

AUTOMOTIVE PRODUCT RECALL

WHAT LEVEL OF RISK
NECESSITATES A RECALL?

DEFECTIVE AUTOMOTIVE
PRODUCT RECALL
SYSTEM IN CHINA:
AN OVERVIEW



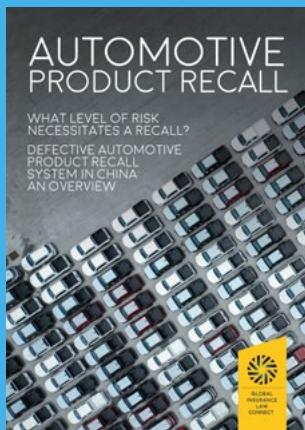
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INTRODUCTION

In this review, we highlight an ongoing investigation in the US regarding whether or not certain vehicles components are defective and require a recall. The case features important legal principles, which could apply to many other types of product defect investigations and recall decisions.

We also take a look at the automotive recall system in China, increasingly a crucial location for global manufacturers of EVs and other vehicles, and a major market in its own right.



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WHAT LEVEL OF RISK NECESSITATES A RECALL?

Any manufacturer or safety authority that is contemplating a product recall should examine all of the relevant evidence, before concluding whether any risk is acceptable or not.

This straightforward question is at the heart of a lengthy ongoing investigation by the US National Highway Traffic Safety Administration (“NHTSA”).

Before discussing this specific case, we briefly revisit some of the questions that can arise in general.

IDENTIFYING A “DEFECT” AND THE SCOPE OF AFFECTED PRODUCTS

When a product failure occurs, manufacturers will generally try to identify which other products (if any) are at risk of similar failure. This typically involves identifying the root cause(s) of the failure, such as an issue with design or production, and confirming which other products were produced in the same relevant conditions. If there is relevant authority guidance on how to determine product “lots” or “batches”, this should also be considered.

But sometimes “precautionary” recall action is taken before identifying a root cause of failure, or even before confirming that the suspect product was defective at all. A manufacturer might make such an early decision if it cannot exclude the possibility – no matter how remote – of consumer injury, enforcement action and/or reputational damage.

Such recalls may lead to difficulties when the business later seeks to recover its costs. The ultimate financial outcome may be disappointing, because for example:

- standard recall insurance coverage is – out of commercial necessity – controlled by policy language with narrow definitions. “Insured Event” may require an insured product to be harmful, as a matter of fact. Covered “Loss” – such as the cost to recall and replace an insured product – may relate to harmful products only, and is usually limited to costs that are “necessary”. Policies also typically require insureds to mitigate covered “Loss”; and
- attempts to recover from a third party (e.g. a supplier), may involve scrutiny of any costs incurred on items that were not actually defective, and the third party (or its liability insurer) may deny liability for such costs.

So, it’s important to try to reach an evidence-based determination of (i) defect and (ii) scope, and to understand the risk that some common “precautionary” costs may not be recoverable.

Most recall decisions are voluntary, with the authority approving (or not objecting to) the voluntary action. But occasionally an authority and manufacturer may disagree about whether particular products should be recalled. Naturally, dispute may be more likely if substantial costs are at stake. This brings us to the case of ARC, which has financial potential of billions of dollars.

ARC & NHTSA

The component part in this case is an airbag inflator, but similar questions can arise regarding other products. Most of these inflators were produced by ARC. Other interested parties include the vehicle manufacturers (OEMs), whose vehicles incorporated ARC’s inflators.

Upon deployment of airbags in the field, some inflators ruptured, causing injury to vehicle occupants. Some OEMs performed lot-specific vehicle recalls and replaced the parts. However, further ruptures occurred (a total of seven in the US, including three between August and December 2021, and then the most recent one in March 2023).

NHTSA’s initial decision (September 2023)

NHTSA initially decided that c.52 million unrecalled inflators have a safety “defect” and should therefore be recalled. NHTSA considered that all inflators are equally likely to rupture, more ruptures are expected, and this risk is unreasonable.

Following this, manufacturers submitted arguments against NHTSA’s decision, including that various types of unrecalled inflator can be distinguished from the types that ruptured, for example because they have materially different design and/or manufacturing characteristics. It was also argued that the risk of another rupture was lower than alleged by NHTSA, and that NHTSA also did not (but should) fully weigh this risk against the high costs and other risks that such a recall would itself cause.



