

Liberty University

“Confronting Cosmetic Carcinogens: A Proposal Regarding the Dangers of Talcum Powder”

A Research Proposal Submitted to
the Faculty of the Helm’s School of Government.

by

Rachael Covington Howell

Lynchburg, Virginia

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Abstract

The Federal Government needs to stop the import, export, mining, and distribution of talcum powder in the United States. This is an issue that effects all Americans, especially active-duty military members. Since 2013, there have been over 38,000 lawsuits against Johnson & Johnson, which allege that their talcum-based baby powder caused cancer. The plaintiffs in the very first talc case in the U.S. have died. All four of the plaintiffs from a 2019 suit have died. Yet, their case has been reversed and remanded. The FDA has redacted the names of scientist(s) that conduct “safety tests” on talc samples. This paper discusses the nature of talc, defines the problem, exposes the roadblocks to justice, and offers two detailed plans to protect Americans. Of the two options, it is recommended that Congress draft a law, with reasonable and sequential steps, to implement a national ban on talc. This can be achieved over time by adding tariffs on talc, removing tariffs on alternative products, stripping talc companies of federal funds, and demanding warning labels on talc-contaminated products.

Trust is the foundation of every family, society, business, and government. If trust is broken, everything begins to crumble. Unfortunately, but also understandably, Americans have begun nursing a general distrust towards our institutions and anything the government touches. A lack of faith can be both healthy and reasonable, as it is predicated on some sort of truth and can be the engine of much-needed reform. However, the problem now lies with a relatively new brand of distrust, suspicion of the grocery shelves. This is not without merit. Americans everywhere have called for product transparency for fear of ingesting or coming into contact with ingredients that result in bodily harm.

It all started in 1906 with the creation of the Food and Drugs Act.¹ Patrons wanted to ensure that the food they bought would nourish instead of kill. Many more food-movements followed the formation of the FDA. In the 1970's, customers wanted labels that indicated whether a food contained GMOs.² Next, in 2009, the public demanded that companies cease using rbST hormones on cows.³ Then, 2015 posed a new challenge from consumers to farmers; make eggs cage-free.⁴ There have been many activists, and no doubt there will be more to come.

All these demands echoed the same message; the desire for ethics and safety. There is a new movement making its way across America, but its cry is more silent. Rather, it is being silenced by big business and, possibly, government agencies. This paper proposes that Congress institute a national policy that bans the import, export, mining, and use of talcum powder due to its highly carcinogenic nature.

Policy Problem

The Powdery Plight

According to the American Cancer Society, one of the most recognized, anti-cancer nonprofit corporations, “talcum powder is made from talc, a mineral made up mainly of the elements magnesium, silicon, and oxygen... In its natural form, some talc contains asbestos, a substance known to cause cancers in and around the lungs when inhaled.”

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Talc’s dangers have been known by the United States government for decades. The Cosmetic, Toiletry, and Fragrances Association, CTFA, attempted to do something about this issue in 1976. They drafted “voluntary guidelines stating that all talc used in cosmetic products

¹ FDA, last modified February 2006, “A Century of Ensuring Safe Foods and Cosmetics,” <https://www.fda.gov/files/A-Century-of-Ensuring-Safe-Foods-and-Cosmetics.pdf>

² Splitter Jenny, “How A Decade of GMO Controversy Changed The Dialogue About Food,” *Forbes*, December 20, 2019, <https://www.forbes.com/sites/jennysplitter/2019/12/20/how-a-decade-of-gmo-controversy-changed-the-dialogue-about-food/?sh=5b8c1a726434>

³ abcnews.com, last modified March 15, 2009, <https://abcnews.go.com/Business/story?id=7087889&page=1>

⁴ “Big Win For Animal Welfare as U.S. Egg Producers Go Cage-Free,” *CBS News*, February 11, 2022, <https://www.cbsnews.com/news/cage-free-chickens-eggs-animal-welfare/>

⁵ Howell, Rachael, “A Woman’s Powdery Plight,” April 13, 2021, pg. 3.

Cancer.org, last modified December 6, 2022, “Talcum Powder and Cancer.” American Cancer Society, <http://www.cancer.org/cancer/cancer-causes/talcum-powder-and-cancer.html>.

in the United States should be free from detectable amounts of asbestos according to their standards.”⁶

Unfortunately, current government “regulations” have proven to not only be ineffective, but apathetic. On the FDA’s webpage on talc, it starts by recognizing the safety concerns consumers have regarding the connection between talc and cancer. The FDA all but dismisses these fears, “the law does not require cosmetic companies to share safety information with FDA.”⁷ They qualify their reason for not getting more involved in regulating talc by stating, “before we can take such action against a cosmetic, we need sound scientific data to show that it is harmful under its intended use.”⁸

To the FDA’s credit, they did include some testing data from 2022, *Testing of Official Samples of Talc Containing Cosmetics for Asbestiform Fibers*. However, not only did the FDA test as little as 50 samples, but part of the report was redacted!⁹ Specifically, the name(s) of the scientist(s) that conducted the testing was blotted out. This causes even more problems. How can Americans trust that this research was done with integrity if the FDA is hiding the people who handled the experiments? Perhaps it was wrong to characterize the current government position as apathetic. It seems like the does government care, but more so about the money talc rakes in, as opposed to human health.

