

Herbert Smith

Product safety: law and trends

Lynne Atherton
Leonia Chesterfield

5 September 2006





Cadbury Schweppes

- Traces of salmonella in chocolate bars
- Detected salmonella in January 2006
- Levels too low for health risk
- Problem corrected March 2006
- Salmonella infections
- Chocolate bars recalled
- Estimated costs £20 million
- Possible claims against Cadbury



European general product safety regime

- Standardise levels of protection
- General Product Safety Directive 2001
- UK General Product Safety Regulations 2005

General safety regime and sectoral directives

- General product safety regime complements existing sectoral regulations

2001 General Product Safety Directive

- Aim: to ensure that all products placed on the market are safe
- Obligations on producers and distributors:
 - Identifiable and traceable
 - Monitor safety
 - Take appropriate action
- Greater power to enforcement authorities: mandatory recall

Exchange of information within the EC: RAPEX system

- RAPEX system for exchange of information in EC
- For all non-food products (except pharmaceutical and medical)

RAPEX system: objectives

- To ensure rapid exchange of information about:
 - Dangerous consumer products
 - Measures taken to prevent harm to consumers

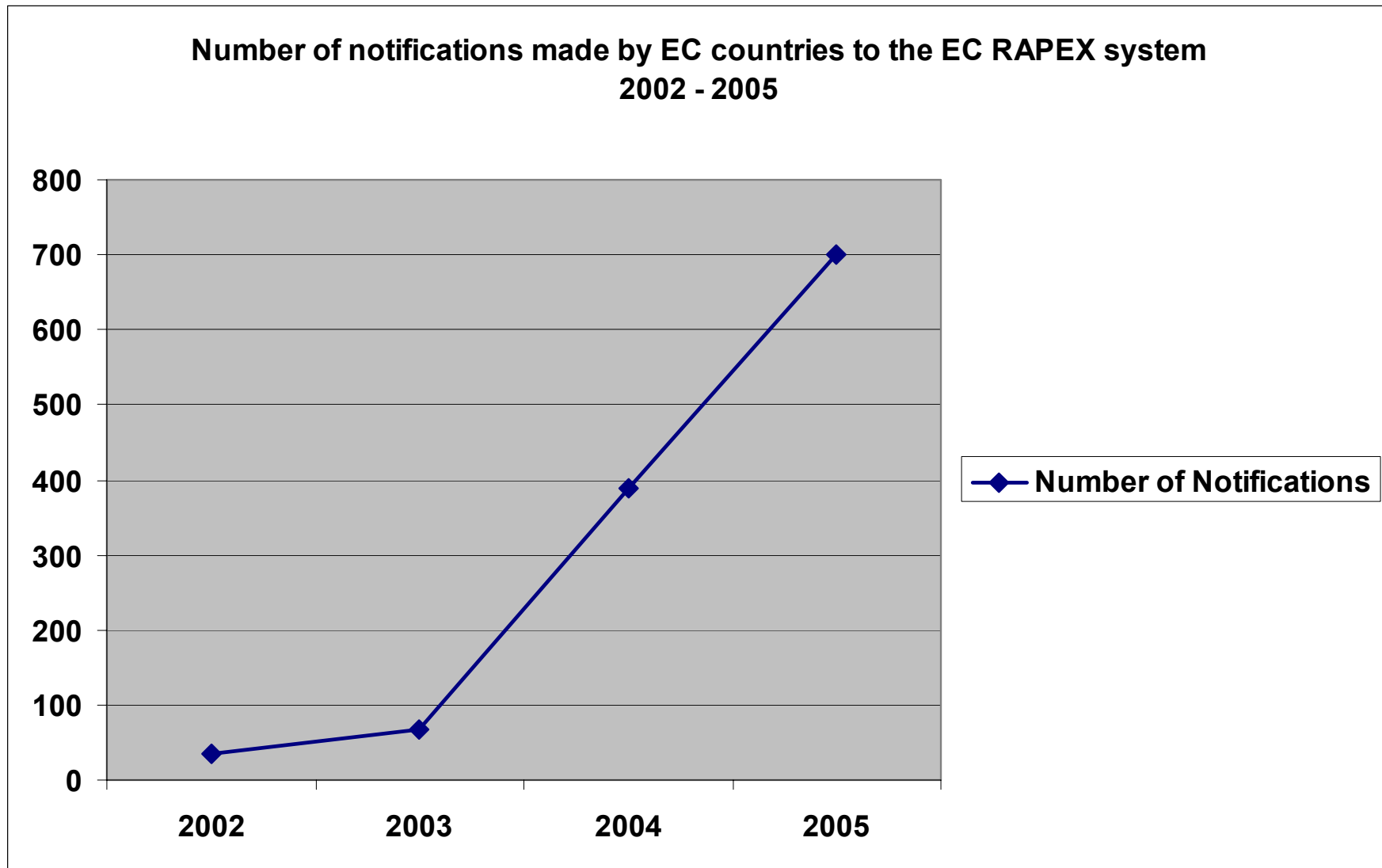
RAPEX system: operation

- Dangerous product identified on market of Member State
- Member State notifies European Commission
- European Commission examines notification
- European Commission disseminates information to all Member States

