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The Price of Cheap Goods: International Trade with China and the Need for Stringent Enforcement of Manufacturing Regulations

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THE PRICE OF CHEAP GOODS: INTERNATIONAL TRADE WITH CHINA AND THE NEED FOR STRINGENT ENFORCEMENT OF MANUFACTURING REGULATIONS

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I. Introduction

On June 14, 2007, Mattel issued a recall of several of its popular Thomas the Tank Engine toys after the company discovered that they had been manufactured with lead paint. Due to the probability that children would ingest lead, millions of toys joined Thomas the Tank Engine on the recall list over the following months because they contained traces of lead paint.  

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1 Angel Jennings, Thomas the Tank Engine Toys Recalled Because of Lead Paint, N.Y. TIMES, June 15, 2007, at C1.
2 See Mattel Issues New Massive China Toy Recall: About 9 Million Items Recalled; Danger From Magnets and Lead Paint, MSNBC, Aug. 14, 2007,
Near panic ensued among parents with small children, who feared that the ingestion of toys containing lead paint could cause lead poisoning.\textsuperscript{3} The issue was especially troubling for Americans, because pursuant to the Consumer Product Safety Act (CPSA),\textsuperscript{4} lead-containing paint products have been banned\textsuperscript{5} by the United States Consumer Product Safety Commission (CPSC) since 1977.\textsuperscript{6} After all, "[t]he Commission f[ound] that the risk of injury which this regulation [was] designed to eliminate or reduce [was] lead poisoning in children. The adverse effects of this poisoning in children can cause a range of disorders such as hyperactivity, slowed learning ability, withdrawal, blindness, and even death."\textsuperscript{7}

Specifically, toys and "other articles intended for the use of children" are subject to the ban of lead-containing products pursuant to subsection (b)(3) of the CPSA.\textsuperscript{8}

Upon issuing the recall, Mattel immediately identified the toys as being produced in one of its corporate factories in China.\textsuperscript{9} The media frenzy that followed put an intense spotlight on Chinese manufacturing, which was already under scrutiny for safety violations found in other imported goods, such as pet food and toothpaste.\textsuperscript{10} As the CPSC scrambled to perform damage control,\textsuperscript{11} the need for more stringent laws regulating trade between the United States and China became clear.

With the Chinese economy growing at a rapid pace,\textsuperscript{12} and the

\multicitation{http://www.msnbc.msn.com/id/20254745/ [hereinafter MSNBC Article on Mattel].}{3}{See id.}{4}{16 C.F.R. § 1303.1 (2008) (Lead-containing paint includes "paint and similar surface-coating materials for consumer use that contain lead or lead compounds . . . in excess of 0.06 percent of the weight of the . . . dried paint film . . . ").}{5}{See id. ("In addition to those products which are sold directly to consumers, the ban applies to products which are used or enjoyed by consumers after sale, such as paints used in residences, schools, hospitals, parks, playgrounds, and public buildings or other areas where consumers will have direct access to the painted surface.").}{6}{See 16 C.F.R. § 1303; 15 U.S.C. §§ 2057–2058 (2008).}{7}{16 C.F.R. § 1303.5(a)(1) (2008).}{8}{16 C.F.R. § 1303.5(b)(3) (2008).}{9}{See Jennings, supra note 1, at C1.}{10}{See id. ("The affected Thomas toys were manufactured in China, which has come under fire recently for exporting a variety of goods, from pet food to toothpaste, that may pose safety or health hazards.").}{11}{See id. A spokesman for the CPSC advised that "'[p]arents should not delay in getting these toys away from their kids.'"}{12}{See Betina Dimaranan, Elena Ianchovichina, & Will Martin, Competing with Giants-Who Wins, Who Loses?, World Bank, \textsuperscript{\textcopyright} 2, 6 (2006),}
United States (U.S.) and the European Union (E.U.) annually consuming nearly sixty percent of the total goods exported from China,\textsuperscript{13} there may be a tremendous opportunity for these two Western giants to have a significant influence on the development, and most importantly, the enforcement, of emerging Chinese consumer safety regulations. In addition, because China ships its products around the world,\textsuperscript{14} the trade regulations that may emerge from negotiations between the West and China could have a global impact on the general safety of consumer products. With China's economy still rapidly growing,\textsuperscript{15} and with some economists placing China second in line behind the United States as the world's most powerful economy,\textsuperscript{16} it is foreseeable that by demanding enforcement of their safety regulations, the United States and European Union have a unique opportunity to make a major impact on the safety levels of goods manufactured in China, potentially improving the health of not just U.S. and E.U. consumers, but perhaps more significantly, consumers in China and around the world.


\textsuperscript{15} See generally Keith Bradsher, \textit{Slowing Marginally, China's Economy Sets 11.5\% Growth Pace}, \textit{N.Y. Times}, Oct. 26, 2007, at C1 (stating that "[China's] economy expanded at a powerful 11.5\% annual pace in the third quarter" in 2007. Although slowing from the second quarter, this growth still puts it ahead of other "high-growth Asian nations, [such as] India and Vietnam.").

\textsuperscript{16} See \textit{A Less Fiery Dragon?}, \textit{The Economist}, Dec. 1, 2007, at 92, 92. The pace of China's growth depends on whether economists convert China's GDP into dollars in terms of purchasing-power parity or covert GDPs into dollars using market exchange rates. \textit{Id.}
II. Consumer Product Safety within the United States

A. The CPSC: The China Program and the CPSC Plan of Action

In the United States, safety standards of products are regulated by the CPSC.17 The Commission was created in 1972 by Congress under the CPSA to "protect the public against unreasonable risks of injuries associated with consumer products."18 As part of its responsibilities, the CPSC regulates products that are made in the United States, as well as those imported from other countries.19 In 1977, the CPSC banned the use of lead in paint throughout the United States.20 Among other goods, the ban included paint used on toys and wall paint used in American homes.21 As declared by the CPSC, "[a]ll products commonly known as toys and other articles intended for the use of children are subject to [the ban]."22 According to the CPSC's findings, "[l]ead is a cumulative toxic heavy metal which, in humans, exerts its effects on the renal, hematopoietic, and nervous systems."23

Elevated blood lead levels (BLLs) can have extremely adverse effects on humans, especially children.24 According to the Center for Disease Control (CDC):

[L]ead exposure in young children is a particular hazard because children absorb lead more readily than do adults and because the developing nervous systems of children are more susceptible to the effects of lead. Blood lead levels (BLLs) at least as low as 10 μg/dL can adversely affect the behavior and development of children.25

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20 See MSNBC Article on Mattel, supra note 2.
21 See id.
24 See id.
When the CDC conducted a study of BLLs between the years 1976 and 1980, it found that approximately 77.8% of Americans had elevated BLLs. An additional CDC study conducted between 1988 and 1991 (after the CPSC banned the use of lead in paint) found that "the geometric mean (GM) BLL for persons aged 1-74 years declined from 12.8 μg/dL to 2.9 μg/dL, and the prevalence of elevated BLLs (BLLs greater than or equal to 10 μg/dL) decreased from 77.8% to 4.4%." There is no statistical proof linking the sharp decline since the 1970s of either the average BLL in Americans, or the percentage of Americans with elevated BLLs, to any single factor; however, the CDC attributes this finding to the CPSC’s ban on the use of lead in paint, especially household paint. These conclusions are further corroborated by the fact that in 2002 the CDC reported that more than 310,000 children in the United States exhibited elevated BLLs. These children were often from low-income families residing in older housing developments, which are more likely to have lead-based wall paint.

In March 2006, the CDC released a report that attributed the death of a child in Minnesota to lead poisoning allegedly resulting from the ingestion of a small metallic charm containing lead. Ingesting the charm caused his BLL to rise to 180 μg/dL, approximately eighteen times the level deemed acceptable in children. As a result of a similar incident in 2004, "the CPSC [had] recalled 150 million pieces of imported metallic toy jewelry sold in vending machines." Such massive recalls have forced Americans to push the issue of product safety into the spotlight.