Talc is used in most every-day hygienic or cosmetic products: face cleanser soaps, deodorant, dry-shampoo, baby powder, lipstick, blush, eyeshadow, mascara, and foundation to name a few. Scouring through the medicine cabinet and reading toiletry labels may bring a sobering sense of dread. Talcum powder permeates nearly everything. Most Americans do not realize the risk they take by simply applying deodorant every day. When applying makeup, powdered eyeshadows produce fall-out, which puts the user at risk of inhaling talc into one’s lungs. Inhaling talc can be just, if not more dangerous than wearing it, as there are studies that show a plausible link between talc inhalation and lung cancer. “Talc toxicity studies show that talc particles and fibers are durable and can remain in the lung for up to 40 years after the end of exposure.”¹⁰ The study reports that the areas of the lung where talc is typically found, are also the main areas where lung cancer grows. However, talc is not limited by a cosmetic case or deodorant stick. It is even being used by the U.S. armed forces.

In an article posted on the U.S.’s Air Force website, talcum powder is used to, “inhibit friction-induced bald spots, excess moisture, or dry rot” on survival rafts.¹¹ Ironically, as Airmen pack a raft that is intended to save their life, they are exposed to a substance that can kill them. What makes matters worse is that servicemembers are exposed to larger amounts of talc compared to civilians. This is because servicemembers work with the substance in a professional capacity in addition to being exposed to talc in their hygiene regimen.

The issue, however, is not just the substance itself, but the current overlapping of stakeholders. There are many companies, like Johnson & Johnson, that turn a massive profit from talc-based products. Other stakeholders include: average citizens, the U.S. military, foreign

⁶ (Howell, endnote 5)

⁷ FDA.gov, last modified December 7, 2022, <https://www.fda.gov/cosmetics/cosmetic-ingredients/talc>

⁸ (FDA.gov, endnote 7)

⁹ FDA.gov, last modified October 7, 2022, <https://www.fda.gov/media/163571/download?attachment>

¹⁰ Liebertpub.com, last modified, 2021. Journal of Aerosol Medicine and Pulmonary Drug Delivery, <https://www.liebertpub.com/doi/10.1089/jamp.2020.1609>

¹¹ af.mil, last modified May 8, 2019,

<https://www.445aw.afrc.af.mil/News/Features/Display/Article/1841395/packing-equipment-nobody-wants-to-have-to-use/>

and domestic companies, and mines. All of the above, including alternative product industries, would be impacted by this paper's policy recommendation.

Because of the entanglements with stakeholders, the United States Government will not be able to properly address the dangers of talcum powder until it severs financial ties with its distributors. Johnson & Johnson, one of the biggest distributors of talcum powder, received \$1 billion dollars from the federal government "in collaboration with the Department of Defense" for covid vaccines in 2020.¹² While talcum powder was not mentioned in this agreement, the fact remains that Johnson & Johnson has been the center of the talc controversy. J&J's ongoing connections, some as recent as 2022, with the Federal Government and DOD, may prove to be a conflict of interest when it comes to regulating talcum powder.¹³

Government contracts with talc vendors is just one upsetting aspect. Talcum powder is a silent giant of industry. According to a 2022 *Mineral Commodity Summary*, there are "five talc mines in the United States," and the "total sales (domestic and export) of talc by U.S. producers were estimated to be 490,000 tons valued at about \$130 million..."¹⁴ Many are concerned about talc in cosmetics and personal hygiene products, which consumers are exposed to daily. The *Mineral Commodity Summary* presents a more troubling statistic. They organized talc usage by percentage, and it was found that only 1% of all talc in the United States is used in cosmetics! Some may be relieved by this "small" number but would later be shocked by all the myriad of uses that puts more people at risk: ceramics, paper, paint, plastics, rubber, roofing, insecticides, and agriculture. It is important to note that 1% of 490,000 tons is 4,900 short tons, which is 9,800,000 pounds of talc used in American cosmetics per year! And if that wasn't enough, these numbers don't include the amount of talc imported to the United States and later put on the shelves.

After defining the problem, exposing the root, and examining how far this issue has permeated society, many questions remain. Why were the names of the scientists in the AMA/FDA report redacted? Did the redacted individuals own stock in talc or any talc manufacturer? Did they have any connections to the brands and distributors in question? Can we really trust the reports conducted and published by the FDA when the United States government has military contracts with Johnson & Johnson and other distributors of talc? Why are scientists so hesitant to give a definitive answer as to the carcinogenic nature of talc? If talc is safe, why did Johnson & Johnson, the biggest distributor of talc, suddenly stop selling talc products in the US and Canada in 2020?¹⁵

Some may not like the truth, but the answer is clear. The moment the United States' government formally recognizes that talcum powder causes cancer, they will be inundated with thousands of lawsuits. How can we know this for certain? Look no further than the current war in the courts.

