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CONSUMER PRODUCT SAFETY ISSUES IN THE UNITED STATES VERSUS THE EUROPEAN UNION

AN EURO-AMERICAN LAWYERS GROUP BRIEFING ARTICLE

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The revised EU General Product Safety Directive, which was scheduled to become law in the UK on October 1, 2005, introduces substantial safety management obligations for producers and distributors in the EU. (Directive 2001/95/EC, OJ L 11/4, 15.1.2002.) The EU legal framework governing consumer product safety and product liability issues has been strongly influenced by U.S. law, but there are also significant differences.

Both sets of laws require notification of government authorities "immediately" upon learning that an unsafe product may have been placed in the stream of commerce. (See Directive Article 5(3); Consumer Product Safety Act, 15 U.S.C. §2064(b), Section 15(b).) However, whereas a manufacturer in the U.S. deals with one government agency (typically, the Consumer Product Safety Commission ("CPSC")), product safety notifications in the EU may involve authorities in 25 or more different countries.

In the U.S., the reporting company must notify the CPSC within 24 hours if the information is clearly reportable, or, otherwise, following "a reasonably expeditious investigation," generally meaning within 10 days. In the EU, producers and distributors are required to report within 10 days, whether or not an investigation is completed, or within 3 days if a product poses a "serious risk" to the health of consumers, or even sooner where the risk creates an "emergency situation." (Directive, Annex I; Guidelines at §4.3.)

In the U.S., a reporting party must notify when its product (a) fails to meet an applicable consumer product safety standard, (b) poses a substantial product hazard to consumers, or (c) creates an unreasonable risk of serious injury or death. In the EU, the obligation is broader – a producer or distributor must notify when its product "poses risks to the consumer that are incompatible with the [Directive's] general safety requirement." (Directive, Article 5(3).)

In the U.S., the presumption is that the notification and ensuing correspondence are confidential (at least during any CPSC investigation), and a manufacturer can deny that a safety issue exists when notifying of a product problem. In the EU, information provided in a notification is much more likely to be disclosed publicly, and sooner, and notification is essentially an admission that the product is not, or may not be, safe.

U.S. manufacturers and suppliers who sell consumer products into the EU need to recognize the increased obligations under EU laws, as well as the differences in the U.S. and EU systems, and should consult qualified European counsel in order to avoid any surprises.

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