26 See id.
27 Id.
28 See id. (attributing the decline in blood lead levels to “regulatory and voluntary bans enacted during this period on the use of lead in gasoline, household paint, food and drink cans, and plumbing systems.”).
31 See id.
32 Id.
Their concern stems from the fact that many of the toys being sold in America come from nations that do not regulate lead paint levels as strictly.\footnote{33}{See id.}

Given the above findings, it is not surprising that American consumers were extremely concerned when Mattel began recalling children’s toys for containing lead paint.\footnote{34}{See MSNBC article on Mattel, supra note 2.} While the Mattel recalls took center-stage in the media, there were safety concerns about many other products that were being imported from China.\footnote{35}{See Audra Ang, China Defends Quality of Exports, USAToday.com (Aug. 27, 2007), http://www.usatoday.com/news/world/2007-08-27-1717639957_x.htm (last visited Jan. 3, 2009).} Most notably, there have been "discoveries around the world of potentially dangerous levels of chemicals and toxins in some Chinese products, from toothpaste to fish."\footnote{36}{Audra Ang, EU: China Must Do More on Product Safety, (Nov. 20, 2007), http://www.thefreelibrary.com/EU%3a+China+must+do+more+on+product+safety-a01610821332 (last visited Jan 29, 2009).} While the standards for product safety under Chinese law are technically even more stringent than those under U.S. law,\footnote{37}{See C.F.R. § 1303.1 (2008); 15 U.S.C. §§ 2057-2058 (2008); see also Product Quality Law of China (adopted by the Standing Comm. of the Seventh National People's Cong. Beijing Mun. on Feb. 22, 1993) LAWINFOCHINA (last visited Jan. 3, 2009) (P.R.C.).} the numbers seem to indicate otherwise, as more than twelve million toys made in China were recalled by Mattel this year alone.\footnote{38}{See MSNBC Article on Mattel, supra note 2 (stating that Mattel announced a new recall of nine million Chinese toys in addition to the 1.5 million Fisher-Price toys and 1.5 million Thomas & Friends toys which had been recalled earlier in summer 2007).}

With the health of many Americans at risk, the ability of the CPSC to regulate imported products has naturally been called into question.\footnote{39}{See Protecting Children from Lead-Tainted Imports: Hearing before the Subcomm. on Com., Trade and Consumer Protection of the H. Energy and Com. Comm. (Sept. 20, 2007) (testimony of Lori Wallach on behalf of Public Citizen), available at http://www.citizen.org/documents/wallachtestimonyhousecommerce.pdf (last visited Jan. 3, 2009).} Lack of available manpower to oversee such regulation is cited as one obstacle to stringent regulation.\footnote{40}{See id.} In a September 12, 2007, Senate oversight hearing on the safety of toys being imported from China, Illinois Senator Dick Durbin...
pointed out the following in a press release:

[S]ince its inception in 1973, the CPSC’s staffing levels have decreased by almost 60 percent – from an all time high of 978 inspectors and full-time employees in 1980 to 401 today – the lowest level in history. Meanwhile the number of products over which the CPSC has jurisdiction is enormous – the 401 employees at the agency today are responsible for overseeing more than 15,000 types of consumer goods. Today, a single individual is responsible for testing all toys at the CPSC.41

When viewed in this light, it is not surprising that potentially hazardous consumer products are easing their way over U.S. borders. Adequate enforcement of U.S. regulations may require an increase in CPSC staff levels.42

Likely in response to criticism from many different arenas, the CPSC released a report entitled the “International Consumer Product Safety Program: 2007 China Program Plan”43 (China Program Plan). In the report, the CPSC estimated that nearly $246 billion worth of goods imported into the United States originated in China, comprising nearly forty percent of the total amount of goods imported into the United States in 2006.44 In addition, the report states that “[f]rom 1997 through 2004, the share of all U.S. imports of consumer products from China increased by about 293%. This trend is likely to continue . . . .”45

With nearly half of all our imported goods arriving from China, it is necessary to establish a clear understanding of the consumer safety regulations that the United States expects China to follow when manufacturing goods.46

Included within the China Program Plan is the Memorandum of Understanding (MOU), which was signed on April 21, 2004, by Li Chiangjiang, the Minister of China’s General

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42 See id.

43 See CHINA PROGRAM PLAN, supra note 17.

44 See id.

45 Id. at 2.

46 See id.
Administration for Quality Supervision, Inspection and Quarantine (AQSIQ), as well as the former Chairman of the CPSC, Hal Stratton.\textsuperscript{47} The primary purpose of the MOU was "to protect the health and safety of U.S. and Chinese consumers."\textsuperscript{48} The MOU listed seven specific goals pertaining to consumer safety regulation, under which both nations were supposed to abide. One of these goals was the development of a Plan of Action for Cooperation (PAC); it was signed later, on August 30, 2005.\textsuperscript{49} The PAC was drafted to facilitate the lines of communication between the two countries by tackling two major goals: first, the organization of a biennial Sino-U.S. Consumer Product Safety Summit;\textsuperscript{50} and second, the creation of four working groups. These working groups were designated for four specific product types: electrical products, toys, cigarette lighters, and fireworks.\textsuperscript{51}

In her testimony submitted to the Senate Committee on Commerce, Science, and Transportation, acting CPSC Chairman Nancy Nord also identified an additional four part plan of action to strengthen the enforcement of safety standards in China: "dialogue and initiatives with the Chinese government; working with the private sector including Chinese manufacturers directly; increased surveillance and enforcement activities at the borders and within the marketplace; and modernization of our governing statutes."\textsuperscript{52} Parts of the government "initiatives" listed by Chairman Nord include the MOU, the PAC, the Sino-U.S. Product Safety Summit, and the working groups.\textsuperscript{53}

The first prong, realized prior to Chairman Nord's new plan, was the genesis of a formal relationship between the CPSC and the AQSIQ, the counterparty agency in China, resulting in the

\textsuperscript{47} See id. at 3.
\textsuperscript{48} Id.
\textsuperscript{49} See CHINA PROGRAM PLAN, supra note 17, at 3.
\textsuperscript{50} See id. at 4 (The second biennial Sino-U.S. Consumer Product Safety Summit was recently held on September 11, 2007 in Bethesda, Maryland).
\textsuperscript{51} See id.
\textsuperscript{53} Id.
signing of the MOU between the two nations.54

The second prong of Chairman Nord’s plan is private sector or manufacturer initiatives; under this, the CPSC will work more directly with private Chinese manufacturers.55 In order to ensure a better understanding of the U.S. regulations and standards, the CPSC established the Office of International Programs and Intergovernmental Affairs and published a “Handbook for Manufacturing Safe Consumer Products”56 in Mandarin. In addition, the CPSC “facilitated the translation of the identification and scopes provisions that summarize the requirements of nearly 300 U.S. mandatory and voluntary consumer product safety standards into Mandarin to assist Chinese manufacturers in understanding what U.S. product safety standards require when manufacturing various products.”57

As part of the third prong, the CPSC continues to work with the U.S. Customs and Border Protection (CBP) in an effort to tighten the enforcement of existing regulations. This work includes participation in the Automated Commercial Environment, a CBP program, which recognizes shipments that may have violated safety standards before they are “introduced into the stream of commerce.”58

The fourth, and final, prong deals with statutory modernization.59 The Consumer Product Safety Act,60 which governs the CPSC, was written thirty-four years ago, when Congress could not have predicted the massive growth that would occur in foreign products imported into the United States.61 As a result, the statute effectively holds American distributors and retailers responsible when the overseas manufacturer is unavailable.62 The CPSC believes that modernization of the statute will allow it to deal with foreign manufacturers more

54 See id.
55 See id.
56 Id. at 4-5.
57 Id. at 5.
58 Testimony of the Honorable Nancy A. Nord (July 18, 2007), supra note 52, at 6.
59 See id.
61 Testimony of the Honorable Nancy A. Nord (July 18, 2007), supra note 52, at 5.
62 See id. at 6.
directly; in other words, it will give the CPSC more leeway to attack the problem on a foreign, rather than domestic, front. A modernized version of the Act, which has not been revised since 1990, came before the House of Representatives in November of 2007. In addition to strengthening lead standards, the bill, if passed, would give the CPSC the ability to “speed-up agency rulemaking.”

B. Obstacles to Consumer Safety Reform

While the CPSC has recognized the potential problems arising from the sharp increase in the amount of products being imported from China, its ability to effectively regulate, in spite of the new program plan, seems destined to be limited. For example, although American companies and the CPSC are able to determine that the toys violating standards were originally produced in China, they are usually unable to identify the specific manufacturer within China; many recalls announced by U.S.-based retailers, distributors and importers do not publicly identify the Chinese manufacturer, sometimes because the retailer may not know the original manufacturer of the product. When CPSC staff is able to identify the Chinese manufacturer of a recalled product, the CPSC sends letters in both English and Mandarin, briefly explaining the recall to both AQSIQ and the manufacturer, whenever the manufacturer’s correct name and address can actually be ascertained.