¹² jnj.com, last modified August 5, 2020, <https://www.jnj.com/johnson-johnson-announces-agreement-with-u-s-government-for-100-million-doses-of-investigational-covid-19-vaccine>

¹³ osd.mil, last modified January 2023,

<https://dodsoco.ogc.osd.mil/Portals/102/Documents/Conflicts/2023%2025K%20covering%20FY2022.pdf?ver=f7CHvUlbGeU%3D>

¹⁴ usgs.gov, last modified January 2022, <https://pubs.usgs.gov/periodicals/mcs2022/mcs2022-talc.pdf>

¹⁵ nytimes.com, last modified August 11, 2022, <https://www.nytimes.com/2022/08/11/business/johnson-and-johnson-talc-corn-starch.html#:~:text=corn%2Dstarch.html-,%20Johnson%20Will%20Discontinue%20Talc%2DBased%20Baby%20Powder%20Globally%20in,in%20North%20America%20in%202020.&text=Tiffany%20Hsu%20and%20Roni%20Rabin,Johnson%20baby%20powder%20since%202017>

Relevant Evidence

Where government agencies had failed, and science floundered, there was a glimmer of hope that the court would settle the matter. Johnson & Johnson has had no shortage of legal woes. Interestingly, they were the center of the very first talcum powder case.¹⁶ Since 2013, J&J has been named in over 38,000 lawsuits related to talcum powder and its link to cancer.¹⁷ Now, the public interest is growing. Especially with headlines that read the following, “Court tosses \$223.8 million verdict against J&J in talc cancer case.”¹⁸

In 2019, “plaintiffs filed complaints alleging that defendants [J&J] were involved in mining and processing asbestos-containing products, including Johnson's Baby Powder (JBP) and Shower to Shower (STS), which were sold and caused them [plaintiffs] to develop mesothelioma following their long-term use of these products.”¹⁹ After a year of litigation, on July 24, 2020, the court, “awarded plaintiffs compensatory damages totaling \$37,300,000 and punitive damages totaling \$186,500,000.”²⁰

Unfortunately, the victory was short-lived. In October 2023, the Superior Court of New Jersey, Appellate Division reversed and remanded the case. They found that the trial court had erred in admitting certain “expert testimony” and that the error was damaging to the defendants.²¹

There may be different reasons as to why the court favored Johnson & Johnson, granted their appeal, and shielded them from paying the \$223.8 million dollar penalty. A quick background check on the three presiding Judges, Haas, Gooden Brown and Puglisi, show a curious connection. They all graduated from Rutgers University. It is true that Rutgers is a State University of New Jersey. However, it is important to note that New Jersey is home to at least 51 different colleges.²² Additionally, four of those have law school programs.

The fact that all three judges graduated from the same school is very interesting, given the school's history with Johnson & Johnson. “Johnson & Johnson and Rutgers University have a historic relationship tracing back more than 120 years...”²³ Not only has Johnson & Johnson

¹⁶ nyt.com, last modified July 13, 2018, <https://www.nytimes.com/2018/07/12/business/johnson-johnson-talcum-powder.html#:~:text=Johnson%20%26%20Johnson%20Told%20to%20Pay%20%244.7%20Billion%20in%20Baby%20Powder%20Lawsuit,-Share%20full%20article&text=Johnson%20%26%20Johnson%20was%20ordered%20Thursday,them%20to%20develop%20ovarian%20cancer>.

¹⁷ reuters.com, last modified October 3, 2023, <https://www.reuters.com/markets/us/court-tosses-2238-million-verdict-against-jj-talc-cancer-case-2023-10-03/>

¹⁸ (reuters.com, endnote 17)

¹⁹ Westlaw.com, last modified October 3, 2023, [https://1-next-westlaw-com.eu1.proxy.openathens.net/Document/Id882fd40624611eea76695209c33e2ad/View/FullText.html?originationContext=document&contextData=\(sc.UserEnteredCitation\)&cacheScope=undefined&transitionType=DocumentItem&chunkSize=XXL&docSource=2659457fe926421f9367b250a3672396&needToInjectTerms=False&searchWithinHandle=i0ad827770000018c16e630db92c0832e](https://1-next-westlaw-com.eu1.proxy.openathens.net/Document/Id882fd40624611eea76695209c33e2ad/View/FullText.html?originationContext=document&contextData=(sc.UserEnteredCitation)&cacheScope=undefined&transitionType=DocumentItem&chunkSize=XXL&docSource=2659457fe926421f9367b250a3672396&needToInjectTerms=False&searchWithinHandle=i0ad827770000018c16e630db92c0832e)

²⁰ (Westlaw.com, endnote 19)

²¹ (Westlaw.com, endnote 19)

²² franklin.edu, last modified 2023, <https://www.franklin.edu/colleges-near/new-jersey#:~:text=There%20are%20at%20least%2051,7%2C531%20that%20were%20offered%20online>.

