



Inspiring Generations of Play

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October 26, 2021

Mr. Edward Gresser
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Comments Regarding Foreign Trade Barriers to U.S. Exports for 2022 Reporting (Docket No. USTR-2021-0016)

Dear Mr. Gresser:

These comments are provided on behalf of The Toy Association and the U.S. toy industry in response to the Office of the U.S. Trade Representative's (USTR) solicitation of public comments for the agency's preparation of its annual National Trade Estimate Report on Foreign Trade Barriers (NTE).

The toy sector is a global industry, with continuing growth potential in international markets and increasing export opportunities for U.S. companies. The Toy Association's membership includes more than 950 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. Our members manufacture and sell approximately 90% of the three billion toys sold in the U.S. each year.

The toy industry has experienced dramatic change the past 12 months and continues to operate within an extremely volatile business environment. The global pandemic has placed unprecedented economic strain on businesses and has severely impacted our supply chain and global trading practices. In the face of such adversity, our industry continues to collectively work together to find solutions and engage regulators and governments alike in support of the betterment of the industry. One particular area involves our continued efforts to ensure the maintenance and application of strict, scientifically based toy product safety standards and regulations. Toy safety is the top priority for The Toy Association and its members. Since the 1930s, the Association and its members 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 States¹ 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 and by other product sectors looking to emulate its protective standards for children.

The Toy Association believes that alignment of international toy safety standards and conformity assessment requirements is the most effective and efficient way to promote toy safety and ensure compliance across all markets. Such alignment also has the secondary benefit of facilitating fair and open international trade. While The Toy Association recognizes and supports foreign governments' sovereign right to manage their public health and safety, we encourage international regulatory bodies to adopt harmonized international standards which incorporate the latest intelligence on product safety and children's behavior to facilitate global toy safety.

¹ In 2008, the President and U.S. Congress recognized the effectiveness of the ASTM F963 Toy Safety Standard by adopting it as a mandatory consumer product safety rule for all toys sold in the U.S. market, under the provisions of the Consumer Product Safety Improvement Act (CPSIA) of 2008.

For toys, effective international standards for safety already exist. Alignment with these standards can reduce compliance costs, as well as costs associated with manufacturing, administration, and testing. These reduced costs and increased efficiencies result in lower product prices for consumers, more open markets among nations and greater product availability and choice. However, unfortunately, in carrying out our mission to promote greater access to safe, quality toys for children across the globe, we have encountered frequent use of technical trade barriers as a means of restricting imports by a number of governments. In some cases, these requirements have only a tenuous connection to safety, while in other cases, well-intentioned measures are unduly onerous without a corresponding safety benefit.

In support of USTR's effort to prepare its annual National Trade Estimate Report on Foreign Trade Barriers report, we have provided a summary of select existing and proposed actions by international governments, which pose significant concern to the U.S. toy industry as technical barriers to trade. As explained in detail below, these measures are inconsistent with the commitments and obligations of each country under the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT) because they create "unnecessary obstacles to international trade" and are "more strict than necessary"— while providing little or no added health or safety benefit.

We appreciate this opportunity to provide comments for consideration by USTR for inclusion in the annual NTE Report.

India

India has become one of the most difficult markets for the U.S. toy industry. With a draconian Quality Control Order for toys and a 200 percent increase in tariff on imported toys, the Indian government has effectively created a *de facto* ban on all toy imports.

Draft Quality Control Order on Toys

In April 2019, the Bureau of Indian Standards (BIS) issued a draft Quality Control Order (Control Order or QCO) to require toys to bear a "standard mark" that would certify that the toy conforms to applicable Indian standards. To obtain a standard mark, the applicant must register the product in question by brand and model number, make a self-declaration of conformity, submit test reports to BIS for consideration and submit an application -- all prior to the conduct of an on-site audit and verification testing by BIS. Should BIS approve the application and grant a license for the product to carry the standard mark, the mark must include the license number associated with issuance of the mark. Separate mark applications must be made for separate brands and models of product, even if they are manufactured with the same equipment in the same facility under similar manufacturing processes. The license number and reference standard must be printed on each mark, requiring special packaging and/or labeling. At each phase of this multi-step process, payment of a fee is also required.

The Toy Association has provided BIS with a detailed account of its concerns with the QCO. However, despite, repeated points of engagement with BIS, the QCO was still implemented without amendment on January 1, 2021. The most pressing issue for our industry persists, specifically the requirement for on-site factory audits that must be conducted only by an Indian Government representative no matter where the factory is located internationally.

