



Product and Food Safety Legislation on Capitol Hill

China, Tainted Products, and Trade Tension: The Perfect Storm

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September 20, 2007

Today's Moderator



Seth Goldberg is a partner in the Washington office of Steptoe & Johnson LLP, where he is a member of the Regulatory and Industry Affairs Department and head of the Environment and Natural Resources group. A substantial part of his practice involves compliance advice, agency rulemaking and license decisions, and appeals from such decisions. In addition to experience in pesticide regulation, hazardous waste regulation, environmental remediation, and litigation, Mr. Goldberg represents clients on a range of chemical regulatory issues before the US EPA, OSHA, FDA, CPSC, and a number of state regulatory agencies. His practice focuses on product approval, compliance advice, and enforcement matters under a range of statutes and regulatory programs.

Today's Presenters



James Barnette is a partner in the Government Affairs and Public Policy group in Steptoe's Washington office. He served as General Counsel, counsel, and Deputy Staff Director for the US House of Representatives Committee on Energy and Commerce from 1995-2005. As General Counsel serving under Chairmen Joe Barton (R-TX), Billy Tauzin (R-LA), and Tom Bliley (R-VA), he helped enact over 100 laws, including the landmark Medicare Modernization Act, the Gramm-Leach-Bliley Act, and legislation in areas as diverse as bioterrorism preparedness, energy, telecommunications reform, consumer protection, and e-commerce. He currently focuses his practice on consumer protection, energy, telecommunications, healthcare, and environmental law.

Today's Presenters



Thomas Bliley, Jr., is a senior government affairs advisor in the Washington office of Steptoe & Johnson LLP. For 20 consecutive years he represented Virginia's Seventh District in the US House of Representatives. Beginning in 1994, he served as Chair of the House Committee on Commerce, the oldest committee in the House and the one with the broadest jurisdiction, for six years. Among many accomplishments, he led bipartisan efforts to enact food safety and safe drinking water legislation. Presently, he advises clients in the areas of government relations, the legislative process, and political advocacy strategy.

Overview

- Product recalls are obviously very much in the news. When it gets to America's Barbie, it hits home to everyone (particularly politicians)
- Because many of the recalls and most of the attention are directed at China, there is no love lost, nor any cost, for Capitol Hill to act
- Expect Congress to remain very active and legislate going into the Fall
- Beware the consequences and get involved

Congressional Action Thus Far

- **Senate: Durbin (D-IL) Hearing**
 - “Enhancing the Safety of Our Toys: Lead Paint, the Consumer Product Safety Commission, and Toy Safety Standards” in Appropriations Committee
 - Not “legislative” because held in Appropriations Subcommittee, but still meaningful
 - Durbin is the Assistant Majority Leader
 - In the appropriations process, he has the ability to include so-called “none of the funds” amendments
 - CPSC attacked on a bipartisan basis
 - Mattel CEO offers apology

Congressional Action Thus Far (cont.)

- **House: Rush (D-IL) Hearings**
 - “Protecting Children from Lead-Tainted Imports” in Energy and Commerce Committee
 - Chairman Dingell made clear that the Committee will legislate
 - CPSC expresses interest in legislation
 - Second hearing going on as we speak

Congressional Action Thus Far (cont.)

- **Oversight**
 - Rush/Stearns letters: sweeping requests for documents and information from retailers and manufacturers
 - Many individual Members have pelted the Administration
- Most of the focus on toys and product safety, but FDA-related matters still very much on the radar screen

Pending Legislation

- The “**Consumer Product Safety Modernization Act of 2007**” (S.1847, introduced by Senator Durbin (D-IL))
- This legislation: (1) reauthorizes the Consumer Product Safety Act (“CPSA”); (2) intensifies the recall procedures available to the Consumer Product Safety Commission (“CPSC”); and, (3) increases fines and penalties for violations of the CPSA.
- Senator Durbin is the Assistant Democratic Leader and therefore very influential in the movement of legislation.

Pending Legislation (cont.)

- **“Imported Food Security Act of 2007”** (S.1776, introduced by Senator Durbin)
- This legislation: (1) directs the Secretary of Agriculture to begin collecting “user fees” on the importation of food to pay for the new food safety inspection requirements under the Act; (2) requires the Secretary to develop a new system, whereby foreign governments and foreign companies will be forced to receive a certification that their imports meet the “standards for food safety, inspection, labeling, and consumer protection that are at least equivalent to standards applicable to food produced in the United States;” and, (3) permits the Secretary to halt the import of any specific food line unilaterally.

Pending Legislation (cont.)

- The “**Safe Food Act of 2007**” (S.654, introduced by Senator Durbin, and H.R. 1148, introduced by Representative DeLauro (D-CT)).
- This legislation: (1) establishes an entirely new “Food Safety Administration” (“FSA”), which would have consolidated control over food safety matters in the Federal government; (2) originates a sweeping new regulatory regime on virtually every aspect of food production and distribution, including a requirement for the registration of “foreign food establishments; and, (3) requires regular inspections; and, (4) imposes significant new civil and criminal penalties.
- Representative DeLauro is a member of the House leadership

Pending Legislation (cont.)

- **“Food and Drug Import Safety Act of 2007”** (a so-called “Discussion Draft” circulated by Representative Dingell (D-MI))
- This legislation: (1) imposes new food and drug safety inspection fees on imported foods; (2) restricts the ports to which foods may be imported; (3) requires country-of-origin and other labeling; and, (4) affords significant new enforcement and recall authorities.
- Representative Dingell is the longest-serving member of the House, and Chairman of the powerful Energy and Commerce Committee, which will have jurisdiction over this legislation when it is introduced.

CPSC Proposal

- The Consumer Product Safety Commission (“CPSC”) – really the Acting Commissioner – has proposed the **“Product Recall, Information and Safety Modernization Act”** (or “PRISM Act”)
- The PRISM Act (1) prohibits the sale of recalled items to consumers; (2) requires advance notice of recalls to retailers; (3) imposes significant new enforcement provisions; (4) provides for expanded recall authority; and, (5) authorizes CPSC funding on a “such sums” basis going forward
- The CPSC is in flux

Outlook Going Forward

- Congress likely in session until December
- Much attention will be focused on the budget, the war, energy, and healthcare issues
- But this issue has really hit home – lead E&C
Republican Joe Barton has a 2-year old son. In the hearings, many Members gave personal accounts – “parents are under siege”
- What Member is going to vote against legislation that “protects children from lead-tainted Chinese imports”?

Outlook Going Forward (cont.)

- Ford/Firestone is the paradigm in these circumstances
- The law of unintended (or over-reaching) consequences is very much in play
- Anyone involved in imported consumer products that may have safety issues needs to get involved in the process now
- Steptoe will remain very much involved in the process, particularly on the House side

Questions?

To ask a question:

1. Click the question mark (Q&A) button located on the tool bar in the bottom right of your screen.
2. Type your question in the rectangular space at the bottom and click the Send button.

Your questions will not be viewed by other attendees.

Upcoming Events

Please join us for

**Product Recalls:
Effectively Managing the Process**

Friday, September 28 · 1:00 p.m. EDT

To register, visit www.step toe.com

Thank you

- Thank you for joining us today.
- Please feel free to contact today's speaker at:

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