



May 18, 2023

Ms. Tracey Spack
Director Plastics Regulatory Affairs Division
Environment and Climate Change Canada
351 St. Joseph Blvd
Gatineau Quebec
K1A 0H3

VIA Email: plastiques-plastics@ec.gc.ca

Dear Ms. Spack,

Re: Consultation - Recycled Content & Labelling Rules for Plastics: Regulatory Framework Paper

On behalf of the Canadian Toy Association and The Toy Association (USA) we are writing in response to Environment and Climate Change Canada's (ECCC) consultation notice on its regulatory framework for plastic packaging and recycling labelling, issued on April 18, 2023.

We appreciate the opportunity to comment on this initiative. We are concerned however with the very short period granted by the department on what is a very technical outline which will have clear implications on the development of draft regulations. In July 2022, the preliminary high-level discussion document for this policy initiative was held for 70 days. We do not believe ECCC has granted enough time for stakeholders to fully assess the technical applications of its regulatory proposal, nor has it allowed enough time to build awareness amongst our member companies who may be impacted.

The above notwithstanding, the toy industry remains supportive of the government's commitment to mitigate plastic pollution and bolster Canada's extended producer responsibility programs. It is important for the government to have the necessary tools to be able to implement effective policy that will achieve their regulatory goals while mitigating unforeseen economic and business administration burdens. As affirmed in our October 7, 2022, submission to ECCC, our associations and member companies have worked to strengthen the industry's commitment to environmental protection and are keen to work in partnership with the Government of Canada to assist in these efforts.

For many years, our members have taken substantial actions to become more sustainable and environmentally friendly and continue to incorporate innovative solutions to reduce their impact on the environment. However, it is crucial to recognize that the criterion for toy safety will always come first. Our efforts as an industry to improve sustainability, whether it be using new materials or new forms of packaging, must also ensure the same level of safety and compliance to meet strict toy safety regulations and standards. There are aspects of ECCC's proposal that have not taken product safety into account, and we stress that attention to address these matters is needed.

Despite the limited window to solicit input from our member companies, we have attempted to compile some observations on ECCC's proposed regulatory framework. We have broken out our comments as follows:

- **Need for Greater Clarity on Defining what is "Reusable Packaging"**: In some instances, toy companies will use plastic storage boxes, tubs and/or small "suitcases" as part of their toy and/or game sets. Based on ECCC's regulatory framework, it is our understanding that such plastic packaging would be out of scope as they are intended to serve as a durable long-term storage, and in many cases are part of the play experience. With this in mind, we recommend ECCC provide greater clarity to affirm this exemption. For instance, Section 3.3 exempts "reusable

packaging: packaging that can be used many times in a reuse or refill system would be exempted from labelling and minimum recycled content requirements”, and our storage units should fit in this exemption. We would suggest this language be further strengthened such as it is detailed by ECCC in Section 4.2.2 to support this conclusion. Section 4.2.2 addresses “sub-categories excluded from recycled content requirements” in more detail than Section 3.3. It reads: “durable packaging used for long-term storage: such as first-aid boxes, CD and DVD cases, and toolboxes, it is not the intent to capture these items as packaging, as they are designed to remain with a product for long-term use”.

- **PCR Content Requirements for Plastic Toy Storage Boxes/Bins Present Safety Concerns:** We are concerned with the proposed mandated minimum content requirements for post-consumer resin (PCR). This concern has been further stressed by ECCC’s proposal to prohibit post-industrial recycled (PIR) material. These proposed requirements are unlikely to be attainable for our industry to comply with due to the inherent variability in the material properties of recycled plastics and the risk it would present to children. Further, a prohibition on PIR will place an unrealistic reliance on PCR which will not be achievable. As stated above, if the PCR materials are not able to meet the specific safety requirements for toys, the primacy of safety overrides other considerations. Our industry has conducted a great deal of research and experimentation on using PCR for certain components of toys and packaging and the results have been unpredictable, including not meeting the overarching objective of toy safety. Member companies are unable to have confidence in the PCR material that is available as many of the raw material sources may not be able to meet our strict mechanical and chemical safety requirements. PCR materials can be brittle, and fragile, thereby would be susceptible to breakage into small parts and sharp edges. For our industry this is unacceptable. We can not have plastic toy storage items that are part of the play experience to become a safety hazard to children. Importantly, these containers are intended for long term storage, and the container is neither designed nor intended to be disposable.

