PROTECTING CHILDREN FROM LEAD-TAINTED IMPORTS

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BEFORE THE

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OF THE

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PROTECTING CHILDREN FROM LEAD-TAINTED IMPORTS

WEDNESDAY, SEPTEMBER 19, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2123 of the Rayburn House Office Building, Hon. Bobby L. Rush (chairman) presiding.

Members present: Representatives Schakowsky, Butterfield, Barrow, Markey, Towns, DeGette, Gonzalez, Ross, Hooley, Matheson, Dingell, Stearns, Whitfield, Radanovich, Pitts, Terry, Burgess, Blackburn, and Barton.

Also present: Representatives Ferguson and Harman.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. The subcommittee will come to order. The Chair will recognize himself for the purpose of an opening statement.

It is important that this subcommittee convene on this particular issue. It is difficult to believe that children are still being dangerously exposed to the dangers of lead, given that Federal law banned the neuro-toxin almost 30 years ago. It used to be that young children, particularly those in low-income communities, had to be protected from the peeling paint from old houses. They were even admonished for innocently putting paint chips in their mouths. But now, incredibly, children face lead exposures from a far more innocuous source, from the toys they play with.

The danger of lead to young children and their developing brains are well known. Chronic exposure to lead can lead to attention problems, learning disabilities, anti-social and delinquent behavior, even mental retardation. Acute exposure can result in severe illness and death. As such, in 2007, given that all we know about the dangers lead poses to our children, how is it possible that lead can still be found in the alloys of children's jewelry and in the paint of toys? How is it that our regulatory system has broken down? Who are the stakeholders responsible for such a travesty? And most important, how do we fix the problem?

This morning, in beginning our 2-day hearing, we take the first steps toward answering all of these questions. Since becoming chairman of this subcommittee, I have repeatedly stated that reforming the Consumer Product Safety Commission to better protect

children is one of my top priorities. Today I want to begin a deliberative process that eventually results in legislation that significantly strengthens our national safety net for children and their families. I want to work on a bipartisan basis with our friends in the minority to ensure, among a host of other goals, that a timely and effective recall system is in place.

Indeed, I want to work toward a solution in which these dangerous products never, ever make it to the store shelves in the first place. The problem of lead in children's products have many dimensions. First, we must start with the Consumer Product Safety Commission. Is the CPSC adequately equipped with the resources and underlying regulatory authority to address lead in children's toys and jewelry? Is the Commission capable of preventing these products from entering interstate commerce and quickly recalling defective products that slip through the cracks?

Second, what are the global market forces that underlie the manufacture and importation of these lead tainted products? Eighty-six percent of toys in the United States are manufactured in China. Why is this? Why is China such an attractive venue for toy manufacturers and how do health and safety standards and their enforcement, I might add, differ from those in the United States and other countries?

Third, who bears responsibility for these lead tainted children's products? Retail entities seem to blame the manufacturers or importers of these toys, while manufacturers and importers blame their contractors and subcontractors from China. This chain of commerce from production to retailer clearly does not have the requisite quality controls in place, nor is there adequate Federal oversight to ensure that all stakeholders abide by well-defined rules and regulation.

As such, it is important that all parties in the chain of commerce, from media companies that market popular icons such as Elmo, to toy manufacturers and importers, to retail outlets, to the Congress and the CPSC, take ownership of this problem and earnestly work to fix the problem at all costs. The health and well-being of our children is far too important for us to tolerate needless finger pointing and petty squabbling. Our kids can afford to be childish; we cannot.

On that note and in closing, let me express my extreme disappointment with one invited stakeholder for refusing to testify before this subcommittee. Dollar General is one of the biggest retailer chains in the United States and they largely sell their products to working class and low-income consumers. Dollar General and other discount stores have a heavy presence in districts such as mine in Chicago. Just as was the case with lead paint and the disproportionate impact it had on low-income children who live in dilapidated homes and public housing, I fear that the current toy fiasco will likewise have a disproportionate impact on children who live in underserved economically disadvantaged communities where some cheap toys and children's jewelry dominate the shelves of so-called dollar and 99 cent stores, which have a heavy presence in poor neighborhood.

If a company like Dollar General can sell their products to my constituents and make money off of my constituents, one would

think they could, at a minimum, appear before this subcommittee and answer some important questions for my constituents. I am not pleased with Dollar General's blatant disregard for the importance of this hearing and their refusal to appear before tomorrow's germane panel.

With that, I want to thank our witnesses, who have agreed to testify in front of this subcommittee today and I look forward to hearing from all of them. With that, I yield back the balance of my time.

The Chair now recognizes the ranking member of the subcommittee, my friend from Florida, Mr. Stearns.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Thank you, Mr. Chairman, and let me compliment you for holding this hearing. You and I have worked together on this project and in fact, we sent out 20 letters, together, to 20 manufacturers of toys and we have responses back from these, and I understand you and your staff have put them on the committee Web site, and I think that shows that this hearing has been transparent and our efforts in working together is for the common good.

Parents, obviously, are particularly concerned about the amount of toys recalled for containing lead paint in excess of the Federal mandatory standard, which is 600 parts per million. While many of the toys recalled this year have been from smaller manufacturers and importers, it has been more surprising to many of us that a significant number of the recalled products are produced by industry leaders, notably Mattel, that obviously has the resources that perhaps the smaller manufacturers do not have.

As the subcommittee examines this issue, we will probably look at appropriate legislation, if it is required. But I want to commend Chairman Nord for her thoughtful draft proposal that she has already brought forward, the Product Recall Information and Safety Modernization Act, PRISM Act, she developed, with her staff, and has shared with us on this committee. There are a number of good proposals contained within her draft proposal and I think, Mr. Chairman, a lot of these merit our consideration if we move forward with our own piece of legislation.

Let me say I believe there are two problems highlighted by the recalls. The first is quality assurance and control of the manufacturing, design and production of consumer products, particularly toys. The recalls have gained much attention, I believe, because there has been a loss of trust that has created doubt whether the products are safe for children. Parents have relied upon many of the name brands because they have always stood for quality. Industry professionals readily admit that prior to the recalls, Mattel was viewed as having one of the most rigorous quality control systems in place, yet here we are, holding a hearing on this subject and we are left questioning how these products made it through the production chain, into our stores and into our homes.

What is equally troubling is what this means for the rest of the toy industry. If Mattel was a leader, what quality control systems do the smaller manufacturers and importers have in place? Are we facing more problems down the line? There is good and bad news

that comes from this recall operation. The bad news is that the problems with unsafe consumer products are similar to our problem with both imported and domestic contaminated foods. We do not have the resources to test every product that comes into our shores.

The good news that toys are manufactured and reproduced in an identical fashion. Tests of reproduction runs should indicate immediately whether a problem exists with the entire production run and should be detected with sampling tests. If a problem occurs with the production run, all the products can quickly be recalled. What I don't understand is how the testing was done that did not initially detect these problems.

In addition to the industry response to ramp up their testing of their products, the Chinese Government announced last week, during a product safety summit, here, that they will take steps to ban the use of lead paint in their toys, in all toys. I welcome the step and would like to know how they intend to enforce that ban. The second problem is the larger problem of risk posed by products that do not meet U.S. safety standards, including lead paint and lead content. When the United States passed the current ban on lead paint in toys in 1978, the threshold became 0.06 percent or 600 parts per million.

According to a study of the President's Task Force on environmental health risk to children in 2000, lead paint, lead-based paint content used in homes prior to that averaged 9 percent for interior paint after 1960, but had been as high as 74 percent, dating to the 1940s. So we have come a long way to eradicate the harms that lead in our environment has caused us, particularly for children who are growing up and are more easily susceptible to elevated lead in their blood levels.

So Mr. Chairman, I look forward to hearing the response and action plans of industry participants to prevent a repeat of this summer's problem. The efforts of some to increase their testing are a good first step and I want to hear more how they will ensure safe products. This is an important issue and I look forward to working through the issues and determine what action would be required. And I thank you.

Mr. RUSH. Thank you. The Chair now recognizes the gentlelady from Illinois, my colleague, Ms. Schakowsky.

OPENING STATEMENT OF HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Chairman Rush. I want to congratulate you for opening this investigation and for calling this hearing today in perhaps the most important subject that we deal with, which is the protection of our children. The issue today is lead paint on toys, a clear and present danger to the health and development of infants and toddlers. So who would endanger our children this way? Unfortunately, all parties bear some of the burden from manufacturers to retailers to the agency that is supposed to protect our children and families; the Chinese, who are responsible for applying lead paint to Elmo, Big Bird, Ernie and other toys, including accessories for Barbie, but Mattel was also respon-

sible for contracting with Chinese sweatshops to make the toys without being willing to spend the money to supervise production.

No one believes that Mattel intentionally sold toys that they knew were painted with lead, but they certainly didn't do enough to stop it. Our committee staff that recently traveled to Beijing and Hong Kong learned that it is a common practice for foreign firms ordering goods from China to employ strict quality control measures over the production process. These are necessary steps that should never be left to Chinese contract or subcontract manufacturers. It is well known that the legal and regulatory systems of China are not to be relied upon as a guarantee for product quality, particularly in an environment where Chinese firms are subject to enormous price pressures.

Mattel chose to gamble with our children's health, apparently for a few extra dollars or to meet the demands of mega firms like Wal-Mart, that are always pushing for the cheapest good, regardless of the human cost. Mr. Chairman, our staff has not been able to discover what happened because Mattel has decided to obstruct our inquiry. They failed to arrange a visit to two of the contracting plants in China, despite our repeated requests. They refused to make their investigators available for staff interviews in Hong Kong, another of our requests.

In fact, they refused to make the man responsible for Chinese operations available for an interview in Hong Kong. We have yet to receive an accounting of what happened in China that caused our children to be exposed to lead paint or the magnets that can harm young children. I believe that Mr. Eckert, Mattel's chairman, hopes to be able to stonewall us the way he has stonewalled the CPSC over the years, refusing to obey the law that requires the reporting of consumer complaints about defects in Mattel toys because he believes the law to be unreasonable, as he recently explained to the Wall Street Journal.

I wonder if the board of directors of Mattel has done appropriate due diligence on the managerial failures that have resulted in recalls of millions of unsafe toys. This is apparently a management that tries to hide its systemic failures. Mattel says it sells 800 million units and only a few million are defective and dangerous and besides, they will do better in the future. Mr. Chairman, I, for one, believe that Mattel's management has forfeited their right to expect any parent to trust them. Certainly, we should not until we have a credible report on the breakdown of quality control that placed our children in danger.

Mr. Chairman, I think we should determine whether Mr. Eckert considers the perjury and obstruction of justice laws also to be unreasonable. He should be reminded that attempts to obstruct our investigation will not be tolerated. And finally, I am looking forward to hearing from CPSC chair, Nancy Nord and Commissioner Moore. Like parents and grandparents around the country, I want to know why CPSC has not done a better job protecting precious children, our most precious treasure, from unsafe and potentially lethal products.

I hope we will hear today that the CPSC has decided not just that it needs more resources, but that it is going to adopt a more aggressive approach to consumer safety. I yield back.

Mr. RUSH. I thank the gentlelady. The Chair now recognizes the ranking member of the full committee, Mr. Barton of Texas.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Well, thank you, Mr. Chairman, for holding this hearing and for Ranking Member Stearns' support of this hearing. A lot of what we do up here is of intellectual curiosity to Members, it is all-important public policy, sometimes it is personal. Today is one of those days, for me, that is personal. Most members of this committee are at a stage in our lives where we buy toys for our grandchildren, our nieces and our nephews and great-nieces and great-nephews, and I have four grandchildren. But I have a 2-year old toddler, son, Jack. He had his 2-year birthday party this past Saturday. So this is personal for me.

When you can't trust Thomas the Train and you can't trust a company like Mattel, I remember when Mattel was the advertiser of the Mickey Mouse show in the 1950s. It is just staggering that we have to worry about some of these issues. But to their credit, the American toy manufacturers, as they found out that they have got problems with some of these products, they have done voluntary recalls and the Consumer Product Safety Commission has instigated some other recalls.

And if we have a productive hearing, and I am sure we will, with Chairman Rush's personal involvement and full committee chairman Dingell's involvement, if we need to take steps legislatively, as the ranking Republican, I am willing to commit that I will work in a bipartisan fashion, because I want the toys that are sold and used by the children of America to be safe, period. Not may be safe, not reasonably safe, but safe. My son, Jack, got a big Tonka dump truck last Saturday and a Radio Flyer tricycle. And his mother, my wife, Terri, and I, when we went to the toy store, we really looked at where those products were manufactured and looked at the label, because we want him to be safe. And with a 2-year old, if it will go in his mouth, it is going to go in his mouth. You just know that.

So Mr. Chairman, I have got a lengthy statement on official policy, but just simply let me say that if you are an American toy manufacturer, I really don't care where you manufacture your toys. I would rather they be manufactured in the United States of America and really prefer they be manufactured in good old Texas, but if you are going to manufacture them in China or Taiwan or Timbuktu, wherever, they had better meet the American safety standards and the government officials of these countries, especially the Chinese, better start getting it.

They seem to think that all we are interested about in the United States is the cheapest product at the lowest cost, but they are sadly mistaken. There are some things that price is the predominant issue with, but the safety of our children, there is no price you can put on that, Mr. Chairman. And certainly, for young Jack Kevin Barton, all of 2 years old, his safety, just like the children and the grandchildren of every other member of this committee is paramount, so I am going to pay real close attention and I

appreciate you holding this hearing and I would submit my full statement for the record.

Mr. RUSH. I want to thank the gentleman for his comments and his personal statement. I also want to inform the gentleman that Radio Flyers are manufactured in Illinois, the next best place to Texas.

Mr. BARTON. Well, he hadn't figured out the pedal part of it, yet. He is still in the scooting part of it.

Mr. RUSH. OK. All right. The Chair now recognizes the chairman of the full committee, Mr. Dingell of Michigan.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. Chairman, thank you. And I begin by thanking you and Ranking Member Stearns for holding this hearing today. It is an important one and it is very timely. As I have said in the hearing of this subcommittee on May 15, our responsibility to our children and this country's responsibility to protect these children, is one of the most important in our society. I am pained to note this morning that it appears that all of us have been derelict in this matter. It is the responsibility of this committee, the subcommittee and very frankly, the Federal Government, to determine the resources that are available and the sources of the lapse that have taken place and to take all necessary steps to correct it.

It would be far too easy to attribute this summer's recall of children's toys and other products to Chinese poorly regulated export manufacturers. To be sure, that is true, and China is clearly not without blame. But regulatory deficiencies, shoddy business practices and the forces of globalization all play a substantial role in this catastrophe. In short, there is lots of blame to go around to everybody.

Appearing before us today are the two commissioners from the Consumer Product Safety Commission, CPSC. As the Nation's consumer safety watchdog, this agency bears significant responsibility for protecting our children, yet it has remained largely under-funded since its inception. And it should be noted, of late, it has endured an exodus of competent staff and an apparent significant diminution of its ability to carry out its responsibilities. In addition, CPSC's testing laboratory is an embarrassment. I note that there are only two of the five authorized commissioners available and we are going to have to find out whether they have the capacity to carry forward with their proper responsibility.

I would expect, then, that Acting Chairman Nord and Commissioner Moore will help our committee to understand the situation and to strengthen the CPSC by answering some of the following questions. (1) How has CPSC's dwindling resources affected its ability to intercept dangerous products at U.S. ports? (2) Has reliance on voluntary industry compliance given rise to recent toy and other manufacturers and children's product recall crises? Lastly, I think we are going to have to ask that acting Chairman Nord discuss, in detail, the agreement recently included between the CPSC and the Chinese general administration for quality supervision inspection and quarantine.

I would note that the Chinese have set extraordinarily high levels of failure, not just in these kinds of consumer products, but also in foods, drugs, cosmetics and appliances and devices. More precisely, then, in what terms of concrete results are we to expect that this agreement is going to deliver any additional protection to American consumers?

I note also appearing before us today is Mr. Robert Eckert, who is Mattel's CEO. The practices of Mattel and its role in industry leader reflect no credit upon it, yet I am concerned about the apparent disdain for Federal regulation and laws present in some public statements. The front page of the September 4, 2007 Wall Street Journal reported Mr. Eckert's comments that Mattel discloses problems on its own timetable because it believes both the law and CPS enforcement practices are unreasonable.

I think he will probably want to explain these matters, but I will want to hear a similar explanation from the CPSC about why they are not more diligent in addressing these questions and what they have proposed to about this or whether additional authorities are needed from this committee and from the Congress to address this kind of behavior and disregard the proper responsibilities of the manufacturers or importers, and what the CPSC is going to do to get the attention of these people so that they will be a little more attentive to their responsibilities to America and to its children.

I further wish to convey my great disappointment that Mattel made little demonstrable effort to comply with the requests of a bipartisan delegation of the Committee on Energy and Commerce staff recently, in Hong Kong, to meet with its internal investigators and quality control staff. That is a poor kind of cooperation to be afforded this committee and it will hardly be helpful in our relationship with the company. I expect Mr. Eckert will be available to answer these questions about the status and intent of Mattel's internal investigation of its recalls this summer, with clarity and provision.

Lastly, I have heard that CEO's apology for lead tainted toys, but I would seek reassurance about this pledge to improve the safety of Mattel's products, given Mattel's past resistance to cooperating with CPSC over the safety of another toy, Power Wheels. I look forward to the committee's second day of hearings on this matter, also, Mr. Chairman. In particular, I find it prudent that we should explore the following. (1) How should the United States structure future trade agreements to enhance the protection of American consumers? (2) How can the U.S. and others compel China to enforce its own regulations? (3) What sorts of quality control practices should U.S. businesses employ in China to assure supply chain integrity? (4) How do cost pressures applied by large retailers to toy and other manufacturers diminish quality control?

And last of all, what additional authorities, funding and resources does CPSC need, as well as legal authorities, to see to it that they are able to properly carry out their responsibilities in matters of this kind. These questions and others are going to inform the committee and enable us to do a better job to improve our ability to protect our consumers and their children. We intend to remain vigilant in this task and produce tangible results. I will note that we will be having legislation on this. We will shortly be

introducing legislation to address some of the problems with regard to Chinese imports and Food and Drug in its inability to address problems at our borders.

And I intend to do a similar thing with regard to CPSC and we will be looking forward to answers and cooperation from CPSC today to see what must be done by this committee and we will anticipate that they will give us answers, both about their authority and how they are functioning, whether they have the resources that they need to do their job and also, what they have to do to get enough commissioners down there to have the quorums and to be able to conduct their business in a proper fashion.

Mr. Chairman, I thank you and I commend you for this hearing and I thank our good friend, Mr. Stearns, also, for his participation.

Mr. RUSH. I want to thank the chairman. The Chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes of an opening statement.

OPENING STATEMENT OF HON. JOSEPH R. PITTS, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. PITTS. Thank you, Mr. Chairman. I won't take all that time, but first of all, thank you for holding this important hearing on protecting children from lead tainted imports. Our children, as it has been said, are our future, and therefore we must ensure their protection in all ways possible. The documentation describing the deaths of children from lead painted toys, as well as from swallowing magnets from toys is disturbing and unacceptable. And of course, our sympathies go out to the families who have lost children due to illnesses related to the issues we are discussing today.

It is vital that toy manufacturers, as well as the U.S. Government, where appropriate, be assertive in enforcing standards and safety inspections at all points of the manufacturing process. Manufacturers must hold contractors and subcontractors accountable for upholding production standards. And the U.S. Government must hold Chinese and U.S. companies accountable for the safety of their products. Recent steps by toy manufacturers are welcome, but there must be a system in place to monitor local contractors in China and other nations in which enforcement of regulations may be lax or entirely nonexistent.

It is in the best interest of our Nation's children, as well as the toy companies and their contractors and their subcontractors, to abide by safety standards. And so I look forward to hearing our distinguished witnesses today, what they intend to do to ensure the safety of their products and I thank you for and commend you for holding this hearing.

Mr. RUSH. I want to thank the gentleman. The Chair now recognizes the gentleman from Georgia, Mr. Barrow, for 5 minutes of opening statement.

OPENING STATEMENT OF HON. JOHN BARROW, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BARROW. Thank you, Mr. Chairman, and thank you, Ranking Member Stearns, for having this hearing. Everybody knows the dif-

ference between somebody who don't know about a problem with this product and don't care, and someone who does know about a problem with the product and don't care to tell folks about it. It is as old as the story they tell back home about the guy that bought a mule from somebody only to discover, a couple of days after he bought it, that it was blind. Went back to the guy that sold him, said why did you sell me a blind mule and the guy said well, the guy that sold it to me didn't tell me about it and I sort of felt he wanted it kept confidential.

Well, I sort of feel like the manufacturers in this country that don't know or don't care, but there is no difference in terms of the impact to the consumer. If the product is dangerous and you don't know, you should know. The impact is just the same as if you do know and suppress that knowledge. We are all going to be held to the standard of what people, what reasonable people know or should know about their products and how they are affecting folks in the stream of commerce.

And I think that applies to us, to the Government, as well. If we know, because we have discovered things that are going wrong with stuff that is coming into the stream of commerce, we have got to act. Now, Ranking Member Stearns made an allusion to the food situation. And me, I don't know, maybe taking a broad view of history, maybe food is going to kind of wake us up to some of the problems of globalization and the way that exporting and outsourcing our clothes and just about everything else hasn't. Certainly, that was the experience of this country when the FDA was adopted in the first place.

But as the only Member of Congress, on both the Agriculture Committee and the Energy and Commerce Committee, I can share with my colleagues and report to you all what we learned on the Agriculture Committee about how things are done differently in two different models we got in this country for regulating imported food. You got the model that the FDA uses when they are trying to monitor the importation and the quality of specialty crops that are being imported in this country getting mixed up with our domestic specialty crops, and what the USDA is doing in the cases of meat.

Now, the USDA does not rely on the kindness of strangers to determine whether or not the meat that is coming into this country is safe. We send inspectors abroad, the USDA sends USDA inspectors to the packing facilities abroad to inspect the conditions there at the packing facilities. This is in marked contrast to the policing policy followed by the FDA for monitoring the quality of specialty crops, the vegetables that are getting mixed up on our shelves.

What we do with imported specialty crops is very different. What we do is we monitor the subject population and wait and see if someone gets sick in the test group. And after someone in test group has gotten sick, we try and figure out where it comes from and we flag stuff and we can trace it up the stream of commerce. The test group is 350 million Americans. We are all guinea pigs for the FDA's method of compliance, of monitoring folks' compliance with the quality and safety of food that comes into this country. Now, we don't do that with the USDA. We take an affirmative,

proactive stance to try and make sure the imported meat is safe before it gets here.

We need to take the same approach with respect to commodities that are manufactured abroad for use in this country. We haven't just got our toys mixed up, domestic stuff mixed up on the shelves with stuff that is made abroad. It is something like 86 percent of the toys in this country are manufactured in China. So we have to make sure that we don't just interdict this stuff after it enters the stream of commerce, but before it lands on our shores. I think we ought to think about trying to adopt the model of the USDA and try and stop manufacture, the wholesale manufacture of unsafe products in our trading partners to begin with.

If the idea of letting this stuff get into the stream of commerce and match the flows and then trying to stop it after it reaches our shores is impractical. It is what the FDA is doing and that is why people are getting sick from eating crops and they are not getting sick from eating meat. Now, that seems to me to be a model that we can build on. Certainly, we need to know that what is going on now is not behind the scenes, it is not somewhere unaware of. Now that we know about it, we are all tasked with doing something about it.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. RUSH. I want to thank the gentleman. The Chair now recognizes, for the purposes of opening statement, Mr. Terry from Nebraska.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman. I want to express my appreciation to you for holding this hearing, not only because lead on our toys is an important issue for our families and because I have three children, although the youngest is now 7 and probably doesn't chew on too many toys. Certainly, though, I think this is a matter that we need to be vigilant. There is a variety of information in discussions about how to properly handle this. I agree with the gentleman from Georgia that if we could do a better job at the source, the supplier, the manufacturer, to adopt the best practices, to make sure that the product is safe once it is packaged, to be exported to the United States.

I think the move by the Chinese Government is positive, but as the full committee chairman has said, unfortunately, China has a history of not following through with its promises, so I want to hear from Mattel especially how they feel the Chinese Government is going to react and enforce what they have promised in tightening up the procedures in China. What we have heard, from others that have testified in past testimony in the Senate, one of the issues with the Chinese manufacturers is for one run of the manufacture of a toy and spraying on paint, that batch of paint meets the standards, but the next buckets of paint they pour in don't. And so literally, you can have the same batch of toys with some meeting the standards and some not.

So you really have to be able to rely on the Chinese who basically run these factories over there to crack down, otherwise I am going to agree with my colleagues on the other side that says that maybe

the importers of these toys that are slapping their name on it should look to different countries to set up a new shop for manufacturing. I also want to congratulate the chairman on holding a hearing on lead contamination. One of the reasons why this issue is important to me, personally, is that I am from Omaha, Nebraska. One-third of my city is a Superfund site for lead contamination.

Now, that is soil. That is from several of our factories from the 1800s up until the mid–1950s and 1960s before they closed down. But what lead does when it is ingested by a child, especially a toddler like Mr. Barton's son, Jack, what it does is it retards the development of the brain so that you have, as they develop into young adults, have a more difficult time of learning. That is the lesser of the symptoms, as we have learned from an incident in Minnesota, in ingesting a lead toy or medallion, is that it can also lead to death.

So I appreciate, I guess the one silver lining from these hearings and all of the news media attention on these toys, is that the public has become educated on lead poisoning. That has been the single most difficult part of our Superfund site in Omaha, is educating people in the Superfund site, especially those with children, on what they need to do to reduce the risk of lead contamination. So in one fell swoop, Mattel and others have helped educate an American public, because as Mr. Rush can certainly testify to, when we represent urban areas, like I do, almost every house is contaminated with lead paint.

And we need to have, I think, broader discussions in this country about lead poisoning in our urban areas and so I am going to keep bringing up lead throughout here as a way to educate the public on lead poisoning, because we have an epidemic of lead poisoning in our own country that we need to deal with, as well. So Mr. Chairman, I appreciate you holding this hearing. I think, overall, we are going to do good for this country by this hearing.

Mr. RUSH. The Chair thanks the gentleman. The Chair now recognizes the gentleman from Texas, Mr. Gonzalez, for the purpose of an opening statement.

OPENING STATEMENT OF HON. CHARLES A. GONZALEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GONZALEZ. Thank you very much, Mr. Chairman, for your leadership on this issue and I want to remind everyone that this is not the first hearing that you have conducted where we have had the chair of the Consumer Product Safety Commission and we should have learned, at that hearing, basically what set the stage for what we are experiencing today regarding the lead-based paint toys that were contaminated.

I think I came away from the last hearing, because I know that the chairman has made her best effort. She has sought us out. I think she even has some proposed legislative remedies and such. But what I learned from that hearing was that we have a commission that is under-staffed and overworked. Congress is, I think, party to some of that condition by cutting its funding, historically. So I don't think that we actually come into this with clean hands. And the other thing I learned that I really thought, that the indus-

try was pretty much self-regulated, that we had a watchdog with a muted bark and no bite.

Now, Mr. Dingell has indicated we are going to have some legislation. I know that the chairman is going to make some recommendations today. I am hopeful and I think that she will, and we need to be acting on it. The American people truly believe that the Government is there to protect them, especially from unsafe products. But I am here to tell them that is not the fact. And you have heard some of my colleagues allude to the situation. We are faced with the reality that it really is industry driven. You have already heard references to basically a toy company can make a determination when it feels it may be imperative to take some action regarding a toy that has been placed in the stream of commerce that poses a danger to Americans and their children. That is not the way it is supposed to work.

So where is the Government's responsibility? And it is not solely Government, but it has to be the toy company, it has to be the retailer and even the consumer has a role to play. As Mr. Barton pointed out, when he and his wife went to buy the toys for their son, there was due diligence exercised by the consumer. So I think there is a role for all of us, but I tell you, it definitely will start with the commission and it ends with the commission. But it will take a joint effort, a collaborative effort, and that is what we should be seeking today.

I will tell you now, there was no doubt this was going to happen. If you were here for the last hearing, we were just waiting for an incident. It just so happened that it was toys and it was Mattel, which is obviously one of the most prominent toy distributors, manufacturers. And we are going to get into design and we are going to get into manufacturing and we are going to see what is the duty of someone that supplies toys, that designs them and then offshores and the manufacturing of those toys, to make sure that whoever is manufacturing them, in China or in any other country, is abiding by those standards that we are going to apply to that finished product when we bring it onto our shores.

Again, thank you very much, Mr. Chairman. I yield back.

Mr. RUSH. I want to thank the gentleman. The Chair now recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. Thank you, Mr. Chairman, and I appreciate you holding the hearing today. Now, most of us, with the increasing number of recalls that we have seen, are extremely concerned about the safety and security of really, what we consider rather mundane, normal household products, and now, especially in regard to our children's toys and as a parent, the last thing you would ever want to do is give your child something that could cause them harm. However, that determination seems to be getting harder and harder by the day to make, as more and more recalls are announced.

In a lot of ways, America has the safest products in the world, but after a summer of recalls, the confidence of the American consumer is severely undermined. And what most of us are concerned

about is the safety of imported goods, especially those imported from the People's Republic of China. And what that leaves us with, as far as we are trying to discriminate is something harmful or not harmful to bring into our home, we look for that country manufacturer, and I will just tell you, in my household, if it is made in China, it does not come home.

In July, my friend and colleague, Mr. Greg Walden, who is on the Oversight and Investigations Subcommittee with me, we sent a letter to the Oversight and Investigations Subcommittee asking for an investigation regarding for the many food and consumer product safety recalls from the People's Republic of China. In August, in response to the Thomas the Train recall, I sent yet another letter to the O & I subcommittee. Once again, I urged them to embark on an investigation regarding the increasing number of consumer product recalls from the People's Republic of China. I have yet to receive a response back from the subcommittee, but Chairman Rush and Ranking Member Stearns, I thank you for your leadership on this specific issue in calling for this hearing today.

I have given those two letters to the majority counsel and ask unanimous consent that they be included as part of today's record.

Chairwoman Nord, I am glad you are here with us today. I know that you and your colleague, Commissioner Moore, will provide some much needed insight regarding the recalls of the Consumer Product Safety Commission. In some ways I am disappointed in how the committee handled the hearing in June and I think the committee could have benefited greatly from your testimony 3 months ago, when we were just on the cusp of discovering the severity of this problem. Obviously, the head of any Federal agency should be treated with respect, regardless of one's political affiliation. I am grateful that you have graciously agreed to be here with us today.

You can't turn on the television at 6 o'clock at night in Washington, DC without hearing Lou Dobbs talk about this, and I was watching him, because I wanted to see what my e-mails and letters are going to look like the next day. And the media, rightfully so, has spent a lot of time and attention on the issue of recalls this summer and we are all concerned about the number of recalls. But it is also important that we step back and think about some of the things that are being done correctly and make certain that we don't do anything to undermine those things.

Chairwoman Nord, even though you specifically note, in your testimony, that the Consumer Product Safety Commission has not historically engaged in international activities and does not have direct authority to handle imported products at ports, you and your agency have made some significant progress in regards to the issue of Chinese imports and last week's agreement with China's general administration of quality supervision underscores this. I am grateful that your agency was able to get China to agree immediately to implement a plan to eliminate the use of lead paint. I will have to say people in this country already expected that their toys be painted with lead-free paint, but this is clearly a step in the right direction.

And certainly now, as Chairman Dingell has pointed out, we have got to hear, going forward, what is going to happen as far as

the enforcement. I am also grateful that members of industry and manufacturing are here today. I am extremely interested in what happens to all of the volume of recalled product that is going to be returned. Do we burn it and put the lead into the atmosphere? Do we bury it and put the lead into our groundwater or do we just simply resell it on eBay and continue the problem?

I would also like to briefly mention the voluntary recall system versus the mandatory recall system. Right now manufacturers bear a legal responsibility to report to the Consumer Product Safety Commission if there are problems. This is existing Federal law and manufacturers must play by the rules. Now, Chairman Dingell talked about a mandatory system of recalls. I am concerned that if we go to an exclusively mandatory system of recalls, we will extend the timeline. I think it is important that the chairwoman has the flexibility to ask for a voluntary recall. I cannot imagine anyone in industry ignoring that call for a voluntary recall and that can happen in a couple of weeks.

If we go the mandatory route, we have to go through the courts, involved lawyers and you know what happens there. It is a couple of years before we get something resolved. Now, in my district back in Texas, a local television station, Fox 4, has documented a problem with sandals, flip flops, that cause a severe localized dermatitis. I cannot imagine what the cause for that might be, but again, we need to get to the bottom of that. And the CPSC is not just to protect consumers, it is to protect manufacturers, too, because when the confidence of the American public is undermined, the manufacturer is ultimately the one who is going to suffer. Again, we will not buy a product in my household if we see that it was manufactured in the People's Republic of China.

Mr. Chairman, I will submit my entire statement for the record. I do understand Chairwoman Nord has some draft legislation that bears us looking at that. We also need to talk significantly about the funding. I am concerned, with all the talk about funding, and we had that discussion earlier this summer, that the House Appropriations Committee, really, the increase in funding was rather modest for their budget this year and I will be interested in hearing from both Chairwoman Nord and Commissioner Moore about their opinion of the House level of funding that was sent by the Appropriations Committee and I will yield back the balance of my time.

Mr. RUSH. I want to thank the gentleman. The Chair now recognizes, for the purposes of opening statement, the gentlelady from Oregon, Ms. Hooley, for 5 minutes.

OPENING STATEMENT OF HON. DARLENE HOOLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Ms. HOOLEY. Thank you, Mr. Chairman, for holding this important hearing and thank you, Chairwoman Nord and Commissioner Moore for being here today and providing your testimony. Like Representative Barton, this is very personal. Last week, my district director, who just had a baby, found out that her baby's favorite teething ring had lead in it. Now, I wonder how many other parents are out there that have given their children teething rings

with lead in it. When it says safe for children, people have expected that it is going to be safe for their children.

Hopefully, it is no longer news to anyone that we have a serious problem with the influx of dangerous lead-tainted and faulty children's products flooding our shelves. So far this year, the Consumer Product Safety Commission has issued 113 recalls, 43 due to excessive lead. I would like to believe this number won't go up, but I know that it will. Not enough has been done to make sure that toys that reach the shelves across this country are safe and there is plenty of blame to go around.

Manufacturers have not been as vigilant as they could have been in monitoring and testing their complicated off-shore supply chains. To prevent the introduction of dangerous toys and other children's products into the marketplace, manufacturers should be required to have independent, third party tests certifying their products are safe before they reach our shelves. I commend the Toy Association to agreeing that this needs to happen.

Recent recalls have highlighted safety problems with Chinese imports. An overwhelming majority of the recalls have been from China. China is now our second largest trading partner and yet, last year supplied the United States with 86 percent of its toys. Currently, it is almost as we are relying on China's weak safety regime to make sure that products we import for them are safe. We can all agree that this isn't enough.

Consumer Product Safety Commission is another piece of this puzzle. The CPSC is charged with the enormous task of protecting the public, including children from unreasonable risk associated with consumer products. Right now we are trying to do this with 400 employees in contrast to the thousand they had in 1981. Clearly, this is not sufficient. They also lack, in some areas, statutory authority to protect the consumers. By the CPS's own admission, the 1950s facility they are using to test potentially dangerous products don't even meet the code.

Moving forward, I sincerely hope the CPSC will be as constructive and proactive as possible in addressing this multifaceted and complicated issue. I also hope that we quickly and thoughtfully pass legislation, giving them the resources and the authority to be more effective in performing their vital duties. We have to be careful, though. In the process of addressing the problems with CPSC, we should not replace the testing by the private sector. The CPSC needs to establish uniform testing rules that the private sector has to adhere to.

It is vital to our children and economy that parents are confident that when they purchase, off the shelves, that product is safe. I look forward to hearing from both panels today and working with my colleagues on addressing this very serious problem. And I yield back the remainder of my time.

Mr. RUSH. I want to thank the gentlelady. Now the Chair recognizes the gentleman from Kentucky, Mr. Whitfield, for the purposes of opening statement. The gentlemen from Tennessee and from Kentucky left. Now the Chair recognizes the gentlelady from Tennessee, Mrs. Blackburn, for the purposes of an opening statement.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Ms. BLACKBURN. Thank you, Mr. Chairman. I thank you for holding today's hearing and I do want to welcome our witnesses. We are looking forward to hearing from you and exploring some of these issues that do relate to consumer product safety and the quality of imported products. As a mother, as a retail industry veteran, and also now as a Member of Congress, I have different lenses through which I can look at and evaluate this issue. I think all of us also look at it as a consumer, as we purchase and use these products. And it is something that I think is of deep concern to us as we evaluate the safety of the products that have made their way into the U.S. retail mainstream. It is something that affects every single socioeconomic level.

And I think it is of concern to us that we see an up-tick in the occurrences of products that contain toxins and it is going to be imperative that this subcommittee carefully examine these problems that have been brought on by both the recent and the not-so-recent recalls that are in this industry and to look for a solution that is going to give peace of mind to the American consumers. There is no substitute for a safe marketplace and I know that our witnesses today are going to talk with us about effective policy and what they see is effective policy for ensuring that marketplace.

Now, I hope that, as we approach this, that we have an eye towards solving the problem and not pointing fingers because a solution is what we need to this, whether it is the potential inadequacies that the Federal Hazardous Substance Act or the regulatory structure at the CPSC or companies that are importing, let us agree to isolate the problem and then agree to work toward a solution on addressing that. And I hope that nobody is going to be tempted to blame all businesses and start to paint with a very broad brush and I know that there is going to be some that say we need more money and we need a bigger regulatory regime and we need new Government programs.

And many times that will happen, but I think we have to ask: Will millions of dollars and new Government spending and hundreds of new bureaucratic inspectors prevent willful negligence on the part of some of the Chinese regulators? Or will they prevent those with the different sets of standards, those foreign contractors and those local officials that have different sets of standards from ours, those in developing nations, from preventing shoddy quality control of product manufactured in their country?

Now, on the issue of funding, knowing this would come up, I went back and looked at this. The current budget authority and the appropriated funding levels for the CPSC are nearly $10 million higher for fiscal year 2007 than it was in the final year of all Democratic government in 1994 and that is in the term of 2006 dollars and that is taking inflation into account. So we have got more money that is there for the CPSC than in 1994. And clearly then, it is hardly a direct correlation between additional funding and new employees and a hazard-free marketplace.

So then we have to say what is the problem and looking at the 43 toy recalls that we have had this year alone and the 14 separate

instances related to unsafe exposure levels to lead paint, we have to say that is 43 too many and I know that many responsible industry leaders, certainly one in my home State of Tennessee, are already acting above industry standards and are testing imported products for toxic components at levels that exceed the Federal standard, whether it is lead or otherwise. And it seems to me that these actions are instructive and that we can learn from these companies who have taken the initiative.

We all know that the private sector is a partner with the Federal Government in determining that the U.S. marketplace is safe from toxic products and we want to be certain that everyone lives up to their responsibility and then see if there are additional steps that are needed. Mr. Chairman, I thank you again for the hearing. I am looking forward to hearing from our witnesses. We welcome you and I yield the balance of my time.

Mr. RUSH. The Chair recognizes the gentlelady from Colorado, Ms. DeGette, for 5 minutes.

OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Ms. DEGETTE. Thank you very much, Mr. Chairman. I will submit my full statement for the record, but to avoid trying to be redundant, I just want to say the parents of this country right now really feel like they are under siege and if you had to ask me, when I ran for Congress 10 years ago, would I be sitting in a consumer protection hearing in 2007 talking about lead paint in toys, I would have laughed and frankly, most of the parents of America would have laughed because they thought, maybe 30 years ago, that the problem of lead paint in toys had been resolved.

But what has happened in the meantime is about 86 percent of our toys are coming from China and obviously our regulatory scheme, both the Consumer Product Safety Commission, the independent toy manufacturers and others, are simply not stepping up to meet the oversight demands that that increased number of imports is bringing on us. The reason I say the parents of America feel like we are under siege is it is coming at us from all sides. We buy spinach for our children thinking that we are feeding them healthy foods and then they end up with *E. coli* or salmonella because of our food safety inspection system.

We buy, as the ranking member, Mr. Barton, said, Thomas the Tank Engine for our nephews or our sons and we have to worry about whether those toys are contaminated by lead. So with all due respect to my friend from Tennessee, Mrs. Blackburn and others, I think that we need to take a long, hard look at the consumer product review, the entire situation in this country, and see why we are having such extreme lapses. Last week, my staff wrote, in my statement, I am a parent of two daughters and I remember buying them toys, as kids, but in fact, last week I found a princess crown and some other things, some rings and earrings and things in my car that my 13-year old daughter had bought. I guess that says something about my 13-year old daughter.

She brought this stuff home and it was manufactured in China and I was sitting in the car looking at it, trying to decide should

I put it in the bag for Goodwill or should I put it in the bag of paint and paint thinner that I was taking to the toxic waste disposal site. That is really kind of sad when parents are thinking about that, Mr. Chairman, and it turns out that my concerns were probably well-founded. Ms. Hooley talked about how there were 15 recalls by the Consumer Product Safety Commission last year, but before 2007, there were an average of four recalls a year. So obviously, it is skyrocketing up.

And what is even worse, the Consumer Product Safety Commission found that of the 113 recall notices for children's product, 42 were for toys and 71 were for other children's products like jewelry. And in fact, of these, 38 percent had to do with excessive lead. So in fact, 7 million pieces of children's jewelry last year, like the ones that were in my car, were contaminated with lead and these are things that little girls are putting on their heads and in their mouths and on their fingers and on their ears. We can't accept that and we can't accept a regulatory scheme that allows that.

So Mr. Chairman, I think that this 2-day hearing is one of the most important things we can do in Congress this fall because many of my colleagues have said, accurately, that the blame is well spread around and the solution is not simple. I will say one thing, though, and again, I need to respectfully disagree with my friend from Tennessee, if you are not going to have adequate and robust oversight, it is hard to see how you can avoid some of these problems.

In fact, if you look historically, since 1981, the Consumer Product Safety Commission has shrunk from 1,000 employees to about 400 today. President Bush's budget that he has submitted would actually cost the Consumer Product Safety Commission 19 more employees. So in truth, while throwing money at problems never works, you have to have a regulatory scheme that is robust and that is adequately enough staffed. And I think that is part of the solution, but industry has to step up as well, and we all know that.

With that, I will yield back, Mr. Chairman.

[The prepared statement of Ms. DeGette follows:]

PREPARED STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Thank you, Mr. Chairman, and thank you for holding this 2-day hearing.

The fact that this hearing is 2 days shows how important the topic is—protecting the interests of children. Children are our most precious resource, for they are the future of this country. If we want a bright future for them, and for us, we have to make sure they are made healthy, through appropriate health care, provided a first class-education, and be kept safe.

We have a long way to go in all of these areas, but this past year has shown acute failures in our ability to protect children from dangerous toys. In particular, they have been exposed to millions of products with dangerous levels of lead paint and lead content.

Protecting kids from lead is not some wild-eyed notion. Lead is contaminant which can cause serious health problems and even death. Lead builds up in the blood stream overtime and causes developmental and behavioral problems in children. For example, studies have shown that lead in the body can reduce a child's IQ. Acute lead poisoning, caused when one quickly ingests a large amount of lead, can cause serious injury or death. Kids get exposed to lead by chewing on or swallowing toys covered in paint or otherwise tainted by lead.

I'm a parent of two daughters I remember buying them toys as kids. Simply put, parents want to feel secure that when they do something nice for their kids they aren't unknowingly giving them a toy that could be deadly. Hard-working and busy

parents shouldn't have to figure out which products have lead; and, in fact, that would basically be impossible because there is no way to know if a toy has lead or lead paint just by looking. Parents have to rely on industry and government to prevent these dangerous toys from ever getting into the hands of kids.

On that score, we are failing at an alarming rate. According to the prepared testimony of Mr. Thomas Moore, Commissioner of the Consumer Product Safety Commission (CPSC), prior to 2007, the CPSC had been averaging four recalls per year for children's toys with excessive levels of lead paint. This year there have already been 15. Overall, the CPSC has issued 113 recall notices for children's products this year, 42 for toys and 71 for other children's products, like jewelry. Of these 38 percent had to do with excessive lead. In terms of raw numbers that comes to 7 million pieces of children's jewelry.

Some of these recalls were pretty high profile. Mattel alone had three separate, massive recalls, including ones which covered such popular products as those involving Sesame Street, Dora the Explorer, and Barbie. It wasn't just Mattel either—RC2 Corporation had to recall 1.5 million Thomas the Train toy cars.

Most of these toys were made abroad, particularly in China, and much has been made of that fact. China is now our second largest trading partner; our trade with it has grown to $343 billion per year. We get 86 percent of our toys from China.

Relying on imports from China to such a large extent creates significant problems, not only with respect to toys but food safety as well. Getting business in China means keeping costs low, which some do by cutting corners and using cheaper lead paint or lead products. Its consumer protection laws are weak and, most importantly, at many levels there is a lack of enforcement. Corruption is a significant problem. While I think relying on China alone to combat this is foolhardy, we do need to work with the Chinese to improve their regulatory enforcement. I am pleased that that is being worked on by the CPSC.

But, at the end of the day protecting American consumers is the duty of American companies and the American government. Americans need to step up and get the job done. Over the years we have seen more and more American companies move manufacturing overseas in search cheap labor and a lower cost of doing business. Regardless of the merits of the behavior, it is no excuse for weakening safety protections.

These companies use contractors, who in turn use subcontractors, who in turn use other subcontractors. I know companies are trying and have rules to prevent the use of unsafe materials. But such a confusing and complex supply chain makes it difficult to ensure their own rules are being followed. Rules are useless if they are routinely being ignored or flouted. These companies need to show more active involvement and quality control. They need to have sufficient numbers of their own people there at plans, monitoring contractors and subcontractors to ensure compliance.

I know today we are talking about lead-tainted imports and manufacturing issues abroad, but I think its worth nothing that a recent study found that over 75 percent of all toy recalls since 1988 have been due to design defects. Just this year, one of the Mattel recalls included products which had small magnets. The design of the product was so poor that the magnets could fall out and be ingested by children, causing serious injury. So, not only do companies need to look at manufacturing practices, but design practices as well. It is their responsibility to design and create products that are safe.

Simply relying on industry to police itself is also not enough. We need third party verification that standards are being followed. That is why I have cosponsored H.R. 3499, the "Children's Products Safety Act of 2007" sponsored by my good friend and colleague Representative Hooley. This bill would require all products for kids five and under to have a certificate, issued by an independent third party lab, that these products comply with our safety standards. And, it would prohibit imports that do not have such a certificate.

Finally, there is a significant role for government and the Consumer Product Safety Commission (CPSC), which has the mandate to protect consumers from harmful products. Of course, that is hard task without sufficient resources.

The CPSC has shrunk over time, declining from 1,000 employees in 1981 to about 400 today. Its budget is a paltry $62 million in fiscal year 2007. Again according to Commissioner Moore, this lack of resources is, not surprisingly, negatively impacting the ability of the CPSC to do its job. For example, it has only 15 people to work in our ports and inspect the thousands of products we import every day. What was President Bush's solution to this? A budget that Commissioner Moore says would cost the CPSC 19 more employees. My friends on the other side of the aisle like to talk about cutting big government and its wasteful spending, but I think saving money at the expense of children's safety is wrong.

As I was cleaning out my garage the other day, I was organizing all of my kids' old toys. After the recalls of this past summer, I started to wonder whether or not I needed to separate the toys into ones I could give to charity and ones that amounted to hazardous waste. Parents should not have to wonder whether or not their kids' toys are deadly. America can do better.

I look forward today to hearing from our witnesses and discussing how we can get this system back on track. With that, I yield back the balance of my time.

Mr. RUSH. The Chair thanks the gentlelady. The Chair now recognizes the gentleman from California, Mr. Radanovich, for 5 minutes for an opening statement. I want to thank the gentleman for waiving. The Chair now recognizes the gentleman from North Carolina, Mr. Butterfield, for an opening statement.

OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BUTTERFIELD. Mr. Chairman, I, too, want to thank you very much for holding this important hearing today on protecting our children and protecting our consumers from lead tainted imports. The prevalence of lead tainted products has been a serious problem in the United States for many, many years and this issue has not received the attention it clearly deserves and so this hearing today is very timely. I want to commend you, Mr. Chairman, and I want to commend the committee and my colleagues on both sides of the aisle for your strong commitment to protecting this Nation's most vulnerable population, our children.

Research reveals that contact with lead tainted products can seriously impact the health of children. Repeated exposure to lead is accumulative and detrimental to the blood system. Regular contact can cause reduced IQ, learning disabilities, attention deficit disorders, behavioral problems, stunted growth and impaired hearing and kidney damage. Further, at high levels of exposure, a child may become mentally retarded. He or she may fall into a coma, may eventually die. Children can come in contact with lead through various sources, one of which is toys. And so this is a very, very serious issue.

In reading the material, it appears that 86 percent of all toys sold in the United States are manufactured in China. Major toy manufacturers rely on their relationships with contractors in countries abroad to ensure the product being manufactured meets U.S. standards. Sometimes the highest quality components do not go into these products manufactured overseas and the safety of children is compromised. And it appears that some of our manufacturers are knowingly engaging in this conduct and if that happens to be true, and these hearings today will help us in that quest for knowledge, then they should be held accountable.

In an effort to combat the potential safety issues that arise from contractors with little oversight, the Toy Industry Association has proposed new testing requirements which require all toys manufactured for sale in the United States to be tested by our standards and also standardizes procedures to be used industry-wide to verify product compliance with U.S. safety standards.

Mr. Chairman, this is a very good step. It is a very good first step in ensuring that products used by our children are safe. Our

constituents demand that we do our part to oversee these industries with the help of the Consumer Product Safety Commission. The CPSC, who is charged with protecting the public from unreasonable risk of serious injury or death for more than 15,000 types of consumer products under their jurisdiction, is experiencing strained resources, that is obvious. They are experiencing very significant backlogs. And I support an increase in funding for this agency, but also believe that the agency needs a strategic plan in place to ensure consumers continue to be protected.

I am particularly looking forward to the testimony of Commissioner Moore, who shares my deep concern for the need to reinvigorate and better fund the Consumer Product Safety Commission. On that note, Mr. Chairman, I would like to welcome the witnesses today and commend them on their dedication to this issue and their work for the American people. I look forward to their testimony and working with my colleagues and stakeholders on this and other product safety issues. This is an important dialog that must continue. Our children are our future and we must protect them.

Thank you, Mr. Chairman. I yield back my 1 minute and 15 seconds.

Mr. RUSH. The Chair thanks the gentleman, and now recognizes the gentleman from New York, Mr. Towns, for an opening statement.

OPENING STATEMENT OF HON. EDOLPHUS TOWNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. TOWNS. Thank you very much, Mr. Chairman. Let me begin by thanking you, Chairman Rush, and Ranking Member Stearns for holding this hearing on protecting our children. I have a statement; I would like to submit it for the record, but I want to make just a few comments. First of all, the blame game is not going to be the solution. I think we should have an open and honest discussion, recognizing the fact that if it requires additional resources, that we put the resources there. We need to make certain that we have a solution. I have a lot of concerns. First of all, even in the recalls, nobody seems to know whether they are successful, unsuccessful or anything. They just announce recall and then after they announce recall, they go about another recall and then another recall. But nobody seems to know, in terms of whether the recall was successful, how many happened to have been returned. Nobody seems to know.

I think, in this day and age, in 2007, and I think that we should be in a position to assess and to determine, in terms of what is really going on. So I am hoping that in this discussion today, that we will look at every aspect and be open about it and talk about what we can do to make certain that we move in a different direction. We are talking about our children, we are talking about the safety of our children and we are talking about parents who work real hard to try and purchase these toys for their children and all of a sudden they find out that the toy is creating a problem. And I think that we owe them more than that.

So I am hoping that this committee will come to grips with the fact that if more resources are needed, let us make certain that they have the resources. And I am hoping the agencies will be honest and tell us if they need. Sometimes agencies will come here and knowing that they cannot do the job because they do not have resources and will sit at the table and never make the request. You know why? And I think that the time has come that we must get over that, get past that, because this is a very serious situation. We are talking about life and death. That is what we are talking about today.

So I am hoping that you understand and that we can move forward with that in mind. And on that note, Mr. Chairman, I would like to submit my entire statement that I have for the record. And I yield back the balance of my time.

Mr. RUSH. The Chair thanks the gentleman for his comments and now recognizes the gentleman from Arkansas, Mr. Ross, for purposes of opening statements.

OPENING STATEMENT OF HON. MIKE ROSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. ROSS. Thank you, Mr. Chairman, for holding this expansive hearing on the recent recalls of products containing lead. These recent recalls of contaminated toys and other items highlight the fact that consumer safety is at risk in America. It is especially troubling that these items are used by the youngest and obviously, most vulnerable members of society. I am troubled that we have reached the level of congressional hearings to determine why, in this day and age, in this 21st century, our children's health has been put at unnecessary risk by contaminated toys, of all things.

We have a responsibility, a duty, to provide our children with the best start in life. Parents deserve answers. We know that exposure of lead content can prove to be dangerous, if not deadly, to individuals, especially children. And it is my hope that over the duration of this hearing we gain a better understanding of existing Federal and State limits on lead in consumer products. We must further explore the role of the Consumer Product Safety Commission's activities to establish lead limits for children's products.

And we need other hearings, Mr. Chairman. Today it is the Consumer Product Safety Commission, which we have basically put this agency in place, as a Congress, to protect consumers. In my opinion, this commission has failed our children and we need to determine if a legislative remedy is needed. But in fairness to them, it is not just this one agency, but we need to look at all the agencies that protect us, as consumers. We raise a lot of catfish in Arkansas; it is a big part of our economy. And I recently learned that for all the fruits, vegetables and seafood coming into America, to all the ports in America from all over the world, there is something like 70 FDA inspectors. Not per shift, not per port, 70 for all the ports in America, for all the fish, seafood, fruits and vegetables coming in. So it is another example of how, from a consumer advocacy standpoint, we are failing consumers.

I think it is also important that we review how retailers have responded to the current toy crisis and how all industry, manufacturers and retailers, can work best with the Government to ensure

that we have the most robust safety systems in place in the United States. As both a parent and an elected official representing many parents in Arkansas, I remain committed to taking steps to prevent further unnecessary exposure of dangerous products to our children. Hopefully, the testimony and discussions today and tomorrow will provide us greater insight towards possible legislative remedies.

And with that, Mr. Chairman, I yield back the balance of my time.

Mr. RUSH. I want to thank the gentleman. The Chair now recognizes the gentleman from Utah, Mr. Matheson.

OPENING STATEMENT OF HON. JIM MATHESON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. MATHESON. Thanks, Mr. Chairman. I will be brief. I know a lot of opening statements have covered the relevant points to be made in opening statements here today, but I guess I would just point out that globalization creates both opportunities and challenges and today we are talking about addressing one of the challenges of globalization, and that is you have a much wider supply chain and much more complex set of distribution channels to come up with how products are in this country now.

As I would echo comments on this panel, as a parent, I have great concern about making sure, when I buy a product in the store, that it is safe and I think a lot of people in this country are looking to Congress and to the industry to work to come up with the solution that ensures the integrity of when a consumer in this country buys a product, they can feel like it is safe. And that is the objective we all ought to keep in mind as we have these hearings today. Mr. Chairman, I really applaud you for scheduling 2 days of hearings on this. I know we will have additional work on this as we go forward and I look forward to working with you to achieve that goal. Thanks so much. I yield back.

Mr. RUSH. I want to thank the gentleman. Now, the Chair asks for unanimous consent that two members of the full committee, but not members of the subcommittee, be recognized for opening statements and to participate in this hearing. So the Chair asks for unanimous consent. Is there any objection to the Chair's request? Hearing none, the Chair now recognizes the gentleman from New Jersey, Mr. Ferguson, for the purposes of opening statement.

OPENING STATEMENT OF HON. MIKE FERGUSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. FERGUSON. Thank you, Mr. Chairman. I am glad to be able to return to the subcommittee for a brief time. I want to thank you and Ranking Member Stearns for holding this hearing to draw attention to this issue that affects every parent and every child across our country. I want to thank our witnesses for coming today, I look forward to their testimony.

In recent weeks and months we have been bombarded with reports of toy recalls from well known toy manufacturers from across the country. In recent months, we all know that Mattel has recalled millions of toys representing popular and beloved children's

characters like Dora the Explorer and Barbie and Elmo and Thomas the Tank Engine, toys just like this one. We have all seen these. My wife and I have four young kids in our house. We went through of all of our toy boxes and found some toys. My wife reminded me, just yesterday, that some of the toys in our very house, we had to go through and clear them out and throw them in the trash.

Millions of parents across the country are doing the very same thing that my wife and I are doing in our house and that many of our constituents in New Jersey are doing in their very homes, as well. In the past 6 months, nearly 21 million Chinese-made toys have been recalled. Eighty-six percent of all toy and game imports come from China. As I say, I am sure every parent in the country had the same reaction that my wife and I did when we began reading these news reports. We have toys like these, our kids have put toys like these in their mouths all the time. No parent in our country should ever have to worry about whether their children's toys are toxic or could make them sick.

If toy companies choose to manufacture their products in China, they need to take every precaution that those toys meet U.S. safety standards. If they don't, I believe Congress must give Federal regulators the authority to ensure that our kids' toys won't actually harm them. America's moms and dads shouldn't be worried that the health of their children could be put at risk when they play with something so simple as the Thomas the Tank Engine or Dora the Explorer backpacks. They expect that established safeguards are in place to protect their kids.

It is our responsibility, as lawmakers and parents and educator and law enforcement, to do everything possible to protect our children at all costs. We will not settle for un-enforced standards or lax inspections when our children's safety is at stake. And that is why I, along with my friend from New York, Mr. Towns, have introduced H.R. 3477, the Safe Toys for Kids Act. This bipartisan legislation would ban uncertified imports from entering the United States by requiring that all imported children's products be tested and certified by an independent group.

This bill is the House companion to legislation that Senators Durbin and Nelson have introduced in the Senate. In light of these national recalls, I am pleased to see that companies like Toys R Us and Disney have stepped up to announce that they intend to recheck and increase checks on products on store shelves. Currently, the U.S. Consumer Product Safety Commission allows manufacturers to inspect their own children's products. However, this is clearly, as we have learned, is not enough. Our bill would require an independent group to test both imported and domestic toys geared toward children 5 years and younger.

This legislation will go far in ensuring that parents can buy toys for their children with the peace of mind that what they are bringing into their home is only of the highest quality. Now, we know that our parents and our children deserve nothing less than that. While this is not a cure-all, I believe it is a good framework to begin a discussion on what we can do to prevent these dangerous and sometimes even deadly toys from falling into the hands of our Nation's children.

I look forward to hearing our witnesses' testimony. I am anxious to hear their ideas on how we can work together to solve this problem. I want to thank the committee and the chairman and the ranking member once again for holding these hearings and again, thank you for allowing me to participate. I yield back.

Mr. RUSH. As stated before, the Chair extends the unanimous consent request to the gentlelady from California, Ms. Harman, who is recognized for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. JANE HARMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. HARMAN. Thank you, Mr. Chairman, and thanks to Mr. Stearns for extending me this privilege. I am a member of the full committee and I have watched attention paid to this issue with great interest. There were Senate hearings last week and the hearings that you are planning for today and tomorrow are obviously critical. I came down here for several reasons. Like many on this committee, I am a mother, in my case, of four children. I am a grandmother of one with two more on the way. My granddaughter, Lucy, is a fanatic for Elmo, her favorite toy, who is all over her room and in my own office upstairs, I have a collection of Barbie dolls, one of them is Barbie for President. Why not?

My other reason for being here, however, is that in my district is El Segundo, CA, the home of Mattel, and we will hear from Bob Eckert on the second panel. He is, in addition to the chairman and CEO of the largest toy manufacturer in the United States, he is also the employer of 2,000 or so of my constituents and it is of great interest to me that they continue to be productively employed in a company that continues to be the largest manufacturer of toys in the United States.

Kids die from lead. Everyone has made this point. That is our first obligation. But employees lose jobs if manufacturers don't behave responsibly and I believe that Mattel is complying with the requests of this committee and going to make even more efforts to behave responsibly and this mother is on the case to assure you that that happens.

Let me just make a couple of additional comments. In my personal conversation with Bob Eckert last week, I was impressed by the steps he wants to take. I did listen to his Senate testimony where he said he took personal responsibility on behalf of his company for the actions it had taken and the actions that it will take. I applaud that. I think those steps that he wants to take are useful. I also suggested that he consider taking over ownership of all of Mattel's plants in China; Mattel owns 50 percent of those plants, but taking over ownership of all of them so that he can more effectively monitor the paint used and other safety issues, but also consider moving some of his manufacturing back to the United States.