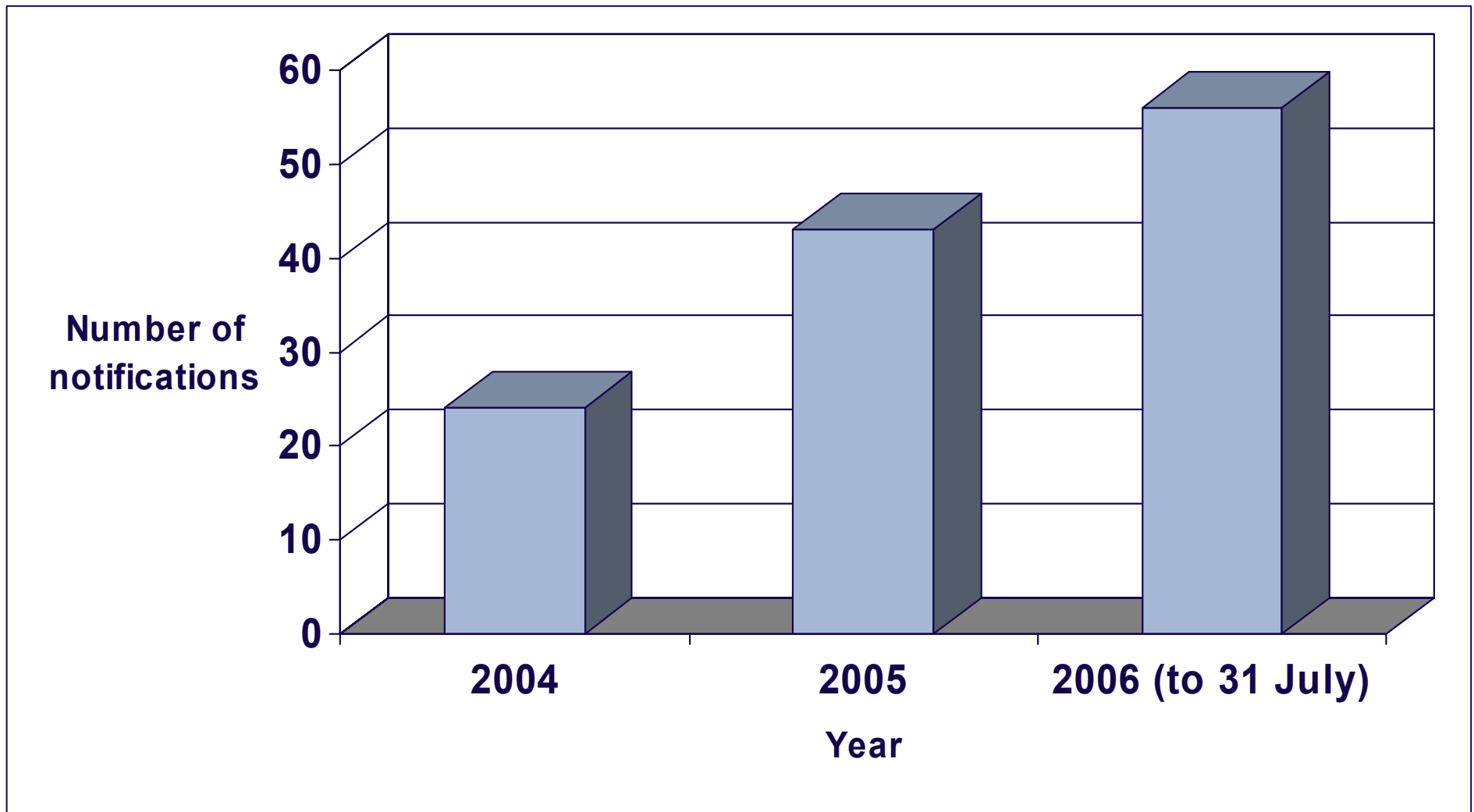
RAPEX system: statistics

- Useful source of data
- Caution required

Trends in product safety



UK notifications to the RAPEX system



Reasons for increase in notifications to the RAPEX system

- Enlargement of the EC
- Increased awareness and ease of usage
- Implementation of the General Product Safety Directive 2001

UK General Product Safety Regulations 2005

- Came into force on 1 October 2005
- Increase in notifications to RAPEX because of:
 - Wider scope of products falling within the regime
 - Increased duties and responsibilities on producers and distributors

Safe products

- An offence for a producer to place a product on the market unless it is safe
- “Safe” means any product which under normal or reasonably foreseeable conditions of use does not present any risk or only the minimum risks considered to be acceptable and consistent with a high level of consumer protection

Scope of products within the regime

- All products intended for consumer use
- 2005 Regulations expand the definition of products covered to:
 - Products supplied in the course of a service
 - Products originally designed for use by professionals but which have “migrated” into use by consumers
 - Antiques and products supplied for reconditioning and repair

Duties on producers and distributors

- Product markings and traceability
- Post market surveillance
- Notification

Duties on producers and distributors: notification obligations

Issues for producers:

