



# China Alert

## China-related business developments and research

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### The Perils of Doing Business in China

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As evidence of the country's efforts to strengthen its focus on addressing manufacturing concerns, Chinese health authorities recently have taken large, public efforts to ensure safety. Within recent months, officials have launched an investigation into a U.S. manufacturer's bath products after a U.S. consumer group claimed the items contained potential carcinogens. And, as a more extreme example, following the Sanlu melamine-milk scandal which took the lives of six children, two Sanlu executives received a death sentence while another received a life sentence for involvement in the scandal and failure to properly investigate complaints made by consumers.

In response, on Feb. 28, 2009, China adopted the Food Safety Law which will go into effect June 1, 2009. U.S. manufacturers entering the Chinese market should be keenly aware of these changes as failure to abide by this new law can result in civil and criminal sanctions. Moreover, China is expected to overhaul its current tort and products liability laws to greatly expand the potential for damages against noncompliant companies.

#### **Effect of the Food Safety Law on Producers or Manufacturers of Food or Food-Related Products**

The new Food Safety Law broadly applies to the production, processing, distribution and sale of food and food-related products. All companies that produce or sell any food or food-related products must abide by the Food Safety Law.

The law defines "food" as any "processed or unprocessed substance to be eaten or drunk by humans, including beverages, chewing gum and substances added to or residual in food." The new law also expressly includes all food products imported into China. All such products, including prepackaged products, must have an appropriate Chinese label affixed on the products and all importers are required to register with the state's entry-exit inspection and quarantine authorities to assure their imported products meet the law's specific requirements. Further, all companies importing food products into China must have records of all products imported and distributed and maintain these records for at least two years. The new Food Safety Law also specifically provides that no company may produce a food additive without obtaining a production permit from the applicable Chinese authority. For those who do have permits, food producers may only utilize food additives in strict compliance with national food safety standards in terms of type, usage and amount. No other chemicals besides those being produced with a permit may be added into foods or food-related products.

Under the new law, China's cabinet will also be empowered to set up an overarching state-level food safety commission, which will oversee the entire food monitoring system in China. The law will provide for a national recall system and penalties for noncompliance with government recalls and will force food producers and distributors to specifically establish and abide by strict internal inspection and record systems for all raw materials and food products.

### **Violations of the Food Safety Act**

Manufacturers that are found in violation of the new law can face maximum fines of 10 times the value of the products sold and may also face mandatory business closure or revocation of production licenses for serious violations. Also, if the food-production license of any food producer is revoked due to a violation the individual in charge will be banned from taking another management position with any food-production company for five years. The law also provides consumers with the ability to seek civil compensation of up to 10 times the price of the product in addition to compensation for any harm caused by tainted food. This clause was added as a direct result of the thousands of melamine-milk cases refused to be heard by Chinese courts. As for criminal liability, those who do not abide by the Food Safety Law may face criminal sanctions if the actions taken violate Chinese law. Finally, in order to combat the abundance of celebrity advertising of unsafe products, the new law states that all organizations and entities, including celebrities, which advertise unsafe foods will be held jointly responsible for violations along with the producer and/or distributor.

### **Proposed Changes in Tort Liability Law**

In addition to the Food Safety Law, the proposed Tort Liability Law has been proceeding through the Chinese legislative process for over seven years. Recently, however, China's head legislator, Wu Bangguo, stated that this law will be finalized and adopted later this year. The proposed law will provide for a new legal framework for products that are found to be defective. Manufacturers will be held liable for actual damages as well as the emotional distress that their products cause the consumer. The proposed law will also allow victims to seek punitive damages against manufacturers that continue to make products after they learn that the products are defective.

### **Suggestions for Manufacturers Doing Business in China**

Any U.S. manufacturer doing business in China or considering entering the Chinese market faces risks — which are, however, manageable. In order to limit their foreign exposure to criminal or civil liability, manufacturers and distributors should find legal representation familiar with China's Food Safety Law and products liability laws to ensure that all applicable standards are met for each particular product. Furthermore, each manufacturer or distributor should establish a recall procedure that will allow for the immediate return of all products found unsafe, and to investigate the cause of the events and any possible violations of law.

Finally, if the company is cited or found in violation of Chinese law, all penalties imposed should be promptly satisfied.

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