

**TESTIMONY OF DONALD L. MAYS**

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**"Ensuring the Safety of Chinese Imports:  
Oversight and Analysis of the Federal Response"**

Before the  
U.S. SENATE  
COMMITTEE ON COMMERCE, SCIENCE, & TRANSPORTATION

JULY 18, 2007

Good morning, Chairman Inouye, Vice-Chair Stevens, Senator Pryor and other distinguished members of the Committee on Commerce, Science and Transportation. I am Donald Mays, Senior Director of Product Safety Planning and Technical Administration for Consumers Union, publisher of *Consumer Reports*.<sup>1</sup> I am here today representing both Consumers Union and the Consumer Federation of America.<sup>2</sup> Thank you for providing me the opportunity to address this Committee about the ability of our federal government to ensure the safety of consumer products and foods imported from the People's Republic of China.

For the past 30 years I have focused my career on product safety and performance testing for manufacturers and retailers, as well as for consumers. I have traveled to China many times, visiting factories and working with testing laboratories that ensured products were safe before they were exported to the United States.

I believe I bring to the issue a unique perspective of someone who understands the competitive pressures of getting new products to the market as quickly and as economically as possible. But I also understand that consumers need to trust that the products they use and foods they eat are safe.

The number of Chinese-made products being recalled in the U.S. has doubled in the last five years, helping to drive the total number of recalls in this country to an annual record of 467 last year. Chinese-made products account for 60 percent of all consumer-product recalls, and 100 percent of all 24 toy recalls so far this year. Clearly,

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<sup>1</sup> Consumers Union ([www.consumersunion.org](http://www.consumersunion.org)) is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to Provide consumers with information, education and counsel about good, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

<sup>2</sup> Consumer Federation of America (<http://www.consumerfed.org>) is a nonprofit association of 300 consumer groups and, a combined membership of more than 50 million people dedicated to advancing the consumers' interest through advocacy and education.

we need to find a better way of preventing unsafe products from crossing our borders and ending up in the homes of consumers.

Consumers Union, and its magazine *Consumer Reports*, continually offers suggestions on how the US government can better ensure the safety of the supply of foods and consumer products entering our marketplace. We believe the responsibility for safety has to be firmly attached to each link in the supply chain. Producers, importers, distributors, and retailers, as well as the government agencies with the relevant jurisdiction, have to own that responsibility. In addition, Consumers Union urges more coordination among government agencies charged with safeguarding the American public. They need better tools and more resources to protect the health and safety of American consumers.

### **Battling Unscrupulous Business Practices**

The world's large, powerful retailers have become the major driving force for quality and safety standards, particularly with foreign-sourced goods. We believe that the pressure major retailers place on suppliers to cut costs often result in cut corners. The net effect can be deadly or seriously harmful products.

Each of the recent high-profile safety problems with Chinese imports were characterized by deceptive or dishonest business practices in an effort to cut costs. Melamine, which is toxic to animals, was blended into pet food to give artificially high protein readings. Diethylene glycol, potentially lethal to humans, was substituted for its higher-cost cousin, glycerin, in the manufacture of toothpaste. Tires were surreptitiously manufactured with either a minimal or missing gum layer needed to prevent catastrophic tread separation. Toxic lead paint was substituted for the paint that was originally approved for popular children's toys, presumably to save money. These are all cases where unscrupulous business practices have jeopardized the health and safety of the consumer.

The Memoranda of Understanding that the CPSC has signed with a dozen countries, including the People's Republic of China, has little effect when ethics violations run rampant in the Chinese manufacturing sector. Our government agencies must better police Chinese-made goods to protect American consumers, but to protect the reputations of American manufacturers whose brand names get tainted by the deceptive business practices of suppliers.

### **Federal Agencies Are Not Equipped to Ensure the Safety of Imports**

The recent onslaught of unsafe Chinese imports into the US – contaminated pet food, toxic toothpaste, lead-laden toys, hazardous tires, contaminated seafood, and unsafe appliances – are clear indications that we are not stopping unsafe and substandard products from crossing our borders. U.S. imports from foreign countries have nearly doubled over the last three years. As the number of imported products increase, our federal agencies in charge of protecting the public from unsafe consumer products and foods must proportionally increase their inspections and oversight of these products. Yet, the staffing levels and budgets for the FDA, NHTSA, and CPSC have remained either stagnant or have decreased over recent years. For example, the staffing level of the CPSC has been steadily dwindling. The budget for fiscal year 2007 culminates a two-year reduction of full-time positions from 471 to 420 -- a total loss of 51 employees. The number of full-time positions will be further reduced to 401 during 2008.

As a result of staffing cutbacks, very few shipments received at our ports are ever inspected for safety. For example, only one percent of all food imports are inspected by the FDA. Our government safety agencies must be given the resources necessary to protect public safety. We need more inspections at foreign factories or processing plants as well as inspections at our ports of entry.

### **Need for Pre-shipment Inspection**

Most major US retailers employ independent testing and inspection companies to provide quality assurance inspection of goods after being manufactured and prior to being shipped. This service involves independent inspectors that statistically sample,

inspect, and test products designated for shipment. They look for minor, major, and critical defects, the later of which will stop a shipment, usually due to safety issues. When standards are required and enforced by importers and retailers, Chinese factory officials will go to great lengths to make sure the products they produce will meet their client's standards and pass inspection.

I have seen the pre-shipment inspection and testing process work first hand and know it can be an effective method for preventing unsafe or defective products from ever leaving the country of origin. However, the focus on a product's "speed-to-market" by some retailers can short-circuit the testing and inspection process. Testing and inspection companies are often rushed to get their jobs done and comprehensive testing may not be possible. In addition, although it is not an expensive service compared with the costs of bringing a product to market, small importers and retailers are often reluctant to employ the inspection and testing process. Several years ago when I was involved in pre-shipment inspection services, the typical cost was about only \$200 to \$250 per man-day – several inspectors would be on site for about five days on average, depending on the size of the shipment.