It occurs to me that that could be a win-win since, as we all know, the United States and the Consumer Product Safety Commission has banned lead paint on toys and children's furniture since 1978 and it is obviously easier to make sure those standards are observed here. My bottom line is that this hearing matters. Additional Federal regulation matters. But the taking of responsibility by those who run America's big corporations is also central to

solving this problem and I am watching closely, as we all are, to make certain that Mattel, in particular, takes personal responsibility and does the most it can do to solve the problem that will protect the professional livelihoods of its workers and it will certainly guarantee that Lucy Peck, my granddaughter, can buy more Elmo dolls and enjoy the toys that she obviously loves.

And it will finally protect this enormous legacy of Barbie, which I think has in, a kind of interesting way, been a symbol, both for some of the excesses of America, but also some of the goals of American girls and women, and I am pleased that we are having this hearing and look forward to participating.

Mr. RUSH. I want to thank the gentlelady. There is a vote that has been called on the floor. We have one 15-minute vote and two 5-minute votes. It is the intent of the Chair to ask our two witnesses of panel I to come and give us an opening statement and that after they conclude their opening statement of 5 minutes apiece, we will recess to go to vote and then we will come back for questioning.

So now the Chair invites the two witnesses, the one witness, the Honorable Nancy A. Nord, the Acting Chairman of the Consumer Product Safety Commission; the other witness on panel I is the Honorable Thomas H. Moore, the Commissioner of the Consumer Product Safety Commission.

We certainly thank you for appearing before this subcommittee, taking the time out from your busy schedule to engage in this deliberation. Please keep your opening statements to 5 minutes because we do have to get over for this vote. The Chair now recognizes the Acting Chairman of the Consumer Product Safety Commission, Ms. Nord, for 5 minutes.

STATEMENT OF NANCY A. NORD, ACTING CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION

Ms. NORD. Chairman Rush, Congressman Stearns, thank you for the opportunity to again come before the subcommittee, this time to discuss the important issue of lead exposure to children. Lead poisoning in children can cause learning disabilities and behavioral problems and because it often occurs with no obvious symptoms, it frequently goes unrecognized. In high enough concentrations, lead can also be fatal. While it is critical to understand the dangers of lead, it is also important to recognize that the United States has made tremendous progress in reducing the blood lead levels of children.

The percent of children aged 1 to 5 having excessive blood lead levels declined from an astonishing 78 percent in the mid–1970s to just under 1.6 percent in 2002. This achievement was due primarily to the phasing out of leaded gasoline and the ban on lead-based house paint in the 1970s. Still, an estimated 300,000 children continue to have excessive blood lead levels and many of them are low-income and minority children. In fact, the overwhelming source of lead exposure to children today is lead house paint and lead contaminated dust found in old, deteriorating buildings.

As outlined in my written statement, the CPSC has a long and active history in eliminating lead exposure from consumer products. But it is important to recognize that the CPSC must have a

legal basis for taking action to remove any product from the marketplace. Our governing statutes set out certain criteria that we must, by law, follow. With respect to the Federal Hazardous Substances Act, which governs most children's products. The law requires a finding that the lead in the product is accessible to the child before we can legally act. That is not merely that the lead is present, but there is actual exposure to the lead in the product.

An example of where we have found the needed exposure to justify regulatory action is children's metal jewelry. This is because when it is ingested, the lead in the jewelry can leech into the child's system. In 2005 the CPSC issued an enforcement policy stating that we would recall any children's jewelry containing more than trace amounts of lead and setting out how we would test for that lead. This was followed last year by the initiating of a rulemaking to permanently effect a ban. In the meantime, we have initiated an aggressive market surveillance testing and recall program for children's jewelry containing lead that since 2004 has resulted in over 170 million units being removed from the marketplace, more than any other product category in the history of the agency.

Now, Mr. Chairman, I would like to briefly address the topic that has thrust our small agency into the spotlight and that is this summer's recalls due to lead-based paint. Here we are not so much concerned about exposure to the lead, because there is a statutory ban on lead-based paint, so it is a per se violation, regardless of exposure. What happened, why the sudden rash of recalls for violation of this ban. Well, the first point is that this year's recalls are not unique. Every year there are at least a few lead-based paint recalls.

This June, however, we had an unusually large recall of the popular Thomas the Tank Engine toys manufactured in China. This came on the heels of some very high profile recalls of Chinese-made pet food, toothpaste and other food and drug products. But even before the media attention began, due to the size and the scope of the Thomas recall, we immediately began a sampling program to test for lead paint on other toys. This, coupled with the publicity of the toy train recall, caused Mattel and other companies to closely examine their own toy inventories. The result were the additional recalls that we announced over the last 2 months.

While it may appear that we are undergoing an epidemic of lead paint on toys, these recalls have served their intended purpose. Not only are they getting violated products off the shelves and out of consumers' hands, but they have caused the entire toy industry to change practices to prevent such violations from occurring in the future.

But finally, Mr. Chairman, as members of the subcommittee have pointed out, it is really critical to prevent unsafe products from reaching consumers in the first place and our China program is an important step. And last week we signed an agreement with the Chinese Government which pledged, for the very first time, to undertake a series of concrete steps to reduce the export of unsafe consumer products to the United States. While I am cautiously, and I underscore the word cautiously, optimistic that this agree-

ment will help reduce violations of our standards, I also recognize that follow-up is critical.

I note that the agreement is not a one-way street. The CPSC has also agreed to undertake a number of educational, training and communication activities to make sure that the Chinese Government and exporters fully understand and adhere to U.S. safety requirements. These activities, if they serve their intended purposes, I think the effect will be much more significant and much more long-lasting than simply putting a few more inspectors at the U.S. ports.

Mr. Chairman, far from shrinking from the recent publicity that the CPSC has faced, sir, I welcome it. Our small agency, I think, has been ignored by the Hill and by the public for way too long. I have sent to you some proposals and I would again ask that you seriously the legislative proposals I have made because I think they would significantly strengthen our responsibilities. Sir, everyone at the CPSC, myself, we are all parents and we take our responsibilities very seriously. I applaud you on this hearing. I look forward to helping you.

[The prepared statement of Ms. Nord follows:]

STATEMENT OF NANCY A. NORD

Mr. Chairman:

Thank you for inviting me to testify today on the critical issue of protecting the American public from unsafe consumer products, including imported children's products that contain lead. Eliminating children's exposure to lead in consumer products has consistently been among the highest priorities of the U.S. Consumer Product Safety Commission (CPSC) and has been part of our core mission since the inception of the agency in 1973.

The history of the CPSC'S actions to abate lead hazards is well-known and well-respected. When products that expose children to lead are discovered in U.S. distribution channels in violation of our laws, the CPSC acts decisively. We have a very active lead program, both to enforce the statutory ban on lead paint for home use and to analyze and act upon accessible lead in a variety of other products.

While the issue of lead exposure to children unquestionably continues to be a serious one, the United States has made dramatic progress on this front. A Federal study of the issue estimated that the percentage of children aged 1 to 5 years old with blood lead levels in excess of 10 micrograms per deciliter had declined from 77.8 percent for the 4-year period starting in 1976 to 1.6 percent for the period 1999 to 2002.

While the phase-out of leaded gasoline and the CPSC ban on lead paint are key factors behind this progress, deteriorating lead paint in older dwellings remains the primary source of lead intake for children. The CPSC has been and continues to be ever vigilant and assertive in this ongoing war against children's exposure to lead in products under our jurisdiction.

Examples of the actions that the CPSC has taken over the last decade include:

1996—CPSC staff found that certain vinyl mini-blinds deteriorated when exposed to heat and sunlight, creating lead dust that could be ingested. At the Commission's insistence, the industry ceased manufacture of vinyl mini-blinds that posed the risk.

1998—The Commission issued a policy statement urging manufacturers to eliminate lead in all children's products and published this guidance in the Code of Federal Regulations.

2000—CPSC staff discovered lead in certain candy wrappers on candy imported from Mexico, and at CPSC'S insistence, the importation of such candy was terminated.

2003—The Commission promulgated a regulation banning candles having candlewicks containing more than 0.06 percent lead.

2004—CPSC'S lead hazard reduction efforts were further expanded with an initiative focused on children's metal jewelry after staff tested samples and found a significant number contained high levels of accessible lead. That initiative resulted in the recalls of more than 150 million pieces of inexpensive children's metal jewelry.

2005—The CPSC issued a new enforcement policy and testing protocol specifying how to test for accessible lead in children's metal jewelry and recommending screening under CPSC test procedures. Since that time, importers and retailers have recalled millions of additional potentially unsafe children's metal jewelry products.

2006—The Commission commenced a rulemaking that may result in a regulation effectively banning lead in children's metal jewelry.

2007—The CPSC is currently engaged with ASTM, a standards development organization, to develop a new product safety standard to eliminate or significantly reduce children's exposure to lead in children's vinyl products.

The Commission acts on a product hazard, whether through recalls or regulation, under the legal authority that Congress has provided in our governing statutes. The Commission banned lead paint on toys and children's furniture in 1978. The agency has vigorously enforced that ban ever since, including through the highly publicized toy recalls this summer.

This ban on lead paint contrasts with our statutory authority for dealing with lead and other heavy metals that might be found in children's products. The popular notion that CPSC has the authority to issue a rule that bans any lead in all "children's products" is erroneous; the law requires that the agency consider exposure and risk by the product.

The Federal Hazardous Substances Act (FHSA) does not authorize CPSC to regulate lead in a product unless it may cause "substantial personal injury" or "substantial illness" under "reasonably foreseeable" conditions of use. That statute itself bans "any toy or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted."

I underscore this distinction because the significant recalls that the CPSC has announced this summer with regard to lead involve two distinct classes of children's products, that is, those that bear banned lead paint, such as Thomas the Tank Engine, and those that have accessible lead content, such as children's metal jewelry. As noted above, lead paint in children's products has been banned since 1978, and the Commission has initiated a rulemaking to ban on lead in children's metal jewelry.

The Congress was farsighted when it crafted the CPSC'S governing statute. When the law was written in 1973 (and I would note Chairman Dingell's key role in authoring and enacting this important legislation), Congress recognized that this new agency could not impose U.S. law on foreign manufacturers, so our statutes hold everyone in the stream of commerce in the U.S. responsible and potentially liable. In brief, the American importer, as well as the domestic distributor and retailer, is held responsible for complying with U.S. rules.

However, what the Congress could not foresee 34 years ago was the reliance on imports that we are now facing. That is one reason that I believe it is in the best interests of consumer product safety to modernize CPSC'S statutes and to strengthen the agency's hand in protecting the American public.

As you know, the CPSC was last reauthorized by Congress in 1990 for a period of two years. The marketplace has changed dramatically in the seventeen years that have passed since Congress last revised our statutes. Not only are there new technologies that have emerged, and continue to emerge, in creating and manufacturing products, but also technology has significantly changed the way that consumers shop and purchase goods and the way that the public receives information. Most of America's consumer products, not just toys, now come from overseas manufacturers. Much has changed in the marketplace, in technology and in communications since 1990.

The result is that the inspection and enforcement tools at the agency's disposal with respect to imported products are not as strong as they need to be. This is one of the key reasons that several months ago I sent to Congress legislative proposals aimed at improving the safety of both imports and domestically produced products through a variety of means. Many of these proposals are reflected in various bills that have been introduced in both the House and the Senate.

In addition to the dramatic shift from domestically produced consumer goods to imports, other challenges require the modernization of the CPSC'S statutory authorities. For example, I have proposed that in instances of direct-to-consumer sales from overseas manufacturers (including those via the Internet), the foreign manufacturer or exporter be the U.S. importer of record.

My legislative proposals are the first part of a multi-pronged approach that the agency is pursuing to address the issue of Chinese imports. In addition to modernization of our governing statutes, the CPSC'S initiative includes dialogue and initiatives with the Chinese government; working with the private sector including

Chinese manufacturers directly; and increased surveillance and enforcement activities at the borders and within the marketplace.

Historically, CPSC has not actively engaged in international activities. However, in 2004, recognizing the continuous and significant increase in the number of imported consumer products entering the American marketplace from China, my predecessor became the first Chairman of the CPSC to travel to that country. That first step was the genesis for a formal relationship between the CPSC and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), our counterpart agency in China, and it resulted in the signing of a Memorandum of Understanding (MOU) between our two nations later that year. Since becoming Acting Chairman last year, I have viewed the task of building upon that foundation as one of my highest priorities.

In 2005, at the first U.S.-Sino Product Safety Summit, the CPSC signed an Action Plan on Consumer Product Safety with AQSIQ. The Action Plan created Working Groups to address issues in four priority areas' fireworks, lighters, electrical products and toys.

The tasks of the Working Groups are to develop strategies to address safety problems; to be able to respond quickly to urgent product safety issues; to exchange information on changes to safety standards; and to exchange laboratory and inspection personnel in each other's respective facilities.

At the beginning of this year, we identified and communicated to our Chinese counterparts specific problems and proposed actions to address these problems with respect to each of the four product categories covered by the Working Groups. One of the problems we flagged was the use of lead paint on toys in contravention of our ban. In May 2007, I traveled to China with a delegation of top CPSC officials for in-depth discussions of the issues identified by this process.

This hard work culminated last week at the U.S.-Sino Product Safety Summit held here in Washington between the CPSC and our Chinese counterpart agency, AQSIQ. I am pleased to report that we reached an important agreement with AQSIQ, under which China will immediately implement a plan to eliminate the use of lead paint on Chinese manufactured toys exported to the United States. They are going to make sure there is no lead in the paint through inspections of U.S. destined toys and a certification system for paint suppliers.

Since China has a weaker standard for lead paint than the United States, it is really quite extraordinary that the Chinese agreed to enforce the stricter American standard.

China also agreed to broad cooperation with the CPSC in the four major product areas that I mentioned above. In each of the four work plans, China has agreed to cooperate with the CPSC to ensure that its producers understand and comply with U.S. safety standards for all of their exports to the United States. The work plans provide a roadmap to improve the safety of these products through five main avenues:

First, in cooperation with the CPSC, AQSIQ has agreed to increase its inspections of products destined for the U.S. and to undertake other activities to ensure that exports meet all applicable safety standards. They have even pledged to encourage Chinese manufacturers to meet UL "voluntary" standards for electrical products.

Second, AQSIQ, again in full cooperation and participation with the CPSC, will expand the knowledge and understanding of U.S. product safety standards among Chinese manufacturers and exporters.

Third, the CPSC and AQSIQ have agreed to various technical personnel exchanges and training activities to ensure full and mutual understanding of our respective laws and systems, including product testing methodologies.

Fourth, we have respectively agreed to establish regular and systematic exchanges of information about emerging product safety issues, including monthly discussions of recall activities and trends.

Fifth, AQSIQ has agreed to specific steps to assist the CPSC in tracing products with identified safety problems to those Chinese firms involved in their manufacture, distribution and export. This will enable both of our agencies to better and more quickly address safety issues as they arise.

This is significant achievement, and while it is in China's economic interest to enforce U.S. safety standards, we will nonetheless be following up to assure that the Chinese government fully implements this commitment. The CPSC will need to stay engaged with the Chinese in order to get the follow through that we are looking for. I am committed to that.

The third prong of our plan to address Chinese imports is to work with the private sector, both here in the U.S. as well as in China, to educate the Chinese manufacturers and exporters not only of the content of U.S. product safety standards, but

also the importance of adhering to those standards, including adhering to consensus or what we commonly call "voluntary" standards.

As part of our plan to address this problem, in 2005 the CPSC published the Handbook for Manufacturing Safer Consumer Products underscoring our message that safety must be designed and built into consumer products in conformance with safety systems planned, established and implemented at the direction of executive management. The Handbook presents a comprehensive systematic approach to manufacturing safe products and has been published in Chinese and distributed throughout China.

In 2006 CPSC facilitated the translation of the summary provisions of nearly 300 U.S. mandatory and voluntary consumer product safety standards into Chinese to assist Chinese manufacturers in understanding what U.S. product safety standards require when manufacturing various products. CPSC determined which standards would be translated primarily by analyzing what imported Chinese products were recalled in the largest numbers and selecting the corresponding U.S. mandatory or voluntary standards for translation. The translation of these provisions of U.S. product safety standards facilitates Chinese manufacturers' understanding of what is required of them when they manufacture products for the U.S. market.

The CPSC has also conducted industry-specific safety seminars and retail and vendor training seminars in China. Staff has conducted a number of other safety training activities in China dealing with toy safety, electrical product safety, fireworks safety and a supplier safety seminar for retailers.

Finally, we are undertaking conversations with specific industry groups to encourage testing and certification programs. For example, ANSI and other standards, industry and retail groups are considering the development of testing and certification programs. The toy industry has already announced plans to move forward with such a program.

The fourth prong of our plan of action for Chinese imports is increased surveillance and enforcement activities. Although the Commission was without a quorum for over six months, the agency has been active in addressing the challenge of imported products, not only directly with the Chinese government, but also here in the United States. In Fiscal Year 2006, the CPSC announced an all-time record number of recalls of defective products. These recalls represented a wide range of consumer products and product hazards. Over two-thirds of these recalls were of imported products, primarily from China.

CPSC'S Compliance staff working in conjunction with U.S. Customs and Border Protection (CBP) undertakes both routine and targeted surveillance and sampling of products at U.S. ports of entry. CPSC recently began participating in the Automated Commercial Environment (ACE). ACE is the new U.S. CBP processing system that strengthens our ability to identify likely shipments of non-compliant products before they arrive at U.S. ports. Our early experience with using the ACE system indicates that it will provide us with better data at an earlier point in the process so that our port inspection activities can be precisely targeted and thus more effective.

CPSC obviously attempts to keep dangerous products from entering into the country in the first instance. However, in the event a defective product does enter the stream of commerce, CPSC has been taking stronger measures to effectively remove such products from the marketplace. For example, after a product has been recalled, CPSC has stepped up the number of recall verification inspections of the recalling firms to ensure the product is being removed from the marketplace. CPSC has also adopted a new practice of notifying major retailers of all CPSC recalls, as well as routinely conducting internet searches for sales of recalled products.

In contrast to the Food and Drug Administration or the Department of Agriculture, the CPSC is a small agency without the resources or authority to perform overseas pre-inspections or large-scale port screening for all of the items under our jurisdiction. In fact, CPSC has no direct authority to handle imported products at the ports, much less to detain or seize them. Our statutes recognize that Customs and Border Protection has the direct authority to deal with imported products at the ports of entry.

We are committed to our mission, and within the constraints of our authorities and resources, the staff at the CPSC enforces the law aggressively. In view of the recalls that the CPSC has announced this year, parents and caregivers are understandably concerned. The Commission and the CPSC staff respect this concern, and whether the product is manufactured overseas or here in the United States, our goal is to keep unsafe products out of the stream of commerce and out of America's homes, yards and recreation areas.

Thank you for this opportunity to testify this morning and I look forward to answering your questions.

Mr. RUSH. The Chair thanks the acting chairperson. Now, the Chair recognizes the Honorable Thomas H. Moore, a commissioner of the Consumer Product Safety Commission for 5 minutes.

STATEMENT OF THOMAS H. MOORE, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Mr. MOORE. Thank you, Mr. Chairman. Mr. Chairman and ranking member and members of the subcommittee, thank you for providing me with this opportunity to present testimony at this hearing on the important issues surrounding protecting children from lead-tainted imports. Recalls of children's products containing lead or lead paint have received an enormous amount of attention. It is very encouraging for me to see that our lawmakers are dedicating themselves to working with the commission to define real solutions to resource and authority issues that may be at the root of these kinds of and other product safety problems finding their way into the stream of commerce in our country.

The key to an effective regulatory and enforcement body is sufficient resources to carry out its responsibilities and mission. The CPSC is a staff-intensive organization. I have always expressed that at the heart of CPSC's operation is its staff, without question, our greatest and most important asset. Over the last few years, because we have achieved our budget required staff reductions through non-targeted means, such as attrition, early outs and buyouts, we have lost some very key staffers. Over time, we hope to be able to train replacements, but the experience that we have lost will take years to recover. Moreover, the lack of sufficient resources has severely limited our ability to do succession training, planning and severely limited our ability to have depth of personnel behind our key positions.

This summer has most definitely been the summer of the recalled toys made in China. There have been several highly publicized recalls of children's products made in China for importation and sale by well-established and long trusted domestic toy manufacturers. The safety issues associated with the increase in imports have created new challenges for our commission. The commission is currently looking at ways to address the developing issues surrounding imported consumer product safety. We are involved in some activities, such as dialog and initiatives with foreign governments and the private sector, including domestic and foreign manufacturers.

For example, last week the commission signed a joint statement in which our product safety counterparts in the Chinese Government proposed to stop the use of lead paint in the manufacture of toys they export to the United States. However, we must be cautious in our dependence on foreign governments to make sure that products exported from their countries comply with our safety standards. Other countries expect, as we do, that the receiving country's regulators of the marketplace will find and address problems with products within their own borders.

Our own statute makes it clear, as does legislative history, that it is not the commission's concern whether a product made in the U.S. for export meets the mandatory or voluntary product safety standards of other countries. It may be a bit unreasonable for us to realistically expect more from other countries than that which we expect of ourselves. We, at the commission, are also working with interested Members in both the House and the Senate to modernize our governing statutes to give us more leverage through the regulatory process and our enforcement activities.

This subcommittee, in particular, has been tremendously engaged in our issues from the very beginning of this Congress and must be given credit for providing the impetus for recommendations for legislative action submitted by members of the commission to the House, the Senate and the administration. Some of the highly publicized recalls this summer have involved children's products that contain lead or contain paint that has lead in it. Toys or other articles intended for use by children that bear lead containing paint are banned, hazardous products.

It is a prohibited act to introduce or deliver this introduction into interstate commerce of banned, hazardous substances. Any person who violates this law could be subject to both criminal and civil sanction. As far as children's products, such as jewelry or vinyl babies bibs containing accessible lead, I wish that the commission had the authority to find it unacceptable for any amount of lead or any other toxic substance to be in a children's product. However, our statute requires us to assess the accessibility of the lead and this is the key measure under the Federal Hazardous Substances Act, the FHSA.

We know that exposure to lead can elevate blood lead levels and that such exposure could bring about developmental——

Mr. RUSH. Commissioner, we do have a vote and the time is up, and we have got a little over a hundred Members who haven't voted and that is what I am looking at, so if you could bring your comments to a close so we can run over to vote, I certainly would appreciate it and I apologize for the inconvenience.

Mr. MOORE. That is all right. I am hopeful that we see significant results from all of our efforts and I thank you very much for this opportunity.

[The prepared statement of Mr. Moore follows:]

STATEMENT OF THOMAS H. MOORE

Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for providing me with this opportunity to present testimony at your hearing today on the important issues surrounding "Protecting Children from Lead-Tainted Imports." Recalls of children's products containing lead or lead paint have received an enormous amount of attention during recent times. It is very encouraging for me to see that our lawmakers are dedicating themselves to working with the Commission to define real solutions to resource and authority issues that may be at the root of these kinds of, and other, product safety problems finding their way into the stream of commerce in this country.

As I have indicated to this House subcommittee and to the Senate, I am gratified by the very clear signals given by both the House and the Senate Authorizers and Appropriators that they understand the very difficult position that the Consumer Product Safety Commission (CPSC) finds itself in. For the first time since I came to the Commission, over twelve years ago, I have the sense that there is a realization of the need for both a substantial and sustained increase in our funding level

as well as the need for real and important changes to our statutes which could give us new authorities and clearer direction in achieving our mission.

In March of this year, in a written statement to the Senate Committee on Commerce, Science, and Transportation, I spoke about the problems associated with any perception of our modern, sophisticated marketplace of today effectively regulating itself for product safety. "Simply stated, competition and voluntary actions of today's businessmen do not always suffice to safeguard the public interest. Competition does not and will not inevitably take the form of a rivalry to produce the safest product. The role of the CPSC in today's consumer product marketplace remains compelling, substantial and relevant."

As if on cue, we now sit here less than 6 months later facing the growing alarm about possibly unsafe consumer products, some produced in violation of current, longstanding regulations, cheaply manufactured in foreign facilities and now flooding our marketplace and providing a risk of harm to those consumers who purchase them. I think it is extremely important that you have engaged the importer community in the discussion of this problem. I will be very interested in their response as I believe that they are a key link in protecting consumers.

Everyone wants to know who is to blame and what steps we can now take to address this problem. The short and easy answer to the first question is that we are all to blame - the Administration, the Congress, the Regulators, the manufacturers, importers and retailers, and anyone else who may have been active or inactive participants in enabling the policy decisions and priorities that have led us to this point. And certainly, those who stood by and quietly acquiesced while the Commission was being reduced to a weakened regulator, largely relying on the regulated to regulate themselves, must examine and correct the role that they played in putting the Commission in its current state. The only blameless ones are the unsuspecting consumers who unwittingly place their confidence in a system designed to protect them from the unreasonable risk of harm from the products that they find in their marketplace.

The second question does not have as short or easy an answer.

RESOURCES, RESOURCES, RESOURCES

The key to an effective regulatory and enforcement body is sufficient resources to carry out its responsibilities and mission. The CPSC is a staff intensive organization. I have always expressed that at the heart of CPSC's operation is its staff, without question, our greatest and most important asset.

Over the last few years, because we have achieved our budget required staff reductions through non-targeted means such as attrition, early-outs and buy-outs, we have lost some very key staffers. We did not want to have to do a reduction-in-force (RIF) to accomplish the staff reductions and, having a number of older employees, we felt it was likely we would have enough employees willing to take advantage of incentives to be able to avoid a RIF, which was in fact the case.

Over time we hope to be able to train replacements, but the experience that we have lost will take years to recover. Moreover, the lack of sufficient resources has severely limited our ability to do succession planning and severely limited our ability to have depth of personnel behind our key positions. In addition, dwindling resources and staff reductions have had some negative impact on our agency's ability to attract high level qualified candidates for our critical vacancies as well as our ability to retain some of our own top level employees.

The result is that the Commission is at a crossroads. Any additional reductions in staff or resources will ultimately place the Commission in a position where it will no longer have any effective force in consumer protection. The first step that must be taken is to reject the administration's staffing and budget proposal for fiscal year 2008 which requires an additional reduction of 19 FTEs. Fortunately, Congress, both the House and the Senate, have done just that. This Congress has sent clear signals that it understands that the Commission needs more funding to increase its staff and to be able to do work on rulemakings and other projects that have been shelved or slowed down because of lack of resources. It is crucial that we have a period of stability, to move away from what has been a pattern of trying to see how we can manage with less and to begin a process of determining what more we need to have in order to ensure that we do our job more effectively.

However, I must point out that it would not serve the Commission or the public well to just indiscriminately throw resources at the Commission in response to the public alarm surrounding some highly publicized recalls. It has taken years for the Commission to get to its present position and it will take years to correct. I support an incremental approach to increasing our budget and staff. Since we require a yearly increase of about three to four percent to keep current with increases in sala-

ries, rents and other operating costs, yearly increases in the range of 10 to 15 percent would, in my mind, provide the Commission with a good growth pattern. This growth pattern would also allow the Commission to do a yearly assessment of where the areas of needs most exist at the Commission therefore allowing the Commission to address its needs in the light of the current consumer product safety problems.

IMPORT PRODUCT SAFETY

Again, in March of this year, I informed the Senate Committee on Commerce, Science and Transportation about my concerns with the growing numbers of possibly harmful imported consumer products coming into our country. "In the future, the problems associated with increasing numbers of possibly dangerous imported products will present the Commission with more and more of a challenge. Increasing numbers of U.S. companies are either importing finished products or component parts made in other countries or establishing their own production plants outside of the U.S. In most cases, domestic companies are not going to have the same degree of control over these products as they would have if their products were being made in this country. This inability to have constant hands-on supervision can result in products entering this country that do not meet U.S. safety standards."

This summer has most definitely been the summer of the recalled toy made in China. There have been several highly publicized recalls of children's products made in China for importation and sale by well established and long trusted domestic toy manufacturers. Thus far in 2007, CPSC has recalled a record number of hazardous imported products from China including a wide variety of toys and children's jewelry. The safety issues associated with this increase in imports have created new challenges for our Commission. The Commission is currently looking at ways to address the developing issues surrounding imported consumer product safety. We are involved in some activities such as dialogue and initiatives with foreign governments and the private sector, including domestic and foreign manufacturers.

For example, last week the Commission signed a joint statement in which our product safety counterparts in the Chinese government proposed to stop the use of lead paint in the manufacture of toys they export to the U.S. However, we must be cautious in our dependence on foreign governments to make sure that products exported from their countries comply with our U.S. safety standards. Other countries expect, as we do, that the receiving countries' regulators (or the marketplace) will find and address problems with products within their own borders. While our agency's attempts to go to the source before the problem products arrive on our shores are necessary and admirable, our own statute makes it clear (as does the legislative history) that it is not the Commission's concern whether products made in the U.S. for export meet the mandatory or voluntary product safety standards of other countries. It may be a bit unreasonable for us to realistically expect more from other countries than that which we expect of ourselves. We should consider whether this policy is still appropriate today. If we export our safety standards along with our products, we take an important step in harmonizing standards in what is increasingly a global marketplace.

In addition, to engaging in activities intended to elicit cooperation from manufacturers and foreign governments, the Commission must advocate for additional resources to increase surveillance and enforcement activities at the borders and in the marketplace. I note here that in a recent Time Magazine article it stated that the Food and Drug Administration has 1,317 field investigators and inspects just 0.7% of all imports under its jurisdiction. CPSC has perhaps a total of 15 people (out of a total field investigative staff of less than 90) to visit those same ports of entry to inspect for the more than 15,000 product types under our jurisdiction. I think those numbers speak volumes about why products under our jurisdiction that violate our mandatory safety standards keep finding their way into the marketplace.

We at the Commission are also working with interested Congressional members in both the House and Senate to modernize our governing statutes to give us more leverage through the regulatory process and our enforcement activities. This subcommittee, in particular, has been tremendously engaged in our issues from the very beginning of this Congress and must be given credit for providing the impetus for recommendations for legislative action submitted by members of the Commission to the House, the Senate and the Administration.

However, I think that it is very important that in whatever we do collectively—through efforts at the Administration level, Congress and the Commission—to address import product safety, we must send a clear, unequivocal message to manufacturers, importers and retailers who bring and offer for sale in this country products which present a substantial product hazard or that do not comply with a U.S. product safety standard. That message should be that, "your actions are unacceptable

and you will be held accountable." The Commission must have the sufficient resources, the adequate authority and the internal willingness to deliver that message with no hesitation.

STATUTORY AND OTHER MODERNIZATION

Some of the highly publicized recalls have involved children's products that contain lead or lead containing paint. Toys or other articles intended for use by children that bear "lead containing paint" are banned hazardous products. It is a prohibited act to introduce or deliver for introduction into interstate commerce a banned hazardous substance. Any person who violates this law could be subject to both criminal and civil sanctions. Prior to 2007, we had been averaging four recalls a year for children's products with "lead containing paint." This year we have already had 15. This regulation banning children's products that have "lead containing paint" has been on the books for 30 years and there is absolutely no excuse for a violation of this regulation. Violators should be held accountable to the maximum extent for their non-compliance.

As far as children's products such as jewelry or vinyl baby's bibs containing accessible lead are concerned, I wish that the Commission had the authority to find it unacceptable for any amount of lead to be in a children's product. However, our statute requires us to assess the accessibility of the lead and this is the key measure under the Federal Hazardous Substances Act (FHSA). The Commission did issue a guideline document back in January of 1998, which went so far as to urge manufacturers "to eliminate lead in consumer products." In response to that guidance, in August of 1998, the Toy Manufacturers of America pledged to eliminate lead from their products. Yet here we are, nearly 10 years later, facing the same problems.

We know that exposure to lead can elevate blood lead levels and that such exposure could bring about developmental problems in children. I am absolutely certain that parents would agree that if we could require the elimination of lead in children's products, we should. I understand that some members of Congress are interested in this issue and I hope that through their efforts we can address this problem and get it resolved in favor of thoroughly protecting our children from unnecessary exposure to products containing lead.

Testing of products on the market to determine compliance with safety standards is also an important part of our responsibilities. I can't tell you how troubling the picture of our toy testing facility in the New York Times article was to me. We have been trying to obtain funds to modernize our lab since before I arrived at CPSC in 1995, yet we have never received any significant funding for that goal. We have been working with GSA on a modernization plan since at least 1999. The Lab Modernization Feasibility Study, completed jointly with GSA in 2005, formed the basis for a capital project submitted to OMB by GSA as part of their FY 2007 Budget. However, other national priorities precluded the project from being funded. There certainly has been a level of frustration associated with the process. We have been forced to accept a band-aid approach to fixing the lab, when what we really need is a major modernization commitment.

I have seen other testing labs, such as those at Underwriters Laboratories, which are much more sophisticated, spacious and up-to-date than our lab. Given that we are the Federal agency designated to protect consumers from product hazards and that our laboratory testing plays a key role in making hazard determinations, I think the state of our lab should concern everyone. However, whenever I go to our lab I am constantly amazed at the ingenuity of our lab staff in overcoming space and resource limitations. We often talk about the agency making do with what it has and nowhere can that be seen more strikingly than at the lab. I would like to see a real investment made in upgrading our lab so that we can do more testing in our own facility rather than having to contract the work out and so that tests don't stack up because of a lack of adequate space or other resources, which prevent us from doing simultaneous testing on various products.

We are currently looking at different "real estate" solutions with GSA that would give us a better physical plant. However, these solutions may or may not allow us to function at the same capability we currently have and they would not include any modernization of equipment. It was estimated back in 2005, that the cost to truly modernize our lab, if we were to stay on the current site, would be somewhere around thirty million dollars. This would expand our capabilities plus give us new equipment and a physical plant that is both energy efficient and an effective use of space. A modern facility would also put us in a better position to deal with emerging technologies, such as nanotechnology. It is difficult for us to even contemplate how we would assess potential product-related nanotechnology hazards when we struggle to provide the basic lab capabilities to meet our current needs.

Even before several recent highly publicized recalls, members of both the House and the Senate had indicated an interest in reinvigorating the Commission through the reauthorization process. I have strongly supported increasing our staff and facilities resources and various changes to our statutes over the years. I have submitted to both the House and the Senate proposals for consideration during this process of looking at reauthorization of the Commission. Acting Chairman Nord has also put forth her proposals, many of which I agree with, some of which (in one form or another) I have advocated for years. Thus, for the first time in a long time, there is bi-partisan support on the Commission to make major changes to the Commission's statutes. Some of the suggested changes could help the Commission's enforcement efforts with respect to the type of problems we have been seeing with the safety of imported products.

Last week, Senator Mark Pryor introduced legislation with Commerce Committee Chairman Senator Daniel Inouye that will severely test the real will of Congress to provide the Commission with the necessary tools it needs to be an effective force in protecting consumers from product safety hazards. Many of the provisions of the legislative package come from the recommendations submitted by Acting Chairman Nord and myself. The CPSC Reform Act of 2007 authorizes additional funding to increase staff levels to 500 employees by 2013, improve our antiquated testing facilities, engage in nanotechnology research and increase our staff's presence at U.S. ports of entry. The legislative package also strengthens the agency's enforcement powers by increasing civil and criminal penalties, requiring third party certification on all children's products, banning the use of lead in children's products, requiring labeling of children's products with tracking information to facilitate recalls, making it unlawful to sell recalled products and by streamlining the product safety rulemaking process. There are other provisions as well and, as I said, most of which were endorsed by me or Acting Chairman Nord.

This House subcommittee has also addressed some of these issues and, I understand, is working on its own comprehensive reauthorization bill. I am gratified by the attention that Congress is paying to the Commission and I am hopeful that we see significant results from all of our efforts.

I know that the American public, especially parents and their children, will be thankful.

Mr. RUSH. Thank you so much, Mr. Commissioner. The Chair intends to reconvene this subcommittee immediately, immediately, I might add, emphasize, after the last vote takes place on the floor. The subcommittee stands in recess.

[Recess]

Mr. RUSH. The committee will reconvene. The Chair will recognize himself for 5 minutes of questioning, and the Chair wants to ask Chairman Nord the following question.

Chairman Nord, I have actually four questions and I have 5 minutes and I want to kind of keep these questions and answers as succinct as possible. And during the year 2007, this current year, the CPSC has issued approximately 30 recalls for lead content in approximately seven million pieces of children's jewelry, overwhelmingly manufactured in China.

Pertaining to the joint agreement that you signed with the Chinese last week, this agreement only covers lead paint on toys. Why doesn't it also cover lead content? What exactly do you expect to get out of the agreement with the Chinese? Can you provide to the subcommittee copies of the "work plans" that detail the initiatives that is encompassed in this agreement? And how will you know if these efforts with the Chinese are really bearing fruit?

Ms. NORD. OK. With respect to the agreement with the Chinese, first of all, understand that there was an overarching general agreement that the U.S. Government and the government of China reached, whereby the Chinese Government agreed to implement a plan to take immediate steps to eliminate lead paint from products

destined to the United States, and they did that because we asked them to do that. And we have put in place a number of processes or we will put in place a number of processes to monitor how they comply with that. But sir, the lead paint agreement is not the extent of our agreement with China. Please understand that this effort started in 2004 and it has been ongoing. We identified four areas where we were concerned about imports and those areas were lighters, fireworks, electrical products and toys.

So what we did was reach agreement with the Chinese on a number of very specific things in each of those four product categories, in addition to lead paint. Now, the question of how do we know whether they will be complying with the agreements that they made with us, sir, that is like the critical question here, because if they don't comply, then what we have done isn't particularly meaningful. But right now the Chinese Government has indicated that they want to work with us to solve this problem and believe me, our agency is going to take advantage of that. We have put in place a system whereby we are going to be closely monitoring the implementation of the specifics in each of the various work plans, and if we see divergence from what they agreed to, then we will be going back to them and calling them on it. Part of what we also did was set up a process for having very close, actually monthly, consultations with them so that we could bring to their attention issues that we see if things are not going the way we would like to see them go.

Mr. RUSH. I wanted you to specifically address the work plans.

Ms. NORD. Yes.

Mr. RUSH. All right. Will you extend to the subcommittee the details or the copies of the work plan?

Ms. NORD. Well, of course I will and in fact, I have got a fairly extensive summary of the work plans here and I would be more than happy to submit that as part of my formal statement to you.

Mr. RUSH. From your testimony you seem to rely solely on the "goodwill of the Chinese Government." Presently, the Chinese standards for lead is much greater, much more stringent than the American standards. However, the issue is one not of the standards, not of the willingness, but the enforcement of the standards and the enforcement of the regulations. How can you assure the American public and the members of this subcommittee that you and the CPSC will engage the Chinese Government and demand that they enforce, not only the elements of the agreement, but also that they will live up to their own standards, in terms of lead content?

Ms. NORD. The Chinese, as I understand, the internal Chinese standards with respect to lead paint are not necessarily more stringent than the U.S., but Mr. Chairman, they are different from the United States. They are much akin to what the European Union has, in that they go to the whole question of accessibility of the lead to the person using the product, whereas ours just have a flat-out ban.

But be that as it may, obviously enforcement of any standard is the key here. What the Chinese and the U.S. Government have agreed to do, or what the Chinese Government has agreed to do is insist on increased testing and inspections of the facilities where

the products are being made. They have also agreed to qualify paint suppliers to the U.S. market, so that those paint suppliers are going to have to register with the Chinese Government, and if we find products, then the Chinese Government will have an administrative way to deal with that.

As I mentioned, the Chinese standard is much closer to the European standard than it is to the U.S. standard, so they agreed to try to put in place a system which will distinguish between products that are being exported to the United States, as opposed to those products that are destined for export to Europe, so that we don't end up getting our various standards, products meeting various standards going to the wrong place. And then, finally, we have agreed to have regular status discussions to assure that the program is indeed being implemented. Part of that involves, of course, doing checks here in the United States and I will tell you that we have underway right now what we refer to as a blitz, looking at incoming product and examining it very, very closely to make sure that the leaded paint is not on those products.

Mr. RUSH. Chairman Nord, I am really kind of confused and you can help me. In your opening statement, you seem to put a lot of emphasis on devaluing the need for inspectors. OK. But now, in response to the questions, you are switching now and saying that we really want to concentrate on inspectors. Which one is it? Do we need more inspectors or do we need less inspectors? Give us a clear picture of what it is that you are intending to do in terms of implementing this agreement?

Ms. NORD. Surely. I think that inspecting, doing our spot-checks, our blitzes, if you will, are important to make sure that the Chinese are complying with the lead paint agreement. But stepping back, sir, with respect to the question of how do you do effective inspections, I think it is very, very important for the committee to have a context here. At the end of the day, the very best thing we could have for the American public is to make sure that the product is manufactured in the first place and we have got underway a program, which I described in my written statement. It is a four-part program. We have to work with the Chinese manufacturers in China. We have to work with the Chinese Government and that is the point of these agreements.

Mr. RUSH. Chairman Nord, do you foresee a time in the immediate future where there will be American inspectors, who are authorized by the CPSC or some other Governmental entity, to go to China at the manufacturing level, at the factory, and be able to inspect the production of the manufacturing of these toys, and other products, to ensure the American public that lead is not in, is not a part of the paint? Can you assure us of that at this point in time?

Ms. NORD. Sir, that is not what the CPSC is doing. We have never done that. If that is what the Congress wishes us to do, then you are talking about a very, very different agency. You are talking about an agency that is larger than what we are right now in orders of magnitude. You are talking about an FDA, USDA-type agency and if indeed that is something that you wish to see accomplished, then that is fine. We will work with you to accomplish that. But our agency has never had personnel overseas. We don't have that capacity. If you are talking about CPSC inspectors in for-

eign ports, sir, that would be a very, very significant departure from the operations of this agency, as they have existed up to this point.

Mr. RUSH. My time is up. I recognize now the ranking member, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. I think I have just basically two questions for the chairlady. I think we all are trying to understand an ounce of prevention prevents a pound of cure here. And in this case, the two questions I have are based upon what has happened, the toy recalls this past summer. The companies themselves, as I understand it, quickly recognized the potential problem. You folks got involved. The Canadian Government was also involved. I understand they detected some of these problems. We have hearings today. And to put that in perspective, that Mattel makes 800 million toys this year and that is just one toy manufacturer. So with that kind of volume from Mattel, not to mention the other ones, is it more effective to have the manufacturers ensure the products are tested or the CPSC?

Ms. NORD. Well, the CPSC has never done pre-market testing of products entering the marketplace. In fact, I think, in the very, very early days of the agency, there was a provision like that and Congress specifically removed it because it was really unworkable.

Mr. STEARNS. Right now that is not your mission?

Ms. NORD. That is not what we do, but——

Mr. STEARNS. But you will promulgate standards?

Ms. NORD. Absolutely.

Mr. STEARNS. Now, the ASTM standard, the industry-wide standard, regarding the use and abuse of toxic substances, when the industry develops the standards, do you believe that that standard is sufficient to conform with a national standard? In your mind is the ASTM standard satisfactory?

Ms. NORD. No. What happens is that the CPSC, in the case of toys, has issued a toy standard which sets out certain requirements. The ASTM standard has been layered on top of the CPSC standard to give added protection.

Mr. STEARNS. Yes. And so in your opinion, then, the standard is satisfactory? It is your standard plus, and do you think it is being implemented across the board, adequately?

Ms. NORD. Well, that is what our job is, is to make sure that that happens.

Mr. STEARNS. And do you think it is being done? Maybe another question would be, looking at your employees, you have about 400.

Ms. NORD. Yes.

Mr. STEARNS. When this agency was actually put in place, I guess, in 1972, you had more employees in 1972.

Ms. NORD. Yes.

Mr. STEARNS. In 1981 you had a thousand employees, but it is cut down to a little more than 600 employees 2 years ago and now you are at 400, with a budget of $62 million. So the question is, do you have enough people to enforce the mission of the Consumer Product Safety Commission, in your opinion?

Ms. NORD. I would always like more.

Mr. STEARNS. So you don't have enough people is what you are saying?

Ms. NORD. I would prefer to have more people.

Mr. STEARNS. OK. The other question I have is, how serious a problem is this now? On the basis of lead in the paint and these magnets and the lead in the jewelry, how many children have actually been affected by this? Do you have any statistics to show? We all know what the standard is, but I am trying to understand how significant the problem is in terms of actual fatalities or injuries or sickness. Can you give us some kind of broad perspective on this?

Ms. NORD. Surely.

Mr. STEARNS. I say this in light of the fact that there was lead in houses before 1978 and there is lead in the ground. And I just wondered, should the American people, the families, the mothers and fathers of children be alarmed, yes, but is this a problem that historically is very serious or is it something that we are still monitoring?

Ms. NORD. With respect to the lead in the toys, we are not aware of any injuries flowing from the products that have been recalled. However, saying that, we also recognize that lead exposure is cumulative, so we don't want children being exposed to lead. However, Congressman, as I said in my opening statement, and I would like to reemphasize here in the strongest possible terms, the most effective, the best way to address lead poisoning in children is to look at old deteriorating paint in houses and lead contaminated dust. That is where the bulk of the problem is. Now, the CPSC deals with consumer products and when we find consumer products like the children's jewelry, we act and the children's jewelry is a good example of where this agency stepped up to a problem and took very, very aggressive action, is taking aggressive action to deal with it.

Mr. STEARNS. Commissioner Moore, I just have a question for you, if I could. You stated that the Commission has been weakened, I think, in some of your testimony, if I am not correct. And has any violator avoided punishment, any reduction in the Commission's authority, in your opinion?

Mr. MOORE. I can't say specifically that I can identify a particular violator, but the fact that there is this possibility and it does happen over time, that is a risk that we prefer not to take, in terms of trying to protect the consumers' interest.

Mr. RUSH. The gentleman's time has expired. The Chair now recognizes the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. As one who has been working with a constituent of mine for a long time to deal with yo-yo balls, I just want to say that aggressive is about the last word I would use for the CPSC. The question I have, Commissioner Nord, the Wall Street Journal this month had an article, safety agency and Mattel clash over disclosures, and it listed multiple times when Mattel has defied the Commission's reporting rules, and that was a quote; failing to disclose hundreds of consumer complaints about the hazards their toys pose to children, including magnets and fire hazards and motorized cars. So what can we do to make sure that no one feels free to flout the law continuously?

And if Mattel feels free to flout the law, then why should we think that China is going to comply with this agreement?

Ms. NORD. Well, I read that article as well, with a great deal of interest and I have to say I scratched my head. I think that if that is correct report of what the Mattel CEO said, that is an incredibly reckless thing to say. I can also assure you that we have an ongoing investigation open into this matter and if a company feels that they can flout the law or if they think that we are not going to take action, they are sadly mistaken.

Ms. SCHAKOWSKY. Well, how would we know that, if hundreds of customer complaints have been sent? What evidence would consumers see at the CPSC to convince them that you really aren't going to let that happen? Has the 24-hour reporting requirement been met by Mattel, by other manufacturers?

Ms. NORD. Again, when we do a recall, that is in and of itself an example of the fact that we are serious about our job. If the company does not report to us in a timely manner, then we bring an enforcement action against them and if you look at——

Ms. SCHAKOWSKY. And has that been done?

Ms. NORD. Oh, absolutely.

Ms. SCHAKOWSKY. Absent Mattel?

Ms. NORD. It has been done to Mattel in the past.

Ms. SCHAKOWSKY. How many times?

Ms. NORD. Gosh, Mattel paid a fine, I believe, in 2006 or 2005. I don't recall the year where they paid a considerable fine for doing exactly——

Ms. SCHAKOWSKY. If you could provide to me, and the rest of the committee, examples of Mattel, what happened.

Ms. NORD. Indeed. Why don't I give you a whole list of all our enforcement actions, really.

Ms. SCHAKOWSKY. OK. And you said in your testimony, since China has a weaker standard for lead point than the United States, it is really quite extraordinary that the Chinese agreed to enforce the stricter American standards. Then is the report in the New York Times on September 11, it says, on the books, China's paint standards are stricter than those in the United States, it has 90 parts of lead per million. By comparison, American regulations allow up to 600 parts per million.

Ms. NORD. Yes, I think that the standard is a different standard and it is my understanding that the Chinese standard, it is 90 parts per million, but it goes to the accessibility. Is the person exposed to the lead? Our standard is a bright line per se standard, so we don't look at, with respect to lead paint, whether there has been exposure. We just look to see if the lead paint is there and if it is, it is a violation. So the standards are different.

Ms. SCHAKOWSKY. But you say ours are stronger? The difference between 90 and 600, I understand that you do this kind of accessibility issue. But you know, there is a constituent of mine, a Marilyn Furer, who actually went to the trouble of doing her own testing on bibs that she had bought for her grandchildren and reported this excessive amount. Is that how we rely on getting this information? Who is supposed report?

Ms. NORD. Well, under the law, the company has an obligation to report to us if they have reason to think that one of their prod-

ucts contains a defect that will cause substantial harm, and that is section 15(b) and that is a section that we vigorously enforce. Also the agency goes into the marketplace and does investigations in order to try to find violators as well.

Ms. SCHAKOWSKY. I have been interested to know that you have, let us see, we have—978 as the number of the former CPSC staff. It is now down to 401. The budget is half of what it was three decades ago, in inflation adjusted terms. Its toy testing department, I understand, consists of one man, Bob, who drops toys on the floor in his office.

Mr. RUSH. Will the gentlelady please bring her——

Ms. SCHAKOWSKY. Well, if I could just finish this question, I would appreciate it.

Mr. RUSH. Sure, sure.

Ms. SCHAKOWSKY. So, what if Bob takes a day off?

Ms. NORD. May I answer that question?

Mr. RUSH. Sure.

Ms. NORD. The toy testing that goes on in the CPSC laboratory is not limited to one person who drops toys. That has been widely——

Ms. SCHAKOWSKY. How many?

Ms. NORD. There is an agency staff at our laboratory and I guess it is, at this point, 34 people, perhaps, in our laboratory and many of them have different responsibilities with respect to lead testing of toys. We have a number of people who do lead testing of toys. With respect to testing for electrical issues, we have a number of other people that do testing for that.

With respect to Bob, as I mentioned to Congressman Stearns, one of main parts of our toy standard is labeling to assure that it doesn't have small parts. The way you determine whether the small parts exist is to do a drop test to see if the product breaks apart. Bob does drop tests. If the agency laboratory director tells me he needs other people to do drop tests, then we will take that request under advisement and try to fulfill it. But he has not done that and frankly, I would like our resources to be focusing on testing for lead and testing for other substances and that is where we have——

Ms. SCHAKOWSKY. Well, if I could——

Mr. RUSH. The gentlelady's time is up. The chairman recognizes now the gentleman from Texas, Mr. Barton.

Mr. BARTON. I thank the chairman. I would be happy to yield a little of my time to Ms. Schakowsky, if she has got one more question.

Ms. SCHAKOWSKY. Is that all right, Mr. Chairman?

Mr. RUSH. Yes.

Ms. SCHAKOWSKY. If I could get a breakdown, in writing, of the toy testing department and who does what.

Ms. NORD. I would be happy to supply that to you. Surely.

Ms. SCHAKOWSKY. Thank you.

Mr. BARTON. Is it the CPSC's view that the Chinese Government is as cooperative as it could be on this issue?

Ms. NORD. We are aware that the Chinese Government now thinks it is in their best interests, economic and otherwise, that they address this problem and we were very pleased that they were

willing to come to the table and negotiate a set of pretty specific agreements. Congressman, the proof is in the pudding. What we need to do on a going forward basis now is hold their feet to the fire. We negotiated the agreement last week. Our next meeting with them is scheduled for early October and we have got meetings scheduled month after month after month with them. And what we are going to be doing is saying to them, OK, you agreed to do this. Let us see the results. And frankly, if we don't get results, then we will know something, but we have got to try to it. They are part of the key to the solution here, so we really need to——

Mr. BARTON. Well, how do you guarantee compliance if you don't have something close to full inspection? The Chinese are past masters at taking the heat off and good intentions, but not really following through. So what is the way that the administration and the Congress can work together to be sure that they comply with whatever the agreement is that they have agreed to?

Ms. NORD. Well, again, the Chinese manufacturer of the product, the exporter, and the American importer have the obligation to assure that the product that comes into this country is safe. The Chinese Government has said that they will step up and increase inspections, require licensing, a number of thing like that to assure that the Chinese——

Mr. BARTON. But they wouldn't let our staffs, Chairman Dingell and Chairman Stupak, send an oversight committee group to China in August, with minority support and participation and they gave us the run around, that something with the visas were improper for what they wanted to do.

Ms. NORD. That is what I understand.

Mr. BARTON. That doesn't show me too much good faith. I used to be the Oversight Subcommittee chairman and we had problems with the Chinese, in terms of FDA drug issues. You had to schedule an inspection 6 months in advance and by the time the inspectors got there, everything looked like it was ready for a chief of state visit or something. So how do we ensure that they really do follow through?

Ms. NORD. I think that the very best way that our agency and the Congress can ensure that is to amend our statutes to require that product sellers certify that the products that they sell comply with U.S. safety standards, because what that does——

Mr. BARTON. So you want a change in Federal law?

Ms. NORD. Yes.

Mr. BARTON. OK. What about the U.S. manufacturers that license their products? Chairman Dingell, in his opening statement, was somewhat less than positive about Mattel. How have they reacted to this latest rash of recalls and problems?

Ms. NORD. Well, the toy industry seems to be very interested in addressing this and they are stepping up to the plate. The toy industry, as an industry, is now, as I understand it, putting in place a process that would require, in licensing, license testing facilities to make sure that the tests were done properly. I have also noted that Disney and some other large leaders in the industry have indicated that they will be doing third-party independent testing of their products as well.

But I think you put your fingers on an important issue here, sir, in that we have got to address this from a number of different perspectives. It is very, very important that U.S. companies that sell products here, insist on compliance from their Chinese exporters. And the examples I just gave you are at least two examples of where they are doing that. We, as a government, need to be talking to the Chinese Government to make sure they understand their obligations and then we need to be able to police the marketplace.

Mr. BARTON. And now my time has expired, but my last question and I don't know if this is literally true, but I read, in some press report, that your organization, the CPSC, only has one inspector to inspect toy imports. Is that true?

Ms. NORD. No, the press that you may have read is that we have one toy tester or one toy safety inspector and that is not correct. That references the same individual that I was just discussing with Congresswoman Schakowsky. We have an individual whose responsibility it is to do the testing for small parts and labeling requirements. There are other people that do testing. But with respect to inspections, we have a field staff that goes out into the marketplace.

Mr. BARTON. I believe that this committee and the Congress would come together and scrounge a few more dollars to compliment and beef up. We are putting thousands of people on the border between the United States and Mexico. We ought to be able to put a reasonable increased number of people to make sure that the toys our children play with are what they are supposed to be.

Ms. NORD. Right now we have, oh, between 85 and 95 field investigators and a number of them do go to the ports on a regular basis. Congressman, the CPSC has never had people stationed at the ports full time. We have just never done that. And obviously, we would like to be spending more time concentrating on what is coming in from outside the United States, but having a person at the port is not going to make a dent on this issue. The issue is huge. There are just thousands and thousands of containers of consumer products coming into this country from overseas.

Mr. BARTON. Well, let us be creative and think of a way to use the resources and complements so that we target—if you ship a piece of clothing, sportswear for adults, into the U.S. market and the seams aren't straight, it is really no big deal. It is a quality problem, but nobody is going to die from it. If you ship toys that have contaminated lead product and five children put them in their mouths and get lead poisoning; in one child it is so severe that it hurts them mentally or perhaps they have an impairment that is life threatening, that is a little bit different. I understand the need to be competitive in world markets, but I do think we can put more resources into protecting the safety of our children and I think, I am in the minority, but I think I am in the majority on the committee and in the Congress in saying we will work to do that. You help us come up with the plan.

Ms. NORD. I would welcome that and I think you are absolutely right, we need to be creative. Part of this is——

Mr. BARTON. My time is expired.

Mr. RUSH. I just want to say, Mr. Ranking Member, I have been really——

Mr. BARTON. You were very generous for letting me have that time.

Mr. RUSH. And we will have a second round, but right now your time has expired.

Mr. BARTON. I understand.

Mr. RUSH. And we need to move on to the full committee chairman, Congressman Dingell, for questions. Congressman Dingell is recognized. Chairman Dingell.

Mr. DINGELL. Mr. Chairman, I thank you and I want to commend my good friend and colleague, Mr. Barton, for his very helpful questions.

Chairman Nord, welcome to the committee. Your agency, in its budget this year, requested a 2 percent increase in net funds and a reduction in full-time equivalents amongst the employees, from 420 to 401. Would you tell us, please, if that is true?

Ms. NORD. I believe so, yes.

Mr. DINGELL. OK. What was your agency's request for funds and personnel to the Office of Management and Budget? How many people did you ask?

Ms. NORD. I cannot tell you that off the top of my head. I would need to respond in writing.

Mr. DINGELL. All right. If you don't know it, we will wait. I want it to be known that we are submitting to you a letter, on which I will expect a prompt response. And Mr. Chairman, I ask unanimous consent that that letter be inserted into the record, as well as the response, when received.

We need to know what your request was for funds and personnel. Now, Madam Chairman, would you tell us how many you are going to need to meet the agreement which you have recently concluded with the Chinese General Administration for Quality and Supervision, et cetera?

Ms. NORD. I am not asking for any additional staff to do that.

Mr. DINGELL. I understand that. What do you need to do that job? Obviously, you have seen a reduction from 420 to 401. That is a total of 19 personnel lost. How are you going to get the personnel that you are going to need to see to it that this is properly enforced and to address your business at the border so we don't have any more lead painted toys and things like that coming in from China?

Ms. NORD. From the standpoint of the administration of the agreements, within the CPSC, we have created an office of international programs, which we are increasing the staff of by at least one individual. The responsibility of that office is to monitor this program. We will be working very closely with Customs and Border Protection to make sure that any——

Mr. DINGELL. This is fine, but it is not answering. I am asking how many you need and this is not answering my question. Now, please inform me of what cooperative agreements you have with other agencies to put personnel at the borders to see to it that your regulations, with regard to safety of products entering this country, are properly enforced? Do you have any, for example, with Customs, with Food and Drug, with Immigration or with any other agency that is charged with these responsibilities?

Ms. NORD. We have a longstanding memorandum of——

Mr. DINGELL. Would you submit those agreements to the committee?

Ms. NORD. Of course. I would be happy to, sir.

Mr. DINGELL. How many people do you have at the borders who are responsible and seeing to it that goods that come into this country are safe and meet the standards of your agency? How many?

Ms. NORD. As I indicated, the Commission has never had——

Mr. DINGELL. You don't have any?

Ms. NORD. No.

Mr. DINGELL. OK.

Ms. NORD. We have inspectors that go to the border.

Mr. DINGELL. I am beginning to understand why it is that you are having these difficulties in seeing to it that the Chinese don't bring in lead painted toys and other things of questionable safety. Now is it your understanding that the Chinese regulations, with regard to consumer safety and exports and things of that kind, are adequate to protect American consumers? Yes or no.

Ms. NORD. I don't know.

Mr. DINGELL. You don't know?

Ms. NORD. I am sorry.

Mr. DINGELL. Very well. Would you please inquire and come back and give us a report as to whether or not those laws are adequate to protect American consumers? Would you also tell us, then, when you make that submission to us, what it is that you propose to do to ensure that we get the necessary assured safety for our consumers, with regard to imports from China?

Ms. NORD. I will be happy to.

Mr. DINGELL. Would you submit that to us?

Ms. NORD. Of course.

Mr. DINGELL. Now, I would note that you have said that the Chinese are going to make sure there is no lead in the paint, through inspections of U.S. destined toys and a certification for paint suppliers. What is going to happen to ensure that that takes place? And what concrete steps have the Chinese taken to ensure that this promise will be kept?

Ms. NORD. They made the promise last week.

Mr. DINGELL. They did, but promises are wonderful. We got a fistful of promises from the Chinese on safety and they don't seem to do anything. It reminds of the song we used to sing when I was in the Army: "I am always signing the payroll, but I never get a goddamned cent." So what are the Chinese going to do to ensure that this is essentially a self-enforced agreement?

Ms. NORD. They have indicated that they will increase testing and inspections. They have indicated that they will be licensing paint suppliers who handle products destined for the United States and we will be going back to them to ask them how they intend to do that.

Mr. DINGELL. All right. Now, what steps are you, at the Commission, taking to ensure that the Chinese are going to honor this agreement in a full and effective and proper fashion? And what are you doing to ensure that you will have A, the resources, and B, the regulations and personnel that you need to do that? I will ask that you submit this to the committee, for purposes of the record.

Ms. NORD. OK.

Mr. DINGELL. And that will be included in the letter, which you will be shortly submitting to us. Now, I am informed that CPSC has prevented approximately 83 shipments of noncompliant toys from entering the United States' stream of commerce with them. Would you give us a statement of what those 83 rejections were and why? Would you also submit to the committee what percentage of the shipments sent to the United States by China were? And would you also please submit to us why it was that these were rejected and whether or not they constitute all of the shipments that should have, in fact, been rejected?

Ms. NORD. I would be delighted to.

Mr. DINGELL. All right. And Madam Chairman, does CPSC have data about the number of toy shipments, either of compliant or noncompliant products which are stopped at U.S. ports of entry, so far in 2007, by CPSC?