²³ Rutgers.edu, last modified November 11, 2015, <https://www.rutgers.edu/news/happy-birthday-rutgers-johnson-johnson-provide-scholarships-students-health-related-fields>

been Rutgers University's oldest partner, but they are also a large financial contributor. Their partnership extends before the time that each judge had attended the school. The fact J&J funds various Rutgers scholarships reasonably puts the Judges' integrity and impartiality into question.

If that wasn't concerning enough, on April 14, 2023, six months shy of when *Barden v. Brenntag North America, Inc.* was to be heard before the Superior Court of NJ, Judge Puglisi was "temporarily assigned to the Appellate Division of Superior Court, effective August 1, 2023."²⁴ The case was heard on September 27, 2023, which is a little over a month after she officially joined the Superior Court's ranks.

Perhaps it is merely a fantastical coincidence that all the judges graduated from the same school, which happened to have century-long partnership with the defendants? Surely the possibility of financial compromise between the Judges and J&J is too small to be noticed? Maybe it is by happenstance that one of the three Judges was temporarily ordered to join the Superior Court of New Jersey, 58 days before J&J's appeal was officially argued? Perhaps it is just a mathematical miracle for J&J that all four of the key plaintiffs died before the appeal was heard in court? "The four primary plaintiffs were D'Angela M. McNeill George, David Charles Etheridge, Douglas Barden, and William Ronning. Etheridge, Barden, and Ronning passed away during the course of the proceedings and their estates were substituted as plaintiffs."²⁵

If only one of these questions were valid, one could wave away concern. But the sheer amount of 'sequential chance' weights too heavy on the scales of justice. Her brow is now lifted in suspicion. This cannot be overlooked. Unfortunately, this case ended much like the first talc-related J&J case in 2013; with deceased plaintiffs and overturned verdicts.

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As research has proven, and Americans have spoken, trust in regulatory agencies and store shelves has been broken. How can the American consumer have confidence that the government will hold companies like Johnson & Johnson accountable? Especially since the government, the scientific community, big business, and the courts cannot agree on the true nature of talcum powder? That answer is more complicated, which is why a complete ban of talcum powder is optimal. The investigation and accountability will hopefully follow. Until then, prohibition of talcum powder is just the start. A ban will inevitably expose any compromises and corruptions within the various tiers of government and civilian powers, while protecting consumers in the immediate.

The new problem of the product vacuum is not to be ignored. It is unreasonable to enact a ban on one item without having a substitute substance. So, what can replace toxic talcum powder?

²⁴Njcourts.gov, last modified April 18, 2023, <https://www.njcourts.gov/notices/order-judge-lisa-puglisi-temporarily-assigned-appellate-division-effective-august-1-2023>

²⁵Westlaw.com, last modified October 3, 2023, [https://1-next-westlaw-com.eu1.proxy.openathens.net/Document/Id882fd40624611eea76695209c33e2ad/View/FullText.html?originationContext=document&contextData=\(sc.UserEnteredCitation\)&cacheScope=undefined&transitionType=DocumentItem&chunkSize=XXL&docSource=2659457fe926421f9367b250a3672396&needToInjectTerms=False&searchWithinHandle=i0ad827770000018c16e630db92c0832e](https://1-next-westlaw-com.eu1.proxy.openathens.net/Document/Id882fd40624611eea76695209c33e2ad/View/FullText.html?originationContext=document&contextData=(sc.UserEnteredCitation)&cacheScope=undefined&transitionType=DocumentItem&chunkSize=XXL&docSource=2659457fe926421f9367b250a3672396&needToInjectTerms=False&searchWithinHandle=i0ad827770000018c16e630db92c0832e)

²⁶nyt.com, last modified July 13, 2018, <https://www.nytimes.com/2018/07/12/business/johnson-johnson-talcum-powder.html#:~:text=Johnson%20%26%20Johnson%20Told%20to%20Pay%20%244.7%20Billion%20in%20Baby%20Powder%20Lawsuit,-Share%20full%20article&text=Johnson%20%26%20Johnson%20was%20ordered%20Thursday,them%20to%20develop%20ovarian%20cancer.>

Alternative Policy Options

As a refresher, an alternative product must be able to function in the various capacities in which talc is used. The following commercial uses of talc are: cosmetics, ceramics, paper, paint, plastics, rubber, roofing, insecticides, and in agriculture.