Even though the CPSC seeks to help align its own systems with those of the U.S. Customs and Border Protection, this goal seems currently unattainable. In one of several articles devoted to this very issue, Chairman Nord was reported as “sa[y]ing it

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63 See id. at 7.
64 See id. at 6.
66 See CHINA PROGRAM PLAN, supra note 17, at 4.
67 See Testimony of The Honorable Nancy A. Nord, (Nov. 6, 2007), supra note 65, at 2.
68 See id.
would help if Customs and Border Protection, which has a much larger force of inspectors at ports, could do more to help enforce consumer safety laws. 'We all understand that Customs' first responsibility is homeland security,' she said, but added that her agency had so few employees at ports that it could do little on its own. Due to the lack of CPSC representation at the ports and borders of the United States, some members of the Bush Administration argue that identification and removal of goods that fail American safety standards should occur at vulnerable points before these goods ever reach the border. Whether this goal is accomplished by increasing checks before the border, or strengthening checks at the border, it is apparent that the United States must take action in order to maintain product safety standards.

Enforcement of American safety standards within China also continues to be a serious problem. Under the second prong of Chairman Nord's plan the CPSC illustrates its effort to distribute translated versions (handbooks) of U.S. safety regulations in order to increase knowledge and awareness within the private sector of Chinese manufacturers. The language barrier aside, cutthroat economic competition within the private sector may be too fierce for the CPSC's efforts to have any real effect:

The recalls . . . underscore the problems facing toy makers and other companies doing business [in China]. China has become a manufacturing powerhouse by depending on cheap labor and savvy cost cutting measures. But sometimes, under pressure to cut costs or win contracts, Chinese manufacturers have cut corners, experts in China say, and chosen to use cheap and illegal substitutes. In June . . . the RC2 Corporation of Illinois, recalled . . . toy railway sets because for at least two years they were being

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70 Id.
71 See Andrew Martin, Cabinet Study Says Safety Must Precede U.S. Border, N.Y. TIMES, Sept. 11, 2007, at C8 (describing how President Bush appointed a working group to investigate the problems with border security; the working group submitted a report stating that "more than 825,000 importers brought shipments into the United States through more than 300 ports, border crossings and postal facilities.").
72 See Testimony of the Honorable Nancy A. Nord (July 18, 2007), supra note 52, at 8.
73 See id.
74 See id.
coated with excessive levels of lead paint, even though the manufacturers were aware of restrictions on lead paint, RC2 officials later said.\textsuperscript{75}

Further obstacles to effective CPSC control are the limitations imposed by the CPSA.\textsuperscript{76} The Act fails to provide adequate measures for dealing with problems arising in today's global trade market.\textsuperscript{77} According to statistics provided by the International Trade Administration, a section of the U.S. Department of Commerce, the rate of foreign goods being imported into the United States has increased by 312.7% since 1989 alone—roughly ten years after the Consumer Product Safety Act first came into effect.\textsuperscript{78} Not surprisingly, in 1978 the United States, with no hint of the boom in foreign imports that was soon to occur, could not have realized that regulatory limitations imposed by the Consumer Product Safety Act would ultimately become a hindrance to the modern day CPSC in terms of achieving its stated purpose of "protecting the public from unreasonable risks of serious injury or death from thousands of types of consumer products under the agency's jurisdiction."\textsuperscript{79}

As Senator Durbin pointed out in a Senate oversight hearing focused on toy safety, some of the necessary changes in modernizing the statute will be to "repeal the requirement that the CPSC have a quorum to engage in regulatory actions (a requirement that routinely hinders timely recalls); [and to] decrease the amount of time that firms have to respond to CPSC from 30 to 10 days . . . ."\textsuperscript{80} Statutory modernization is possibly the most attractive prong of the four-part plan of action provided by the Commission.\textsuperscript{81} Since the CPSA is a federal law,

\textsuperscript{76} See Testimony of the Honorable Nancy A. Nord (July 18, 2007), supra note 52, at 8.
\textsuperscript{77} See id.
\textsuperscript{80} Durbin Hearing, supra note 41.
\textsuperscript{81} See Testimony of the Honorable Nancy A. Nord (July 18, 2007), supra note 52,
remedying its limitations lies within the framework of our own legislative system. In addition, a statutory amendment would provide the Commission with the greatest amount of actual power to effectuate change in the shortest amount of time. At present, this amendment is probably the most vital part of the solution to consumer safety reform.

III. Consumer Product Safety within the European Union

A. Consumer Policy and the RAPEX System

Predicting the global impact of the strengthening of Chinese consumer safety standards necessarily includes an understanding of consumer product safety regulations within the European Union, as well as in the United States. In 2007, the European Union imported approximately €180 billion worth of the total goods exported by China.\footnote{China: EU Bilateral Trade and Trade with the World 1, 4 (September 10, 2008) [hereinafter E.U. Bilateral Trade], available at http://trade.ec.europa.eu/doclib/html/113366.htm.} According to the same year's report the United States imported approximately €174 billion worth of goods produced in China,\footnote{Id.} about $242 billion.\footnote{Currency Converter, http://finance.yahoo.com/currency (last visited Jan. 3, 2009).} In addition, the report shows that after Hong Kong, the country importing the next largest amount of goods was Japan, at about 8.6% of the total goods exported out of China.\footnote{E.U. Bilateral Trade, supra note 82, at 4.} The list of top importers falls rapidly from there.\footnote{See id. (showing that Korea comes in at 4.7%, while Singapore sits at 2.5%).} As this data indicates, the United States and the European Union are vying for the top spot as the world's biggest importer of Chinese goods, with slim competition coming from other nations.

Combined, the European Union and the United States are importing a little more than forty percent of the total amount of goods currently being exported from China, and it seems likely that this number will only increase.\footnote{See generally CHINA PROGRAM PLAN, supra note 17, at 2.} In its 2007 China Program Plan, the CPSC writes that:

[T]he value of U.S. imports of consumer products...
manufactured in China was $246 billion, comprising approximately 40% of all consumer products imported into the U.S. From 1997 through 2004, the share of all U.S. imports of consumer products from China increased by about 293%. This trend is likely to continue in the near term.\(^8\) Additionally, with China's economy still growing at a rapid pace, its reliance on E.U. and U.S. consumerism is nearly assured, at least for the time being.\(^9\) Like the United States, the European Union has strict consumer product safety regulations and is also currently working with China to ensure that their regulations are enforced.\(^9\) With these two Western giants consuming almost half of all the products exported from China, it seems likely that both the European Union and the United States have an opportunity to have a positive influence on the enforcement of safety standards, both in China and worldwide. Thus, understanding the consumer safety policies of the European Union and their demands on China will be as important as understanding China's relations with the United States.

The agency that regulates consumer product safety within the European Union is known as the Committee on Internal Market and Consumer Protection (IMCO).\(^9\) IMCO is a committee of the European Parliament, the legislative body of the European Union.\(^9\) In addition to IMCO, in January 2007, the European Union created the position of Commissioner for Consumer Protection.\(^9\) This new commissioner role is evidence that the European Union is becoming increasingly concerned with consumer safety and protection, especially with regard to

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\(^8\) Id.
\(^9\) See id.
\(^9\) See id.


\(^9\) See id.

products made outside of the European Union. This concern is not surprising, as more than fifty percent of the defective products sold throughout the European Union in 2006 came from China, with toys constituting nearly twenty-five percent of these defective products.

One of the ways that the European Union tackled the China problem directly, in a manner similar to the United States, was by signing the E.U.-China Memorandum of Understanding (E.U. MOU) in January of 2006. According to a press release, the E.U. MOU

[w]as] signed . . . with the objective of establishing better communication and collaboration on consumer product safety and to support Chinese authorities in their efforts to ensure product safety, in particular for consumer products exported to the EU. The Memorandum puts in place a number of practical measures, including joint meetings, exchanges of information and follow-up on emerging safety issues. One measure taken in May 2006 is that RAPEX information concerning products of Chinese origin has been made available on a read-only basis to the Chinese government, thereby allowing immediate follow-up by the Chinese Authorities on notifications regarding unsafe products.

Although the E.U. MOU was signed recently, the Commission has stated that it may start negotiations for a new MOU to reinforce China’s commitment in trade with the European Union.

In addition to the E.U. MOU, the European Union also signed an agreement with China dealing specifically with the tightening of production standards for toys, known as the Roadmap for Safer Toys (Roadmap). “The Roadmap . . .