- Whether to notify
- When to notify
- To whom to notify

Enforcement authorities

- Precautionary principle
- Mandatory recall

Enforcement authorities

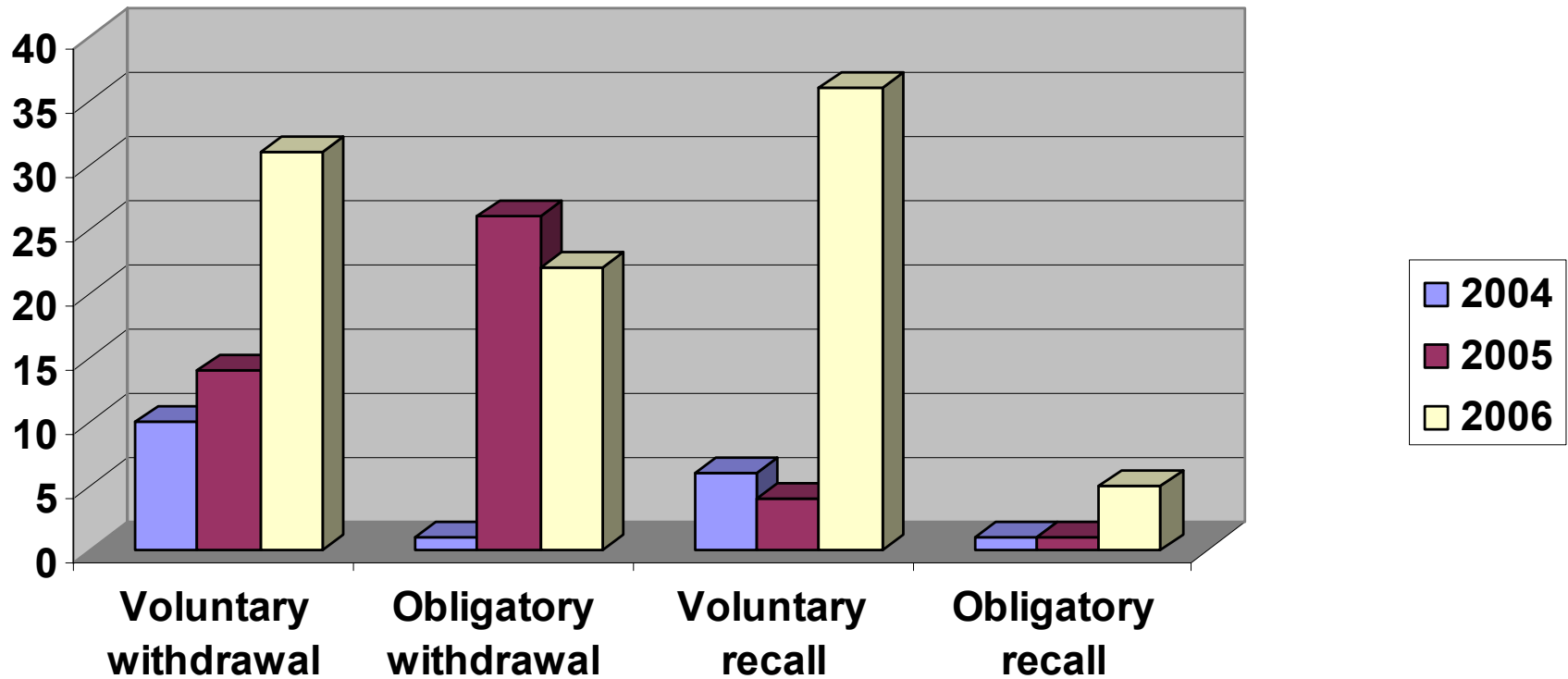
- Appeals
- Compensation

Impact of the UK General Product Safety Regulations 2005

- Mandatory recall provisions caused concern during consultation process
- EC RAPEX statistics provide insight into impact of the 2005 Regulations

Product withdrawal and recall

Measures adopted following UK notifications to the EC RAPEX system
2004-2006 (projected forward)



Recent recalls: Johnson & Johnson

A well managed recall:

- Poisoning of drug, Tylenol, by terrorists in the 1980s
- Took immediate action
- Openness built trust
- Rebuilt brand and reputation