The on-site factory audits and verification testing requirement is onerous, unnecessary, expensive, and virtually impossible to satisfy (even during pre-pandemic conditions). Such audits are also unnecessary and the failure to provide alternatives is inconsistent with international product safety practices such as ISO 17067. Additionally, verification testing must be performed by a lab accredited by the Indian accreditation body, only a few of which

exist outside of India. In contrast, international safety norms allow product testing to be done by any laboratory accredited to international standards by an accreditation body that is an ILAC-MLA signatory. Further, because costs of the on-site audit, including travel to and from the factory by Indian government auditors must be paid by the manufacturer, the on-site audit requirement treats domestic manufacturers more favorably than foreign ones.

The pandemic has clearly had a major impact on the practical application for on-site factory inspections. In response, The Toy Association has been advocating for virtual inspections; however, BIS officials have not voiced interest in such a proposal. The toy industry remains very concerned with India's QCO. We have sought ways to bridge the gap with the compliance challenges, but to no avail. Effectively, BIS has developed a system that prohibits the importation of safe toy product from entering the country. However, to meet consumer demand, we understand that counterfeit and non-compliant toy product have found their way into the Indian market through different channels, a development directly attributable to the QCO and which could come with serious health and safety concerns. Despite limited dialogue from the Indian Government, the toy industry is still eager to find a resolution with BIS. We are grateful for USTR's advocacy on our behalf before the WTO TBT Committee and appreciate its continued effort.

India Tariff on Toys

Last year, the Government of India (GOI) announced an increase on toy tariffs from 20 to 60 percent (22 to 66 percent when including GST). The 200 percent tariff increase was implemented with immediate effect. The increased toy tariff is among the highest tariff increases enacted in India's annual budget and establishes India as the country with, by far, the highest tariff for toys in the world.

The tariff (in addition to the QCO) makes it cost-prohibitive and practically impossible for the world's toy manufacturers to sell imported toys in India – and these measures may be counterproductive to consumer safety. As a result, safe, quality toys have almost become a luxury item for India's children. Additionally, as noted above, these import restrictions have prompted an increase in smuggled and counterfeit products, given that India imports about 85% of its toys. Counterfeit toys often do not meet safety standards, and as a result, increase safety and health risks to children.

Kingdom of Saudi Arabia

Saudi Arabian Standards Organization (SASO) SALEEM SABER Certification and Conformity Assessment System

The U.S. toy industry remains concerned about the implementation of SALEEM SABER (SABER), the electronic certification and conformity assessment system by SASO. The SABER system went into effect in January 2018, and SASO began enforcing the SABER system for different categories of imported goods in June 2018. SASO implemented SABER for the import of toys in April 2019; following a transition period, the system became mandatory for all imported toys in October 2020. The transition phase of the SABER system has proven cumbersome, expensive and time consuming, consistent with the concerns the industry has raised on this issue since its inception.

Beyond the SABER system, toy manufacturers and importers must also obtain a Gulf Conformity Tracking System (GCTS) product symbol, which confirms the toy has been certified for the marketplace. When the Saudi SABER system is combined with the requirements set by the Gulf Standardization Organization (GSO) for compliance under its GCTS regime, toy manufacturers and importers are left with managing a expensive,

complex and unnecessary administrative compliance regime for imported toys. Among some of the problems our members continue to face are:

- SASO has delegated responsibility for conformity assessment to Notified bodies (NBs) certified by SASO; these NBs have applied requirements for physical samples of products inconsistently, in some cases requiring physical samples of all products in a group to be tested while in others only requiring representative samples. Recognizing some of the issues, GSO created a 'toy categorization document' published in June 2020. However, toy manufacturers continue to voice concern that NBs still frequently request physical samples of all products in a group, and not only of the representative items as detailed by the GSO Guidance.
- Members have also reported that NBs charge companies to decide which item will be the representative one, then they check if the group has valid test reports or documentation-companies need to provide, and only then they choose the representative item. This is an unnecessarily complex procedure, reducing speed to market, adding costs and burden but not adding any additional safety.