Ms. NORD. I am sure if we do, I will be happy to submit it.

Mr. DINGELL. Would you please submit that to the committee?

Ms. NORD. Yes.

Mr. DINGELL. Now, does CPSC have performance goals for scrutinizing the number of shipments at the borders and for halting those at the border, for 2000 and beyond, if and when necessary? Do you have any rules, regulations or anything of that sort, with regard to assuring that these things are done?

Ms. NORD. Our rules require compliance with U.S.——

Mr. DINGELL. Would you submit that then, please, for the record, to the committee? Mr. Chairman, I note that I am 2 minutes and 44 seconds over. I thank you for your courtesy to me. And I thank you, Madam Chairman.

Mr. RUSH. The Chair recognizes the gentleman from Nebraska, Mr. Terry.

Mr. TERRY. Thank you, Mr. Chairman. Following up on the ranking member and full committee chairman's comments on how we can assure that the product that is being put on shelves in America meet your criteria, the safety criteria. I think we have to start with China and we have to make sure that the product that is being produced there, manufactured there, meets the standards at that exact point in time when that product is finished. As I understand, just in trying to educate myself for this hearing, that some manufacturers or companies like Mattel—I am not sure they are the exact manufacturer or if some entity manufacturers it for them. But they do their own inspections there on site. I don't know the frequency of which, but we will ask. I will ask. And the other companies choose to hire outside entities, private sector companies. I think they are all European-based, like Norske Veritas, Intertech, and SGS, to do the testing for them. Do you have an opinion, from your experience with CPSC, about whether these three companies, independent companies that do the testing and verifications and certifications, are more reliable than companies that do their own inspections?

Ms. NORD. I would hesitate to say that a company that does its own inspection is not going to do it in a reliable way. I don't know that to be true and I think that paints a blanket or makes a blanket statement that I am not willing to make. However, having said

that, I do believe that third-party independent testing is the best way to assure that the testing is done credibly, reliably and competently, so I am a big fan of that. Also, especially with respect to smaller companies that don't have the resources to do testing, independent third-party testing is a very good tool. And please understand that I said independent. I did not say governmental. I don't think that the United States or the government of China should be doing testing that would then be what we would rely on.

Mr. TERRY. Are you aware of those three firms that I read off, Norske Veritas, Intertech, and SGS?

Ms. NORD. Yes, of course.

Mr. TERRY. What is your opinion of the companies?

Ms. NORD. They all do very credible jobs.

Mr. TERRY. Those are private sector companies. Like I said, they are European-based. Am I correct in that understanding? That is all right. That is kind of trivia, anyway.

Ms. NORD. Yes.

Mr. TERRY. You are well aware of the work of these companies?

Ms. NORD. Absolutely.

Mr. TERRY. I would tend to agree with your observation, and no offense to companies that do their own inspections, but there seems to be, for me, a little bit more credibility when an independent company does the testing and then the certification. What would you think of adopting rules or maybe even Congress adopting legislation that would require the independent third-party testing?

Ms. NORD. I think independent third-party testing should be done. In my proposal, I have asked for certification, a requirement that companies certify.

Mr. TERRY. Yes, testing and certification. The certification is a key point. Thank you.

Ms. NORD. And what I had in mind there was an independent testing regiment. I know that Congressman Ferguson, Congressman Towns, some members of the Senate, have introduced legislation along those lines and again, I think any way that we can encourage companies to test and verify the results of those tests is a very good thing.

Mr. TERRY. All right. Thank you very much. I will yield back my 20 seconds.

Ms. NORD. Thank you.

Mr. RUSH. The Chair now recognizes the gentleman from Texas, Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman. Chairman Nord, my impression from your testimony in the past and today is that you are working with what you have. Unfortunately, I don't think it really is adequate and I am talking about the model itself. And one very telling statement you made was, in responding to some questions about expanding your responsibilities and meeting them, you said you would be looking at a very, very different agency. That is for Congress to determine, actually. I don't think that is what you are going to be able to create and I think you have to do the best you can with what you have. I want to ask, rather, some practical questions regarding the agreement that you reached with AQSIQ, which is your counterpart or compliment in China. It

is still going to be up, basically, to the Chinese to conduct the inspections and make determines as to compliance. It is a yes or no.

Ms. NORD. Yes.

Mr. GONZALEZ. OK. So there is no way for us, because there is no mechanism in place, within this agreement, that allows for a representative of the United States to be part of that inspection compliance and so on.

Ms. NORD. The agreement doesn't contemplate that U.S. employees would be inspecting Chinese manufacturers, no. What the agreement does, though, is it tries to get at it in a number of ways. For example, if we have concerns about a particular type of product, we would be notifying the Chinese. They would then be coming back to us with what they intend to do about it and then, obviously, as a part of the conversation——

Mr. GONZALEZ. We are not part of that process. We don't grade their papers. It is one of those things. It just has to be good faith. And in this respect, maybe blind faith. But regardless, that is what we are going to have here. What is the consequence if they fail? Let us say you identify a product, you put them on notice, they go through their process and we have something coming into the United States that harms a consumer. Now, they clearly have failed. Now, we don't know if it was intentional or otherwise, negligence, whatever. What is the consequence to them?

Ms. NORD. The consequence to them is what has been happening in the marketplace. People don't buy their products. They are very concerned about that and frankly, at the end of the day, economics counts for everything.

Mr. GONZALEZ. So it is just going to be market forces. There is no mechanism there that there is any penalties. I think that, basically, everything is just based on good faith and good intentions. My experience has always been, if you don't have consequences, you probably don't have responsible behavior. And that is human nature, whether it is in the United States or in China. But again, I commend you for doing as much as you can with the limited resources that you have.

But Commissioner Moore, in his testimony—I will read it.

> For example, last week the Commission signed a joint statement, in which our product safety counterparts in the Chinese Government propose to stop the use of lead paint in the manufacture of toys they export to the United States. However, we must be cautious in our dependence on foreign governments to make sure that products exported from their countries comply with our United States safety standards.

So I will ask you, Commissioner Moore, what is the alternative to the agreement that was reached by CPSC with its equivalent in China, if you are saying that can only go so far, and I agree with you, but I am just saying OK. Well, what would be the alternative under the present configuration of the Commission and your resources?

Mr. MOORE. We would have to focus on enforcing our standards with the companies based on the United States. Those who order the products, those who import the products, we have to rely on them not to bring products into our country. Not so much the Chinese, but you rely on them.

Mr. GONZALEZ. Well, in theory I am going to agree with you. I am just not sure how we do that in practice and I think we are going to learn more from Mr. Eckert and maybe explore what is the responsibility of the United States-based toy manufacturer/distributor to the consumer, and that is going to be a really interesting topic, I promise you. Well, I am over my time and I yield back. Thank you very much, Mr. Chairman.

Mr. RUSH. The Chair now recognizes the gentleman from Texas, Mr. Burgess, for a round of questions.

Mr. BURGESS. Thank you, Mr. Chairman. Chairwoman Nord, can you expand a little bit on the difference between voluntary and mandatory recalls and what that means to you and your agency?

Ms. NORD. Surely. The vast majority of our recalls are what we call voluntary recalls and when I say voluntary, what that means is that we haven't gone in and ordered that a recall take place. Instead, the company has worked with us and the two, the agency and the company, jointly agree that a recall will take place and it does.

Mr. BURGESS. And over what period of time will that happen?

Ms. NORD. Well, about half of our recalls are what we refer to as fast-track recalls and with fast-tracks, basically, we try to get the recall accomplished within 20 days of being informed that there is an issue. And that is rather extraordinary. No other Government agency is able to act that quickly to effect a recall. Twenty days is a very short period of time, but——

Mr. BURGESS. I would agree, 20 days is extraordinarily fast for any Government agency, in my short tenure here.

Ms. NORD. But the point is, is to get the recall out there to get the consumer informed of what is happening and then try to get the product out of consumers' hands. So it is important that we act quickly.

Mr. BURGESS. But if you go to a mandatory, how long will that take to accomplish the same goal?

Ms. NORD. The last time we did that, it was several years.

Mr. BURGESS. Well, now, in a voluntary recall, do people generally comply? If you are notified, and I assume I am correct on this, the manufacturer is under an obligation to come to you and say, we have discovered a problem.

Ms. NORD. Yes.

Mr. BURGESS. And you say, you better get that thing back from the public. Does that work? Do people come forward and confess the sin, admit the problem and then get on about fixing it, or do people tend to hide and obscure it?

Ms. NORD. I think our recall process works very well. People do take their responsibilities seriously. They come forward and we work together to effect a recall. If for some reason a company, though, is recalcitrant, is not willing to help us work through a solution to this, then we do have some tools in place that we can bring to bear to achieve a result. I think that our last tool of resort is to go into a judicial proceeding to order a recall. That just takes a lot of time.

Mr. BURGESS. Can you think of any examples of where it hasn't worked, where there has actually been a bad actor who has refused to participate in the process?

Ms. NORD. Yes, the last time we did a mandatory recall was in the Daisy air rifle case. That was back in 2001 and I think it extended for 2 years.

Mr. BURGESS. OK. Commissioner Moore, in your testimony you state that you need an additional 10 to 15 percent in funding every year to make up for the shortfall. Currently you get 3 to 4 percent, but because of the increase in the cost of living and the cost of doing business, that 3 to 4 percent is essentially consumed in the increased expenditure for doing business every year. But I notice in this year's appropriation bill that was passed out of Financial Services, the increase was about 6 percent. Did you talk with the Subcommittee on Financial Services? Did you converse with Subcommittee Chairman Serrano on what you felt the budgetary requirements of your agency would be?

Mr. MOORE. I am afraid not. That is not a part of my role at the Commission.

Mr. BURGESS. OK. So do you all then develop a budget internally that is voted on by the commissioners? How do we in Congress get that number from you? Do we just make this up every year?

Mr. MOORE. The budget comes through the Commission's budget comes through the chairman's office. Yes, it is the Commission and we see it after it is done, but we don't really—and we can have some input in the process, but we don't directly control the amount of the—what the numbers are.

Mr. BURGESS. Did you vote for the budget, in favor of the budget that passed for this year, for example?

Mr. MOORE. Yes.

Mr. BURGESS. When you say you have an opportunity for input, did you recommend that, instead of a 6 percent increase, that this year we might want to, with perhaps a more favorable climate in the subcommittee, appropriations?

Mr. MOORE. I have asked for more, yes.

Mr. BURGESS. And give us kind of an idea of the dollar figure that you would have liked to have seen for this year.

Mr. MOORE. At least——

Mr. BURGESS. I guess, at some point, what I am saying is—and I am not trying to pick on you, but at some point——

Mr. MOORE. Yes.

Mr. BURGESS. And I don't sit on the Committee on Appropriations, but I understand very completely the difference between an authorizer and an appropriator. When you go out to the NIH, the buildings are named for appropriators. There is not a single one named for an authorizer. So I understand what the difference is and I am sensitive to that.

Mr. MOORE. Yes.

Mr. BURGESS. But we, as the authorizers, need you to help us identify what is the funding level and if you say you need an increase of 10 to 15 percent a year but you have been living with 4 percent a year for a while, I got to believe that there is going to have to be an initial plus-up that is perhaps in excess of 10 to 15 percent. And I don't like to spend money any more than the next person, but if this Federal agency is going to function properly, then we are obviously going to need to fund it at a level where it can function, otherwise, what is the point?

Mr. RUSH. The Chair would like to inform the gentleman that his time is up. The witness will be allowed to answer his final question.

Mr. BURGESS. I thank the chairman.

Mr. MOORE. Well, we try to get the most effective number. So for instance, right now we certainly favor the increases that are being talked about over here. I think it is somewhere around $68 million or $69 million.

Mr. BURGESS. It is $68 million.

Mr. MOORE. OK, $68 million. And then the Senate is talking about $70 million. Certainly that would help us to be more effective in terms of increasing our staff and reaching the needs of consumer safety protection at a higher level, and that is the point. We have to adjust to it. If the money is not there, then we have to make that adjustment. We have to cut back. And that is not always the best service presented to consumer safety interest, but we have to deal with it. That is the best we can do.

Mr. RUSH. The gentlelady from Oregon is recognized.

Ms. HOOLEY. Thank you, Mr. Chair. Thank you, Chairman Nord and Commission Moore, for being in front of our committee today. I have a series of very short questions and I would love short answers. What percent of the toys that you have recalled this year have been due to dangerous lead content? OK. While you are getting that answer, what other the toys and children's products have been recalled?

Ms. NORD. Thirty-two percent of our total recalls have been because of lead. What was the second piece?

Ms. HOOLEY. And what is the other reason for toys and children's products being recalled?

Ms. NORD. Oh, many. Suffocations, small parts violations, choking hazards, frankly, are the biggest. The most dangerous product with respect to children, in terms of fatalities, is balls, children choking on balls.

Ms. HOOLEY. A couple people have mentioned Bob in your testing lab that tests for toys and you said you have got 34 other people testing in the laboratory. I am assuming that is testing for all products not just toys.

Ms. NORD. Yes.

Ms. HOOLEY. And so Bob really is the only toy tester?

Ms. NORD. No. No, that is not correct.

Ms. HOOLEY. He is the only designated toy tester. They test——

Ms. NORD. No.

Ms. HOOLEY. You have 34 people testing on toys?

Ms. NORD. No, what I said was Bob is not the only designated toy tester.

Ms. HOOLEY. OK. But you said you had 34 people in the lab.

Ms. NORD. In the laboratory.

Ms. HOOLEY. And they test for everything?

Ms. NORD. Yes.

Ms. HOOLEY. OK. You have labs that are fairly old and you have got 34 people working in the labs.

Ms. NORD. Yes.

Ms. HOOLEY. We have hundreds of millions of consumer products. Is that adequate?

Ms. NORD. Our laboratory desperately needs to be modernized and we have had a number of conversations with this committee and our appropriators about that problem. We need to modernize our laboratory.

Ms. HOOLEY. Chairman Nord, in your talks with the Chinese officials, in terms of banning lead in toys, what exactly did they agree to?

Ms. NORD. I am sorry?

Ms. HOOLEY. What exactly did the Chinese agree to in your talks with lead in toys, banning lead in toys?

Ms. NORD. The general agreement that we reached, they agreed to implement a plan that would immediately eliminate lead from products, children's toys destined for the United States.

Ms. HOOLEY. We talked a little bit and it has been brought up by other people, realistically, if you are given the resources, how quickly could the CPSC expand? How long does it take to hire and train an employee?

Ms. NORD. It takes an awful long time and I am afraid I can't, sitting here, tell you an average amount of time, but it takes several months, because once we go through the hiring process, which is highly regulated, we have to also go through a security clearance process.

Ms. HOOLEY. Do you have any idea of how many employees you think it would take to fulfill the mission of the CPSC? How many employees would it take?

Ms. NORD. Well, we put a budget in. The Appropriations Committee has upped it and told us to hire up to 420, so that is what we are going to be doing, assuming that the appropriations bill passes.

Ms. HOOLEY. Do you think that will fulfill your mission?

Ms. NORD. That will be better than 400.

Ms. HOOLEY. Have you ever requested additional resources or authority?

Ms. NORD. I have only gone through this process once and yes indeed, I have got standing before the committee a long comprehensive list of proposals of things I would like to see.

Ms. HOOLEY. How long has the CPSC been in direct contact with the Chinese Government regarding unsafe products being exported to the United States?

Ms. NORD. We signed a memorandum of understanding in 2004. In 2005, we had the first U.S.-Chinese safety summit in Beijing. We have been in contact with them, in regular contact since then. That contact has really intensified at the beginning of 2007 and it culminated in the second U.S.-China safety summit last week.

Ms. HOOLEY. So 3 years?

Ms. NORD. Yes.

Ms. HOOLEY. OK. And 3 years before you got an agreement with them, too, is that right?

Ms. NORD. We signed a memorandum of understanding in 2004.

Ms. HOOLEY. OK. It has been reported that the Chinese Government has 210,000 people and 1,800 labs dedicated to product safety. In your estimation, are the lab and employee figures accurate?

Ms. NORD. I have no reason to think that they are inaccurate. That is what the Chinese told us.

Ms. HOOLEY. Have you visited any of their labs?

Ms. NORD. I have been to their headquarters. I have not visited an AQSIQ lab. I have visited other laboratories in China.

Ms. HOOLEY. Can you speak to the quality of their facilities and their testing methodology?

Ms. NORD. I really can't.

Ms. HOOLEY. OK. All right. I am looking forward to getting your answers from the different requests that committee members have made. Thank you.

Mr. RUSH. The Chair recognizes the gentlelady from Tennessee, Mrs. Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman. And Ms. Nord and Mr. Moore, I thank you for patience and your endurance this morning. When you get down to Ms. Hooley and you are getting kind of toward the end of the line on these questions that are coming at you. Ms. Nord, I want to be certain that have a good understanding of basically what you have presented to us. You have a problem or your work basically should be constituting pre-market, which is your offshore work, and post-market, which would be onshore work. Pre-market would be as they are tested as they are manufactured and then tested and then products are labeled that they are safe for transport to the U.S.

And then your post-market is what you are dealing with once a product makes it into our product stream, into the market stream and a problem arises. And if I am understanding you correctly, what you have said is, pretty much, the current structure of the CPSC doesn't meet the current needs; that you need to do some changing with your structure; that just putting more people in is not going to necessarily solve the problem. And then I think I heard you say that—we talked about the three companies that primarily do much of the private sector testing and you mentioned the testing and certification and then you alluded to having penalties that go with that so that there is a stated consequence for companies that continually violate the law.

So very quickly, just to be certain I have understood, in trying to define the problem and put the laser on the problem and get this so that we don't have bad products, we don't have 43 recalls in a summer, that we, as a committee, have a good understanding of basically where you are and then begin to look at how we best fix this for you.

Ms. NORD. OK.

Mrs. BLACKBURN. So am I right? Is my understanding pretty much right? Would you contest any of that or agree with that?

Ms. NORD. Well, I think you, as you set it out, pre-market and post-market, I think that is a very apt description of the process. Now, with respect to pre-market, please understand that the Commission's authorities and existing regulations are not as comprehensive as perhaps the committee thinks.

Mrs. BLACKBURN. Correct. I understand that and that is why I said your current structure doesn't necessarily accommodate your current needs.

Ms. NORD. But one of the things that I think would address this issue, both on a pre- and a post-market basis, is requiring that product sellers certify that they are meeting U.S. safety standards.

That requires them to pre-market test and it gives us an ability to do a better sense of inspection because we would have the documentation.

Mrs. BLACKBURN. Right. They would test, they would certify and then tie a penalty to that. OK. Now let me ask you something. Voluntary product recalls. How often does that happen with a company, that they just have a voluntary product recall and have you ever had to fine somebody for initiating a voluntary recall without working with you?

Ms. NORD. Companies are supposed to work with us.

Mrs. BLACKBURN. OK.

Ms. NORD. I am not aware that we have ever fined anyone for doing that on their own.

Mrs. BLACKBURN. All right. Now let me ask you this. Mattel is going to make nearly 800 million toys this year and other manufacturers, large and small, are going to make toys that are coming into the market. So is it the most effective thing, is it to have these manufacturers test their products for safety and then report this to the CPSC? Or do you need to develop something new, where you all would be the one that would be testing and then certifying these? Is it better to leave that with the private sector?

Ms. NORD. I believe that if you were to require our agency to do the actual testing, again, you would be creating a very different agency than the one that exists now. If we have a requirement that the company certifies that they meet U.S. safety standards, that will force them to do pre-market testing, and I believe that independent third-party testing is the best way to go. The other thing that is very important here is who is doing the testing and we need to make sure that the laboratories that do the testing are certified to a standard that we would set, so that you have got real accredited laboratories doing high-quality testing. If you have that and then you have a certification process, I think that really goes a long way to addressing this problem.

Mrs. BLACKBURN. Excellent. Thank you. I yield back, Mr. Chairman.

Mr. RUSH. The Chair recognizes the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman. Chairman Nord, the situation at the Consumer Product Safety Commission that you find yourself in reminds me of the beloved children's story, The Little Engine That Could. But in this case, the CPSC is unfortunately the little agency that can't. The CPSC can't ensure that children are safe from harmful substances, like lead in toys. The agency's failures are not the result of poor performance by CPSC's dedicated employees. They are dedicated. They are diligent. They are hard working. But the Bush administration has starved the agency of the resources it needs to perform its important work. That little engine in the children's book kept chugging, I think I can, I think I can, I think I can. But the Bush administration has put the CPSC in an impossible situation. The challenge is just too steep for an undersized, under-resourced agency. And as a result, American consumers are put at risks and parents are left to wonder whether the toys they buy for their children are toxic. The parents play toy box roulette with each toy, wondering whether or not it has lead

in it. Let me begin by asking, when was the last regulation that your agency promulgated?

Ms. NORD. Last week.

Mr. MARKEY. Last week?

Ms. NORD. Yes. We have got a vote out there for another one as soon as the commissioner votes. I have already voted.

Mr. MARKEY. Excellent. So your budget is small. The Bush administration doesn't really want to increase the agency's budget in a significant way, historically. But on the other hand, you can promulgate regulations. You don't have a lot of money, but you have a lot of power. You can promulgate regulations. So inspecting such a tiny percentage of toys overseas leaves children dangerously vulnerable to injury or death from toxic toys and other products. Now, this is a hand-held analyzer made by a company in my congressional district, Thermo Scientific, which, in just a few seconds, has the capacity to analyze whether or not a toy has lead, which can endanger children in our country.

Ms. NORD. Yes.

Mr. MARKEY. How many of these types of devices does the CPSC own?

Ms. NORD. We have an open procurement right now to buy a number of them.

Mr. MARKEY. And how many are you attempting to buy?

Ms. NORD. I think, at this point, I am not sure. Can I get back to you?

Mr. MARKEY. Are you talking about a hundred or you talking about two?

Ms. NORD. No, we are not talking about a hundred. These things cost like $25,000. We could never afford that.

Mr. MARKEY. Not under the Bush administration you can't.

Ms. NORD. No.

Mr. MARKEY. So if you get two of these guns, China is a big country. This is a big country. Two analyzer guns to determine whether or not there is lead in toys really isn't a lot that your agency will have.

Ms. NORD. No, of course it isn't.

Mr. MARKEY. But in turn, you could pass a regulation and you could mandate that every company in the United States that imports toys has to buy analyzer guns and has to deploy them.

Ms. NORD. This is from your district.

Mr. MARKEY. Not this one particularly, any analyzer gun.

Ms. NORD. OK.

Mr. MARKEY. Anything that advances the ability to serve as a deterrent, a detector. I don't care which one you mandate, although this seems to be a very good product. I just wonder, would you consider promulgating a regulation that every company has to purchase these kinds of technologies so that you can just zap in a second the little toy duck and determine whether or not it is dangerous for children?

Ms. NORD. We would not have that authority under out statute and indeed, Congress has specifically said we can't do that.

Mr. MARKEY. You can't do what?

Ms. NORD. Specify that kind of a procurement. The Congress has said that our standards have to be cast in performance terms rath-

er than in that specific a way. So what we can do is say that you can't have lead. What I would like us to have the authority to do is say a company needs to certify that there is no lead. Right now that authority doesn't exist for us. And then the company needs to figure out how they are going to go about certifying to the fact that there is no lead in their products and that is where——

Mr. MARKEY. Are you presently testing by scrapping?

Ms. NORD. I assume so, yes.

Mr. MARKEY. You assume so or you don't know?

Ms. NORD. Yes, we are doing x-ray fluorescents and scrapping.

Mr. MARKEY. I think you should learn a lot more about what your agency is doing and exactly how you are testing, otherwise I think we are going to wind up in a situation where it is heads, the Bush White House wins, and tails, the children of America lose. There is no regulation and at the same time, there is no funding. And so inside of the regulatory black hole play all of the children of America and I just don't think it is something that should be allowed to continue and I would recommend very strongly that you begin a regulatory process to put, as specifically as possible, the protections for the children of our country. I thank you, Mr. Chairman, very much.

Mr. RUSH. Thank you. The Chair wants to inform the members of the subcommittee that we will engage in an additional round of questioning, one additional question per member, for those who have a question. Then, at the conclusion of this round, we will recess because there will be four votes on the floor. And at the conclusion of those four votes, we will return, reconvene and we will have testimony from Mr. Eckert from the Mattel toy company.

Commissioner Moore, you have told this subcommittee that you are concerned that the law allows U.S. companies to export products that are not compliant with U.S. safety standards and I share that concern. It is like recycling the recalls. And what should we do about it? Do you have any recommendation for legislative reforms in that particular area?

Mr. MOORE. I think we might want to give some consideration to requiring them to at least inform the CPSC of their intentions to ship these products abroad and then we can determine whether that is permissible in a particular case.

Mr. RUSH. Are you aware of a current practice now? Is that current problem that we have in terms of recall?

Mr. MOORE. A problem?

Mr. RUSH. Yes.

Mr. MOORE. Yes, it is a problem.

Mr. RUSH. It is a problem?

Mr. MOORE. Yes, it is a problem, and in fact, some companies do tell us that they are exporting. Some of them do.

Mr. RUSH. They are exporting defective and dangerous——

Mr. MOORE. No, they don't tell us that. But if the products turn out to be defective, we try to prevent it as best we can. I don't think we have sufficient authority at this point.

Mr. RUSH. Thank you. The Chair recognizes the gentleman from Texas for one additional question.

Mr. BURGESS. OK, one question. It is going to have five parts.

Mr. RUSH. One question and one part.

Mr. BURGESS. I would like to make the observation, Chairman Nord, that I agree with you completely that it is the consumer ultimately who will punish any manufacturer or any importer who brings something into this country that ultimately is proved as unsafe, and I know. I talk to people in my district every day who feel just as I do, that no longer can they trust the safety of products when it says made in the People's Republic of China, and they are not purchasing those products.

So I hope the manufacturers and importers are listening to that message and hearing that message from the consumers. On a very local level back in my district, there has been a news story about some sandals, flip-flops that have been sold in one of the big chains down there, that have caused a really significant dermatitis in the people that have worn them and it is obvious, just in the configuration of the strap itself, where the contact has occurred. Are you aware of this? Has the manufacturer contacted you with this information and have you issued the voluntary recall for this product?

Ms. NORD. Yes, we are aware of it. We actually are in the process now of testing that. Unfortunately, we haven't been able to get the actual consumer sample that caused the problem. That would be very useful if we could see the actual product involved. But we do have testing underway and I would like to be able to come back to you with what our tests show.

Mr. BURGESS. OK. Well, this is one of those examples where things should proceed expeditiously. And I all I knew was what I saw on the news report, but it looks pretty dreadful and they seem to have a variety of feet that were affected and if it is that pervasive with one retailer, it would just seem to me that it would behoove us to act quickly and get this product off the shelves until we find out the relative safety or the commission of non-safety of this product.

Ms. NORD. OK.

Mr. BURGESS. I thank the chairman for his indulgence and I will yield back.

Mr. RUSH. You have remarks?

Ms. NORD. Well, I wanted to just expand or answer the question that you had asked Commissioner Moore, if I might, because I think it is important, it is a terribly important issue and I think it deserves if I could give an answer as well.

Mr. RUSH. Sure.

Ms. NORD. The Consumer Product Safety Act addresses the export of consumer products and the Commission put in place a number of years ago, gosh, in the late 1970s or early 1980s, a policy statement and regulations setting on how we deal with exports. It has in there a blanket statement that says that if a company manufactures a product and it is distributed in the United States and it does not meet U.S. safety standards, it may not be exported out of the United States.

So there is that blanket policy statement that the Commission adopted. Now, with respect to products that are manufactured in the United States for export that do not meet U.S. safety standards, there is a requirement that the companies notify the CPSC of their intent to do that and then we notify the country that is destined to get the product and we do that on a regular basis.

So if, for example, Mr. Chairman, you have got a U.S. company that might be manufacturing a toy for export to the European Union, which has a different toy standard than we do, by definition, it wouldn't meet our safety standard. They would notify us we would notify the EU and the export would take place. We get those notifications at least once a week and we do have a process in place that notifies the country in question. I might add, Mr. Chairman, we are the only country that I know of that does that with other countries. We do not get similar kinds of notices from other countries.

Mr. RUSH. The subcommittee submitted a letter to the CPSC——

Ms. NORD. I am aware of that.

Mr. RUSH. You are aware of the letter regarding this particular issue?

Ms. NORD. It just arrived yesterday.

Mr. RUSH. Yes. Would you respond to us by Tuesday, if you can?

Ms. NORD. We will give it our very best efforts.

Mr. RUSH. The Chair now recognizes the gentlelady from Illinois, Ms. Schakowsky.

Ms. SCHAKOWSKY. Let me just clarify that. If a product is recalled in the United States, recalled for being defective and it is supposed to be either destroyed or it can be exported if it is recalled, no?

Ms. NORD. No, the statute says that if it is distributed in the United States and it doesn't meet a U.S. safety standard, it cannot be exported. With respect to recalls, what we do when we negotiate the recall is put in place a disposal plan. On occasion you will have the company, and we will agree to allow them to export it for disposal purposes, not for resale.

Ms. SCHAKOWSKY. Only for disposal if it is recalled. OK. I wanted to ask about preemption and understand a little better what States can do.

Ms. NORD. Yes.

Ms. SCHAKOWSKY. The CPSC guideline is 600 parts per million on jewelry.

Ms. NORD. Yes.

Ms. SCHAKOWSKY. Illinois passed a law that just prohibits the sale of jewelry that doesn't meet that standard. Do you believe that the Illinois law should be preempted?

Ms. NORD. No, the Illinois law is not inconsistent with the Federal laws.

Ms. SCHAKOWSKY. What if Illinois set a lower standard, that is, there were fewer parts per million that were allowed?

Ms. NORD. I am sorry.

Ms. SCHAKOWSKY. If Illinois said, we are not going to allow anything that is 500 parts per million in jewelry.

Ms. NORD. OK, in jewelry. Well, at this point, we only have an enforcement policy, so it would not be preempted. If we were to go ahead and do a ban and issue a regulation, then anything that was inconsistent with our regulation would be preempted unless the State came in and asked for us to waive the preemptive effect and there is a process in our statute that allows that.

Ms. SCHAKOWSKY. So on the one hand you are saying, though, that the Commission doesn't have a lot of resources to do a lot of

things and yet, when States move ahead, it is possible that they would be preempted. California and Vermont are considering more stringent standards.

Ms. NORD. Actually, I would really disagree with, I guess, the underlying sense of that question, because we view the States as very, very critical partners here. And in fact, we have got State employees on our payroll that we pay to go out and do inspections and really be our feet on the ground. We have got several Illinois State employees who receive money from the CPSC.

Mr. RUSH. The gentlelady's time is up.

Ms. NORD. So we look to the States to be——

Mr. RUSH. Mr. Markey is recognized.

Mr. MARKEY. I thank the chairman very much and I love your innovation, this whole concept of final jeopardy. One question is just absolutely innovative, it is a breakthrough concept and I love it. Let me again reiterate that the workers at the agency, they do a great job. They work very hard. They are under tremendous constraints that come down from the Bush White House, and I appreciate all the work of all of you who are at CPSC. Let me ask you this, Commissioner Moore. Should the Commission be cutting staff in the midst of this children's products crisis?

Mr. MOORE. Absolutely not.

Mr. MARKEY. Absolutely not. And how many new staff would you like to see, Commissioner Moore?

Mr. MOORE. I would like to see us have 500 or more staffers.

Mr. MARKEY. Five hundred or more staffers. And how many would you dedicate to this issue of children's toys?

Mr. MOORE. That is a difficult one to answer. I would have to get back with you on that one.

Mr. MARKEY. OK. Thank you. Thank you, Mr. Chairman, I appreciate it.

Mr. RUSH. Thank you and I want to thank the witnesses. You have been more than generous with your time and we certainly will be communicating with you again. The subcommittee now is in recess. We have four votes on the floor and we will reconvene with the president of Mattel as soon as we have completed our voting. This subcommittee will reconvene promptly at the conclusion of the four votes on the floor. Thank you.

[Recess]

Mr. RUSH. Call to order. We want to welcome the second panel of this hearing. We want to welcome Mr. Robert Eckert, who is the CEO of Mattel, Incorporated. Mr. Eckert, would you please be seated at the witness table. Mr. Eckert, first of all, on behalf of the subcommittee, we want to thank you for the generous use of your time. You have been here for quite a while. I think I saw you when you first came into the room and that was hours ago and you are still here and so we really appreciate it. We will ask that you give us an opening statement, if you have an opening statement, and we ask that you confine it to 5 minutes, please. So you can begin at your convenience.

STATEMENT OF ROBERT A. ECKERT, CHAIRMAN AND CEO, MATTEL, INC.

Mr. ECKERT. Thank you, Mr. Chairman, for inviting me to appear before the committee today. My name is Bob Eckert and I am the chairman and CEO of Mattel. I am the person responsible for making sure all our systems and all our people are dedicated to safe toys for our kids to enjoy without worry or concern.

These recalls should never have happened, especially at Mattel. Our standards were ignored and our rules were broken. We were let down and we let you down. My job is to find out what happened and make sure it never happens again. We have worked tirelessly for the past 7 weeks to address these recalls. We are still investigating and we are still testing toys. If there is a needle in the proverbial haystack, we aim to find it.

Mr. Chairman, I know your staff has also been working hard to investigate product safety and I am aware that they didn't get access, the access that they wanted, when they were in China. I can assure that, going forward, Mattel will do everything in its power to make information and people available to you. My written testimony discusses in detail the sequence of events. We know which manufacturers violated their contracts with us. We know which paints were contaminated and we know when they were used and on what toys. We have already fired several manufacturers that purposefully violated our rules and we continue to investigate others.

I want to use this afternoon to tell the committee how we plan to ensure that our rules are followed, our standards are met and our toys are safe. First, Mattel has instituted a three-stage lead paint safety check. All products, not just those sourced in Asia, are subject to lead paint rules throughout the production cycle, before, during and after any paint application. Prior to painting, every batch of paint must be purchased only from a certified paint supplier and retested before it is used. Second, we have increased the number of auditors who are now in every major manufacturer, every day, to monitor compliance with our standards, and Mattel employees will conduct surprise inspections as well. Third, once the product is manufactured, each batch must pass a lead test prior to reaching store shelves, for an extra layer of redundancy.

But we are not stopping there. We have created a new organization, reporting directly to me, that will combine all of Mattel's principal safety compliance and reporting functions. We believe this action will focus even more attention on safety and quality as well as standards and processes. For the past 7 weeks, I have been focused on steering the Mattel organization through these issues. Now, because I want to be able to personally assure our customers that our processes are right and our systems are working, I will travel back to China this month to inspect the implementation of the new procedures, to discuss our action plans with local managers, and to make clear my expectation for the safety of Mattel's toys.

I am confident the steps we have taken so far will strengthen our procedures, but I won't rely on Mattel internal audits alone. This is one of the matters that I have discussed with Congresswoman Harman. We are putting in place third-party audits of our product

safety and quality systems, led by an outside expert who will review Mattel's compliance with its safety protocols and report back to me with the findings. We expect tough reviews and we are ready for them.

Mattel has taken extraordinary steps to notify parents about these recalls, including extensive advertising, Web outreach and media interviews. But we recognize that not everyone reads the morning paper or tunes into the nightly news, so we are working with State attorneys general and public health officials and we will reach out to other government and community organizations to communicate with even more people. I have said many times in the past that Mattel doesn't compete on safety. I can assure this committee that we will share with other toy companies what we have learned to help improve industry practices overall, and to ensure that children play with safe toys regardless of who made them or where they are made.

Mr. Chairman, recent questions about the safety of Mattel toys have been a personal and bitter disappointment to me, as well as to the men and women at Mattel who take great pride in their work. I would like to conclude by reiterating my personal apology. Parents expect the toys carrying the Mattel brand are safe. For decades they have trusted this company to make certain that they are, and we intend to earn back that trust, not just with words, but with out deeds. Thank you.

[The prepared statement of Mr. Eckert follows:]

STATEMENT OF RONERT ECKERT

Thank you for your invitation to appear before the subcommittee to address Mattel's recent lead-paint related recalls and for the opportunity to reinforce our commitment to efforts that will result in effective improvements in toy safety.

While I am the Chairman and CEO of Mattel, I am also a parent of four children. And like you, I and the more than 30,000 other employees at Mattel know that nothing is more important than the safety of our children. Mattel has worked hard through the years to earn the trust of parents worldwide, and we know full well that we have disappointed those parents by the recalls you have seen over the past several weeks. For that, we are very sorry. I am proud to say, however, that Mattel has faced up to these issues and to our responsibilities. We have been open and forthright about them, and we have moved vigorously to take steps to prevent these problems from re-occurring.

In my testimony, I would like to start by providing you some important background facts regarding Mattel and our production of toys before the recent recalls. I will then turn to a description of what we now know about the specific circumstances that led to each of the recalls. Finally, I will address the steps that Mattel has taken to prevent this kind of problem in the future.

MATTEL OPERATIONS

Founded in 1945, Mattel designs, manufactures, and markets a broad variety of toy products. Our toys are enjoyed by children in over 150 countries. We manufacture toys in both company-operated facilities and through third-party contract vendors. Mattel has been manufacturing products and using contract vendors in China successfully and without significant manufacturing related safety issues for more than 20 years.

Mattel and its vendors manufacture almost 800 million products a year. Approximately fifty (50) percent of all the toys we sell are manufactured at our own plants, a higher proportion than other large toy makers. When Mattel does contract with vendors to manufacture toys, our contracts require that the vendors comply with Mattel's quality and safety operating procedures and Global Manufacturing Principles (GMP), which reflect the company's commitment to responsible practices in areas such as employee health and safety, environmental management and respect for the cultural, ethnic and philosophical differences of the countries where Mattel

operates. The contracts and accompanying documents also require that vendors comply with all applicable safety standards, and Mattel specifies, for each toy, the standard that applies. As to each standard, Mattel generally specifies the most stringent requirement that applies anywhere in the world. The contracts and accompanying documents also specify the tests that must be performed to ensure compliance.

In China, Mattel, through its subsidiary Mattel Asia Pacific Sourcing (MAPS), has contracts with approximately 37 principal vendors making our toys. Additional vendors are involved in the production of paper products, like board games and cards, cosmetics, inflatables, and our American Girl and Corolle dolls and accessories. Mattel's policies provide that approval to be a vendor for MAPS requires both a production facilities review and an audit under Mattel's GMP.

MATTEL'S PRE-AUGUST 2007 SAFETY PROCEDURES

We believe that, prior to August 2007, Mattel already had some of the most rigorous safety standards and procedures in the toy industry. With respect to paints, vendors could purchase coatings from one of MAPS' qualified paint suppliers, all of which had implemented pigment traceable control programs to ensure that pigments met heavy elements requirements, including for lead, before being released to production and could be traced to specific containers of paint on the factory floor. The qualified suppliers were required to test pigments before delivery and, with each delivery of paint, provide traceability records to the vendors linking the pigment in that paint to pigment certificates. In addition, each container of paint had to have a label with a date code and batch/lot number. The vendor was contractually obligated to match each incoming shipment with a corresponding pigment certificate and sticker each container with traceability information. Records demonstrating compliance with these procedures had to be maintained and kept available for periodic audit by MAPS auditors, which occurred approximately monthly.

If vendors needed to buy paint from other suppliers, they could only do so if they complied with additional rules. Incoming shipments of paint from the supplier had to be quarantined. Samples from the shipment had to be submitted to a MAPS-approved lab for a heavy elements test. Again, paints that passed the test had to have a label affixed with batch number, test number, and other required information. As with approved suppliers, records demonstrating compliance with these procedures had to be maintained and made available for periodic audit by MAPS auditors.

If a vendor used a subcontractor to assist with any of its production, our contracts required that the vendor identify that subcontractor to MAPS. Vendors also were required to identify all facility locations. Vendors were required to supply all paint, obtained as described above, to be used by any subcontractor on Mattel products.

The above procedures were designed to protect the integrity of the paints to be used on Mattel products. In addition, there were a number of checks built into the system prior to August 2007 to verify that finished toys did not have paint with lead in amounts above applicable standards. Under the procedures imposed by our agreements with vendors, at the commencement of production, before any product could be shipped, samples had to be tested for compliance with all facets of Mattel's product requirements, including the standards for lead and other heavy elements. Product could be shipped only after a certificate of compliance was issued.

In addition to all this testing, a majority of Mattel's direct import customers required periodic testing of products before export. In those circumstances, the direct importer determined the nature or scope of the tests, including tests for heavy elements. The testing for direct importers was sometimes done by MAPS and sometimes done by independent labs. In addition, recertification testing was required for products made for direct import if production continued for more than one year. Finally, after certification, vendors were not permitted to change manufacturing locations, materials, components or material sources without approval from MAPS and recertification.

THE RECALLS

Mattel's safety standards and procedures had functioned successfully for many years prior to this summer's recalls. Clearly, however, something new arose that we had to address. When Mattel discovered toys with noncomplying paint, we initiated an exhaustive investigation to get to the root cause. What that ongoing investigation has revealed so far is that a few vendors, either deliberately or out of carelessness, circumvented our long-established safety standards and procedures. As a result, MAPS has terminated its business relationships with some of the entities involved and is continuing to investigate others. Let me provide you the details of what we have discovered so far.

THE AUGUST 2, 2007, RECALL

The August 2, 2007, recall had its genesis in a direct importer's pre-shipment test for lead in paint on a sample of product bound for France. Specifically, Intertek, an independent laboratory, performed the pre-shipment lead test for Auchan, a French direct importer. On June—8, 2007, Intertek reported noncompliant paint on a sample of toys manufactured for MAPS by Lee Der Industrial Company, Ltd. Mattel Product Integrity employees in Asia stopped shipment of the item and contacted the vendor, Lee Der, requesting that it immediately remedy the problem and provide another sample of the corrected production for testing. On or about June 29, 2007, Mattel Product Integrity employees in China were notified of an Intertek lead test result on another sample of the same toy previously tested on June 8 for Auchan. The product passed the lead test. At that point, Mattel Product Integrity employees in Asia had reason to believe that Lee Der had solved any lead paint issue that it had.

Independent of the test failure in China, but during the same time period, on June 27, 2007, a consumer reported to Mattel's call center in the U.S. a home test kit finding of lead paint on a product also manufactured by Lee Der, a result which Mattel was subsequently unable to replicate when testing several samples of the same product. On June 28, 2007, Mattel Product Integrity employees in China took additional samples of Lee Der's products and sent them to MAPS' laboratory in China for testing.

On July 3, 2007, a third lead test report for Auchan, performed by the same independent laboratory, Intertek, found noncomplying lead levels in paint on another sample of the originally-tested toy in a different assortment made by Lee Der. Shipment of that product was held and, on July 5, MAPS picked up samples of 23 additional Lee Der products to test. On July 6, 2007, MAPS' laboratory in China reported results of its testing of the five samples of Lee Der toys that MAPS had taken on June 28. Nonconforming levels of lead were found in the paint on portions of three of five samples of the toys made by Lee Der. That same day, July 6, immediately following receipt of these results, MAPS notified Lee Der that MAPS would accept no more toys made by Lee Der. On July 9, MAPS' laboratories reported that 9 of the 23 additional samples of Lee Der toys taken on July 5 contained some paint with nonconforming lead levels.

In light of these additional test results, Mattel's employees in Asia notified senior management at Mattel of an issue with Lee Der products for the first time on July 12, 2007. Mattel management ordered an immediate freeze of all shipments of suspect Lee Der products on July 13, 2007, and expanded the freeze to apply to all Lee Der products on July 17, 2007. Mattel also launched an investigation to identify both the root cause and potential scope of the lead paint problem, including what toys might be affected, what dates of production might be affected, and whether any of the affected toys may have been shipped and, if so, to what locations. Mattel traced the nonconforming lead levels to yellow pigment in paint used on portions of certain toys manufactured by Lee Der at a previously undisclosed plant located in Foshan City, China.

Mattel filed an Initial Report with the Consumer Product Safety Commission (CPSC) on July 20, 2007, and a Full Report on July—26, 2007, indicating Mattel's desire to institute a fast track recall. Mattel recalled all products that we believed potentially could contain some paint with impermissibly high lead levels. Thus, the recall covered 83 different stock keeping units (SKUs) made by Lee Der between April 19, 2007 (the date when Lee Der took delivery of the paint containing lead from its supplier) and July 6, 2007 (the date when Mattel stopped taking delivery of Lee Der's products).

Lee Der's use of an unregistered facility to produce Mattel product was a violation of its manufacturing and procurement agreement with MAPS, as was its failure to test every batch of paint received from its paint supplier for use on Mattel product.

THE AUGUST 14, 2007, RECALL

On July 30, 2007, just prior to the announcement of the August 2 recall, a test conducted by Mattel on paint on a different toy, the Sarge car, made by a different vendor, failed the lead test. The test was part of Mattel's routine recertification testing for direct importers described above. Mattel immediately began an investigation to verify the result, locate potentially affected product, and determine the cause and scope of the problem. In light of the test result on the Sarge car and the lead test results on the Lee Der-made toys, on August—1, 2007, Mattel decided to detain from distribution all finished products in Asia, whether made by Mattel or our vendors, until test samples proved the toys to be in compliance with lead standards.

On August 6, 2007, Mattel concluded that the excess lead on the Sarge car was due to yellow pigment used by an undisclosed subcontractor on the olive-green top. That same day, Mattel filed an Initial Report with the CPSC. The next day, August 7, Mattel filed a Full Report with the CPSC asking for a fast track recall of the toy. The Sarge car was recalled on August 14, 2007.

The olive-green top of the Sarge car that contained lead paint was painted by Hon—Li Da Plastic Cement Products Co., Ltd. located in Shenzhen City, China. Hon Li Da was a subcontractor of Early Light Industrial Company, Ltd. in Hong Kong. Early Light incorporated the top painted by Hon Li Da in the finished Sarge car made in its manufacturing facility located in Pinghu, China. Early Light had not identified its subcontractor, Hon Li Da, though it was required to do so by its agreement with MAPS. It is not clear at this time whether Early Light supplied Hon Li Da with certified paint, whether it supplied an insufficient quantity of certified paint, or whether Hon Li Da sold the certified paint it was provided by Early Light and bought and used other paint containing lead.

THE SEPTEMBER 4, 2007, RECALL

When Mattel detained all finished product in Asia on August 1, we began to test for lead in paint on samples of each toy. This exhaustive testing program resulted in identifying certain parts of some additional toys with paint containing lead in excess of the applicable standard. Specifically, Mattel obtained some test results indicating that a few parts of certain Barbie accessory sets (7 SKUs), a Geo Trax vehicle (2 SKUs), and the Fisher-Price 6-in–1 Big World Bongos Band (1 SKU) also had paint on some portions of the toys with lead levels in excess of the applicable standard.

The nonconforming paint on portions of certain plastic Barbie accessories was first detected on or about August 9 and 11, 2007. The CPSC was notified of the results of Mattel's testing and investigation by letters delivered on August 10 and—17, 2007. A Full Report was filed with the CPSC on August 27, 2007, again requesting a fast track recall. As in the prior two recalls, Mattel was over-inclusive in the toys we included in the recall. In fact, the recall included some Barbie accessories that, when sample tested, complied with the applicable lead standard.

The affected Barbie accessory products were painted by one or both of two related subcontractors, Dong Lian Fa Metals Plastic Produce Factory and Yip Sing. Dong Lian's factory is located in Huizhou City, China. Yip Sing's factory is located in Shenzhen City, China. The lead paint affected parts were incorporated into finished product manufactured by MAPS' vendor, Holder Plastic, at its factory in Shenzhen, China. Holder failed to identify its subcontractors to MAPS as it was required to do. Holder appears to have supplied Dong Lian Fa and Yip Sing with approved paint, and it is not yet known why paint containing lead was applied to the toys.

The nonconforming paint lead levels on the Geo Trax vehicle's small yellow ladder and headlights were discovered on or about August 16, 2007. The CPSC was notified on August 20, 2007, of the Geo Trax test result, and a Full Report was filed on August—27,—2007, asking for a fast track recall. Mattel's recall of approximately 89,000 Geo Trax included a significant number of compliant toys because the toys with noncompliant ladders and head lights painted by Apex Manufacturing Co., Ltd.'s subcontractor, Boyi Plastic Products Factory, between July 31, 2006, and September 4, 2006, had been mixed with pieces of compliant production in Apex's inventory. Mattel has recalled all 89,000 finished products that were made from the mixed inventory.

Certain of the Geo Trax products included in the recall were painted by Boyi in Dongguan City, China. These toys were intermingled with other finished products manufactured by MAPS' vendor, Apex, in Dongguan City, China. Apex violated its agreement with MAPS by failing to identify its subcontractor, Boyi. Apex claims that it provided compliant paint to Boyi, but that has not been confirmed.

Nonconforming paint lead levels on portions of some 6-in–1 Big World Bongos Band were found initially on or about August 20 and confirmed in retests on August 27, 2007. Even though the noncomplying paint is located on the underside of the Bongos' plastic skin, Mattel decided to recall the toys by notifying the CPSC on August 27, 2007, and by filing a Full Report on August 28, 2007, also requesting fast track treatment. Our current understanding, based on our ongoing investigation, is that the affected 6-in-1—Big World Bongos Band were painted at the request of a subcontractor, Wo Fong Packaging Co., Ltd., located in Dongguan City, China. The components made at the request of Wo Fong were incorporated into finished product manufactured by MAPS' vendor, Shun On Toys Co., Ltd., at its factory in Dongguan City, China. Shun On violated its agreement with MAPS by failing to identify its

subcontractor, Wo Fong, and by failing to provide Wo Fong with the paint to be used on a Mattel product.

Mattel's exhaustive testing program to identify any lead paint on any part of our toys continues to this day. I am pleased to report that, thus far, this testing has revealed no other products, beyond those subject to the September 4, 2007, recall, that should be recalled for lead in paint in excess of the applicable standard.

MATTEL'S FOLLOW-THROUGH ON THE RECALLS

All of these recent recalls were initiated by Mattel as voluntary recalls. In addition, in order to expedite the recalls, Mattel requested that each recall be implemented pursuant to the CPSC's "fast track" program. Mattel and the CPSC have worked together closely and cooperatively to plan the recalls and to make sure that the recalls are being clearly communicated to parents. Thus, in agreement with the CPSC, Mattel staffed its call center with adequate numbers of properly trained operators, developed a CPSC-approved script, prepared a CPSC-approved portion of the company's Web site addressing the recall, explored means by which consumers could be contacted directly by mail using Mattel's consumer data base, prepared and sent to retailers a CPSC-approved notice for retail stores, prepared CPSC-approved posters to be displayed in retail stores, and finalized the terms of the recall. Mattel also gave retailers advance notice of the recall, as permitted by the CPSC, so that they could remove recalled products from their stores even as preparations for the implementation of the recall were being finalized.

With the CPSC's assistance, permission and approval, Mattel also:

Issued a joint press release with the CPSC;

Set up a toll-free, multi-lingual, interactive voice response phone line that assists consumers in determining whether their product is subject to the recall and that allows registration for the recall;

Placed a notice on the Mattel web site that includes a web tool, in more than 20 different languages, that aids consumers in determining whether their product is subject to the recall and that allows for on-line registration for participation in the recall;

Produced and placed prominently on our website two specially-made videos in which I addressed these issues directly with parents;

Mailed letters to individual consumers whose contact information was in the Mattel Consumer Relations database by virtue of their having called Mattel previously about any toy that is subject to the current recalls; and

Formally notified retailers of the recalls by letter.

In order to get the news out to as many consumers as quickly as possible, Mattel also took the initiative and ran full-page newspaper ads in major newspapers on August 14 and September 5, 2007. Among the newspapers that carried the ads on one or both of those dates were USA Today, the New York Times, the Los Angeles Times, the Chicago Tribune, and the Washington Post. We gave satellite interviews to numerous television programs, which appeared on global, national and local broadcasts. We also did many print and on-line interviews. In addition, Mattel placed ads on various web sites, especially those that we believed were likely to be visited by parents. These websites included Yahoo!, Disney, Nickelodeon, and the Cartoon Network. This combination of the CPSC's prescribed measures and Mattel's further independent efforts resulted in intense media coverage of the recalls.

With respect to the procedures for returns of recalled products, retailers may return all recalled products in their inventory to Mattel for full credit. Consumers are provided a postage prepaid "mailing label" to use to send recalled product back to Mattel. In most cases, when Mattel receives recalled product from consumers, we issue vouchers redeemable for Mattel products in an amount that is intended to be equal to or greater than the retail price actually paid plus tax. In some cases, we issue replacement parts rather than a voucher. If any consumer has a proof of purchase at a higher price than the voucher amount, Mattel will issue a voucher for the higher price.

MATTEL'S ENHANCED PROCEDURES TO ENSURE COMPLIANCE

Mattel has acted quickly to implement new procedures designed to provide enhanced protections against potential future violations of our manufacturing standards and procedures. For example, after the August 2 recall, we immediately supplemented our contractual requirements with a three-stage safety check related to the paint used on our toys. The three-stage safety check applies to all plants that manufacture toys for Mattel, not just those located in Asia.

First, every batch of paint must be purchased only from a certified paint supplier. Even though the supplier is already certified, samples of the paint must still be tested before use to ensure compliance with lead standards. Those sample tests must be performed either by Mattel's own laboratories or by laboratories certified by Mattel. Copies of the test results must be made available to Mattel.

Second, paint on samples of finished product from every production run must be tested for lead by either Mattel's own laboratories or by laboratories certified by Mattel.

Third, we have increased the frequency of random, unannounced inspections of vendors and subcontractors for compliance with these new procedures. In addition, Mattel has been conducting unannounced inspections of every one of our vendors and subcontractors worldwide.

Beyond this three-stage safety check, Mattel's vendors must disclose to Mattel the identity of any subcontractor that a vendor proposes to use before that subcontractor is allowed to work on Mattel products, and any such subcontractor must be open to audit by Mattel. Those subcontractors are not permitted to further subcontract the work on Mattel's products. Vendors must supply all paint to the subcontractors, and the vendors and subcontractors must segregate all production for Mattel, including having dedicated storage for paint used on Mattel products. Mattel's vendors also must test the paints on a sample of all components produced by any subcontractor for lead before using the subcontractor's components in a Mattel product. Review of compliance with these additional requirements will also be part of the unannounced inspections of vendors and subcontractors.

Through the above steps, Mattel has now implemented a system of multiple and redundant safety checks. We certify paint suppliers to ensure the paint they supply is good paint. We require tests of the paint from the certified paint suppliers before it is used, and if it fails, it doesn't go on our product. We have increased random inspections of vendors and subcontractors during production to make sure they are testing paint. We require that vendors test samples of any components that they get from subcontractors before they go into our products. We test samples of the finished products on a regular basis to verify that the process has worked. At the same time, our direct importers are continuing to perform their own testing of our products.

OTHER MEASURES

In addition to these many safeguards, we are continuing to evaluate and, where appropriate, adopt further measures to enhance the safety of our products and the effectiveness of the recalls. We have made some recent announcements that will have a direct impact on how we do business. For example, we have created a new organization, reporting directly to me, that will combine, in one operation, all of Mattel's principal safety, compliance and reporting functions.

While Mattel is confident that the measures we have adopted will go far in preventing these lead-paint problems from re-occurring, we agree that others, including Congress, the CPSC and foreign regulatory bodies and governments, can and should play an important role in what we believe should be a joint and cooperative effort with a shared objective—the safety and well-being of our children.

Mattel supports the Consumer Product Safety Act and the mission of the Consumer Product Safety Commission. We are committed to working with members of Congress to strengthen the Commission. We believe that more resources are needed for the organization to carry out its important duties most effectively. Mattel further supports proposals that would ensure laboratories used for testing toys, wherever produced, are fully qualified and are accredited by independent organizations.

These recent lead recalls have been a personal disappointment to me and, I am sure, to all of the men, women and parents who take great pride in working at Mattel. But, as I said at the start of my remarks, these events have also called for us to act, and we have. As an industry leader often deeply involved in setting standards for our industry, we have adopted safety standards and procedures that we hope will be a model for all toy companies.

I would like to conclude by reiterating my personal apology on behalf of Mattel and to emphasize my commitment to parents. Parents expect that toys carrying the Mattel brand are safe. I believe the steps we have taken and continue to take will strengthen the safety of our products and earn their trust.

Thank you for the opportunity to address these important issues with you today. I would be happy to answer any questions that you may have.

Mr. RUSH. Thank you for your opening statement. The Chair recognizes himself for 5 minutes for questioning.

Mr. Eckert, you and your company have apologized to the American public for the toys with the lead paint, and you have just recently done so in this hearing. I have a concern that in the past Mattel has not been so forthcoming with the public. The CPSC has twice, in 2000 and earlier this year, fined Mattel for failure to report serious safety defects in toys, including Power Wheels, Little People Animal Farms, et cetera. Given this recent history, how is the public to trust your assurances and how is it to read your apologies?

Mr. ECKERT. I believe, sir, the timeliness with which we have executed the recalls this summer are a good example of our understanding of our obligations and our willingness to comply with them. And if I might add, when we go backwards in time and look at recalls like the 1998 recall of Power Wheels that occurred before I was even with the company, and what we try and do is not dwell on those issues but learn from them and apply them to our situation today. And I might add, not only do I believe our recalls were timely this summer, and I would add that the CPSC worked very hard to execute these recalls on very short notice. They did work evenings, they did work on weekends and they did work over holidays to help us effect these fast-track recalls. We had initiated a dialog with the Commission, prior to this summer's recalls, to put in place a new system that I believe will be gold standard for manufacturing companies to take out these disputes of timeliness and to automate a system and to make sure the Consumer Product Safety Commission gets the information when they need it.

Mr. RUSH. On the issue of time and timeliness, can you comment on the recent reports in the press earlier this month that stated that Mattel will disclose problems "on its own time table," and that the CPSC's enforcement practices are "unreasonable." Should Congress interpret this as saying that your company is above the law?

Mr. ECKERT. That is not what I said.

Mr. RUSH. That is not what you said.

Mr. ECKERT. It is not in quotes. That is not how I feel. And again, I believe our actions demonstrate the contrary. I am sure you have faced situations, as have other Members of Congress, where you might say something in a media report and it comes back being something entirely different than what you might have said.

Mr. RUSH. I don't want to comment on that. Well, what did you mean when you made those statements?

Mr. ECKERT. I didn't make those statements in the body of that interview.

Mr. RUSH. You didn't make those.

Mr. RUSH. Right.

Mr. ECKERT. What I tried to communicate was what I understand our requirements to be. First of all, I absolutely understand the prompt notification requirement, that is, 24 hours to notify the agency when you have a reasonable conclusion that a defect may pose, could pose a serious hazard. What hasn't received as much attention is the provision in the regulations which gives companies 10 business days or more to determine if they have a reportable in-

cident. For example, is the product in distribution, what product is it and where is it? We do use time, from when we first hear of a problem, to make sure we know what products are involved. We go to the root cause of the situation so that we recall the right products on the right days.

Mr. RUSH. Right. I have just a few more seconds and have a couple of other questions. Mattel announced three recalls in August and September. Are there any more coming?

Mr. ECKERT. I certainly hope not, but I have learned never to say never. And I said in my remarks, we are looking for the needle in the haystack and if there is another needle in the haystack, we will find it, if we at all can, and we will report it in a timely fashion and we will have another recall. The fact is the system worked, because we recalled these products.

Mr. RUSH. Can you personally assure parents that the Mattel toys that they might be considering buying for this upcoming Christmas season for their children, can you assure them that they will be safe?

Mr. ECKERT. My No. 1 goal is to make sure that this holiday season's toys are the safest ever.

Mr. RUSH. The Chair now recognizes the ranking member, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. Mr. Eckert, let me just start from the beginning. How many products do you make every year? How many toys do you make? What is the volume?

Mr. ECKERT. We make roughly 800 million toys a year.

Mr. STEARNS. And what percentage of those products have been recalled?

Mr. ECKERT. Due to lead paint, we have recalled about one and a half million products here in the United States. It is about one-half of 1 percent.

Mr. STEARNS. OK, one-half of 1 percent.

Mr. ECKERT. It is one-half of 1 percent.

Mr. STEARNS. Yes. It is a very small percentage. And the idea is that most of these recalls came from a certain area. And where was that? They were manufactured in——

Mr. ECKERT. They were manufactured in the southern part of China.

Mr. STEARNS. And this is not in the United States, the recalls, they were products that were manufactured in the southern part of China?

Mr. ECKERT. That is correct.

Mr. STEARNS. OK. And how many plants were involved?

Mr. ECKERT. There were several different plants, five different, what we call primary vendor plants out of the roughly 37 or so vendors that we use in China, and then several subcontractors of theirs.

Mr. STEARNS. And it is your intent now to have subcontractors in there working for you, testing, on a statistical basis, these toys in the future to prevent this from happening again?