Alt. 1: Cornstarch

The United States is the largest producer of corn in the global marketplace.²⁷ The global corn starch industry is worth \$70 billion dollars.²⁸ Talc's worth in the world market is much smaller at \$1.6 billion.²⁹ Cornstarch is also significantly less expensive than talc. The price may vary, but talcum powder can be purchased for \$15 per pound.³⁰ Commercial-grade cornstarch sells for \$20 for 50lbs, or \$0.40 per pound.³¹

This alternative can adequately replace talc and assume the current uses of talc. Cornstarch can be used as a thickening agent in paint. It also acts as a moisture-remover when creating pottery. Cornstarch can also be made into bio-degradable plastic, eco-friendly rubber, and it is already used in papermaking. Interestingly, in a recent study, it was found that cornstarch can be used to repel mosquitoes. Cornstarch can be modified to create "amylose inclusion complex (AIC)" which, once mixed with essential oils, can kill mosquito larvae.³²

When it comes to cosmetics, cornstarch is already used in a variety of products. It can be found in deodorants, dry shampoo, and nail polish. Several brands have already started replacing talc. "Hard Candy Cosmetics" has cornstarch listed as an ingredient in their setting powder.

Interestingly, Johnson & Johnson has already started using cornstarch as a replacement for talcum powder in their baby powder products.³³ They claim that their products will be talc-free by 2023. Ironically, they have also doubled down on the claim that talc is still safe. "Our position on the safety of our cosmetic talc remains unchanged," J&J said in a recent statement.³⁴ If that were true, why the tens of thousands of lawsuits? And why change over to a cornstarch-based product? Regardless, J&J themselves have proven that cornstarch is a viable alternative to talc.

Alt. 2: Tapioca Starch

²⁷usda.gov, last modified September 28, 2023, <https://www.ers.usda.gov/topics/crops/corn-and-other-feed-grains/feed-grains-sector-at-a-glance/>

²⁸grains.org, last modified 2023, [https://grains.org/buying-selling/corn/industrial-starch-industry/#:~:text=U.S.%20Corn%20Outperforms%20Other%20Origin,billion%20bushels\)%20of%20corn%20annually.](https://grains.org/buying-selling/corn/industrial-starch-industry/#:~:text=U.S.%20Corn%20Outperforms%20Other%20Origin,billion%20bushels)%20of%20corn%20annually.)

²⁹factmr.com, last modified 2022, <https://www.factmr.com/report/4479/talc-market#:~:text=The%20global%20talc%20market%20is,by%20the%20end%20of%202032.>

³⁰micronmetals.com, last modified 2023, <https://micronmetals.com/product/magnesium-silicate-talc/>

³¹icifoods.com, last modified 2023, <https://estore.icifoods.com/shop-starch>

³²usda.gov, last modified March 2, 2020, <https://www.ars.usda.gov/news-events/news/research-news/2020/researchers-put-cornstarch-to-use-fighting-pests/>

³³bmj.com, last modified August, 17, 2022, <https://www.bmj.com/content/378/bmj.o2046.full>

³⁴ (bmj.com, endnote 33)

Tapioca starch is derived from the Cassava plant. Cassava is native to South America. However, the starch is largely produced in Thailand.³⁵ The global market of tapioca starch, \$9 billion, overshadows talcum powder.³⁶ There is a growing interest and demand for boba tea, a popular drink made with chewy tapioca starch “pearls” marinated in brown sugar. The market for tapioca powder is projected to skyrocket as a result of the West’s new beverage obsession. As of today, tapioca can be purchased for \$3 to \$6 dollars per pound in the United States.³⁷ The United States also produces and exports tapioca. 1,449 tons, or 2,898,000 pounds of tapioca was exported by the United States in 2020.

Due to tapioca starch’s nature, it can function similarly to its corn counterpart. It has a similar shelf-life and is already used in paper-production and ceramics. Additionally, it is a popular alternative to talc in the cosmetic and personal hygiene market. “Not Your Mothers,” a hair-care brand, uses tapioca starch in their dry shampoo. Now that some substitute products have been discussed, what are the alternative policy options to counter the harmful status quo?

Option 1

In order to institute a national policy that bans the import, export, mining, and use of talc, there must be incentives. This does not mean the solution is asking the Federal Government to throw money at a problem. On the contrary, it would be demanding foreign governments pay more. China is one of the exporters of talc to the United States. Adding a tariff on talc will not only dissuade China from exporting talc to the U.S., but it will also further dissuade customers from buying talcum products. Companies that use talc will have to pay more to produce the same product. In turn, they will raise their prices to cover the cost. Perhaps the hidden tax on the customer will, for once, benefit them? This can aid in the slow detox and removal of talc from American shelves.

According to the Harmonized Tariff Schedule, there is no tariff for tapioca starch. But, there is a general tariff of .54 cents/kg on corn starch.³⁸ If the United States were to remove the tariff on corn starch, it would allow an easier flow of that product into the United States, which the market will need. As talc is filtered out, more corn or tapioca starch will need to be imported. The purpose of the talc tariff is not to provoke China. But, an added benefit of desiring more exports, specifically from Thailand, is that it may improve relations with both China and Thailand as China is their ally.

