



October 29, 2020

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

Re: Request for Comments to Compile the National Trade Estimate Report on Foreign Trade Barriers (Docket No. USTR-USTR-2020-0034-0001)

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. The U.S. toy market is \$27 billion annually, with an annual U.S. economic impact of \$98.2 billion. Our members manufacture and sell approximately 90% of the three billion toys sold in the U.S. each year.

Toy safety is the top priority for The 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 States.¹ 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. While The Toy Association recognizes and supports foreign governments' sovereign right to ensure 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 in order to facilitate global toy safety. For toys, effective international standards for safety already exist. Alignment with these standards can reduce compliance costs, as well as costs associated with

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.

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.

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 many 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.

We have provided a summary of some of 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 they are “more strict than necessary” — while providing little or no added health or safety benefit.

Beyond those technical barriers to trade, we also have noted certain tariff barriers facing our industry. These include India’s recent tripling of its duty on toys to 60 percent, as well as ongoing efforts to reduce Brazil’s 35 percent tariff on toys.

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

Brazil

Ordinance 563/217 Requirements for Conformity Assessment

Since 2014, Brazil’s Institute of Metrology, Standardisation and Industrial Quality (INMETRO) has been developing and implementing a “family registration” system to categorize and certify toys. The initial proposed Ordinances 489 and 310 were combined into, what was to be, a “final” regulation, Ordinance 563, which was adopted in early 2017.

On October 30, 2018, INMETRO notified the WTO of proposed revisions to Ordinance 563 (proposed “Complementary Ordinance 563”) just two months before the imminent effective date of the still-in-place finalized Ordinance 563 in December 2018. At that time, INMETRO delayed the implementation date to December 2019, but never issued a revised Ordinance 563. Instead, INMETRO issued a series of additional ordinances on conformity assessments that pertain to toys, including Ordinances 404 and 503. Most recently, in June 2020, INMETRO published Ordinance 217, adding to the list of requirements.

The Toy Association has provided multiple, detailed sets of comments in response to INMETRO’s TBT notifications of these ordinances. The U.S. toy industry’s concerns regarding the issue remains as follows:

Concerns about Certification Requirements:

Brazil has imposed “family registration system” requirements in its certification schemes for many products other than toys. However, the family registration system requirement is especially difficult for toy manufacturers to meet because toy manufacturers typically manufacture a greater number of products, at lower price points, and with a much higher rate of turnover on a seasonal basis than do other product sectors. This combination of factors means that the new family registration certification requirement imposes disproportionately heavy costs and burdens on the toy industry.

The ordinances maintain the requirement that toy companies label packaging with a Conformity Identification Tag, that includes a product family-specific registration number obtained through the new Object Registration system, *after* the toy has been tested and certified by an official certifying party (OCP). This requirement not only results in significant inefficiencies in the supply chain, but forces importers to retool their entire supply chain so that the product can be tested and stored in a warehouse until INMETRO provides a registration number *prior* to import. This requirement, which is unique to Brazil, will be unnecessarily burdensome. It will result in significant cost increases and time-to-market delays, all with no improvement in safety.

Also, the certification process requires a company to first submit lengthy documentation, including a detailed description of the traceability procedure adopted by the supplier for the product and a descriptive toy “memorial” including extensive information, such as the list of raw materials used to manufacture the toy. Not only do these requirements impose a heavy administrative burden on companies, they also require companies to disclose confidential and proprietary business information.

We appreciate that INMETRO has been deliberative in considering conformity assessment for toys and its willingness to consider stakeholder input. However, the issuance of so many conflicting ordinances, many of which are disjointed and cross-reference other provisions, all of which are intended to remedy shortcomings in the MERCOSUR standard NM 300 and accommodate INMETRO’s inability to effectively monitor the retail environment, has created years of confusion and uncertainty for our industry. For example, the latest ordinance, Ordinance 217, was not written as a stand-alone document and can only be interpreted by comparing it side-by-side with Ordinance 563. As a consequence, Ordinance 217 provides limited clarity. In fact, we have been unable to fully review Ordinance 217 and compare it to the earlier ordinances in time to provide further detail on this subject in our NTE comments, given the comparatively recent issuance of Ordinance 217, however, we believe it delays the effective date for Ordinance 563, while adding new changes to the requirements that stakeholders must review and analyze to ensure compliance with Brazilian standards.

Concerns about the Standards:

MERCOSUR standard NM 300 has not been updated in several years. The existing NM 300 standard is aligned to a now-outdated version of ISO 8124. We understand that NM 300 is currently under review, and while there is little transparency to this process by outside parties, we request that Brazil work with the other MERCOSUR countries to update NM 300 to align the toy safety standard with the most recent version of ISO 8124.