NHTSA's supplemental initial decision (August 2024)

NHTSA considered the opposing arguments from ARC and others, but upheld its initial decision in August 2024. It concluded that the evidence suggests there is a single root cause of all failures, i.e. friction welding issues coupled with lack of examination for weld debris, and this implicates the entire population of inflators. NHTSA said it “found no ... evidence that shows [any specific] ... subpopulations are less susceptible to rupture”.

NHTSA further states that statistical evidence is generally not necessary for it to conclude that a risk is unreasonable. Despite this, NHTSA has cited statistical evidence here, suggesting that the most likely number of future ruptures in unrecalled vehicles is between one and two.

NHTSA's decision to investigate further (December 2024)

Following further submissions by manufacturers, NHTSA decided to investigate further, before making any final decision. In January 2025 it sent requests to manufacturers for more detailed further information, including in relation to the different designs and manufacturing processes of the various inflators involved. This is with a view to determining whether any relevant difference exists between any group of unrecalled inflators and the ones that have ruptured during deployment, such that some unrecalled inflators do not have to be recalled.

COMMENT

While this specific case may not be resolved for some time, it highlights some fundamental questions regarding product safety and recall, including how to prove whether any product risk is acceptable or not.

A manufacturer's crisis response plan should address these issues in advance of an incident, with guidelines on how to identify which products – if any – are defective. In appropriate cases, statistical modelling might assist with analysing the risks of future product failure and resulting harm to consumers.

Product recall insurers and policyholders should also consider the circumstances in which a policyholder might be expected to challenge an authority's opinion on these questions, and which types of evidence might be used to support such a challenge.

DEFECTIVE AUTOMOTIVE PRODUCT RECALL SYSTEM IN CHINA: AN OVERVIEW

China's booming new energy vehicle (NEV) market has spurred significant developments in its regulatory landscape. For businesses and legal practitioners in the relevant fields, understanding China's defective automotive product recall system is key to navigating potential risks and ensuring compliance.

Since its inception in 2004, the recall system for defective automotive products in China has steadily evolved into a robust framework. This article will explore the system's development, its key procedures, and recent examples to provide an accessible overview of China's approach.

I. LEGAL FRAMEWORK OF THE SYSTEM

Over the last 20 years, China has built an extensive legal framework governing defective automotive product recalls. In 2023, China implemented 214 automotive product recalls, involving approximately 6.7 million vehicles, reflecting the system's growing efficiency and scope. The State Administration for Market Regulation (SAMR) is the primary authority managing recalls and promulgated the core regulatory basis for the system, including the Administrative Regulation on the Recall of Defective Automotive Products (2019) and the accompanying Measures for Implementation (2020). Specialized bodies, like SAMR's Defective Product Recall Technical Center, play a critical role in overseeing investigations and recalls, often working with other agencies on specific issues like emissions hazards.

SAMR's collaborative initiatives with technical experts and market participants further enhance the system's credibility. Through mandatory reporting obligations, transparent processes, and rigorous oversight, the framework ensures that manufacturers remain accountable for vehicle safety standards while protecting consumer interests.

II. WHAT TRIGGERS A RECALL?

A defect subject to a recall is defined broadly under China's system, covering physical flaws and software malfunctions alike. The following criteria should be met to identify a defect:

1. It fails to comply with national or industry safety standards for personal or property protection.

2. The defect stems from issues in design, manufacturing, labeling, or similar factors.

3. It affects a group of vehicles – such as a batch, model, or category – rather than individual cases.

It is also worth noting that recalls only apply to products already sold to consumers. Issues discovered pre-sale fall outside the scope of this system.

III. NAVIGATING THE RECALL PROCESS

The recall process in China can be initiated by either manufacturers or SAMR. The typical process is outlined as follows.

1. Manufacturer-Initiated Recalls

If a manufacturer identifies a potential defect, they must investigate, report their findings to SAMR, and, if confirmed, immediately stop production, sales, and imports of the affected vehicles while initiating a recall.

2. SAMR-Initiated Recalls

SAMR may step in if it receives defect reports through consumer complaints or its online systems. In such cases, SAMR can direct manufacturers to conduct investigations.

If SAMR deems the manufacturer's response inadequate or finds serious safety risks, it can launch its own investigation. When defects are confirmed, SAMR will issue a formal recall order.