Mr. ECKERT. No, sir. Again, the rules are very clear to prevent this from happening again. One, you can only use certified paint from one of our eight certified suppliers that have pigment tracing and have documentation on every can of paint. Two, you must

retest the paint before you use it, to make sure it is good. Three, we now have auditors in every one of these primary vendors every day of the week to watch what they are doing. And four, for even more redundancy, we are testing every batch of finished toys, samples from every batch before they go to store shelves.

Mr. STEARNS. Now, do you own these plants? Do you have 100 percent ownership of these plants?

Mr. ECKERT. We do not. We own some plants. Of the toys we make in China, about half of them come from Mattel plants and half come from what we call vendor plants.

Mr. STEARNS. The ones that were recalled, those plants, how many of those plants did you own?

Mr. ECKERT. None.

Mr. STEARNS. None. So all of these are from plants you do not own?

Mr. ECKERT. That is correct.

Mr. STEARNS. Do you have a 10 percent interest, a 50 percent interest?

Mr. ECKERT. We have no interest. But with some of these plants, we have had long relations.

Mr. STEARNS. But how could you be sure that you are going to be able to control the product in a company in southern China that you have no ownership in, that is owned by "the communist government?" How can you assure us that you are going to have any control on any plant that you don't own and you can't assure access to?

Mr. ECKERT. Well, we do have access to all of those plants and we are in those primary vendors every day and I think our redundant level of tests provides assurance.

Mr. STEARNS. But don't you think it would be better that you own these? You say you own some plants in China.

Mr. ECKERT. That is correct.

Mr. STEARNS. OK. So wouldn't it be advisable for you to own the plants where these problems were?

Mr. ECKERT. I am not sure it is a question of who owns the plants, it is: Are people following the rules?

Mr. STEARNS. But the plants you own, you have had no trouble with.

Mr. ECKERT. That is correct, but again——

Mr. STEARNS. So why not take the next logical step and say, why don't we transfer this to plants we own, rather than plants we have no ownership in?

Mr. ECKERT. We are putting the same redundancies in the plants that we do own. Again, I am not sure this is——

Mr. STEARNS. So ownership is not a relevancy?

Mr. ECKERT. I think what is important here is that our people follow the rules and what got us into these recalls this summer is that a handful of people violated our rules. They circumvented the rules.

Mr. STEARNS. I know, but you didn't own the plants, you had no huge authority there, whereas, in the plants you own, you did. So you are saying you are going to continue to manufacture there and hope these subcontractors get in there and you have no ownership in these plants, so I am not sure the guarantee is there. Let me

move along here. Why don't you manufacture these toys in United States?

Mr. ECKERT. We manufacture in markets outside of China. First, we are one of the few toy companies that owns toy facilities, toy-making facilities, and we manufacture in other markets, including Malaysia, Thailand, Mexico, Indonesia.

Mr. STEARNS. Are you manufacturing in China because it is inexpensive?

Mr. ECKERT. We have been manufacturing there since, I believe, 1983.

Mr. STEARNS. Yes.

Mr. ECKERT. It is a good combination of quality, cost and——

Mr. STEARNS. Inexpensive labor is primarily the reason, wouldn't be?

Mr. ECKERT. Not necessarily. We also have worked in China for decades and had very high quality toys.

Mr. STEARNS. You see a lot of Toyota or BMW come back in the United States and they go into parts of the United States where the standard of living is not as high as New York City, Westchester County, Greenwich, Connecticut. Is it possible that a lot of these companies where you manufacture in southern China, you could come back in the United States and in some of the regions of this country we could create jobs for Americans?

Mr. ECKERT. We are always looking at where we manufacture toys and we will continue to look. Since I have been at Mattel for the last 7 years, we have rotated plants and made changes several times and we will continue to do that.

Mr. STEARNS. The last question, Mr. Chairman. How much of this failure in this detection of the lead in paint is due to fraud or to process failure?

Mr. ECKERT. It is hard for me to answer. The investigation is still ongoing. My sense is that some people made honest mistakes and some carelessness. For example, when a vendor outsources to a subcontractor a part, the requirement is the vendor takes the paint that follows our rules and it goes to the subcontractor with the part. I believe there may have been instances where the paint went to the wrong place or not enough paint went to the right place. That may be an issue. I also believe there were clear cases of people intentionally circumventing the system and those are the people we no longer do business with.

Mr. STEARNS. And I submit, Mr. Chairman, that a lot of fraud did occur and without ownership of this, the possibility of fraud could occur, so I think that is a relevant point.

Mr. RUSH. His time is up. The Chair now recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes of questioning.

Mr. BURGESS. Thank you, Mr. Chairman. And Mr. Eckert, I thank you also for staying with us all day. It has been a pretty long hearing. You may have heard me. It has been so many hours ago, now you may have forgotten. When you do a product recall, what do you do with all of the stuff that you get back? Does the stuff come back to you?

Mr. ECKERT. Yes. Not everything comes back, unfortunately, which is why we work so hard with the CPSC, why we have taken out advertising to announce the recalls, which, again, I believe is

unprecedented in our industry. We have been on television with media interviews. We took out full-page ads in newspapers. We bought advertising on Internet sites, like Google and Yahoo, to make sure people were aware of it. When we do get toys back, we quarantine them. We do not release them. We do not export them. We do not ship them out of the country. In the case of this summer, this is the first time we have had lead paint on toys, so this is new to us. We are working with environmental consultants to try to devise a plan to dispose of them. I know one of the things we are looking at is can they be used in cogeneration, complementing ingredients in cogeneration or something like that. But we do not allow those products to leave our control.

Mr. BURGESS. Very well. So they are not going to end up in a landfill or just burned in a regular furnace?

Mr. ECKERT. No, they are not.

Mr. BURGESS. What do we do to make sure that if you had a product in the pipeline over in China, obviously, now that pipeline is stopped, how do we be sure that someone doesn't, before that product even gets to this country and gets under your command and control, how are we sure that it is not diverted and perhaps shows up on an eBay site? With the interconnectivity that we have with the Internet today, you can buy things from other countries. Are we doing anything to monitor that? Or if someone in this country said, I better dump my Tommy the Tank, or whatever it is, quickly and sell that on eBay, is anyone——

Mr. ECKERT. That is a concern. I don't know the answer. I talked to a Senator just last week about that. It is a big concern of mine. If someone were to take a toy that is not safe for children and donate it to the Salvation Army or one of those things, that to me is wrong and I don't know the answer to how to prevent that, but I believe we should work and figure out a way to do that.

Mr. BURGESS. Now, Chairwoman Nord, when she was here, I think testified that the current standard, acceptable standard for lead in paint had to be less than 0.06 percent.

Mr. ECKERT. Yes.

Mr. BURGESS. I believe that is the figure that was quoted. How high were the levels in some of the paint that you tested that was ultimately found to be at risk?

Mr. ECKERT. It varied tremendously. For example, I saw media reports today of the toy that we identified in the letter to the chairman and to the staff, that had 11 percent lead. On that particular toy, the range was from 0.26 percent to 11 percent, depending on which product was sampled. But that was the single highest number we got.

Mr. BURGESS. Now, would the whole toy have been painted with that?

Mr. ECKERT. Not at all. No, what happens in this particular, it was a stamp on the underside of a membrane, so not exactly accessible in normal use and it is just that small portion of the toy. In fact, in all of these toys, it is not the big toy that is affected, it is some component. And when I cite percentages, it is percentage of lead on the paint on that small component. The average has been or a typical number has been closer to 1 percent. It is still too high.

Mr. BURGESS. Are you aware of any testing that has been done on children who have been, say, in a household or an area where they may have been exposed? Has there been any clinical documentation that, in fact, this resulted in a higher than expected lead level in children who may have been in an environment where these toys were?

Mr. ECKERT. No. In fact, I have read media reports throughout this ordeal, that have suggested, from people who are experts and—I am not a toxicologist and the like, that say this really isn't a concern from a public health standpoint. That being said, that is not my job.

Mr. BURGESS. No. Right.

Mr. ECKERT. My job is to get these toys back. They don't meet our standards. It is not a question of how much. I want the toys back.

Mr. BURGESS. Yes, it would be interesting to see what our water in these pitchers has as a concentration of lead, Mr. Chairman. I tried to get Ed Markey to aim that little gun at my pitcher, but he wouldn't do it. Ranking Member Stearns asked a very good question. Why even manufacture overseas, because it would seem to me, with all of the counterfeiting that goes on nowadays and we sit everywhere, from pharmaceuticals to Brittany Spears CDs. Don't you put your trademark at risk somewhat by moving your production facilities overseas?

Mr. ECKERT. We do manufacture in several markets. Almost half of the toys we sell every year are not sold in the United States, so we are a company that has operations in both sales and marketing and manufacturing overseas.

Mr. BURGESS. Well, Mr. Chairman, I think Ranking Member Stearns also recognized that we are up to the Christmas selling season, everything after July 17. I know, in the old days, if I hadn't taken my Christmas lights down by July 17, I was early for the next year and not late for the last year. So everything that happens after July 17, now we are getting ready for the next Christmas season. It just seems to me, with the volume of toys that you expect to sell over the Christmas season in this country, There has got to be people who are looking for a made in America label on a product that they can believe. And you heard my testimony earlier. I, for one, the only way I feel that I have the control bringing an unsafe product into my home is to not buy a product that is manufactured in a country where the standards are so lax, and I have got to believe that other people feel the same way. In fact, I have heard from a number of my constituents during the town halls that we did during August recess, that that was the case. So are you looking at all to move manufacturing back into this country? As Mr. Stearns suggested, there are lots of areas where this could be considered and putting that made in America label, a little American flag on the toy, I got to believe that would help recover the branding process that you talked about.

Mr. RUSH. The gentleman's time is up. The witness will be allowed to answer this question.

Mr. ECKERT. As I said earlier, we continue to look regularly at where we make toys and what is made where and what is made

in our facilities and what is made in outside facilities all over the world. We will continue to do that.

Mr. RUSH. The Chair will allow one additional question from each member who requested it. The Chair has one additional question here. Mr. Eckert, I have heard the word certification kind of bantered around the room. What do you mean by certification and what kind of assurances will your certification provide, and what is the process for the certification to take place?

Mr. ECKERT. If you are referring to the laboratories, that hasn't been an issue. The issue isn't the test or the procedures. The issue is products failed the test. My belief is all toys, representative samples of all toys should be tested in accredited labs. Outside parties can accredit the labs, which the Toy Industry Association has recently proposed, have outside parties accredit the labs and the sampling protocols and I think that will add a level of assurance to consumers.

Mr. RUSH. So are you suggesting, then, that each toy that Mattel places on the shelves in the stores, that there will be something to inform the buying consumer that this product has been certified as safe?

Mr. ECKERT. There may be something. I don't know. I think the industry needs to look at that and others need to look at that. But I do feel that I would like to see the entire toy industry step up to the level of testing that we are doing.

Mr. RUSH. The Chair recognizes the ranking member for an additional question.

Mr. STEARNS. Thank you, Mr. Chairman. Mr. Eckert, I am just going to give you a chance to reply. During the opening statements, members on that side indicated that staff was over there in China and they were prevented from going into your plants and the indication was that there was obstruction, there was intentional hiding of the ability to have access to your plants, and I thought I would give you an opportunity to respond to some of the opening statements where they made this claim against Mattel. Were you here? Did you listen?

Mr. ECKERT. Yes.

Mr. STEARNS. And I thought you might want to take an opportunity to give your side of the picture.

Mr. ECKERT. Well, as I said, I am aware of situations where the staff didn't feel like they had adequate access. We tried very hard to provide them access to our facilities, to our testing labs. We have flown people in from California to here, our lead investigator, to interview with the staff, but I am not here to quibble about that. I am also aware that they didn't feel like they got everything they needed. And so Mr. Chairman and Mr. Ranking Member, I am here to assure you, you will get everything you need. I will try my very hardest to accommodate that.

Mr. STEARNS. Well, that is good to hear, Mr. Chairman. I know my staff was in China, too, so I thought I would give you that opportunity. Thank you.

Mr. ECKERT. Thank you.

Mr. RUSH. Mr. Burgess.

Mr. BURGESS. Thank you, Mr. Chairman. Probably not a question, but I guess I will just conclude with a statement, Mr. Chair-

man. I know I can't help but feel, as we sit here and certainly not that I think that Mattel would necessarily be involved, but I can't help but feel that we are just on the verge of the cusp of yet one more round of bad headlines from somewhere in this process and I just think it is so incumbent upon each one of us. We have heard from the people from the Consumer Product Safety Commission today and certainly this committee takes its job very seriously. I know the Senate is working on things as well. I just don't think there is enough we can do to restore that consumer confidence. Mr. Eckert, I will just tell you, my party used to be in the majority here and a lot of us feel that one of the reasons we are no longer is because our brand suffered and it is a real challenge to get your brand back after your brand has been tarnished. So I appreciate the job that you are up against and the work that you have taken on and certainly wish you every success in that. I would just end with, don't overlook the manufacturing capability that exists right here. And Mr. Barton, I think, pointed it out well. Texas has got a great workforce ready to go make those toys for you and have them on the shelves by this Christmas and we will even let you put a little Texas flag on them and I think they will sell like hot cakes. I will yield back my time.

Mr. ECKERT. Thank you.

Mr. RUSH. Again, the Chair wants to thank the witness for his generous use of his time. We thank you for bearing with us today, as we have conducted this hearing. I want the committee members to be reminded that the record will remain open for 30 days in order to accept official statements for this hearing. I want to also state that Chairman Dingell is detained in a meeting at the Capitol and will submit written questions to Mattel, for the record, and will appreciate a prompt response. This concludes panel No. 2 and the committee, without objection, will be recessed until tomorrow morning at 10 o'clock.

[Whereupon, at 3:40 p.m., the subcommittee recessed, to reconvene at 10:00 a.m., Thursday, September 20, 2007.]

[Material submitted for inclusion in the record follows:]

HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, JR., NEW JERSEY
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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

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October 22, 2007

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Nord:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Wednesday, September 19, 2007, at the hearing entitled "Protecting Children from Lead-Tainted Imports." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are additional questions from Subcommittee Chairman Rush, Representative Markey, and me. We ask that you respond to these questions for the record. In preparing your answers, please address your response to the Members who have submitted the questions and include the text of the Member's question along with your response. Please begin the responses to each Member on a new page.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Tuesday, October 30, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-226-5577** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron with the Committee staff at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Edward J. Markey, Member
Subcommittee on Commerce, Trade, and Consumer Protection

U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Nancy Nord, Acting Chairman

Tel: 301 504-7901

November 30, 2007

The Honorable John Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 22nd regarding the hearing by the Subcommittee on Commerce, Trade, and Consumer Protection on Wednesday, September 19th, entitled "Protecting Children from Lead-Tainted Imports." With your letter, you enclosed questions from Members of the subcommittee.

I appreciate the opportunity to answer those questions. Please find enclosed a copy of my responses.

Sincerely,

Nancy A. Nord

Enclosures

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Edward J. Markey, Member
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable John Dingell

1. What was the level of funding and personnel requested by the Consumer Product Safety Commission (CPSC) of the Office of Management and Budget (OMB) for Fiscal Years 2007 and 2008? Please provide a copy of these requests.

Section 22 (Communications with the Congress and the Public and Clearance Requirements) of Office of Management and Budget Circular A-11 (Preparation, Submission, and Execution of the Budget), July 2007, precludes the CPSC from providing the requested information. A copy of that section of OMB Circular A-11 is enclosed.

2. Does the CPSC have cooperative arrangements with other Federal enforcement agencies (e.g., U.S. Customs and Border Protection)? If so, please describe them and submit copies of these formal agreements.

The CPSC maintains cooperative agreements and Memoranda of Understanding (MOU) with a number of other federal agencies for training, data sharing, testing, technical support, information services, and other matters. With regard specifically to enforcement agencies, the relevant agreements are with U.S. Customs and Border Protection (CBP) to establish and clarify working relationships and uniformity of procedures and for other purposes. Copies of the relevant agreements are enclosed. Please note that those classified "FOR OFFICIAL USE ONLY" should not be released to the public.

3. How many full-time field staff are employed by CPSC whose duties include the inspection of imported consumer goods at U.S. ports of entry? For Fiscal Year 2007, how much money did CPSC allocate for this work?

The CPSC currently employs 96 field staff, of whom 84 are inspectors and/or working supervisors who inspect potentially hazardous products. Sixty-four of these field employees have duties that include inspections and related activities at the ports as appropriate (although we do not assign staff exclusively to a port). In Fiscal Year 2007, over $13 million was allocated to the field operation in general. Additional imported product testing and inspection is conducted by staff at CPSC's headquarters and laboratory. Because CPSC's budget allocations are focused on product safety results rather than on internal agency processes, CPSC resources are allocated and budget records are maintained based on expenditures on identified hazards (such as small parts, fireworks and lighters), rather than on specific activities.

4. According to your agency's 2008 Performance Budget Request, the CPSC prevented approximately 83 shipments of non-compliant toys from entering the United States in 2006. What percentage of total toy import shipments for 2006 did that constitute? Further, please describe what was contained in the 83 shipments.

According to U.S. Customs, the total number of toy shipments with the relevant tariff codes of 9501 through 9503 was approximately 316,927. Based on this number, less than one percent of toy shipments were examined by the CPSC. A listing identifying the products contained in the shipments of toys is enclosed. Currently, there is not a tariff code to identify specifically shipments of toys that are painted or children's jewelry. The CPSC is seeking changes to permit more specific identification of toys that are subject to CPSC's rules.

5. Does the CPSC have formal performance goals for the inspection and seizure (if necessary) of consumer product imports? If so, please provide a copy of those goals.

CPSC staff has never had a formal performance goal for the number of consumer products inspected or seized at import. In FY 2007, the CPSC had a goal to conduct at least two port-of-entry surveillance programs focusing on particular products. These are extended efforts in cooperation with U.S. Customs and Border Protection. The CPSC is considering a shift of resources to establish a permanent presence at major U.S. ports. Under this approach, the CPSC would establish new performance goals for import surveillance.

6. Please provide all documents related to the four Working Groups established under the Action Plan agreed to by the CPSC and Chinese General Administration for Quality, Supervision, Inspection and Quarantine (AQSIQ) under the auspices of the 2005 U.S.-Sino Product Safety Summit, including copies of their respective work plans.

The requested documents are enclosed with this response.

7. In addition to greater resources generally to meet the overall mission of the CPSC, how much additional funding and staff does your agency require in order to implement the provisions of the Joint Statement on Enhancing Consumer Product Safety, as agreed upon between the CPSC and AQSIQ on September 11, 2007. Please provide any available documentary evidence in order to both quantify and qualify this estimate.

The staff and travel resources necessary to monitor the provisions of the China Action Plan were budgeted for in CPSC's Fiscal Year 2008 Performance Budget Request which is currently pending before Congress. Subsequent to the Budget Request being submitted to Congress, it was decided that the agency will no longer accept industry-funded travel. In the case of travel to China, that would result in a shortfall in travel funds of $127,600 in Fiscal Year 2008. Additional staff may also be needed by CPSC's Office of Compliance as we further implement the provisions of the Joint Statement. The Commission is currently considering these requirements as we prepare our budget request for submission to Congress in February.

8. In your opinion, are existing Chinese regulatory standards and laws regarding exports sufficient to protect U.S. consumers? Please submit documentary evidence to support your claim. In the event that you do not believe that Chinese standards and laws are sufficient to protect U.S. consumers, please submit your recommendations for how to ensure that they do.

Historically, the CPSC has not allocated resources to catalogue the consumer protection laws or the safety standards of other countries. Similarly, the CPSC does not generally undertake comprehensive comparisons of foreign standards against U.S. standards. For these reasons, the agency has not previously performed an analysis of foreign regulatory standards and laws pertaining to Chinese-made consumer products. In the work plan for the Fireworks Working Group, however, the CPSC agreed to conduct a comparison of U.S. and Chinese fireworks standards. In addition, the Chinese government has recently enacted rules requiring Chinese manufacturers to comply with the consumer product safety standards of the markets to which they intend to export. While we are in the process of determining whether these rules are effective, the goals and agreements stemming from our recent Product Safety Summit with the Chinese government evidence the need for enhanced export controls and other actions on their

part. Our recommendations in this regard are encompassed by the Joint Statement on Enhancing Consumer Product Safety and the four product Work Plan agreements signed at the Summit, the provisions of the Interagency Working Group on Safe Imports Report to the President, and the legislative proposals to strengthen the CPSC that I presented to Congress earlier this year.

9. What, if any, steps has the CPSC taken in order to ensure that China will abide by provisions of the aforementioned Joint Statement on Enhancing Consumer Product Safety? Please provide documentary evidence that details CPSC action in this regard.

The CPSC has begun monthly video conferences with AQSIQ during which AQSIQ reports on steps the Chinese government is taking to prevent the use of lead paint on toys exported to the United States. The first such conference took place in October. CPSC staff is also in more frequent contact with our Chinese counterparts through email communications and other means to relay information about product recalls, emerging safety issues, CPSC safety activities, and other appropriate information. Earlier this month, AQSIQ Vice Minister Wei, who participated in the September Safety Summit, met with me to again state the intent of the Chinese government to take steps to comply with the agreements reached and to otherwise address the issue of safe imports. Finally, the Director of CPSC's Office of International Programs has just returned from follow-up meetings with officials in China where AQSIQ's further plans for implementing its commitments were discussed.

The Honorable Bobby L. Rush

1. The Joint Agreement signed with the Chinese covers lead paint on toys. Why is lead content in children's products also not included, considering that so far in 2007, the Consumer Product Safety Commission (CPSC) has issued approximately 30 recalls for lead content in approximately 7 million pieces of children's jewelry, overwhelmingly from China?

The CPSC has long had a ban in place relating to lead paint, including paint on toys. CPSC staff is currently developing a standard that, if approved by the Commission, would limit lead content in children's jewelry. Under these circumstances, CPSC staff concluded that the agency's agreement with China should focus on lead paint first. If a standard limiting lead in children's jewelry or other children's products is adopted by the Commission, we will communicate that standard to the Chinese government and manufacturers and insist on strict compliance with it.

2. Please provide detailed plans on how the CPSC will follow up with the Chinese to ensure that they enforce the terms of the Action Plan signed last month.

In October, the CPSC drafted and submitted to AQSIQ an implementation plan for the four Work Plans. The CPSC also has begun monthly video conferences with AQSIQ and held an initial discussion of the draft implementation plan during the recent October video conference. More detailed discussions are taking place during the November video conference. Also, the Director of CPSC's Office of International Programs has just returned from follow-up meetings with officials in China where AQSIQ's plans for implementing its commitments were discussed.

We expect to continue monthly discussions on all items and to make frequent visits to China during the coming year to monitor AQSIQ's enforcement activities.

3. We understand that the European Union uses a different test and standard in limiting the trace amount of lead permitted in paint. Please tell us how the two systems and standards compare. Please also tell us if the CPSC has ever done a study or otherwise considered lowering the trace amount of lead in paint from 600 ppm and, if so, what information it gathered and what conclusions it reached.

Standards

There are differences between the lead paint standards in the United States and those in the European Union (EU). The differences relate to whether the standards address total lead content or lead accessibility, whether it is a ban or voluntary standard, and the actual lead limit (i.e., the "number").

Standards based on **total lead content** of a product or component of a product set limits for the amount of lead allowed to be present in a product. They are generally expressed as the concentration of lead in the product in units of weight of lead divided by the total weight of the item. For example, lead content can be given as a percentage (%), parts per million (ppm), or milligrams of lead per kilogram total weight (mg/kg).

Standards based on **lead accessibility** set limits for the amount of lead allowed to be accessible from the product, i.e., the amount of lead to which a consumer could be exposed as a result of using the product. These standards do not limit the total lead content of the product. These regulations or voluntary standards usually cite a testing method to measure accessibility, usually an extraction method. Accessible lead is expressed as the amount of lead that extracts, leaches, or migrates from an entire intact product (or component of a product) during the test, or as the amount of lead that extracts from the product per unit of weight. A common expression for lead accessibility would be milligrams lead extracted per kilogram of product (mg/kg) or parts per million (ppm).

With respect to lead paint, the CPSC's "lead paint standard" (16 CFR 1303) bans the sale of paint and similar surface coating materials for consumer use if it contains lead in excess of 0.06% (600 ppm or 600 mg/kg) by weight of the total nonvolatile content of the paint or weight of dried paint film. Toys and other articles intended for use by children that bear lead-containing paint in excess of 0.06% are also banned. Certain products that are not banned require labeling. This U.S. regulation specifies a **total lead content** limit.

The EU Directive 1999/45/EC addresses paints and varnishes. This regulation requires labeling of paints containing lead greater than 0.15% (1500 ppm or 1500 mg/kg) by weight of the metal. The required label should read, "Contains lead. Should not be used on surfaces liable to be chewed or sucked by children." Unlike the U.S. regulation that **bans** certain products with paint exceeding a specific total lead content, the EU regulation **only requires a label** when the lead content is above 1500 ppm.

ASTM F963, Standard Consumer Safety Specification for Toy Safety is a voluntary standard that addresses paint and similar surface coatings materials on toys. It references 16 CFR 1303 (for total lead content) and sets an accessibility limit of 90 ppm with a specific test method.

European Standard, EN71; Safety of Toys – Migration of Certain Elements is a voluntary standard that applies to paints, varnishes, lacquers, and other materials and, like the ASTM voluntary standard, specifies a lead accessibility limit of 90 mg/kg with a specific test method.

To summarize, the U.S. has a far more stringent *mandatory* standard for lead paint than the EU; the *voluntary* standards for the U.S. and EU are quite similar.

Study of Lead Containing Paints

In 1992, the Commission staff issued a notice of regulatory investigation requesting information on a potential new level (possibly 0.01 or 0.02%, based on knowledge of health effects and background levels, weight of paint, etc.). The staff conducted a study to determine lead levels in house paint currently on the market. Of the 433 national samples, 90% had lead content below 0.01%. In the remaining 10%, the source of lead contamination was believed to be the earthen paint pigments. (Paints can be pigmented with synthetic materials that do not contain lead. Natural "earthen" pigments may contain lead. Earthen pigments have generally been used because of their specific colors.) Since most domestic house paints were already below 0.01%, the staff recommended ending the activity to lower the limit for lead levels in these paints. Staff has no reason to believe that the lead levels of new domestic house paints are greater than those measured in 1992.

It is much easier for a paint manufacturer to make a can of paint with lead levels below 0.01% than for a toy or furniture manufacturer to achieve this level on a painted product. This is because in the manufacturing process (especially overseas) there are numerous places for contamination, including pipes and tubing in machinery, use of leaded gasoline, or lead contaminated soil entering the plant.

4. Please provide information on any outreach or education programs or activities conducted by the CPSC to prevent informal sales (e.g., yard sales, thrift shops, and Internet auctions) of recalled products, especially children's products.

The CPSC has a long-standing relationship with businesses in the second-hand market. The agency's outreach extends to some of the largest and most well-known second-hand "brick and mortar" shops, as well as on-line auction sites.

Beginning in 2004, the CPSC reached out to the second-hand shops to assist them in identifying those products that should not be sold. The CPSC provided information and education to assist in identifying products such as hooded sweatshirts with drawstrings, baby walkers that do not conform to consensus standards, and recalled play yards. In 2007, the CPSC included the national headquarters of these second-hand shops in our email notification system for retailers so each receives recall information as it is announced.

With regard to on-line auctions, the CPSC has established a strong working relationship with e-Bay. With assistance from the CPSC, e-Bay has developed software and filters to identify sites that may be selling a recalled product. The CPSC conducts on-line surveillance for products that have been recalled, and that information is passed on to the safety officials at e-Bay. Some auction sites are put "on hold" while an investigation determines whether a product is part of a recall or just similar in appearance.

The CPSC is aware that not all second-hand stores are affiliated with a national headquarters, and products are sold at much smaller venues like church bazaars or neighborhood yard sales. To assist these local offices, the CPSC has developed a program called Neighborhood Safety Network or NSN. To date there are more than 5000 members, including day care providers, churches, Boys and Girls Clubs, American Indian reservations, health care centers, and fire departments. NSN members are provided not only recall information, but through CPSC's tool kits, members can download safety information that can easily be tailored to their own individualized safety campaigns.

CPSC staff is also conducting our "Drive to One Million" campaign to increase the number of subscribers, both businesses and consumers, to our recall email notification system.

The Honorable Edward J. Markey

1. How does CPSC ensure that retailers remove recalled products from their shelves and inventories?

For each recall announced by the Commission, a corrective action plan is developed by the recalling company in coordination with staff in CPSC's Office of Compliance. The corrective action plan includes details on notifying consumers and notifying the distribution chain on steps that they need to take to stop sale of the product. It also includes information on the remedy chosen by the recalling firm and direction on returning the product to the recalling company.

Upon implementation of the recall, CPSC investigators conduct checks at retail stores to ensure appropriate recall implementation. This includes an actual physical inspection of retail establishments that received and sold the product to ensure that the product is no longer available for sale, that posters announcing the recall are in place, and that any recalled articles have been placed in a secure separate area of the store to ensure no further sale. In addition, field staff conduct inspections at the headquarters of the recalling company to verify implementation of all aspects of the corrective action plan.

Members of the CPSC's Internet Surveillance Unit conduct both random and specific searches of the internet in an effort to locate the sale of recalled products on line. If recalled products are discovered, a notice is sent immediately to the internet site advising them to stop sale and remove the product from the site.

2. Once a recall is ordered, does the CPSC require that the recalled products are removed within a certain time period? If yes, how does the CPSC determine the appropriate period to protect consumers? If no, why not? For the most recent five recalls ordered by the CPSC, please list the affected products and for each product provide the time period during which retailers were required to remove the covered products from their inventories.

Generally, prior to the press release and other publicity announcing a recall, notice is given to all members of the distribution chain (including retailers) so that they can stop sale, remove

products from the shelves, and post recall notices in their stores. In many cases, communication systems (e.g., telephones and web sites) have to be established or improved to handle consumer inquiries that result from the press announcement. While there is no standard on the number of days between notice to the distribution chain and the press release being issued, CPSC staff work with each recalling company and their retailers to assure that adequate prior notice is provided, balancing the risk presented by the product against the need to assure that the recalling firms are prepared to respond effectively and promptly to consumers from the very first and most important days of the recall.

3. Would you support a safety certification mark on toys that have been tested by independent laboratories, similar to the "Underwriters Laboratories" seal for electrical products?

I do support a safety certification mark, to the extent feasible, on toys that have been tested by accredited laboratories.

4. What percentage of serious injuries or deaths due to products under CPSC's jurisdiction does the agency investigate every year?

CPSC staff attempt to review every report to the agency of a serious injury or death. Many reports lack sufficient detail to permit follow-up. For example, many reports do not provide any information on the product model or manufacturer. Where the manufacturer or retailer is known, the CPSC sends a copy of the report to them. After initial review, CPSC staff selects approximately ten percent of reports involving death or serious injury for in-depth investigation. These reports are then reviewed in turn by staff and also sent to the manufacturer or retailer.

5. When was the last time you visited China to examine the production of toys exported to the United States? How many times have you been to China to see first-hand the facilities where toys are produced for export to the United States? Please list the dates of your visits, the facility visited, the owner of the facility – including, for example, whether it is a subsidiary of a U.S.-based company, a subcontractor or other entity.

Since coming to the Commission just over two years ago, I have traveled to China twice. The first trip, in April 2006, had several purposes including to meet with AQSIQ officials to discuss our MOU and related Action Plan, to learn more about fireworks production and safety inspection efforts in that country, and to see first-hand product testing (including toy testing) at a testing laboratory in Hong Kong. The other trip, in May 2007, was to negotiate with the Chinese government in anticipation of our recent Product Safety Summit and to speak at and attend meetings of the International Consumer Product Safety and Health Organization. Neither trip afforded me the opportunity to visit toy factories. I would also note, of course, that CPSC staff regularly travel to China to conduct training for Chinese manufacturers and others about our product safety standards and requirements, particularly with respect to toys. In that regard, CPSC staff participated in a compliance training session in August in China and other staff just returned from China after meeting with toy industry representatives and visiting the factory that manufactured the Aqua Dots recalled toy.

6. What percentage of children's products recalled by CPSC over the past 24 months resulted from unsafe lead levels compared to other defects, such as design flaws and other factors?

Twenty-four percent of the children's products recalled by the CPSC in the past 24 months (FY 2006 and FY 2007) resulted from lead levels in excess of the agency's enforcement guidelines or the regulatory lead-containing paint ban as compared to other defects.

7. Do you think the CPSC has adequate authority to protect the marketplace from unsafe goods? If not, what additional authority is required?

Earlier this year, I provided Congress with my package of 41 legislative proposals to strengthen the authority of the CPSC. My legislative package is entitled the Product Recall, Information and Safety Modernization (PRISM) Act, and I am pleased that a number of my proposals are included in H.R. 4040, the Consumer Product Safety Modernization Act being considered by the committee. A copy of PRISM is attached.

8. Would you support larger fines on companies that fail to comply with CPSC statutes and regulations? If yes, how much larger should the fines be? If not, why not?

I have proposed an increase in CPSC's civil penalty cap to $10 million to be phased in over four years. (This increase passed the U.S. House of Representatives on October 9, 2007.) I have asked that this increase be implemented for the four main statutes that CPSC administers. I have also proposed that the civil penalty process be streamlined by granting the CPSC the authority to impose penalties of up to $2 million administratively rather than via judicial action. Most enforcement agencies that have larger penalties also have the ability to impose smaller penalties administratively.

9. CPSC reportedly learned of magnet hazards in certain toys in 2005, but it took more than a year to carry out a recall. Why did it take the agency so long to take action on a product clearly hazardous to children? In retrospect, should CPSC have moved more quickly to recall products with magnet hazards?

In 2005, when CPSC staff began reviewing incident reports of small magnets coming loose or detaching from magnetic building sets, these incidents were viewed and treated by staff as a "small parts" issue. Small parts are primarily a choking or aspiration hazard and are banned in toys for children under the age of three. There are thousands of such incidents every year. For toys intended for children between the ages of three and five, the outside toy package is required to bear a small parts warning label.

In May 2005, the CPSC received a report of a child suffering intestinal injuries associated with magnet ingestion from a magnetic building set. At that time, this incident was not identified as presenting a novel medical issue because the CPSC annually receives thousands of reports of children ingesting small objects which, in some cases, cause gastro-intestinal injuries. In December 2005, the CPSC received notice that a child had died due to intestinal injuries after ingesting multiple magnets from a building set that used a new, very powerful type of magnet. This was the first clear case that indicated the serious hazard that was presented by these new magnets affixing in the intestines. The CPSC was one of the first agencies in the world, public or private, to identify and announce this new hazard and to educate consumers and medical personnel to the danger.

After recognizing this emerging hazard, CPSC staff worked diligently to investigate and address it, culminating in a March 2006 recall.

The CPSC does not have the authority to unilaterally order a recall. To force a recall from a recalcitrant firm, we must conduct a trial-type hearing to determine if a defect exists and if corrective action is warranted. The Commission has a choice of working with a firm to obtain a voluntary corrective action or to follow the resource- and time-consuming process of seeking a notice and corrective action (recall) order through the hearing process. Since CPSC's inception, staff has always attempted to negotiate voluntary corrective action unless it is evident that that process will not result in adequate public protection. In almost all cases, that process does result in timely corrective action for consumers that would not have happened as quickly if the Commission resorted to a hearing.

Since the initial magnetic building set recall in March 2006, the CPSC has announced nine other voluntary recalls for toys due to magnet hazards. CPSC staff also worked with the private sector to adopt a voluntary standard for children's products containing magnets.

10. Current California standards under the state's Proposition 65 law are 350 times stricter for lead than CPSC's current standard. Other federal agencies are also more protective: EPA, for example, has a long-term goal of zero lead in water, and the CDC says that there is no safe level of lead exposure to children. Why is CPSC taking an alternative, less protective view, on how much protection children need from lead.

See answer to Question 11.

11. During your first appearance before the House Commerce, Trade and Consumer Protection Subcommittee earlier this year, you stated that the Federal Hazardous Substances Act defines a hazardous substance in such a way that CPSC must judge a hazard by how much lead (or another hazardous substance) is accessible from a child's product. Since current science says there is no safe level of lead, why have you chosen to define a hazard level that is, for example, 350 times less protective than the California standard? Instead of saying that the agency cannot act because there is not enough lead, would you agree that the CPSC should update the hazard level for lead to reflect the most current science?

Since its inception, the CPSC has played a prominent role in protecting the public, especially children, from the hazards of exposure to lead. The agency's approach is in line with that of other federal agencies, and CPSC staff participates in several federal interagency committees addressing the issues of lead exposure, adverse health effects, intervention, and public health screening.

As discussed in earlier committee hearings, in addition to protecting children from hazardous exposures to lead under the lead paint ban (16 CFR part 1303) of the Consumer Product Safety Act, the Commission also protects children by taking action against a product that contains lead or other toxic substances, under the Federal Hazardous Substances Act (FHSA). Under the FHSA, household products that expose children to quantities of lead that may cause substantial personal injury or illness under reasonably foreseeable conditions of handling or use, including ingestion, are "hazardous substances." Further, a toy or other article intended for use by children which bears or contains a hazardous substance in such a manner as to be susceptible of access by

a child is a banned hazardous substance. Thus, if a children's product contains lead and that lead is accessible to the child, that product is a banned hazardous substance. The emphasis of the FHSA is on reducing injury and illness, not the attainment of zero risk.

Blood lead levels are used as a biological indicator of lead exposure but cannot identify specific sources of exposure. The federal community currently recognizes a blood lead level above 10 ug/dL as a level of concern (a level intended to trigger investigation and prevention activities). This level was established in 1991 (down from 60 ug/dL in 1960) and reaffirmed by CDC's Advisory Committee on Childhood Lead Poisoning Prevention and CDC in 2005 (Preventing Lead Poisoning in Young Children [2005]).

Although the dose-relationship for the adverse effects of lead in exposed children has not been definitively characterized, it is clear that lower levels of lead exposure are associated with fewer and less severe effects than exposure to higher levels. CPSC staff considers 10 µg/dL to be the appropriate level of concern with respect to substantial illness in children. Staff uses this level (and accounting for cumulative blood levels in children) to calculate the level of additional lead exposure from consumer products that should not be exceeded in order to avoid adverse health effects.

Concerning the California standard, Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, the state's Office of Environmental Health Hazard Assessment (OEHHA) maintains a list of chemicals known to the state to cause cancer or reproductive effects, and two distinct listings are identified for lead or lead compounds: 1.) For carcinogenic effects, the no-significant-risk level ranges between 15 micrograms lead per day (ug/day) and 58 ug/day (oral exposure) depending on the form of lead. 2.) For reproductive effects, the maximum allowable dose level is 0.5 ug/day. Proposition 65 does not ban consumer products that contain lead above these levels but only requires them to be labeled.

To avoid exceeding the 10 ug/dl blood lead level, CPSC staff suggests that chronic ingestion (considered by staff as at least 15-30 days) of lead not exceed 15 ug lead per day. Recently, the CPSC staff considered the effects of acute ingestion (occurring once, not over time) of lead associated with children swallowing lead-containing jewelry. To avoid exceeding the 10 ug/dL blood lead level of concern from acute exposure, the staff recommended that children not ingest more than 175 ug of accessible lead. In either case, products are evaluated using specific methods to estimate accessibility for regulation under the FHSA.

It is not clear what the basis is for the statement in the question that CPSC's hazard level is 350 times less protective or less strict than the California standard under Proposition 65. CPSC staff believes it may be an inappropriate comparison between the CPSC staff's 175 ug level with regard to metal jewelry ingestion (which generally triggers removal from the market) and California's 0.5 ug/day level (which merely triggers product labeling).

12. I understand that when CPSC released its September 27, 2005, "Preliminary Lead Test Results for Vinyl Lunchboxes" which found that the lunchboxes posed no health threat to children, the agency had tested fewer than ten lunchboxes, finding three with high lead levels. Is this accurate? If not, please stipulate the actual number of lunchboxes tested and the number with elevated lead levels. If yes, why did CPSC conclude there was no health risk to children from vinyl lunchboxes after testing such a small number?

None of the lunchboxes tested by the CPSC before September 27, 2005, was found to be hazardous, as simulated exposure testing indicated that in those cases where lead was present in

the lunchboxes, it did not migrate in a manner that posed a risk of serious injury or illness. Nonetheless, acting with caution, CPSC staff continued testing additional lunchboxes in the weeks that followed. By November 2005, CPSC staff had tested 60 children's lunchboxes for accessible lead. The products tested included a wide sample of different lunchbox models from various manufacturers.

After extensive and scientifically sound analysis and testing, in 2006 CPSC staff determined that the accessible lead in 60 different vinyl lunchbox models tested was insufficient to warrant corrective action by the CPSC. In fact, accessible lead levels in the lunchboxes tested fell well below what is generally considered to present any health risk to children. This testing is to be distinguished from total lead content, which was tested by the CPSC as a reference point for some vinyl lunchboxes, but only to help validate the results obtained when the accessibility of lead on the surface of those lunchboxes was tested. In short, if lead in a product is not accessible to the consumer, then it generally will not trigger the agency's authority to recall or regulate the product under CPSC's governing statutes.

For the CPSC, regulation of vinyl lunchboxes generally falls under the FHSA. This law establishes a ban for "any toy or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted." 15 U.S.C. § 1261(q)(1). Further, 15 U.S.C. § 1261 (f)(1)(A) defines the term "hazardous substance" to include any substance that is toxic "if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." In the case of vinyl lunchboxes, CPSC staff concluded that the amount of accessible lead was too low to trigger the statutory ban, *i.e.*, that it was too low to cause substantial injury or illness to children through contact with the product.

13. In further regard to lead-tainted vinyl lunchboxes, in its March 21, 2007 response to questions that I, along with several of my colleagues, asked the FDA, the Department of Health and Human Services (HHS) stated that "in light of data developed by the CPSC, FDA decided to notify manufacturers and suppliers of vinyl lunch boxes in July 2006 that the use of lead or lead compounds in such lunch boxes could be deemed to be an unsafe food additive and subject to possible enforcement action." According to HHS, substances are designated as additives if they are "reasonably expected to migrate to food as a result of their intended use." I understand that CPSC operates under a different statutory regime, but I am concerned about press reports attributed to a CPSC spokesperson, who was quoted by the Associated Press as saying that food in a child's lunch box "may have an outer wrapping, a baggie, so there isn't direct exposure." Given FDA's warning, why isn't CPSC concerned about unwrapped food in a child's lunch box?

See answer to Question 14 below.

14. Is CPSC asserting that the lead in a child's lunchbox is not "accessible" to the child, despite the HHS finding that use of lead in the lunchbox is "reasonably expected to migrate to food" in the lunchbox? Does CPSC disagree with HHS? If not, how can the lead be expected to migrate to the food to be eaten by the child while, at the same time, not be "accessible" to the child? Did CPSC test for lead from lunch boxes given the

potential for contact with foods, especially acidic foods? If yes, what were the results? If not, why not?

The CPSC and FDA (HHS) are directed to address the question of potential lead hazards by two separate statutory schemes, which require the respective agencies to focus on different issues, utilizing different standards and thresholds for action. For the CPSC, regulation of vinyl lunchboxes generally falls under the FHSA. This law establishes a ban for "any toy or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted." 15 U.S.C. § 1261(q)(1). In the case of vinyl lunchboxes, CPSC staff concluded that the amount of accessible lead was too low to trigger the statutory ban, *i.e.*, that it was too low to cause substantial injury or illness to children *through contact with the vinyl lunchbox, i.e., the product under CPSC's jurisdiction.*

With regard to FDA, its governing statute in the case of lunchboxes focuses on the purity of food and the substances that come in *contact with food,* which is under FDA's jurisdiction, and requires a different analysis and trigger for action than does CPSC's statute. (The FDA expands on this point in a letter to the Chairman of the Committee on Energy and Commerce dated March 21, 2007. A copy is attached.) The CPSC appropriately defers to the statutory authority and resources invested in FDA and the scientific expertise and experience of FDA and HHS in determining the potential health effects of the possible migration of substances to food and in executing the appropriate federal response.

15. The CPSC has stated that lead in vinyl baby bibs is a problem only if the bibs are used or deteriorated. But testing has found lead on the surface of intact vinyl bibs, and independent lab testing commissioned by the New York Times and by the Center for Environmental Health (CEH) found levels of lead in new vinyl baby bibs that were consistently three to four times the federal lead paint standard. Given these lead levels in new baby bibs, why does the agency continue to suggest that lead in baby bibs is only a problem in old, worn bibs?

In an analysis carried out in May 2007 by the CPSC on 81 bibs, total lead values ranged from 0% to 0.688%. Every sample had very low accessible lead levels measured by the wipe test that simulates hand to mouth transfer (it would require approximately 2500 touches per day in order to present a health hazard). The saline extraction test which simulates mouthing action also resulted in very low levels of accessible lead requiring 5280 minutes (88 hours) of mouthing per day in order to present a health hazard. The bib with the highest saline extracted level would require more than 1330 minutes (22 hours) of mouthing a day in order to present a health hazard. The results from the acid extraction test which simulates ingestion of an object demonstrated a mean accessible lead of 14.8 μg lead which would require ingesting approximately a 25cm^2 piece of bib each day for 15 to 30 days in order to present a health hazard. Infants and toddlers are not likely to tear a new bib apart; therefore, it was CPSC staff's recommendation that worn bibs could present a hazard if the vinyl was falling apart and pieces were accessible to a child.

CPSC staff tested the New York Times' bibs for potential lead exposure which children might suffer through touching the bibs and then putting their hands in their mouths and from direct mouthing of the bibs. Based on the extremely low levels of lead found in our tests, children would have to touch the bib and then lick their hands more than 1420 times every day, for about 15-30 consecutive days, in order for the bib to present a health hazard. They would have to

mouth the bib for 29,500 minutes per day in order to present a health hazard, clearly not a possible scenario.

16. The July 2004 recall of 150 million pieces of children's jewelry from vending machines nationwide was, according to CPSC's recall notice, a recall of jewelry produced in India. Other lead-tainted jewelry has come from other countries in Asia, Latin America, and elsewhere. Is the jewelry problem best addressed by new agreements with China? How does the agency hold American retailers responsible for the safety of products they sell?

Since the major recall in July 2004, most later jewelry recalls have involved products from China. CPSC staff is currently developing a standard that, if approved by the Commission, would limit lead content in children's jewelry. Such a standard would strengthen our enforcement efforts and could become the foundation for additional agreements with China or other nations.

Under the Consumer Product Safety Act, retailers are obligated to report to the CPSC when they have information that a product fails to comply with an applicable consumer product safety rule, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. Retailers are also prohibited from selling any consumer product that is not in conformity with an applicable safety standard or which has been declared a banned hazardous substance. Retailers who violate these requirements are subject to penalties, and the agency has levied fines on numerous retailers in this regard.

Additionally, CPSC staff conducts surveillance of retail establishments and notifies major retailers of all CPSC recalls. To further strengthen the CPSC's hand, my legislative proposals provided to Congress earlier this year included provisions that would make it unlawful to knowingly sell a recalled product after the date of public announcement of the recall and would give the CPSC streamlined authority to impose civil penalties of up to $2 million administratively.

17. CPSC has stated that it is in the process of rulemaking for lead in metal children's jewelry. But tests have found high lead levels in vinyl jewelry and in coatings on faux pearls. Is CPSC also testing jewelry components other than metals that also can poison children? If yes, which other components and for the presence of which substances? If not, why not?

As part of its ongoing testing of children's jewelry, CPSC staff has focused on metal items because of the demonstrated hazards associated with lead content of some metal products, but the staff has obtained a number of jewelry items with components consisting of glass, crystal, plastics, and resins. Limited testing of these non-metal materials indicates that although some items contain measurable levels of lead, the accessibility of the lead, and thus the potential for hazardous exposures in children, is low. Accordingly, the CPSC is currently focusing its resources on the demonstrated hazard identified in children's metal jewelry.

18. CPSC has been working on its jewelry rulemaking for more than a year. Meanwhile, more than 100 jewelry producers and retailers have agreed to strict legal standards limiting lead in metal, vinyl and other jewelry materials, and California has adopted a comprehensive jewelry law based on these standards. Is the CPSC considering the adoption of the California levels? If not, why not?

The Commission is considering all available actions that could be taken to reduce the risks associated with children's metal jewelry containing lead. In accordance with section 3(f) of the Federal Hazardous Substances Act (FHSA) [15 U.S.C. 1262(f)], the Commission initiated a rulemaking proceeding by publishing an Advance Notice of Proposed Rulemaking (ANPR) on January 9, 2007 (72 FR 920), soliciting public comment on and information related to regulatory alternatives, economic considerations, and existing standards or standards in development. In accordance with section 3(g) of the FHSA [15 U.S.C. 1262(g)], the Commission could adopt an existing standard, such as the California law, in whole or in part, as a regulation.

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October 22, 2007

The Honorable Thomas H. Moore
Commissioner
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Commissioner Moore:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Wednesday, September 19, 2007, at the hearing entitled "Protecting Children from Lead-Tainted Imports." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions to you from Subcommittee Chairman Rush. In preparing your answers, please address your response to Mr. Rush and include the text of his question along with each of your responses.

To facilitate the printing of the hearing record, your responses to these questions should be received by no later than the close of business on **Friday, November 2, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-226-5577** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

Hearing:
"Protecting Children from Lead-Tainted Imports"
September 19, 2007
Questions and Responses for the Record

To Commissioner Thomas H. Moore:

QUESTIONS FOR THE RECORD FROM THE HONORABLE BOBBY L. RUSH

1. You have stated that you are concerned that the law allows U.S. companies to export products that are not compliant with U.S. safety standards. Please provide your recommendation for legislative reforms.

RESPONSE: I raised the issue of our export policy because I believe it is time to have a discussion about whether that policy still serves our national interest. Until this time, I have purposely refrained from suggesting any "fix" because I think there needs to be a broad reexamination of the role this country now plays in the world marketplace. If we want other countries to protect our consumers here in the U.S. through their export policies, then perhaps we should be more willing to protect their consumers through our own export policy. It has been twenty-five years since this was last debated and it is fitting that any discussion be in the Congress, as Congress established our current policy.

In response to your question I suggest the following language:

CPSA: Section 18

Strike section (a).

Change section (b) to read:

"(a) Not less than thirty days before any person exports to a foreign country any product—

(1) which is not in conformity with an applicable consumer product safety rule in effect under this Act, or

(2) is subject to an order issued under section 12 or 15 of this Act, or

(3) is subject to a corrective action undertaken by a manufacturer or a retailer pursuant to section 15 of this Act that does not already contain a non-export agreement"

[balance of section remains the same]

Add new subsection (b):

"(b) Notwithstanding any other provision of law, the Commission shall prohibit a person from exporting from the United States any consumer product that is subject to the notice requirement of subsection (a) of this section, except that the Commission may allow the exportation of products (1) made solely for export where the exporter affirmatively proves to the Commission that the product meets the published standards of the foreign country that would be receiving the product, (2) made solely for export where there is no published standard in the foreign receiving country governing the product but that country evidences a willingness to accept the product for importation, (3) where the violation of subsection (1) or (2) of subsection (a) of this section is such that it either did not or would not result in a consumer level recall of the product by the Commission in the United States, or (4) in such other circumstances as the Commission may determine do not pose a substantial risk of injury to persons residing either in the United States or in the foreign country to which the product would be sent."

FFA

Strike subsections (a) and (b) of section 15 and change "(c)" to "(a)."

Add the following to new subsection (a), after "in effect under this Act,": "or is subject to a corrective action undertaken by a manufacturer or a retailer pursuant to section 15 of the Consumer Product Safety Act that does not already contain a non-export agreement."

Add new subsection (b):

"(b) Notwithstanding any other provision of law, the Commission shall prohibit a person from exporting from the United States any fabric, related material, or product that is subject to the notice requirement of subsection (a) of this section, except that the Commission may allow the exportation of fabrics, related materials or products (1) made solely for export where the exporter affirmatively proves to the Commission that the fabric, related material or product meets the published standards of the foreign country that would be receiving it, (2) made solely for export where there is no published standard governing the fabric, related material or product in the foreign receiving country but that country evidences a willingness to receive the product for importation, (3) where the failure to conform to an applicable flammability standard or regulation in effect under this Act is such that it either did not or would not result in a consumer level recall of the fabric, related material or product by the Commission in the United States, or (4) in such other circumstances as the Commission may determine do not pose a substantial risk of

injury to persons residing either in the United States or in the foreign country receiving the fabric, related material or product."

FHSA

Add to subsection (d) of section 14, after "banned hazardous substance," the following: "or a substance that is subject to a corrective action undertaken by a manufacturer or a retailer pursuant to section 15 of the Consumer Product Safety Act that does not already contain a non-export agreement."

Add new subsection (e) to section 14:

"(e) Notwithstanding any other provision of law, the Commission shall prohibit a person from exporting from the United States any substance that is subject to the notice requirement of subsection (d) of this section, except that the Commission may allow the exportation of substances (1) made solely for export where the exporter affirmatively proves to the Commission that the substance meets the published standards of the foreign country that would be receiving the product, (2) made solely for export where there is no published standard governing the substance in the foreign receiving country but that country evidences a willingness to receive the substance for importation, (3) where the violation that results in a substance being misbranded or banned is such that it either did not or would not result in a consumer level recall of the substance by the Commission in the United States, or (4) in such other circumstances as the Commission may determine do not pose a substantial risk of injury to persons residing either in the United States or in the foreign country to which the substance would be sent."

These changes assume that section 15 will be amended to make clear that reports must be filed not just for products regulated under the CPSA but under all of our statutes.

2. Please explain in detail your concerns about the current export policy in CPSC's statutes, including what authority your agency lacks and what additional authority you would like your agency to have and why.

RESPONSE: I recognize that there are U.S. manufacturers who make products solely for export, which meet the established standards of the receiving country, but which do not comply with the comparable U.S. mandatory standards. If the exporter had to show us that their product met an established foreign standard then such trade would appear to be legitimate trade between willing and knowing trading partners. The current system, however, merely puts the foreign country on notice that they are receiving a product that may or may not meet their standards but which clearly violates ours and, even if the country objected to receiving the product, we have no authority to prevent the product's exportation.

There is currently no requirement in our statutes that companies notify us that they are exporting a recalled unregulated product--that is, a product recalled under our section 15

recall authority. The staff does now, on occasion, negotiate a non-export provision with a company as part of a recall of an unregulated product. Any change to our export policy should provide staff with the clear authority to deny the exportation of recalled unregulated products as part of that corrective action plan. I also support making the export provisions of the Flammable Fabrics Act (FFA) consistent with the export policy in our other statutes. Under the FFA, we cannot prohibit the exportation of a product that violates a flammability standard even if it has been circulated in domestic commerce (a power that we do at least have under our other statutes).

The current export policy was written in a different era when we were a major exporter. Now we are largely on the receiving end and our consumers do not know who to trust anymore when they are buying a product. Changing our policy to one that allows us to prohibit the exportation of a product that we would not sell to our own citizens puts us in a better position to be able to more successfully demand that products coming into our country from abroad meet our own safety standards.

3. What role do you currently play in planning and approving the agency's annual budget requests?

RESPONSE: Our annual budget, as you know, is based on a dollar amount allocated to the agency each year by the Office of Management and Budget, an amount which is then incorporated into the President's budget. That figure can differ significantly from what the Commission approved in its submission to OMB as to what the agency will need to meet expected operating costs (which increase every year), any additional requirements imposed upon the Commission by the legislative or executive branches and additional amounts that the agency might request for new or on-going research or to take on new projects. Certainly in the last three years, when it has been made clear to us before we even submitted our budget to OMB, that we could expect little or no increase (not even enough to cover our increased operating costs), the development and approval of that budget submission (kept hidden from Congress and the public) has been done with some degree of resignation that it will not be fully funded. Once we have gotten our passback from OMB, our staff's task has largely been to figure out what we can cut out of the original submission and by how by many full time equivalents we must reduce our staffing levels to operate under the President's budget. Certainly my office has a role to play in this process, but the process has been so circumscribed by our budget constraints, that there is little we can say in the budget document that we submit to Congress as part of the President's budget other than to discuss, to the extent a majority of the Commission is willing to do it, what important items have not been funded and how many staff we will have to lose.

The Chairman's office, through the Executive Director, directs and shapes the budget document before my office ever sees it (this is not unique to any particular Chairman, but has been deemed part of the Chairman's administrative functions). Thus my office works from a document that is largely complete, except for some early input as to the total amount to be requested. I do get to vote on the budget documents and, most importantly,

on the operating plan each year, which is based on the actual amount appropriated. With only two Commissioners, the option to not approve the budget (whether I like it or not) is not a particularly helpful one and I have voted to approve the budget submissions to Congress. I have also made it clear in my written testimony to Congress that the amounts requested in the President's budget were insufficient.

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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

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October 23, 2007

Mr. Robert A. Eckert
Chairman and CEO
Mattel Inc.
333 Continental Blvd.
El Segundo, CA 90245-5012

Dear Mr. Eckert:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Wednesday, September 19, 2007, at the hearing entitled "Protecting Children from Lead-Tainted Imports." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions for you from Subcommittee Chairman Rush and me. We would appreciate your response to these questions. In preparing your answers, please address your response to the Member who submitted the questions and include the text of the Member's question along with your response. Please begin the responses to each Member on a new page.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Tuesday, October 30, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-226-5577** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Mr. Robert A. Eckert
Page 2

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

Bob Normile
Senior Vice President
General Counsel & Secretary

November 2, 2007

Honorable John D. Dingell, Chairman
U.S. House of Representatives
Committee On Energy and Commerce
Washington, D.C. 20515-6115

Re: Mattel Inc.'s Responses To The October 23, 2007 Questions Of The Subcommittee On Commerce, Trade, And Consumer Protection, Committee On Energy And Commerce, U.S. House of Representatives.

Dear Chairman Dingell:

Mattel Inc. appreciates this opportunity to respond to the October 23, 2007 questions posed by you and Subcommittee Chairman Rush. The company hopes that its responses will advance our shared objective of improving the safety of toys and other children's products.

Responses To Questions Posed By The Honorable John D. Dingell

1. **The Committee understands that Mattel has initiated an investigation of the source of the lead paint in the products that it recalled this past summer. Was that investigation ordered by Mattel's board of directors? Will Mattel's board of directors and shareholders receive a copy of the report's findings? If so, please provide a copy of the report to this Committee.**

The investigation into the source of the lead paint was initiated by Mattel Asia-Pacific Sourcing ("MAPS") management, in consultation with Product Integrity personnel, in order to determine as quickly as possible the source of the non-compliant paint that was used, the dates it was used, and the portions of toys to which it had been applied. This information was essential so that Mattel could identify which toys were subject to recall, notify the CPSC, and implement the recall. Mattel's Board of Directors was apprised early on of this investigation and has been updated on its progress and results. Although there was no formal written report, the results of the investigation into the source of lead paint on the recalled products are detailed in Mattel's letter dated September 5, 2007 to Chairman Rush and Congressman Stearns, and in the written testimony of Robert Eckert before the Subcommittee on Commerce, Trade and Consumer Protection.

333 CONTINENTAL BOULEVARD EL SEGUNDO, CALIFORNIA 90245
tel 310-252-3615 fax 310-252-2567/4991

2. **Has Mattel terminated its contracts with the vendors whose subcontractors used lead-tainted paint? (For reference, these vendors include Lee Der, Early Light Industrial Company, Ltd., Holder, Apex, Shun On Toys Co., Ltd., and Wo Fong.) If the contracts with these vendors have not been terminated, please indicate why.**

Mattel ended its business relationship with Lee Der and is ending its business relationship with Shun On Toys Co., Ltd. Mattel has also prohibited its vendors from engaging any of the subcontractors involved in the recent lead-related recalls to work for vendors on Mattel's products. Mattel has not ended its business relationship with the remaining three vendors because Mattel concluded, after investigation, that they had the commitment and the capacity to comply with the enhanced product integrity program requirements that Mattel announced in August 2007.

3. **How many quality inspectors does Mattel directly employ in China at this time? After this summer's recalls of lead-tainted toys, does Mattel plan to employ full-time quality control personnel in the production facilities of its Chinese vendors?**

Mattel employs about 55 full-time quality control inspectors who conduct inspections and audits of vendor facilities that produce toys for Mattel in China. In addition, Mattel employs 10 on-site compliance supervisors and has 50 full-time contract quality control personnel who are present every work day in the production facilities of Mattel's 37 principal vendors in China. In all, the company has approximately 1,500 product integrity employees in Asia. Since August 1, Mattel has conducted unannounced inspections and audits of every major vendor and their subcontractors in China that produce toys for Mattel.