Further, the Ordinances (outlined above) promulgate numerous requirements that either contradict or are redundant to NM 300. In addition, many of the ordinances are too broadly applied, inconsistent with international norms, and/or would result in banning safe toys.

Tariff Reduction for Toys

In 2010, Brazil implemented an “emergency” measure imposing tariffs of 35 % on toy imports. With most countries of the world assessing either no duty on toys or a duty in the single digits, this made Brazil a notable outlier.

The Toy Association applauds the Bolsonaro administration’s ongoing effort to reduce tariffs on toys from 35 to 20 percent. CAMEX recently issued a report on the proposal, following the conclusion of a public consultation period. We understand that a decision may be made soon by CAMEX.

The CAMEX report included support for the tariff reduction. Among the findings, CAMEX reported that the reduction in the tariff will result in:

- lower costs for Brazilian businesses, lower prices for Brazilian consumers and increased economic activity for the Brazilian economy; and
- will make quality toys more affordable and accessible to Brazil's children, reduce the import and sale of smuggled and counterfeit toys in Brazil and broaden the benefits of safe and engaging toys and play for Brazil's children.

It is important to note that even at the reduced rate of 20%, Brazil's toy tariff would remain among the highest in the world and would be insufficient to align Brazilian tariff policy to that of other countries in the international toy marketplace. We encourage CAMEX to continue to consider tariff reductions to bring its rates into alignment not only with MERCOSUR countries but with the international marketplace.

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 carcinogenetic hazard when inhaled. The provision will become effective in October 2021.

The U.S. toy industry appreciates USTR's raising this issue with the EU at the WTO's TBT Committee meetings since 2019. We remain concerned that the EU's ATP provision will have a significant deleterious 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. Titanium dioxide is typically used in toy materials such as plastics, rubber, paints and coatings. 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 10um. 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 be prohibited 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 parts.*

- In contrast, this limitation differs from the recent opinion of the EU's Scientific Committee on Consumer Safety (SCCS) that titanium dioxide is safe in powder form in cosmetics at up to 25% concentration. There is no scientific basis to justify such inconsistent treatment of titanium dioxide in these categories of consumer products. Furthermore, the disparity underscores that the ATP is more stringent than necessary to accomplish its intended purpose, rendering its restrictions on the use of titanium dioxide in toys a violation of the EU's WTO obligations
- Even if the toy industry were granted a derogation from the TSD CMR requirement allowing for the use of higher levels of titanium dioxide in toys, the requirement to label toys with a warning of potential carcinogenicity would not enhance public safety because the potential risks of titanium dioxide use in toys are so remote. Importantly, while posing a burden on industry to comply, the use of a warning label in an instance when potential risks are so minimal also diminishes and dilutes the effectiveness of warning labels for those products posing genuine safety risks.

France

Article 17 of the French Circular Economy and Anti-Waste Law n° 2020-105 Requiring Triman Logo (Triman Law)

In February 2020, France adopted Law 2020-105, 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.

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. In addition, the expected enactment in January 2022 will pose additional challenges to toy manufacturers because it is likely to impact products that have already been developed, requiring redesign and possible reproduction of product labels and packaging.

The practical result will be France-specific packaging and labeling, adding costs to products destined for the French market and leading to higher prices. Moreover, requiring additional labels labeling on products such as toys is likely to lead to consumer confusion and reduced attention to labels related to safety.

The Toy Association has been monitoring, analyzing, and commenting on provisions involving packaging and labeling for several years, and appreciates the U.S. government's support in this regard. We have also worked with national toy associations in other countries. We have consistently found, both in our analysis and in practice, that provisions such as France's Triman law that require specific packaging and/or labeling result in confusion, compliance challenges and needless expense without resulting in a benefit to safety or the environment.

Finally, France has not notified this issue to the WTO in accordance with its obligations under the TBT agreement. We urge the French Government to notify the Triman Law to the WTO, consistent with its obligations, to permit The Toy Association and other interested parties an opportunity to provide our comments on this matter.

Penalty for Green Dot Usage on Product Packaging

The Government of France has issued a decree prohibiting the usage of the “Green Dot” on products and their packaging in France. The Green Dot is a widely recognized symbol in many European countries which signifies that for each piece of packaging, a financial contribution has been paid to a national packaging recovery organization. Further, France intends to impose a penalty on companies that sell products with the Green Dot on the packaging, despite the fact that the Green Dot is mandatory in many other European countries.

