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gLAWcal Comment #219

PRODUCT LIABILITY IN CHINA

Based on

Junhong Hu “From Remedy of Damage to Risk Prevention: An Analysis of the New Legislative Implications of the Chapter on “Product Liability” in China”



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Global Law Initiatives for Sustainable Development



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A gLAWcal comment on Junhong Hu “From Remedy of Damage to Risk Prevention: An Analysis of the New Legislative Implications of the Chapter on “Product Liability” in China” in Paolo Davide Farah and Elena Cima (Eds.) China’s Influence on Non-Trade Concerns in International Economic Law

The Tort Law of the People’s Republic of China, 1 (hereinafter Tort Law) which was enacted on December 26, 2009 and came into effect on July 1, 2010, and provides for “Product Liability” in a particular chapter as a special kind of tort liability. Is the new legislative framework of China’s Tort Liability system efficient? And what are the broader implications on product safety and liability, and consumer protection, more broadly? Chinese government, over the past decades, has increasingly introduced stricter rules and legal norms on product safety. Despite of this, the consumer safety cases with serious damage constantly arise. For instance, let us look at the world-renowned cases of Fuyang powder-milk accident (occurred in 2002) and melanine milk powder accident (occurred in 2007). Since these cases, new legislative regulations have been implemented, such as the ones now included in Chapter V of the Tort Law, especially in relation to food law. First of all, if the legislative materials are considered all together, we will see that they lack specific definitions of the product quality/product safety distinction. And that should be an important element to clarify. What is underlined here

is that, overall, this system is focused on an “ex ante” supervision: according to the law, the national product quality supervision department carry out random supervision inspections, and those national inspections will determine the product’s quality based on national and local standards, and this could lead to an inefficient management of risk.

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