods, which can include paint falsely labeled as lead-free. Toy companies should be aware of these problems and steer clear of Chinese paints.

Stepping up inspections and finding alternative sources for paint may provide a solution for the large, multinational toy companies, but they are not the answer for small companies, which collectively provide a large quantity of toys to American children. Most of the small companies do not have inspectors stationed at the Chinese factories, nor do they have the capability to test every product. Sending inspectors to factories or doing large numbers of inspections would be cost-prohibitive for these companies. Even seeking out alternative sources for paint and testing the paint may be too costly for small businesses. Furthermore, although there may be quick fixes to problems with toys, ensuring the safety of other Chinese-made products, such as children's jewelry or food products, is far more complicated.

If private companies cannot test or cannot be trusted to inspect and guarantee the safety of products imported into the United States from China, the United States federal government may need to get involved. Unfortunately, this is unlikely to happen anytime soon. Currently, there are twelve federal agencies enforcing thirty-five different laws on food safety.⁴¹ These agencies, particularly the FDA, which reported a \$135 million shortfall last year, are also under-funded.⁴² The United States Consumer Product Safety Commission (CPSC), the agency responsible for setting safety standards for toys and other consumer products, suffered from a ten percent budget



cut over the past two years as well.⁴³ Furthermore, the CPSC employs only approximately 100 field inspectors and compliance officers.⁴⁴ Therefore, those in the federal government responsible for guaranteeing food and product safety are under-staffed, under-funded, and attempting to operate in a bureaucratic morass. This is not a recipe for success.

In spite of these difficulties, it would likely be possible for the federal government to ramp up the inspection of imports, providing the FDA and CPSC with funding to hire inspectors to test goods in China or to test the products domestically. Only a small percentage of all imports are physically inspected.⁴⁵ If we are going to increase import inspections, it would be wiser to focus on explosives, chemical agents, and biological agents, not fish, toiletries, and toys. It should obviously be a priority for the government to keep Americans healthy, but the federal government's main concern should be guarding against terrorism—not tainted products.

The best approach for Congress and President Bush to take is to keep things simple. First, make the laws governing food and product inspections more straightforward, reducing the number of agencies if necessary. Second, the FDA and CPSC should receive increased funding that allows them to widely publicize recalls. In addition, Congress should give all of the food safety agencies and the CPSC the power to impose severe fines on American companies that do not comply with those laws. These measures will help the various agencies enforce the food and product safety laws more strongly.

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In the end, the best possible solution might be for the government to ensure that the penalties imposed on private businesses motivate those companies to become as diligent as possible rather than taking on the responsibility of inspecting products. In addition to imposing high fines, the agencies should make companies that violate safety laws admit fault. This does not appear to be a common practice. For example, in March of this year, the CPSC settled a case with Fisher-Price for not reporting a choking hazard within twenty-four hours of learning of the problem, as required by statute.⁴⁶ Even though Fisher-Price failed to report the problem for six months, as part of the



settlement the company denied the allegations that it had knowingly violated the law.⁴⁷ If companies had to publicly state their culpability, they would be more likely to avoid distributing harmful products because of the potential public relations disaster of admitting shoddy business practices. Settlements without confessions mean companies merely hope to avoid or reduce fines. The government has to hit companies where it hurts: their public image

and, consequently, their earnings and stock price.

There are a lot of pieces that need to fall into place in order for the public to regain what confidence it had in Chinese products. It does not seem likely that the Chinese government will increase transparency, and it has recently renewed its crack-down on the Chinese media.⁴⁸ In addition, little can be done by the United States and other democracies to ensure a freer exchange of information within China. It is unlikely, therefore, that the Chinese people will be able to spark a movement by Chinese companies and local governments to comply with safety regulations.

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The only way to reform the manufacturing industry in China is from the outside. The United States and European Union can exert some pressure on the Chinese government, but must do so carefully and gently so as not to spark any trade wars with the already volatile Chinese government. More importantly, however, the United States and the European Union need to do what they can to compel American and European companies to increase inspections and work harder to guarantee the safety of products imported from China.

All of this will increase the costs to consumers, but Americans do not have much of a choice because manufacturing in the United States has dramatically decreased in the past twenty years. The best result Americans can hope for may simply be that the costs be kept to a minimum in terms of both money and human health. There will always be faulty and dangerous products and people who attempt to cut corners—regardless of the costs. Perhaps by acting swiftly and strongly now, companies and governments can ensure that the next problem is not further reaching or more dangerous. **BLB**

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- ² *Id.*
- ³ Jan Whitaker, *America's History of Tainted Consumer Goods*, THE CHRISTIAN SCIENCE MONITOR, Aug. 3, 2007, <http://www.csmonitor.com/2007/0803/p09s01-coop.html>; *NewsHour* (WETA television broadcast July 3, 2007) (transcript available at http://www.pbs.org/newshour/bb/business/july-dec07/china_07-03.html).
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- ⁷ David Barboza, *Owner of Chinese Toy Factory Commits Suicide*, N.Y. TIMES, Aug. 13, 2007, at C3.
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- ¹³ Kahn, *supra* note 6.
- ¹⁴ *Wild West Imports*, *supra* note 1.
- ¹⁵ David Barboza, *China Suspends Exports by 2 Firms Over Lead Paint*, N.Y. TIMES, Aug. 10, 2007, at C2.
- ¹⁶ Editorial, *China, Unregulated*, N.Y. TIMES, Aug. 15, 2007, at A20.
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- ¹⁹ *Id.*
- ²⁰ See, e.g., David Barboza, *Mattel Said To Plan 2nd Toy Recall*, N.Y. TIMES, Aug. 14, 2007; *Recalled: 255,000 Chinese Tires*, CNN, Aug. 9, 2007, <http://www.cnn.com/2007/US/08/09/tire.problems.ap/index.html>; *Fox 5 News at 10* (WTTG television broadcast Aug. 14, 2007).
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- ²⁶ *NewsHour*, *supra* note 3.
- ²⁷ Kahn, *supra* note 6.
- ²⁸ April Mei, *Playtime is Over for China's Toy Industry*, ASIA TIMES ONLINE, June 21, 2006, http://www.atimes.com/atimes/China_Business/HF21Cb05.html.
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- ³³ Mei, *supra* note 27.
- ³⁴ Renae Merle, *China Vows to Step up Inspections*, WASH. POST, Aug. 16, 2007, at D8.
- ³⁵ *Mattel Toy Recall*, *supra* note 20.
- ³⁶ *Id.*
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- ³⁹ *Id.*
- ⁴⁰ *Id.*
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- ⁴³ *China, Unregulated*, *supra* note 16.
- ⁴⁴ *Id.*
- ⁴⁵ John W. Schoen, *Ships and Ports are Terrorism's New Frontier*, MSNBC, June 21, 2004, <http://www.msnbc.msn.com/id/5069435/>.
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- ⁴⁷ *Id.*
- ⁴⁸ Keith Bradsher, *China Announces Media Crackdown*, N.Y. TIMES, Aug. 15, 2007, at A3.