We appreciate that SASO officials have acknowledged that the NBs should be more consistent and have recognized that they may be operating with self-serving incentives to utilize the system to generate unnecessary fees. However, for over a year we have repeatedly sought clarification between SASO and the NBs to address our concerns but to no avail. We believe SASO should enforce greater oversight on the notified bodies to ensure that they are consistent in their application of the conformity assessment requirements and refrain from imposing unnecessary requirements and/or costs on importers. We have been urging SASO to monitor the notified bodies closely and proactively to ensure that they are consistent and transparent in administering the conformity assessment requirements.

Indonesia

Indonesia National Standard and Technical Specification for Toys (SNI Regulation 24/M-IND/PER/4/2013) (SNI Regulation)

Indonesia's Ministry of Industry (Mol) decree on the SNI Regulation went into effect in April 2014 and continues to persist as a major barrier to the export of toys to the country. We appreciate USTR's continued advocacy on behalf of the U.S. toy industry since this issue first arose in 2012. Unfortunately, the toy industry continues to be adversely affected by the overly restrictive and discriminatory aspect of the regulation. Among the most egregious features of the SNI Regulation is its original requirement that each lot of imported toys was to be tested, while domestic toys would only be sampled and tested once every six months. While continued advocacy to the Mol resulted in the addition of an alternate conformity assessment process for imports (modeled on ISO 17067 Scheme 5), that process is not workable for all toy manufacturers and significant problems remain. These include: undue restrictions on which laboratories are authorized to conduct toy testing; restrictive certification and marking requirements; onerous documentation requirements; restrictive factory audit requirements; and unreasonable and/or vague restrictions on certain substances.

A more recent problem is a new requirement that limits who can conduct the evaluation of foreign factories under the SNI Regulation and, in particular, who can pull requisite samples. Indonesia is now requiring that those individuals be of Indonesian nationality, have a residency status in the country and be fluent in Bahasa. These requirements do not bring any value to the quality of safety checks and, in many cases, have served to severely delay the importation process.

The regulation contains several requirements inconsistent with Indonesia's obligation under the WTO Agreement on Technical Barriers to Trade because they create unnecessary obstacles to international trade and are stricter than necessary.

European Union

Titanium Dioxide

The European Union (EU) Commission (EC) has adopted a provision, the 2018 Adaptation to Technical and Scientific Progress (ATP), to amend the EU Regulation (EC) No. 1272/2008 on the Classification, Labelling and Packaging of Substances and Mixtures regulation (CLP) to include titanium dioxide as a category 2 carcinogen. This change has been finalized by the EC and the European Parliament and will require classification and labeling of products for titanium dioxide on the basis that it poses a carcinogenic hazard when inhaled. The provision took effect on October 1, 2021.

This creates a specific issue for the toy industry, however, in that the EU Toy Safety Directive (2009/48/EC) prohibits the use in toys of any substance which is classified under the CLP regulation as "carcinogenic, mutagenic, or reprotoxic".

The U.S. toy industry appreciates USTR's raising this issue with the EU at the WTO's TBT Committee meetings since 2019. At this time, our industry is hopeful for a derogation being issued by the EC. It is understood an appointed panel of scientists are reviewing the eligibility for allowing this derogation, which we hope will ease the proposed unnecessary burden on toys. However, until such time the derogation is issued, we remain concerned with the pending policy being implemented.

As we have outlined to USTR before, without accommodation, the EU's ATP provision will have a significant damaging effect on the toy industry, without corresponding benefits to safety, as explained in detail below:

- Titanium dioxide, an inert mineral, has widespread safe uses, including in paints, coatings, printing inks, plastics, cosmetics, food and feedstuffs, textiles, rubber and pharmaceuticals. Classifying titanium dioxide as a Category 2 carcinogen under the CLP, which would require product labeling to that effect on a host of downstream products, would be out of proportion to the potential risk posed by the substance, inconsistent with international standards on classification and labeling schemes such as the UN Globally Harmonized System and cause significant disruptions to trade without corresponding benefits.
- While it is possible that some uses of titanium dioxide could present a risk to health, such as in the case of respirable small particles, the potential risk from uses of titanium dioxide in toys is exceedingly remote. When used in toy materials, titanium dioxide is typically used in plastics, rubber, paints, and coatings as a white pigment and opacifier. There is no reasonable risk of inhalation with such uses, and there is no scientific basis to regard the use of titanium dioxide as hazardous in such applications.
- As currently proposed, the ATP would impose labeling mandates on liquid mixtures containing more than 1% titanium dioxide with particle size of less than 10µm. It would also mandate warnings on solid mixtures containing greater than 1% titanium dioxide, regardless of particle size. Unfortunately, a quirk in the EU Toy Safety Directive (TSD), specifically the Carcinogen, Mutagen, and Reprotoxin (CMR) restriction, prohibits the toy industry from warning by labeling but instead prohibits from using more than 1% or more of titanium dioxide in toys – even in the case of items in which there is no conceivable use that could result in respirable particles, such as in liquids that are not intended or likely to be sprayed or in solid mixtures.