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94 See id.
96 See id.
97 For further discussion of RAPEX, see infra notes 108-14 and accompanying text.
98 Id.
99 See id.
100 See GUIDELINE FOR ACTION ON COOPERATION FOR STRENGTHENING E.U.-CHINA
outlines a strategy for improving [the safety of Chinese toys exported to the E.U.], focusing on training and technical assistance, the exchange of RAPEX information between EU and Chinese authorities, and tracing, feedback and follow-up mechanisms for dangerous products.\textsuperscript{101}

One aspect of this strategy, similar to the efforts within the United States, is to provide the toy manufacturers with current information on the rules and standards to “enhance thereby their capacity to comply with the existing legislation.”\textsuperscript{102} The European Union’s efforts to link China to RAPEX and educate Chinese manufacturers concerning E.U. toy safety rules and standards will ensure better compliance with E.U. requirements, and may potentially play a powerful role in China’s ability to enforce their own rules and standards.\textsuperscript{103}

On a “statutory” level, the European Union has several directives\textsuperscript{104} addressing consumer safety. One is the General Product Safety Directive (GPSD), which “covers the safety of products intended to be sold to consumers within the European Union.”\textsuperscript{105} Originally, the GPSD allowed the individual E.U.

\begin{footnotesize}
\begin{enumerate}
\item Guideline for Action, supra note 100.
\item See id. at 2 (including the specific objectives of “ensur[ing] systematic exchange of information between the services of the European Commission and AQSIQ in relation to toy safety[,] training for [Chinese] personnel[,]” and joint discussions of “progress and problems encountered.”).
\item For information on E.U. directives addressing consumer safety see Process and Players, \url{http://eur-lex.europa.eu/en/droit_communautaire/droit_communautaire.htm} (last visited Jan. 4, 2009) (“Adopted by the Council in conjunction with the European Parliament or by the Commission alone, a directive is addressed to the Member States. Its main purpose is to align national legislation. A directive is binding on the Member States as to the result to be achieved but leaves them the choice of the form and method they adopt to realise the Community objectives within the framework of their internal legal order.”).
\item U.S. COM. SERVICE, U.S. DEP’T OF COM., INTERNATIONAL MARKET INSIGHT: STANDARDS AND THE EUROPEAN UNION’S GENERAL PRODUCT SAFETY DIRECTIVE (2004),
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member states to devise their own national legislation concerning product safety. The only requirement of the GPSD was that a safe product had to be:

any product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product’s use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons.

In 2001, in response to information gathered regarding public safety, and in order to increase the “clarity” of consumer safety standards, the European Union amended the 1992 GPSD to establish standards that would apply across the European Union. The 2001 GPSD recognized the importance of facilitating the ability of individual member states to comply with community-wide product safety standards.

Perhaps most significantly, the amended GPSD established RAPEX. RAPEX is the basis of the network of national market surveillance and enforcement authorities who work together to keep European consumers safe. It ensures that information about dangerous non-food consumer products found in one Member State is rapidly circulated among all the national authorities and the European Commission for follow-up, with the aim of preventing the supply of these products to consumers.

In accordance with the 2001 GPSD, Member States now notify

http://www.aeanet.org/Forums/mcHybLmWUzXJunDiOCAfxaPaMKqylQiohsc.pdf.

106 See id.
the European Commission, using RAPEX, of any measures that member state takes "to prevent or restrict the marketing or use of consumer products posing a serious risk to the health and safety of consumers, which may be available in more than two European countries."\textsuperscript{111}

When RAPEX was established, the European Commission began publishing a weekly overview of "RAPEX notifications on products posing serious risks to consumers" on the RAPEX website.\textsuperscript{112} "These overviews provide information on the product, the nature of the risk posed and the measures taken to prevent these risks."\textsuperscript{113} This system empowers consumers by providing them access to safety information regarding products they currently use or plan to purchase.\textsuperscript{114}

Additionally, the European Commission has a search tool available to interested consumers where they can retrieve a list of all related products deemed "dangerous" by the Commission since 2005.\textsuperscript{115} Similar to the United States, the European Union has a directive, which directly focuses on product safety.\textsuperscript{116} The E.U.'s toy safety directive requires the following:

Toys must be so designed and constructed that, when used . . . they do not present health hazards or risks of physical injury by ingestion, inhalation or contact with the skin, mucous tissues or eyes . . . . In particular, for the protection of children's health, bioavailability resulting from the use of toys must not, as an objective, exceed . . . 0.7 µg for lead [i.e. the BLL] per day.\textsuperscript{117}

For lead, the acceptable bioavailability standard (i.e. the BLL resulting from use of the toy) is 0.7 µg of lead.\textsuperscript{118}

\textsuperscript{111} Id. at 10.

\textsuperscript{112} Id.

\textsuperscript{113} Id at 14. (enabling consumers to check whether the products they use or plan to purchase have been subject to RAPEX notifications).

\textsuperscript{114} See id.


\textsuperscript{118} Id.
Despite instituting only a partial ban on lead in the European Union, the presence of lead in children's toys caused just as much panic in Europe as it did within the United States. On September 21, 2007, Arlene McCarthy, the Chair of IMCO, "[demanded] that the European Commission and Member States reassure parents of the safety of Chinese toys" to prevent a panic and reaffirmed the "responsibility [of the E.U.] to ensure that the toys our children are playing with are safe and present no danger to our children's health." McCarthy also acknowledged that ninety percent of the E.U.'s toys are produced in China, so it seems inevitable that E.U. consumers will have more problems with Chinese toys than U.S. consumers. As part of the response to this problem, E.U. Consumer Protection Commissioner Meglena Kuneva held a "Have a Safe Christmas" web-chat, commenting that "we need to draw consumers' attention to what rights they enjoy and how to make sure that the products they buy are safe." The web-chat addressed parental concerns regarding the best methods for ensuring they were purchasing safe toys for their children, and also highlighted how to obtain safety information about the toys. Clearly, the discovery of lead in children's toys, coupled with the fact that a majority of toys sold within the European Union are made in China, was a cause for serious concern in Europe, as well as in the United States.

On March 13, 2007, the European Commission adopted the Consumer Policy Strategy. The strategy recognizes the need to empower "consumer[s] with the skills and tools to fulfill their role in the modern economy; in making markets deliver for them

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120 See id.


122 See id.

and in ensuring effective protection from the risk and threats they cannot tackle as individuals."\textsuperscript{124} The Commission's aim is to "[a]chieve . . . a more integrated and more effective internal market . . . [in which] [p]roducts and services will be safe."\textsuperscript{125} To reach this goal the Commission set forth a number of goals that it sought to accomplish through the strategy, including "better consumer protection regulation," "better enforcement and redress," and "better protection of E.U. consumers in international markets."\textsuperscript{126} One of the main tools the Commission cites as a mechanism for establishing greater enforcement is the RAPEX system\textsuperscript{127}. In regard to the greater protection of Europeans in the international market, the Commission cites its relations with China specifically:

In 2005, the Commission concluded co-operation agreements with the US Consumer Product Safety Commission and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) in the field of consumer product safety. The Commission will strengthen co-operation with US and Chinese authorities on the basis of the existing agreements and will seek to develop new agreements, where appropriate.\textsuperscript{128}

As in the United States, the failure of China to meet the safety requirements mandated by law in the European Union has caused a great stir among consumers, citizens, and the government. Like the United States, the government has been scrambling to ensure that consumer safety is protected through the new Consumer Policy Strategy, the directives, the E.U. MOU, and the RAPEX system.

\textbf{B. Positive Aspects of the E.U. System; Obstacles to Consumer Reform}

In some ways, the European Union is currently in a better
position than the United States to have an immediate impact on Chinese enforcement of safety regulations. Many of the obstacles that currently hinder the ability of China to comply with E.U. and U.S. safety standards are problems that the European Union encounters on an almost daily basis. For example, the European Union, unlike the United States, is composed of twenty-seven member states and twenty-three official languages. Each time the European Union proposes and passes legislation; issues a report from the European Commission or from the European Parliament on issues for potential legislation; or decides a case in the European Court of Justice, these documents must be translated into twenty-three different languages. In particular, when issuing regulations great care must be taken to ensure that regulations are accurately translated. E.U. regulations are "directly applicable, which means that [they create] law which takes immediate effect in all the Member States in the same way as a national instrument, without any further action on the part of the national authorities." Since regulations take immediate effect, it is essential that the nuances of the underlying purpose of the law survive translation. The inaccurate translation of regulations could create the potential for a member state to inadvertently violate E.U. law.