Precisely because the Green Dot is mandatory in some countries, France’s prohibition on use of the Green Dot will 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. The imposition of country-specific labeling requirements such as France’s Green Dot prohibition will lead to substantial packaging and distribution costs which do not have any evident corresponding benefit, and is likely to result in inadvertent violations due to the realities associated with distribution and supply chain functioning.

Further, penalizing use of the Green Dot on the part of France seems counter-productive to a genuine interest in encouraging and fostering environmentally responsible practice.

Finally, like with the Triman Law (above), France has not notified this issue to the WTO in accordance with its obligations under the TBT agreement. We urge the French Government to notify its decree regarding “Green Dot” to the WTO, consistent with its obligations, in order to permit The Toy Association and other interested parties an opportunity to provide our comment on this matter.

India

Draft Quality Control Order on Toys

In April 2019, BIS issued a draft Quality Control Order (Control Order or QCO) to require toys manufactured outside of India 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 would include the license number associated with issuance of the mark. Separate standard 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.

The Control Order was originally scheduled to enter into force on September 1, 2020, but the Indian Department for Promotion of Industry and Internal Trade (DPIIT) recently delayed implementation to January 1, 2021. The Toy Association has provided BIS with a detailed account of its concerns about the Control Order, among the most pressing of which are as follows:

- The labeling and marking requirements are restrictive and unnecessarily burdensome, requiring manufacturers to segregate specific product for the Indian market and disallowing testing and marking of product families. These requirements are highly inefficient and burdensome given that different models of products often come from the same factories and have similar manufacturing processes. Further, the obligation to label products could be met by permitting the use of stickers, as well as

acceptance of existing industry practices that promote safety without imposing undue burdens and costs.

- Companies selling toys in India are required to apply for and receive approval for a QCO license under the Indian scheme. Such application requires testing and on-site factory audits conducted by Indian Government representatives. The on-site factory audits and verification testing requirement is onerous and virtually impossible to satisfy (even during pre-pandemic conditions). Such audits are also unnecessary and inconsistent with international product safety practices. International safety norms ensure products meet harmonized safety requirements by requiring product testing by a laboratory accredited to international standards. Requiring an on-site factory audit *and* verification testing is duplicative, unnecessary and unduly burdensome. 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 by capping auditor travel costs for domestic factories within India, while keeping them unlimited for foreign ones.
- While DPIIT announced in September that the effective date was delayed until January 1, 2021, we note that the process to apply for license is expected to take 3-4 months under normal conditions. As of October 2020, we have heard that only a few local manufacturers have received such a license. While foreign manufacturers have submitted many applications, there appears to be no hope their factories will be certified before the QCO takes effect given the inability of BIS inspectors to conduct overseas audits given pandemic-related travel restrictions. Moreover, as currently structured, the QCO will require the removal of all unsold imported toys from the Indian market – whether in distribution centers or on retailers’ shelves – effective January 1.
- For these reasons, BIS should allow a workable transition period for enforcement of the Control Order to allow the shipment and distribution of compliant toys in India until there are adequate BIS resources to administer the requirements and allow manufacturers to sell products manufactured before the effective date.

Amendment in Policy Condition No. 2 to Chapter 95 of ITC (HS), 2017 – Schedule – 1 (Import Policy)

The Toy Association remains concerned about India’s Import Policy, which was announced, and enacted, without prior notice, by the Bureau of Indian Standards (BIS) in September 2017. The Import Policy requires all imported toys to be tested for compliance with Indian toy safety standards IS 9873 and IS 1566, using a conformity assessment facility accredited by the National Accreditation Board for Testing and Certification (NABL) in India. Prior to the Import Policy enactment, BIS had a process that was reasonably aligned with international norms, accepting toys tested to ISO 8124, as certified by a laboratory accredited under the International Laboratory Accreditation Cooperation (ILAC). Since the 2017 Import Policy was enacted, trade has been dramatically restricted as a result. Our concerns, as outlined in previous NTE submissions and summarized here, remain as follows:

- The Import Policy imposes significant and unnecessary burdens and costs on the global toy industry without providing any redeeming safety benefit. IS 9873 is significantly aligned to international toy safety standard ISO 8124, making the requirement to test to the Indian-specific IS 9873 duplicative and unnecessary. Requiring companies to retest their products to demonstrate compliance with a near-identical standard does not improve toy safety, though it does increase compliance costs and serve to deter imports.
- The burdens of testing are further compounded by NALB’s failure to certify an adequate number of testing laboratories. In fact, to date, the only ones that have been certified are in India. The limited

number of certified laboratories, coupled with the de facto ban on testing by non-Indian labs, increases costs, delays time to market and creates supply chain difficulties

- The Import policy has created a restrictive environment for compliant toy companies, resulting in less access to globally available and safe toys for children in India. The impact creates a space for grey market and counterfeit toys contrary to the government's intended efforts to curb counterfeit/fake and unsafe toys from entering the country.