EU Member State Labeling

In the last year, we have been confronted with a concerning trend of divergent national packaging labelling and information requirements across several EU member states. This not only counters the work underway at the EU level to create a common internal market and a harmonized approach to waste collection and sorting, but it is resulting in major disruptions for importers. These national labelling and information requirements force companies to create several iterations of their packaging to comply or to use stickers to add or cover certain markings. In addition to costs and operational impacts on production lines, these national measures can also have a negative impact on the size of packaging and its recyclability and can further confuse consumers.

Examples of divergent national labelling initiatives include:

- **France “Green Dot”**² - The Government of France has issued a decree prohibiting the usage of the “Green Dot” on products and their packaging in France; however, this decree is currently being re-evaluated. The Green Dot is a widely recognized symbol in many European countries (and elsewhere) which signifies that for each piece of packaging, a financial contribution has been paid to a national packaging recovery organization. As part of its original proposal, France intended to impose a penalty on companies that sell products with the Green Dot on the packaging even though the Green Dot is mandatory in other European countries. Precisely because of this, France’s prohibition on use of the Green Dot would put product manufacturers and retailers, including those in the toy industry, in the difficult position of navigating and complying with contradictory packaging requirements in Europe, having to segregate specific products for the French market to ensure that they do not carry the Green Dot, while risking potential penalties. Penalizing the use of the Green Dot on the part of France seems counter-productive to a genuine interest in encouraging and fostering environmentally responsible practice. As of writing, the French Council of State has temporarily suspended this initiative, meaning the scheduled imposition of fines for using the Green Dot that had been scheduled for April 1, 2021, has been deferred. However, a final decision still needs to be made by the Council of State. Until such time that this policy is fully rescinded, it remains a concern for our industry.
- **France Triman**³ - In February 2020, France adopted Law 2020-105 (Triman), for the purpose of discouraging waste and requiring all products that generate waste, including toys, to be labeled on the product packaging with the Triman logo and waste sorting instructions for the packaging and product itself. On June 29, 2021, the French authorities adopted the decree implementing the provisions on the Triman logo and the sorting instructions. Producer responsibility organizations have had three months to present proposals for defining the sorting instructions that will need to be affixed to product packaging, after which there will be a 12-month transition period. Sorting instructions are not harmonised across the EU. While The Toy Association supports the goal of reducing waste and promoting recycling, it is unnecessary and burdensome to require the Triman logo and sorting instructions to be included on product packaging. This will require toy manufacturers and importers to segregate, package and label specific products for France, in contrast to other EU member states, leading to delays, unnecessary costs and supply chain challenges.
- **Italy**⁴ - Italy has introduced a requirement that alphanumerical codes be placed on all packaging and, for packaging to consumers, that waste sorting instructions be placed on packaging as well. As the sorting instructions are not harmonised across the EU, this information could be confusing for consumers and

² Decree of November 30, 2020 relating to signs and markings that may lead to confusion on the rule for sorting or bringing in waste from the product and Decree of December 25, 2020 amending the decree of November 29, 2016 relating to the approval procedure and laying down specifications for eco-organizations in the household packaging sector.

³ Article 17 of the Law 2020-105 regarding a Circular Economy and the Fight against Waste and Draft decree on consumer information symbols indicating the sorting rule for waste resulting from products subject to the principle of extended producer responsibility.

⁴ Legislative decree n° 116 of 3 September 2020.

further burdens toy manufacturers and importers to segregate, package and label specific products for Italy. These requirements were set to enter into force 1 January 2022; however, in May 2021, legislation was passed to temporarily suspend the requirements until December 31, 2021 and to allow stock already on the market to be sold after that date. However, the issue still presents a real concern for the toy industry and other product manufacturing sectors. Further, Italy hasn't notified the EU or the WTO about this separate labelling requirement.