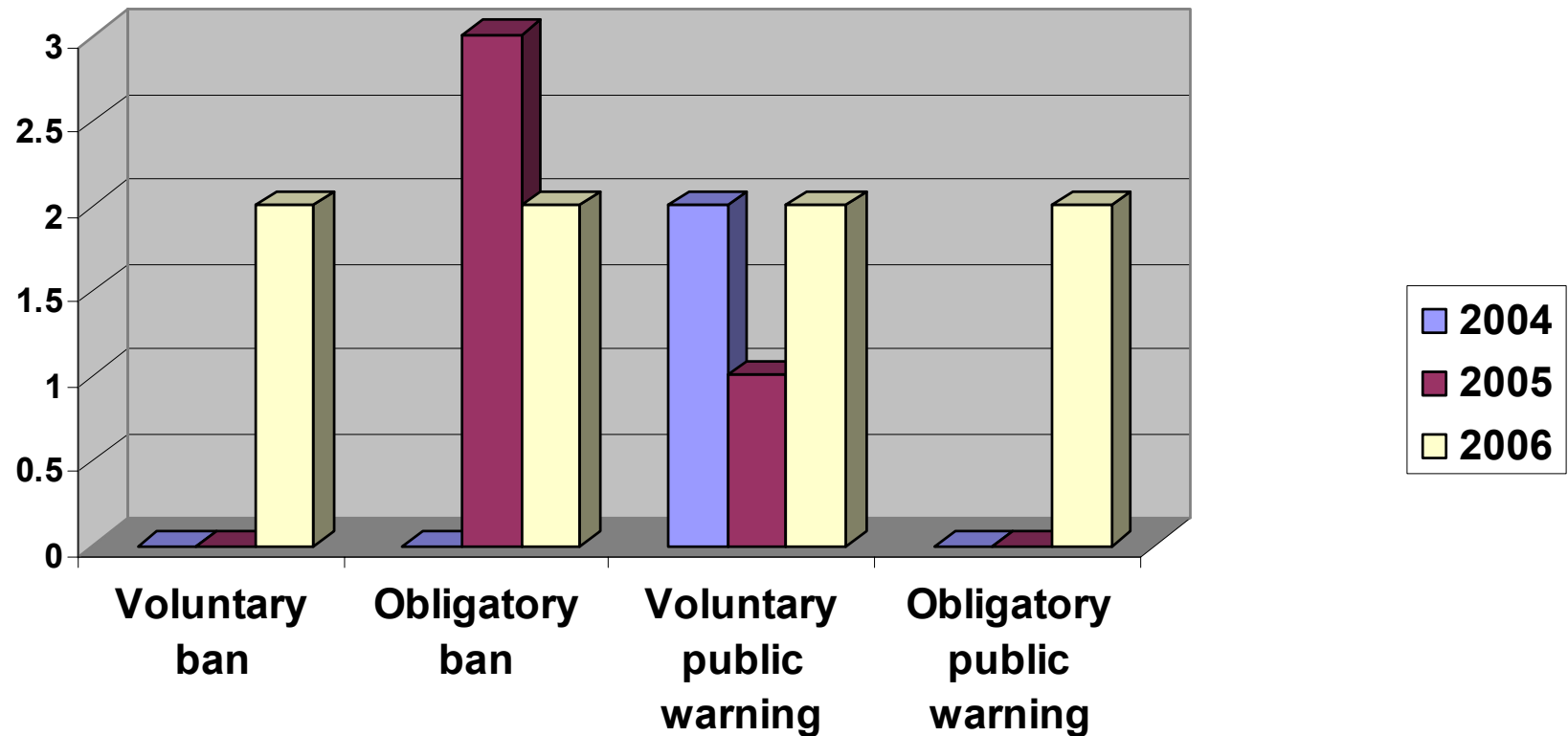
Recent recalls: Perrier

A badly managed recall:

- Traces of benzene found in bottled water
- Claimed contamination resulted from isolated incident
- Benzene in bottles in Europe
- World-wide recall
- Criticism for disregarding public safety