Plastic toy containers are designed to meet the same stringent international toy safety regulations as the product they contain. These products are compliant with the toy standards requirements for chemical content in the plastic substrates and designed with mechanical product safety and use/abuse play patterns in mind. Such containers are compliant with strict toy safety regulations and standards including ASTM F963 (USA), EN-71 (EU), SOR/2011-17 (Canada), and ISO-8124 (international).

It is for this reason we recommend ECCC to exempt the use of rigid plastic containers as used throughout the toy industry from its PCR content requirement. This principle and applied exemption for the toy sector has been recognized under similar regulatory regimes, such as the New Jersey’s Recycled Content Law and California Rigid Plastic Packaging and Container law. We encourage ECCC to consider the approach and defining terms as applied by other leading regulators. The European Commission Circular Plastics Alliance has also developed useful guidance on waste definitions which we encourage ECCC to consider.¹

- **Greater Clarification on Compliance & Recordkeeping:** Sections 4.4 & 4.5 discuss requirements to demonstrate compliance and recordkeeping. As presented, the terms do not expressly state that products excluded from the PCR requirements are also excluded from recordkeeping and verification. We are concerned that Section 4.5.1 mentions that companies would need to “keep records on the use of reusable packaging”. Not only would this be a burdensome administrative requirement, but it is unclear what information would be kept for this

¹ EC Circular Plastic Alliance – Guidance on Waste Definitions – Website:
<https://ec.europa.eu/docsroom/documents/46954/attachments/8/translations/en/renditions/pdf>

situation. The terms regarding the intent of this provision and its application are unclear. For instance, the toy industry would obviously not be refilling “packaging” for consumers. The consumer simply reuses the item as they see fit from the original product. It is important for ECCC to understand that there are many common scenarios which our industry takes into account as part of a toy purchase. For example, consumers may continue to use packaging as storage for toys, parts, or game pieces. They may also use the packaging as part of the play experience. It is also common whereby the consumer is a collector and would want to retain packaging.

- **Need for Greater Harmonization of Labelling:** Section 5 details ECCC’s proposed labelling requirements. As understood, ECCC is proposing that all packaging, including long term storage packaging that is exempt, would be mandated to label for recyclability based on the proposed new labelling requirements. We are concerned that the proposal sets in motion a variation of approaches that could emerge at the provincial/territorial levels. The unique provisions proposed by ECCC will force significant amount of complexity onto producers, including having the potential to create “country or region specific” packaging to comply with all the required and banned elements.

We believe the proposal contradicts the principles detailed under the *Canadian Free Trade Agreement* and would implement an additional technical barrier to trade across the country. We strongly encourage ECCC to focus its efforts to work with the Provinces and Territories by raising the performance standard of their existing EPR programs/systems, which can be achieved without mandating companies to re-label all their goods with unique marks solely for Canada or specific regions. It is critical for ECCC to understand that manufacturers do not control which province a product may be sold in once it enters the market through retailers. We also often see porosity in terms of product flows between markets (e-commerce from the US), which makes unique country or region-specific labels impractical.

We recognize that Section 5.4 proposes a labeling scheme that attempts to be representative of the existing *How to Recycle* (H2R) program currently being applied by many companies. However, it is unclear whether ECCC will allow for the alignment with the current H2R labelling program. In application, we are concerned that ECCC may be attempting to implement a Canadian-only label that is almost exactly alike and functions in the same manner as the H2R method but the H2R approach would not be recognized to be compliant with ECCC’s regulatory intent. In addition, it is understood that ECCC is proposing a mandatory QR code to take consumers to a web page describing in greater detail the recyclability of the packaging. This information could easily be provided alongside an existing H2R scheme without replacing it. We believe it is important for ECCC to recognize that the H2R scheme is based on lab testing for recyclability. Manufacturers do not simply apply the labels to their products with no thought given to the actual recyclability. It is a mandated requirement of the H2R program to test and prove compliance.

We strongly recommend that ECCC recognize and align with the H2R program. Detailed comments on this point were included in our submission issued on October 7, 2022. We cannot emphasize enough that Canada should work to harmonize as closely as possible with its leading trading partners and that it seeks to support existing provincial and territorial programs. Already, many international retailers and manufacturers are voluntarily incorporating the H2R system across the U.S. and Canada. Continued deviations on labelling practices across international markets will result in significant disruptions for importers when countries implement inconsistent labelling requirements for recycled material.