Before drafting an outright ban on talc, the federal government can remove any incentives, subsidies, grants, and the like to companies that mine and distribute talc products in the United States. They can also pass a law that requires companies to put a temporary warning label on their products. California has passed a law that all products that contain chemicals and toxins listed in Proposition 65, must have a label.³⁹ This circumvents the corrupt FDA and makes

³⁵ linkedin.com, last modified October 17, 2023, <https://www.linkedin.com/pulse/largest-tapioca-starch-exporters-world-nguyen-nguyen>

³⁶ reportsanddata.com, last modified June 2023, <https://www.reportsanddata.com/report-detail/tapioca-starch-market#:~:text=Market%20Synopsis,7%25%20during%20the%20forecast%20period.>

³⁷ selinawamucii.com, last modified 2023, <https://www.selinawamucii.com/insights/prices/united-states-of-america/tapioca/>

³⁸ Harmonized Tariff Schedule, last modified 2023, <https://hts.usitc.gov/reststop/file?release=2023HTSABasic&filename=finalCopy>

consumers more aware. These are all parts of a slower-paced, multi-step policy that can accommodate for the time the market will need to evolve past talc.

Option 2

The second policy option is the radical and abrupt halt of all imports, exports, mining and selling of talcum powder. A national recall can be both swift and effective, but it is risky. It will still be a step-by-set process, but this policy option has, potentially, less steps and requires less time than the first. According to Article 1, Section 8, Clause 3, of the U.S. Constitution, Congress has the power to regulate commerce with foreign nations. They can pass a law that can halt all imports of talc “overnight.” In addition to that, like the first policy option, the Federal Government can move to re-evaluate and cancel all subsidies and grants to corporations that mine or distribute talc.

The Fifth Amendment grants the federal government the authority to seize land. The Federal Government could utilize eminent domain to seize the five main talc mines operated in the United States.⁴⁰ The fifth amendment of the U.S. Constitution stipulates, “...nor shall private property be taken for public use, without just compensation.”⁴¹ The issue with using eminent domain is that what is seized and paid for must be for public use, which defeats the purpose of trying to protect the public from exposure. The CDC found a clever, and perhaps concerning, way around this. According to their *Public Health Emergency Law* pdf, slide 12-13, “Government need not pay owner when restricting public from access to or use of dangerous property (the property creates a public nuisance).”⁴²

Before one can react in horror with the idea of seizing property, one must be reminded of the threat talcum powder poses to every single American. Every single person who comes in contact with talcum powder, whether that be through physical exposure or inhalation, is at risk of developing cancer. It is a silent killer. The only way to know how much exposure is too much, is when it’s too late.

To put it simply, it is a national security risk. The EPA, environmental protection agency, defines it this way, “national security is the security and defense of a nation state, including its citizens, economy, and institutions, which is regarded as a duty of government.”⁴³ The EPA goes on to list examples of national security threats, which include: “domestic threats posed by hazardous material releases.”

The concept of the government seizing land that is laden with toxins is not unheard of. According to the Department of Justice, Title 9, Section 9-111.400 stipulates that land contaminated with hazardous substances may be, “subject to forfeiture.”⁴⁴ It does clarify that “such action is fiscally sound or necessary to advance a law enforcement purpose.” One could argue that seizing talc mines falls within advancing a law enforcement purpose because police

³⁹ P65warnings.ca.gov, last modified 2023, <https://www.p65warnings.ca.gov/about/frequently-asked-questions>

⁴⁰ usgs.gov, last modified January 2022, <https://pubs.usgs.gov/periodicals/mcs2022/mcs2022-talc.pdf>

⁴¹ Constitution.congress.gov, https://constitution.congress.gov/browse/essay/amdt5-9-1/ALDE_00013280/

⁴² cdc.gov, https://www.cdc.gov/phlp/docs/phel_3_1_unit_3_june_10_2009.pdf

⁴³ epa.gov, last modified January 10, 2023, <https://www.epa.gov/homeland-security/homeland-security-defined#:~:text=Similarly%20national%20security%20risks%20involve,material%20releases%20and%20natural%20disasters.>

⁴⁴ Justice.gov, last modified May 2010, <https://www.justice.gov/jm/jm-9-111000-forfeitureseizure#:~:text=It%20is%20the%20policy%20of,located%20in%20consultation%20with%20the>

power does extend to dangerous substances. A secondary solution that grants authority to the government to seize land is by updating statutes regarding toxic substances to include talcum powder. This policy idea is not intended as an exercise in tyranny. Rather, the purpose is to serve and protect.

The near billion pounds of talc that are sold annually are a grave concern. Luckily, despite the amount of talc circulating the marketplace, the global market value of talc is lower than other industries because of how inexpensive and readily available it is. The role of the government is to protect life, liberty, and property. One way it can do all three is to seal-off the mines to ensure the cancer inside never makes it into a product, which will destroy liberty by ending someone's life. Talc brings death, and death will not be missed.

One of the final steps to the second policy option is crafting legislation to codify the ban on imports, exports, mining, and sales of talc. This will enforce the previous actions and safeguard the future. Time is not a luxury in this case, but a curse. The goal is to stop the sale of talc as soon as possible. The market may struggle for a time, but it is better for companies to scramble, than for consumers to suffer.