Product bans and warnings

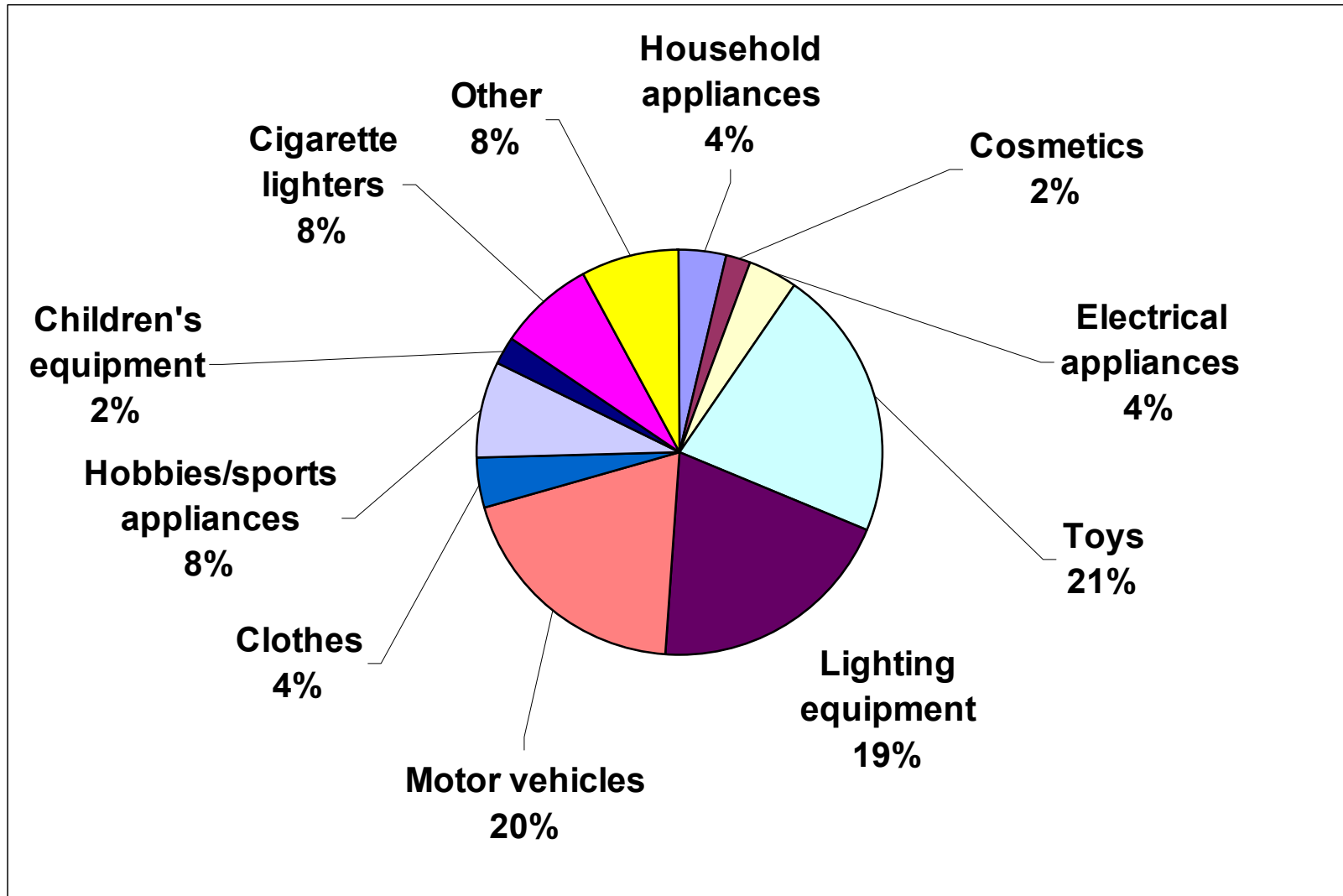
Measures adopted following UK notifications to the EC RAPEX system
2004-2006 (projected forward)