4. **Please provide an accounting, to date, of each recalled product. How many were returned by consumers to retailers, and how many were returned by consumers to Mattel? What has Mattel done, or what will it do, with the returned recalled products (including those that have non-compliant levels of lead in their paint)? If the products are destroyed, what methods will Mattel use to accomplish this? Where does the destruction of these products take place? Is the destruction carried out in such a manner as to minimize harmful effects to the environment? Finally, what steps has Mattel taken to ensure the products that were recalled or will recall in the future, are not re-introduced into commerce, either domestic or foreign.**

   a. **Initial returns from consumers.**

As of October 24, 2007, the number of mailing labels shipped and returns received from consumers alone, excluding retailers, of toys subject to the various recalls were:

Products	Mailing Labels Sent	Products Returned and Processed[1]
August 2, 2007 Recall of Certain Fisher Price Toys	245,114	17,233
August 14, 2007 Recall of the "Sarge" Car	32,524	7,561
August 14, 2007 Recall of Certain Toys with Magnets Attached to Plastic.	172,323	20,463
September 4, 2007 Recall of Certain Barbie accessories, Geo Trax, and 6-in-1 Bongos	90,658	659

b. Disposal

Mattel is committed to the safe and proper disposal of all components of the recalled toys. Mattel currently is retaining toys returned in the United States pursuant to the recalls, in part because of pending litigation. Once the company determines that it need not retain the returned toys any longer, they will be destroyed so that they cannot be re-introduced into commerce as toys.

Different components of the returned toys may be disposed of differently. The company will seek to recycle portions of the toys that can appropriately be recycled. These may include batteries, wiring, and other electrical components. Metal and plastic parts of the toys can be shredded or otherwise obliterated and may also be recycled.

To the extent that portions of the recalled toys are not recycled, they will be disposed of in a manner that is consistent with applicable environmental and other requirements. The ultimate disposal of these components has yet to be finally resolved.

5. Have the terms of your contracts with licensors, such as Nickelodeon and Sesame Workshop, changed since this summer's recalls to include new requirements concerning quality assurance and safety inspections? If so, please provide copies of these contracts and explain how they have been modified from prior agreements.

Mattel's contracts with licensors have not expired or been subject to renegotiation since the recalls. Nevertheless, Mattel's enhanced safety procedures are being applied in the manufacturing of licensed products.

[1] As of October 24, 2007, approximately 66% of the returns received had been processed.

Responses To Questions Posed By The Honorable Bobby L. Rush

1. **We understand that the European Union has a different and lower level for the trace amount of lead permitted in children's products. When Mattel sells the same toy (*e.g.*, "Sarge") in both the U.S. and the European markets, how does it deal with the different standards?**

Mattel generally designs its products to comply with the most stringent standards that apply anywhere in the world where its products are sold. The U.S. standard for lead in paint is 600 parts per million, or 0.06%, total lead. The E.U. standard for lead in paint is 90 parts per million, or 0.009%, soluble lead. The E.U. standard employs a different test method and, unlike the U.S. standard, is designed to simulate potential exposure. In Mattel's recent lead-related recalls, toys were recalled in both the U.S. and E.U. if a portion of the paint on a toy failed to comply with either lead standard.

2. **Please provide detailed, updated information on all five lead-related recalls that Mattel (and its subsidiary Fisher-Price) conducted in August and September of 2007.**

   - **Please provide specific information detailing the exact amounts of lead discovered in each of the recalled toys and products.**

The August 2, 2007 recall of certain Fisher-Price toys included all toys produced by Lee Der during the period after Lee Der purchased non-conforming paint that might have been applied to the recalled toys. Subsequent testing showed that samples of 18 of the recalled Stock Keeping Units ("SKUs") complied with the applicable standard for lead in paint. Of the remaining recalled SKUs, the total lead concentration of the non-conforming paint in the samples tested by Mattel averaged about 0.81 %.

As to the "Sarge" car that was recalled on August 14, 2007, the green roof of the recalled "Sarge" cars had lead in paint in excess of the applicable standard. Mattel's testing of samples of the recalled cars showed that the average total lead concentration of the non-conforming green paint on the roof of the recalled "Sarge" cars was about 0.75%.

As to the certain Barbie accessories that were recalled on September 4, 2007, samples of three out of the seven SKUs subsequently tested by Mattel were in compliance with the applicable lead standard. For the other four SKUs, Mattel's testing showed that many date codes complied with the applicable lead standard. Samples from those that did not comply had an average total lead concentration of about 0.23%.

As to the Geo Trax vehicle recalled on September 4, 2007, the yellow paint on the headlights and ladder of some of the recalled vehicles was non-compliant. Because compliant and non-compliant parts had been mixed in inventory, Mattel recalled all production of the toy that might have had non-compliant paint. Mattel's subsequent testing of samples of the Geo Trax vehicle showed that, for the toys that had non-compliant yellow paint on the headlights and ladder, the average total lead concentration of that paint was about 0.29%.

Finally, as to the 6-in-1 Bongos recalled on September 4, 2007, the paint on the bear claw stamped to the underside of one of the plastic drum skins had non-compliant paint. Mattel's testing of samples of the 6-in-1 Bongos showed that the non-compliant paint on the underside of the plastic drum skin had an average total lead concentration of about 7.49%.

- **In the September 5, 2007, letter from Mattel to the Committee you stated that "Mattel does not, at present, have counts of all of the returned toys from consumers." Please update the Committee by providing details that Mattel has since ascertained regarding the consumer response to the recall after the announcement, including how many toys have been returned for replacement.**

See response to question 4 from the Honorable John D. Dingell, above.

- **Is the disposition of toys that are recalled in the U.S. by Mattel different than the disposition of toys recalled in Europe? If so, how and why?**

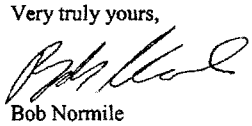
Mattel anticipates that the ultimate disposition of toys subject to the lead-related recalls in Europe and U.S. generally will be the same. As discussed above, the recalled toys will be destroyed so that they can no longer be used as toys. Mattel will recycle parts of the toys and will dispose of those portions of the toys that are not recycled in accordance with applicable environmental laws and regulations.

There may be minor variations in the actual disposition of some portions of the toys in the U.S. and E.U. due to differences in the applicable laws and regulations. There is also a difference in the timing of the disposal of these recalled toys. Mattel is storing returned toys subject to the lead-related recalls in the U.S. because of pending litigation.

3. **During the hearing, you stated that the *Wall Street Journal* did not accurately report your views on Government requirements for reporting product defects to the CPSC or for conducting recall activities. Please provide us with what you actually said to the reporter?**

Mattel does not have a verbatim record of what was said during the *Wall Street Journal* interview. Mattel's CEO was attempting to communicate to the *Wall Street Journal* reporter a very specific point, namely that the existing standard for when a company must make a report to the CPSC is, as CPSC Acting Chairman Nord testified before this Committee in June 2007, a "judgment call" based on a "very broad and somewhat imprecise" standard. Mattel supports efforts to clarify reporting standards, and has been working proactively with the CPSC, starting well before last summer's recalls, to put in place a new automated reporting system that will eliminate disputes over the timeliness of reporting.

Very truly yours,



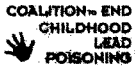
Bob Normile

BN/mec

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection.



Ruth Ann Norton
Executive Director

September 28, 2007

The Honorable Bobby L. Rush, Chair
Sub-Committee on Commerce, Trade and Consumer Protection
U.S. House of Representatives
Capitol Hill
2125 Rayburn House Office Building
Washington, DC 20515

Dear Representative Rush:

Thank you for the opportunity to submit comments on the issue of Lead Poisoning in children's products. As Executive Director of the Coalition to End Childhood Lead Poisoning, I have worked for the past fourteen years toward the goal of eradicating lead poisoning by reducing exposure to lead hazards of all kinds. Lead poisoning is considered the number one environmental health hazard for children, but is 100% preventable. It has been said that an ounce of prevention is worth a pound of cure. In the case of lead poisoning, prevention has been estimated to be worth $32 billion returned to society in lost earnings for every generation of children 0-6 years of age.

Before us lies an opportunity to control and reduce lead dangers in children's products. I urge the Committee to consider a variety of ways that will contribute towards the goal of children's safety and protections including:

- Providing additional resources to the Consumer Product Safety Commission (CPSC). As previous testimony has conveyed, only one CPSC staff member is assigned to test toys. Further, ongoing vacancies at the Commissioner level mean a quorum can never be reached and that the Commission itself cannot act. It is imperative that the Commission be adequately staffed and enabled to carry out its mission.
- International trade agreements must be reached to mandate that overseas companies exporting goods to us must adhere to minimum U.S. safety standards, and third party U.S. inspectors be allowed into factories for quality assurance.
- Congress should also work to empower state and local governments to take proactive and corrective action on consumer goods that pose a health risk in their jurisdictions. Intergovernmental agreements should be reached to enable preventive action on all levels.

2714 Hudson Street 800.370.LEAD www.leadsafe.org Baltimore, Maryland 21224 Fax 410.534.6475

The Coalition's vision is to end childhood lead poisoning and promote healthy homes so that every child has the opportunity to reach his or her full potential. I thank you for the opportunity to share these recommendations and for your partnership and strong action towards our mutual mission of child safety and consumer protection.

Sincerely,

Ruth Ann Norton
Executive Director

PROTECTING CHILDREN FROM LEAD-TAINTED IMPORTS

THURSDAY, SEPTEMBER 20, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2123 of the Rayburn House Office Building, Hon. Bobby L. Rush (chairman) presiding.

Members present: Representatives Schakowsky, Gonzalez, Hooley, Matheson, Stearns, Pitts and Burgess.

Staff present: Judith Bailey, Consuela Washington, Christian field, Andrew Woelfling; Valerie Baron, Will Carty, Shannon Weinberg, Brian McCullough, and Chad Grant.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. The subcommittee hearing will come to order.

We want to thank our witnesses for appearing before us today on this second panel for this hearing subject titled "Protecting Children from Lead-Tainted Imports." I want to take a moment to welcome again our witnesses and to invite them to come to the witness table. Our witnesses are for this second panel Dana Best, who is a fellow at the American Academy of Pediatrics. Dr. Best is on the faculty of George Washington University School of Medicine and attends pediatrics at Children's National Medical Center in Washington, DC, Dr. Best, please join us at the table. Thank you so very much for being here.

Our next witness will be Ms. Olivia D. Farrow. She is the assistant commissioner of the Division of Environmental Health for the city of Baltimore. Ms. Farrow was instrumental in drafting regulations banning lead in children's jewelry in Baltimore. Welcome, Ms. Farrow.

The third witness is Mr. Michael Green. He is the executive director for the Center for Environmental Health in Oakland, California. The Center is a nonprofit organization that promotes alternatives to toxic chemicals commonly used by children and parents. Welcome, Mr. Green.

Our next witness on the panel is Ms. Mary Teagarden of Global Strategy, Thunderbird School of Global Management in Glendale, Arizona. Professor Teagarden has expertise in the area of strategic

management of technology and innovation and strategic human resource management. Welcome, Ms. Teagarden.

And our final witness for today is Ms. Lori Wallach. She is the director of Global Trade Watch located here in Washington, DC Global Trade Watch is a division of Public Citizen and focuses on issues surrounding globalization including jobs, wages, the environment, public health, safety, social justice and democratic accountability. That is a tall order, but thank you and welcome to the hearing.

I will ask the witnesses if they have opening statements, please take up the 5 minutes, no more than 5 minutes for your opening statement, and we will begin from my left, your right, with our first witness, Dr. Best.

STATEMENT OF DANA BEST, M.D., M.P.H., AMERICAN ACADEMY OF PEDIATRICS

Dr. BEST. Good morning. My name is Dr. Dana Best and I am proud to represent the American Academy of Pediatrics at this important hearing on lead in children's products.

Because of its widespread use, lead has been concentrated in our environment where it poses a serious threat to children's health. Lead cannot be identified easily even when present at high levels in paint, dust or dirt, meaning that children can be exposed without our knowledge. It is an invisible poison.

Damage done by small amounts of lead may be hard to measure and even harder to understand. Most children who accumulate lead in their bodies do not have physical symptoms. Instead, they suffer a wide array of negative effects including cognitive, mood or behavioral and physical harm.

There is no safe level of lead exposure. The vulnerability of children to lead poisoning during development of their brain and nervous system has been amply demonstrated and the literature is very consistent. On average, children whose blood lead levels rise from 10 to 20 microgram per deciliter lose 2 to 3 IQ points. More recent studies have shown an even greater impact on IQ of blood lead levels under 10 micrograms per deciliter, a loss of 4 to 7 IQ points at that level. Furthermore, the effects of lead do not stop once the children's brain and nervous system mature or the blood lead level falls.

Another important effect of lead exposure is on behavior with higher rates of behavioral problems reported in teens and adults exposed to lead during child during childhood. Children with elevated lead levels are more likely to have problems with attention deficit and reading disabilities and to fail to graduate from high school. Investigators have identified associations between lead exposure and increased aggression, commission of crime and antisocial or delinquent behaviors. Studies have suggested that several nations that began reducing lead exposure aggressively in the 1970s experienced corresponding decreases in crime two to three decades later. Other effects include abnormal balance, poor eye-hand coordination, longer reaction times and sleep disturbances.

Lead is easily absorbed by ingestion or inhalation. The most common route of exposure of children is through ingestion, usually by putting their hands or other objects in their mouth. Studies using

video to record hand in mouth or object in mouth behaviors recorded 20 or more activities an hour—20 or more times an hour that a child puts their hand or an object in their mouth. If the dirt on their hands or the dust on the floor contains lead, every one of those activities delivers a dose. Since children absorb 5 to 50—that is five-zero—percent of any lead that they ingest compared to adults who only absorb 5 to 15 percent, they are at high risk of lead poisoning every single time they are exposed.

Once lead enters the body, it remains there for years. Lead is similar to calcium from the elemental perspective. This means that our bodies "see" lead as calcium, absorb it into our blood as if it were calcium, and then store it in our bone as if it were calcium. These stores of lead can be released years later when bone changes occur or demand on calcium stores are made.

In recent years, parents have found a new source of anxiety regarding lead exposure: children's toys and other products, particularly those imported from China. Since July 2006, the Consumer Product Safety Commission has issued at least 11 recalls affecting more than 6.7 units of children's jewelry due to lead content. Since 1998, CPSC has issued at least 29 recalls involving 157,962,000 pieces of toy jewelry due to high lead levels. Other products recalled because of lead contamination include game pieces, sidewalk chalk and art kits. Consumers are acutely aware of recent recalls of popular toys that contain lead paint, including Thomas the Tank, Barbie, and Dora the Explorer. The risk of harm to children from these toys is real. In 2006, a 4-year-old Minnesota boy died after ingesting a small shoe charm that was later found to be 99 percent lead.

Mr. RUSH. Dr. Best, your time is up. Would you please conclude your testimony?

Dr. BEST. In conclusion, the charm he ingested dissolved in his stomach, releasing the lead into his bloodstream. To protect the health of our Nation's children, non-essential uses of lead, particularly in products to which children may be exposed, must be prohibited. The American Academy of Pediatrics recommends the following: (1) The CPSC should require all products intended for use by or in connection with children contain no more than trace amounts of lead. (2) The Academy recommends trace amounts of lead be no more than 40 parts per million, which is the upper range of lead in uncontaminated soil. This standard would recognize that contamination with minute amounts of environmental lead may occur but can be minimized through good manufacturing practices. (3) Children's products should be defined in such a way as to ensure it will cover the wide range of products used by or for children. This standard should cover toys intended for use by or with children under the age of 12 years.

Mr. RUSH. Thank you.

Dr. BEST. Four: The limit on lead contact must apply to all components of the item or jewelry and other small parts that could be swallowed, not just the surface. Legislation or regulations should limit the overall lead content of an item rather than only limiting the lead content of its components.

Mr. RUSH. I must apologize, Dr. Best, but we have to hear testimony from the others. Would you please have one concluding statement, please?

Dr. BEST. It is important to note that while limiting lead is an important aspect of guaranteeing the safety of children's products, numerous other aspects of this issue should be considered.

Mr. RUSH. Thank you.

Dr. BEST. There are no known safe levels of lead.

[The prepared statement of Dr. Best follows:]

TESTIMONY OF DANA BEST, MD, MPH, FAAP ON BEHALF OF THE AMERICAN ACADEMY OF PEDIATRICS

ENERGY AND COMMERCE SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

"Protecting Children from Lead-Tainted Imports"

September 20, 2007

Department of Federal Affairs
The Homer Building
601 Thirteenth Street, N.W.
Suite 400 North
Washington, D.C. 20005
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Good morning. Thank you for the opportunity to testify today before the Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection at this hearing, "Protecting Children from Lead-Tainted Imports." My name is Dana Best, MD, MPH, FAAP, and I am proud to represent the American Academy of Pediatrics (AAP), a non-profit professional organization of 60,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults. I am an Assistant Professor of Pediatrics at George Washington University School of Medicine and an attending physician at Children's National Medical Center in Washington, D.C. I also serve on the AAP's Committee on Environmental Health, which is the primary body within the AAP that handles lead issues.

Lead is Ubiquitous in Our Environment.

Lead is a soft, heavy and malleable metal that occurs naturally in trace amounts throughout the environment. Due to its abundance and easy workability, it has been used for thousands of years in plumbing, production of glass and crystal, and manufacture of ammunition.[1] Its toxicity was recognized by the Romans[2] and documented during the twentieth century, as its increasingly widespread use led to unprecedented levels of occupational and environmental lead poisoning.[3] By 1970, science had demonstrated conclusively that lead could cause both acute poisoning as well as a wide range of long-term human health consequences.[3, 4] Since then, hundreds of studies have shown that the body has no use for lead, and that a "normal" blood lead level is zero.

Because of its widespread use, lead has been concentrated in the environment where it poses a serious threat to children's health. Furthermore, because it cannot be identified easily, even when present in high amounts in paint, dust, or dirt, children can be exposed in their homes and schools and at play without our knowledge. It is an "invisible" poison.

Low Levels of Lead Can Cause Serious Effects

Damage done by small amounts of lead may be hard to measure and even harder to understand. Most children who accumulate lead in their body do not have any physical symptoms, but low lead levels cause a wide array of negative effects, including cognitive, motor, behavioral, and physical harm.[5]

There is no "safe" level of lead exposure. The developing embryo, fetus, and child grow and change rapidly. If, during this period of change, the fetus or child is exposed to a poison of some kind, development can be impacted negatively. These "critical windows of exposure" are specific periods of development during which the embryo or fetus is undergoing some process (such as the development of arms and legs between days 22 and 36 of pregnancy, when thalidomide damages their development.[6, 7]) There are many other examples of this effect, including tobacco smoke and behavioral effects, and alcohol and fetal alcohol syndrome. The critical period associated with harm from lead poisoning is brain and nervous system development, which begins in early pregnancy and continues until at least age 3 years.[8]

The vulnerability of children to lead poisoning during development of their brain and nervous system has been amply demonstrated, and the literature is very consistent. On average,

children whose blood lead levels (BLLs) rise from 10 to 20 mcg/dL lose two to three IQ points. More recent studies have shown an even greater impact on IQ of BLLs under 10 mcg/dL. Key studies reported a loss of 4 to 7 IQ points in children whose lead levels rose from 1 mcg/dL to 10 mcg/dL.[9, 10] These studies suggest that "low" levels of exposure – meaning BLLs less than 10 mcg/dL – cause proportionately greater harm than higher levels. The effects of lead on health do not stop once the child's brain and nervous system mature or the BLL falls. A recent study found that in a group of 7-year old children exposed to lead before the age of 3 years, IQ continued to fall, even after the BLL had declined.[11]

Another important lasting effect of lead exposure is on behavior, with higher rates of behavioral problems reported in teens and adults exposed to lead during childhood. Children with elevated lead are more likely to have problems with attention deficit, reading disabilities, and to fail to graduate from high school.[12] Investigators have identified associations between lead exposure and increased aggression, commission of crime and antisocial or delinquent behaviors.[13-16] Studies have suggested that several nations which began reducing lead exposure aggressively in the 1970s experienced corresponding decreases in crime rates two to three decades later.[16] Other effects include abnormal balance, poor eye-hand coordination, longer reaction times, and sleep disturbances.[12, 17, 18]

The loss of a few IQ points or a small increase in the proportion of children with behavioral problems in the population of U.S. children has marked impacts on educational needs and future potential.[19] Since lead exposure is a population-wide risk, even relatively low levels of exposure

can affect large numbers of children. This means that more children need special education, there are fewer gifted children, and over time, the average IQ of the entire population falls.[19]

Lead Poses a Serious Health Hazard to Children At Every Level of Exposure and Every Stage of Development

Lead is easily absorbed by ingestion or inhalation. The most common route of exposure of children is through ingestion, usually by putting hands and other objects in their mouth. Both hand-to-mouth exploration and playing on floors are typical behaviors for children, especially younger children. Studies using videos to record oral behaviors of young children report hand or object in mouth activities 20 or more times per hour.[20, 21] If the dirt on their hands or the dust on the floor contains lead, every one of those activities delivers a dose of lead.

Another significant difference between children and adults is in the rate of their metabolisms. Children have significantly faster metabolisms, which means that they breathe faster and ingest proportionately more food and water.[22] This difference means that in similar environments, children are exposed to a greater extent to contaminants than adults. Since children absorb 5 to 50% of any lead they ingest (compared to adults, who absorb 10-15%),[23] they are at high risk of lead poisoning every time they are exposed.

Once lead enters the body it remains there for years. Lead is similar to calcium from the elemental perspective. This means that our bodies "see" lead as calcium, absorb it into blood and then store it in bone. These stores of lead can be released years later, when bone changes occur or demands on calcium stores are made.[24] Another consequence of storing lead in bone is

that exposures separated by months or years have an additive effect on the body's burden of lead and can exert effects over decades. Acquisition of lead in the body even in small amounts (i.e., amounts that result in BLLs less than 10 mcg/dL) contribute to this accumulation of lead. This means that commonly encountered blood lead concentrations have lasting negative effects.

Another consequence of this accumulation of lead in bone is the exposure of the fetus to lead by the mothers. Women exposed to lead during childhood may have significant stores of lead in their bones. If they do not consume adequate calcium during pregnancy, their bones release calcium as the fetus grows. As the calcium is released, lead is released as well. This lead can be transferred to the fetus – exposing the fetus' developing brain and nervous system at a critical time. Fetal exposure from this route has been demonstrated to cause measurable decreases in IQ.[25]

Sources of Children's Exposure to Lead

The most common source of lead exposure today is lead paint, found in older housing stock. As paint wears off, it contaminates the dust that clings to surfaces, toys and the fingers of children. Other sources of lead exposure include contaminated soil, traditional or folk medicines, and certain types of dishes. In recent years, however, parents have found a new source of anxiety regarding lead exposure: children's toys and other products, particularly those imported from China.

These concerns are justified. Since July 2006, the CPSC has issued at least 11 recalls affecting more than 6.7 million units of children's toy jewelry due to excessive lead content.

Since 1998, CPSC has issued at least 29 recalls involving 157,962,000 pieces of toy jewelry due to high lead levels. Other products recalled during that time due to lead contamination include game pieces, candles, sidewalk chalk, and art kits. Consumers are acutely aware of recent recalls of popular toys found to contain lead paint, including Thomas the Tank Engine, Mattel's Barbie, and Fisher-Price's Dora the Explorer toys. The risk of harm to children from these toys is real: in 2006, a 4-year-old Minnesota boy died after ingesting a small Reebok shoe charm that was later found to be 99.1% lead.[26] The charm he ingested dissolved in his stomach, releasing the lead into his bloodstream.

Lead Must Be Removed from Toys and Other Children's Products

The American Academy of Pediatrics has consistently urged the Consumer Product Safety Commission (CPSC), the Environmental Protection Agency (EPA), and other agencies to take aggressive, proactive steps to minimize children's exposure to lead. The addition of lead to jewelry or toys is not in any way central or even necessary to the function or purpose of the product. For example, manufacturers add lead to jewelry to give it more weight or heft, rather than using a more expensive but safer metal. None of these factors represent a compelling rationale for including a poisonous substance in a product specifically designed for use by children.

The range of products covered by a ban on lead content must also be considered carefully. "Children's product" must be defined broadly enough to cover the full range of items capable of causing a serious hazards – not just toys or "toy" jewelry but also durable products such as furniture (cribs, strollers, high chairs, etc.) and products meant for the care of children (bath

seats, gates, etc.). One of the first pediatric deaths attributed to lead paint was a child who chewed on the railing of his crib – in 1913.[4]

Finally, legislation should cover products meant or designed for use by or with children at least up through the age of 12. Children are susceptible to neurological damage from lead exposure throughout the development of their brain and nervous system. Their long "shelf life," or the period of time over which they can be exposed to and accumulate lead in their bodies, means that every exposure should be eliminated or minimized to prevent future harms. Finally, toys meant for older children often find their way into the hands of younger siblings and other small children, posing a hazard to these children outside the object's target audience.

Federal Lead Standards

Federal agencies use a variety of standards for unacceptable lead content. This issue is complicated by the fact that lead uptake varies depending upon the route of exposure (ingestion, inhalation, skin contact, etc.) In considering existing guidelines, it is critical to bear in mind that many were set before research demonstrated the harmful effects of lead at low levels. There is no known safe level of lead exposure; as a result, exposure to lead below these levels should not be considered "safe."

- In 1978, the Consumer Product Safety Commission banned the manufacture of paint containing more than 0.06% lead by weight on interior and exterior residential surfaces, toys, and furniture.
- Based on that standard for lead paint, the CPSC's current voluntary standard prohibits toy jewelry to contain more than 0.06% lead by weight. The standard further requires

manufacturers to test for the "accessibility" of lead, although surface accessibility may be irrelevant if an item is small enough to be ingested.

- The EPA requires water provided by public utilities to contain no more than 15 parts per billion of lead. The 1986 Safe Drinking Water Act Amendments banned the use of lead in public drinking water distribution systems and limited the lead content of brass used for plumbing to 8%.
- The EPA set guidelines for lead contamination of dust, limiting levels called "safe" to below 40 mcg/ft^2 for floors.[27] It is important to note that this is not a health-based standard; an estimated 20% of children exposed to floor dust lead levels at 40 mcg/ft^2 will have a blood lead level above 10 mcg/dL.[28]
- In response to reports of lead contamination in candies likely to be consumed frequently by small children, the Food and Drug Administration (FDA) set a maximum lead level of 0.1 parts per million (ppm). FDA has set different levels for other products; for example, dairy product solids may contain lead at no more than 0.5 ppm.[29]
- The FDA recommends a limit on children's lead intake in food to no more than 6 mcg/day. It is important to note that this is not a health-based standard; this limit is roughly equivalent to the amount of lead that would be expected to lower IQ by 1 point.
- FDA regulates lead content in cosmetics; for example, the colorant manganese violet may contain lead at no more than 20 ppm.[30]
- Airborne lead is regulated by EPA as a "criteria pollutant" under the Clean Air Act. The National Ambient Air Quality Standard for lead is 1.5 mcg/m^3, maximum arithmetic mean averaged over a calendar quarter.

- Both the National Institute for Occupational Safety and Health and the Occupational Safety and Health Administration set permissible limits for lead exposure in the workplace, but these guidelines are designed for adults and not appropriate for children.

Recommendations

To protect the health of our nation's children, nonessential uses of lead, particularly in products to which children may be exposed, must be prohibited. The American Academy of Pediatrics recommends the following:

- The CPSC should require all products intended for use by or in connection with children to contain no more than trace amounts of lead.
- The Academy recommends defining a "trace" amount of lead as no more than 40 ppm, which is the upper range of lead in uncontaminated soil.[31] This standard would recognize that contamination with minute amounts of lead in the environment may occur but can be minimized through good manufacturing practices.
- "Children's product" should be defined in such a way as to ensure it will cover the wide range of products used by or for children. This standard should cover toys intended for use by or with children under the age of 12 years.
- The limit on lead content must apply to <u>all</u> components of the item or jewelry or other small parts that could be swallowed, not just the surface covering.
- Legislation or regulations should limit the overall lead content of an item, rather than only limiting lead content of its components. A single product may contain numerous component that could cumulatively contain a dangerous level of lead.

Finally, it is important to note that, while limiting lead is an important aspect of guaranteeing the safety of children's products, numerous other aspects of this issue should also be considered. Other key children's product safety issues including choking hazards, flammability, dangerous magnets, and safe product design.

Conclusion

There is no known "safe" level of lead for children.[32, 33] No study has determined a blood lead level that does not impair child cognition. Since any measurable lead level causes lasting harm, prevention of exposure is the only treatment.[34] Lead exposure is an important, unnecessary, and preventable poisoning.

The American Academy of Pediatrics commends you, Mr. Chairman, for convening this hearing to examine the pernicious threat to children's health posed by lead. I appreciate this opportunity to testify, and I look forward to answering any questions you may have.

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Mr. RUSH. Thank you so very much. I apologize but we must move on.

Ms. Farrow, please.

STATEMENT OF OLIVIA D. FARROW, ASSISTANT COMMISSIONER, DIVISION OF ENVIRONMENTAL HEALTH, BALTIMORE CITY HEALTH DEPARTMENT

Ms. FARROW. Good morning, Mr. Chairman.

Mr. RUSH. Before you begin, I just want to let all the witnesses know that all your written statements will be for the record. Your entire written statement will be in the record, so I want to remind you of that. Thank you so much. Please begin.

Ms. FARROW. Good morning, Mr. Chairman, Ranking Member Stearns and members of the committee. On behalf of the Baltimore City Health Department, I would like to thank you for this opportunity to testify on the need for stricter Federal regulations to reduce exposure to lead hazards from lead-tainted imports. My name is Olivia Farrow and I am the assistant commissioner for environmental health for the Baltimore City Health Department.

Lead poisoning is the most common environmental hazard facing American children today. It is also one of the most preventable. Children are frequently exposed to lead by ingesting lead dust from deteriorating lead-based paint, exposure from lead in soil, drinking water or lead-tainted consumer products such as food and jewelry. While lead poisoning can affect children across socioeconomic spectrum, we have found that often exposure is concentrated in low-income urban areas. In March 2006, a 4-year-old child in Minneapolis died from lead intoxication after swallowing a piece of children's jewelry that was sold with a new a pair of shoes.

In response to this tragic event, the Baltimore City Health Department began testing samples of children's jewelry sold within its jurisdiction. Our tests found excessive levels of lead in children's jewelry in Baltimore. The products were being sold in stores that operate throughout the country including Clair's and Wal-Mart. To respond under the authority of the Commissioner of Health, the Baltimore City Health Department proposed and then promulgated regulations on children's jewelry on December 7, 2006. The city regulation requires that the Health Department collect monthly samples of children's jewelry and test for lead content. In order to give city retailers an opportunity to come into compliance, the regulation initially banned children's jewelry containing more than 1,200 parts per million. Effective September 1, 2007, we further reduced the acceptable level of lead, banning all children's jewelry with metal components containing in excess of 600 parts per million. Once a product is found to contain an excessive amount of lead, a violation notice is issued. The notice declares all items of the same style and from the same manufacturer to be a nuisance and orders the retailer to stop sale within 24 hours. An owner can be charged with multiple misdemeanor offenses and fined should he or she fail to comply with the notice.

The city began the mandatory monthly testing of children's jewelry in February of this year. Out of the 7 months we have tested, we have found excessive lead levels in 4 of those months. Our testing has revealed that the majority of the products found with ex-

cessive levels of lead are sold in discount stores that cater to a lower income clientele. Furthermore, the majority of the samples of jewelry that are found to be poisonous are ones that are sold for a dollar or less. For example, in February 2007 the Health Department collected a necklace and bracelet set for testing. The set was made in China and purchased at a locally owned children's discount store for $1. Both the necklace and bracelet were found to contain approximately 2.4 percent lead by weight. In March 2007, three rings that were manufactured in India and sold in a city vending machine operated by Cardinal Novelty tested approximately 5 percent lead by weight. Now, these exact three rings were previously subject to a product recall in July 2004 by the Consumer Product Safety Commission. Last month our Health Department found that a Spiderman 3 ring which sold for $1 contained 12.8 percent lead by weight. This ring was sold at a Dollar Tree store and was imported from China.

Our experience in Baltimore city has proven that many of these imported products are not adequately regulated by the Federal Government. The failure of the CPSC product recall system exemplifies the Federal Government's failure to protect the public from imported goods. As I previously stated, the CPSC recalled three rings in July 2004 because of high lead content yet almost 3 years later, Baltimore city finds these rings are still available for sale to the public. Cardinal Novelty would have been free to continue to redistribute this poisonous product had Baltimore city not enacted his regulations.

A local jurisdiction's authority can only extend so far. Federal agencies need to aggressively take the lead in preventing the sale of these contaminated products. Current Federal regulations are obviously insufficient in protecting children from lead in imported products.

I would like to conclude by stating that this country has made tremendous progress in the fight to eliminate childhood lead poisoning but even one child poisoned is one too many and stricter Federal regulations on products for children are urgently needed. On behalf of Baltimore city's Health Department and Mayor Sheila Dixon, I thank you for the opportunity to offer comments today.

[The prepared statement of Ms. Farrow follows:]

STATEMENT OF OLIVIA FARROW

Mr. Chairman, Ranking Member Stearns and members of the committee, on behalf of the Baltimore City Health Department, I would like to thank you for this opportunity to testify on the need for stricter Federal regulations to reduce exposure to lead hazards from lead-tainted imports. My name is Olivia Farrow and I am the Assistant Commissioner of the Environmental Health Division of the Baltimore City Health Department.

Lead poisoning is the most common environmental hazard facing American children today. It is also one of the most preventable. Children are frequently exposed to lead by ingesting lead dust from deteriorating lead-based paint. Exposure may also come from dirt that contains lead, drinking water or lead-tainted consumer products such as food and jewelry. While lead poisoning can affect children across the socioeconomic spectrum, we have found that often exposure is concentrated in low-income, urban areas.

On March 23, 2006, a 4-year old child in Minneapolis died from lead intoxication after swallowing a piece of children's jewelry that was sold with a new pair of shoes. In response to this tragic event, the Baltimore City Health Department began testing samples of children's jewelry sold within its jurisdiction. Our tests found exces-

sive levels of lead in children's jewelry in Baltimore. The products were being sold in stores that operate throughout the country, including Claire's and Wal-Mart (Attached are the lab results).

To respond, under the authority of the Commissioner of Health, the Baltimore City Health Department proposed and then promulgated regulations on children's jewelry on December 7, 2006. (Attached is the final regulation).

The city regulation requires that the Health Department collect monthly samples of children's jewelry and test for lead content. In order to give city retailers an opportunity to come into compliance, the regulation initially banned children's jewelry containing more than 1,200 parts per million. Effective September 1, 2007, we further reduced the acceptable level of lead, banning all children's jewelry with metal components containing in excess of 600 parts per million of total lead. Once a product is found to contain an excessive amount of lead, a violation notice is issued. The notice declares all items of the same style and from the same manufacturer to be a nuisance and orders the retailer to stop sale within 24 hours. An owner can be charged with multiple misdemeanor offenses and fined should he or she fail to comply with the notice.

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For an example, in February 2007, the Health Department collected a necklace and bracelet set for testing. The set was made in China and purchased at a locally owned children's discount store for $1. Both the necklace and bracelet were found to contain approximately 2.4 percent lead by weight.

In March 2007, three rings that were manufactured in India and sold in a city vending machine operated by Cardinal Novelty tested approximately 5 percent lead by weight. These rings were previously subject to a product recall in July 2004 by the Consumer Product Safety Commission (CPSC).

Last month, our Health Department found that a Spiderman 3 ring, which sold for $1, contained 12.8 percent lead by weight. This ring was sold at a Dollar Tree and was imported from China.

Our experience in Baltimore city has proven that many of these imported products are not adequately regulated by the Federal Government. The failure of the CSPSC product recall system exemplifies the Federal Government's failure to protect the public from imported goods.

As I previously stated, the CPSC recalled three rings in July 2004 because of high lead content. Yet, almost three years later, Baltimore city finds that these rings are still available for sale to the public. Cardinal Novelty would have been free to continue to redistribute this poisonous product had Baltimore city not enacted its regulations.

A local jurisdiction's authority can only extend so far. Federal agencies need to aggressively take the lead in preventing the sale of these contaminated products. Current Federal regulations are obviously insufficient in protecting children from lead in imported products.

I would like to conclude by stating that this country has made tremendous progress in the fight to eliminate childhood lead poisoning. But even one child poisoned is one child too many. Stricter Federal regulation on products for children is urgently needed.

On behalf of Baltimore city's Health Department and Mayor Sheila Dixon, I thank you for the opportunity to offer comments today.

Mr. RUSH. Thank you very much.

Mr. Green.

STATEMENT OF MICHAEL GREEN, EXECUTIVE DIRECTOR, CENTER FOR ENVIRONMENTAL HEALTH

Mr. GREEN. Thank you, Mr. Chairman. Thanks for holding these hearings and for this opportunity to testify.

For 10 years, the Center for Environmental Health has been protecting children from lead poisoning and other hazardous children's products. In this work, we primarily use a State law, California's

Safe Drinking Water and Toxic Enforcement Act, locally known as Proposition 65. We use this law as an innovative tool to protect children and families not only in California but throughout the country, often protecting children from unnecessary exposures to toxic chemicals. In some of our early work, we won legal agreements to eliminate lead threats to children in diaper creams, children's medicines and even home water filters that were leaching lead. We also won agreements with dozens of makers of playground structures that were made of arsenic-treated wood, eliminating threats to children from cancer-causing levels of arsenic. In just the past 2 years, we discovered lead threats to children and have won legal agreements eliminating these risks in imported candy, vinyl lunchboxes, vinyl baby bibs and in vinyl metal and jewelry, among many other products. These are all children's products.

In the process of uncovering these hazards and working to get these products off the market, we have discovered that the Consumer Product Safety Commission is paralyzed by a lack of the political will to protect children. This lack of political will has major consequences. We have seen the CPSC issue misleading statements about the safety of a high-lead Disney bracelet, like actually this one, and then take no action for nearly 6 months. This Disney jewelry had painted pearls that had lead content that was 275 times the legal limit for lead paint. Eventually they recalled the item with little publicity. We have seen the CPSC act in direct contradiction of the Food and Drug Administration about lead hazards in vinyl lunchboxes. The FDA said that it was reasonable to expect that lead from lunchboxes would leach into kids' food while CPSC took no action because the food might be wrapped. We have obtained CPSC memos showing that the agency changed its test protocols so that its testing of lunchboxes would find less lead. They changed their protocols. We find this absolutely shocking. One of these memos is copied in my written statement and I would encourage you to look at that. And throughout all of these incidents, the CPSC has relied on an outdated standard or "acceptable" lead exposures that ignore the vast body of research over the last decade showing that even small lead exposures are problems for children. For example, the CPSC standard is 350 times higher, and therefore 350 times less protective than the California standard under Proposition 65.

The lead problem in children's toys is a systemic problem. Retailers push manufactures for ever lower prices. Their priority is not the safest product but the cheapest products possible, at least sometimes. Congress needs to turn that priority around. The Center for Environmental Health recommends Congress take the following steps to ensure that toys are just toys and not exposures to toxic chemicals.

First, as a supplement to our work in lead in jewelry, Congress should enact a comprehensive ban on lead in toys. For toys, we recommend following the model of the Toxins in Packaging Act already adopted by 19 States. This law requires over a 4-year period that the concentrations of four toxic metals, one of which is lead, be reduced to less than 100 parts per million. Surely the toys that our children play with, chew on and sometimes accidentally swal-

low deserve at least the same level of safety as packaging materials.

Second, such legislation must hold distributors, retailers and manufacturers accountable for the safety of the products they sell through mandatory pre-market testing and strong disincentives for violators.

Third, Congress should ensure that CPSC and other Federal regulatory agencies are using testing and standards based on the most up-to-date science.

Finally, we strongly urge that Congress ensure that CPSC is adequately resourced to manage the massive task of protecting children from hazardous products but we must also note that the current problem at CPSC is not only a resource problem. Our experience suggests that often the bias of current CPSC leadership is to protect industry at the expense of the health of America's children. CPSC is using unrealistic testing procedures and outdated health standards. This could be corrected with strong legislation. However, the evidence from CPSC's own internal documents, which we got through a FOIA request, that the agency modified its testing procedures to reduce its estimates of lead exposure from children's lunchboxes, demonstrates an extreme willingness of the current CPSC leadership to put industry's convenience ahead of children's health. This problem results not from a lack of resources or statutory authority but from leadership decisions that have failed to make children's health the first and most important priority. Our children's health should not be a partisan political issue like that, and I look forward to your questions. Thank you for this opportunity.

[The prepared statement of Mr. Green follows:]

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Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
Thursday, September 20, 2007
"Protecting Children from Lead-Tainted Imports"
Testimony of Michael Green
Executive Director, Center for Environmental Health

I. Background

In 1986, California voters approved an initiative to address their concerns about exposure to toxic chemicals.[1] That initiative became the Safe Drinking Water and Toxic Enforcement Act of 1986, better known by its original name of Proposition 65. Proposition 65 requires the State to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, has grown to 812 chemicals, including lead, the subject of my comments today.

Proposition 65 requires businesses to notify Californians about significant amounts of toxic chemicals in the products they purchase, or that are released into the environment. By providing this information, Proposition 65 enables Californians to make informed decisions about protecting themselves from exposure to these chemicals. Proposition 65 also prohibits California businesses from discharging significant amounts of toxic chemicals into sources of drinking water.

A state agency, the Office of Environmental Health Hazard Assessment, administers the Proposition 65 program as part of the California Environmental Protection Agency.

According to Proposition 65, businesses are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety

[1] Most of the information in this section comes from the Office of Environmental Health Hazard Assessment's Proposition 65 web site.

of means, such as by labeling a consumer product, posting signs at the workplace, distributing notices at a rental housing complex, or publishing notices in a newspaper.

Businesses with less than 10 employees and government agencies are exempt from Proposition 65's warning requirements and prohibition on discharges into drinking water sources. Businesses are also exempt from the warning requirement and discharge prohibition if the exposures they cause are so low as to create no significant risk of cancer or birth defects or other reproductive harm. In Proposition 65 terminology, this amount of exposure is called the safe harbor level. For lead, the safe harbor level is 0.5 micrograms per day. For example, a violation of Proposition 65 occurs when a toy or other children's product exposes a child to more than 0.5 micrograms of lead per day without warning.

California's safe harbor level for lead, 0.5 micrograms per day, is a strict standard that is protective of children's health. It is consistent with what federal agencies have concluded about lead exposure. For example, the U.S. Public Health Service says, "No safe blood lead level in children has been determined." The U.S. Environmental Protection Agency says lead's effects, particularly for children, "may occur at blood lead levels so low as to be essentially without a threshold." The Centers for Disease Control and Prevention say "no level of lead in a child's blood can be specified as safe." California's safe harbor level, and the conclusions of these three agencies, are in marked contrast to the approach taken by the Consumer Product Safety Commission, which recommends that children not ingest more than 175 micrograms of accessible lead in a short period. This is 350 times the California safe harbor level.

Penalties for violating Proposition 65 can be as high as $2,500 per violation per day.

The California Attorney General's Office enforces Proposition 65. Any district attorney or city attorney may also enforce Proposition 65. In addition, any individual or organization acting in the public interest may enforce Proposition 65.

II. The Center for Environmental Health's Public Interest Litigation

The Center for Environmental Health has five programs:

- Our Pollution Prevention Program works collaboratively with industry to identify ways to reduce the use of toxic chemicals. Frequently companies can save money while also protecting public health through a reduction in the use of these chemicals;

- CEH's Sustainable Food Program works to leverage the buying power of large institutions in order to expand the market for organic, local and sustainably produced food, and to confront the unhealthy practices of industrial food production;
- Our Community Health Program focuses on supporting community-based groups in their efforts to reduce asthma and other environmental health problems in their communities;
- CEH's Environmental Health Policy Program is working for comprehensive chemical policy so that chemicals are not addressed in a piecemeal fashion.

Finally, or Public Interest Litigation Program has been enforcing Proposition 65 since 1996. Our goal is to use the law not just to warn Californians about toxic exposures, but to reduce the use of and exposure to toxic chemicals. While the law requires only that companies provide warnings in California, we often achieve national and even international industry-wide changes in production practices by negotiating agreements with manufacturers and retailers that both ensure compliance with the law and set limits on how much of a particular chemical can be present in a particular product. For example:

- In a landmark 1997 study, CEH exposed the use of leaded brass in home water filtration systems. Between 1997-2000, we reached agreements with major producers of home water filters, ending the industry's use of materials that were leaching lead into "filtered" water;
- In 2000, CEH began investigating the use of arsenic-based preservatives in wood playground structures. Arsenic is a cancer-causing chemical, and children can be exposed to high levels of arsenic when playing on these structures even for just a few weeks. We filed legal notices against producers, later the California Attorney General joined in the largest cases, and between 2002-03 we reached agreements with more than thirty makers of wood playground structures made with arsenic-based preservatives, ending the industry's use of these cancer-causing chemicals in wooden children's play structures;
- In 2001, CEH began investigating lead levels in diaper rash creams and children's anti-diarrhea medications. The California Attorney General later joined some of these cases as well. Between 2002-03, we reached agreements with leading makers of these products, including Johnson &

Johnson, Pfizer, Safeway, Walgreens and several others, that require severe reductions of the lead levels in these children's products.

- In 2002-03, CEH began investigating lead risks to children from certain imported candies from Mexico. After CEH filed suit, the California Attorney General joined in this litigation. In 2006, we reached agreements with the major producers of the candies, including subsidiaries of Mars and Hershey's, requiring them to severely reduce the lead levels in their products.
- In 2003, CEH began investigating lead in children's jewelry. In 2004, we filed suit against leading retailers, including Macy's, Target, Wal-Mart, Kmart, Nordstrom, Sears, and over thirty others, for selling lead-tainted children's jewelry. A month later, 150 million pieces of children's jewelry were recalled from vending machines nationwide, the largest product recall in U.S. history. Again, the California Attorney General joined our cases and co-litigated with us to protect children from lead. In January 2006, we reached an agreement with more than seventy companies, outlining strict lead standards for metal, vinyl, and other materials used in children's jewelry. (Terms are summarized in the following section that focuses on our jewelry work.) We have since settled with over thirty additional companies that have agreed to the CEH reformulation requirements. Our settlements also formed the basis for California's children's jewelry law, which came into force this month.
- In 2004, CEH began investigating lead in vinyl children's lunchboxes. In 2006-07, we reached agreements with 20 leading producers and retailers of children's lunchboxes, calling for strict lead standards and, in some cases, requiring a phase-out of the use of vinyl in lunchbox interiors.
- In 2006, CEH began investigating lead in vinyl baby bibs. In 2007, we initiated legal action against Wal-Mart and Toys R Us for selling lead-tainted bibs. Wal-Mart removed their store-brand bibs from their stores nationwide; Toys R Us removed all vinyl baby bibs from their North American stores.

In addition, we often collaborate with state and/or federal regulators in pursuing protections for children beyond California. For example, we shared test results and other information about lead in children's lunchboxes with the Attorneys General of Illinois and New York, and with state agencies in Washington and

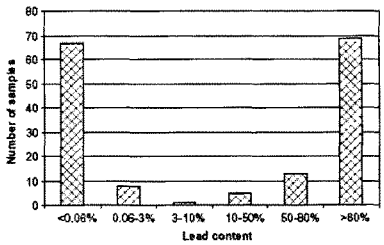
Connecticut, resulting in those states taking action to recall the products or warn consumers. We also shared our lunchbox test results and other information with Food and Drug Administration regulators, contributing to the agency's decision to initiate an investigation and ultimately to issue a warning notice to lunchbox producers about the sale of lead-tainted lunchboxes.

Finally, in the past ten years we have also reached settlements with more than two dozen California companies that were emitting illegal levels of toxic chemicals, including lead and perchloroethylene, a cancer-causing solvent. Many of these companies were located in residential areas and/or near schools, parks, and daycare centers and most reduced or eliminated their toxic emissions as a result of our agreement with them.

III. Lead in Children's Jewelry

The Center for Environmental Health began testing jewelry for lead in 2003. We found high lead levels in metal and vinyl jewelry components, as well as in the coatings used on fake pearls. In June 2004, we filed the first of a series of lawsuits against retailers, producers and distributors of lead-tainted jewelry.

The scope of the lead in jewelry problem is well illustrated by research published by Dr. Jeffrey Weidenhamer of Ashland University in Ohio. He tested 139 pieces of children's jewelry purchased in four different states and found that the average lead content was 44 percent (440,000 parts per million). Almost half of the jewelry was more than 80 percent (800,000 parts per million) lead. His results are summarized in the chart below.



(Source: Jeffrey D. Weidenhamer and Michael L. Clement. 2007. Widespread lead contamination of imported low-cost jewelry in the US. *Chemosphere* 67 961–965.)

It is worth noting that the July 2004 recall of 150 million pieces of children's jewelry from vending machines nationwide that followed shortly after our lawsuits were filed was, according to CPSC's recall notice, a

recall of jewelry produced in India. In over two years of testing leaded children's jewelry, we found tainted jewelry from many countries in Asia, Latin America, and elsewhere. The recent attention to unsafe products from China is certainly understandable, but we believe that Congress needs to focus primarily on the American companies that source products from overseas, through vendors and/or sub-contractors in China or elsewhere. These companies have tremendous market influence and can exert this influence for safer products. Our experience in years of negotiations with American retailers is that these companies can and will make safety improvements and reformulate products when they are faced with strong incentives to do so.

It is also worth noting CPSC's role in one high-profile lead jewelry case. In April 2005, we discovered a Disney "Princess" bracelet intended for young children that included fake pearls coated with a glossy paint. Independent testing that we commissioned found that the coating on the Disney pearls contained 166,000 parts per million of lead, which is more than 275 times the legal limit for lead in paint. We sent samples of the Disney bracelet to CPSC, along with our test results, and asked the agency to request an immediate recall of the piece.

But CPSC failed to act. Instead, CPSC staff told our researcher that the lead-tainted coating on the Disney piece might not be considered paint, and that the agency was not required to conduct a recall if only a small amount of lead paint was found. In June we received a letter from Disney (attached) stating that "Independent tests performed by....the U.S. Consumer Product Safety Commission confirm that the amount of lead in the pearl coating is well below the legal limit for lead in paint." Yet CPSC never released this test data, nor would the agency confirm whether they indeed had tested the item. We had a second independent laboratory test samples of the same item, and the second lab confirmed the high lead levels found in the original testing.

Nearly six months after we announced finding alarmingly high levels of lead in this Disney children's bracelet, in September 2005, CPSC recalled the item, stating in the recall notice that the item contained "high levels of lead." This recall notice was not posted in the recalls section of CPSC's website nor was it e-mailed to people who signed up for the agency's recalls email list.

With the California attorney general as a co-plaintiff, we have now negotiated agreements with over 100 jewelry suppliers and retailers that significantly reduce the amount of lead used in jewelry. The compliance date

for children's jewelry was the first of this month, and the terms of the settlement are now part of California law (Health and Safety Code Section 25214.1-25214.4.2).

A chart explaining the standards for children's jewelry in our settlements and the California law follows:

COMPONENT	LEAD STANDARD
Metallic components, ink, glazes, or coatings	Less than 600 parts per million lead
Glass or crystal components	Either a total weight of less than 1 gram, or contain less than 200 parts per million lead
Plastics	Less than 200 parts per million lead (after August 31, 2009)
Other materials	Less than 200 parts per million lead

IV. Lead in Children's Vinyl Products

A. Vinyl Lunchboxes

In 2004, the Center for Environmental Health began testing soft vinyl lunch boxes for lead. We were particularly concerned about lead in the lining of the lunch boxes, where it would be likely to come into contact with food. We found high levels of lead, including one lunch box with a lead level approaching 10,000 parts per million. We have now negotiated agreements with 20 major lunch box companies which limit the amount of lead in lunchbox linings to 200 parts per million, and to 600 parts per million elsewhere.

Less than a month after our first announcement of lead in children's lunchboxes, on September 27, 2005, CPSC released its "Preliminary Lead Test Results for Vinyl Lunchboxes." In fact, CPSC documents we later obtained as a result of a Freedom of Information Act (FOIA) request showed that at the time of the agency's preliminary statement, CPSC had tested fewer than ten lunchboxes. At that time, we had tested over one hundred lunchboxes, finding that approximately 20% tested for high lead levels.

The agency's preliminary statement also claimed that staff "tested the inside and outside of each lunch box and the preliminary results were consistently below one microgram (µg)." The agency stated that this level posed no health threat to children, although the agency refused our requests and requests from several reporters to release their test data. In fact, the FOIA documents (which the Associated Press also obtained, and which formed the basis of their February 2007 report, attached) revealed that CPSC's preliminary statement was contradicted by its own test data. At the time that CPSC claimed that none of its tests showed lead levels

higher than one microgram, the agency's tests (of fewer than 10 lunch boxes) had actually already found at least three lunch boxes with levels higher than 1 microgram, and also found lunchboxes with lead levels as much as 16 times higher than the legal limit for lead in paint. The FOIA documents also revealed that CPSC's testing methods at that time were inconsistent, with some lunch boxes tested only on the outside, and that the agency testing had inconsistent results.

In other words, CPSC's internal documents contradict the agency's public statement on at least three counts: the public statement falsely reports the levels of lead CPSC found, it falsely reports the test method used, and falsely reports the consistency of the testing.

Thankfully, FDA contacted our researchers and decided to initiate its own investigation. In July 2006, the FDA sent a strongly worded letter to lunchbox makers. Based on the lead levels that CPSC found in lunchboxes, FDA's letter said that, "Because neither lead nor lead compounds are authorized for use in the manufacture of PVC food-contact articles such as lunchboxes, and some migration of lead to food as a result of such use may reasonably be expected, we urge companies to refrain from marketing such lead-containing lunchboxes." In contrast, in February 2007, a CPSC spokesperson told the Associated Press that "The food that you put in the lunch box may have an outer wrapping, a baggie, so there isn't direct exposure."

Despite the FDA warning, CPSC continued to downplay the risks to children from lead-containing lunch boxes. The CPSC stated that according to their testing, "children would have to rub their lunch box and then lick their hands more than 600 times every day, for about 15-30 days, in order for the lunch box to present a health hazard." Amazingly, in February of this year an agency spokesperson told the Associated Press that CPSC stands by this statement, and the agency to this day continues to use this statement to justify their inaction on lead in children's lunchboxes (see http://www.cpsc.gov/phth/vinyl.html).

The most alarming memo within the FOIA documents we obtained is an e-mail showing that the CPSC had changed the test protocol for lunch boxes in order to obtain results that would justify its statement. A copy of that memo follows.

Krivda, Frank J.

From: Recht, Joel R.
Sent: Monday, September 26, 2005 2:45 PM
To: Rogers, Theresa D.
Cc: Mullan, John G.; Schoem, Marc J.; Toro, Mary F.; Krivda, Frank J.; Saltzman, Lori E.; Hatlelid, Kristina M.; Matheson, Joanna M.
Subject: RE: lunchboxes
Importance: High

Here is a summary of the wipe data for 05-830-5408 and 05-830-4008. We also re-tested 05-840-7337 using more wipes (10 swipes each of the area with 3 wipes) – which gave a lower average result than in the prior report (which used only 4 swipes with 1 wipe) This shows (or I guess HS will say that this shows) that the overall risk is lower than our original testing would have showed, as the amount of lead dislodgeable is mostly taken out with the first wipe and goes down with subsequent wipes). Also, HS asked me about the carrying handles which we did not report on – we checked and none of the samples we have used PVC in the carrying handles – they were Nylon or Polyester, or Polypropylene, none of which would be expected to have any lead content.

B. Vinyl baby bibs

Last fall, we began testing vinyl baby bibs for lead. We found high levels of lead in bibs sold by major retailers, including Wal-Mart, Toys R Us, and Babies R Us. Similar to our lunch box testing, we found one bib that contained almost 10,000 parts per million lead. We are in the process of negotiating an agreement with the manufacturer of the bibs to eliminate this unnecessary hazard.

As with lunch boxes, the Consumer Product Safety Commission minimized the lead problem with baby bibs. While the agency statement admitted that ""Some vinyl materials, including those used as the front or back of baby bibs, contain lead," the agency concluded that "none of the bibs that were tested at CPSC's laboratory would pose a risk of substantial illness to children from mouthing." CPSC only released summaries of their test data on baby bibs. CPSC does not define a "substantial illness," but it is alarming that a health protection agency would find it acceptable for infants to be exposed to any degree of illness due to lead poisoning from their baby bib.

CPSC's statement suggested that lead levels in bibs were a hazard only if the bibs are "used bibs that are worn or have deteriorated." But CEH testing found lead on the surface of new baby bibs, and independent laboratories commissioned by CEH and by the New York Times found high lead levels in NEW vinyl baby bibs purchased in California and Washington DC. In both cases, labs found lead levels in the baby bibs that were 3-4 times higher than the 600 parts per million lead paint standard.

CPSC's stance on lunch boxes and baby bibs suggesting that it is permissible to expose children to "a little" lead is based on outdated science and old standards. CPSC's evaluations of lead hazards are based on the assumption that it's acceptable for a child to have a blood lead level of 10 micrograms per deciliter. The agency continues to use this number despite current science showing that blood lead levels five times lower than this are linked to impaired neurological development, lower scores on standard academic tests, and attention deficit hyperactivity disorder.[2]

Recent publicity about lead-tainted bibs and toys means that proper disposal of toys or other items that contain lead is important. Unfortunately, this issue has not been widely addressed. In California, the Alameda County Lead Poisoning Prevention Program arranged drop off sites at libraries, clinics, and child development centers so that concerned parents could safely dispose of tainted products. This program is a good model for other communities to follow, and for Congress to consider establishing as an important part of a legislative solution.

V. Recommendations

First, to supplement our work on lead in children's jewelry, Congress should enact a comprehensive ban on lead in toys. We recommend following the model of the Toxics in Packaging Act (http://www.toxicsinpackaging.org/model+legislation.htm), which has been adopted by nineteen states and provides for a ban on packaging containing more than 100 parts per million, cumulatively, of four toxic metals (including lead) after a four-year phase-down period. This law was written in 1989 and has proved since then to be feasible and effective. Surely the toys that our children play with, chew on and sometimes accidentally swallow deserve at least the same level of safety as packaging materials. In addition, we believe that Congress should specify a goal of zero lead in children's products, much as the U.S. Environmental Protection Agency has set a goal of zero lead in drinking water.

Second, the legislation must hold distributors, retailers and manufacturers accountable for the safety of the products they sell, through mandatory pre-market testing and strong disincentives for violators.

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[2] S.G. Gilbert and B. Weiss. 2006. A rationale for lowering the blood lead action level from 10 to 2 micrograms/deciliter. Neurotoxicology 27:693-701; M.L. Miranda et al. 2007. The relationship between early childhood blood lead levels and performance on end-of-grade tests. *Environ. Health Perspect.* 115:1242–1247; and Joe M. Braun et al. 2006. Exposures to environmental toxicants and Attention Deficit Hyperactivity Disorder in U.S. children. *Environ. Health Perspect.* 114:1904–1909.

Third, Congress should ensure that CPSC and other federal regulatory agencies are using testing and standards based on the most up-to-date science. It is not acceptable for the CPSC to modify its testing procedures to reduce its estimates of lead exposure, as it did when we discovered high lead levels in lunchboxes. It is also not acceptable for CPSC to use outdated standards based on lead exposures that are known to be harmful to children.

Fourth, Congress should ensure that CPSC and other federal regulatory agencies are adequately funded and resourced to manage the massive task of protecting children from hazardous products. In the case of CPSC, the funding that they have available to them to protect children from lead in children's products is grossly inadequate and needs to be dramatically increased. However, we must also note that the current problems at CPSC are not wholly resource problems. Our experience in at least one jewelry case and in the ongoing agency intransigence on lead in vinyl children's products suggest that often there is a bias among current politically-appointed leadership at CPSC to protect industry at the expense of the health of America's children. The evidence from its own internal documents that CPSC modified its testing procedures to reduce its estimates of lead exposure from children's lunch boxes demonstrates the extreme willingness of the current CPSC leadership to put industry's convenience ahead of children's health. Unfortunately, we do not know if any legislative approach can fully resolve this problem, which results not from a lack of resources or statutory authority, but from leadership decisions by political appointees that have failed to make children's health the first and most important priority.

Mr. RUSH. Thank you very much.

Ms. Wallach.

STATEMENT OF LORI WALLACH, DIRECTOR, GLOBAL TRADE WATCH

Ms. WALLACH. Thank you, Mr. Chairman and members of the committee. On behalf of Public Citizen's 200,000 members, thank you for the opportunity to discuss some of the root causes of the serious safety problems with various imports including toys.

I have four main points which are spelled out in my written testimony, which I will summarize. First, the imported product safety crisis has a root cause in U.S. trade policy, trade pacts, and tax and other incentives that have promoted the export of wide swaths of the U.S. manufacturing base to nations with effectively no regulatory systems to ensure safety in production while the trade agreements simultaneously impose limits on import safety standards and inspection rates. Our current trade agreements prioritize, ensuring the favorable investment climate for U.S. firms seeking to relocate overseas and then facilitating access for the things coming back over consumer safety. That more than 80 percent of U.S. toys are now made in China is not an inevitability or random. As the chart on page 4 of my testimony shows, the production of toys destined for the U.S. zoomed into production in China immediately after Congress passed permanent normal trade relations for China and China joined the WTO. Right there, zoom, and the WTO provided investment protections, under the Trade-Related Investment Measures cut tariffs and literally facilitated the industry leaving. Prior to that, 1993, zoom, NAFTA passes, immediately production moves to Mexico. The choice of the U.S. toy industry to relocate production to low-wage, under-regulated venues is one of those rare cause-and-effect moments in the trade world where you can literally see trade agreements, action. In 1993, before NAFTA, was the peak of U.S. employment in the toy sector, 43,000 workers. Now it is down 75 percent. The hemorrhage starts directly after the trade agreements pass. Point 1.