- **Portugal**⁵ – Similar to Italy, Portugal plans to implement a requirement that alphanumerical codes be placed on all packaging and for packaging to consumers, that waste sorting instructions – especially the color of the bin – be placed on the packaging as well. In addition, Portugal plans to ban the use of the “tidy-man” logo for recyclable and reusable packaging. These requirements will require specific toy product packaging for the Portuguese market. The draft Decree has not been adopted yet. The Ordinance with the sorting instructions is expected to be published by December 31, 2022, setting a transitional period for compliance with the marking obligation of no less than one year. If Portugal imposes these labelling requirements, there is a serious risk that other EU Member States will also develop their own schemes. As a result, companies will be required to include multiple sorting instructions on pack or the need to create specific packaging for each Member State.
- **Spain** – Waste Law & Green Dot - A draft law pending before the Spanish Parliament would ban the destruction of unsold surpluses of non-perishables such as textiles, electrical devices, and toys, with no exemption for cases in which the product is unsafe. The European Commission is planning to introduce a similar ban under the Sustainable Products Initiative, making Spain's requirement problematic to the extent that it diverges from the anticipated EC ban. The draft law needs to be adopted by the Spanish parliament. In addition, Spain is looking to introduce additional marking provisions in a new Decree on Packaging and Packaging Waste. There is only one EPR scheme for packaging in Spain and they have selected the Green Dot as their identification symbol. Spain is the only EU member country that will make its use mandatory. Companies will need to affix this logo to its packaged products or risk fines. In addition, the French ban on the use of this symbol, as described above, prevents companies from being able to use the same packaging for two bordering EU countries.
- **Bulgaria**⁶ – Packaging labeling obligations – Bulgaria has adopted a new packaging decree which makes mandatory the use of alphanumerical codes and the Mobius loop. These markings were first introduced in Bulgaria by the Packaging Ordinance of 2012; however, their use was voluntary. The decree that was adopted in December 2020 mandates the requirement by January 1, 2022 and has not been notified to the WTO by the Bulgarian government.

Mexico

Operation of Tianguis del Bienestar (well-being markets)

On June 21, 2021, the President of Mexico announced plans to reform the administration of Tianguis del Bienestar (well-being markets) which, as proposed, would allow for confiscated imported product to be donated to those in underprivileged communities across Mexico. The program has been positioned as a way of meeting the needs of vulnerable communities, while easing the administrative and cost issues required to manage customs warehouses.

The toy industry commends the Government of Mexico's desire to support underserved communities; however, we are concerned that the products seized by customs authorities, specifically toys, may be counterfeit and/or not

⁵ Draft Decree-Law (fifth amendment to Decree-Law No 152-D/2017).

⁶ Decree No 420 of 31 December 2020

meet Mexico toy safety standards and may therefore present a risk to children if they are released under this proposed initiative. The successful importation of toys into Mexico requires that all toys must meet the Federal Consumer Protection Law, as well as series of Norma Oficial Mexicana (NOM) certifications that outline strict toy safety standards. Before entry, products must be tested by a certified laboratory and receive a NOM certificate. This process is often circumvented by counterfeiters and manufacturers of copycat products, whose products are consequently confiscated by Mexican customs authorities.

In terms of the WTO implications, the distribution of confiscated consumer goods also violates several legal principles and international treaties and perpetuates intellectual property infringement. Seized counterfeit toy product would effectively remain in circulation. While we understand that Mexican authorities (INDEP) have provided assurances to USTR that by law they cannot utilize goods suspected of violating intellectual property, Mexico has also indicated that they do not have the resources for proper enforcement of counterfeits.

Republic of Korea

Phthalates - Proposed Revision of Safety Criteria for Children's Product

Earlier this year, the Republic of Korea gave notice of a proposed revision of its safety criteria for children's product. We commend the effort to modernize Korea's safety requirement for children; however, the proposal details a significant deviation for leading international regulatory norms, specifically regarding the addition of Diisobutyl phthalate ("DIBP") as an additional restricted phthalate ester in children's products.

We do not take issue with the addition of DIBP to the list of restricted phthalates, but do have significant concerns with the aggregate limit, as it will create problems in analysis, is more stringent than necessary, and takes Korea's regulation of phthalates in toys even further out of alignment with international norms. The aggregate limit being proposed is also unnecessary to protect the health of Korea's children.

