

# Do you Know the Manufacturing and Distribution Processes of the Products You Import?

New Import Safety Initiatives Will Require You Do!

DrinkerBiddleGardnerCarton

The Interagency Working Group on Import Safety (“Working Group”), established by the President’s Executive Order on July 18, 2007, is moving quickly through the President’s mandated steps to improve import safety. The Working Group issued its initial report on import safety on September 10, 2007, entitled *Protecting American Consumers Every Step of the Way: A strategic framework for continual improvement in import safety*. Since publication of the report, the Working Group members and key government agencies have been conducting outreach with the trade to obtain input as to how safety of imported goods can be enhanced.

The Working Group held a public meeting on October 1, 2007, in which it sought public comment on the framework and recommendations for its implementation. In addition, the Department of Homeland Security held a public webinar on October 5, 2007, to solicit additional input from the trade.

The Working Group’s report outlined a suggested framework to improve the safety of imported products, and will be followed by an action plan in November that will provide short and long-term recommendations for importers, carriers and government agencies. With more than \$2 trillion worth of imports coming into the United States in 2007, from more than 825 importers and at least 200 countries, and with the volume of imports expected to triple by 2015, the Working Group has stated that it is clear that we can no longer “inspect our way to safety.”

The proposed strategic framework would change the focus of import safety from an intervention, border-based strategy to a life-cycle approach that stresses prevention. On this basis, imports would be viewed

as a “video” of the product’s import life cycle, rather than a “snapshot” of the product at the border, which is currently the case.

## Framework Summary

The three prongs of the proposed framework are prevention, intervention and response.

### 1. Prevention

Under the first prong, prevention, the focus would be on importers making an effort to learn more about the manufacturing and distribution processes of their imported products. This might include implementing appropriate preventive measures and requiring manufacturers and carriers to apply them. Building quality into the product from the very start will be a necessity. Further, third party certifications and testing could become standard protocol to assist with the prevention of unsafe products.

### 2. Intervention

The second prong is intervention after identifying risks. This task is expected to be adopted by importers, manufacturers and governments. For importers, this means ensuring pre-entry documentation and certification requirements are in place. With respect to governments, risk-based inspections are anticipated, along with sampling that uses science-based detection technology. The discovery of problems before arrival or at the U.S. border should prompt government officials to act quickly to seize, destroy, or otherwise prevent unsafe goods from reaching U.S. consumers. The earlier unsafe goods are identified, the more likely an intervention will be successful.

### 3. Response

If unsafe products reach U.S. consumers despite the steps taken above, the Working Group envisions quick action to limit potential exposure and harm to U.S. consumers beyond mere recall notices.

The Working Group identified the following steps to achieve its vision:

- Advance a common vision among the federal agencies.
- Focus on risks during the import life cycle rather than only at the U.S. border.
- Increase accountability, enforcement, and deterrence.
- Build interoperable systems capable of communicating with each other.
- Foster a culture of collaboration among importers, producers and governments to prevent unsafe products from entering the United States.
- Promote technological innovation to potentially screen larger volumes of imported products and research the causes of the underlying risks.

#### Comments from the Trade

Certain comments or opinions appeared to be fairly consistent among the presenters providing testimony. The following is a brief overview of the key remarks:

- The Food and Drug Administration (“FDA”), Consumer Product Safety Commission (“CPSC”) and other government agencies involved in safety will require additional funding and resources to accomplish the goal of import safety.

- The trade generally supports the use of third parties to provide certification services of foreign manufacturers.
- Foreign manufacturer standards (*e.g.*, performance) need to be developed and implemented.
- Further standardization on actual enforcement of regulations pertaining to import safety is required.
- The issue of safety is not limited to imported products (this was especially noted with respect to testimony on food safety), but action items must also cover domestically manufactured goods.
- Partnership programs that would allow for expedited entry of goods for importers deemed “low risk” was of interest (comparison to C-TPAT was made, including the potential to add components to C-TPAT to cover import safety).
- Traceability of the goods (especially when it comes to recalls) will be critical and must be addressed.
- Standardization in labeling (CODEX<sup>1</sup> was mentioned as an example by more than one presenter) is necessary.
- Agencies such as the FDA need more legislative authority to mandate recalls versus relying on importers to take proper action on tainted goods.
- Numerous associations that testified stated the government should work with trade associations to leverage existing standards systems that may already exist but could be further expanded.

The testimony indicated that the trade certainly recognizes the growing problem and the need for

<sup>1</sup> The CODEX Commission develops internationally agreed upon standards and related texts for use in domestic regulation and international trade in food that are based on scientific principles and fulfill the objectives of consumer health protection and fair practices in food trade. Parent Organizations for CODEX are the Food and Agriculture Organization of the United Nations and the World Health Organization.

more consistent and robust standards. In addition, multiple presenters stressed the need for incentives and benefits for importers to improve product safety, but at the same time noted that for those “carrots” that were offered, it would be critical that the “sticks” were sufficient.

### **Responsibilities for Import Safety**

Although the Working Group expects the burden of inspection will be on importers, U.S. government agencies would also have some additional responsibilities. For instance, the federal agencies would work with foreign governments to oversee manufacturers within their borders to help ensure products meeting U.S. standards are manufactured in their countries. Many presenters at the Working Group’s public hearing indicated they believed that the government should bear the costs and responsibilities of inspecting goods with potential import safety issues.