Point 2: The safety of imported products is directly linked to the lack of safety regulations in some of the offshore venues where the toys are now being produced. Add to that the laissez-faire attitude of the Consumer Product Safety Commission and domestic safety policies that are still premised on the notion that a lot of product is made here and not overseas and the American public is left having to rely on foreign regulatory systems to ensure the safety of the things that are in our homes. Sadly, recent experiences highlighted that many foreign regulatory systems are simply not up to the task. With 80 percent of U.S. toys now coming from China, whose regulatory structure has been likened by U.S. producers operating there as the wild, wild east, the imported toy safety problem is probably more pervasive than the recent recalls show.

Point 3: Now, thankfully, Congress is seeking to address the problem, but perversely, the same trade agreements that have created the incentives that have led to the shift of production to unsafe venues also impose limits on the safety standards that can be imposed on imported products as well as the amount of inspection. Most people are very surprised when they learn that the actual

trade between countries is only part of WTO, NAFTA and other U.S. trade agreements. Those agreements set regulatory constraints with which all countries must conform their domestic laws. The binding provision in this country shall ensure conformity of all domestic laws, regulations and procedures with the trade agreement rules. The agreement in the WTO that applies to toy safety is called the Technical Barriers to Trade Agreements. The name says it all. Any domestic regulation that might keep out a product because it is unsafe is presumed to be a technical barrier to trade. If the U.S. does not conform its domestic laws to the WTO rules, the U.S. is subject to challenge. Amongst the rules: imported and foreign goods must be treated the same. That means that under WTO rules, imports are not allowed to be inspected at a higher rate. All domestic laws are judged in a panel of trade lawyers meeting in secret in Geneva as to whether they are least trade restrictive, not most safety protective, and whether or not they are an unjustified, unnecessary obstacle to trade, very subjective standards. As well, the U.S. is required to allow free passage into our country of toys made with equivalent standards. If we do not conform these laws, we can be challenged and we face trade sanctions if we do not change them. China, as a WTO member, could challenge U.S. improvements to toy safety unless also changes are made to our trade agreement as well as the important changes to domestic policy.

So in conclusion, my testimony lays out a list of 10 particular changes to domestic law, particular changes needed to our trade agreements to make sure Congress has the space to make the domestic changes, and the final point is, right now Congress is considering expanding this model, a NAFTA expansion to Peru and Panama, and Public Citizen urges Members of Congress not to make the problem worse by expanding our current failed, unsafe trade model. Thank you.

[The prepared statement of Ms. Wallach follows:]

Auto Safety • Congress Watch • Energy Groupp • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

Testimony of Lori Wallach
Director, Public Citizen's Global Trade Watch

Hearing on Protecting Children from Lead-Tainted Imports

Subcommittee on Commerce, Trade and Consumer Protection
of the House Energy and Commerce Committee September 20, 2007

Mr. Chairman and members of the subcommittee, on behalf of Public Citizen's 200,000 members, thank you for the opportunity to discuss some of the root causes of the serious safety problems with various imported products, including toys, which are increasingly coming to the public's attention.

Public Citizen is a nonprofit research, lobbying and litigation group based in Washington, D.C. Founded in 1971, Public Citizen accepts no government or corporate funds. Public Citizen's Global Trade Watch division focuses on how the current globalization model and its implementing mechanisms, including the World Trade Organization (WTO) and North American Free Trade Agreement (NAFTA), affect our goals of promoting democracy, economic and social justice, health and safety, and a healthy environment.

The imported product safety crisis has a root cause in U.S. trade policies, trade agreements and tax and other incentives that have promoted the export of whole swaths of the U.S. manufacturing base, while simultaneously imposing limits on import safety standards and inspection. To effectively remedy the imported product safety crisis, Congress must act on three levels:

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- Provide new authority for domestic agencies responsible for product safety and inspection that brings these agencies' responsibilities and authorities up to date with the reality that a significant portion of products circulating in the United States are no longer made here, but rather are being produced in developing countries, where often product safety systems are insufficient to safeguard consumers against even the most egregious hazards.

- Provide greater funding for U.S. safety inspections both at overseas plants and at the border in recognition that a significant portion of products circulating in the United States are in fact not being produced under U.S. domestic environmental, safety and other regulatory standards, and develop a mechanism to ensure companies choosing to produce in such environments offset the additional expenses connected with ensuring import safety. Clearly, Congress must take action to ensure that a strict standard of safety for imports is set and enforced to keep unsafe product out of the market, including through the inspection of foreign plants and through much more border inspection of imported goods. The new U.S.-China product safety agreement being touted by the Bush administration closely mirrors the one signed three years ago by former CPSC chairman Hal Stratton – which, as we have seen, is not being enforced by China,and has proven meaningless.

- Alter various provisions of U.S. trade agreements, including the World Trade Organization's Technical Barriers to Trade (TBT) agreement, whose rules currently limit border inspection and the safety standards that signatory countries can require of imported goods. Absent such changes in existing trade agreements and rejection of future agreements with such limits, any improvements Congress may make to U.S. policy regarding import safety would be exposed to challenge as "non-tariff trade barriers" before trade tribunals. With the exception of the recent WTO ruling against the U.S. internet gambling ban, both Democratic and Republican administrations have systematically worked to implement such trade tribunal rulings, including a NAFTA order to allow access to all U.S. roads for Mexican-domiciled trucks and WTO orders to weaken Clean Air Act and Endangered Species Act rules, among other examples.

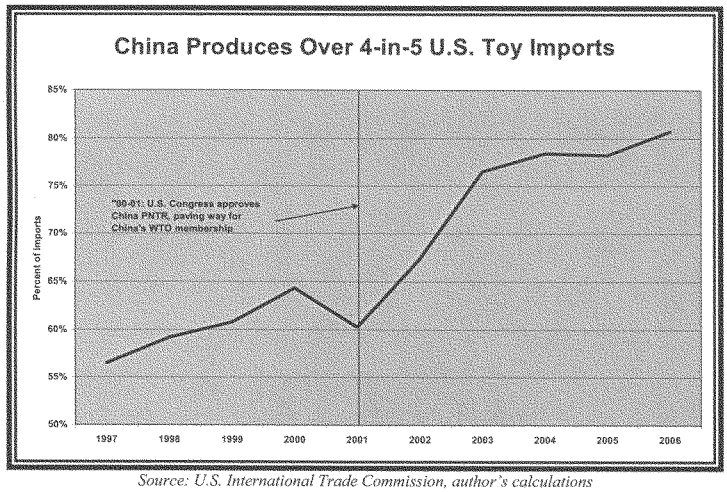
While Congress has been increasing its attention to the first two matters, less focus has been paid to the fact that provisions of various U.S. trade agreements conflict with Congress' stated goal of ensuring that some of our most vulnerable citizens – children – are not exposed to avoidable risk of injury or death from their imported playthings. Our current trade agreements prioritize ensuring a favorable investment climate for U.S. firms seeking to relocate production overseas, and facilitating access for imports from those overseas facilities, over consumer safety. Effectively, the American public is being left to rely on foreign regulatory structures and foreign safety inspectors to ensure that product imports are safe. Unfortunately, our recent experience has highlighted that many foreign regulatory systems are simply not up to the task.

Moreover, as Congress steps up action to address the imported toy safety threat, proposed trade pacts now pending before Congress would replicate and lock in limits on the U.S. government's ability to ensure the safety of imported products and food. Incorporated in the proposed Free Trade Agreements with Peru, Panama, Colombia and South Korea are rules that limit both what safety standards the United States can require for imported products, and how much border inspection is permitted. Given the array of problems being caused by a flood of unsafe imports, certainly the American public would be astonished to learn that Congress is considering NAFTA expansion agreements that would reaffirm the very trade and investment rules that are a root cause of the current imported product safety crisis.

This testimony presents the data on how the offshoring of production of toys with which U.S. children play peaked after various U.S. trade agreements, how trade agreement-granted foreign investor privileges created incentives to export products from the United States, and which trade agreement rules limit safety standards and inspection of imported products. This testimony concludes with a summary of policy changes that could help address the imported product safety crisis regarding toys and beyond.

1. **<u>The Export of U.S. Toy Production Surged Following NAFTA and China's Entry into the WTO</u>**

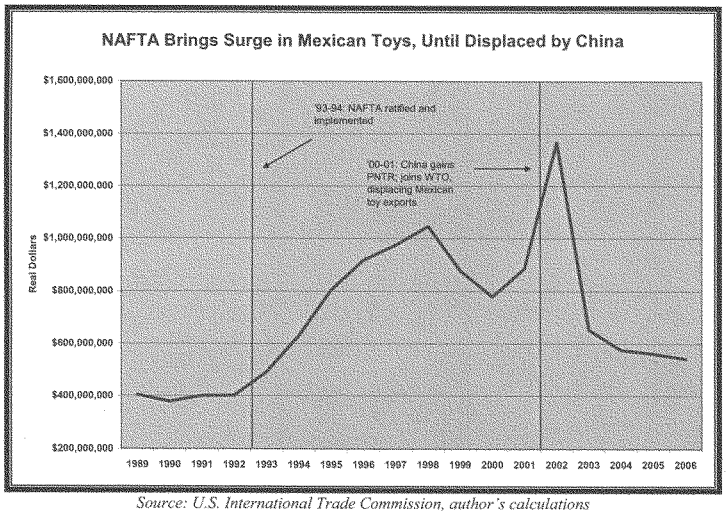
According to the U.S. International Trade Commission, more than 80 percent of toys sold in the United States now are being manufactured in China. The production of toys destined for the U.S. market surged immediately after China's entry into the World Trade Organization in January 2001. The WTO's Trade-Related Investment Measures (TRIMs) agreement provided an array of guarantees for foreign investors that reduced the risks of relocating production to facilities in China. At the same time, under the WTO, U.S. toy tariffs were reduced beginning in 1995, and eliminated by 1999. Thus, when Congress approved permanent Most Favored Nation status for China in the fall of 2000, facilitating China's entry into WTO, Congress provided incentives for toy production to relocate to China.



Source: U.S. International Trade Commission, author's calculations

Prior to China's WTO accession, U.S. toy production had already begun to relocate en masse to Mexico after Congress passed NAFTA. Total employment in the U.S. doll, toy, and game industry declined from its high in 1993 (the year before NAFTA went into effect) of 42,300 workers, to 17,400 workers in 2005.[1] With toy firms seeking ever-lower-waged workers, U.S. trade and investment pacts paved a race to the bottom in labor costs – from Mexico's $6 per day to China's $1-2 per day.

NAFTA not only includes the foreign investor protections found in WTO, but contains additional investor rights that actually promote offshoring of production. NAFTA's "Chapter 11" investor protections guarantee a minimum standard of treatment for U.S. firms relocating to Mexico, and provide the right for U.S. firms to obtain compensation for regulatory takings. These extraordinary rights, which extend beyond U.S. property rights law, are privately enforceable by foreign investors using NAFTA's "investor-state" mechanism, which empowers them to directly demand compensation in UN and World Bank tribunals for government regulatory policies that might undermine expected profits. Such compensation is not permitted in U.S. courts, even under an increasingly conservative Supreme Court's interpretation of U.S. Constitutional property rights. Rather, here, such regulatory compliance requirements are considered a cost of doing business under a social contract that ensures that products and working conditions are safe and the environment protected. Under NAFTA, some $35 million in claims by foreign investors has been paid out in challenges to toxics bans and more.[2]



Source: U.S. International Trade Commission, author's calculations

With various U.S. trade agreements directly leading to the wholesale relocation of toy production overseas, and in the absence of U.S. laws requiring inspection and pre-certification of toy safety prior to import here, the American public is being left to rely on the safety regulatory structures of foreign countries to ensure that the imported products they purchase and use here are safe. Some countries have superior product safety systems; however, the vast majority of U.S. toy imports come from China. Horror stories of child injuries and death caused by dangerous products, medicines and food in China are sadly common. China's rapid industrialization is occurring in a regulatory climate often described by U.S. businesses operating there as the "wild wild east" – with dire implications for the health and safety of the Chinese public. Our trade agreements have now exported this safety crisis to the United States. Add to the absence of an operational safety and inspection system the long supply chains – involving multiple contractors and subcontractors – that are common in China, with every link in the chain susceptible to fraud or contaminated goods, and serious safety problems were foreseeable as production was offshored under various trade agreements.

Indeed, given the safety issue is directly linked to the lack of safety regulation in some offshore venues and over 80 percent of U.S. toys come from China, the imported toy safety problem is probably more pervasive than the recent recalls have suggested. The lack of government oversight – resulting from the laissez-faire attitude of the Consumer Product Safety Commission (CSPC) and antiquated safety policies premised on U.S. production of most products in our markets – regarding the safety of imported toys being produced in the absence of operating safety regulatory systems has resulted in the exposure of our children to well-known hazards, such as lead paint contamination. Most likely, we only know a fraction of the problems.

Indeed, now the American public only finds out about dangers with toys manufactured overseas when a toy retailer or a toy branding company like Mattel reveals company testing. Some of our nation's largest brand-name toy companies have agreed to recalls of their imported products when their in-house or their retailers' testing has revealed problems. However, consider the many products that are not subject to such industry testing! As previous witnesses have described, neither the CPSC nor any U.S. government agency is testing

these toys, nor is there U.S. inspection of plants abroad, as is required (if inadequately) for meat to be imported into the United States. The prospect for avoidable death and injury is enormous, as we saw with the tragic lead-poisoning death of four-year-old Jarnell Brown of Minneapolis in 2006 after he ingested a heart-shaped Reebok charm dangling from an imported bracelet provided as a free gift with the purchase of various styles of children's footwear.[3]

After decades of the consumer movement working to fight for strong safety standards and for a robust civil justice system that creates incentives for industry to be careful, American consumers assume products on our store shelves are safe. For instance, given lead paint was banned in the United States in 1978, parents who may well be vigilant about the hazards of old paint in their homes would not expect that the toys they bring into their homes could pose an enormous lead paint hazard.

2. While Promoting Relocation of Production Overseas, U.S. Trade Agreements Also Contain Limits on Imported Product Safety Standards and Border Inspection

In response to a growing number of major recalls of imported toys, Congress is now considering how to fix this intolerable situation – as well as threats regarding the safety of imported food, the amount of which has doubled since the United States implemented NAFTA and WTO. Yet, perversely, our current trade agreements that have caused this surge in imports *also* impose limits on domestic regulatory policy of signatory countries. Domestic laws that provide a level of protection that extends beyond that allowed in these trade agreements, that fail to use international standards when they exist, or that provide for more intense inspection of imported goods relative to domestic goods are all subject to challenge in trade tribunals as violating U.S. "trade" obligations. Clearly, Congress should move ahead immediately to implement new policies to address the immediate import safety threat. However, to ensure that these laws remain on the books and effective, changes must be made to aspects of existing U.S. trade agreements, and the United States must not adopt more trade agreements containing such regulatory limits.

Many people are surprised when they first learn that actual *trade between countries* is only one element of the policies established and enforced by NAFTA and the WTO. These "trade" agreements also require that countries alter wide swaths of domestic non-trade policy or face sanctions. For instance, an element of our imported food safety crisis can be directly tied to changes made in the WTO implementing legislation that replaced a longstanding requirement that imported food meet U.S. standards with a weaker requirement allowing imports of food that exporting countries attest was produced under "equivalent" safety standards. Laws that are not immediately changed upon implementation can be challenged in trade tribunals later.

NAFTA and the WTO are dramatically different from all other trade agreements that preceded them. Traditionally, trade agreements focused on tariffs, quotas and border customs inspections. NAFTA and the WTO exploded the boundaries of what was included in trade pacts, establishing over 800 pages of non-tariff policies to which signatory countries must conform their domestic laws. Unlike prior trade agreements, NAFTA and the WTO agreements constrain the options that signatory governments may use when setting their *domestic* public health, food safety, consumer, worker and environmental policies – even when such policies treat domestic and foreign goods, producers, services or investors the same. (Under NAFTA and the WTO, non-discriminatory regulations may still violate the constraints on regulatory action the pacts establish.) Indeed, these agreements set specific constraints on signatory countries' *domestic* product and food safety standards, environmental rules, service-sector regulation, investment and development policy, intellectual property standards, government procurement rules, tax policy and more. When NAFTA's implementing legislation and the WTO Uruguay Round Agreements Act passed Congress in the early 1990s, the text of the agreements became binding federal law.

A key WTO and NAFTA provision requires each signatory country to ensure the conformity of all of its laws, regulations and administrative procedures to the agreements' terms.[4] Other WTO and NAFTA signatory nations – and private foreign investors through NAFTA and its various extensions such as the Central America Free Trade Agreement (CAFTA) and other bilateral FTAs – can challenge U.S. national

or local policies before foreign tribunals for failure to comply with the pacts' terms. Nations whose policies are judged to be "non-tariff trade barriers" are ordered to eliminate them or face indefinite trade sanctions.

The record of challenges to U.S. domestic laws shows why real redress of our import safety crisis also must include changes to our trade agreements. The United States is the country which has faced the largest number of WTO challenges to its laws, and has lost 86 percent of such cases. That an improved U.S. product safety policy could be challenged is a very real threat. As a WTO member, China could initiate such a challenge as soon as more stringent import safety laws were passed, if China believed such laws violated their WTO rights. As described below, the WTO constraints on domestic product regulation are both broad and vague, exposing a wide swath of possible U.S. policies to attack.

The diversity of U.S. laws that have been successfully challenged using WTO or NAFTA is stunning. The United States has been ordered by a NAFTA tribunal to open its road to Mexico-domiciled trucks despite serious safety problems. Under the WTO, U.S. tax, environmental, anti-dumping, safeguard, procurement and gambling policies have all been challenged. The United States has been the number one target of challenges at the WTO, where domestic laws are almost always ruled against in tribunal hearings.

U.S. WTO disputes:

	United States as Complainant	**United States as Respondent**	**All Disputes *(including U.S. and non-U.S. cases)***
Complainant Win	24	43	114
Respondent Win	5	7	15
% Cases Won By Complainant	82.8%	86.0%	88.4%

The United States has lost an array of WTO attacks against domestic public interest laws, a pattern that extends to successful WTO attacks on other nations' environmental, food safety and other public interest laws. The United States weakened gasoline cleanliness standards after a successful WTO assault on Clean Air Act regulations by several countries. Even though the United States signed a global environmental treaty called the Convention on International Trade in Endangered Species, American rules requiring

shrimp fishers not to kill sea turtles were diluted after a WTO challenge to U.S. Endangered Species Act regulations enforcing the treaty. The U.S. Marine Mammal Protection Act was weakened after Mexico threatened WTO action to enforce an outstanding ruling against the law under the General Agreement on Tariffs and Trade (GATT). These are only a few of the negative results for U.S. domestic non-trade regulatory policy during the 12 years of WTO implementation.

Non-trade public interest laws challenged at WTO:

	All Public Interest Disputes	**Public Interest Disputes – U.S. as Complainant**	**Public Interest Disputes – U.S. as Respondent**
Complainant Win	16	7	5
Respondent Win	3	2	0
% Cases Won By Complainant	84.2%	77.8%	100%

What would happen if Congress refused to weaken a new imported product safety law if it were successfully challenged at the WTO? WTO rules allow the winning countries to impose trade sanctions against the United States *until* we change our law as ordered for the full amount of trade that is affected. Alternatively, the United States can offer to negotiate compensation. That would mean, for instance, if China successfully challenged an imported toy safety law at the WTO, the United States would offer to pay China not to send unsafe toys to us as an alternative to having China impose trade sanctions on whatever U.S. economic sectors they chose. China would get to choose which option it desires.

To put in perspective the seriousness of this problem, consider the multi-billion dollars in U.S. liability after a WTO enforcement panel recently ruled that the U.S. government failed to comply with a 2005 final WTO order to change certain laws related to the U.S. ban on Internet gambling. The WTO Internet gambling ruling implicates large swaths of state and federal gambling law unrelated to online gaming as potential trade barriers, and a follow-up WTO challenge already has been threatened by the European Union. The ruling clears the way for tiny Antigua, which challenged the ban, to demand compensation from the United States, and if an agreeable deal cannot be struck, to impose trade sanctions. To avoid the follow-up WTO challenges on our domestic gambling regulations, the U.S. Trade Representative has given

notice to the WTO that it is seeking to remove gambling from WTO jurisdiction; however, this requires negotiating compensation with other WTO signatory countries. There is no way to get out of one of these rulings against U.S. law without paying. Currently, over $3.4 billion in demands have been tabled.

The limits on domestic safety, health and environmental regulation contained in both NAFTA and the WTO are based on certain underlying premises, among them: domestic regulatory policies must be designed in the "least trade restrictive" manner, and national laws and standards should be "harmonized" (homogenized) internationally so as to maximize cross-border trade.

The Technical Barriers to Trade agreement is the WTO agreement that sets the criteria that WTO signatory nations must follow concerning standards, technical regulations, and conformity assessment rules for all products, including industrial and agricultural products.[5] The TBT agreement's rules cover toy safety standards. The overarching purpose of the agreement is to make national standards globally uniform, discipline domestic regulatory standards that limit trade beyond TBT-permissible standards, and make WTO signatory countries' standard-setting processes transparent, albeit to other WTO countries, not to consumer and environmental groups.

The TBT agreement requires WTO signatory nations to use international standards if such standards "exist or their completion is imminent." The agreement requires signatory nations to use international standards as the basis for their technical regulations and standards, unless the international standards would not be appropriate "because of fundamental climatic or geographical factors or fundamental technological problems."[6] If a member adopts a standard "which may have a significant effect on trade of other Members," the member must justify the standard to other members upon request.[7] However, if a member's standard conforms with the relevant international standard, "it shall be rebuttably presumed not to create an unnecessary obstacle to international trade."[8]

Under NAFTA and the WTO, international standards serve as a ceiling which countries cannot exceed, rather than as a floor that all countries must meet. The agreements provide for the challenge of any domestic policies that provide greater consumer safeguards than international standards, but contain no mechanism to challenge standards that fall below the named international standard. Thus, the NAFTA and WTO harmonization provisions are likely to serve only as a one-way downward ratchet on the most progressive domestic standards. Challenges to domestic standards that exceed international standards occur in the binding dispute resolution system built into these agreements, which is closed to public participation or observation, and which can result in millions of dollars in punitive trade sanctions against the losing country. This is the "race to the bottom" that is built into WTO and NAFTA rules.

The TBT agreement also requires WTO member nations to treat imported and domestic products alike. Even though the future enhanced border inspection that Congress could mandate may be the *only* safety check on an imported toy, the TBT agreement's "non-discrimination" or "national treatment" rules require that the United States not inspect imported goods at a greater rate than similar domestic goods. The U.S. Department of Agriculture, for instance, in order to conform to this requirement, has already specifically and voluntarily weakened a U.S. policy requiring monthly supervisory inspections of foreign meat plants producing meat for export to the U.S. market.[9]

The TBT agreement also prohibits WTO members from adopting or applying standards and technical regulations in ways that create "unnecessary obstacles to international trade."[10] What is an unnecessary obstacle versus a legitimate safety standard is determined by the closed-door trade tribunals, which are staffed by trade lawyers without expertise in consumer safety. As well, the TBT agreement requires that countries may only maintain policies that fulfill "legitimate objectives" (defined as "national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment"[11]) in the *least trade-restrictive* manner possible, while taking into account the risks that non-fulfillment of such regulations would create.[12] However, in assessing such risks,

the only factors that members may consider are "available scientific and technical information, related processing technology or intended end-uses of products."[13] Again, tribunals of trade lawyers are left to make the subjective determination about whether a less trade restrictive option might exist.

In the name of harmonizing product standards worldwide, the WTO's TBT agreement gives almost absolute authority to international standard-setting organizations. NAFTA and the WTO set minimalist guidelines on what international standard-setting bodies or standards are presumed to be NAFTA or WTO compliant. The TBT agreement cites the product standards of the International Organization for Standardization (ISO) in Geneva. However, the agreements also state that the standards of any other international institution, including industry organizations, may also apply as long as the institutions are open to participation by representatives of WTO member countries.

For instance, the ISO is a private-sector body comprised of industry representatives. Until a few years ago, ISO only developed technical standards (e.g. the standard size of a light bulb) for industry. However, it recently began producing environmental standards. When the toy industry discusses setting new industry-wide standards, such private bodies are the likely venues. Although the TBT agreement designates ISO and other private organization standards as presumptively trade-legal, consumer groups, and even government officials, have been excluded from ISO's standards-developing process. In fact, according to a report for the European Environment Bureau, ISO's standards drafting committee is "made up principally of executives from large international corporations, national standards-setting firms and consulting firms."[14] If a new U.S. government toy safety standard were more stringent than an industry-set standard developed in such an international standard-setting body, the U.S. standard would be in violation of WTO requirements.

In addition, the TBT agreement requires members to consider accepting the standards of other members as "equivalent," even if they differ, if they meet the objectives of their own standards then allow "free passage" of products from such countries.[15] That is to say that the United States would be required to

accept imports that met the exporting countries' standard, once deemed equivalent, not the U.S. standard. However, the very concept of determining whether different standards are "equivalent" has been criticized, given neither the TBT agreement nor U.S. law defines what is "equivalent." This has resulted in various equivalence determinations being made by U.S. government agencies that are bureaucratic guesswork based on no objective basis that different standards can meet the same goals. Under this process, some 40-plus countries' meat inspection systems have been declared equivalent, even though some countries used company-paid inspectors and did not have continuous inspection regimes in clear violation of U.S. law.[16]

Finally, the TBT agreement requires member nations to ensure that their local governmental bodies, which in the United States includes state, county, and municipal governments, comply with the agreement's terms.[17] This is not an issue when state regulations mirror the corresponding federal regulations. However, a few states, most notably California, employ public referendums to pass consumer and environmental protection standards that are more stringent than federal or international standards. Several U.S. states are considering action on imported toy safety.

3. Ten Steps to Improving Import Safety

While this hearing is focused on toy safety and specifically the issues of lead contamination in toys from China, many of the broader issues regarding imported product and food safety fall under the jurisdiction of the Commerce Committee. Thus, this testimony concludes with ten steps towards addressing the overall imported food and product safety crisis.

1. Fix existing trade pacts that limit import safety standards and border inspection.

- **A thorough review is needed now of our existing trade agreements – from the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) pacts to recent NAFTA-clone regional agreements – to carefully identify the provisions that are**

causing problems. We must fix these existing agreements – and do better in the future. If we are to enjoy the benefits of trade, we must remove these non-trade limits on our basic health and safety that have been inserted into recent trade agreements. Specifically, our current trade agreements must be modified to remove provisions that:

→ Limit countries' rights to inspect imports at a more intensive rate than similar domestic goods. We must be free to inspect imports at whatever rate government safety agencies determine is needed to ensure safety.

→ Require the United States to allow imports of meat and poultry and non-food products from foreign countries that use "equivalent" and often lesser safety standards. We must be free to require that only goods that meet our U.S. safety and environmental standards can be imported.

→ Limit the level of food or product safety protection countries choose to implement. We must be free to set our own level of desired safety and environmental protection.

→ Include trade agreement harmonization requirements that give primacy of internationally harmonized rules relative to domestic law. Unless they are designed with the *intent* of discriminating against foreign goods, our domestic safety standards and the level of safety protection we desire are not a trade issue.

2. **Reject four pending NAFTA expansion agreements that would worsen the problem.**

- **Congress must reject the pending NAFTA expansion deals so that the Bush administration is forced to remedy the limits on safety standards and border inspection *in the current model* before any new deals are approved.** The four pending NAFTA expansion agreements with Peru, Panama, Colombia and South Korea would make the situation worse by increasing the import of food and products while limiting U.S. safety standards and border inspection.

3. **Ensure products meet U.S. safety standards before they enter the U.S. market.**

- **Require pre-shipment inspections and create a program of government-administered mandatory 3rd party testing of imported toys and consumer goods to ensure product safety.**

4. **Give the Food and Drug Administration (FDA) the authority to examine and approve other nation's regulatory systems as meeting U.S. safety standards *before* imports from a country can enter the U.S. market and tighten USDA rules.**
   - **The FDA needs new authority to examine and approve other nations' regulatory systems and food safety laws as the same as ours or better, before imports from a country can enter the U.S. market.** Currently, 80 percent of food products we eat come under FDA jurisdiction. These imports currently are permitted to enter the U.S. market without FDA's pre-approval of the food safety systems of the exporting countries. In contrast, USDA, which regulates less than 20 percent of the foods we eat, has authority to inspect plants abroad and decide which countries will be allowed to import meat and poultry here. Unfortunately, USDA does not require that foreign food safety systems be the same as the U.S. safety system, but rather (as required by WTO and NAFTA) allows imports from countries deemed to have "equivalent" systems.
   - **USDA needs to tighten its foreign food production safety standards to only allow food that meets our standards to enter, not food produced under "equivalent" systems.** There is no definition of equivalence in the trade pacts – and failure to find another country's system equivalent can be challenged. Countries whose safety systems differ significantly from ours have been deemed equivalent, and their products often enter our market in violation of U.S. law.

5. **Give U.S. agencies with enforcement authority the power to levy meaningful civil penalties for manufacturers, importers, distributors, and retailers who fail to meet safety standards, and criminal penalties for those who knowingly and repeatedly jeopardize public safety.**

6. **Border inspection of imported food and products must be greatly increased.**

- **Congress must require and fund greatly increased border inspection to prevent unsafe products from crossing our borders**. It is unconscionable – and dangerous – that the U.S. inspection rates for produce and seafood is less than one percent and meat and poultry inspection is only 11 percent. In contrast, the European Union physically inspects many high risk imports, such as seafood, at a rate of 20-50 percent. Currently, the CPSC has a total of only 15 border inspectors to inspect all non-food imported products!

7. **Country-of-origin labeling of ALL imported products so consumers can make informed choices.**
   - **Congress should immediately implement the 2002 law that requires country-of-origin (COOL) labels on beef, pork, lamb, fruits and vegetables. Congress should extend COOL provisions to cover all food products, including poultry, and and all ingredients in food, drugs, cosmetics, dietary supplements and vitamins.** Currently, only manufactured goods, prepackaged retail-ready foods and certain non-processed seafood sold in the United States are required to have COOL labeling.
   - **Develop a product traceability program for food and consumer products as well as for all components and ingredients.**

8. **Hold foreign manufacturers and suppliers, and U.S. importers and distributors, accountable for bringing unsafe products to the market.**
   - **Create market incentives for overseas manufacturers to focus on safety by subjecting them to the possibility of lawsuits in U.S. courts by injured consumers**. Currently, overseas manufacturers escape such liability, allowing those who cut corners on safety to profit without concern. By legislating jurisdiction of U.S. courts to the overseas manufacturers of any product *entering* U.S. markets, Congress would make attention to safety a good business decision for overseas producers.

- **Require importers to post a bond to ensure they have sufficient resources to recall their products should they prove dangerous or defective.**

9. **Authorize mandatory recall authority for all government agencies charged with ensuring food, product or consumer safety. Although the CPSC has recall authority, the FDA and USDA lack such authority for most food products.**

10. **Require all government agencies to publicly disclose information pertaining to safety investigations and adverse event reports. Currently, FDA has such authority, but CPSC does not.**

ENDNOTES

[1] Bureau of Labor Statistics, Employment, Hours, and Earnings from 2005 Employment Statistics survey, cited in U.S. Department of Commerce Industry Outlook, Dolls, Toys, Games, and Children's Vehicles NAICS Code 33993 (2005)
[2] Public Citizen, *NAFTA'S Threat to Sovereignty and Democracy: The Record of NAFTA Chapter 11 Investor-State Cases 1994-2005*, February 2005, at xv.
[3] Consumer Product Safety Commission, Recall Notice, March 23, 2006, Release #06-119.
[4] See e.g. Agreement Establishing the WTO, Article XVI-4.
[5] The TBT Agreement does *not* cover agriculture standards relating to animal, plant or human health. Thus, while a different WTO agreement covers food safety per se, the TBT agreement does cover, for instance, the health and safety issues related to flame retardants in processed cotton or environmental issues relating to pesticides.
[6] WTO Technical Barriers to Trade agreement, at Art. 2.4.
[7] WTO Technical Barriers to Trade agreement, at Art. 2.5.
[8] WTO Technical Barriers to Trade agreement, at Art. 2.5.
[9] In 2004, the Food Safety and Inspection Service (FSIS) changed its requirement that supervisory visits by inspectors take place every month at foreign plants eligible to export to the United States after numerous countries were found to be out of compliance with this basic safety standard. Supervisory visits are needed because without them, plant inspectors can be bullied by firms, bribed and otherwise compromised. FSIS has itself documented many instances, when foreign meat inspectors had their salaries provided by companies and not the government. FSIS amended 9 CFR §327.2(a)(2)(iv)(A) and 9 CFR §381.196(a)(2)(iv)(A) to require that foreign supervisors make "periodic visits." FSIS clearly stated that it was making this move to comply with WTO requirements citing Sanitary and Phytosanitary (SPS) Article 2.3. FSIS stated "The effect of Article 2.3 is that FSIS, acting as a regulatory agency of the United States, may not impose import requirements on inspection systems or establishments in an exporting country that are more stringent than those applied domestically." 69 Federal Register 51194, (Aug. 18, 2004.)
[10] WTO Technical Barriers to Trade agreement, at Art. 2.2.
[11] WTO Technical Barriers to Trade agreement, at Art. 2.2.
[12] WTO Technical Barriers to Trade agreement, at Art. 2.3.
[13] WTO Technical Barriers to Trade agreement, at Art. 2.2.
[14] Benchmark Environmental Consulting, *ISO 14001: An Uncommon Perspective - Five Public Policy Questions for Proponents of the ISO 14000 Series* (Nov. 1995), report produced for the European Environment Bureau, at 13.
[15] WTO Technical Barriers to Trade agreement, at Art. 2.7.
[16] Public Citizen, *The WTO Comes to Dinner: U.S. Implementation of Trade Rules Bypasses Food Safety Requirements*, July 2005.
[17] WTO Technical Barriers to Trade agreement, at Art. 3.1.

Mr. RUSH. Thank you very much.

Ms. Teagarden.

STATEMENT OF MARY TEAGARDEN, PROFESSOR, GLOBAL STRATEGY, THUNDERBIRD SCHOOL OF GLOBAL MANAGEMENT

Ms. TEAGARDEN. Good morning. Thank you for inviting me to speak this morning. I am really humbled and honored to be here. I am a professor of global strategy at Thunderbird Graduate School of International Management. I am a grandmother of small boys who play with toys and I have been studying offshore manufacturing in China and several other countries for over 30 years trying to understand how to do it well. I spend 20 percent of my time on the ground in China and it is from this perspective that I am offering my comments.

Protecting children from lead-tainted imports brings our attention to toys in China. I have several points to make regarding lead-tainted imports. First, there are many factors contributing to lead-tainted imports. Second, there are many actions that China can take to help resolve the problem. Third, there are many actions that importers can take to help resolve the problem. Fourth, government has a very important role to play in solving this problem.

Instead of simply blaming China, we must take a hard look at what we can control. American big-box retailers and their unrelenting pressure on suppliers for ever-lower prices bear part of the responsibility in this problem. American importers focusing on cost and investing in brand rather than quality, supply chain integrity and product integrity bear part of the responsibility. American parents and grandparents demanding ever-lower-priced toys to respond to children's requests bear part of the problem. And finally, American government's choice to chronically underfund watchdog agencies like CPSC is part of the problem.

China can certainly do a lot more to control the problem of lead-tainted products. However, we don't control China. But we must do our best to control us. There are many opportunities for control within this complex commercial system. American companies have played a major role in making China the workshop of the world. These companies are behaving rationally. They are playing by the rules of the game, focusing on profit and growth. Wal-Mart might be the best example of this rational behavior. They are the biggest big-box retailer and the world's largest company. They squeeze their suppliers to lower costs. Their suppliers in turn squeeze their suppliers to lower costs. As a consequence, there is a risk of slippage, quality slippage, use of inferior products and less supervision in the manufacturing process among suppliers. Extending responsibility for product compliance with U.S. laws to retailers would be an important safeguard against lead-tainted imports.

In conversations I have had with Chinese officials, they estimate that 50 percent of their exported products don't comply with Chinese laws. We must insist that imports into the United States comply with U.S. laws. China is large and industrialization has grown at a mind-bogging pace. This makes control harder. Lead-tainted products are fundamentally a control problem. Companies must be held accountable for compliance of products they sell in the United

States. Regulations governing imports are substantial and do an adequate job addressing lead-tainted products but the system relies on self-regulation and we have seen that self-regulation doesn't work. Punitive fines or import sanctions for importers that don't report problems immediately would drive faster reporting and keep lead-tainted products off or our shelves. The CPSC doesn't have enough people. A well-funded, adequately staffed and robust inspection system is part of the solution.

There are many actions China can take to help resolve the problem. We must encourage China to enforce their export regulations. We must seek a government-to-government reporting hotline to warn our Chinese counterparts about errant manufacturers. We have to keep pressure on the Chinese Government to help make positive progress on this issue. Working with them instead of against them will bear fruit. We have to realize that if we block imports from China, production will shift to other low-cost countries. The problem is not going to go away.

Companies can directly control the products through testing. We should require importers to use independent testing where risk for lead-tainted imports is high before the products are shipped to the U.S. to prevent entry into our distribution streams.

Finally, Government must fund oversight agencies to enable an appropriate level of inspection, given the proliferation of imported goods sold in the United States. And the CPS should continue to identify and sanction companies that import lead-tainted products. I encourage the Commission to look at the entire system to understand where there are opportunities for improvement. Learning from this assessment should be shared with industry to help everyone get better. Surely business and government working together can solve this problem.

My grandsons, Mike and Evan, would thank you all for your efforts in making these things happen, and I thank you for the opportunity to provide my testimony on this important topic.

[The prepared statement of Ms. Teagarden follows:]

Statement of Mary Teagarden
Thunderbird School of Global Management

Introduction

The scope of the recent wave of recalls associated with lead tainted toys coming from China has focused the attention of parents and others responsible for children's well-being, retailers who sell these toys, companies who import these toys, and numerous government officials on the problem of toys that have been painted with lead-based paint. Much of the focus of this controversy is on blaming China and their contractors. I believe that this is counterproductive and reactionary. The problem of lead tainted products is not a new problem. The problem of lead tainted imports is not a new problem. The fact that China is currently in the crosshairs is to a large degree a function of the growth in their importance as a preferred site for outsourcing manufacturing. It is a volume issue. Lead-tainted imports have many causes.

Who Owns the Problem?

Instead of simply blaming China, we must take a hard look at American issues, those that we can control, that contribute to this problem. I believe that in so doing we will see that we are a big part of the problem. American big box retailers and their unrelenting pressure on suppliers for ever lower prices bear part of the responsibility. American importers focusing on cost and investing in brand rather than quality and supply chain and product integrity bear part of the responsibility. American investors pressuring companies for growth and ever increasing profits bear part of the responsibility. Parents wanting low priced toys to respond to their children's requests for the latest toy seen on TV bear part of the problem. Finally, the American government's choice to chronically under-funded watchdog agencies like the Consumer Product Safety Commission is part

of the problem. I recognize that blame also belongs to China. China can do a lot more than it currently does to address the problem of lead-tainted products. However, we do not control China. China controls China. We can do our best to influence China. We can and must do our best to control us. But knowing what to control is not that clear or easy. There are many opportunities for control within this complex commercial system.

The China "Problem"

Manufacturing in China is not going away. China's manufacturing sector ranks fourth in the world after the U.S., Japan and Germany. China's exports to the United States have grown by approximately 1,600 percent over the past 15 years. According to the US-China Business Council, the dollar value of imports from China is US$287.8 billion in total and toys, games and apparel as industrial segments represent 40.8 percent of this volume.[1] The toy industry is a US$22 billion dollar industry and 80 percent of these toys are manufactured in China.[2] Toys were one of the first consumer products to be produced in China in significant volume. Most of the toys produced in the world are now produced in China and most of these are produced in some very localized parts of China like Guangzhou and smaller cities outside of Shanghai. Most of these toys end up in the hands of American children.

Companies know how to take advantage of the benefits of manufacturing in China while maintaining product quality and obeying US laws for the products they import. Many companies with which I have worked or that I have visited produce world-class quality

[1] http://www.uschina.org/statistics/tradetable.html
[2] Renae Merle (August 3, 2007) "Recalls of Toys Pressure Agency: CPSC Resources Called Inadequate." *Washington Post.com*

products that are high-tech, and difficult and complex to manufacture. Companies know how to produce safe, quality products in China whether in their own plants or through contracting relationships with Chinese suppliers. Indeed, Mattel, one of the companies that recently had lead-tainted toys recalled has been manufacturing toys in China for twenty years. If we look at the recall statistics, Mattel has done a fairly good job manufacturing safe toys in China. So knowing how to produce products free of lead contamination is not the problem. We must look at other drivers to fully understand the problem. What are the drivers behind the issue of lead-tainted imports?

Economic Drivers

Exports have been an important part of China's economic growth strategy and a key driver of their economic growth. American companies, like those in the toy industry, have played a major role in making China, the "workshop of the world"[3] as they have relocated manufacturing from the U.S., Mexico and numerous other locations around the world to China[4]. Indeed, these companies are behaving rationally. As Robert Reich reminds us, they are by and large playing by the "rules of the game," focusing on profits and growth.[5] This is where the big box retailers contribute to the problem.

Wal-Mart is the biggest of the big box retailers, and the example I will use here. In fact they are the world's largest company. To put this in perspective, they sell in three months what the number two retailer sells in a year.[6] Given their size, they have the ability to

[3] Bill Powell (March 4, 2002) "It's All Made in China Now." *Fortune.*
[4] Oded Shenkar (2005) **The Chinese Century**. Philadelphia: Wharton School Publishing.
[5] Robert B. Reich (2007) **Supercapitalism**. New York: Alfred Knopf.
[6] Charles Fishman (2003) "The Wal-Mart You Don't Know." *Fast Company*, December.

squeeze lower prices from their suppliers. They focus on nationally branded products. One positive benefit for the customer is that they get nationally branded products at low prices. One negative consequence is that as Wal-Mart (or other retailers) squeezes their suppliers to lower cost who in turn squeeze their suppliers to lower cost. So it goes throughout the supply network. As a consequence, there is a risk of slippage--quality slippage, use of inferior materials, and less supervision of the manufacturing process. The longer the supply chain, the higher the risk in the absence of world-class process and material controls.

Retailer Cost Pressure Drivers

The more retailers exert pressure on suppliers to provide products at lower and lower cost, the more slippage risk in the supply network. Researchers have found that the emphasis on cost cutting in the supply network undermines overall effectiveness.[7] When the largest retailer in the world squeezes its suppliers including those who produce toys, we should not be surprised that slippage and its consequences occur. Extending responsibility for product quality beyond importers to retailers can introduce an additional safeguard. Direct responsibility for product quality would encourage retailers to focus beyond relentless cost pressure to product quality. Extending responsibility for product quality to retailers would be an important safeguard against lead-tainted imports.

[7] Thomas Choi, Kevin Dooley, and ManusRrungtusanatham (2001) "Supply Networks and Complex Adaptive Systems: Control versus Emergence. *Journal of Operations Management*, 19, pp. 351-366.

The "China Price" Driver

Companies seeking ever lower prices have benefited from what *BusinessWeek* calls the "China price," a price that is 30 to 50 percent cheaper than what you can make the equivalent product for in the U.S.[8] Companies manufacturing in China are able to produce at the "China price" for a variety of reasons, including lower factor costs. Labor, facilities, raw materials are all cheaper in part because of differences in absolute costs and differences in regulatory oversight between China and many other countries, including the U.S. For example, the U.S banned lead in toys in 1978 and China just signed an agreement to do so this month.[9] In conversations that I have had with Chinese officials, they estimate that 50 percent of their exported products do not comply with Chinese law. The Chinese government has agreed to increase inspections and meet more regularly on export-related issues.[10] This is a very important issue for China, especially because it is undermining confidence in products made in China.

Supply Network Control Driver

China is large and industrialization has grown at a mind-boggling pace. This exacerbates the control problem faced by companies manufacturing in China, especially as they move from large cities like Shanghai, Beijing and Guangzhou to the smaller, less cosmopolitan cities where most toys, and many of the materials used in toys are assembled and manufactured. I see lead-tainted import problems as fundamentally control problems. Companies are exercising inadequate control over their global supply networks. My colleagues Hari Bapuji and Paul Beamish, Canadian academics that have examined

[8] Pete Engardio & Dexter Roberts (December 6, 2004) "The China Price." *BusinessWeek.*
[9] http://www.msnbc.msn.com/id/20726149/
[10] http://www.msnbc.msn.com/id/20726149/

products recalled by the Consumer Product Safety Commission since 1988 find that of the 550 recalls since 1988, "...only about 10% (or 54) of recalls are historically attributable to manufacturing defects such as poor craftsmanship, over-heating of batteries, toxic paint and inappropriate raw materials."[11] Most of the recalls are because of design problems, not lead-based paint. Companies are responsible for their designs and the processes used to manufacture their products.

Companies know how to take advantage of the benefits of manufacturing in China while maintaining product quality and obeying US laws for the products they import. Many companies with which I have worked or that I have visited produce world-class quality products that are difficult or complex to manufacture. Indeed, Mattel, one of the companies that recently had lead-tainted toys recalled has been manufacturing toys in China for twenty years according to the media. If we look at the recall statistics, they have done a fairly good job. So knowing how to produce products that are lead-free is not the problem. It is a question of constant process and material vigilance throughout the supply chain.

Government Under-Funding Driver

As I said earlier, tainted imports are not a new problem. Indeed, the Consumer Product Safety Act was in part a response to this problem. The regulations governing lead tainted imports are substantial and do an adequate job addressing the problem of lead paint in or on toys. They rely on a company's self-report of violations. I believe that self regulation

[11] Ibid, p. 4.

is powerful at the company and industry levels. It protects earnings, brand equity and product integrity simultaneously. The toy industry is largely self-regulated. Self-regulation, however, does not guarantee perfect compliance as evidenced by the case of recalls at Mattel and the US$ 2 million in fines that they have been assessed for failing to report recalls in a "timely manner."[12] Punitive fines or import sanctions for companies that do not comply as soon as they are aware of a problem would drive faster reporting.

The Consumer product Safety Commission has appropriate oversight responsibility and good safety standards; however this is not adequate to address the problem of lead tainted imports. According to media reports about the Commission, they do not have adequate resources to do their job. The Commission's problem parallels China's growth, but moves in the opposite direction. As imports from China have grown exponentially, the number of personnel available to inspect imports has been relatively flat, so proportionally, they have gotten smaller relative to the problem. Janell Mayo Duncan of the Consumers Union comments that the Consumer Product Safety Commission has only about 100 field investigators and compliance personnel nationwide to conduct inspections at ports, warehouses and stores of US$ 22 billion worth of toys and other consumer products sold in the US each day. She concluded that they need more money and resources to do more checks.[13] I concur; a well-funded, robust inspection system is part of the solution.

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[12] Heather Burke

[13] Eric Lipton & David Barbosa (2007) "As More Toys Are Recalled, Trail ends in China." The New York Times, June 19.

Other Lead Threats

While the focus of our attention is largely on lead-tainted toys, I want to call your attention to a class of imports that go unregulated and present perhaps a greater risk to the public. Cast crowns and bridges, cast partial denture frames and cast implant abutments are custom designed and individually produced restorations prescribed for an individual patient by a licensed dentist. The risks to the public are two fold; non approved metal alloys might be used in their manufacture, and the product has only a visual review of the casting at the end of the products import life cycle by the dentist at the final point distribution to the uninformed patient. The dentist does not review the restoration during the manufacturing process; most of the systems for dental laboratories are voluntary.[14]These cast dental devices primarily come for the same region that produces lead-tainted children's jewelry.

Recommendations

The problem is not as simple as a problem with manufacturers in China. However, there are many actions that China can take to help resolve the problem. I believe China will make progress, especially with our persistent encouragement. We can encourage China to enforce their export regulations more aggressively. We can encourage them to work more closely with regulators in other countries and industry representatives to develop global standards with which they will require and enforce compliance. We are seeing a lot of positive movement from China right now. We can seek a government to government reporting "hot line" to warn our Chinese counterparts about errant

[14] Correspondence with Bennett Napier, Director of the National Association of Dental Laboratories and Elizabeth Curran, CDT, Vice-Chairman, National Board for Certification in Dental Laboratory Technology, September 2007.

manufacturers. We need to keep pressure on the Chinese government to help them make positive progress on this issue. Working with them instead of against them will bear fruit. If we block imports from China, production will shift to other low cost countries and the problem will not go away.

Importers are responsible for the integrity of their supply network and for compliance with US laws for those products sold here. There are many actions that importers must take to resolve the problem. These primarily focus on maintaining supply network integrity. Companies must develop and use systems that ensure that global standards are applied. They cannot rely on intermediaries to do their work, even long-term trusted intermediaries as was the case of lead-tainted paint on Mattel's toys. If we look at recent quality problems in dog food and tires we see that Chinese suppliers' factories were not inspected prior to or during production and that neither product had a quality process in place. The Chinese suppliers were blamed despite the fact that these were supply network control failures of the importers. One thing we must do is understand where the problem resides. Companies can directly control their products using an in-house laboratory or a third party laboratory like Bureau Veritas, or SGS Group. We should require importers to use in-house or third party testing where the risk for lead tainted imports is high before products are shipped from the supplier to prevent entry into the distribution network. The increased cost will surely be passed on to the customer, but fewer toys will not hurt children as much as lead in toys will.

The government can fund oversight agencies to enable an appropriate level of inspection given the proliferation of imported products sold in American stores. A robust and well-funded Consumer Product Safety Commission inspection system is one of the protections that will help keep lead-tainted imports away from children. The Commission should continue to identify and sanction companies that import lead-tainted products. However, I encourage the Commission to look at the entire supply network before assessing blame and to document opportunities for improvement. Learning from this assessment should be shared with industry to help everyone get better.

Thank you for the opportunity to provide my testimony on this important topic.[15]

[15] I would like to thank numerous people in the Thunderbird family for their contributions to this presentation.

Mr. RUSH. Thank you very much. I want to announce, there is a vote that is occurring on the floor right now. We have 5 minutes to get over and vote. There are three votes, so it probably involves a half an hour, so we will recess for about a half an hour and return for questioning by the committee as soon as the vote is over with, so please forgive us. We are going to stand in recess until the completion of the vote. Thank you.

[Recess.]

Mr. RUSH. I will state to the witnesses that we thank you so much for your patience. I am going to recognize myself for 5 minutes of questioning, and I will begin with Ms. Farrow.

Ms. Farrow, you state that the majority of children's jewelry with excessive lead is found in discount stores with lower-income clientele. Are any of these discount stores chain stores? Can you provide us with a list of the stores where you have found this poisonous jewelry?

Ms. FARROW. Yes, Mr. Chairman, many of them are chain stores. I can provide the committee with a list today if you would like.

Mr. RUSH. Yes. With your oral testimony, can you provide us with a——

Ms. FARROW. Of the products that we found positive, Clair's, Wal-Mart, the Children's Place. Those are chains. Dollar Tree and another Dollar Tree and then the vending machine rings, they were found at a Foodarama. However, the distributor, Cardinal Distributing, vends product throughout the State of Maryland.

Mr. RUSH. Did your research locate any Dollar General stores or do you know, Dollar General, do they own any of the other discount stores?

Ms. FARROW. We have not found any at a Dollar General at this time. We have been to Dollar Tree stores, which are a national chain.

Mr. RUSH. Thank you very much. The Chicago Department of Public Health has found imported Mexican candy in stores throughout Chicago that had high lead content in the wrapper. Has your city, the city of Baltimore, does it have similar problems?

Ms. FARROW. Yes, back in December 2005, we conducted a random survey of some of the stores in the Hispanic community and we did find some products that were high. We referred it to the FDA and they conducted testing and did find that some of the candy and products were high lead.

Mr. RUSH. Is this the candy or the wrappers?

Ms. FARROW. Well, this was the candy itself.

Mr. RUSH. Mr. Green, is there any reason that there should be lead in vinyl baby bibs or vinyl lunchboxes?

Mr. GREEN. The short answer is absolutely not. So why is there lead in vinyl? There is lead in vinyl for two reasons. One reason may be, vinyl is a junk plastic. PVC and vinyl are the same thing. It is a junk plastic and it has all these different chemicals and then it needs something to hold all those chemicals together, and the thing that holds it all together is usually a metal. More often than not when it is manufactured, especially here in the U.S., that metal is tin, organotin. Sometimes especially when standards are not as high, they will use a more toxic metal, cadmium or lead. So the first reason that it would be in there is as what is called a sta-

bilizer, to hold all of the different chemical constituents together and you can do it with tin just as easily, so that is the first reason. The only other reason there would be lead in vinyl besides some kind of contamination that was unintentional is in the pigment. So obviously we have gone through this lead paint story, culminating in 1978 with the ban in lead paint. There is no problem with having pigments that don't contain lead. So the two reasons there would be lead in there are both very easily solved and are usually solved. I also just want to say real quickly about the candy from Mexico——

Mr. RUSH. That was going to be my next question to you.

Mr. GREEN. The Center for Environmental Health, and then later joined by the California attorney general, brought suit against a subsidiary of Hershey's, a subsidiary of Mars and then a large Mexican-owned company for this problem. We found that the two principal sources of the lead were paint on the wrapper sometimes, and then drying the chiles that are actually in the candy near a generator that is burning leaded gasoline in Mexico. Then it basically lands on it, which is an easy thing to solve. You dry the chiles, inside, or not with a generator with lead nearby, at least. So I just wanted to sort of give that information.

Mr. RUSH. Is this problem more apparent in U.S. communities with high Hispanic population? And my second part of this question is, is this something that the general American public and particularly Hispanic citizens should be concerned about as we head into the Halloween season?

Mr. GREEN. Yes. One of the concerns that we got from Hershey's and Mars' subsidiaries and this third large company was, well, if we fix our problem and there continues to be smaller companies still have these same problems, the drying of the chiles or the paint on the wrappers, if we come to an agreement with you, Mr. Attorney General, and you, the Center for Environmental Health, what is going save our brand from continuing to be criticized as this is found, and so we came to an agreement. As part of the agreement, they would help fund their smaller competitors to address these problems, which is very creative. But I am skeptical about how well it will—I think things will continue to slip through the cracks on this issue unfortunately. That is the first thing. And then the second part of your question is, there is definitely a disproportionate impact on Latino children from this problem.

Mr. RUSH. Thank you.

Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

Dr. Best, what is the naturally occurring levels of lead in the body for adults and children, if there is a difference?

Dr. BEST. Naturally occurring is probably a misnomer. In an environment where we don't have contamination, the natural level, the normal level of lead would be zero.

Mr. STEARNS. What is it in the average adult?

Dr. BEST. In the United States?

Mr. STEARNS. Yes.

Dr. BEST. I can give you the median level of——

Mr. STEARNS. Yes, that is fine.

Dr. BEST. OK. This is a level for children. As a pediatrician, those are the numbers that I think about. It is in the 1.2 to 2.0 microgram per deciliter level.

Mr. STEARNS. What is that in terms of parts per million like we have here? We have someone advocating 100 parts per million.

Dr. BEST. Well, that is difference between biological and——

Mr. STEARNS. Can you give me a——

Dr. BEST. I might. I can tell you that it translates——

Mr. STEARNS. What I am trying to see, if I give a toy to a child and it has 600 parts per million, is it possible that child already has 600 parts per million in his system?

Dr. BEST. Yes, and that is one of the concerns we have is that lead isn't just a one-time acute event, it is an accumulation, so the lead you got from your toy and the lead you got from the paint——

Mr. STEARNS. Can you just approximate in your mind an average adult and an average child today, how much lead do they have in their body, parts per million?

Dr. BEST. No, I can't do it in parts per million because we don't measure it in that way. The parts per million translated into what is in your bloodstream, it is like an apple and orange measurement.

Mr. STEARNS. You just can't say parts in the bloodstream, it is so much. You can't do that then?

Dr. BEST. I can't.

Mr. STEARNS. I understand that. I appreciate that. One other question is, you look at all the adults, some of them are living to 95 and 100, and how did they escape this lead poisoning when growing up with lead-based gasoline we had in this country for many, many years, lead-based paint until 1978. We had lead pipes in our plumbing and so we had all this lead that was omnipresent. How did these people grow up and——

Dr. BEST. We didn't escape it.

Mr. STEARNS. So you are saying you think——

Dr. BEST. I think I would have been a lot smarter.

Mr. STEARNS. Here you have got an M.D., a Master's in public health. I am not sure what——

Dr. BEST. Just think of what I could have done.

Mr. STEARNS. What is an FAAP?

Dr. BEST. I am a fellow of the American Academy of Pediatrics.

Mr. STEARNS. Well, you are pretty smart as it is. But you see, my point is that we have eliminated the lead in the paint, we have eliminated it out of the pipes, we have eliminated it out of the gasoline and now we are just talking about just 100 parts per million so——

Dr. BEST. Well, the point that I think is important to bring out is that as we have eliminated these kind of gross sources, meaning gross as a large source of environmental lead, we have lowered the lead level in our population, and that is a great thing because we have less renal disease, we have lower blood pressure because of that, we are smarter.

Mr. STEARNS. Maybe a longer life span?

Dr. BEST. Longer life span and because it is a gene-environment-education kind of mixture, it is hard to point out which of that contribution was lead. But we know that as we have decreased the level of lead in our bodies, we have also found that even though

we keep lowering the level of lead to which we pay attention, it still is harmful, even below what is now currently the level of concern.

Mr. STEARNS. OK. Let me move on. Mr. Green, I was on C-SPAN talking about this the other day and a lot of people were calling in, should I throw out all my toys that are in my closet that have possibly lead or lead paint. What is the proper disposal that should be done of these toys? Just quickly, and then I have a question for Ms. Wallach. Go ahead.

Mr. GREEN. Well, first of all, no one has really looked at this so that question needs to be solved, but if it is a high level, then the right thing to do would be to take it to the local hazardous waste facility that you would take paint that is in your garage or the computer that is in your garage.

Mr. STEARNS. Your testimony described the CPSC leadership as simply political appointees who are protecting industry. Do you have any evidence of this or is this purely your opinion?

Mr. GREEN. It is my opinion and I have evidence.

Mr. STEARNS. Ms. Wallach, do you believe the United States should ban all imports of toys from China? Why or why not? If so, from what other countries should we not allow toys?

Ms. WALLACH. I think that we need to do two things. We either need to keep out toys produced in countries that don't have safe regulatory regimes or we need to figure out a system to make sure that the way things are being produced overseas are safe and they don't get into our market in the first place because recalls only get a small part of it, and we could go either way. And in part, it is going to rely on the decision of Congress, what your judgment is, is the most efficacious. In the short term, should there be a ban on all lead in toys coming from anywhere? Absolutely. If in fact there are rules, for instance, new authority to have inspection overseas, which I think is going to be necessary in countries that don't have strong regulatory systems of their own, then you are going to give that authority, you are going to try and get the act cleaned up, you are going to have more inspection on the border, I hope. But then if that doesn't work, yes, we are going to have to consider what products are the highest risk products that we shouldn't be importing and it would be a real tragedy if between improved government regulation, U.S. industry action and Chinese Government action we couldn't clean up the situation.

Mr. RUSH. Thank you.

The gentleman from Utah is recognized for questioning.

Mr. MATHESON. Thank you, Mr. Chairman.

First, Ms. Teagarden, I wanted to ask you, in your written testimony I think you mentioned you have spoken with officials in China who estimate that 50 percent of their exported products do not comply with existing Chinese law. I was wondering if you could tell me who these folks in Chinese, these officials work for. Do you know which agencies they work for that you talked to?

Ms. TEAGARDEN. The only reason that you get that kind of disclosure is with expectation of confidentiality, and with all due respect, I couldn't remember their names if I tried but——

Mr. MATHESON. Well, let me ask you this. Do you know what types of products they are referring to when they estimate the 50 percent noncompliance?

Ms. TEAGARDEN. The discussion was wide-ranging. We looked at a wide range of manufactured products, not specifically toys, a wide range of products.

Mr. MATHESON. Do you know if they have taken any steps within the country to reduce this rate of noncompliance?

Ms. TEAGARDEN. If you read the Chinese media, the Chinese Government has been quite aggressive relative to historical behavior in trying to bring these issues into compliance.

Mr. MATHESON. Do you know of any particular steps they have taken to reduce this noncompliance?

Ms. TEAGARDEN. They have arrested people. They have executed people.