The current phthalate requirement of the "Safety Criteria for Children's Products" restricts six phthalates to a concentration level of 0.1% for the sum of all six; adding DIBP would now require a limit of 0.1% for the sum of seven phthalates. Not only is the analysis method out of alignment with international norms (which either restrict each phthalate to 0.1% individually as in the United States, or to the sum of no more than three phthalates as in the European Union), but both the existing and proposed requirements are in violation of the WTO Agreement on Technical Barriers to Trade, in that they are more stringent than necessary to achieve their stated health and safety goal.

The restricted phthalates are not intentionally added to toys but may be present at low levels as unintentional contaminants. The proposed limit of 0.1% for seven phthalates in the aggregate means that effectively, each phthalate is restricted to 0.014%, or 140 ppm. This is too close to the practical quantitation limit (PQL) for the restricted phthalate esters in plastic matrices in most commercial laboratories (approximately 100 ppm) to allow reliable results, and as such it will be very difficult for manufacturers to confirm compliance, given the low expected concentration levels in toys, as well as commonly encountered matrix interferences.

We are urging Korea officials to align with international norms by allowing 0.1% of each phthalate individually; this will align with international norms and be adequately protective for two reasons:

- Scientific authorities in both the EU (European Chemicals Agency, evaluating REACH restrictions) and the U.S. (Consumer Product Safety Commission, relying on the opinions of a scientific Chronic Hazards Advisory Panel) have determined that the 0.1% limit for each phthalate is protective of children's health; and,

- It is uncommon for more than one phthalate contaminant to be encountered in a single toy.

Proposed Amendments to the Act on the Promotion of Saving and Recycling of Resources

The Republic of Korea is proposing an amendment to its *Act on the Promotion of Saving and Recycling of Resources* ("the Act") that would make it mandatory to label the material and packaging method, including space ratio and amount of packaging, on the surface of packages. The proposed amendment would also include a substantial fine.

While the objective of the proposal to reduce packaging waste is commendable, its implementation would result in substantial costs and supply chain burdens for toys imported into the Republic of Korea because it would impose country-specific labeling requirements. Requiring mandatory labeling of details regarding the packaging, testing and compliance will pose burdens of administering such a requirement, resulting in interruptions, inefficiencies, and related increased costs in the product supply chain. Notably, testing to certify compliance with the existing Act would be completed post-production of a product. Requiring subsequent labeling following such testing, to add the information required under the Amendment, lengthens and complicates the path to market.

Among the likely burdens the proposed Amendment creates are that of administering the addition of required labels; managing storage and logistics of product before and after testing and procedures for segregating inventory; delays to the process, and the related materials and administrative costs associated with these added requirements and complexities. Further, we note that increased production costs related to the added administrative requirements of the Amendment – ultimately resulting in increased retail cost to consumers – and yet the information provided on such labeling may not be sufficiently useful or valuable to consumers to merit the increased cost.

Russia

Psychological Safety Assessment Proposal for Toys

In January 2021, Russia's Ministry of Health posted a revised draft law that would establish an unprecedented and highly arbitrary psychological assessment of toys, games and play structures for the stated purpose of protecting children's mental health. An assessment could be initiated on the request of any party.

In application, the proposed law would require a commission of experts from federal budgetary institutions to conduct an evaluation of a product with respect to whether it is deemed to promote any of the following harms: harm to one's self or harm, violence or cruelty to other people or animals; drug, tobacco and alcohol consumption; sexual violence and pornography; prostitution, vagrancy and gambling; deaths in a form degrading human dignity; and insulting the religious feelings of believers. Should the commission of experts deem a product to be promoting any such harm, the commission opinion would be sent to the federal body responsible for consumer protection to resolve the issue by, *inter alia*, suspending the product's circulation in commerce. There are no standards for the above evaluations, creating a risk that toys could be banned arbitrarily. Although the Russian government refers to the proposed scheme as "voluntary," it is our understanding that toys can be "nominated" for review and a manufacturer cannot refuse to participate in the commission's evaluation process, clearly creating the risk of product being forced from the market.

The draft law is currently undergoing inter-ministerial review and will need to be submitted to the State Duma before adoption. A similar proposal filed by Kazakhstan for the Eurasian Economic Union (EAEU) was opposed by the United States and the EU in the WTO TBT Committee, with the argument that international age-

appropriateness guidelines were a more appropriate means to address the issue. That Kazakhstan proposal was subsequently put on hold.