While the European Union confronts translation issues on a daily basis, the issue is obviously less familiar in the United States. As explained by CPSC Chairman Nancy Nord's testimony to the Senate Committee on Science, Commerce, and Transportation:

In 2006 CPSC facilitated the translation of the identification and scopes provisions that summarize the requirements of nearly 300 U.S. mandatory and voluntary

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132 See id.
consumer product safety standards into Mandarin...[t]he translation of the identification and scopes provisions of U.S. product safety standards facilitates Chinese manufacturers understanding of what is required of them when they manufacture products for the U.S. market.\textsuperscript{134} Although Chairman Nord does not, in her testimony, elucidate as to whether the United States has ever overseen the translation of documents, it seems possible that up until recently, the translation of U.S. standards and rules was undertaken by the Chinese authorities themselves, without any prior determination by U.S. officials as to whether the rule's effects had been essentially "lost in translation."\textsuperscript{135} While this may be relatively unfamiliar territory for the United States, it is ground often tread by officials in the European Union.

The same theory applies when considering consumer protection. The European Union promotes the "four freedoms," one of which is freedom of goods.\textsuperscript{136} Freedom of goods ensures that products that meet E.U. standards and regulations can move freely throughout the Union, without tariffs or trade barriers of any kind.\textsuperscript{137} As the European Union expanded through the addition of more member states, it was necessary that E.U. trade officials insist that consumer safety and protection remain intact, and make certain that each new member state was adhering to "national" standards. In essence, the recent trade problems with China, though serious, were probably not as remarkable to the citizens of the European Union as they were within the United States. The European Union, by virtue of its formation, has likely gained extensive experience in negotiating problems caused by trade among nations of different regulations and standards. The idea that the European Union was perhaps more prepared to combat this problem is also evidenced by the fact that it already

\textsuperscript{134} Testimony of the Honorable Nancy A. Nord (July 18, 2007), supra note 52, at 5.

\textsuperscript{135} See id.

\textsuperscript{136} See EUROPA, A Plain Language Guide to Eurojargon, http://europa.eu/abc/eurojargon/index_en.htm (last visited Jan. 3, 2009) ("One of the great achievements of the E.U. has been to create a frontier-free area within which (1) people, (2) goods, (3) services and (4) money can all move around freely. This four-fold freedom of movement is sometimes called "'the four freedoms.'").

\textsuperscript{137} See id.
had many more preventative measures in place than the United States. While the United States and the European Union both signed an MOU before the China toy product recalls occurred during the summer of 2007, the European Union also had the RAPEX system and the Roadmap set in place prior to the panic from threats of lead in the Chinese toy industry.138 From an objective standpoint, the European Union seemed more prepared to handle the toy crisis than the United States.

The implementation of the RAPEX system will potentially allow the European Union to have a greater influence on the development of a global consumer safety standard than the United States. The RAPEX system provides all E.U. citizens with a weekly update on all products that have either been deemed dangerous or have been recalled.139 In contrast, the CPSC website only lists those items that have been recalled. The E.U. Commissioner on Consumer Protection is already working with China to link them to the RAPEX system. Such work will provide China with a model on which to base a similar alert system, and may aid the government in identifying the manufacturers who are violating safety standards.140

The results of the latest RAPEX-China report [sic] show considerable progress by the Chinese Authorities in taking corrective actions to stop the flow of dangerous goods onto the European market. The report shows that 184 cases have been fully investigated during the three month period July-September 2007, compared to just 84 cases in the 2 previous reports combined (July 2007, December 2006). Corrective actions were taken in 43% of the cases. By December 2007, China will put in place a domestic alert system modelled on the RAPEX system to coordinate work with the regions and increase effective cooperation.141

138 See generally KEEPING EUROPEAN CONSUMERS SAFE, supra note 110.
139 See id. (stating that RAPEX ensures that information about dangerous non-food consumer products found in one Member State is rapidly circulated among all the national authorities and the European Commission for follow-up with the aim of preventing the supply of these products to consumers).
140 The identification of the manufacturers in China who are not following safety standard regulations is often difficult. See CHINA PROGRAM PLAN, supra note 17.
However, the integration of the Chinese Government with the RAPEX system appears to have been the only reform measure that has produced tangible results in China, intensifying its enforcement of regulations. The United States and the European Union have demonstrated many efforts, over time, to increase enforcement of regulations in China; this determination is evidenced by the signing of MOUs, drawing up of pacts, the devising of new consumer policies, and the strengthening of domestic regulations. However, in spite of these numerous attempts to affect enforcement, both abroad and at home, the only method, that appears to have had any real effect on Chinese enforcement of regulations is the coordination of Chinese and E.U. officials through the RAPEX system.\footnote{Review and Welcomes “Considerable Progress” from China (Nov. 22, 2007), http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1746&format=HTML&aged=0&language=EN (last visited Jan. 3, 2008).}

Despite its success, the RAPEX system has some drawbacks. Unlike the United States, in which the CPSC is the sole authority on consumer protection, the European Union has no single authority\footnote{See id.} that is ultimately responsible for monitoring and verifying the safety of products coming into the European Union for sale.

First and foremost, economic operators—namely, manufacturers or their commercial representatives in the E.U.—[are responsible for testing products imported in the E.U.]. Of course member state authorities carry out sample testing in their own laboratories, and that is one way for a product to end up on the RAPEX system. Sometimes, RAPEX alerts are triggered by producers themselves. Voluntary measures notified by producers account for an increasing share of overall RAPEX notifications.\footnote{As noted earlier, the CPSC is “charged with protecting the public from unreasonable risks of injuries and death associated with more than 15,000 types of consumer products under the agency’s jurisdiction.” See CHINA PROGRAM PLAN supra note 17, at 2. Additionally, only one employee has sole responsibility over toys. Id.}

Relying on data provided by manufacturers, producers, or sample checkers almost inevitably leads to underreporting, and
subsequently, failure to fully realize the extent of the safety problems arising from products made in China. More importantly, unsafe products, such as toys containing lead paint, flow through the market undetected.

But the RAPEX-figures do not fully reflect the level of non-compliance with safety requirements since . . . [it] is based on sample checks. It is however clear . . . [that] Chinese products . . . are over-represented among dangerous products found on the market. Improvements in the safety of Chinese products will therefore have an important effect. 145

This is the same problem that is also occurring in the United States and the European Union. The percentage of imports arriving from China is increasing within the United States and the European Union every year, but neither region currently expends the resources necessary to assure that those imports from China are safe.

The toy industry in the United States appears to be largely self-policed. The CPSC has safety standards, but it also has only about 100 field investigators and compliance personnel nationwide to conduct inspections at ports, warehouses and stores. The senior counsel for the agency stated that, "[the CPSC does not] have the staff that they need to try to get ahead of this problem . . . [t]hey need more money and resources to do more checks." 146

In other words, in the absence of strict enforcement of consumer safety standards by China, the United States and the European Union will need to devote considerable resources toward guaranteeing the safety of Chinese imports, or otherwise risk (at least for the present), the distribution of potentially dangerous products. As the Chairwoman of the European Parliament’s Consumer Protection Committee said, "We have a General Product Safety law, we have a toy safety law, but if national authorities are not enforcing the rules, they cannot effectively protect our consumers, and in this case our children’s

145 Id.
health and safety.’147 Fortunately, there is evidence that such steps may be taken in the future. According to an article published in the *New York Times*, “like the United States, the European Union is considering requiring toy manufacturers to have all their new products tested in independent laboratories — a move that would add to costs.”148

In addition to the factors already set forth, there is one additional reason illustrating why the European Union may have the opportunity to make a greater impact on China’s adherence to Western consumer safety standards and, ultimately, on the standards China may develop for its own nation. After the toy recall crisis in 2007, the European Union refused to compromise on its safety standards in its dealings with China. As Commissioner Meglena Kuneva149 pointed out in a recent visit to China, “the EU cannot and will not compromise on European values, and in particular on consumer safety . . . guaranteeing safety is the only way to guarantee access to the European market. ‘Security and trust are as important for Europe as the price.’”150

On the other hand, the United States seems to be taking a different approach. While it is true that in the United States the CPSC is clearly concerned with consumer safety, it has failed to take the comparatively hard-line approach taken by the European Union. This failure may be due in part to the fact that U.S. corporations, especially large toy-makers like Mattel, depend on their factories in China to produce affordable toys. “Eighty percent of toys sold in the United States are made in China,

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mostly through outsourcing arrangements to vendors.”¹⁵¹ Thus, while the European Union has the freedom to threaten complete consumer withdrawal, the United States is more wary: “while some European manufacturers have resisted the temptation to shift nearly all their production to Asia, Europe is like the United States in that it imports about 70 percent of its toys from abroad, mostly from China.”¹⁵² The degree to which the United States is economically dependent on China could give that nation considerable bargaining power with the United States, even in the area of consumer product safety.