Trends in product safety

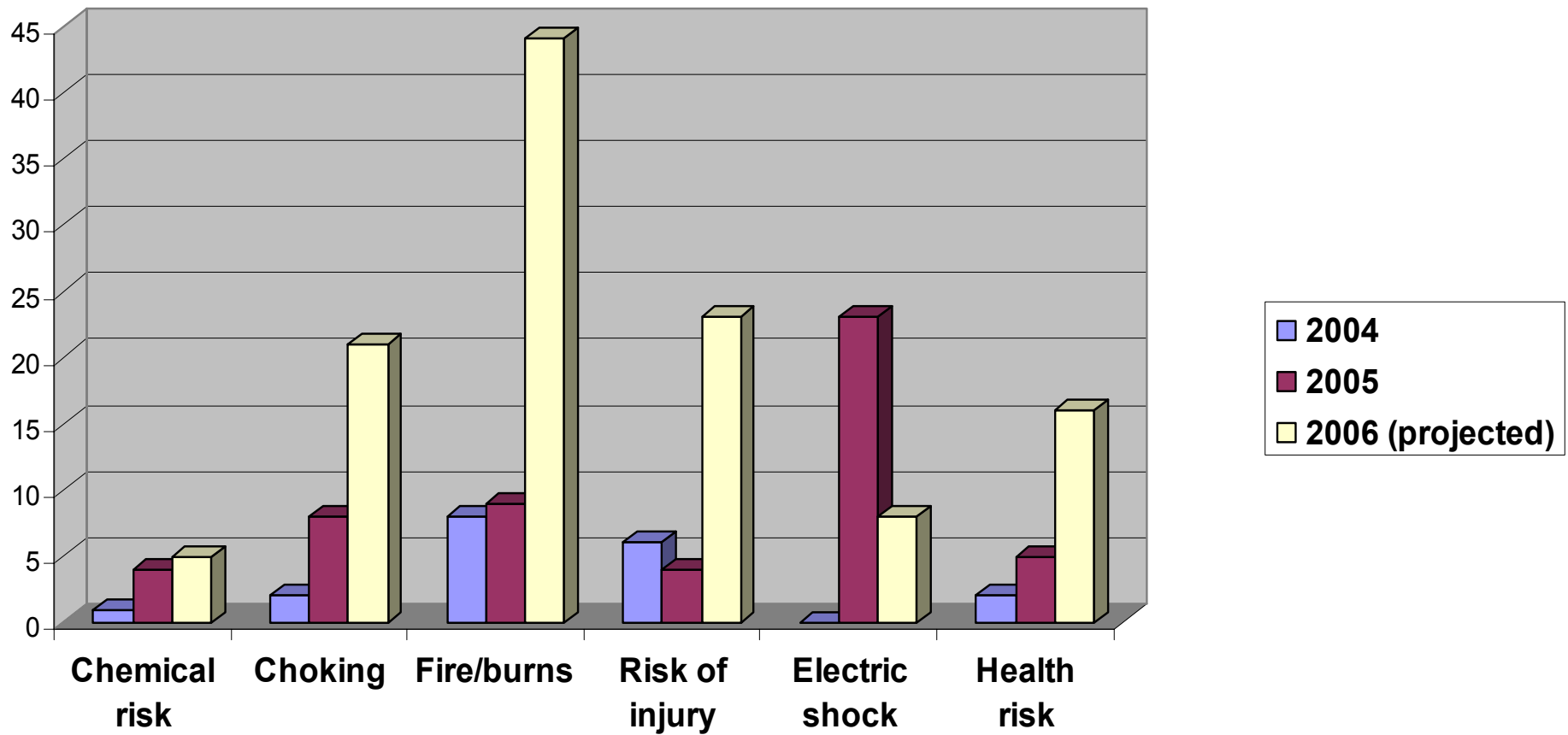
- Categories of products
- Nature of risk
- Origin of products

Categories of products notified by UK to RAPEX – 1st January to 31st July 2006



Risk arising from products notified by UK to RAPEX

2004-2006 (projected forward)

