

"Comparative Analysis of EU and US Product Safety Regimes"

Roundtable Discussion at
ICPHSO European Meeting and Training Symposium
November 11, 2004

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Background on CPSC

- Safety Agency Has Jurisdiction Over “Consumer Products.”
- Very broadly defined - A product does not have to be sold at retail to be a consumer product
- Sometimes joint jurisdiction with NHTSA or other agencies

CPSC Background

- Broad power to establish safety standards, but usually prefers to encourage voluntary standards
- More focus on product defect investigations, failure to report investigations, and conducting product recalls

Product Defect Reporting

- Section 15(b) of the Consumer Product Safety Act requires a manufacturer or distributor or retailer to report to the CPSC if it has information that “reasonably supports” the conclusion that:
 - a defect in a product could create a substantial product hazard; or,
 - a product poses an unreasonable risk of serious injury or death
- Statutory maximum penalty of approximately \$1.7 million

Product Defect Reporting

- U.S. v. Mirama Enterprises, Inc. , 185 F. Supp. 2d 1148 (S.D. Cal. 2002), held as a matter of law that manufacturer should have reported juicer to CPSC after 3 to 5 consumer complaints about possibility the device would shatter and have flying pieces
- Mirima case just affirmed on appeal. 2004 WL 2404773 (Oct. 28, 2004)

CPSC Enforcement

- CPSC has the power under the Consumer Product Safety Act to investigate a product hazard situation
- If CPSC asks for a recall and the company refuses, CPSC has the power to bring an administrative complaint against the company to force corrective action

CPSC Defect Reporting

- CPSC receives several hundred reports every year. Not all lead to recalls.
- Low threshold for reporting
- Must look at worldwide data, not just US data
- Report may be filed by foreign entity. CPSC may look for an entity over which it has jurisdiction (retailer; importer; US subsidiary of foreign manufacturer.)

CPSC Defect Reporting

- Evolving role of retailers in reporting and recalls: Walmart litigation. Retailer sued for failing to report safety problem relating to a product made by another manufacturer
- Filing a report will lead to an investigation, including requests for documents
- Unreasonable delay can lead to a reporting case

CPSC Lawsuit Reporting

- Section 37 of the Consumer Product Safety Act requires that a manufacturer report three adverse judgments or settlements in two year period, involving suits alleging death or serious bodily injury
- Two-year period is set by statute. It re-sets at the end of each two-year period
- Civil penalties for failure to report

CPSC Enforcement: Trends

- Recent civil penalties.
- Actions against retailers.
- Criminal prosecutions.

Recall Notice-Central Web Site



your online resource for government recalls

Consumer Products

Motor Vehicles

Boats

Food

Medicine

Cosmetics

Environmental Products



The **U.S. Consumer Product Safety Commission (CPSC)** has jurisdiction over more than 15,000 kinds of consumer products used in and around the home, in sports, recreation and schools including:

- appliances
- clothing
- electronic / electrical
- furniture
- household
- children's products
- lighting / lighter
- outdoor
- sports / exercise

→ [CPSC Recalls](#) - Home

→ [Product Search](#) - Look for a general recalled product type

→ [Product Description Search](#) - Look for a specific recalled product, including words that may be on it or its packaging

→ [Company Search](#) - Look for recalls involving a specific company

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[Privacy and Security Notice](#). This site is provided as a resource for federal recalls. Please direct questions about specific recalls to the appropriate agencies listed above. Technical questions about this page can be directed to the recalls.gov [webmaster](#).

Collateral Issues

- Documents created and submitted to government can be used in later litigation
- Documents available in discovery and under Freedom of Information Act
- Recalls can spur class action litigation and products liability litigation
- Must consider worldwide recall implications

Worldwide Recalls/Regulatory Coordination

- Defect reporting, or a recall, in one country should cause company to consider other countries
- Involvement of one governmental agency may lead to knowledge by other government agencies

Comparison to EU

- GPSD: broader product coverage
- One central agency and one federal law vs. multiple agencies and laws.
- Timing differences: no RAPEX.
- US has established recall and penalty procedures; EU is developing.
- EU: more emphasis on standards, including safe harbor for compliance.

Comparison to EU

THE WALL STREET JOURNAL.

WEDNESDAY, SEPTEMBER 15, 2004 **A19**

INTERNATIONAL

Worlds Apart on Product Safety

As EU Makes It Easier for Regulators, Red Tape Reigns in U.S.

By ALEXEI BARRIONUEVO

LIGHTING UP just got safer in Europe. But don't count on the U.S. to follow suit.

In April—just three months after a new consumer-safety directive took effect here—the European Union banned cheap Chinese cigarette lighters that Canadian and Mexican regulators already had deemed dangerous. Meanwhile, U.S. lighter makers' efforts to get the gadgets barred from the American market have gone nowhere despite three years of government safety testing.

The lighters saga highlights a widening divide between U.S. and European approaches to consumer-product safety regulation—even when it is businesses rather than consumers pushing for safety rules. U.S. and European officials have talked about harmonizing their policing of consumer safety as globalization carries products far and wide, but in many ways they are going in opposite directions. As Europe increasingly gives regulators more clout and flexibility, their American counterparts remain hamstrung by a bureaucratic thicket that prolongs efforts to remedy all but the most egregious product defects.

"The administrative procedure we have to go through is more burdensome than it needs to be," said Hal Stratton, chairman of the U.S. Consumer Product Safety Commission.

The new European directive strengthens the EU's authority to recall products and impose emergency bans under the so-called precautionary principle that has come to dominate regulation in Europe and Canada. The principle generally allows regulators to ban products based on a lower burden of proof of their

Brussels

Safety Dance

Despite talk of harmonizing consumer-safety rules across borders, the EU and U.S. actually are taking divergent approaches to regulating troublesome products such as the cigarette lighter and toys pictured here.

Products recently banned by EU, not by U.S.:

- Yo-yo water balls (fear that toy poses strangulation danger)
- Phthalates (concerns about chemicals that soften plastics in such things as baby teethingers)
- Disposable lighters (certain Chinese ones explode and flare up, among other things)

More heavily regulated by EU:

- Cap guns (Europe sets lower acceptable-noise level)
- Decorative oil lamps

Sources: U.S. Consumer Product Safety Commission; European Union



sticky administrative process have hobbled its ability to ban much of anything.

In November 2001, the Lighter Association Inc., a Washington lobbying group for companies that make lighters, petitioned the CPSC to adopt a mandatory standard for lighter safety similar to ones in Canada and Mexico. The association, which represents makers of 60% of the lighters sold in the U.S., including Bic Corp. and

per 900 million lighters sold—wasn't high enough to justify a rule and that the industry hadn't proved that compliance with the voluntary standard was low enough to merit mandatory enforcement.

The commission was to hold a public meeting yesterday on the Lighter Association's petition. Mr. Stratton said it is rare for the commission to overturn a staff recommendation.