Mattel is a prime example of how U.S. business’ dependence on China to manufacture cheap goods may potentially end in compromises on consumer safety.

‘Mattel has a China problem and a supply-chain problem,’ says Jean-Pierre Lehmann, an Asia expert at The International Institution for Management Development, a business school in Lausanne. The company is dependent on cheap Chinese production for most of its wares, so it has little bargaining power and can be bounced into an apology. Of the roughly 800m toys Mattel produces every year, more than two-thirds are made in China and about half are made at the company’s own plants.¹⁵³

Since the European Union is not as dependent on Chinese manufacturing as is the United States, it may be able to demonstrate greater leverage in enforcing China’s adherence to Western consumer safety standards.

The European Union, like the United States, imports approximately seventy percent of its toys from abroad, mostly from China.¹⁵⁴ Europe’s relative industrial independence from China can mean that its demands on consumer safety will be taken more seriously. Therefore, the European Union could play a more significant role in shaping the consumer safety policies that may emerge in China.

¹⁵³ Plenty of Blame to Go Around, THE ECONOMIST, Sept. 29, 2007, at 68, 70.
¹⁵⁴ See id.
IV. Consumer Product Safety in China

A. AQSIQ and Consumer Safety Regulations

In China, the agency in charge of consumer product safety and regulations is known as the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ).\textsuperscript{155} According to the official AQSIQ website, "[AQSIQ] is a ministerial administrative organ directly under the State Council of the People’s Republic of China in charge of national quality, metrology, entry-exit commodity inspection, entry-exit health quarantine, entry-exit animal and plant quarantine, import-export food safety, certification and accreditation, standardization, as well as administrative law-enforcement."\textsuperscript{156} Although AQSIQ is the Chinese consumer protection agency counterpart, it plays an even larger role in consumer protection than the CPSC and the Consumer Protection Committee. While the CPSC, the Consumer Protection Committee, and the Consumer Protection Commissioner all regulate non-food products manufactured both domestically and abroad, AQSIQ seems to have a greater share of responsibility. It regulates quality control; the imports and exports of health, and plant quarantine; and enforcement.\textsuperscript{157} Although China, with its population of almost one and a half billion people,\textsuperscript{158} certainly has the sheer manpower available to staff an agency with so many expectations, its scope still appears overly broad and its functions appear too widely varied to perform each task adequately.

AQSIQ has several laws and regulations relating to exports and quality control. One is the Law of the People's Republic of China on Import and Export Commodity Inspection.\textsuperscript{159} According


\textsuperscript{156} Id. AQSIQ has over 30,000 employees in over 300 branches and thirty-one provinces performing entry/exit inspection; as well as employing 180,000 employees in over thirty-one provinces; the Bureau of Quality and Technical Supervision, as its name indicates, performs quality and technical supervision of goods and services. Id.

\textsuperscript{157} Id.


to its general provisions, the law was enacted with "a view to strengthening the inspection of import and export commodities, ensuring the quality of import and export commodities, protecting the lawful rights and interests of the parties involved in foreign trade, and promoting the smooth development of China's economic and trade relations with foreign countries." Surprisingly, this law was passed almost twenty years ago in 1989. Although the law does not list detailed specifics, it provides for quality control of all products entering and exiting China. It mandates, among other things, that "export commodities which are included in the List of Commodities shall be checked and released by the Customs upon presentation of the inspection certificate or the paper for release issued by the commodity inspection authorities." The law also provides for random inspections of goods, the denial of exit ability to those goods, which violate quality standards, and punishment for those who purposely export goods which violate standards.

There is also a Product Quality Law of the People's Republic of China that assists AQSIQ in consumer protection. While the Import and Export Commodity Law focuses mostly on trade, this law seems intended for consumer protection. Its stated purpose is to "strengthen the supervision and control over product quality, to define the liability for product quality, to protect the legitimate rights and interests of users and consumers and to safeguard the socio-economic order." The law also makes reference to internationally acceptable standards, stating that: "[t]he State shall, in compliance with the international quality control


160 Id.
161 See id.
162 Id.
163 See id.
165 See Import and Export Commodity Law, supra note 159.
166 Product Quality Law, supra note 164.
standards in general use, perform a rule of authentication for enterprise quality system . . . [t]he State shall practise a product quality authentication system by making reference to the internationally advanced product standards and technical requirements." Additionally, the law provides for a supervision and inspection system, with random inspection employed as its main form of detection. Clearly, China had the written regulations and standards in place to avoid the crises that occurred almost fifteen years after the passage of the Product Quality Law, and nearly twenty years after the Import and Export Commodity Law.

In fact, "[o]n the books, China’s paint standards are stricter than those in the US, requiring paint intended for household or consumer-product use contain no more than 90 parts per million lead. By comparison, US regulations allow up to 600 parts per million." In decimal terms, this means that China’s laws allow their products to contain 0.009 percent lead, while American produced products can contain 0.06 percent lead. Like the United States and other developed countries, China is well aware of the hazardous effects that lead exposure can cause to humans. "The regulations are supposed to safeguard health, particularly in cases involving children, where ingesting excessive amounts of lead has been linked to disorders including mental retardation and behavioral problems." China’s recent violations of American safety standards, including those regulating lead levels, are not a result of the government's failure to put adequate regulations on the books.

B. The China Problem: Lack of Enforcement and Economic Pressure

On January 8th, 2008, AQSIQ held the “Working Conference

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167 Id.
168 See id.
169 See id.; see also Import and Export Commodity Law, supra note 159.
171 See id.
172 Id.
173 Id.
of National Quality Supervision, Inspection, and Quarantine."

The press release given by AQSIQ stated that:

In his report, Li Changjing reviewed the breaking progress achieved in quality inspection work in 2007. In the year 2007, under the correct guidance of Party Central Committee and State Council, the quality inspection bodies made every effort and won the battle of product quality and food safety. The quality inspection system . . . accomplished fully the task of special rectification of product quality and food safety, studied actively a series of effective new working measures, changed greatly the working style, corresponded promptly to series of accidents in product quality of food safety, strengthened further the international communication and cooperation of quality inspection and the news propaganda, and played effectively the function of supervision and service.

Yet these comments seem as inconsistent with the reality of the recall crises over imported Chinese goods as China’s strict regulations concerning consumer safety are with enforcement of those laws. In the European Union, almost fifty percent of the products reported as defective by the RAPEX system were produced in China. In light of such statistics, it is difficult to understand how China is “w[inning] the battle of product quality.”

Unsurprisingly, the Vice Premier of China does not agree with Changjing. “Vice Premier Wu Yi warned on Wednesday the country must not rest on its laurels following a claimed victory in a four-month campaign against shoddy goods, saying it was still too easy to break the law.” While China’s written regulations safeguard against many of these problems, the safety measures are simply not enforced by the government. “[E]nforcement of

175 Id.
176 European Commission Consumer Affairs, supra note 115.
177 Vice Premier can be used interchangeably with “prime minister” in China.
the regulations in China is lax. 'The standard doesn’t matter,'” said Scott Clark, a professor of environmental health at the University of Cincinnati. "Remember, in the Soviet Union during the cold war, they had very high standards on the books, but they never enforced them. It was just for show.” Although China clearly has a national standard on lead, which sits at 0.009% per product, some manufacturers freely admit that enforcement of the regulations is non-existent. In addition, lead-based paint seems to be readily available, with some Chinese paint companies claiming that no national standard exists regarding the percentage of lead allowable in paint.

More importantly, Chinese factories have an incentive for ignoring the lead standards, in addition to other safety standards. In an extremely competitive market, manufacturers sometimes disregard expensive safety measures in order to offer competitively priced products. Unleaded paint can cost three times the price of paint with elevated levels of lead, giving many Chinese factory owners an economic incentive to cut corners in order to make a profit. As China’s Vice Premier Wu observed, “There is still a problem that it costs a lot more to uphold the law that it does to break it.” Often manufacturers that ignore the regulations incur no penalties because they are never located. As noted earlier, both the CPSC and the E.U. Commissioner on Consumer Protection often fail to discover the manufacturer of the defective products. Food safety problems are particularly pronounced in China’s vast countryside, where lax oversight of small factories within rural areas has contributed to a string of food poisoning incidents. If consumer safety continues to be a concern for the United States and the European Union, the key to reform appears to lie not in stricter regulations, but in ensuring that China begins enforcing existing safety laws and identifying and punishing manufacturers that violate safety standards.