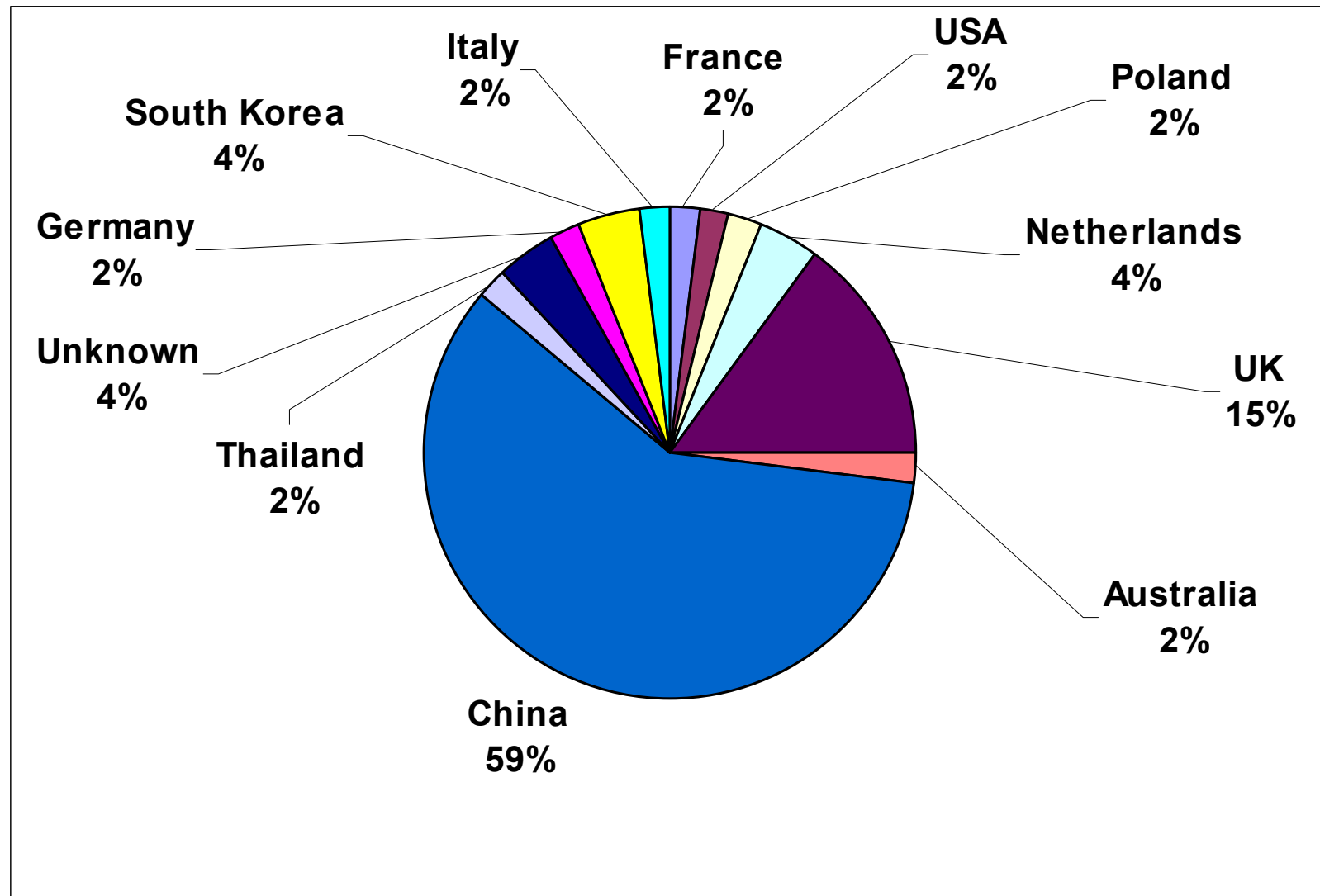


Exploding laptops: Dell

Risk of serious injury publicised by the internet prompted speedy recall



Country of origin of products notified by UK to RAPEX – 1st January to 31st July 2006



Product recall insurance: UK recall insurance market

- Increased number of recalls has led to increased demand for product recall insurance
- Product recall insurance market responding to increasing demand

Product recall insurance: relationship between insurance policy coverage and trends in product recall in the UK

- Voluntary recall
- Obligatory recall

Conclusions

- Increased notifications
- Implementation of the General Product Safety Directive 2001
- “Voluntary” action to prevent harm to consumers
- Well managed and early product recalls
- Increased number of product recalls led to an increased demand for insurance cover
- Trends in product safety provide important information for insurers