If importers, distributors, and retailers were held accountable for product safety, the nature of the way they do business would change dramatically. Pre-shipment testing and inspection would become a critical part of quality and safety assurance along the supply chain.

### **Need for Safety Certification**

Virtually all electric-powered products sold on the US market are certified to comply with voluntary safety standards set by Underwriters Laboratories (UL). Several independent testing laboratories are accredited to certify these products under the "Nationally Recognized Testing Laboratories" program administered by the Occupational Safety and Health Administration (OSHA). Retailers and consumers have learned to look for the "UL-listed" or equivalent CSA- and ETL-listed marks as an indication of product

safety assurance. Unfortunately, no similar program exists for most other products, including toys and juvenile products, foods, cosmetics, or automotive equipment.

Consumers Union believes that a US government-administered, third-party conformity assessment program for all imported products could help ensure that they meet our safety standards. If done right, this program would give consumers at least a minimal level assurance that the products they buy are safe to use or consume.

### **Need for Product Traceability**

The recent reports of toxic and counterfeit toothpaste highlighted another serious gap in our government's ability to ensure product safety – lack of traceability. We support legislation that would require “country-of-origin labeling” of foods, drugs, and cosmetics. (A recent poll conducted by Consumers Union found that 92% of consumers favored country-of-origin labeling on all foods.) Furthermore, we urge this Committee to require the establishment of a chain-of-custody verification program so that tainted or unsafe ingredients can be traced back to their original manufacturer.

The need for traceability pertains not only to FDA regulated products, but also to other consumer goods. Faulty or dangerous components in one manufacturer's product may also be incorporated into products produced by other manufacturers. Unless faulty components can be traced to their source, there is little chance of catching safety problems before they manifest themselves, sometimes in the form of serious hazards.

### **Safety Bond for Product Recalls**

The recent Chinese-made tire recall highlights the problem of importers sometimes not having the resources to conduct a recall. This is an unacceptable situation. We recommend that, just as drivers must have auto insurance, importers must post a bond to insure that they can fund a recall should their product prove dangerous or defective. Government agencies should be given the authority to call the bond should the importer not have the resources to handle a recall or be no longer in business.

### **Need for Meaningful Civil and Criminal Penalties**

We think that the levying of significant civil penalties against companies that bring unsafe products to the market, either intentionally or because of a lack of due diligence, would serve as an effective deterrent. Each agency should have the authority to levy sufficient penalties for compliance violations. Currently, the limit on civil penalties that can be levied by the CPSC is only \$1.83 million. This amount is inadequate to serve as an effective deterrent for large companies. Large retailers and manufacturers may look at the current cap on civil penalties as simply a cost of doing business.

Additionally, the principals of companies who knowingly and repeatedly import, distribute, and sell unreasonably dangerous products should be subject, personally, to criminal penalties. Consumers Union supports legislation designed to deter employees with decision-making authority from knowingly or recklessly jeopardizing consumer safety by subjecting them to criminal liability.

### **Need for Recall Authority**

We believe that all agencies should have mandatory recall authority. Although NHTSA and the CPSC have mandatory recall authority under their statutes, with the exception of infant formula, the FDA does not have mandatory recall authority for unsafe foods.

Currently, the CPSC is short a third commissioner and therefore lacks the quorum necessary to execute a mandatory recall. We urge the Committee to expedite legislation that will restore the CPSC's authority and enable the agency to unilaterally mandate the quick removal of unsafe products from the marketplace. We support the proposal to extend to CPSC the authority to act with only two commissioners.

Additionally, for each agency, it must be made illegal for a party to sell products that have been recalled. Currently, there are no laws that would prevent the sale of a recalled consumer product under the CPSC's purview.

## **Public Disclosure**

Each agency should publicly disclose reports it receives linking the use of foods, drugs, cosmetics, and other consumer products to serious and potentially serious injuries. In addition, each agency should disclose when it opens an investigation on potentially hazardous products. Currently, the FDA and NHTSA make much of this information public; the CPSC cannot disclose this information due to limits imposed on the agency by Section 6b of the Consumer Products Safety Act. Public disclosure can help warn consumers of potential hazards while an investigation is on-going. Last year's outbreak of e-coli contaminated spinach could have cost many more lives had the FDA not sent out early warnings about the problem. To serve the public interest, we believe that full disclosure should be exercised by each government safety agency.

## **Closing remarks**

In closing, we are suggesting eight points of action that we think must be considered to help safeguard the health and safety of American consumers from the onslaught of unsafe Chinese-produced consumer products and foods:

1. Provide increased resources to government safety agencies to prevent unsafe products from crossing our borders
2. Hold suppliers, importers, distributors, and manufacturers accountable for bringing unsafe products to the market by requiring pre-shipment inspections and testing to ensure product safety
3. Develop US government-administered, third-party safety certification programs for all products
4. Develop a product traceability program for both country-of-origin labeling for food and consumer products as well as for all components and ingredients
5. Require that importers post a bond to ensure they have sufficient resources to recall their products should they prove dangerous or defective
6. Give all agencies with enforcement authority the power to levy meaningful civil penalties for manufacturers, importers, distributors, and retailers who fail to



comply with regulations, and criminal penalties for those who knowingly and repeatedly jeopardize public safety

7. Authorize mandatory recall authority for all government agencies
8. Require all government agencies to publicly disclose information pertaining to safety investigations and reports of adverse events

We appreciate the opportunity to testify on these issues of great importance to consumers, and look forward to any questions.

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