For any new approach to labelling, it is critical for ECCC to consider the broader implications for packaging design and how the information is received. For the toy industry, product labelling is already a major part of its safety protocols. Our industry very much believes in transparency and ensuring consumers and parents are informed about the products they are purchasing. This involves providing meaningful and useful information to help parents make informed choices on toys, such as general safety warnings on use, appropriate age, recyclability, and other related safety information.

Unless judiciously designed and executed, and harmonized with other markets, new labelling schemes will almost certainly create consumer confusion about the significance of the information provided and how it should be interpreted. Mandated unique Canadian recycling labels with the existing of other comparable labels already being applied may end up increasing packaging size, which would be contrary to the sustainability objectives being pursued by ECCC. We strongly recommend ECCC look to align with existing labelling programs as we have detailed, and that it allows for flexibility when it comes to packaging size through “compact” iterations of labels that could be accommodated on small packages, rather than force companies to increase their packaging size.

It is important for ECCC to avoid establishing an unintentional barrier to trade through the introduction of a unique labelling regime for recyclability in Canada. As detailed under the World Trade Organization’s *Technical Barriers to Trade Agreement*, the provisions of which are incorporated in the *Canada-United States-Mexico Agreement (CUSMA)*, Canada is prohibited from adopting technical standards that negatively impact trade and competitiveness absent a justifiable reason for the departure from accepted international standards and clear demonstration that such departure is “necessary” to serve a legitimate health and safety objective. We recognize that the H2R program is voluntary in the U.S., but it is an effective regime that has already been adopted by companies in an effort to curb plastic waste. By recognizing the H2R system and harmonizing with its technical regulations, Canada would be bolstering the environmental impact it is seeking to achieve while reducing the economic and trade burden on companies. Recognizing the principle of good regulatory cooperation and alignment, we request that Canada gives a full and fair consideration of the H2R program.

- **Proposed Scope of Measuring Recyclability is Vague and Potentially Impossible:** Section 5.3 discusses measurement of recyclability and the corresponding methodology. Although we agree with the basic principles of this objective, the desire for assessing the criteria separately on a province-by-province basis is unduly complex and it is unclear what value ECCC would secure from such a burdensome effort. As proposed in the framework, ECCC is seeking 80 % “collectability”, with 80 % sorting ability to re-processors, and 80 % of that being reprocessed. Not only are these figures difficult to achieve on their own, but to establish such metrics by each province/territory would be very complex and would go beyond most manufacturer’s abilities. Such a proposal would simply be impossible to execute.
- **Proposed Implementing Timeline is Unreasonable:** ECCC’s proposed timeline for implementing its new labelling requirements on certain packaging by 2026 is very short, specifically for the PET blisters. Assuming the regulations will not be finalized until sometime in 2024, industry will be left with a very short transition period to change packaging to add/remove new labels. Companies would need at minimum 48 months before such requirements were to come into force. Manufacturers would need to liquidate existing label stock and integrate any new labelling changes. Any enforcement prior would create unnecessary additional costing pressures and trigger waste issues of existing stock. ECCC would also need to ensure that existing product in the marketplace would not be classified as non-compliant.

As noted earlier, we appreciate the opportunity to comment. However, we have not yet had the opportunity to fully evaluate the requirements proposed by ECCC. We may have additional observations and related concerns that warrant ECCC's attention. In the meantime, if you have any questions about our comments, please do not hesitate to contact us.

Yours sincerely,



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About the Canadian Toy Association and U.S. Toy Association

The Canadian Toy Association (CTA) has over 100 members consisting of manufacturers, importers and distributors of toys. Many CTA members are small and medium enterprises operating across Canada; however, the bulk of Canadian sales come from larger multinational toy companies, most of which are based in the U.S. The Toy Association is a not-for-profit trade association for producers and importers of toys and youth entertainment products sold in North America. It represents over 950 companies who account for approximately 90% of the domestic U.S. toy market. The mission of our memberships is to bring fun and joy to children's lives and in that mission the safety of young consumers is paramount – it is our industry's number-one priority.