Regardless of whether the policy is implemented slowly or abruptly, Congress, specifically, the Senate subcommittee on Consumer Protection, Product Safety, and Data Security, will have to be involved.⁴⁵ The FDA is not trustworthy to regulate and enforce safety in the marketplace. Congress has the power to regulate commerce and should be more involved to protect the citizens they represent. So, of the two products and policy options, which ones should be selected?

Criteria

Deciding an alternative product is secondary to the main body of the policy. In order to evaluate which alternative product and policy is best, we must know what it will take for the Government to implement the talcum ban.

First, the Federal Government does not want more lawsuits. If the FDA suddenly announces that talc is cancerous and they've known all along, it will be disastrous for government and big business. While some might demand that and call it justice, which it arguably is, the solution cannot include the FDA. The FDA has been shown to be untrustworthy and incapable of enforcing safety standards on our shelves. Additionally, a solution must provide enough money that is either comparable or greater than the revenue talc generated. A solution must be lasting and efficient.

Secondly, we must understand that while Government has the power to offer a solution, it is a prideful beast. As much as we might hate to admit it, real change will not happen if our demand is that government perform a loud, and costly, repentance. Government will rarely, if ever, stand before the world and give a humiliating and vulnerable apology. The fix must be attractive and politically feasible.

⁴⁵ Commerce.senate.gov, <https://www.commerce.senate.gov/commerce-subcommittees#:~:text=The%20Subcommittee%20on%20Consumer%20Protection,and%20international%20data%20transfer%20issues>.

Thirdly, a policy must be administratively feasible. Money is joined to time. There is so much money in talcum powder imports, exports, mining and products. Due to the variety and number of uses, a ban must accommodate the time it takes to discover and incorporate the alternative product. Now, with the three criteria listed, efficiency, political and administrative feasibility, we have a guide for evaluating the alternatives.

Projected Outcomes

Which starch is best? They are similar in terms of makeup and composition, but with each kind comes different challenges. What if the United States were to recommend cornstarch over talcum powder? The change would be efficient because the public will be protected. Corn, in its natural and unmodified state, has no links to cancer and has been consumed for thousands of years. Corn starch can perform in all the different areas that talc is currently being utilized, and it is less expensive. It also has a long shelf life. It will remain usable for years, as long as it is not exposed to moisture or bugs.⁴⁶

Switching to corn starch is also politically and administrability feasible because the United States will become more self-reliant. Since there is no need to import corn starch, companies will be able to produce their products domestically. This will lower prices for customers. With talc banned, and the growing need for the replacement product, the market will meet the demand and produce more corn. Countries that rely on us for talcum powder will also be forced to switch to the alternative, which will make their own shelves and citizens safer. The United States will be relied on even more for corn products, which will boost the economy.

Having said that, what if tapioca starch is used instead of talc or corn starch? The change would be somewhat efficient because it is similar in composition to corn starch. The United States does produce tapioca domestically as well as import it from Thailand. It would be fair to project better relations with China as a result, which would appeal to some politically. There is a growing market for tapioca. The United States can take advantage of that, which will boost the economy.

In terms of which policy option is best, slowly, or suddenly, the same criteria test can be applied. If the U.S. implemented the slower policy, it would give time for the market to evolve. Adding the tariff on talc will gradually push companies to look for alternatives. Having the warning label can both alert customers and facilitate free exchange until talc is totally expunged from the market. It is efficient, as well as politically and administratively feasible. The free market would do most of the work. The government's role would be to prevent talc exposure from happening again, by banning a product that, at that time, will no longer be used.

But, what should happen if a more drastic approach were taken? What if talc were all but banned overnight, and mines seized? The results, both satisfactory and cautionary, would be seen quickly. The ban would strong-arm companies in the global market, as well as the domestic sphere. They would still be forced to find an alternative. This will eventually grow the American economy should companies utilize cornstarch. There might be a temporary loss in all markets that incorporate talc, but those vacuums would eventually be filled by safer, and cheaper, options. By banning exports and mining domestically, it will not only make U.S. shelves safer, but also protect consumers around the world as their local businesses adjust.

⁴⁶ realsimple.com, last modified October 13, 2023, <https://www.realsimple.com/does-cornstarch-go-bad-8349094>

Still, one can probably already hear the accusations of theft and companies crying foul. It is a fair claim that safety has been the trojan promise of tyrants. In this case, after decades of war over the truth, the lull must end. The lull of the lie that says this travesty may go on and nothing is wrong. The courts have failed. Listed agencies of the executive have failed. Now, it is up to Congress to protect the citizenry of the United States. They must lead the charge, yank the reigns of the other branches, and rouse them to action. The Constitution has already granted authority, and precedent has already been set. If this correction is done swiftly and deliberately, there is no need to fear that it will snowball into worse grievances. Yet assurances can only make promises in the realm of the hypothetical. There's a real world out there, and it bears consequences.

