

# Reducing Your Product Liability Risks from Overseas Products

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## Introduction

Imagine a child's toy, gleaming with bright colors and designed for endless hours of fun. A toy which turned out to hold a lurking danger due to poor manufacturing processes. A month after hitting the shelves, there's a widespread outcry. Parents are furious, the media is ablaze with criticism, and the company responsible faces legal battles that could run into the millions of dollars. Their mistake? Not taking the time to thoroughly vet their overseas supplier.

This is not just a fictional tale, but a cautionary reality for businesses that overlook the significance of product liability when sourcing their products from overseas. This blog post delves into the considerations businesses must keep in mind to avoid such pitfalls and ensure the safety of their consumers.

How often do you consider the ubiquitous "Made in China" label? Whether purchasing from China or any third-party manufacturer, it's important to prioritize product liability.

## Product Liability Risks

To convince recalcitrant clients of the need for product liability protection for the products they are having made overseas, I sometimes send them the following deposition questions asked of a U.S. manufacturer whose China-made product had badly injured a child:

1. How did you choose your China product supplier in the first place? What sort of due diligence did you do on that supplier?
2. Did you clearly put your specifications in your contract with your Chinese supplier? Was your contract written so as to actually bind your manufacturer under Chinese law? How do you know that it was?
3. Can you show me the provisions in your contract relating to product quality and safety? What product specifications did you require of your Chinese manufacturer? Is this in your contract with them? Where?
4. Did you just go with what your Chinese supplier was telling you about the safety of its product or did you test it yourself? Please describe each and every product test you conducted.
5. What exactly did you do to make sure the product you were getting from China confirmed to your contract and to applicable U.S. product safety regulations?
6. What made you first suspect problems with the product? Did you at that time immediately cease importing them?
7. What would it have cost you per unit to fix the problems?

After reading these questions, clients often ask, "How can I prevent these issues?"

The below is my answer to that question.

## Vet Your Product Suppliers

Manufacturers vary in quality, from exceptionally good to criminally negligent. This means you must thoroughly check out your product suppliers in advance. At minimum, you should do a [due diligence check](#) on your supplier. Such a check usually can reveal whether your potential product supplier company is in fact the factory owner, or just some broker posing as the factory owner. It can also tell you whether the company is properly registered for manufacturing the product you will be buying from it. If your potential supplier of toasters is in the dog-walking business (which once happened to one of our clients), you know you have a problem that you do not want to have to explain to a judge or a jury.

A due diligence check can also give you a good sense for your potential supplier's financial viability. A manufacturer that pays its bills is less likely to risk its reputation by cutting corners on its manufacturing than a company on the verge of going under. It will also usually reveal lawsuits involving your potential manufacturer. You should re-check suppliers periodically to ensure their standing hasn't slipped over time. Don't just vet them initially and assume all will remain well.

## Implement Quality Control Measures

Most consumer products arrive in the U.S. already packaged for retail sale, making inspection outside the country of manufacture cost ineffective. You should consider instituting a statistically valid inspection system in the country in which your products are being made to validate the safety and quality of your product. There are plenty of good third party product inspection companies that can help you with this.

By way of an example, the Chinese government has its own relatively effective inspection system for food and drug products, but to reduce costs, many Chinese suppliers intentionally avoid the Chinese government procedures. The Chinese government itself used to estimate that as many as 50% of the food and drug items exported from China violate China's own export rules. In other words, regardless of the product you are buying, it is your job to make sure your supplier is licensed to manufacture and export the product you are buying from it and to make sure the product you are buying went through proper foreign government inspection before its export. [You cannot rely on your supplier](#) for any of this. When someone gets injured from your product, it will be you who is sued.

## Assess Supplier Performance Over Time

If you have been using five suppliers for the last few years and four are good and one is not, you probably should try to dump the worst one as quickly as possible and consolidate with your four other ones or find a replacement. It seems every time one of my law firm's international manufacturing attorneys deals with a major supply chain problem, the American/European/Australasian company says something like, "We should have known we would have a problem with this supplier." That is not what you want to be telling a judge or jury.

You know who your problem suppliers are. Replace them *now* before they cause you even bigger problems. Ask a product liability defense lawyer how six months of e-mails from you complaining of "continual quality shortfalls" will affect a product liability lawsuit against you. Actually, don't bother; you already know the answer.

## Use Comprehensive Manufacturing Contracts

Your [manufacturing contract](#) with your foreign product suppliers should focus in detail on safety and quality control issues. They also should make clear your right to inspect the products and delineate responsibility for injuries and recalls. Using just Purchase Orders will not cut it.

Equally important, you must do what your contracts provide. If your contracts state that you are responsible for inspection, you must actually inspect. The contract is not there for show; it is there to provide a procedure to be followed.

Your contract with your foreign product manufacturer can either shift liability towards you or away from you. You must recognize, however, that most courts will be reluctant to see an injured party walk away with nothing. *But see* [China Factory Indemnification: Yeah, Whatever](#).

## Secure Adequate Insurance

Insurance is not a replacement for protective action; it is your backup. Ensure your policy aligns with your business needs. Understand its coverages and exclusions, and regularly review its terms. For more on product liability insurance, check out [China Manufacturing and Product Insurance](#).

## Be Careful with Your Marketing Claims

I had a client that marketed its product as the "best built in the world," despite being in an industry known for the frequency of its product liability issues. This overconfidence invited legal challenges and plaintiffs' lawyers would invariably contend that my client should be held to a higher standard because it had expressly warranted its product to be better built than its competition. Make sure you are not making claims about your product you cannot back up.

## Conduct a Product Liability Self-Audit

Now that we've covered key items like suppliers, contracts, quality control, insurance, and marketing, I will discuss the importance of conducting a self-audit to assess your company's current product liability preparedness. The following checklist should be a good start to inspect existing policies and procedures:

### Suppliers

- Conduct thorough due diligence on all potential suppliers (ownership, finances, manufacturing capabilities, reputation, lawsuits, etc.)
- Periodically recheck existing suppliers to ensure standards are maintained
- Maintain detailed documentation of supplier vetting and selection process

### Contracts

- Include clear, specific language around product quality, safety standards, inspections, liability, and intellectual property ownership
- Ensure contract legally binds suppliers per applicable laws
- Review contracts with a qualified lawyer, especially for overseas suppliers

### Quality Control

- Institute a statistically robust quality inspection process at manufacturing source
- Conduct third-party product audits and inspections
- Test products thoroughly to simulate real-world conditions
- Document all quality control measures and product testing

### Insurance

- Work with brokers to obtain adequate product liability insurance for your business
- Fully understand what circumstances and liabilities your policy does and does not cover
- Review insurance policies annually as your business changes

## **Marketing**

- Vet all product marketing claims and images to ensure accuracy
- Do not exaggerate product capabilities or durability
- Disclose risks associated with product use fully

Using this checklist may reveal gaps in your practices around supplier vetting, contracts, testing processes or insurance coverage. Identifying these opportunities for improvement can strengthen your product liability risk management. We recommend you conducting this audit at least annually, and whenever you launch a new product or add a new supplier.

## **Conclusion**

Know your suppliers well, make sure your products meet quality standards, have clear contracts, ensure you're covered with insurance, and be honest in your marketing. Taking these steps will protect both your business and your customers.