India Tariff on Toys

The Government of India (GOI) announced an increase on toy tariffs from 20 to 60 percent (22 to 66 percent when including GST) in its annual budget for fiscal year 2020/21. The 200 percent tariff increase was implemented with immediate effect.

The increased Indian 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. We estimate that the tariff increase will lead to an increase of up to 125% in the price of toys. The tariff (in addition to the QCO) makes it cost-prohibitive and/or practically impossible for the world's toy manufacturers to sell toys in India. As a result, safe, quality toys could become a luxury item for India's children.

Additionally, these import restrictions will likely prompt 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. Thus, the higher tariffs are likely to result in fewer imports of safe, quality toys for Indian children.

Indonesia

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

Indonesia's SNI Regulation, which went into effect in April 2014, remains a major barrier to the export of toys to Indonesia. We appreciate USTR's continued advocacy on behalf of the U.S. toy industry since this issue first arose in 2012. Unfortunately, we recognize that Indonesia continues to impose undue restrictions on the import of toys, including restricting the certification of testing laboratories, frequent product testing requirements that discriminate against imported toys, restrictive marking requirements, onerous documentation requirements and restrictive factory audit requirements. Among the most egregious features of the original SNI regulation is its requirement that each lot of imported toys be tested, while domestic toys must only be tested once every 6 months.

While Indonesia has represented that it has accommodated importer concerns about its implementation of the SNI regulation; presumably this refers to their September 2018 order allowing importers and manufacturers to choose between its original conformity assessment scheme and a factory-audit based system, neither option

presents the toy industry with a workable solution.² The alternate scheme (“Scheme 5”) which was intended to address the discriminatory treatment for testing requirements between imported and domestically manufactured toys, remains oppressively burdensome, entailing factory audits, inspections and laboratory testing.

Both the original SNI regulation and Scheme 5 continue to discriminate against imported toys. Furthermore, Indonesia continues to refuse to accept test results from (ILAC-)accredited foreign laboratories. This requires in-country testing in Indonesia, adding to costs and delays in completing the conformity assessment process.

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. In fact, the European toy industry estimated that 2019 exports of toys from the EU to Saudi Arabia decreased by as much as 90% since the April 2019 implementation, illustrating the unworkability of the SABER for toys. The requirement to obtain product GCTS symbols and certifications for toys by item type means that importers face substantial, and possibly prohibitive, expenses in attempting to import toys, as well as unnecessary administrative difficulties in dealing with the SABER system. Among some of the problems are:

- Notified bodies (NBs) certified by SASO 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. In addition, notified bodies have often required importers to provide redundant information, such as additional photos of already certified products, increasing time and bureaucratic burdens unnecessarily.
- We appreciate that SASO officials have acknowledged that the notified bodies should be more consistent and recognized that notified bodies may have self-serving incentives to utilize the system to generate unnecessary fees. 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 urge SASO to monitor

² Further, the U.S. toy industry disagrees wholly with a recent statement by Indonesia BSN claiming success, and “accommodation” of the trade concerns raised by the international industry, as it relates to this regulation:

“One of the achievements that has been successfully made is that the application of compulsory SNI for children’s toys is not raised as a trade concern by other countries which has become a prolonged issue since 2011. This means that the efforts made by Indonesia have been able to accommodate the interests of business actors both at home and abroad. as well as the application of the principle of non-discrimination in accordance with the WTO TBT agreement.”

Source: Strengthening Indonesia Interests Through the WTO TBT Committee’s Forum (dated March 03, 2020) on the BSN website.

the notified bodies closely and proactively to ensure that they are consistent and transparent in administering the conformity assessment requirements.

- The mandatory product registration process continues to require detailed and sometimes proprietary information from companies with respect to their products, some of which are in development. Aside from the burden of providing photos and other detailed commercial information on upcoming products, the potential public exposure of such confidential business information puts companies at great financial risk. SASO should limit its requirement that companies provide photos and unnecessarily detailed commercial information on products, particularly those in development, to protect business proprietary information.

