

March 1, 2024

Dan Harris

Attorney, Harris Sliwoski Law Firm

Testimony before the U.S.-China Economic and Security Review Commission

“Consumer Products from China: Safety, Regulations, and Supply Chains”

**1. What are the most critical issues facing U.S. companies in ensuring the quality and safety of goods manufactured or sourced from China?**

The most critical issues U.S. companies face in ensuring product quality and safety from their Chinese manufacturers are (1) selecting a reliable Chinese manufacturer, (2) drafting contracts that will be enforced against their Chinese manufacturers, and (3) conducting comprehensive Chinese factory inspections.

**Selecting a reliable Chinese manufacturer:** Identifying trustworthy manufacturers in China is difficult, due to the Chinese government's control over data access. China's counterespionage laws make conducting due diligence on Chinese companies potentially illegal, which in turn makes doing so fraught with risk.

In the past, any of my law firm's lawyers or paralegals proficient in Chinese could access government records online to conduct due diligence on Chinese companies. Today, we must rely on an “approved” Chinese citizen within China (or who appears to be within China to the Chinese internet police) to perform this research, a change that adds time and complexity to the process.

**Drafting Contracts that will be enforced against their Chinese manufacturer:** In international manufacturing, the dual incentives of ongoing business and the threat of legal action ensure product quality and safety. In China, however, enforcement of legal judgments is challenging.

Enforcing a judgment or arbitration award against a Chinese manufacturer requires navigating China's court system. Chinese courts generally enforce breach of contract actions, but the effectiveness of such enforcement can vary, especially if the ruling could significantly impact the Chinese defendant or cause job losses.

 600 Stewart Street, Suite 1200, Seattle, Washington 98101

 (206) 224-5657

 firm@harris-sliwoski.com

 harris-sliwoski.com



Navigating these legal challenges requires China-specific contracts that account for the jurisdictional and enforcement realities in China. Foreign companies and their legal representatives must ensure their contracts are precise to avoid common pitfalls that could weaken their position in Chinese courts.

**Conducting comprehensive Chinese factory inspections:** Heightened risks and expenses related to traveling to China have led many businesses to reduce their direct visits to Chinese factories. Although using local quality control (QC) firms for routine inspections offers a partial solution, it reduces the level of direct control and understanding that comes from direct, first-hand inspections.

The impact of this reduction varies depending on the product. For buyers of simple products like t-shirts, the effect is probably minimal. But for those producing more complex and safety-critical products, such as airplane parts, the consequences of decreased direct oversight might be significant.

### **2. How frequently do Chinese producers fail to fulfill manufacturing contracts for U.S. companies?**

In the last two years, I have had more American companies come to me with quality issues involving their Chinese suppliers than at any other similar period in the last decade. This trend in product quality issues likely results from China's economic downturn after the pandemic, along with the challenges American companies face in maintaining quality standards with Chinese manufacturers.

### **3. Why might Chinese manufacturers choose not to or otherwise fail to comply with contractual agreements?**

The primary driver behind a manufacturer's decision not to adhere to contractual agreements is financial gain. To secure contracts and increase profits, Chinese manufacturers often overrepresent their production capabilities or resort to cost-cutting measures that compromise quality.

### **4. Are there any formal Chinese regulations ensuring or restricting U.S. firms' ability to conduct due diligence on factories and producers in China? Are there any informal barriers to conducting these checks? What options do U.S. firms have if they are denied access or otherwise unable to conduct due diligence checks on Chinese producers?**

China's counter-espionage laws restrict due diligence efforts and complicate access to crucial Chinese government records. Informal barriers further exacerbate these challenges.

Chinese laws do not explicitly ban conducting due diligence on China companies, but doing so falls within a legal gray area. This legal ambiguity, coupled with the risk of inadvertently breaking laws, poses significant challenges for foreign companies attempting to conduct due diligence.



Given these complexities, U.S. firms must act carefully, balancing the need for thorough due diligence with the legal realities of operating in China. Engaging local experts and consultants who understand the intricacies of Chinese regulations and business practices is often an expensive but necessary step to mitigate risks and ensure successful business operations.

**5. What remedies do U.S. firms and consumers have if they receive shipments of poor quality, unsafe, or defective goods from Chinese producers, both within the Chinese legal system and U.S. legal system?**

Legal remedies for companies that receive defective products from their Chinese suppliers are available in both the Chinese and U.S. legal systems, though their effectiveness varies. Enforcing U.S. judgments in China is often impossible. For more on this, please see my responses to paragraphs 1 through 4 above.

For consumers, redress directly against Chinese manufacturers is limited. Though suing a U.S. wholesaler or retailer for a harmful Chinese made product can be a viable option, it rarely is economical to pursue legal action against Chinese producers due to the unlikely enforcement of U.S. judgments in China and the often low damages awarded by Chinese courts.

**6. How effective are those remedies?**

The effectiveness of legal remedies against Chinese companies for defective products that harm American consumers is low, and many Chinese companies exploit this.

I learn about these companies because I often get inquiries from personal injury lawyers around the country seeking my help to pursue a Chinese company whose products harmed their client.

A notable example involves a Chinese company that purchases e-cigarette batteries from Korea, deliberately mislabels them to misrepresent their usage as e-cigarette replacement batteries, and then sells them at a high markup to U.S. smoke shops. These unsuitable batteries have led to numerous explosions, causing consumer injuries. Despite receiving multiple calls regarding this issue, finding a resolution remains challenging due to financial, legal, and jurisdictional hurdles.

I have also seen this with Chinese companies that always make unsafe fireworks and skateboards, underscoring the systemic nature of this problem. The current legal framework offers minimal deterrents to such practices, highlighting a critical area for improvement in consumer protection against defective Chinese imports.

**7. What role may Chinese export insurance companies like Sinasure play in supporting producers of defective Chinese goods? How may financial institutions like Sinasure impact U.S. firms, and to what extent do these export insurance companies contribute to poor manufacturing and product safety standards in China?**



Sinosure primarily insures Chinese exporters against non-payment risks from international buyers, a role that becomes contentious when disputes over product quality arise. Sinosure's tactics in pursuing payments typically include threatening legal action in the United States and/or China, blacklisting the U.S. product buyer from purchasing on credit from China, and demanding payment for goods that were either defective or not delivered. These actions sometimes compel U.S. firms to pay for defective products. Because Chinese manufacturers are compensated no matter how bad their product, they are less motivated to adhere to quality and safety standards. Though Sinosure seeks to paint itself as an export insurance company, it is just another arm of the Chinese government tasked with advancing China's interests, with little regard for fairness.

**The Commission is mandated to make policy recommendations to Congress based on its hearings and other research. What are your recommendations for Congressional action related to the topic of your testimony?**

1. The United States should establish stricter safety standards for imported goods, especially high-risk products. It should also increase its monitoring of imported products to prevent unsafe products from entering the country
2. Provide additional resources for U.S. companies to better understand and navigate the Chinese legal and regulatory landscape.
3. Evaluate the legality of Sinosure's operations under WTO (World Trade Organization) guidelines, as its operations may be an improper government subsidy. It might also make sense for the United States to engage with other countries to ensure that Sinosure complies with international trade regulations.