### **Data Sharing on Import Safety**

The International Trade Data System (“ITDS”) received a great deal of attention at the public hearing on October 1. ITDS, which was made mandatory by the SAFE Port Act of 2006, provides for an electronic interface among all federal agencies to monitor and control the movement of imported products through commerce.

The expectation is that ITDS will create a single window for the exchange of information among importers, carriers and government agencies, which will help to prevent and intercept potentially dangerous products from reaching U.S. consumers. By a Presidential Executive Order issued on September 10, 2007, ITDS became a requirement for all government agencies with a firm deadline to complete individual agency plans by November 12, 2007, and each agency must fully utilize ITDS by 2009.

### **Recently Introduced Legislation**

Although the Working Group has been very active in conducting public outreach as it develops its action items, this has not stopped Congress from taking its own steps to address the situation. As was the case in the wake of the Dubai Port panic, there has been a

landslide of legislation introduced to address a broad range of safety-related issues. Consider the following examples:

- H.R. 3580 (signed into law on September 27, 2007) – The bill requires companies to report contaminations of the food supply within 24 hours of determining the problem, and also includes measures to establish standards for pet food and increased inspections of aquaculture.
- H.R. 3100 – A bill to increase inspections of imported toys and to increase civil penalties for violators.
- S. 1833 – A bill to require all toys or products intended for use by children five years or younger to have a certificate of compliance with consumer product safety standards issued by an independent, third-party testing agency.
- S. 1847 – A bill that would expedite the release of information in the event of a recall, establish a minimum fine for companies that do not comply with a recall order, and increase the maximum civil penalties from \$1.25 million to \$20 million.
- S. 1776 – A bill to amend the Federal Food, Drug, and Cosmetic Act (“FDCA”) to establish a user fee (per line item of food imported, not to exceed \$20 per line) program to ensure food safety, and for other purposes.
- H.R. 3477 (and H.R. 3499) – A bill to amend the Consumer Product Safety Act (“CPSA”) to require third-party verification of compliance of children’s products with consumer product safety standards.
- S. 2037 – A bill to amend the CPSA to make it unlawful to see a recalled product.
- S. 2045 – A bill to reform the CPSC to provide greater protection for children’s products, to improve screening of non-compliant consumer products, and to improve effectiveness of product recall programs.

- H.R. 3588 – A bill to amend the CPSA to provide CPSC with greater authority to require recalls, and mandatory routing product testing.
- S. 2077 – A bill to establish a program to ensure the safety of fresh produce intended for human consumption.
- S. 2081 – A bill to require manufacturers to demonstrate sufficient means to cover, for certain products distributed in commerce, costs of potential recalls.
- S. 3610 – A bill to amend the FDCA with respect to the safety of food and drugs imported into the United States.
- H.R. 3624 – A bill to establish a comprehensive program to ensure the safety of food products intended for human consumption, which are regulated by the FDA.
- S. 2095 – A bill to amend the Agricultural Marketing Act of 1946 to require country of origin labeling for processed food items.
- H.R. 3683 – A bill to direct the CPSC to investigate the potential dangers in children’s clothing and to promulgate any necessary consumer product safety rules regarding such clothing.

It is likely that some form of additional legislation will be passed in the coming months, and it is important for importers to stay abreast of pending legislation and voice comments to their elected officials, where necessary, to avoid new laws that could inhibit trade.

### **Conclusion**

The transcript of the October 1, 2007 hearing will be available to the public within the next few weeks at [www.importsafety.gov](http://www.importsafety.gov). The detailed action plan should be available in mid-November. In the meantime, it would be a good idea for companies to review their procedures and records to determine how much effort will be required to ensure compliance with the proposed framework. While importers who are C-TPAT certified and/or Importer Self-Assessment participants may be a step ahead of the game, a more thorough review of the manufacturing processes that imported goods undergo prior to importation could help ensure minimal exposure in this area, negligible disruptions to the supply chain, and little or no enforcement action. In addition, there has been discussion that a safety partnership program may be merged into the C-TPAT program, which would put members of C-TPAT ahead of the curve.

## Customs & Trade Practice Group

Any questions should be directed to Karen Lobdell (312.569.1066, Karen.Lobdell@dbr.com) or Beata Spuhler (312.569.1158, Beata.Spuhler@dbr.com) or any other member of Drinker Biddle Gardner Carton's Customs and Trade Group.

### **Kathleen Murphy**

Chair, Partner  
(312) 569-1155  
Kathleen.Murphy@dbr.com

### **Therese Ignich**

Trade Specialist  
Licensed Customs Broker  
(312) 569-1582  
Therese.Ignich@dbr.com

### **Joan Koenig**

Counsel  
(312) 569-1163  
Joan.Koenig@dbr.com

### **Karen Lobdell**

Global Trade and Supply Chain  
Specialist, Licensed Custom Broker  
(312) 569-1066  
Karen.Lobdell@dbr.com

### **Randy Rucker**

Counsel  
(312) 569-1157  
Randy.Rucker@dbr.com

### **James Sawyer**

Partner  
(312) 569-1156  
James.Sawyer@dbr.com

### **Beata Spuhler**

Associate  
(312) 569-1158  
Beata.Spuhler@dbr.com

### **Michelle Welsh**

Associate  
(312) 569-1172  
Michelle.Welsh@dbr.com