Additional Issues of Concern

In addition to the key issues faced by the toy industry which we have outlined above, The Toy Association is monitoring the following emerging issues that pose challenges to the U.S. toy industry:

Canada: Toxic Substance Designation for Plastic Manufactured Items

On October 19, 2020, the Government of Canada published a proposed Order (Canada Gazette, Part I, Volume 154, Number 41) to add “plastic manufactured items” to Schedule 1 of the *Canadian Environmental Protection Act, 1999* (CEPA) in accordance with the precautionary principle. It has been introduced as part of the government’s regulatory process to establish a national ban on single-use plastic products (SUP). Once finalized, the proposed Order would grant the government the authority to develop risk management measures under CEPA for “plastic manufactured items” throughout their entire lifecycle.

The government has defined “plastic manufactured items” as items “made of plastic formed into a specific physical shape or design during manufacture, and have, for their intended use, a function or functions dependant in whole or in part on their shape or design. They can include final products, as well as components of products.” The Government of Canada has detailed a position that “all plastic manufactured items have the potential to become plastic pollution.” As detailed in the Order, the proposed SUP ban does not impact toy manufacturers directly; however, the precedent of using the CEPA Toxic Substance List under Schedule 1 to regulate finished products is very concerning and unwarranted.

CEPA is designed to be used for chemical management, not for leakage of plastic waste into the environment or for finished products. The Government of Canada’s proposed Schedule 1 listing goes beyond the intent for how CEPA was originally structured to regulate “substances” as detailed in the Act. Attempting to regulate “plastic” as a category under Schedule 1 ignores the myriad differences between the multiple plastic substance classes. Effectively, the government’s proposed classification for “plastics” under CEPA is analogous to regulating “metal” without considering the differences between “steel” and “aluminium”.

The addition of “plastic manufactured items” to CEPA’s Toxic Substances List would compromise the integrity of the regulatory mechanisms which Health Canada and industry apply to ensure safe toys. A Schedule 1 toxic designation for “plastic manufactured items” will create confusion on the safety of plastics in general and how they are used in consumer products. In particular, it misrepresents the safety of plastics as used in toys, since these materials are often the safest choice for young consumers – and subject to stringent standards for material safety and durability. The toy industry remains committed to working with the Government of Canada to ensure that Canada’s product safety regime delivers the intended health and safety benefits to consumers, but this must be done through the regulatory system which was designed to ensure product safety. A Schedule 1 toxic substance listing of “plastic manufactured items” puts the integrity of this regulatory framework in doubt.

Republic of Korea Proposed 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 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 of toys to the Republic of Korea because it would impose country-specific labeling requirements.

Russia/Eurasian Economic Union Draft Amendments to the Technical Regulation of the Customs Union "On the Safety of Packaging"

The Eurasian Economic Union is considering a draft amendment on the safety of packaging, the stated purpose of which is to harmonize packaging requirements in the Union, to ensure public safety and prevent deceptive practices and claims being included on packaging. While The Toy Association supports these general goals, it is concerned that the implementation of region-specific packaging regulations would result in substantial costs and supply chain burdens of toys to Russia and the Union because they would impose country-specific labeling requirements.

The United Kingdom (UK): Brexit-related changes

With the UK's official exit from the European Union in January 2020 and the anticipated effective date of its independence from the EU trade policy scheme on January 1, 2021, we expect that challenges related to Brexit will continue to present themselves. The British Toy and Hobby Association has issued a report outlining some of the potential concerns and questions around the evolving situation. For example, among the issues that are most urgently becoming evident are the *UK Conformity Assessment Requirements*, which mandate a UK conformity assessment mark (UKCA) beginning in January 2022.

- This effective date incorporates a one-year grace period from the original requirement and, reportedly, will not impact existing stock on shelves.
- However, a UK address is also required on a toy (of either a UK-based manufacturer, company, brand, the UK importer, or the authorized representative) and this is mandated by January 1, 2021.
- The UK will require declaration of conformity with UK standards (e.g. BS EN 71 standards), for products to earn the UKCA mark.
- These requirements would be redundant, unnecessary and costly for products complying with the identical EU standards. Importantly, this Brexit-implementing requirement does not enhance product safety. Such country-specific conformity assessment requirements pose compliance difficulties, duplicative testing and needless costs. The UK should be encouraged to adhere to international safety norms by accepting international safety standards and existing conformity assessment practices, rather than re-creating a redundant system.

Conclusion

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 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.

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 for Technical Affairs, at akaufman@toyassociation.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Pasierb". The signature is fluid and cursive, with the first letter "S" being particularly large and stylized.

Steve Pasierb
President & CEO