The U.S. toy industry has deep concerns with this Russian proposal for many reasons. As a threshold matter, there is no international standard for psychological safety, and it would be impossible to develop one because evaluating toys based on whether they promote or discourage certain views or behaviors is necessarily a subjective exercise and a parental prerogative. Should Russia adopt a mandatory psychological safety standard for toys, it would lead to the arbitrary exclusion of certain toys from the market to the detriment of Russian children who would lose the opportunity to enjoy creative and fun toys available to other children around the world. In addition, it is likely that toys from non-Russian manufacturers would be disproportionately affected by such a provision, which would place Russia in violation of its obligations as a member of the WTO.

Eurasian Economic Union (EAEU)

Current ban on recycled content in toys

An EAEU technical regulation promulgated in 2011 (Customs Union 008/2011) established mechanical and chemical safety standards for toys. One provision that, while unusual, attracted little attention at the time was a ban on the use of recycled content in toys. Specifically, Article 4, clause 2 states: "The use of materials obtained as a result of the recycling of the used materials is not allowed in toys" (although it does allow the use of in-house waste materials).

This ban is inconsistent with global toy safety standards. Given the growing importance of sustainability and the extensive efforts being undertaken by U.S. toy companies to that end, the use of recycled materials has become an increasingly important tool for manufacturers to promote that objective. As they adapt their product lines accordingly, toy companies are finding that some of their most environmentally friendly toys cannot be sold in Russia and other EAEU markets given the ban on recycled content.

The ban on recycled content is unnecessary because the subject regulation, as well as Customs Union 007/2011 of EAEU, already lay down extensive requirements addressing the mechanical and chemical safety of the materials used in toys, including strict limits on a range of chemical substances regardless of their origin. These provisions correspond with the principles contained in international toy safety standards. Additionally, we note that there exist no test methods capable of determining whether recycled materials are present. It is understood that effort has been initiated by government officials to update these technical regulations, which assumes the proposal would eventually be notified to the WTO.

Ukraine

Current restriction on recycled content in toys

Similar in principle to the EAEU ban on recycled content in toys, the Ukraine government published in December 1998, a regulation⁷ that restricts the use of recycled content in toys. Specifically, it reads that "recycling materials (not more than 30% of impurities to the main material) are allowed for the production of toys and games for children over three years," subject to the permission of the Ministry of Health. For several years, The Toy Association has advocated to have the 30% limit on the use of recycled materials removed. The restriction is at

⁷ State sanitary rules and safety standards of toys and children's health games in Dsanpin 5.5.6.012-98 (Approved December 30, 1998)

odds with global toy safety standards, and it is unnecessary given Ukraine's existing regulatory regime that already addresses the physical and chemical safety of the materials used in toys, including strict limits on a range of chemical substances.

China

China Compulsory Certificate – Foreign Factory Audits

The China Compulsory Certificate (CCC) regulations are a costly barrier for U.S. toy companies and present intellectual property concerns. The CCC program mandates companies selling toys in China to secure a certification that affirms the product has been tested by a Chinese laboratory and that the product was manufactured in a factory with specific certification requirements. The administration of the CCC program is managed by the China Quality Certification Center (CQC), which operates under government authority set by the China Certification & Inspection Group (CCIG).

As part of their duties, CQC officials are required to travel to foreign factories to conduct their audit for certification, all at the expense of the toy manufacturer/importer. The CCC program does not allow any outside parties to perform these duties. As the CCC factory audit essentially follows a set ISO standard, any audit firm accredited to perform ISO 9001 audits should be able to perform and document compliance with the CQC.

The CCC requirement clearly acts a trade barrier to U.S. toy companies as domestic Chinese supplier costs are considerably lower than for import factories. Also, the administration of the CQC program presents intellectual property concerns, as there is little assurance in the confidentiality of trade secrets during a Chinese government audit of a U.S. factory.

Conclusion

Toy safety is the top priority for The Toy Association and its members. The toy industry is committed to working with legislators and regulators in the United States and globally 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 in any market can be trusted as safe for use by children. Standards alignment and non-arbitrary and non-discriminatory conformity assessment processes assure open markets between nations to maximize product availability and choice.

Thank you for the opportunity to submit comments for the NTE Report. If you have any questions or need additional information, please contact Alan P. Kaufman, Senior Vice President, Technical Affairs, at akaufman@toyassociation.org.

Sincerely,



Steve Pasierb
President & CEO