180 Id.
181 Id.
182 Id.
183 Id.
185 Id.
186 Blanchard, supra note 178.
187 Id.
C. Why China Matters

"'Let China sleep, for when she wakes, the world will shake.' So purportedly said Napoleon some 200 years ago." 188 Even Napoleon could not have foreseen the truth behind his words. Fast-forward to the twenty-first century, and China is awake and thriving. Over the past decade its per capita growth has averaged 8.5% with investment constituting approximately a third of the Gross Domestic Product (GDP). 189 Due to its sizeable population and considerable potential for development and foreign direct investment, China’s swift economic growth leaves it poised to make a global impact as an emerging superpower. 190

However, China was not always considered a booming, potential superpower. Before the late 1970’s, China had a centrally planned, Communist economy modeled after the Soviet economy. 191 In 1978, however, China’s government pushed for economic change and ignited the shift to a market economy. 192 “China introduced market reforms in the early 1980s; only a third of the economy is now directly state-controlled. Since joining the World Trade Organization in 2001, China has rapidly become an economic force, doubling its share of global manufacturing output and creating a commodity-market boom.” 193

Additionally, the government created five Special Economic Zones, in the provinces of Shenzhen, Zhuhai, Shantou, Xiamen, and Hainan, all of which were authorized to provide tax incentives and more lenient restraints on imports for the purpose of attracting foreign direct investment. 194 The result has been a strong increase in GDP since 1978. 195

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191 Id. at 2.
192 Id.
195 Id.
China shows no sign of slowing down. According to a World Bank report, "[e]conomic growth remains rapid and the trade surplus continues to widen . . . ."\(^\text{196}\) China’s economy has been growing at this hectic pace each year, and "[b]usinesses continue to flood China with investment, as a combination of foreign investment and trade surpluses has China adding to its foreign currency reserves at a pace of $1 billion a day."\(^\text{197}\) Along with such economic growth, however, comes increased responsibility and pressure. When the government initially instituted market reforms, more than half the country was living below the international poverty line.\(^\text{198}\) By 2004, that number had dwindled down to a mere ten percent of the population.\(^\text{199}\) China’s continued growth is important not only to the government, but to the people of China.

Economic growth and prosperity comes with a price. China’s economy may be booming, but her dependence on exports and foreign investment continues to grow as well. This dependence is noteworthy for the European Union and the United States; together, they purchase roughly forty percent of all products exported from China.\(^\text{200}\) And as became clear this year, such dependence gives both the European Union and the United States tremendous bargaining power with China. In order to retain European and American business, officials from China have been forced to meet with government officials from both areas of the world and verbally concede to some of their demands to increase consumer product safety. Now that the European Union and the United States are scrutinizing all products coming out of China, it appears as if the Chinese will need to begin enforcing regulations or risk losing nearly half the economic investments in their country.\(^\text{201}\)

China, well aware of her vulnerability, has begun to explore alternative methods of economic growth. "China’s retail sales


\(^{197}\) Bradsher, supra note 15.


\(^{199}\) Id.

\(^{200}\) See E.U. Bilateral Trade, supra note 82 and accompanying text.

\(^{201}\) See id.
increased at the quickest rate in at least eight years on rising incomes, helping government efforts to curb the economy's dependence on exports and investment to achieve growth." Additionally, the Chinese government is attempting to direct its investments away from the United States, focusing more intently on Europe and other parts of the globe. As quoted in The Economist:

Sino-E.U. economic relations are booming. China's economy is growing so fast that it now dwarfs those of many individual E.U. member states. Bilateral trade grew by 21% year on year in 2006 to more than €250bn (US$368bn), while E.U. investment in China reached more than €3.7bn last year. Over that same period growth in exports from China to the E.U. outpaced those to the US, highlighting China's shift in focus to Europe as its primary export destination.... The rising profile of the E.U. in China's export picture is in part due to a worsening trade climate in the US. Scares in North America about the safety of made-in-China goods from toys to toothpaste have severely affected consumer perception.

This shift is significant, because it means that the European Union, currently China's largest trade partner, will likely have more influence over China's policies in the future than the United States.

China's economic dependence on the two most powerful Western entities could also have important legal consequences for China and the rest of the world. The recall crises this past year have highlighted China's need to increase enforcement of consumer safety guidelines outlined by the European Union and the United States. The shifting of China's focus from the United States towards the European Union is also significant in light of the fact that Europe refuses to compromise on its safety standards, at the threat of complete withdrawal from China's economy.

Additionally, with China focusing its efforts at greater global

204 See id.
205 See Kuneva, supra note 93.
investment, the time is ripe for Europe to have a big legal impact on the development of adequate consumer safety laws for the people of China. New safety standards for China, especially in terms of lead reduction, may have a tremendous impact on consumer safety standards around the world.

VI. The Global Impact of China

A. The Expanding Lead Problem

As noted earlier in this article, elevated BLLs can have disastrous consequences on the mental and physical aspects of human health. A 1997 report from the CDC to Congress on workers’ exposure to lead-based paint states that “[o]ne of the major targets of lead toxicity in adults is the nervous system, including the central and peripheral nervous systems. Lead damages the blood-brain barrier, and subsequently, the tissues in the brain. Severe exposures resulting in BLL’s greater than 80 μg/dL [(grams/deciliter)] may cause coma, encephalopathy, or death.” Additionally, elevated BLLs have been shown to cause paralysis, anemia, kidney failure, stillbirths, miscarriages, and birth defects. In fact, the Department of Health and Human Services claims:

[A] special concern for pregnant women is that some of the bone lead accumulation is released into the blood during pregnancy. Several studies conducted concurrently in the United States and other countries provided evidence that even low maternal exposures to lead, resulting in BLL’s as low as 10 μg/dL, produce intellectual and behavioral defects in children.

The toys and other products manufactured in China containing

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206 See CTRS. FOR DISEASE CONTROL & PREVENTION, supra note 25, at 141 and accompanying text.

207 Ecephalopathy is a change in your mental condition in which toxins that normally circulate in the bloodstream are not cleared properly by the liver and result in altered brain function. See California Pacific Medical Center, Study on Encephalopathy (2004), available at http://www.cpmc.org/learning/documents/encephalopathy-ws.pdf.


209 Id. at 3-4

210 Id. at 5.
lead are certainly a grave concern for the United States and the European Union, and the risk to human health far outweighs the cost benefits provided by lead, given the above findings. Despite the reduction in manufacturing costs provided by lead-based products, our nations have been working for decades to reduce lead exposure in our respective populations. The United States, as a nation, is well aware of the life-threatening consequences of lead exposure; for this reason, the violations by China were taken very seriously and were swiftly addressed by the United States government.

However, this is not the case for developing nations. "Increased globalization and outsourcing of manufacturing has drastically increased the likelihood that products with unacceptably high levels of lead are being traded across borders—including between China and Africa as well as into regulated countries like the United States." Many developing nations are lacking lead regulations, and as a result, people living in these areas can be exposed to very high levels of lead. This lack of regulations may become a significant problem if trade between China and these developing nations continues. While the United States and the European Union have lead regulations in place and could recall defective items exported by China, people in developing nations oftentimes have no recourse.

One collaborator taking part in a University of Cincinnati study on the effects of lead found that "[t]he extent of domestic lead exposure, and its resulting health hazards has been understudied in developing countries, though its importance in cognitive dysfunction related to early exposure is well established.

211 See id.
212 Id. at 2. The United States first established a national industrial standard for lead in 1978, leading to a significant reduction of the average blood lead level in the adult population (from 13.1 µg/dL in 1976 to 3.0 µg/dL in 1991).
213 See generally Durbin Hearing, supra note 41.
215 See id.
216 See id.
in countries such as the United States.\textsuperscript{17} With China ready to begin shifting its market to a more global focus, the possibility that it would continue trading products containing unregulated levels of lead to developing nations with no safety standards of their own in place becomes frightening, especially in light of the severe health hazards lead poses to the human body. "It's important that international regulations be in place to supplement local efforts to ensure that paints have lower than recommended lead levels, with the ultimate goal of eventually eliminating all lead from paint," an author of the same study added.\textsuperscript{18} Both the European Union and the United States are currently in a perfect position to put such international regulations in place.

'Recent massive recalls of toys from China for lead-based paint content offer further evidence of the public health threat lead-based paint marketing in foreign countries can pose in the United States . . . . [A] consistent, global ban against lead-based paint is urgently needed to protect people not just in the United States—but across the world.'\textsuperscript{19} The manufacturing problems posed by China have created a rare opportunity in modern history, one in which both Europe and the United States will be able to work together to ensure the safety of their own citizens, while simultaneously ensuring the safety of millions of people in China and across the globe.

