

May 28, 2023

European Commission
EU-TBT Enquiry Point
DG for Internal Market, Industry, Entrepreneurship and SMEs
Avenue d'Auderghem 45
1000 Bruxelles
Belgique

VIA U.S. TBT enquiry point

RE: Notification G/TBT/N/EU/953 – Proposal for a Regulation on packaging and packaging waste

Dear Sir/Madam:

These comments are provided on behalf of The Toy Association, and our 800+ members, in response to the European Commission's notification (G/TBT/N/EU/953) to the World Trade Organization on February 27, 2023. We appreciate the opportunity to comment and thank the European Commission ("Commission") for inviting input via the WTO TBT network, consistent with EU's obligations under *WTO Agreement on Technical Barriers to Trade*.

For many years, the toy industry has actively sought real solutions to be more sustainable and environmentally friendly and our members continue to incorporate innovative solutions to reduce their impact on the environment. We support efforts by governments to mitigate packaging waste and bolster extended producer responsibility programs. Our association and member companies have strengthened the toy industry's contribution to environmental protection, whether it be with the toy product itself, the packaging, the manufacturing process, or the supply chain for sourcing material and distributing the product.

The Toy Association welcomes the Commission's proposal to convert Directive 94/62/EC on packaging and packaging waste into a Regulation. This is an important step toward bringing much-needed consistency and clarity on recycling practices across the EU. Over the years, varying EPR approaches instigated by EU Member States have created unnecessary trade barriers for international toy manufacturers supplying the EU market. In support of the Commission's proposal notified to the WTO, we have detailed our comments and recommendations below, which are based on years of experience in complying with established EPR regimes in other countries. We also note that our recommendations closely align with the comments provided by Toy Industries of Europe. Our main points are as follows:

- **Create an EU EPR label for Continuity & Consistency:** In support of the Commission's regulatory proposal, we strongly recommend it creates an EU-wide label for sorting plastic material and to limit the use of unique labelling requirements by Member State's EPR schemes. A European wide EPR logo would enable consistency for international companies selling in the EU market and lead to less waste by significantly reducing the number of different packaging versions that have become necessary as a result of contradictory requirements promulgated by individual Member States. Over the years, our member companies have been challenged by the ongoing fragmentation amongst several Member States from differing rules and requirements on packaging waste and labelling. Our member companies frequently

use standardized packaging when supplying the European market. This allows them the flexibility to ship products to markets where demand is highest, avoid unsold stock, maximize efficiency, reduce the environmental impact, and meet the requirement for product to be sold throughout the EU. Continued deviations on labelling practices across the EU market will result in significant disruptions for importers if countries implement inconsistent labelling requirements for recycled material. We strongly believe a single EU-wide label is needed and should be incorporated into the new Regulation. In support of such an effort, we recommend the following points:

- **Leverage Digital Labels:** We encourage the Commission to consider the use of digital tools for EPR logos and other relevant information in support of plastic waste mitigation. Due to the limited space on product packaging, it would be better to dematerialize any further information (e.g., EPR symbols, specifications of environmental claims, reuse information) and make them available digitally, based on geo-localization. This would ensure that consumers are not confused by the information overload displayed on the packaging. For example, EPR logos (including TRIMAN information or other EPR symbols) can be misinterpreted as a sorting label (similar to Green Dot). When it comes to labelling, our industry very much supports ensuring consumers and parents are informed about the products they are purchasing however, it is imperative that consumer information is clear and readily understandable. Applying an array of disparate EPR labels and symbols on packaging will inevitably trigger labelling fatigue and become meaningless to consumers, resulting in a reduction in the effectiveness of the overarching intent. Lastly, the use of digital labels would prevent the need to increase the size of product packaging, thus reducing the volume of packaging in the supply stream, which is of course another important environmental consideration. A digital label on a package will be able to electronically display the necessary information in the most effective manner for the consumer in their specific location, regardless of where the product is purchased in the EU.
- **Implement a Simplified Pictogram:** An EU-wide sorting label should be a pictogram design with no text. We believe it to be very important to have a “pictogram style” label that can properly inform consumers how to dispose packaging waste and be easily implemented in all Member States. As it currently stands, toy packaging must already display a comprehensive amount of mandatory information under the *Toy Safety Directive*, such as safety warnings, conformity marks, contact details of economic operators and translations of this information into all the languages present within the economic region. As previously stated, there is limited space on the packaging and any additional translations risks to overload consumers with information, as well as increase the packaging size to accommodate all the necessary information.
- **Implementation Timeline:** An EU-wide sorting label should have an adequate and flexible transition period. The development of new packaging follows an annual cycle, and the process to make changes to a product label is highly complex. An EU label would impact packaging design, and an adequate transition is mandatory. At minimum, a 24 months coming-into-force period after implementing a new mandatory EU wide label would give companies enough time to liquidate existing stock, revise inventory and integrate the mandated labelling changes into the supply chain. At the same time, companies who are ready earlier should be allowed to apply the new EU sorting label before the transition period ends. In this regard, we recommend having a flexible approach and granting a “tolerance period” where both types of packaging are allowed on the market.