Mr. MATHESON. All right. Let me ask you this. I will try a new line of questioning.

Ms. TEAGARDEN. The 35-cent solution.

Mr. MATHESON. In your testimony, you talk about a need for more inspectors in the Consumer Product Safety Commission. I think that there is general consensus that that is appropriate. Do you think that the commission—do you have recommendations for any expanded authority within the CPSC to address the toy safety issue?

Ms. TEAGARDEN. I don't have expertise there. What I would look at is the provision of more people making sure that companies are doing what they say they are doing.

Mr. MATHESON. I guess I would ask Mr. Green, do you have thoughts about should there be expanded authority of the CPSC? Do you have thoughts about that?

Mr. GREEN. I do think that we need to expand the authority of the CPSC while also increasing their budget and while——

Mr. MATHESON. And how would you expand the authority? Do you have thoughts on that?

Mr. GREEN. Well, a lot of it is about political will of using some of the authority they already have but I have spoken about that. I have some stuff in my written testimony about this. But the most important thing is to give them some more specific authority on lead, less ambiguous authority to deal with lead in a way that all the other agencies are looking at it so right now they are saying well unless it is in paint, we don't have any authority over that. Well, that doesn't necessarily make sense if a child is chewing on something, for example.

Mr. MATHESON. Right. That is helpful.

I want to ask a question of Ms. Farrow. In your testimony you raised the issue about you found toy jewelry 3 years after it was subject to the recall process.

Ms. FARROW. That is correct.

Mr. MATHESON. And you raised the issue about the adequacy of the Federal Government regulating imported toy jewelry. Do you have thoughts about what else the CPSC can do to assist local government agencies in improving the safety and the recall process?

Ms. FARROW. Well, I think if the CPSC would notify the local jurisdictions that a recall has occurred and then maybe seek our as-

sistance in making sure that the product is destroyed and permanently removed from trade.

Mr. MATHESON. And do you feel like we need to make improvements on that?

Ms. FARROW. Yes, clearly we have that example of this product that was sitting in a backroom somewhere for 3 years and then placed back out in the marketplace.

Mr. MATHESON. OK. Mr. Chairman, that is all the questions I have. I will yield back. Thanks.

Mr. RUSH. The Chair recognizes the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes of questioning.

Mr. PITTS. Thank you, Mr. Chairman.

Dr. Best, we understand that children can ingest lead, they can swallow chips of paint. Would licking a toy be enough to ingest or absorb lead to affect increase in blood lead level?

Dr. BEST. It is a hypothetical question. I will give you a hypothetical yes. The issue that we almost universally encounter is lead dust. It is on the floors and on children's hands and on toys, so that is an important issue about licking items. It would depend on how bioavailable the lead is, whether the paint had been chipped or harmed, if there was paint on the outside, if the item had been chewed on before and had deteriorated in a way so that lead was available.

Mr. PITTS. And what are the procedures for treating someone with too much lead in their blood?

Dr. BEST. It depends. The first step is to make sure that continued exposure does not happen. That means you need to remove the source of lead or the child from the source of lead, whichever is more appropriate. If the child is living in a lead-painted house, we remove the child from the house. If the child has swallowed a lead charm, we remove the charm from the child. Then depending upon the level of lead, we will make sure that they are nutritionally adequate so that they have a good source of calcium and iron and vitamin C in their diet so that they don't continue to absorb more lead from whatever other sources there are in their environment. And then finally, if it is above a certain level, we will institute chelation, which is a medical procedure that reduces lead, although it has its own consequences.

Mr. PITTS. Are you aware of any children that have become injured or sick by this summer's recalled toys with lead paint?

Dr. BEST. No, I am not, but my pediatric practice is local.

Mr. PITTS. Ms. Farrow, roughly how many products made with lead are in a typical person's home today? How much lead is a person exposed to in their own home from products made with lead?

Ms. FARROW. Well, clearly in older homes that were built prior to 1978, the primary exposure is from the lead paint in the home. As far as products, I think at this point it might be hard to determine. We haven't tested all the products, all the children's toys. They are not all being tested. Maybe Mr. Green might have a better idea.

Mr. PITTS. Go ahead.

Ms. FARROW. There are toys, vinyl products, potentially as we've identified earlier, potential candies, other food products.

Mr. PITTS. And what can be done about those products, older products that are still in circulation, or in the home?

Ms. FARROW. Well, I think it is a matter of getting the word out to communities that products can potentially be poisonous but the key is really identifying what those products might be and providing testing and scrutiny of all the products that are out there in the marketplace.

Mr. PITTS. Mr. Green, did you want to add something?

Mr. GREEN. Well, I was just going to say that more often than not, these are cheaper products and frequently products made out of vinyl, out of PVC, and so I think that parents—and we already talked about how to dispose of them but parents, if they are concerned and they really want to go to the mat and do everything they can, could basically take all products that are made for their children to play with that are made out of PVC vinyl and get rid of them.

Mr. PITTS. Now, Mr. Green, you said that you felt the CPSC leadership were political appointees who are protecting industry, that you thought you had evidence. Do you think the record recalled number of products this year is evidence of them protecting industry?

Mr. GREEN. Thanks for that question. That is a good question. So first of all, I didn't say that they always do. I just said that there have been situations where we have seen that, and then for the previous question, in my written testimony there is some very specific evidence including a document that we received from a FOIA request, sort of the proverbial smoking gun related to the lunchboxes about that. As far as the question about the increased number of recalled items, I think that we also have to look that the world has changed and so globalization is causing increasingly large number of the products that are for sale in the U.S. to be made in places that don't have the sort of American regulatory and enforcement provisions to ensure that there are not toxic materials or dangerous aspects to products. And so I think that it would be only natural as there is more international trade for us to have more dangerous products in the U.S. because our standards are currently higher—safety standards.

Mr. PITTS. Thank you, Mr. Chairman.

Mr. RUSH. The Chair recognizes the gentlelady from Oregon, Ms. Hooley, for 5 minutes.

Ms. HOOLEY. Thank you, Mr. Chairman. Dr. Best, as you stated in your testimony, there are no safe levels of lead for children. Does this mean that you think the CPSC's limit on lead paint to 600 parts per million is insufficient?

Dr. BEST. I do.

Ms. HOOLEY. And what would you have it in?

Dr. BEST. I want to sure I get my decimal point correct. Yes, 40 parts per million in any component of the item.

Ms. HOOLEY. Do you know how CPSC came up with that figure, 600 parts per million?

Dr. BEST. I believe that they divided a dose of lead that can be attributed to a specific rise in blood lead, a dose of external lead into your blood, and then divided that by enough lead to cause a

loss of 1 IQ point, and I actually I have that written down. It is a fairly convoluted structure but we can show it to you.

Ms. HOOLEY. Thank you. Dr. Best and Mr. Green, a question for both of you. Are you aware that there are water hoses, some with or without warning labels, that if you actually put the water through them, they are producing a high level of lead than you would get from your faucet if you had lead in your pipes? And that is the water sometimes we drink out of that hose or give our children a drink out of that hose or we water our fruits and vegetables. Can you talk to me about that and how important that it and do we need to do something about it?

Dr. BEST. Well, the good news is that vegetables don't absorb lead out of the water as well as humans do, for instance. So washing your vegetables or growing your garden using water from that hose is less of a concern. I am not going to say it is no concern but——

Ms. HOOLEY. But less of a concern.

Mr. BEST. The other news is that you really shouldn't be drinking out of your hose because there is lots of other things besides lead including some phthalates and other things that we know are harmful.

Mr. GREEN. The Center for Environmental Health came to an agreement with hose manufacturers, the largest hose manufacturers, the ones that were selling in California, and the agreement basically said that they had to comply with the California Toxics Act and they have chosen to comply in one of two ways: Either to reduce the lead to such a low level, to an extremely low level or to put a warning on it. Obviously we were trying to encourage them to just eliminate the lead and the reason the lead is in there is because the hoses are made out of vinyl and so they are sourcing vinyl sometimes that have lead in them and in my opinion is not nearly as dangerous a health hazard as jewelry or bibs or lunchboxes because it is not designed for a child to use it on a regular basis. However, when the sun sits on the hose and like in my yard where I got one of those little handles at the end, the water sits in there in the sun, the vinyl breaks down and the lead dust that Dr. Best described goes into the water and then the kids play in the yard and they get thirsty and they drink out of the hose. That possibility does exist.

Ms. HOOLEY. I understand, for any of the panelists, that some western European countries like Germany have dealt with the issue of dangerous substances in products more effectively. Do any of you have any knowledge of what is happening in other countries? You can volunteer, any one of you.

Mr. GREEN. At the risk of monopolizing the conversation, my Treo would be illegal in the E.U. so they are making a different Treo for the EU that doesn't have the heavy metals that this one has, as an example. I have an example here in my pocket so I am sharing it with you.

Ms. WALLACH. And to that end, the Europeans have gone through a process of finding a whole new regulatory system for toxics. Its acronym is REACH, and gruesomely, the United States, has been one of the countries that has threatened to drag that new standard for raw toxics, not just in toys, to the WTO as an illegal

trade barrier. So there are a set of memos that came out of the State Department during the period of Colin Powell as Secretary of State that lay out orders basically of our all our embassies in Europe as well as various memos describing how their improvement in the toxic exposure would be a violation of the World Trade Organization's Technical Barrier to Trade Agreement. We threatened in what is called a demarche, which is before you file the actual suit, we threatened a WTO suit and they weakened that standard though they are starting to implement the weakened version so it is a rollback. It is a chilling effect already without a challenge and we are still apparently—the U.S. Trade Representative's office is still chewing on the idea of going after that because it is a better standard. The Treo would be bad and there are a whole set of products—now there are two scales of production, one for the U.S. market and one for Europe, to meet these standards that are higher safety.

Ms. HOOLEY. Mr. Chairman, do I have time for one more question, Mr. Chairman?

Mr. RUSH. Mr. Gonzalez is recognized for 5 minutes.

Mr. GONZALEZ. Thank you very much, Mr. Chairman

My first observation, and I appreciate what Mr. Green said. He said the world has changed and I am afraid we are still dealing when it comes to safety of products with a design and a model that is outdated but I am going to cover something that was discussed yesterday as to what the CPSC is doing regarding the issue at hand. The other observation I have is simply, I understand the interests of lead levels and maybe other sources but we are where we are and I think that we don't have to debate the fact that lead is bad and the best test of that is whether a manufacturer or a retailer of a product containing lead, would they purchase it and allow their children or their grandchild to use it. I think that is always the test, and I guarantee you, the answer to that would be no.

But yesterday Chairman Nord indicated the following:

> I am pleased to report that we reached an important agreement with AQSIQ, which is the counterpart in China of the CPSC, under which China will immediately implement a plan to eliminate the use of lead paint on Chinese manufactured toys exported to the United States. They are going to make sure there is no lead in the paint through inspections of U.S.-destined toys and a certification system for paint suppliers.

When I asked her, is that realistic because we don't have any oversight, we have no inspectors, we are not going to have anyone over there assisting the Chinese or maybe even looking over their shoulder as to whether they are really complying with the terms of this particular agreement? So very briefly, I would like the witnesses to tell me whether this is realistic. I am not criticizing Chairman Nord. I think she inherited what she has inherited by resources and through authority and she is going to do the best she can under the circumstances. We are going to be introducing legislation that may address some of the shortcomings.

The second point, and I want, again, even though I am going to cite the testimony of a couple of the witnesses, I want the other witnesses to also chime in on what I believe is so important, and that is the shared responsibility of different sectors in addressing

the problems, whether is lead or other unsafe products, and that is the role of the manufacturer and their liability, the retailer and their liability and of course just good consumer due diligence, and I think some of the witnesses may have touched on that in their testimony. But what I want to point out is the comment here, first of all, I believe it is Mr. Green in his summary

Second, such legislation must hold distributors, retailers and manufacturers accountable for the safety of the products they sell through mandatory pre-market testing and strong disincentives for violators.

I have got Ms. Teagarden, I believe

Direct responsibility for product quality would encourage retailers to focus beyond relentless cost pressure to product quality. Extending responsibility for product quality to retailers would be an important safeguard against lead-tainted imports.

So the first question is what Chairman Nord has put in place as far as the international agreement, and secondly, where do we get the manufacturer and the retailer to share some of that responsibility and why do you think that they are not doing that at the present time? And we will start with Dr. Best.

Dr. BEST. As a medical professional, I must admit that that is not my field of expertise but I can say that there is no reason for lead to be in any product. It is used in a product because it is cheaper than its alternative or because of lack of knowledge, so I would hope that our standard is set very high no matter what the source is.

Ms. FARROW. I would say that despite what China may or may not do in the future, we still need to have some type of regulatory framework here in the United States to actually inspect the product as it enters this country because even though China might say they are stepping up, we have got to make sure that we can close any kind of loophole that might be there. Clearly we have identified the problem. The product has been identified by CPSC and they still allow the product to remain on the marketplace, in the marketplace, and there has got to be a better mechanism for destroying, destructing the property that the toys, jewelry, other products that are found to contain lead and I think we just need to step up our enforcement on our border.

Mr. GONZALEZ. Mr. Green?

Mr. GREEN. In regard to the first question, it is my understanding that last week on the Senate side, one of the Senators said that he had been told by a Chinese representative, oh, we have already been doing what is in that new agreement for years. So that is hearsay but it is at least a good source. And then so that implies that it is not necessarily a very optimistic opportunity. It is not necessarily, OK, we got a done deal here. Second thing about that is that it is not just about China. In fact, the largest recall, the 150 million pieces of the very, very cheap jewelry that was in the gumball machines, that that recall happened just a month after the Center for Environmental Health, 2 months after we sued some of the other jewelry manufacturers and sellers, those were all made in India. So I think we can't necessarily only say oh, the problem is China. Actually the problem is us. We are responsible for protecting our kids. And then as far as the second half of your question, what can we do about whether retailers, what their role is, so it shouldn't be the place of a small nonprofit like the Center for

Environmental Health to have to bring litigation against these large retailers. It should be the place of government to hold the retailers accountable because these very large retailers have the resources to check out what is happening, what they are selling, and they should be held accountable for what they are selling.

Mr. GONZALEZ. Thank you.

Mr. RUSH. The Chair recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman.

Dr. Best, I actually very much appreciated your comments about what you could have been had there not been lead in the gasoline. I struggled with that question myself for the last 24 hours since I read your testimony, and maybe I would have been smart enough not to run for Congress. But nevertheless, you made a statement somewhere along the line, there is no reason for any lead to be in any product, and certainly a standard that perhaps we should strive for. In fact, you have been very specific in your prepared testimony of what you outlined as a definition of a trace amount of lead and how we should strive to make there were no more than trace amounts of lead. You are here in the committee room. You have got probably the most powerful subcommittee chairman in a sitting committee in the Western world today in Mr. Rush. What would you instruct Mr. Rush, how would you achieve this ideal? The other recommendations you have down here, they don't seem as substantive as the first two, defining the trace amount and recommending that there be no more than a trace amount. So how if you were going to guide our chairman as to how to craft the legislative product to end up with that ideal or even maybe to put it more simply, if you could have your wish as an ideal legislative product, how would you advise Chairman Rush to proceed?

Dr. BEST. That we set the internal and external standards for products to be defined very broadly for children, that we not just limit things to the younger children for whom the product is intended but that we remember that a 12-year-old probably has a 6-year-old or a 3-year-old sibling and those siblings want nothing more than to play with the 12-year-old's toys. I would set the standard high in terms of age and be very broad in terms of what is a children's product, meaning not just toys or jewelry that is intended for children, but car seats and easels and many, many other products. One of the things that is wonderful about children is they are very smart and they are exploring. They explore through their mouths and their hands and they ingest lead that is absolutely not intended to be ingested.

Mr. BURGESS. So you would make the criteria quite stringent but again, as far as developing the product that would then cover things made in this country, things made in other countries, the air we breathe. Where is the greatest return on investment for Chairman Rush's legislative work on this?

Dr. BEST. In terms of the greatest return on health, which I think is what we are all looking for, is that I would make sure that when we think about products now from a global market, that every item that we allow into our country or allow to be sold in our country be acceptable to my own child or my own grandchild. I think that is the best standard of care that we can give. The chil-

dren in China don't need any lead in their products any more than the children here.

Mr. BURGESS. Let me ask you this, and I am certainly not an expert in this, and my only background knowledge is the knowledge I have gleaned from reading journals like the Washington Post, but it is my understanding that lead content in our city water—you list a Washington address on our witness sheet—our tap water here in Washington, DC—in fact, we have signs posted in the restrooms, don't drink the water, which is kind of a strange sign to see in the bathroom but we have to be concerned about things like our city water supplies?

Dr. BEST. Absolutely.

Mr. BURGESS. What is the level of lead in our city water here in Washington, DC?

Dr. BEST. I don't know what it is now. I know that we had a problem with it starting in 2002. I think that——

Mr. BURGESS. I arrived in 2003 and I remember being advised to get a water filter.

Dr. BEST. Right, and the problem there was similar in that the regulatory and—the rules were there but they weren't followed, and that is the same problem we are having now is, the rules, they are not the best rules that I think we should get but the existing rules weren't even followed. And so I can't tell you what is in the water in the city tap. I do know that the city also has said that it has improved but I am not going to——

Mr. BURGESS. Yes, and that is part of what is bothering me intellectually about this. We could go to great trouble and expense to clean up a problem overseas but if we haven't even done it in our own backyard—I thought it was a given that we had. I was a little surprised to come here and find that it was a problem.

Dr. BEST. I think your point is well made. One of the concerns that I have about an issue like this is that it brings to the attention of the public toys and lead. Well, that is good because we need the public to be aware that this is a real risk. It is not pretend. It is not rare. It is a real risk. We also need to think about the fact that there is lead paint in houses still. There is a lot of lead paint still out there and it is always in the poor neighborhoods where the paint isn't well maintained, the apartment building isn't well maintained. There are many other environmental toxins that we need to be aware of and we need to remember that every time we allow our children to be exposed to those toxins, when they grow up to be the adults that we are now, they might have been smarter.

Mr. BURGESS. Yes, they might have been smarter.

Mr. Green, what do we do with all the stuff we get back on those recalls?

Mr. RUSH. Time is up.

Mr. BURGESS. Can Mr. Green answer that question?

Mr. RUSH. No. We will have a second round.

Mr. BURGESS. You are very kind. Mr. Chairman, did you get all that stuff that the doctor gave you for crafting legislation?

Mr. RUSH. I certainly did.

Mr. BURGESS. I will yield back.

Mr. RUSH. The chairman recognizes himself for one additional question and will allow the other members of the subcommittee to have one additional question.

Professor Teagarden, you state in your written testimony that "knowing how to produce products that are lead-free is not the problem. It is a question of constant process and material vigilance throughout the supply chain." Thus, would you recommend that U.S. manufacturers require their own full-time audit personnel to be present and their contractors, factories in China to monitor compliance with quality control and safety standards, and would this be financially feasible for most companies?

Ms. TEAGARDEN. I believe that that is best practice. I believe that the research shows that that ensures integrity in the system, and yes, it would increase costs. Relative to toys, I would say so what. The tradeoff is worth making.

Mr. RUSH. Thank you very much.

Mr. Burgess is recognized for one additional question.

Mr. BURGESS. Well, I will repose the question. Mr. Green, what do we do with all the stuff that gets recalled? I asked that question of CEO of Mattel yesterday. You can't burn it, you can't put it in the landfill. I hope we are not reselling it on eBay. So what do you do with it?

Mr. GREEN. Are you reselling yours on eBay? I am just kidding.

Mr. BURGESS. My children are older and I am too young for grandchildren so I am kind of in that awkward in-between age, so I am not buying toys right now.

Mr. GREEN. Well, the first thing is that yesterday the CEO from Mattel talked about using it for co-generation. So first of all, that would be a very bad thing to do because if it is vinyl, then it has chlorine in it, and if it has chlorine in it and you burn it, it will by definition create dioxin, which is one of the most toxics known to science. So we shouldn't be burning it, that is for sure, if it is vinyl, and in addition, if it is metals, you can't burn the metals anyway so you are just getting rid of the rest of the stuff and you may even, if it is not being burned well, just distributing the metals like the lead into the air. So we shouldn't be burning it. That is clear. In the county where my office is, Alameda County, and where I live, they actually had set up drop-off points for people who are concerned about this. So the stuff that has a lot of lead in it, you may—and we talked about this a little bit earlier today, people may think that the right thing to do is to do the same thing you would do with the paint that you have in your garage that you are not using, which is take it to the local hazardous waste drop-off spot that is in every county.

Mr. BURGESS. Is there any way to leach the lead out of those products so that they can at some point be reclaimed or used for co-generation or some other process?

Mr. GREEN. Technically, there would be a way but it wouldn't make sense. It would be, one, too expensive, and two, it just wouldn't make sense by the nature of those materials.

Mr. RUSH. The gentlelady from Oregon is recognized for one additional question.

Ms. HOOLEY. Thank you, Mr. Chairman.

Ms. Teagarden, in your testimony you find fault with the big-box retailers applying pressure on suppliers for lower and lower prices. What do you suggest be done about this? Anything?

Ms. TEAGARDEN. I think that is good business practice for them to do that but meeting their profit obligations can be balanced with the need to meet their obligations to consumers to sell products that are lead-free to children.

Ms. HOOLEY. And how would you do that?

Ms. TEAGARDEN. I would make them responsible for the compliance—also responsible for the compliance of products they sell.

Mr. RUSH. The gentleman from Texas is recognized for one additional question.

Mr. GONZALEZ. Thank you very much, Mr. Chairman. I am just going to follow up on Ms. Wallach and Ms. Teagarden on the question I had posed earlier and you were not able to respond, but I think Ms. Teagarden answered the second part. One was on the agreement with the Chinese Government and whether that is practical and effective and the other about retail liability, that aspect of it and how would that be accomplished?

Ms. WALLACH. First of all, on the agreement, in 2005 China immediately implemented the previous agreement on lead in products, and we have seen with the current spate of problems, nothing happened, so I think to answer your question yes or no, no, that agreement is not going to fix the situation. The things that need to happen I believe are third-party certification within the plants, not the Chinese Government, to do the inspections. It is the same reason we have Government inspectors of meat inside meat plants instead of the company inspectors. It is a matter of conflict of interest. Number 2, higher fines for importers because the liability as Ms. Teagarden has said the incentives need to be set up such that actually you want a safe product or it is going to be a business mistake and cost you profitability. Number 3, we need to figure out how we subject to liability in U.S. courts in the civil justice system for injured consumer the producers, not just the importers so you create actually an incentive for the producers as well because they could be then losing a lot of money. And No. 4, we need to increase inspection. We need to have authority given, which doesn't exist but does exist in the USDA statutes for imports of meat to allow U.S. inspectors to go and ensure that those third-party certifications actually do meet U.S. law and have plant inspection overseas as well as greatly increased inspection at the border. The fifth piece of it though is who pays for that, and in my testimony I describe how and why those companies, those U.S. toy producers who have moved overseas to take benefit of cheap wages should be the ones who have to fund the additional costs to the U.S. Government to ensure that the products they bring back here are safe as well as profitable to them. Thank you.

Ms. TEAGARDEN. And I concur with Ms. Wallach on that one. I think she covered everything I would say.

Mr. GONZALEZ. Thank you, Mr. Chairman.

Mr. RUSH. Thank you very much. I want to again thank this panel of witnesses for your time and for your testimony, and you have really helped this subcommittee out a lot in terms of as we

proceed into the future. Thank you so very, very much for your time.

We will now ask the following witnesses to come forward now for panel two. Thank you to the witnesses who are the witness table now for your generous use of your time. You have been quite patient with us as we have proceeded through today's hearing.

I want to introduce the witnesses. Mr. Carter Keithley is the president of the Toy Industry Association. TIA is the primary trade association for toy manufacturers and importers, representing 85 percent of sales in North America. Mr. Allen Thompson is the vice president for Global Supply Chain Management, Retail Industry Leaders Association. RILA represents over 600 member retail companies including large chains such as Wal-Mart and Target. Mr. Michael Gale is the executive director of the Fashion Jewelry Trade Association. This association represents over 200 companies in the costume jewelry industry. And next is Gary E. Knell, who is the CEO and president of the Sesame Street Workshop. The Sesame Workshop is a nonprofit media organization which produces the popular Sesame Street television show on public television, and lastly, Ms. Kathie Morgan is the vice president of Technical Committee Operations, ASTM International. ASTM International is one of the largest voluntary standards development organizations in the world.

Again, I want to welcome you. You will have 5 minutes for opening statements. We will begin with Mr. Keithley.

STATEMENT OF CARTER KEITHLEY, PRESIDENT, TOY INDUSTRY ASSOCIATION, INCORPORATED

Mr. KEITHLEY. Good morning, Mr. Chairman and members of the subcommittee. I am very pleased to come before the subcommittee this morning on behalf of the Toy Industry Association to talk about toy safety. The TIA is in fact the leading toy industry association in the world. Our 500 member companies provide, as you observed, Mr. Chairman, more than 85 percent of all toys sold in the United States each year. TIA has been a leader in developing and implementing toy safety measures for more than seven decades. We are very proud of our accomplishments in ensuring that toys sold in America are the safest of any in the world. Our toy safety standards have bee modeled for other nations and records show that toy-related injuries in the United States are relatively rare despite the sale of nearly 3 billion new toys every year.

The recent recalls of a few models of toy products in the U.S., however, have given our industry and opportunity to make further progress in the continuous process of safety improvement. These recalls demonstrated to us that we needed to apply some new safety assurance measures in the toy production process. It is important to point out that the recalls account for a tiny proportion of the total of nearly 3 billion toys sold in the U.S. each year. So far this year there had been lead paint-related recalls of 14 models of toy products imported into the U.S. by 11 companies. Two of those companies are among our 500 manufacturing members and it also should be remembered that to their credit, these recalls were initiated by the manufacturers themselves when they identified the problem. But because the recalls this year related to lead paint on

toys, something which has been prohibited by our safety standards for decades, we believe it is important for us to strengthen new measures to prevent such occurrences in the future.

Here are the fundamentals of the new initiatives that we are undertaking. First, we are developing standardized procedures that will be used industry-wide to verify that products comply with U.S. safety standards. Second, we are establishing criteria to certify that testing laboratories are qualified to perform testing to U.S. standards using these industry-wide protocols, and third, we are encouraging the Federal Government to adopt a requirement that all toys sold in the United States undergo inspection to assure that they conform to our standards. We have modeled our initiatives in this area after measures utilized in many American industries. We are working with the American National Standards Institute to develop these procedures and we are communicating closely with the CPSC throughout the process.

The safety system in the U.S. is a characteristically American approach to solving problems. It is a robust pluralistic system that employs the talents, expertise and speed of the consensus process, working with industry, government and consumers to address safety issues. We are very proud to be working with ANSI in developing these measures because ANSI is the premier nonprofit organization whose mission is to enhance the American quality of life by promoting, facilitating and safeguarding the integrity of consensus driven safety standards in the United States. In contrast to a top-down government-driven approach to safety, our system involves all stakeholders in a consensus process that allows tens of thousands of new products and new technology to come to market for the enjoyment of our consumers. Clearly, there is an important role for government to play as a watchdog and an enforcer of conformance with private-sector standards but history has proven the success of our reliance upon private-sector safety initiatives.

Finally, I would like to point out that our proposals are not specific to toys made in any particular area of the world. The new requirements will apply to toys made in any nation. For more than 30 years working with our suppliers in China, our industry has produced billions and billions of high-quality toys that fully conform to our toy safety standards and we are confident that our suppliers in China will embrace these new safety requirements. We enthusiastically applaud the new safety agreement signed last week between the U.S. CPSC and AQSIQ and we welcome the agreement by the Chinese authorities to take immediate action to eliminate the use of lead paint on Chinese-manufactured toys. We recognize and accept, however, that the ultimate responsibility resides with our industry to assure that toys imported into the U.S. conform with our safety standards. We do not shrink from this responsibility and we pledge to you and to the American public that we will do everything in our power to make sure that toys sold in America are safe for our children to play with. I am honored to be here representing the toy industry among my distinguished colleagues here on this panel, and I look forward to responding to your questions.

[The prepared statement of Mr. Keithley follows:]

STATEMENT OF CARTER KEITHLEY

Good morning Mr. Chairman, members of the subcommittee.

I am very pleased to come before the subcommittee this morning on behalf of the Toy Industry Association to talk about toy safety.

The TIA is the leading toy industry association in the world. Our 500 member companies provide more than 85 percent of all toys sold in the United States each year. TIA has been a leader in developing and implementing toy safety measures for more than seven decades. We are very proud of our accomplishments in assuring that the toys sold in America are the safest of any in the world. Our toy safety standards have been the model for other nations, and records show that toy related injuries in the U.S. are relatively rare, despite the sale of nearly three billion new toys every year.

The recent recalls of a few models of toy products in the U.S., however, have given our industry an opportunity to make further progress in the continuous process of safety improvement. These recalls demonstrated to us that we needed to apply some new safety assurance measures in the toy production process.

It is important to point out that we that the recalls account for a tiny portion of the total of nearly three billion toys sold in the U.S. each year. So far this year there have been lead paint related recalls of 14 models of toy products imported into the U.S. by 11 companies. Two of those companies are among our 500 manufacturing members. And it should also be remembered that, to their credit, these recalls were initiated by the manufacturers themselves when they identified the problem.

But because the recalls this year related to lead paint on toys, something which has been prohibited by our safety standards for decades, we believe it is important for us to strengthen new measures to prevent such occurrences in the future. Here are the fundamentals of the new initiatives that we are undertaking:

- First, we are developing standardized procedures that will be used industry-wide to verify that products comply with U.S. safety standards;
- Second, we are establishing criteria to certify that testing laboratories are qualified to perform testing to U.S. standards using industry-wide protocols; and
- Third, we are encouraging the federal government to adopt a requirement that all toys sold in the U.S. undergo inspection to assure that they conform to our standards.

We have modeled our initiatives in this area after the measures utilized in many American industries. We are working with the American National Standards Institute (ANSI) to develop these procedures, and we are communicating closely with the Consumer Product Safety Commission throughout this process.

The safety system in the United States is a characteristically American approach to solving problems and meeting needs. It is a robust, pluralistic system that employs the talents, expertise, and speed of the consensus process—working together with industry, government and consumers—to address safety issues. We are very proud to be working with ANSI in developing these new measures. ANSI is the premier non-profit organization whose mission is to enhance the American quality of life by promoting, facilitating and safeguarding the integrity of consensus-driven safety standards and conformity assessment systems in the United States.

In contrast to a top-down, government driven approach to safety, our system involves all stakeholders in a consensus-process that allows tens of thousands of new products and new technology to come to market for the enjoyment of our consumers. Clearly, there is an important role for government to play as a watchdog and an enforcer of conformance with private sector standards, but history has proven the success of our reliance upon private sector safety initiatives.

Finally, I would like to point out that our proposals are not specific to toys made in any particular area of the world. The new requirements will apply to toys made in any nation. For more than thirty years, working with our trusted suppliers in China, our industry has produced billions of high quality toys that fully conform to our toy safety standards. We are confident that our suppliers in China will embrace these new safety requirements.

We enthusiastically applaud the new safety agreements signed last week between the U.S. CPSC and the General Administration of Quality Supervision, Inspection and Quarantine in China. And we welcome the agreement by the Chinese authorities to take immediate action to eliminate the use of lead paint on Chinese manufactured toys exported to the United States. We recognize and accept, however, that the ultimate responsibility resides with our industry to assure that toys imported into the U.S. conform to our safety standards. We do not shrink from this responsibility, and we pledge to you and to the American public that we will do everything

in our power to make sure that toys sold in America are safe for our children to play with.

I am honored to be here representing the toy industry among my distinguished colleagues on this panel, and I look forward to responding to your questions.

Mr. RUSH. Thank you very much.

Mr. Thompson, you are recognized for 5 minutes.

STATEMENT OF ALLEN THOMPSON, VICE PRESIDENT, GLOBAL SUPPLY CHAIN POLICY, RETAIL INDUSTRY LEADERS ASSOCIATION

Mr. THOMPSON. Thank you, Mr. Chairman and members of the subcommittee. Before I begin my prepared remarks, I want to stress that retailers contribute to, not detract from, consumers' access to safe and affordable products, and in my remarks this afternoon, I will describe the steps that retailers have taken and are taking to protect consumers.

My name is Al Thompson and I am the vice president of Global Supply Chain Policy of the Retail Industry Leaders Association, but more importantly, I am the father of two young children, and so the issue of toy safety is one that carries personal importance to me. RILA represents the largest and fastest-growing companies in the retail industry and provides millions of jobs and operates more than 100,000 stores and distribution centers domestically and abroad. As you consider how to protect consumers, particularly children, from dangerous products. I want to outline some of the public policies under consideration that RILA supports.

First, we support increased funding for the Consumer Product Safety Commission, or CPSC, as well as mandatory recall authority for the CPSC and a legal prohibition against knowingly selling a recalled product. Second, we support Federal legislation to promulgate lead standards for all types of jewelry similar to those enacted in the State of California as well as efforts to enhance product traceability for children's products. Third, we support the establishment of clear and predictable safety standards for toys and children's products that are uniform nationwide. While no two RILA members sell exactly the same merchandise, they are equally committed to the safety and integrity of their supplier operations as well as the safety of products on their shelves.

In light of recent incidents, many of our members have enhanced product testing. For example, some retailers now require testing for all toys regardless of manufacturer. Others are implanting more rigorous protocols to confirm the safety of their toys through multilayer testing and documentation. Our members have also reviewed and strengthened their internal policies and procedures for product testing, supplier compliance and the sanction for noncompliant suppliers and manufacturers. Furthermore, our members have joined with other allies seeking better Government standards and guidelines for product safety with a particular focus on products manufactured for children.

While members have taken aggressive steps, RILA believes that ensuring product safety is a shared responsibility. Retailers have rigorous quality assurance requirements and enforcement mechanisms for their suppliers that manufacture goods for their stores.

RILA members require their suppliers and manufacturers to understand and adhere to U.S. Government standards and regulations for toys and other products. They require that their suppliers operate factories in secure environments and rely on known and approved subcontractors to produce safe quality products. They require suppliers to maintain and document production processes that conform to safety standards beginning at the design phase and continuing through the completion of a finished product. And finally, they require manufacturers to open their factories and production processes to periodic quality and safety inspections.

When a product is recalled, either at the insistence of government or a supplier, retailers take action. They immediately remove the product or products from the stream of commerce and properly dispose of them so they are not resold. They also notify purchasers when possible that they should return the product for a refund or replacement. These prompt actions are the result of protocols that virtually every RILA member has in place to respond to recalls and protect consumers. As soon as a product is recalled—as soon as a product recall is initiated, RILA members implement existing recovery plans to remove the subject merchandise. Retailer inventory systems produce an error message at the point of sale if such products reach checkout registers, and after implementing the recall, our members review their suppliers' testing protocols to minimize the potential for future problems and take appropriate actions or levy sanctions as needed.

A successful product safety regime requires a close partnership between the private sector and U.S. Government as well as other governments that may be responsible for ensuring the quality of goods leaving their shoes. RILA stands ready to work with government policymakers to enact policies that strength consumer confidence and advance the production of safe, high-quality products that are affordable and readily available for customers.

Thank you for the opportunity to testify today, and I look forward to answering your questions.

[The prepared statement of Mr. Thompson follows:]

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Testimony of the

Retail Industry Leaders Association (RILA)

before the

United States House of Representatives

Committee on Energy and Commerce

Subcommittee on
Commerce, Trade, and Consumer Protection

Hearing on

Protecting Children from Lead-Tainted Imports

September 20, 2007

Good morning Chairman Rush, Ranking Member Stearns and Members of the Committee. My name is Al Thompson, and I am the Vice President of Global Supply Chain Policy at the Retail Industry Leaders Association, or RILA.

RILA represents members including the largest and fastest growing companies in the retail industry, which together account for more than $1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores and distribution centers domestically and abroad.

At RILA, I am responsible for representing the industry on all policies that impact our member companies' global supply chains. This includes issues involving transportation, logistics and security. In addition to my work at RILA, I also am the father of two young children, so the issue of toy safety is one that carries both personal and professional importance for me.

RILA appreciates this opportunity to showcase the steps that our members are taking to ensure product safety and integrity all along the supply chain. Our industry knows that it has no higher duty than assuring the safety and quality of the products we sell to our customers, most especially toys and children's products.

RILA believes that implementation and verification of product safety protocols are rightly the roles of private industry. Through rulemaking and laws, government can provide guidelines that are clear, uniform, and national in scope, so that manufacturers can better-issue detailed specifications to their suppliers and enforce those specifications with tests, inspections and follow-up.

But before I fully describe the processes and product safety procedures that our members have in place, I want to describe some of the steps that our individual member companies have taken to ensure greater accountability from manufacturers in light of several recent high-profile product recalls.

Because no two RILA members sell exactly the same merchandise, they each have slightly different protocols and procedures for evaluating the safety and integrity of supplier operations, as well as the safety of products on their shelves. In light of recent incidents, many of our members have:

- Enhanced product testing;
    - For example, some retailers are now requiring testing and verification of safety compliance for all toys, regardless of the manufacturer. Others are implementing more rigorous protocols to confirm the safety of toys through multi-layered testing and documentation.
- Reviewed their internal policies and procedures for product testing, supplier compliance and the sanctions for noncompliant suppliers and manufacturers; and
- Joined with other allies seeking better government standards and guidelines for product safety, with a particular focus on products manufactured for children.

Retailers Expect Their Product Vendors to Produce Safe, High-Quality Products

One thing that has not changed in light of recent events is the commitment of our members to provide safe, effective and affordable goods for their customers. We believe that ensuring product safety is a shared responsibility. As such, retailers have vigorous quality assurance requirements and enforcement mechanisms for their suppliers that manufacture goods for their stores.

To assure the safety of toys and children's products, many RILA members require their suppliers and manufacturers – through contracts and product specifications – to:

- Understand and adhere to U.S. government standards and regulations for toys and other products. Many of our members' specifications actually exceed U.S. government standards;
- Operate secure factory environments, and rely on known and approved subcontractors to produce safe, quality products;
- Maintain and document production processes that conform to safety standards beginning at the design phase and continuing through completion of the finished product; and
- Open their factories and production processes to periodic quality and safety inspections.

Retailer Efforts to Assure Safe Toys and Children's Products

RILA members are actively working to reassure parents that toys and children's products sold in their stores are safe.

In addition to the national toy brands and smaller brands, some RILA members sell what are commonly known as "private-label" toys. These are toys manufactured for and sold exclusively in a single retailer's stores. With these products, many RILA members conduct enhanced multistage testing through independent labs to confirm compliance with all U.S. safety standards and regulations. Such testing occurs throughout the design and production process, as well as on samples of production lots destined for store shelves. Retailer specifications for private-label toys meet or exceed the U.S. safety standards and regulations for toy safety.

With respect to branded children's toys, retailers work with their suppliers to confirm that sufficient product testing is occurring and to verify compliance with all U.S. safety and regulatory requirements. Retailers may also conduct independent testing on samples destined for their shelves.

Retailer Actions in the Event of a Recall

When a product is recalled – either at the insistence of the government or a supplier – retailers take action:

- To immediately remove the product or products from the stream of commerce, and properly dispose of them so that they are not resold; and
- To notify purchasers, when possible, that they should return the product for a refund or replacement.

These prompt actions are the result of protocols that virtually every RILA member has in place to respond to a recall and protect consumers.

- RILA members proactively monitor and research recalls and U.S. regulatory agency alerts to keep apprised of product safety issues. Some retailers have an entire department devoted solely to this effort;
- As soon as a product recall is initiated, RILA members implement existing recovery plans to remove the subject merchandise;
- Retailer inventory systems produce an error message at the point of sale if such products reach check-out cash registers; and
- After implementing a recall, RILA members review their suppliers' testing protocols to minimize the potential for future problems, and take appropriate action, or levy sanctions, as needed.

Policy Recommendations and Conclusion

Retailers place the highest priority on the safety and quality of the products they sell to their customers, including toys and children's products, regardless of whether the products are produced domestically or abroad. RILA believes that the most effective way to ensure safe products is to focus on the design and production of products so that product safety is built into products as they are made.

A successful product safety regime requires a close partnership between the private sector and the U.S. government, as well as other governments that may be responsible for ensuring the quality of goods leaving their shores.

The U.S. government can help by creating a clear framework of requirements for product safety standards. RILA:

- Welcomes the opportunity to work with Congress and other regulators to develop enhanced industry safety standards and protocols that are clear and predictable;
- Believes that safety standards for toys and children's products should be uniform nationwide;

- Supports increased federal funding for the Consumer Product Safety Commission (CPSC);
- Would support mandatory recall authority for the CPSC, and a legal prohibition against knowingly selling a recalled product;
- Would support federal legislation to promulgate the lead standards for all types of jewelry, similar to those enacted under California law; and
- RILA would support efforts to enhance product traceability for children's products.

RILA stands ready to work with government policymakers to enact policies that strengthen consumer confidence and advance the production of safe, high-quality products that are affordable and readily available for consumers.

Thank you for the opportunity to testify today.

Mr. RUSH. Mr. Gale.

STATEMENT OF MICHAEL GALE, FASHION JEWELRY TRADE ASSOCIATION

Mr. GALE. Mr. Chairman, members of the committee, thank you for inviting the Fashion Jewelry Trade Association to discuss today how to ensure that jewelry for children, indeed for all consumers, adequately limits lead exposure. The FJTA represents 250 manufacturers and suppliers of children's and adult jewelry to retailers. Our members range from small family-owned businesses, some of those doing less than $1 million annually, to large branded national firms supplying department stores, chain stores and specialty chains. Trade Press has estimated that the fashion jewelry industry in 2005 was an $8.3 billion industry.

I would like to start off by describing what we mean by fashion jewelry. Fashion jewelry is not trinket jewelry. It is not jewelry sold through vending machines or given away as premiums. Our members do not make those products. It is also not fine jewelry or jewelry made primarily of precious or semiprecious metals or gemstones. Fashion or costume jewelry is an everyday fashion item. Fashion jewelry can be made from a variety of materials. Most often the metal components of jewelry are made from a base metal that is plated with copper and nickel or another metal and then a finish coat of silver or gold. Glass, crystal, ceramic, plastic, wood and other natural and synthetic components are frequently used. Fashion jewelry can be embellished with paints, enamels and other such materials.

FJTA and its members care deeply about all consumers and support a national preemptive standard for lead in jewelry components based on the existing comprehensive California law. The law was adopted in the aftermath of the Prop 65 lawsuit. The standards were agreed to by the California attorney general, environmental groups, industry and after exhaustive testing and detailed assessments of testing methodologies and discussions about the role of lead in various components of jewelry. The California law known as AB–1681 establishes specific limits on lead in the various components used in fashion jewelry for young children and different, sometimes higher limits for materials used to fabricate jewelry intended for other consumers. The standards for metal used in children's jewelry, for example, is 600 part per million. That limit is based on longstanding toxicology and evidence about the risks of lead exposure. In contrast, the lead limit for metal used in jewelry not intended for children varies depending on whether the metal is properly plated, and for the record, we have put in a chart which is an overview of the California law on a material-by-material basis applicable to jewelry materials intended for use in children's jewelry and jewelry intended for adults.

There are two basic reasons the separate standards were adopted for the different materials and for children's versus other jewelry in California. First, there is a recognized difference in risk between adults and children. The generally agreed upon concept of accessibility has been a foundation of decisions about how to reduce or limit children's exposure to lead. In other words, whether because lead is encapsulated in a material, for example, crystal and glass,

or access to lead is restricted through other barriers as in the case when metal is properly plated, differences in the limits of allowable lead are justified based on accepted science. Intensive testing and analysis have shown that the levels adopted in AB–1681 are safe for children's and other jewelry and we also attach for the record a copy of an analysis conducted by a toxicologist with extensive experience in the issue. Second, as we have seen, there are differences in the materials used for jewelry. A one-size-fits-all standard for lead was agreed to be inappropriate during the California discussions. Lead imparts useful and desirable properties to metal used in fashion jewelry. It allows for improved flow properties at lower temperatures, facilitates casting, especially of intricate parts, and of finishing.

The total elimination of lead in jewelry, particularly jewelry that is not intended for young children, would impose difficulties and cost on the industry and adversely affect quality and cost to consumers. Reducing the lead content in metal too much can result in higher rejection rates for intricate cast pieces, a shorter life of molds and other equipment, higher breakage because of increased brittleness in the metal, and potentially higher consumer complaints because of poor quality, to name a few. The standards reflected in AB–1681 have been adopted as a model by our industry. We are proactively supporting a common national standard, educating our members to expand awareness about the issue and we have also reached out to the international fashion jewelry community, especially in China. We have been participating with the CPSC in proceedings on children's jewelry and supporting national preemptive standards. We met recently with the CPSC staff to provide further background and information on our industry.

Mr. RUSH. Mr. Gale, would you please bring your commentary to a close?

Mr. GALE. I thank you very much, and if there are any questions about what our industry has done, I will be glad to answer them.

[The prepared statement of Mr. Gale follows:]

fashion jewelry
trade association

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Mr. Chairman, members of the committee, thank you for inviting the Fashion Jewelry Trade Association (FJTA) to discuss how to ensure that jewelry for children – indeed, for all consumers – adequately limits lead exposure.

The FJTA represents 250 manufacturers and suppliers of children's and adult jewelry to retailers. Our members range from small family owned firms, some doing less than $1 million annually, to large branded national firms supplying department stores, chain stores and specialty chains. Trade press reports estimate that the fashion jewelry industry was an $8.3 billion industry in the U.S. in 2005.

Let me start by describing what we mean by fashion jewelry. Fashion jewelry is not trinket jewelry – jewelry sold through vending machines or given away as premiums. Our members do not make trinket or give-away jewelry. It is not fine jewelry, or jewelry made primarily of precious or semi-precious metals and gemstones. Fashion or costume jewelry is an everyday fashion item. Fashion jewelry can be made from a variety of materials. Most often, the metal components of jewelry are made from a base metal that is plated with copper, nickel or another metal, and a finish coat of silver or gold. Glass, crystal, ceramic, plastic, wood, and other natural and synthetic components are also frequently used. Fashion jewelry can be embellished with paints, enamels, and other such materials. Products include bracelets, charms, cuffs, earrings, hair pieces, necklaces, pins, rings, and other fashion accessories.

FJTA and its members care deeply about all consumers and support a national preemptive standard for lead in jewelry components based on an existing, comprehensive California law. This law was adopted in the aftermath of a Proposition 65 lawsuit. The standards were agreed to by the California Attorney General, environmental groups and industry after exhaustive testing, detailed assessments of testing methodologies, and discussions about the role of lead in various components of jewelry. The California law, known as AB 1681, establishes specific limits on lead in the various components used in fashion jewelry for young children, and different, sometimes higher limits, for materials used to fabricate jewelry intended for other consumers.

The standard for metal used in children's jewelry, for example, is 0.06%. That limit is based on longstanding toxicological decisions about the risks of lead exposure. In contrast, the lead limit for metal used in jewelry not intended for young children varies depending on whether the metal is properly plated. The attached chart provides an overview of the California law on a material by material basis applicable to jewelry materials intended for use in children's jewelry and in jewelry intended for adults.

There are two basic reasons that separate standards were adopted for the different materials, and for children's versus other jewelry, in California.

First, there is a recognized difference in risk between adults and children. The generally agreed-upon concept of accessibility has been a foundation of decisions about how to reduce or limit children's exposure to lead. In other words, whether because lead is encapsulated in a material (for example, glass), or access to lead is restricted through other barriers, as is the case when metal is properly plated, differences in the limits of allowable lead are justified based on accepted science. Intensive testing and analysis have shown that the levels adopted in A.B. 1681 are safe for children's and other jewelry. We attach for the record a copy of an analysis conducted by a toxicologist who has extensive experience in the issue.

Second, as we have seen, there are differences in the materials used in jewelry. A one-size-fits-all standard for lead was agreed to be inappropriate during the California discussions. Lead imparts useful and desirable properties to metal used in fashion jewelry. It allows for improved flow properties at lower temperatures, facilitating casting, especially of intricate parts, and of finishing. The total elimination of lead in jewelry, particularly jewelry that is not intended for young children, would impose difficulties and costs on the industry and adversely affect quality and costs to consumers. Reducing the lead content in metal too much can result in higher rejection rates for intricate cast pieces, a shorter useful life of molds (due to casting at higher temperatures), higher breakage because of increased brittleness in the metal, and potentially higher consumer complaints because of poorer quality, to name a few.

The standards reflected in A.B. 1681 have been adopted as a model by our industry. We are proactively supporting a common national standard, educating our members to expand awareness about the issue. Indeed, we have reached out to the international fashion jewelry community as well.

- We have been participating in the CPSC's proceeding on children's jewelry and support a national, preemptive standard. We met recently with the CPSC staff to provide further background information on our industry, including describing why lead is used in metal components and discussing plating best practices.
- We held a forum in May in conjunction with a major industry trade show that includes participants from around the world to highlight the need for compliance with U.S. laws on lead content.
- Proper plating of metal components will limit accessible lead, as evidenced by the agreed-to higher standards in California for properly plated metal in adult jewelry. Plating "best practices" were included in the Proposition 65 Consent Agreement mentioned earlier. FJTA is working with the Manufacturing Jewelers and Suppliers of America, a 2000 member association of material suppliers, platers and equipment manufacturers, to refine and expand plating and testing protocols for

metal components used in our industry. We expect a final report in 4-6 weeks.

- China is a major supplier of fashion jewelry to U.S. firms. FJTA has met with the Chinese Consul for economic and commercial matters in New York. We encouraged the Chinese government to embark on an education program for jewelry manufacturers who produce both children's and adult jewelry. The goal of this program is to insure the Chinese manufacturers understand the US standards and the tests necessary to insure the component materials they use meet the U.S. standards.
- We have met with the Hong Kong Trade Development Council and are planning a videoconference with them to educate their trading company members about U.S. standards for jewelry.
- We have worked with an international testing agency to obtain special pricing for FJTA members on testing of jewelry components.

The California law establishes safe standards for jewelry. The standards protect both health and the environment while still allowing our industry to meet the public's quality and fashion needs without disrupting trade. Some states, like Minnesota and Illinois, have adopted versions of AB 1681. Other states have legislation pending or are studying legislation at this time. As an industry that includes many small businesses, even slight variations between applicable laws create serious problems for manufacturers, suppliers and retailers in our industry. Manufacturers are uncertain which standards apply to orders as suppliers sell nationally. National retailers supply their stores from central warehouses. Their inventory cannot be segregated by state or city. A national standard is needed, but it must be science-based, reflecting differences between materials and differences in risks to adults and young children. This approach will advance safety, create a level playing field that allows for design flexibility, and help assure consumer satisfaction for our primary adult market.

Our industry needs a national, risk-based standard, one that can not be preempted by any state or local law or regulation, if we are to maintain our competitiveness in a global marketplace, assure that compliant materials are available throughout our international supply chain, and maximize our industry's ability to protect consumers, especially children. Our industry stands ready to work with the Congress and the CPSC in making this goal a reality.

FJTA Member
fashion jewelry
trade association

SUMMARY OF CALIFORNIA A.B. 1681 LEAD LIMITS

Class	Material	Lead Limit	
		Children's Jewelry (for children under 6)	Other Jewelry
Class 1	Stainless or surgical steel	No limits	No limits
	Karat Gold	No limits	No limits
	Sterling Silver	No limits	No limits
	Platinum, palladium, iridium, ruthenium, rhodium or osmium	No limits	No limits
	Natural or cultured pearls	No limits	No limits
	Glass, ceramic or crystal decorative components, including cat's eye, cubic zirconium or CZ, rhinestones and cloisonne	Maximum weight of 1 gram unless component contains less than 0.02% (200 ppm) lead	No limits
	A gemstone cut or polished for ornamental purposes except aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite and wulfenite	No limits	No limits
	Elastic, fabric, ribbon, rope or string that does not contain intentionally added lead	No limits	No limits
	All natural decorative material (amber, bone, coral, feathers, fur, horn, leather, shell, wood) in its natural state not treated in any way to add lead	No limits	No limits
	Adhesive	No limits	No limits

SUMMARY OF CALIFORNIA A.B. 1681 LEAD LIMITS

		Lead Limit	
	Material	**Children's Jewelry (for children under 6)**	**Other Jewelry**
Class II	Properly plated metal components	Maximum lead content: 0.06% (600 ppm)	*Before 8/31/09:* Maximum lead content: 10% (Use of 88 metal)
			After 08/31/2009: Maximum lead content: 6% (Use of 92 metal)
	Plastic and rubber components, including acrylic, polystyrene, plastic beads and stones, or polyvinyl chloride (PVC)	*Before 08/31/2009:* Maximum lead content: 0.06% (600 ppm)	*Before 08/31/2009:* Maximum lead content 0.06% (600 ppm)
		After 08/31/2009: Maximum lead content: 0.02% (200 ppm)	*After 08/31/2009:* Maximum lead content: 0.02% (200 ppm)
	Dye or surface coating (including printing ink or ceramic glaze)	Maximum lead content: 0.06% (600 ppm)	Maximum lead content: 0.06% (600 ppm)
	Unplated metal components not otherwise listed in Class I	Maximum lead content: 0.06% (600 ppm)	Maximum lead content: 1.5%
Class III	Materials not otherwise listed as a Class I or Class II Material (including aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite and wulfenite; elastic or fabric with intentionally added lead; natural decorative materials treated to add lead)	Maximum lead content: 0.02% (200 ppm)	Maximum lead content: 0.06% (600 ppm)

Evaluation of Lead in Children's Jewelry

By: F. Jay Murray, Ph.D., DABT

Summary

The Consumer Protection Safety Commission (CPSC) recently proposed a limit of 0.06% (600 ppm) of lead in metal for children's jewelry.[1] This proposed limit is adequate to protect children from any harmful effects of lead due to mouthing or swallowing of children's jewelry based on extensive testing by the CPSC. Prior to the proposed limit, physicians had reported a small number of cases of adverse effects, including one death, among children who swallowed lead-containing jewelry. These cases are associated with high concentrations (from 39% to over 99%) of lead in the product. The single fatality involved swallowing a bracelet charm reportedly composed of virtually pure (>99%) lead.

Lead is a common component of alloys used to make jewelry. Significantly, plating of jewelry limits the amount of accessible lead. Plated jewelry containing lead in the underlying metal poses less potential for exposure to lead than unplated lead-containing metal. Acid and saline extraction tests of plated jewelry demonstrates that plated jewelry containing up to 6% lead demonstrates that the available lead is well below the CPSC level of concern. Additional testing of plated jewelry indicates that even plated jewelry containing approximately 10% lead in the underlying metal, the interim standard in California's settlement, easily passes the CPSC acid extraction test for accessible lead.

Introduction

Children engage in mouthing behaviors, which can be expected to result occasionally in ingestion of objects, including jewelry. The toxicity of overexposure to lead is well understood. The CPSC has proposed a limit of 0.06% (600 ppm) of lead in metal for children's jewelry. Lead has traditionally been present in alloys used in jewelry because it adds flexibility to the manufacturing process. Manufacturers report that levels of lead lower than 600 ppm are infeasible because of the lack of availability of alloys. Lead can also be present in crystal although it is not readily available as discussed below. The purpose of this report is to evaluate the potential risks of lead in children's jewelry from swallowing and mouthing.

[1] See 72 C.F.R. 920 (January 9, 2007). Some states, like California, have adopted limits on lead in jewelry. See A.B. 1681. Children's jewelry is defined in A.B. 1681 as jewelry intended for children 6 years of age or under, and we apply that definition here.

Swallowing of Children's Jewelry

A review of the medical and scientific literature revealed three cases in the U.S. in which ingestion of jewelry containing lead was associated with adverse health effects in children. These case reports demonstrate that swallowing jewelry containing a high percentage of lead can be harmful, even fatal. Tragically, a 4-year old Minnesota boy with an elevated blood lead level of 180 μg/dL[2] died after swallowing a bracelet charm, which reportedly contained over 99% lead according to testing by the state public health department laboratory.[3] This case is the only known fatality attributed to swallowing jewelry containing lead. A 4-year old Oregon boy exhibited a very high blood lead level of 123 μg/dL about 3-4 weeks after swallowing a pendant, which the state laboratory reported to contain about 39% lead.[4] Similarly, a 9-year old boy's blood lead level was 27 μg/dL four days after he swallowed a ring reportedly containing 90% lead; three days later, his blood lead level rose to 54 μg/dL, and the ring was removed endoscopically.[5]

It is noteworthy that these three cases all involved jewelry products containing a percentage of lead 650-1650 times above the CPSC proposed standard. The only known fatality was attributed to swallowing a bracelet charm made of virtually pure lead (over 99% lead).

CPSC estimated that, during 2000-2005, more than 300,000 children aged 18 years and younger were treated in hospital emergency rooms for injuries associated with foreign object ingestion. Roughly half of these cases involved swallowing coins. Nearly 20,000 of the ingestions involved jewelry items. The CPSC database does not identify the specific jewelry products involved or the lead content of the jewelry. Despite the limitations of the database, it is worth noting that with almost 20,000 cases of children swallowing jewelry in the U.S. from 2000 to 2005, there appear to be relatively few cases of serious injury from swallowing lead-containing jewelry even before CPSC proposed a 600 ppm limit on lead in children's jewelry.

Mouthing of Jewelry

Compared to swallowing jewelry made with lead or components containing lead, mouthing of jewelry presents less potential for exposure to lead. Saliva has a neutral pH, unlike stomach acid; acid allows for greater extraction of lead. In addition, mouthing behavior occurs for a relatively short period of time compared to the amount of time that swallowed jewelry may be in contact with stomach acid. Saline extraction testing (to predict accessible lead in a neutral pH environment such as the mouth) by CPSC demonstrates that the amount of accessible lead is much smaller than that observed from

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[2] μg/dL = micrograms of lead per deciliter of blood. The Centers for Disease Control (CDC) has established a blood lead level equal to or greater than 10 μg/dL as a level of concern.
[3] Centers for Disease Control and Prevention (2006) Death of a child after ingestion of a metallic charm – Minnesota, 2006. MMWR 55 (Dispatch):1-2.
[4] VanArsdale JL et al. (2004) Lead poisoning from a toy necklace. Pediatrics 114(4):1096-99.
[5] CPSC (2006) Memo from J Elder and K Hatlelid through P Faulk to Todd A Stevenson dated December 4, 2006.

acid extraction. For plated jewelry, CPSC saline extraction testing shows that the plating effectively prevents significant exposure to lead, even when the jewelry contains as much as 60% lead.[6] In short, if the concentration of lead in jewelry does not present a significant hazard from swallowing, it will not present a hazard from mouthing.

The CPSC Proposed Limit of 600 ppm of Lead for Children's Jewelry

The CPSC's proposed limit of 600 ppm of lead in metal in children's jewelry is designed to protect children from hazardous lead exposures from swallowing lead-containing jewelry. To avoid exceeding a blood lead level of 10 μg/dL (the level of concern identified by the Centers for Disease Control) from acute exposure, CPSC recommends that children not ingest more than 175 μg of accessible lead in a short period, such as from ingesting a piece of jewelry.[7]

CPSC conducted extensive testing of jewelry by CPSC using an acid extraction test. Acid extraction is designed to determine the amount of "accessible lead" from swallowed jewelry since the stomach constitutes an acidic environment. CPSC determined that fewer than 1.9% (2/108) of the children's jewelry pieces with total lead concentrations equal to or less than 600 ppm (0.06%) had accessible lead exceeding 175 μg, while 76.2% of the pieces with total lead values greater than 600 ppm (0.06%) exceeded the 175 μg level.

CPSC's proposed limit of 600 ppm is scientifically defensible and adequate to protect children's health. Children's jewelry containing 600 ppm or less of total lead does not pose a significant health risk from lead exposure, even when the jewelry is swallowed. Adoption of this limit as a national standard would clearly prevent the serious health effects that have been seen infrequently when children have ingested jewelry containing high concentrations of lead (390,000-990,000 ppm) and thus serve the public interest.

Plated vs. Unplated Jewelry

Plated jewelry poses a much lower health concern than unplated jewelry. Of note, many jewelry pieces are plated with other metal that do not contain lead, and this plating reduces the amount of accessible lead. In other words, for the lead in the underlying metal to be accessible, the plating must be compromised. To confirm this, plated jewelry was tested recently using the same acid extraction test and standard (175 μg of accessible lead) employed by the CPSC.

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[6] Testing of plated metal pendants conducted by K Prime, Inc, Santa Rosa, CA in March 2005. The amount of accessible lead following six hours of saline extraction is well below the 175 mg of lead which forms the basis for CPSC's 600 ppm limit for lead in metal to protect children from hazardous lead exposures from swallowing lead-containing jewelry.

[7] CPSC based its value of 175 μg of accessible lead on widely-accepted calculations of the effect of acute exposure to lead on the blood lead level, taking into account a child's body weight and blood volume, and the oral bioavailability of lead. Blood lead levels are a function of cumulative exposure over an extended period of time.