\textbf{B. The Possibility of Global Impact}

The idea that China would raise its standards in order to keep the business of the United States and the European Union, and in doing so, raise consumer product safety standards around the world, is not a new one. This concept is known as "trading up," a phrase coined to describe a scenario where developing countries assume the standards of their more developed trading partners in order to continue to trade with them.\textsuperscript{20} In a study conducted on the effects of stricter food regulations imposed by the European

\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} Jason A. Donovan, Julie A. Caswell & Elisabete Salay, The Effect of Stricter Foreign Regulations on Food Safety Levels in Developing Countries: A Study of Brazil, 23 Rev. of Agric. Econ. 163, 164 (2001).
Union and the United States on Brazil, specifically in the area of
exports of fish, the authors of the study aimed to determine
whether pressure from the European Union and United States to
implement quality control standards would be enough pressure to
convince Brazil to "trade up." Unsurprisingly, patterns
consistent with the current consumer product safety crisis in
China emerge when discussing food quality control in Brazil.

Overall patterns of [the quality management system]
adoption yield insights into the importance of export
markets in adoption decisions. Evidence suggests that
Brazilian firms may be reluctant to comply with [quality
management] laws or recommendations because of a lack
of information about [the quality management system],
high implementation costs, and weak government
enforcement . . . . [W]ether they adopt [it] . . . may
depend on factors other than current domestic government
mandates, such as (1) a desire to maintain access to export
markets, (2) anticipation that [it] will be strictly enforced
in the future, or (3) a desire to capture cost-savings and
safety improvements from [the quality management
system] adoption.222

It should be noted that China and Brazil differ in some very
important ways; Brazil was not, at the publication time of the
cited article, one of the fastest growing economies in the world.223
In addition, Brazil did not have the manpower currently available
to China. China's population may play a key role in the
discussion of whether stricter enforcement is possible; for
example, if enough human and financial resources are available,
enforcement may become a much more feasible task.

However, many of the overriding concerns appear to be the
same. Brazil was a developing nation attempting, like China, to
acquire economic growth through international trade.224 And

221 Id.
222 Id. at 166.
223 See, e.g., IMF Set to Help 2 South American Nations, L.A. TIMES, Aug. 4,
2001, at C2 (reporting that the IMF is preparing to extend $15 billion in emergency
credit to Brazil in an attempt to counteract economic troubles).
224 See Donovan et al., supra note 220, at 165 (stating the importance of the
United States and European Union export markets as one reason for adopting higher
safety standards).
similarly to China, Brazil’s problems did not seem to stem from a lack of adequate regulations but rather from the complete absence of enforcement by the government.\footnote{Id. at 166 (The article cites weak government enforcement of the new safety standards as one reason the majority of Brazilian companies, nearly 74.5%, are reluctant to implement the new measures.).} The study eventually found that in regions of Brazil that depended on trading with important partners for economic growth, such as the United States and the European Union, processors adopted the standards necessary to continue trade with that partner at higher percentages than their counterparts who catered to the domestic market.\footnote{Id. at 167-68 (Processors in the Northern and Northeastern regions of Brazil, which are dependent on exporting to the United States and the European Union, adopted the new safety regulations at the highest rates, forty-five percent and thirty-two percent respectively.).} In regions where the economy was not dependent on a more developed nation for trade, the adoption of stricter regulations was minimal, at best.\footnote{Id. at 168. Six years after stricter safety regulations were required by the Brazilian government, 88.5% of Brazilian processors which only sold domestically had yet to implement them. Id. at 167.} The study found:

When a stricter standard is enacted by a trading partner, an exporter reacts by either relinquishing the export market or adopting the standard. If it relinquishes the export market, its sells only in the domestic market at the status quo level of safety . . . . Otherwise, it adopts the stricter standard, and decides whether to sell only in the export market or to also sell in the domestic market . . . . Domestic food safety standards . . . . are affected only . . . . where the company decides to sell export-grade products, which we assume are safer, in the domestic market.\footnote{Id. at 169-70.}

Although Donovan, Caswell and Salay’s article focuses solely on food safety and Brazil, the theory behind Brazil’s ultimate choice to adopt stricter safety standards is applicable to any nation attempting economic growth that is likewise dependent on exporting its goods to more developed nations with stricter enforcement regulations. China, with its enormous gains in economic growth, relies on consumer driven, developed nations like the European Union and the United States for its continued prosperity.
The managing director general of the Asian Development Bank . . . cautioned that [Asia] remained dependent on exports to markets, especially the United States . . . . China is among the most dependent of all, he said, with international trade in goods equal to 65 percent of its economic output last year. ‘We are still fairly bullish on the Chinese economy’s growth potential,’ [he] said, but its dependence on exports ‘is a vulnerability.’

According to the “theory” established in Donovan, Caswell and Salay’s article, if an exporter decides to adopt a stricter safety standard within its domestic market, safety standards are bound to increase for both the developing nation and abroad. Applying this theory to China, it seems likely that if the United States and the European Union stand firm and refuse to negotiate on consumer product safety, China will be forced to cease trade with either one or both of these powers, or alternatively, begin to enforce safety standards. China, with her dependence on exports for continued prosperity, and by proxy, her dependence on the European Union and the United States, is likely to choose adoption and enforcement of Western consumer safety standards over cessation of trade with these partners. Once the Chinese government begins enforcing stricter safety standards on its export manufacturers, it seems likely that that it would also apply such standards domestically, rather than constantly monitoring two separate standards for products that are destined for domestic sale versus those products that will be exported.

Additionally, with China’s focus shifting away from the European Union and the United States toward a more global market, the refusal of either partner to compromise on safety regulations may eventually result in the development of an international lead standard.

VII. Conclusion

Lead exposure is a serious problem, not only in the United States, but also across the world. While the discovery of lead

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230 See Donovan et al., supra note 220, at 166-68.
paint being used on toys manufactured in China is alarming, many Western nations are aware of the detrimental effects of lead and are taking steps to alleviate the crisis and correct the problems with Chinese manufacturing. More frightening, perhaps, is the prospect of millions of people in undeveloped and developing nations around the world being exposed to elevated levels of lead who lack any knowledge of the serious consequences it can have on human health, childhood development, and pregnancy.

The United States and the European Union swung into action when lead was first discovered on Chinese made toys in June of 2007. While China has strict written regulations concerning allowable lead levels in paint, enforcement of this standard appears to be non-existent. This lack of enforcement places the United States in the difficult position of reconciling consumer safety concerns with its own economic interests. While the United States recognizes the necessity of insisting on enforcement of a strict lead standard, large American companies depend on China in order to produce goods at a competitive price.\(^{231}\) Europe, on the other hand, has largely resisted the urge to move its factories offshore to China, which puts it at a tremendous advantage when demanding that China institute consumer safety reform through adequate enforcement.\(^{232}\) In addition, because of the current weakness of the American economy, China is attempting to shift focus on exporting away from the United States, towards Europe and a more general global market.\(^{233}\) This shift places Europe in an even more strategic position to secure China's enforcement of strict national lead standards than the United States, since China would be risking a total loss of European consumers.

More importantly, insistence by the United States and the European Union on stricter standards could have far-reaching effects. Because China is currently attempting to export on a more global level, developing nations that have no lead regulations will be receiving products that could expose them to

\(^{231}\) Barboza, supra note 170 (citing pressure that Western companies place on their suppliers to maintain low production costs as an inevitable incentive to ignore safety regulations).

\(^{232}\) Stephen Castle & Dan Bilefsky, supra note 148.

\(^{233}\) China and Europe, supra note 203.
elevated levels of lead.\textsuperscript{234} Citizens of nations with no lead regulations could be left with no legal recourse if the serious health hazards of lead cause irreparable damages, or worse, death. Presently, China is not in a strong enough economic position to shift away from either the United States or the European Union as swiftly as it may like. China still remains vulnerable to the need for foreign direct investment, particularly on the part of the United States, and for the sale of exports to both of these regions. Thus, the time for demanding stricter enforcement of safety regulations by China is upon us.

There is light at the end of the tunnel. While the discovery of lead in toys being sold in the European Union and the United States is disturbing, the actual power of these giant trading partners to effect a global change in consumer safety regulations is apparent. The United States and the European Union have a truly unique opportunity to indirectly establish an international safety standard on lead, which could lead to better health for people around the globe.

MEGHAN JOSEPHINE CARMODY

\textsuperscript{234} See Lead-based Paint Problem, supra note 214.