Tradeoffs

While the main goal is to present to the government an attractive and do-able policy, there is still the ever-present threat of litigation. Money is both the lust of corruption and the price of accountability. Accountability, that lingering and inevitable promise, stokes the ire and fear of all governments. Victims require avenging. The American people will demand justice one way or another. Lawyers will be called, and Judges will don their darkened robes once again. Government's role is to protect the life, liberty, and property of its citizens. Courage and humility are required for reform.

Both policy recommendations cannot promise to quell the consumer's rage as they are disillusioned. The more gradual approach, however, offers an olive branch to a body of leaders overwhelmed by science's advances and the expanding market. Science may have showed the threat of talcum powder decades ago, but many may have viewed it too late and too ingrained in society to expunge. Perhaps government could conceive no other solution out of fear? Retaliation will come, but it will be greater the longer government delays addressing their mistakes. The sooner talc is gone, the less victims it will have. Eventually, with the substance removed, talc-related lawsuits will slowly dissipate.

Lawsuits are married to money, and so is trade. There are concerns that both policies will not be effective. The desire for clean ingredients doesn't end with removing talc. Cornstarch can be genetically modified, and often is. Many claim that the "science" is unclear as to the connections between GMOs and cancer. Replacing a known-cancer-causing agent with a suspected cancer-causing agent defeats the whole purpose of the talc ban.

If companies switched to tapioca instead, more issues arise. The U.S. does not produce as much tapioca as it does corn. Tapioca is more expensive per pound than cornstarch. Despite the similarities to its counterpart, it is unknown if tapioca will perform as well as cornstarch does. Because American companies are less familiar with tapioca, it will take longer for them to acquire and incorporate it as a substitute to talc. Tapioca will need to be imported, which makes the United States more dependent on outside nations. It will also raise the prices on products made with tapioca, but perhaps it is worth it? That is something only the consumer can determine.

Finally, one of the goals is to build back trust between the consumer citizen and the American Government. The drawback of implementing a slow and gradual change is the appearance of deception. There is a delicate balance between appeasement and justice. Modifying the market will take time regardless. Yet, the court of public opinion is often susceptible to first impressions and is unforgiving. The policy should be framed such that it radiates more positivity than guilt.

One can say the government is guilty of a grand cover-up and should pay both in gold and blood. As desirable and noble as that is, no monetary penalty will be enough. Humans are eternally valuable. Nothing will adequately replace a lost love-one's memory and presence. The government will not enact its own death sentence. It will not swing the axe towards its own neck. Instead, the reform should be silent and as do-able as possible to avoid arousing anger. By some, this approach threatens to cross the threshold into grey morality. To that, may one consider the tradeoffs of sentiment and result. Ends, in this rare case, may justify means. The intent is not to affront ethics. If a gradual change halts talcum's ability to inflict its cancerous scourge on innocent people, the means are worth it. There may very well come the anticipated day of accountability. Those involved should absolutely answer for knowingly exposing the public to talcum powder. However, accountability is outside the scope of this policy. First things first; talc must go.

General Recommendations

So, what is to be done? It has been said that we must choose either the "temporary pain of discipline or the permanent pain of regret."⁴⁷ The public, through social media, is becoming more sensitive and more aware of toxins in the marketplace. The sooner Congress can do something about this powdery plight, the better. The formal recommendation of this paper is to take the slower approach. Congress should draft a law, outlining several steps, each with an appropriate enactment date. All the steps in the policy should be committed to the goal of ultimately banning the import, export, mining, and use of talcum powder.

The first step is to add a high tariff on talc imports. Then, the current tariff on cornstarch needs to be removed. After those steps, it is recommended that the federal government remove all incentives, subsidies, and grants currently enjoyed by companies that mine and distribute talc products. Subsequently, there needs to be a law that requires a warning label on products that contain talc. Finally, talc must be banned outright by federal law.

If this seems daunting, it should be noted that other countries have also banned talc. America wouldn't be the first, and hopefully won't be the last. In 2023, Zimbabwe banned the import of talc and removed J&J talc baby powder from their nation's shelves.⁴⁸ In the EU, talc, with certain exceptions, is banned from being used in cosmetic products.⁴⁹ Congress can do the same. They just need courage.

Conclusion

This policy plan is important because it affects all consumers. A quick check of your own vanity or medicine cabinet will prove this to be true. The labels on deodorant, eyeshadow, and the like will tell the same sad story of a world dusted in talc. But, there is hope! Trust, the

⁴⁷ Source unknown

⁴⁸ bnnBloomberg.ca, last modified June 8, 2023, <https://www.bnnbloomberg.ca/zimbabwe-bans-j-j-baby-powder-imports-on-talc-concerns-1.1930571>

⁴⁹ Echa.europa.edu, last modified December 8, 2023, <https://echa.europa.eu/cosmetics-restricted-substances/-/legislationlist/substance/100.035.328>

cracked foundation that it is, can be restored. All it takes is for business and government to look in the mirror, make up their mind, and do the right thing.

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