- **Detail Reasonable Reuse Targets for Transport Packaging:** The current transport reuse targets under Article 26 should not follow a one-size-fits-all approach. We are also concerned that there could be a significant cost increase for both the transportation as well as the organization of reusability systems as reusable containers are often much heavier than single-use containers. Thus, foreign manufacturers and importers will face the dilemma of increased costs, if reusable packaging is even feasible for a given item. Reusable packaging requires the use of more material (and more energy) to ensure repeated usability, without an improvement to EPR. Toys are not supplied in standardized package sizes so the product packaging necessary for protection and product safety have to be individually tailored to the specific product. Secondary packaging has to be sized along with these important considerations in mind. While pallets are re-used as standard in transit, the product packaging and master cartons are not effective for consideration as candidates for reuse targets. Even if viable, this would force the international supply chain to accommodate changes on the design of the packaging just for the EU market, therefore impacting how international manufacturers and importers supply Europe. There are several other points we encourage the Commission to consider in response to Article 26:
 - **Different Types of Transport Packaging:** Transport packaging is essential for the movement of toys across the EU and the rest of the world. It protects the toys during transit and ensures that toys arrive uncontaminated, intact, and safe to play with. Any reuse targets need to consider the variety of transport packaging (cartons, pallets, straps, wraps etc.) and should be tailored accordingly. For example, the reuse of pallets used for transport works in practice. However, pallet wraps and straps for stabilisation may be difficult to reuse because they could become ineffective, or potentially damage the products. In this case, recycling of the item may well be a better option.
 - **Different Models of Businesses:** Reuse targets for transport packaging need to take into consideration the particularities of companies and the global nature of their supply chain. Setting up a reuse system for transport packaging is a complex operation. For example, for toy producers with multinational operations and a decentralised supply chain, it is difficult to facilitate the backward logistics required for reusable packaging. As noted above, there could be a disproportionate impact on foreign manufacturers, and it could involve substantial more energy usage, packaging, and lead to a larger carbon footprint. We believe it would be a better solution to recycle the transport packaging than, for example, shipping back pallets, boxes and wraps from distribution centers to ports.
- **Apply Reasonable Recycled Content Targets:** Recycled content targets should be forward-looking and reflect the availability, quality, technical feasibility, and cost of recycled material. There is a global effort underway to improve sustainability and move to recycled and recyclable materials. In turn, it is important for governments to understand that there is currently a worldwide shortage of suitable recycled plastic, to the point that recycled plastic is often more expensive than virgin. Recognizing the proposed new recycled content targets, we are concerned that these measures will increase consumer costs, and in some cases the appropriate recycled material will simply not be available at any price. There are a few important points we encourage the Commission to consider:
 - **Product Safety is Paramount:** Our efforts as an industry to improve sustainability, whether it be using new materials or new forms of packaging, must ensure the same level of safety and compliance to meet strict toy safety regulations and standards. To ensure the safety of toys (and particularly in the case of combined food & toy products having to comply with strict Food Contact

Material Legislation as well), recycled content targets must take into account the availability and cost of high-quality (e.g. food-grade) recycled materials to avoid any risk of contamination that could jeopardize the safety of the product.

- **Greater Clarity on Definitions:** We recommend further clarification is applied to the "plastic part" definition of the packaging under Article 7. If any plastic part (no matter the size) has to comply with the recycled content targets, even a small plastic part used to seal or hold together a paper package would have to respect the recycled content targets. This would lead manufacturers to rely on lower-quality recycled content material, increasing the possibilities of product contamination or using more packaging to ensure the toy's safety.

Again, we thank the Commission for the opportunity to comment and its draft proposal. Should you have any questions regarding these comments or position, please do not hesitate to contact me or my colleague Joan Lawrence. I can be reached at jhuxley@toyassociation.org, and Ms. Lawrence can be reached at jlawrence@toyassociation.org.

Sincerely,



Jos Huxley
Senior Vice President, Technical Affairs

About The Toy Association and the toy industry:

The Toy Association is the North American based trade association; our membership includes more than 800+ businesses – from inventors and designers of toys to toy manufacturers and importers, retailers, and safety testing labs – all involved in bringing safe, fun toys and games to children. The toy sector is a global industry of more than US\$90 billion annually, and our members account for more than half this amount.

Toy safety is the top priority for The Toy Association and its members. Since the 1930s, we have served as leaders in global toy safety efforts; in the 1970s we helped to create the first comprehensive toy safety standard, which was later adopted under the auspices of ASTM International as ASTM F963. The ASTM F963 Toy Safety Standard has been recognized in the United States and internationally as an effective safety standard, and it serves as a model for other countries looking to protect the health and safety of their citizens with protective standards for children.

The Toy Association is committed to working with legislators and regulators around the world to reduce barriers to trade and to achieve the international alignment and harmonization of risk-based standards that will provide a high level of confidence that toys from any source can be trusted as safe for use by children. Standards alignment assures open markets between nations to maximize product availability and choice.