IN 2023, CHINA IMPLEMENTED **214 AUTOMOTIVE PRODUCT RECALLS**, INVOLVING APPROXIMATELY **6.7 MILLION VEHICLES**, REFLECTING THE SYSTEM'S GROWING EFFICIENCY AND SCOPE.

"MANUFACTURERS CAN DISPUTE A RECALL ORDER WITHIN 15 DAYS UPON RECEIPT AND SUBMIT COUNTEREVIDENCE. SAMR THEN EVALUATES THE CHALLENGE, CONSULTING INDEPENDENT EXPERTS AND CONDUCTING ADDITIONAL TESTS IF NECESSARY."

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3. Challenging a Recall Order

Manufacturers can dispute a recall order within 15 days upon receipt and submit counterevidence. SAMR then evaluates the challenge, consulting independent experts and conducting additional tests if necessary. The manufacturer must comply with the recall order under the circumstances below:

- The manufacturer neither implements the recall as ordered in the notification nor raises a challenge within the prescribed timeframe.
- Upon receipt of the challenge, SAMR's testing confirms that a defect does indeed exist.

So far, there are no judicial precedents published concerning the enforcement of recall orders in China.

4. Recall Implementation

Once a recall is confirmed, manufacturers need to submit a recall plan to SAMR within five working days. This plan often includes notifying distributors, halting sales of defective products, and implementing corrective measures, such as software updates or physical repairs.

IV. RECENT EXAMPLE: TESLA'S RECALLS IN CHINA

Tesla's recent recalls illustrate how China's system works in practice – and how it's adapting to modern challenges like over-the-air (OTA) updates.

May 2023: Addressing Unintended Acceleration

Tesla recalled 1.1 million vehicles after SAMR identified a braking system defect that increased the risk of unintended acceleration. The recall covered multiple models, including Model S, Model X, Model 3, and Model Y, and relied on OTA updates to fix the issue.

August 2024: Resolving Front Trunk Malfunction Detection Issues

In another case, Tesla recalled 1.7 million vehicles due to a defect in the front trunk detection system. Again, OTA technology allowed consumers to receive updates remotely, showcasing the industry's shift toward smart recall solutions.

January 2025: Addressing Safety Risks in Power Components and Steering Systems

Tesla initiated a recent recall in China, covering 1.2 million vehicles due to two major safety concerns:

- Power Component Damage in Driving Computer Mainboard (335,716 vehicles, produced between July 2023 and December 2024):

This issue could lead to rearview camera malfunctions, increasing the risk of collisions.

- Electronic Power Steering Software Defect (871,087 vehicles, produced between January 2022 and September 2023): This defect could limit steering assistance, potentially resulting in steering failure.

Tesla resolved these issues primarily through OTA updates, with physical repairs or component replacements for vehicles unable to receive remote fixes. These examples emphasize that China's regulators are actively embracing solutions for software-driven vehicles while balancing safety oversight and innovation. Learning from the Tesla case, manufacturers in China must strengthen their defect monitoring systems to detect both hardware and software issues early. Staying informed about regulatory developments, particularly those related to OTA updates and cybersecurity, is essential to ensure compliance and adaptability.

For legal practitioners, understanding the nuances of China's recall system is essential for advising clients on compliance, risk management, and dispute resolution.

V. THE ROAD AHEAD

While China's automotive recall system is well-established, emerging technologies like intelligent driving systems and battery management software bring new regulatory hurdles. For instance, SAMR is focusing on "dual loss of control" issues, such as thermal runaway in batteries and misuse of autonomous systems, prompting updates to recall regulations. Collaborations between SAMR and other agencies, like the Ministry of Industry and Information Technology (MIIT), aim to address these challenges, particularly for OTA updates. A more stringent regulation may be implemented to keep pace with the rapid advancements in the automotive sector.

The regulatory evolution also reflects heightened attention to cybersecurity risks and evolving software safety standards. Consequently, manufacturers must implement proactive monitoring systems not only to ensure product safety and mitigate recalls, but also to demonstrate compliance in a market demanding ever-higher standards. Ultimately, China's automotive recall system – shaped by stringent regulations, technological innovation, and active interagency oversight – is evolving dynamically, requiring legal practitioners to maintain continuous engagement with its developments.



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