Six pieces of plated jewelry, including two pendants and four earrings, were submitted for testing. The total lead concentration of the plated jewelry ranged from 26,000-57,000 ppm (2.6 to 5.7%). In call cases, the amount of accessible lead from the plated jewelry was below 175 μg. The test results ranged from <0.05 (not detectable) to 75.6 μg. Thus, all six pieces of plated jewelry containing up to 57,000 ppm of lead passed the same CPSC acid extraction test as unplated jewelry containing 600 ppm or less of lead. The results of these tests support adoption of 6% as an acceptable level of lead in plated jewelry.

By extrapolation, these results strongly suggested that levels as high as 10%, the interim standard in California's settlement, would also pass the CPSC acid extraction test. To test this hypothesis, additional testing was performed. Plated and unplated jewelry containing 9.52% lead was tested using the CPSC acid extraction test. A single supplier provided one unplated pendant containing 9.52% lead and three identical plated pendants containing 9.52% lead in the underlying metal. The results of the CPSC acid extraction test demonstrated that each of the three plated pendants leached no more than 1.3 μg of lead over the course of the six-hour acid extraction test. These results indicate the amount of accessible lead from plated jewelry containing approximately 10% lead in the underlying metal is well below the CPSC guideline of 175 μg of accessible lead. In contrast, the unplated pendant leached 1580 μg of lead in the same test, well above the CPSC guideline. These results indicate that plated jewelry containing as much as approximately 10% lead in the underlying metal, the interim standard in California's settlement, passes the same CPSC acid extraction test as unplated metal jewelry containing 600 ppm of lead.

Glass, crystal and rhinestones in children's jewelry

Children's jewelry may contain glass, crystal or rhinestones. These materials pose a lower hazard of exposure to lead from swallowing or mouthing than lead in metal, because the lead is part of the crystalline structure and is less accessible. Glass, crystal and rhinestones are composed of a highly bonded mineral structure. If lead is present, the lead is tightly bound, so much so that hot concentrated acid will not fully liberate the lead.

Crystal and rhinestones can contain up to 38% lead; however, the amount of accessible lead is very low. In tests with over 25 samples of glass and crystal in a CPSC saline extraction test run for one hour, there was less than 1 μg of accessible lead per gram of test material. In the acid extraction test, the amount of accessible lead in rhinestones is substantially less than the amount of accessible lead in metals containing 600 ppm of lead. CPSC acid and saline extraction tests demonstrate that 15 grams (a little more than half an ounce) of rhinestones in children's jewelry as a very conservative and health protective standard.

Why not completely eliminate lead from children's jewelry?

Lead is a ubiquitous substance. Lead is commonly associated with other minerals, including calcium. It is virtually impossible to completely eliminate lead from any product, including children's jewelry.

Many substances are toxic at high doses, but not at low doses. For example, alcohol (ethanol) in alcoholic beverages is known to cause cancer and birth defects. Alcohol is one of the most common causes of birth defects in the U.S. population. However, low doses of alcohol are not considered toxic, even though it is exactly the same substance which causes cancer and birth defects at higher levels of exposure. Examples of products that contain low concentrations of alcohol include orange juice, ice cream and bread. It is virtually impossible to completely eliminate alcohol from these products. More importantly, alcohol does not pose a significant health risk at the low levels of exposure provided by these products. Like low levels of lead in jewelry, there is no compelling reason to completely eliminate alcohol from these products.

Like all toxic substances, the toxicity of lead is a function of the dose. Adoption of national standards for plated and unplated metal jewelry of 6% and .06%, respectively, will provide reasonable and scientifically-defensible protection to children from the risk of mouthing or swallowing jewelry. Eliminating small, non-toxic doses by establishing standards that result in exposure below the CPSC's established risk limit of 175μg provides no opportunity for health improvement. Since no public health benefit will result from the total elimination of lead from children's jewelry, there is no compelling reason to adopt a lower standard or to completely eliminate lead from children's jewelry.

Conclusions

The CPSC has proposed a limit of 600 ppm (or 0.06%) of lead for children's jewelry. This proposed limit is adequate to protect children from any harmful effects of lead due to swallowing of children's jewelry based on extensive acid extraction testing by the CPSC. Furthermore, if a piece of lead-containing jewelry passes the CPSC acid extraction test to protect children from swallowing the jewelry, it would easily pass the CPSC saline extraction test designed to protect children from exposure to lead from mouthing of jewelry, since lead is less easily extracted via saliva than via stomach acid.

Plating of jewelry limits the amount of accessible lead. Plated jewelry containing lead poses less opportunity for exposure to lead than unplated lead-containing jewelry. Limited testing (acid extraction) of plated jewelry demonstrates that plated jewelry containing 6% lead is below the CPSC level of concern. Additional acid extraction testing of plated jewelry indicates that plated jewelry containing approximately 10% lead in the underlying metal, the interim standard in California's settlement, is below the CPSC level of concern. Thus, unplated and plated children's jewelry should contain no more than 0.06% and 6-10% of lead, respectively.

Mr. RUSH. Mr. Knell.

STATEMENT OF GARY E. KNELL, CEO AND PRESIDENT, SESAME WORKSHOP

Mr. KNELL. Mr. Chairman, thank you and members of the committee so much for holding these hearings. It shows indeed that you care about children, and I would like to submit our written testimony for the record.

Sesame Workshop was formed in 1969 as a nonprofit organization which was there to use the media to help children reach their highest potential, and I am sure many of you know our characters who happen to work for us—Big Bird, Elmo and Bert and Ernie and other folks who have been known to walk the halls of Congress at times as well. But Big Bird and Elmo are really indeed part of our army of teachers who try to reach kids and teach kids about letters and numbers, about health and hygiene, about trust and respect, so we wanted to come here today to express our concern as licensors about the recent recalls and what we need to do about it because several Sesame Street items were part of Mattel's first recall.

First, the committee should know why Sesame Street licenses its characters for toys, games, books, videos, et cetera. We do so for two reasons. One is, that we extend the educational experience of the television program to promote the most important experience of learning for a young child and that is play through these types of products, and second, these products do generate an important source of royalty income for Sesame Workshop which pays for the educational research and television production of what we do. A program such as Talk, Listen, Connect which we just completed for 400,000 preschool children of active-duty military Guard and Reserves who are dealing with deployment, redeployment, unification, this the kind of program that we do, and ironically, sort of the ultimate irony is that we had produced a lead prevention kid using the Sesame Street characters called Lead Away which went out to 460,000 pediatricians' offices and now that we are involved with this, we are going to update this and get this out to another half million in all 50 States, and we would love to work with the committee to figure out ways to expand that. We are in the teaching business so when our characters are subject to an intentional or a careless design or a manufacturing flaw that is in violation of our contracts, we get hurt. Our reputation suffers and we need to regain any trust that we may have lost with parents.

So what steps need to be taken? In our view, it is a public-private response. We need privately to strengthen industry standards and testing procedures. We know that Mattel will tighten them. Chairman Eckerd of Mattel apologized to me personally for the recall and we do believe that Mattel is going to take steps. They happen to be in many ways the best in class in the toy business. They have been very rarely subject to recalls. We need to make sure that everyone in this industry is doing whatever is necessary to ensure safety and tighten up those gaps that exist. As an extra protection, Sesame Workshop is going to spend its own resources to hire third-party auditors to test at the manufacturing shipping and retail lev-

els so that we continually prove to parents that we stand for quality and learning.

And finally, we also support the committee's move to strengthen the public sector so that the Consumer Product Safety Commission has a final safety net, so to speak, which will do things like requiring warranty cards with online easy access for parents, mandatory safety testing. We need to move toward a goal of zero lead, to make our chain of supply turn into a chain of safety, as it should be referred to. So we believe a swift response by all parties, private and public, is appropriate.

We will be an enthusiastic supporter of legislation, Mr. Chairman, which you decide to propose here and hopefully enact, and as parents, grandparents, uncles and aunts of many young children, we must not settle for anything less. Thank you very much.

[The prepared statement of Mr. Knell follows:]

sesameworkshop®

The nonprofit educational organization behind Sesame Street and so much more

TESTIMONY OF GARY E. KNELL

PRESIDENT AND CEO

SESAME WORKSHOP

September 20, 2007

Submitted to:

U.S. House of Representatives

Committee on Energy and Commerce

Subcommittee on Commerce, Trade, and Consumer Protection

Hearing on *"Protecting Children from Lead-Tainted Imports"*

Good morning Mr. Chairman, Congressman Stearns, and distinguished Members of the Committee. Thank you for the opportunity to come before you today to speak about toy safety. I am Gary Knell, the President and CEO of Sesame Workshop, the nonprofit educational organization behind *Sesame Street*, *Dragon Tales*, *The Electric Company*, and much more.

When we first learned of the disturbing news that certain toys bearing the iconic characters of *Sesame Street* were being recalled by Mattel/Fisher Price because they contained unacceptable levels of lead, we were shocked, we were angry, and we were greatly disappointed. But, concern without any action is simply useless to the parents and caregivers, who are our number one fans and partners in promoting children's healthy growth and development.

We reached out to your Committee to be a part of this important discussion, to join forces with the public and private sectors and to find a solution so that what occurred over this summer never happens again. As the only panelist here today to offer insight into the role of a trademark and copyright licensor with respect to licensed toys, I thank you once again for your invitation to testify.

Who We Are...

As you know, Sesame Workshop is **not** in the business of making toys. We are in the "business" of creating innovative, engaging content that maximizes the educational

power of media to help all children reach their highest potential. We produce *Sesame Street* here and around the world and other children's education programs such as the Emmy-nominated primetime special program "When Parents Are Deployed" to address the challenges and sacrifices military families face with deployment and separation. That program was created to help our military families talk, listen and connect with their children – the more than 700,000 American children under age five who have a parent deployed in military service.

We are unique among other well-known children's media organizations in that we are an independent not-for-profit organization. We are not affiliated with any public television outlet or any governmental agency. In order to ensure our financial self-sufficiency, we rely, among other things, on the revenues derived from our consumer product licensing activities. We license our trademarks and copyrights of Elmo, Big Bird, and our other beloved characters in order to fund the research and the development of our educational programming. In short, our licensing activities make *Sesame Street* and affiliated outreach projects available on public television and other outlets for this and future generations.

Sesame Street Licensed Products...The Process

We do not take lightly the trust of parents and caregivers who for nearly 40 years have come to equate *Sesame Street* with safety, health and something good for children. A few years ago, we made the decision not to permit the use of our characters on unhealthy foods for children. Recognizing that childhood obesity is a national crisis, we initiated

our "Healthy Habits for Life" program. For the past eight months, I have been leading a Joint Congressional/FCC Task Force on Media and Childhood Obesity. We know young children love Elmo, Big Bird and their other Muppet friends and we learned that children would eat apples, oranges, and even broccoli when Elmo got involved. – and in this way, we can inspire better health choices for young children and their families.

When we enter into a licensing agreement with a manufacturer of consumer products such as toys, we are always mindful of the expectations that parents have of *Sesame Street*. Ever since the early 1970s when we began licensing our characters for use in these products, we have been choosing "best-in-class" manufacturers as our licensees. It has been, and continues to be, important for us to choose the right partners as our licensees because we are not in the business of manufacturing and yet we know that our licensing activities extend our educational mission. Learning the ABCs with Elmo on television during the day and then hugging a plush version of the popular Muppet at bedtime while listening to a parent read aloud "Elmo's Alphabet" storybook enriches -- and perhaps, even speeds -- a child's educational journey.

When we sign licensing agreements with our licensees, we give them a license to make and sell products using our trademarks and copyrights, and they give us contractual promises about how they will do so. They are contractually required to manufacture, sell, or distribute products that are, in all respects, safe and fit for use by the persons for whom the product is intended to be used. We insist that our licensees comply with all applicable laws, regulations, and industry self-regulatory guidelines and they are required

to provide us with documentation of safety tests or other procedures to ensure compliance with applicable safety standards. We also ask licensees to consider exceeding the safety requirements of applicable law. If there is any defect or a need to recall any licensed product, our licensees are required to notify us promptly. We give them 15 days to provide us with a plan with a timeline for completely remedying any such defect. They must promptly and diligently carry out the remediation, or we will terminate our relationship with them.

Fisher-Price Recall

One of our most significant licensees is Fisher-Price, a unit of Mattel, Inc., who either as Mattel or its predecessor companies, has been our partner as the manufacturer of *Sesame Street* toys for preschoolers for many years. Together, not only have we tickled Elmos, we have encouraged boys and girls of all backgrounds, and in many countries, to do the work of a child – play.

This summer, when Mattel/Fisher-Price announced their first recall, it included some 400,000 units of *Sesame Street* branded toys. They informed us before the recall was announced by the CPSC and, I believe, shared whatever information they could share based on their knowledge at the time. They assured us that they were cooperating with the CPSC to make sure either the toys did not reach retail or if they were already at retail or purchased by consumers, they would be recalled. They also assured us that they were doing a full review of all of their toys.

For our part, we immediately set into action our plans to share information with parents and our fans. Our primary means of communication is through our website, which has the widest and fastest reach. We put up, and kept up, a statement from me directly. We are answering emails and phone calls from parents. When they call asking specifically about the Mattel/Fisher-Price recall, we will direct them to the recall website or toll-free number set up by Mattel/Fisher-Price. In some cases, parents are calling us back to give us feedback.

Looking Ahead...

Learning is at the heart of what we do, and a child's good health and safety is the foundation for his or her ability to learn. In fact, one irony here is that one of the many educational outreach projects we have developed over the years is called *"Sesame Street Lead Away,"* distributed to pediatricians, which teaches parents and caregivers how to prevent lead exposure as well as what to do in the case that they suspect their child has ingested the toxic substance.

The lesson for Sesame Workshop from this experience is that we must be even more vigilant about who we license to produce products that bear our characters and we must be very clear about the standards they must satisfy – both with respect to safe design as well as safe manufacturing components. To ensure this, we have decided to conduct independent audits at different points in the supply chain (e.g., manufacturing, shipping, and retail) to test for lead, small parts, and other potential problems. We will announce in the next thirty days that we have retained the services of one or more third party labs with testing facilities here and in Asia. We will hold the companies that license our characters

accountable and we will stop working with them if they do not meet our requirements for safety and social responsibility. And, at such point if none of the toy manufacturers can guarantee safety for the consumers who buy our licensed toys, we will get out of the business altogether.

We applaud and support the steps taken by those in the private sector. Manufacturers and the Toy Industry Association are strengthening safety checks as are retailers such as Toys R Us and Wal-Mart. We also applaud the Consumer Federation of America's efforts to mandate product registration cards to be included in all toy products to ensure the success of recalls, when necessary. Finally, we applaud the swift response from Congress and support additional funding for the Consumer Product Safety Commission so that it will have the staffing and the testing capabilities required to set and enforce safety requirements on imported and locally manufactured children's products.

Conclusion…

In conclusion, Mr. Chairman, we support any and all efforts that will ensure the safety of children's products in this country. Further, we welcome the opportunity to work with the Committee on any new initiatives coming forth that would enable the Consumer Product Safety Commission to fully pursue its mission.

To support parents in providing the best they can provide for children's safety, health and development, there is work for all of us – whether the Congress, private sector, public

sector, or consumer advocates groups. We are connected not only by a chain of commerce; we are connected by a "chain of safety" as the guardians of children's safety. Thank you. I am happy to answer any questions the Committee may have.

Mr. RUSH. Thank you.

Ms. Morgan for 5 minutes.

STATEMENT OF KATHIE MORGAN, VICE PRESIDENT, TECHNICAL COMMITTEE OPERATIONS, ASTM INTERNATIONAL

Ms. MORGAN. Thank you, Chairman Rush and members of the subcommittee, for the opportunity to participate today. I am Kathie Morgan. I am vice president of technical committee operations for ASTM International. In brief, ASTM is a nonprofit organization with 34,000 members devoted to the development of international standards in over 90 different industry sectors. ASTM utilizes a consensus-based approach to develop standards that promote health, safety and improve the quality of life. ASTM does not offer testing and accreditation services nor do we license a certification mark.

The U.S. system of standardization is one of the most dynamic in the world. It significantly reduces or often eliminates the cost to the Federal Government of developing its own standards. For consumers, it provides the technical underpinnings on which a broader conformity assessment process can be based. And most importantly, it allows technical experts, consumer advocates and regulators to engage together and directly in the development process. This process can result in new standards or revisions to existing standards that reflect changing technology and emerging issues in less time than regulatory action.

ASTM Committee F–15 on Consumer Products with a membership of 850 professionals has 50 subcommittees in different product areas including toy safety. ASTM F–963, the specification for toy safety, establishes safety requirements for toys used by children under 14 years of age. All Federal regulations applicable to toys are referenced in F–963, and in addition there are more than 100 separate tests, design specifications and other requirements. Section 4.3 of the standard addresses lead and other materials that are toxic, corrosive or irritants. The requirements on lead restriction are from 16 C.F.R. 1303 referenced in section 4.3.5. The regulation prohibits the use of paint or similar surface coating materials in which the total lead content is in excess of 600 parts per million. In addition, the lead content of the soluble material lead which can migrate from the toy and therefore be ingested by the child may not exceed 90 parts per million. The soluble level is determined by a method that is also detailed in F–963 that extracts the soluble elements from the toy under a condition that would simulate the situation in which the material stays 4 hours in the alimentary tract after swallowing.

Earlier this year, the Consumer Product Safety Commission requested Committee F–15 to coordinate the development of a new standard addressing lead in children's vinyl products. A new subcommittee on F–15 was just established last month that will initially focus on the identification of lead content in vinyl children's products such as baby bibs and lunchboxes, although certainly the scope could be broadened in the future. ASTM is currently soliciting participation for this activity and we will certainly ensure that all the witnesses involved in this hearing are invited, if they are not already involved.

The participation of consumers and safety advocates in the standards process is paramount. To overcome funding obstacles, ASTM provides travel assistance for consumers to attend meetings. The annual administrative fee is waived for consumers, and electronic initiatives are in place that allow individuals to participate remotely from their own computer desktop.

Much of the focus today is on toys imported from China. ASTM has agreements with the Standardization Administration of the People's Republic of China, the Chinese National Institute of Standardization and the Shanghai Institute of Standardization. Through these agreements ASTM provides access to all ASTM standards for these organizations. We sponsor joint training programs and we provide participating memberships to Chinese representatives on the ASTM technical committee. In return, the Chinese standards bodies promote the utilization of ASTM standards in China and the development of Chinese national standards based on the ASTM standards. We will continue efforts with China to raise awareness and understanding of ASTM standards.

While we have had success working cooperatively to develop standards like F–963, the global value chain is critical to meet safety challenges of the future. ASTM will participate next week in ANSI'S building consumer confidence conference. Long-term solutions include a conformity assessment system that begins with developing the most diligent standard possible followed by testing and compliance processes that will cultivate consumer confidence. ASTM will support to the maximum extent possible any standard development needs that surface to compliment the initiatives announced by ANSI and the Toy Industry Association, but for our part, our efforts will continue to focus on the elements critical to the standard development mission ensuring an inclusive process, providing an environment of structure, technology and tools for stakeholders and a distribution system that ensures the standards are in the hands of those who need them.

Thank you for the opportunity to participate and I look forward to answering your questions.

[The prepared statement of Ms. Morgan follows:]

TESTIMONY OF KATHARINE MORGAN

Thank you Chairman Rush, Ranking Member Stearns, and members of the subcommittee for the opportunity to participate in this important hearing. I am Katharine Morgan, vice president of Technical Committee Operations with ASTM International.

ASTM International is a leading non-profit organization devoted to the development of international standards. For more than 100 years, ASTM has served society as a leading venue for consumers, industry and regulators to work collaboratively under a balanced and consensus-based process to craft standards that promote health, safety and improve the overall quality of life.

Unlike other standards development organizations, ASTM focuses almost exclusively on standards development. We do not offer testing and accreditation services, nor do we license a certification mark. As a result of our steadfast focus on standards development, ASTM standards are well known and valued for their technical quality and relevance.

THE U.S. VOLUNTARY CONSENSUS STANDARDS SYSTEM

As this committee knows very well, the Consumer Product Safety Act and its subsequent amendments establishes a Federal policy directing the CPSC to defer to a voluntary consumer product safety standard in lieu of promulgating its own require-

ments if important criteria are likely to be met through the use of the voluntary standard. This criteria includes a CPSC determination as to whether the utilization of a voluntary standard would eliminate or adequately reduce the risk of injury addressed and whether it is likely that there will be substantial compliance to the standard by industry. The CPSC retains the ultimate authority to promulgate mandatory standards in the event such standards are not effective or substantial compliance is not widespread. Other important Federal laws exist such as the National Technology Transfer and Advancement Act (NTTAA) which direct all agencies to use voluntary consensus standards and to participate in their development where it makes sense to do so.

The United States has a very decentralized voluntary consensus standards system that is driven by the needs of stakeholders. The government is a major participant. But the process requires participation and cooperation of all stakeholders and a commitment towards reaching a consensus. To guide the process, ASTM and many standards development organizations are accredited by the American National Standards Institute and adhere to procedures for due process, openness, balance and transparency. If it is suggested that these procedures are not being met, there are protective actions such as a right of appeal to preserve the integrity of the process.

The U.S. system of standardization is the most dynamic system in the world. It significantly reduces or often eliminates the cost to the Federal Government of developing its own standards. For consumers, it provides an important standards foundation which, when used in conjunction with an effective testing and compliance program, can build consumer confidence in the products that are purchased. But most importantly, the system allows stakeholders—technical experts, consumer advocates and regulators to engage directly in the development process. Led by the private sector, new standards and revisions to existing standards can often be made and incorporated into the marketplace much faster than by an agency rulemaking or other regulatory action. This nimbleness of the system allows timely revisions to standards to reflect changing technology and that establish requirements to address changing hazard patterns or emerging issues. This also enables the government to leverage both expertise and resources to rapidly elop effective standards that address emerging hazards.

ASTM Standards and Toy Safety

Of particular interest to today's hearing, ASTM standards are widely used to make toys safer for children to play with and to assist manufacturers in testing components and products to determine levels of lead and other declarable substances.

ASTM Committee F15 on Consumer Products has played an important role in consumer product safety standards for over 30 years. The committee has a broad global membership of approximately 900 professionals, including staff of the Consumer Product Safety Commission (CPSC), consumers, safety advocates, retailers, researchers,—medical professionals, academics, test laboratories and representatives of the consumer products industry. Committee F15 encompasses 50 standards-writing subcommittees in different product areas and will form new subcommittees as urgent safety issues and new hazards are identified that lend themselves to a standards solution.

One of the most critical areas of focus for Committee F15 is toy safety. With thousands of new toys introduced to the marketplace each year, ASTM plays a vital role in protecting the safety of children. An important contributor to that safety is ASTM F 963, Consumer Safety Specification for Toy Safety, which establishes recognized safety requirements for toys intended for use by children under the age of 14. ASTM F 963 helps to protect children in countless ways as it relates to possible hazards that may not be recognized readily by the public, but that may be encountered in the normal use for which a toy is intended or after reasonably foreseeable abuse.

Federal toy safety regulations in the U.S. Code of Federal Regulations are referenced in ASTM F 963. In addition, there are more than 100 separate tests, design specifications and other requirements included. These tests and specifications include use-and-abuse tests, testing for accessible sharp points and edges, and measuring for small parts, wheel-pull resistance and projectiles. There are also tests for flammability, toxicity, electrical and thermal requirements, and noise. Manufacturers design products to achieve conformance with such requirements.

ASTM F 963 and Lead in Toys

First drafted in 1971 (and later adopted under ASTM), ASTM F 963 has been enhanced over the years to address new product technology and changes in regulation.

Section 4.3 of F 963 addresses lead and other materials that are either toxic, corrosive or irritants. The requirements related to lead restriction are from 16 CFR 1303 which is referenced in F 963, Section 4.3.5. This requirement has been in the standard since mandated. There have not been any revisions to this section in recent years. Accordingly, the existing ASTM standard and Federal regulations address the key issue of lead in paint on toys.

ASTM F 963 AND MAGNET INGESTION

ASTM standards are required to be reviewed every five years at a minimum. F 963, due to its comprehensive nature and the dynamics of an evolving industry is under constant evaluation to address changing needs from both a product and emerging hazard standpoint. Recent revisions made to ASTM F 963 include the addition of safety requirements and test methods for yo-yo elastic tether toys; the addition of requirements related to cord, straps and elastics; and revisions to sections that address packaging film, age requirements as they pertain to use and abuse testing, and hemispheric shaped objects.

As this subcommittee knows all too well, there have been incidents in recent years of children swallowing small magnets that were built into toys or that were part of a building play set with small parts intended for older children. These incidents of magnet ingestion drove a recent revision to ASTM F 963 requiring that magnets and magnetic components be reliably contained within a toy or carry a warning describing the dangers posed by functional small ingestible magnets. The subcommittee is further developing the magnets section of F963 and is working on a web based training program to educate the industry, retailers, testing laboratories and others on the new requirements.

The revision of ASTM F 963 containing the initial provisions to address magnets was approved March 15, 2007, nine months following the initial establishment of the task group in June 2006. ASTM members involved in this effort recognized the urgency of the need and diligently worked together to develop the new safety requirements. Nine months of development time, given the complexity of the task in a full consensus environment, is evidence of the high priority that the various interest groups involved placed on finding a solution.

LEAD IN CHILDREN'S VINYL PRODUCTS

Requests for new activities as well as the development of new or the revision of existing ASTM standards are received from a variety of sources. Earlier this year, CPSC requested that Committee F15 coordinate the development of a new standard for mitigating lead in certain children's vinyl products. Accordingly, a new F15 subcommittee was created last month regarding "Lead in Children's Vinyl Products". The initial activity as approved at the organizational meeting will focus on the identification of accessible lead in vinyl children's products such as baby bibs and lunch boxes. The scope of the activity could be broadened in the future should it be determined based upon hazard data and risk assessments that it is necessary to do so.

CONSUMER PARTICIPATION IN ASTM F15

Most major manufacturers of toys, juvenile and related consumer products participate in ASTM F15 as do many major retailers. These individuals are classified as "producers" for the purposes of committee operations and standards development work. Representatives of consumer groups, safety advocates, testing laboratories, academics and government agencies are classified as "non-producers" since they represent a consumer, user or general interest. ASTM's regulations require a balance of interests in two ways—first by allowing only one voter per organization and second by ensuring that the number of voting producers never exceeds the number of voting non-producers. Thus, no single person or entity can control an ASTM standards committee, its agenda or the content of an ASTM standard.

Staff of the CPSC is actively engaged in the work of ASTM F15, particularly in key subcommittees on toys and related juvenile products. While CPSC attends meetings and actively participates in the standards development process, a Commission policy requires that staff maintain non-official voting status. However, CPSC staff regularly returns abstention ballots with technical comments that are very significant to F15 deliberations.

Consumers and safety advocates continue to play an important role in F15 and other ASTM technical committees by raising awareness of issues, providing valuable input regarding consumer behavior and preferences and recommending entire new subject areas for standardization. These individuals share their experiences and knowledge to create better standards and, ultimately, better products. One of the

greatest barriers to participation by consumers has been a lack of financial resources. Recognizing the need to assure that the interests of the public are protected and represented in our standards activities, ASTM provides a level of travel and participation assistance for consumers to attend subcommittee meetings and Committee F15 has a policy of waiving the annual administrative membership fee to encourage a broader participation of consumers. ASTM has also reduced barriers to participation with a full range of electronic initiatives that allow individuals to participate in the standards development process from their computer desktop without ever having to physically attend meetings.

While taking steps to encourage more active consumer participation, Committee F15 is proud of the fact that many leading consumer organizations—including, among others, Kids In Danger, the Consumer Federation of America, Safe Kids, the American Academy of Pediatrics, Consumers Union, Good Housekeeping, and Keeping Babies Safe—are engaged and are making a difference. Individuals and organizations that do participate—in—standards—development should be applauded for their contributions of time, talent and resources. I wish to thank them for their important efforts and numerous contributions to the development of ASTM safety standards.

ASTM OUTREACH TO CHINA

Much of the focus of today's hearing is on toys imported from China. ASTM has has cooperated with the standards bodies in China on numerous initiatives. Major activities include the signing of a cooperation agreement with the Standardization Administration of the People's Republic of China (SAC) and similar agreements with other prominent standards organizations including the Chinese National Institute of Standardization (CNIS) and the Shanghai Institute of Standardization (SIS).

Through our relationships with China's leading standards bodies, ASTM provides our partners in China with access to the full volume of 12,000 ASTM standards; jointly sponsor standards and training programs; provide participating membership to Chinese representatives on ASTM technical committees; and sponsor a professional exchange program encouraging Chinese standards experts to visit ASTM International's Global Headquarters in Pennsylvania for extended study of ASTM and the U.S standards development process.

In return, the Chinese standards bodies promote the acceptance and use of ASTM standards in China; utilize the resources of ASTM to develop Chinese National Standards and reference ASTM standards where applicable in Chinese National Standards (China currently uses over 450 ASTM standards as the basis of—their national standards); and to facilitate connections between Chinese technical experts and ASTM technical committees to ensure that ASTM standards reflect the specific needs of Chinese industry.

ASTM is one of four U.S.-based international standards development organizations that have jointly established the Consortium for Standards and Conformity Assessment (CSCA) in China. Located in Beijing, the CSCA office helps to build cooperative and enduring relationships with Chinese governmental and industry standards associations. It also promotes the understanding and use of ASTM standards and of other U.S.-domiciled SDOs in China. The other members of the consortium are the American Petroleum Institute, ASME—International, and CSA America. In addition, ASTM officially opened an office in Beijing earlier this year. The ASTM International Board of Directors met last October in Beijing and also sponsored a day of outreach visits with Chinese industry and government organizations. Follow-up from that event continues.

Through our offices in China, we look forward to working with representatives of Chinese government and industry to raise a greater awareness and understanding of ASTM standards, including F 963. ASTM also looks forward to assisting CPSC and other U.S. government agencies as it engages China on issues involving standards, product safety and international trade.

Consensus standards such as ASTM F 963 exist to address toy safety issues and reduce threats to children from acute mechanical and chronic hazards involving lead and other toxic substances. While we have had great success in working cooperatively with representatives from the CPSC, industry, consumer groups and other interested stakeholders to develop ASTM standards, enhanced awareness, understanding, and adherence through out all aspects of the global supply chain will be critical in meeting emerging safety challenges of the future. Long term solutions include a conformity assessment system that begins with the development of the most diligent technical standard possible and then is followed by a testing and compliance process that affords consumers the ability to purchase products with a confidence that those products meet the applicable technical and safety standards. For ASTM

International, where standards development is the core competency, our efforts will continue to focus on those critical elements needed for responsive and effective standards development—ensuring an inclusive process that engages the most balanced and complete representation of stakeholders and providing the structure, technology and tools needed for those stakeholders to efficiently work and develop the standards that are needed.

I thank you for the opportunity to participate in today's hearing and I look forward to answering your questions.

Mr. RUSH. Thank you.

The Chair recognizes himself for 5 minutes of questioning. Mr. Gale, your group has reached out to the international community on lead standards. What is the standard for children's jewelry in other parts of the world, especially Europe.

Mr. GALE. Europe does not have any standards pertaining to the lead content in jewelry, either children's or adult. The only standards in Europe are that products shall be safe and that they shall not contain nickel, because nickel is a metal that causes allergic reaction in many individuals.

Mr. RUSH. Thank you.

Mr. Keithley, Professor Teagarden in her testimony stated, and I quote, "Knowing how to produce products that are lead-free is not the problem. It is a question of constant process and material vigilance throughout the supply chain." First, do you agree with this statement? Second, would you recommend that U.S. manufacturers require their own full-time audit personnel to be present in their contractors' factories in China to monitor compliance with quality control and safety standards?

Mr. KEITHLEY. Well, Mr. Chairman, I do agree with Professor Teagarden's statement. Indeed, the issue——

Mr. RUSH. You do agree with it?

Mr. KEITHLEY. I do agree with it. It is one of product production processes and monitoring that to assure that the toys coming off the line conform with the standard which prohibits lead in paint on those toys. As far as whether or not the appropriate solution to achieving that end is having each company have its own full-time inspector on site, I think we should let the ANSI process work to figure out what the optimal solution to achieving that end is. Many of our members, a large majority of our members, are small companies, small businesses, and they rely heavily on the inspection processes of third parties, laboratories who are expert in this. That is why part of our proposal is to make sure that those third parties are qualified to do this testing and then assigning them the responsibility to go in pursuant to procedure established by ANSI is to how much do we need to do to get to that optimal safety.

Mr. RUSH. Mr. Knell, what pressures can Sesame Workshop bring to bear on the companies such as Mattel that manufacture toys with your licensed characters? Could you insist on even more stringent manufacturing and testing that they are currently proposing? Would you consider requiring manufacturers of your licensed toys only in company-owned plants? Could they be manufactured only in company-owned plants or in contract plants with constant supervision by an American employee of the company?

Mr. KNELL. We will consider all of those, Mr. Chairman. Our contracts with licenses like Mattel do not have extended lives that

go on for years and years. Our contract with them will be up in the next 2 years and we plan to have a very extensive negotiation regarding all safety prospects which include these kinds of audits that you have discussed, moving them more towards owning the plants. I think everything should be on the table and what I think we will look for them so that just doesn't happen again is some protocol that will ensure that we move toward a lead-free environment. I want to live for the day when we can stamp all these toys "lead-free" and assure parents that indeed they have nothing to worry about when they are making that purchase.

Mr. RUSH. There was some testimony yesterday about domestically locating manufacturing companies or plants here within the United States. Would that be one of the aspects of negotiation?

Mr. KNELL. Well, it may be. Sesame Street, you should know, is in 120 countries around the world. We are working in all kinds of places including the Middle East trying to teach tolerance and aspect, in South Africa, around HIV and AIDS issues, so we are very active in all parts of the world and it is really a global franchise in many ways. With that said, we all know that 80 percent of the toy business has moved over to China. We have got to make sure that we are picking the best in class toy and other game and apparel manufacturers who are going to put in not only safety standards for children but safety standards for workers as well so we have something that we can feel is an assurance that will work.

Mr. RUSH. Thank you.

The Chair recognizes now Ms. Hooley from Oregon.

Ms. HOOLEY. Thank you, Mr. Chairman. I just have a few questions.

Mr. Thompson, roughly how many contractors do large toy producers like Hasbro and Mattel have in China?

Mr. THOMPSON. Ma'am, I wouldn't know the exact number of Hasbro and Mattel, their presence in China. I do know that our stores do sell a lot of their products.

Ms. HOOLEY. Do you have any idea how many subcontractors the contractors have?

Mr. THOMPSON. We can reach out to our companies and see if they have that knowledge. I do that what we do do is, we require that when we do contracts with Mattel or Hasbro, that they use known and approved contractors and subcontractors to produce toys for our stores.

Ms. HOOLEY. Mr. Keithley, do you have a ballpark figure of how many toys your members expect to sell this Christmas?

Mr. KEITHLEY. Typically annually, it is about 3 billion toys each year. On a Christmas basis, I am sorry, in the holiday season, about 45 percent of our product is sold during that holiday season.

Ms. HOOLEY. During the holiday season?

Mr. KEITHLEY. Right.

Ms. HOOLEY. Of those toys, how many have already been or are in the process of being manufactured? Are we ready for the holiday season? Those toys are in the distribution system now, right?

Mr. KEITHLEY. Right, and I can't give you a percentage but I can tell you that I am confident that a very substantial proportion of the toys for this coming holiday season are either already in distribution centers in the United States or on the water on the way

over here. That is why our manufacturers have told us that they are in the process of retesting all of the toys either before they leave China if they haven't left yet or when they reach their destination point, point of entry here in the United States, to be sure they don't have lead on them because what has happened has frankly—it should not have happened and so these manufacturers want to be sure—all the manufacturers want to be sure that it is not going to happen to their products.

Ms. HOOLEY. So how can the people be assured? I assume that again most of the toys for the holidays, knowing how far in advance you have to make things, and then the distribution process, how can people be assured that when they go buy their children a toy this holiday that it is going to be safe? What are you doing to reassure them that that is actually going to be happening or are they going to have to sort of figure it out themselves?

Mr. KEITHLEY. What we have recommended to all of our 500 manufacturers is to go back and do retesting and we have been told by the manufacturers that they are and the laboratories have told us that they are inundated with requests to go in and take products out of the cartons that have arrived here in the United States, retest them to be sure there is no lead paint content on them. Once that is done—and I should say also, many of our retail partners are doing the same thing. So once that it is done, it is our responsibility to get the word out that in fact the retesting has been done so if a product is on the shelf, it is because it has been retested.

Ms. HOOLEY. You will retest it before it goes on the shelf?

Mr. KEITHLEY. Exactly.

Ms. HOOLEY. And I have heard these numbers and I just want you to verify them. It has been reported that the Chinese Government has about 210,000 people in 1,800 labs dedicated to product safety. Do you know how often they are inspecting and testing the products from the facilities your members use there? Is that sort of a ballpark figure?

Mr. KEITHLEY. I do not know whether those figures are accurate or just how much safety testing they are doing, Congresswoman.

Ms. HOOLEY. Have you visited any of the labs?

Mr. KEITHLEY. I have. I have visited labs in China, both Chinese Government labs and private labs that do testing under contract to our manufacturers, and let me simply say that we do not rely or we cannot suppose to offload the responsibility for safety testing to the Chinese authorities at all. It is our responsibility so our companies pay for these contractors to go in there and do it and don't rely on the Chinese labs.

Ms. HOOLEY. OK. Thank you very much.

I have one question for Mr. Gale and I will try to get this done in 22 seconds. In the fashion jewelry trade, you talked about the difference between what you put in a child's jewelry versus an adult's jewelry. I don't know but I have held a lot of babies and seen a lot of kids that chew on their mom's jewelry or that it is a really great thing that kids love to play, especially little girls like to play dress up and they wear that jewelry or that jewelry is passed down and then all of the stuff you don't want anymore, you give it to the kids. Is that a good thing to do a bad thing or do, or how can we assure parents that all this wonderful jewelry, at

least that I thought was wonderful at some point in my life that I have given away to children so they can play dress up, I am sort of feeling bad about that.

Mr. GALE. Great question, and the answer is the jewelry that is made today to the California standards, even the adult jewelry has been proven to be totally safe for children. Tests have been done and——

Ms. HOOLEY. How long has that been going on, because I have got some really old stuff that I gave away.

Mr. GALE. Some of the old stuff might have a high lead content.

Ms. HOOLEY. So that was a bad thing to do?

Mr. GALE. Well, from what we know now, it would be bad to let children have access to that.

Ms. HOOLEY. And how long have the California standards been in place?

Mr. GALE. About a year.

Mr. RUSH. Your time is up.

Ms. HOOLEY. Thank you.

Mr. RUSH. The gentleman from Texas.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

My first question would be directed to Ms. Morgan, and I am going to ask some fundamental questions here. The ASTM International, how is that funded? Dues, subscriptions? How is that funded?

Ms. MORGAN. Seventy-five percent of ASTM is funded by the sale of our publications which predominantly is ASTM standards. About 10 percent is from membership fees and the balance is miscellaneous sources including investment income.

Mr. GONZALEZ. I was just curious as to who all the actors that take advantage of your information but again, just how much input do they have? You indicate in your testimony, "As this committee knows very well, the Consumer Product Safety Act and its subsequent amendments establishes a Federal policy directing CPSC to defer to a voluntary consumer product safety standard in lieu of promulgating its own requirements if important criteria are likely to be met through the use of voluntary standards." You are going to people seizing on that as maybe a source of the problem of government not being more active and allowing others that may be in certain enterprises to establish standards and I am not real sure that we are going to have a huge argument on standards. "The United States system of standardization is the most dynamic system in the world." That is on page 3 of your testimony, and we probably would agree, but I think what we are getting into is really inspection and compliance, and we still may have an issue about lead levels and so on and I believe that you do a good job. I don't know that really is the issue today but I appreciate your participation. One of the things you point out, representative of consumer groups and safety advocates, testing laboratories, academics and government and so on are the non-producers but obviously are part of your process. Is that correct?

Ms. MORGAN. That is correct.

Mr. GONZALEZ. So would like Mr. Green, who is sitting behind you, would he be involved?

Ms. MORGAN. We would be delighted to have Mr. Green involved in the organization.

Mr. GONZALEZ. Do you have a list of, let us say, those that are concerned with safety, health, environment and so they constitute members or contributors to your organization? That would not be retailers, that would not be manufacturers and so on.

Ms. MORGAN. Yes, we do have those lists of those kinds of participating organizations in ASTM. Also, whenever we begin any new activity, we take every measure possible to solicit the names of those organizations that would have an interest and a bearing in that activity.

Mr. GONZALEZ. I appreciate if you would provide me at a later date a list of what I refer to again your contributors or participants. I just want to see how it all comes out in the way of percentages as far as the different sectors of the industry and the consumer groups.

To Mr. Knell, I really do want to commend you, and again, it is about reputation and about your good name and such, but it appears that you yourself in a licensing agreement feel that it is incumbent for you to provide for a third-party independent disinterested audit. Is that correct?

Mr. KNELL. That is what we are going to implement because our faith I guess in the system has been a bit ruptured and these acts were something that obviously made the system not work so in order to reassure parents that our toys and the toys that we license are safety, because we are not in the toy manufacturing business, we believe bringing in an independent auditor such as a Veritas or an Intertech or some independent third-party company which can go to a factory in China unannounced, if necessary, to reassure that those products are safe is something that we have got to do. I think the Walt Disney Company made a similar announcement as well.

Mr. GONZALEZ. And again, I commend you and I think Ms. Hooley is going to have a bill regarding certain toys at certain ages that actually take that whole aspect and make it into law, and we will see what happens with that.

My last question, I have about 40 seconds, I am going to be real quick here to Mr. Keithley and Mr. Thompson to kind of go through step by step is to members of your organizations and say how do you feel, what is their responsibility to assure that what is being manufactured pursuant to their design or what is being sold in their stores as far as their responsibility to make sure that that product that is placed in the stream of commerce is safe for use by the American consumer?

Mr. KEITHLEY. Congressman, it is our manufacturers' responsibility to assure that, and our companies have been doing really a terrific job for many, many years doing just that, and I think the record shows that toy safety issues have not been just overwhelming over these past years and so when something like this does happen that lead paint gets through on a toy, it is a particularly damaging thing and that is why we are now proposing a new system to try and close whatever gaps there may be remaining in our safety system.

Mr. RUSH. The gentleman's time is up.

The Chair now recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman.

Mr. Gale, I apologize for not being here during your earlier testimony but educate me, if you can, I am walking through downtown Lewisville, TX, the other day and passed by a jewelry store and they have got a big sign up that says we now have the Higas magnets I guess for costume jewelry. I assume they are talking about a more potent magnet, a more attractive magnet. Are these the same type of devices that pose the difficulty for children, the magnetic toys when they were ingested?

Mr. GALE. My understanding is that any magnet that a child would ingest, if there is more than one, can cause problems and blockages and yes, it could conceivably do so.

Mr. BURGESS. Now, with your professional organization, what are you doing to alert people to this possible danger? Because I didn't see a similar sign up in the window that said caution, magnets if ingested could cause intestinal obstruction or blockage and consult your pediatrician at your earliest convenience.

Mr. GALE. What we are doing is first of all informing our members that there is a potential problem and then we are creating—we a relatively new organization. We have been in business for a year and a half. We have established a Web site and we are in the process of putting information on the Web site for the consumers.

Mr. BURGESS. I guess one of my biggest concerns about this problem, I was not aware of it until sitting on this committee after practicing medicine for 25 years. Somebody called me up and said I have got a child that swallowed a magnet and I said just be patient, you will get it back. And it turns out that is what a lot of people thought but it wasn't correct and some children suffered significant injuries as a consequence. So I am most concerned about the education of the public who might be purchasing these things and obviously we are not expecting 3-year-old children to be purchasing that type of jewelry, but their mothers might—hopefully not in Texas it wouldn't be their fathers—but their mothers might and they would be exposed or potentially exposed to the danger. I am just extremely concerned about people being made aware of this problem because, again, I don't think there is widespread recognition. I know there is not widespread recognition in the medical community and the public service or the public education is so critical in this regard because from Mr. Rush's earlier witness panels, this is one of the most disturbing things I had ever heard sitting here and listening to witnesses testify.

So for what it is worth from me, I think it would be a very useful trade that your trade association could do to publicize the potential dangers of these magnets. It doesn't really matter in this case whether they are made in China or India or anywhere. It is the attractive capabilities of the magnet and the ability to cause the bowel to adhere to cause the obstruction which again never in my years of practice would I have considered that as being a potential problem. So again, for what it is worth, I would encourage your trade association to make that information readily available to the people who purchase the jewelry and we will just gradually increase public awareness of that because the other efforts that the

consumer protection agency was utilizing at least in my experience hadn't been filtering down to the level of the community and certainly not the level of the community physician.

Mr. Chairman, it has been an outstanding group of witnesses you have had over the past 2 days and I just want to thank you for doing this. I really don't have any other questions and I will yield back the balance of my time.

Mr. GALE. Excuse me, Mr. Chairman. May I answer? Thank you for that observation, and I want to compliment the toy industry because they have done a very good job on informing the public about the problem of magnets and magnets coming loose and dislodging and therefore children being able to swallow them, and so that is very important in the jewelry field as well that we must make sure that if magnetic clasps or any magnets are used, that they be absolutely secured, mechanically secured so that there cannot be any ingestion by children.

Mr. RUSH. At this point the Chair wants to issue a sincere apology to the gentlelady from Illinois for abruptly cutting her off during her sentence in yesterday's hearing. I hope the gentlelady will please accept my apology.

The Chair recognizes the gentlelady from Illinois for 5 minutes.

Ms. SCHAKOWSKY. Of course I accept your apology and I thank you for your making it. I appreciate that very much.

In the first panel, Lori Wallach, director of Public Citizen's Global Trade Watch, said that—and this is really I think a question for Mr. Thompson, that the United States would need to alter various provisions of U.S. trade agreements including the WTO Technical Barriers to Trade Agreement whose rules currently set limits on the level of safety protection and the rate of border inspection. She says absent such changes, the improvements that Congress may make to improve import safety would be exposed to challenges as non-tariff trade barriers before trade tribunals, and so I wanted to get your view of that. I think that is a serious concern because we suspect are going to take action in response to the crisis that has emerged and that is an area of your expertise, I guess.

Mr. THOMPSON. Congresswoman, I am probably not the right person to address the WTO component of this. I would be more than happy to get the appropriate people in front of your staff. What I can address, particularly probably in relation to the previous panel, is, one, we are responsible for what is sold on our store shelves and we take that responsibility very seriously. We invest heavily in actually entire departments that deal with toy safety and that includes using independent certified third-party labs to test toys made exclusively for us. That includes using third-party and our own employee auditors to go out and check the factories regardless of which country we source and make products out of to ensure that there are safe manufacturers' practices in place. And so we will always use our leverage to ensure that——

Ms. SCHAKOWSKY. Well, these are all things after the products have come into the country. Do any of you advocate the notion that there ought to be safety inspections at the plants as well as at the borders and what is actually happening in that regard? And I am talking both about plants that are owned by the company but I

guess more particularly plants that are contracting with the companies. Mr. Keithley, you are nodding.

Mr. KEITHLEY. Yes, ma'am, absolutely. There needs to be inspection in those plants and our companies who are sourcing the product from those Chinese producers need to have their inspectors in those plants inspecting the product coming off the line, and by their inspectors, most likely third-party contracted inspectors because as I said, many of our manufacturing companies are small businesses.

Ms. SCHAKOWSKY. They would be chosen by you and chosen by the company and work for the company?

Mr. KEITHLEY. Well, they would most likely be an independent third-party laboratory that had been accredited under our proposal by the American National Standards——

Ms. SCHAKOWSKY. This is our legislative proposal you are speaking of?

Mr. KEITHLEY. Well, we are working with ANSI to develop the protocols and the procedures. It would be an ANSI-sponsored-and-driven set of procedures. We are asking for a Federal requirement that the inspection be done pursuant to those procedures.

Ms. SCHAKOWSKY. There was some talk about this. What kind of consumer input as opposed to only industry-driven input would go into that?

Mr. KEITHLEY. Right. ANSI, like ASTM, has a very robust system for including all stakeholders including consumers and academics and media and government.

Ms. SCHAKOWSKY. Let me ask under a different topic. I am not sure who best can answer this, but how long, I guess the retailers, after a recall is issued does it take a retailer to remove all recalled products from the shelves and does it make a difference if it is a mandatory or a voluntary recall?

Mr. THOMPSON. First, ma'am, it does not make a difference whether it is a mandatory or voluntary recall.

Ms. SCHAKOWSKY. And you know that because?

Mr. THOMPSON. Because once we are notified by the CPSC that a product is going to be recalled, our retailers take immediate steps to remove that product from the shelves and dispose of it and find the best way to notify our consumers to return that product and also ensure that our systems have that, the fact that that product has been recalled.

Ms. SCHAKOWSKY. So you don't a different procedure for mandatory or voluntary. Do your retailers?

Mr. THOMPSON. No, ma'am. Once we are notified of a voluntary or mandatory recall, we remove that product from our shelves and ensure at the register that that sale is blocked.

Ms. SCHAKOWSKY. Thank you.

Mr. RUSH. The Chair will allow one additional question from each member. He recognizes himself for one additional question.

Mr. Thompson, your testimony states that RILA retail association members review their suppliers' testing methods after recall and might levy sanctions if appropriate. Do you have an example of such a sanction?

Mr. THOMPSON. I don't have a specific example with regard to toys. I know that, for example, with some of the recent recalls in-

volving pet products that one of our companies decided to cease the business relationship with that manufacturer, and I think I want to leave with the committee as well that a lot of our members conduct multi-stage testing so this is not after the product is in the stream of commerce. We test pre-production and we test in some cases mid production and post-production. Now, they will also pull some samples off the shelves but our testing involves all stages of the production process and our audits also do occur overseas in those factories.

Mr. RUSH. The gentleman from Texas for one additional question.

Mr. GONZALEZ. The question will go to Mr. Keithley, Mr. Thompson. What is the consumer's individual recourse legally as to a retailer and a manufacturer for a product that obviously is harmful as you understand it today?

Mr. KEITHLEY. Well, as I understand it today, Congressman, there is no prohibition, nothing under the Consumer Product Safety Act or any existing law prevents the consumer from seeking redress if they felt they had been injured.

Mr. GONZALEZ. OK.

Mr. THOMPSON. Congressman, there is nothing that prohibits the consumer from taking action and it is my understanding that it will vary State by State depending on their own consumer protection laws but we do have a responsibility to our consumers for what is sold on our shelves so there is nothing that prohibits them from——

Mr. GONZALEZ. The reason I ask that, Mr. Chairman, is that, as you know, what Congress in the past few has been doing and that we can just go down the line at the Federal level what we done with strict liability, joint and several, class action, Federal preemption, eliminating certain legal remedies and of course restricting damages, and I think that there is a role to the civil justice system in this country to also assist our private sector to accomplish what we are all attempting to accomplish and that is to make sure we don't have harmful products out there that will do harm to the American consumer. I yield back.

Mr. RUSH. Thank you.

The gentlelady from Illinois is recognized for one additional question.

Ms. SCHAKOWSKY. I could make one comment and then a question. In Illinois, there is a $500 per day per violation that if a recalled product remains on the shelf, a tool that has been very effective in speeding up recalls. It is something that I think we ought to consider.

My question is this to Mr. Keithley. Yesterday I raised concerns about Mattel's decision to ignore the 24-hour reporting requirement and in the words of the Wall Street Journal, defying the Consumer Product Safety Commission. Do you believe that toy manufacturers should be required to comply with the 24-hour rule of reporting about a hazard in a product?

Mr. KEITH. Definitely, and I think they are required to under the present law.

Ms. SCHAKOWSKY. Well, they are required to but Mattel has said that they don't like that law so they didn't comply. But thank you very much.

Mr. RUSH. The members of this panel, the final panel for these particular hearings, thank you so much for your time. We will keep the record open for 30 days and subcommittee members may submit additional questions to all of our witnesses and we ask that you respond to those questions on a prompt basis. We thank you so much for coming. Thank you for your time and being generous with your time. The subcommittee is adjourned.

[Whereupon, at 1:30 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
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October 22, 2007

Ms. Olivia D. Farrow
Assistant Commissioner
Division of Environmental Health
Baltimore City Health Department
210 Guilford Ave., 2nd Floor
Baltimore, MD 21202

Dear Ms. Farrow:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Thursday, September 20, 2007, at the hearing entitled "Protecting Children from Lead-Tainted Imports." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached is a question to you from Subcommittee Chairman Rush. In preparing your answer to this question, please address your response to Mr. Rush and include the text of his question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Friday, November 2, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-226-5577** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

CITY OF BALTIMORE

SHEILA DIXON, Mayor

HEALTH DEPARTMENT

Dr. Joshua M. Sharfstein, Commissioner
210 Guilford Avenue
Baltimore, MD 21202

October 26, 2007

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade and Consumer Protection
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Congressman Rush:

In response to your question from the hearing on "Protecting Children from Lead-Tainted Imports", below is my response.

1. Has the Baltimore City Health Department done any work with home lead test kits? Can consumers rely on these kits to test products that raise concern about lead paint or lead content?

The Baltimore City Health Department has not done any work with home lead test kits for the testing of children's consumer products. We currently send all of our samples to a private laboratory for full analysis in accordance with the Consumer Product Safety Commission guideline for determining total lead.

We have no experience with the home lead test kits. Therefore, we are unable to give you comment at this time about their effectiveness.

If you have additional questions, please feel free to contact me via e-mail at Olivia.Farrow@BaltimoreCity.gov or at 410 396-4422. Thank you for the opportunity to provide testimony on this important issue.

Sincerely,

Olivia D. Farrow, Esq., R.S.
Assistant Health Commissioner
Baltimore City Health Department

HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

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October 22, 2007

Mr. Michael Gale
Fashion Jewelry Trade Association
1486 Stony Lane
North Kingstown, RI 02852

Dear Mr. Gale:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Thursday, September 20, 2007, at the hearing entitled "Protecting Children from Lead-Tainted Imports." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions to you from Subcommittee Chairman Rush. In preparing your answers to these questions, please address your responses to Mr. Rush and include the text of his question along with each of your responses.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Friday, November 2, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-226-5577** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Mr. Michael Gale
Page 2

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

fashion jewelry
trade association
1486 stony lane • north kingstown, rhode island 02852
p/f: 401.295.4564 • email: fjta@aol.com

October 31, 2007

The Honorable John D. Dingell, Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2416 Rayburn House Office Building
Washington, D.C. 20515

Re: Lead in Children's Products

Dear Representative Dingell:

This responds to your letter of October 22, 2007, following up on recent hearings on lead in children's products at which the Fashion Jewelry Trade Association (FJTA) testified.[1] As you know, FJTA supports adoption of a national, preemptive, material-specific standard on lead in jewelry components based on existing laws in California and Minnesota. We respond to your two questions below.

1. *Some consumer groups recommend a lead standard for children's jewelry at a standard lower than 600 ppm. Given the risks to children's health caused by lead, are there reasons that we shouldn't mandate a standard lower than 600 ppm for children's jewelry? Please explain.*

As we previously testified, FJTA and its members support lead limits adopted in California and Minnesota for jewelry. Lead limits for jewelry intended for young children (under 7), and separate standard for jewelry intended for other consumers, adopted after an intensive mediation process involving environmental groups, chemists and toxicologists, the California State Attorney General, and industry, protect safety. Lead limits of 600 ppm for metal and coatings used in children's jewelry are protective of health, and derive from science-based assessments of blood lead levels of concern.

Indeed, in its 2005 report, *Preventing Lead Poisoning in Young Children,* the Centers for Disease Control and Prevention (CDC) (2005 CDC Report) stated:

[1] The Fashion Jewelry Trade Association represents companies involved in the fashion or costume jewelry business in the U.S. Our members do not make vending machine jewelry or jewelry given away as premiums. Only a very small proportion of sales involve jewelry intended for children under 6.

> Although there is evidence of adverse health effects in children with blood lead levels below 10 μg/dL, CDC has not changed its level of concern, which remains at levels $\geq$ 10 μg/dL. We believe it critical to focus available resources where the potential adverse effects remain the greatest. If no threshold level exists for adverse health effects, setting a new BLL [blood lead level] of concern somewhere below 10 μg/dL would be based on an arbitrary decision. In addition, the feasibility and effectiveness of individual interventions to furthe reduce BLLs below 10 μg/dL has not been demonstrated.

2005 CDC Report, p. ix.

FJTA also recently asked the expert technical firm, Exponent, to assess the current 600 ppm limit on lead in metal components of children's jewelry applied by the Consumer Product Safety Commission (CPSC) and also by several states to assess whether this level protects children's health. Exponent concluded:

> While it is desirable that lead exposure be reduced to levels well below those of toxicological concern set by expert agencies such as the CDC, lead exposure associated with children's jewelry that complies with the CPSC standard is very small. Additionally, in the unlikely situation of a child swallowing a lead-containing piece of jewelry, the blood lead levels for a child with a typical starting level will not come close to the 10μg/dL blood lead standard set by the CDC. The CPSC standard of 600 ppm provides a public health-protective basis to limit lead exposure to children. Finally, overall, the potential exposure to lead from jewelry, particularly jewelry that is in full compliance with the existing standards, is likely dwarfed by the potential exposure from other major sources of lead exposure, which have been linked directely to elevated blood lead levels in young children.

Technical Memorandum, Evaluation of CPSC Limits for Lead in Children's Metal Jewelry, prepared for the Fashion Jewelry Trade Association by Exponent, October 2007 at p. 7.

Metal in particular, because it is mined, will contain some level of lead, because lead is an element found in nature. Thus, any metal used to make jewelry is likely to contain some lead. Lead is also widely found in the environment, and can be introduced into manufacturing processes and products even when lead is not intentionally added. These factors make it enormously difficult to to establish a lower limit on lead content in metal below the current 600 ppm standard, because metal suppliers cannot reliably and repeatably assure us that they can produce products that meet a lower limit. Lead levels have been dramatically reduced in jewelry from almost 60% - the standard amount of lead found in metal typically used for plated jewelry a few years ago – to 600 ppm in jewelry for young children 6 and under, and below 10% in other jewelry. While California standards permit jewelry not intended for young children to contain 10 % lead until the summer of 2009, our industry is already adhering to the 6% limit in properly plated jewelry intended for consumers other than children under 6.

It should be noted that children's jewelry are subject to other standards as well in the U.S. For example, children's jewelry would be subject to other tests under CPSC's regulations, like a pull test, to evaluate the strength of the materials, and use and abuse testing for small parts and sharp

points. A small amount of lead adds durability to metals, which may otherwise be somewhat brittle and prone to breakage. Some FJTA members have conducted testing on metal components, and report that reducing lead content in metal below the current 600 ppm standard will potentially result in a significantly higher percentage of products, like metal plated chains and clasps, failing to meet these other safety tests.

In addition, FJTA is working with another industry association, the Manufacturing Jewelers and Suppliers Association, to refine standards for plating of metal jewelry. Testing has shown that proper plating provides an effective barrier to limit leaching of lead from metal used in jewelry.

FJTA supports limiting lead in jewelry or other products intended for young children 6 and under. We agree with the scientific experts who have continued to support a 600 ppm limit on lead in metal children's jewelry to protect children's health. Rather than arbitrarily lowering this limit to levels that have not been demonstrated to offer significantly greater protection to children or to be technically achievable, we support utilizing the vehicle of a Chronic Hazard Advisory Panel, authorized under Section 28 of the Consumer Product Safety Act (CPSA), to study the issue.

2. *The Fashion Jewelry Trade Association has reached out to the international community on lead standards. What is the standard for children's jewelry in other parts of the world, especially in Europe?*

The states of California and Minnesota have the most detailed regulations on lead in jewelry, with material-specific standards for jewelry intended for children 6 and under, and standards for other jewelry. Importantly, these standards recognize the effectiveness of proper plating in limiting consumer exposure to accessible lead. A rational policy approach to lead in jewelry recognizes that very young children are at greater risk of ingestion, thus supporting lower, but technically achievable limits. Levels of permitted lead in jewelry intended for older consumers, who do not commonly ingest jewelry, are higher than the standards for jewelry intended for young children 6 and under because older consumers are protected through the vehicle of proper plating of metal components.

FJTA serves its members in the U.S., but to our knowledge, there are few regulations applicable to lead in jewelry outside the U.S. Canda has adopted a 600 ppm limit on total lead in children's jewelry, with a 90 ppm accessible lead limit. While FJTA's members do not make toy jewelry, toy jewelry is subject to toy safety standards in the European Union. In general, however, jewelry as a product category in the EU is subject to the provisions of the EU General Product Safety Directive. Jewelry products that meet standards in California and Minnesota are deemed safe in the EU.

The attached chart provides an overview of U.S. and international regulations applicable to lead in jewelry.

FJTA has sought to be a constructive partner in discussions about reducing the exposure of young children to lead. We hope that this response and the attached materials help give you a broader understanding of the scientific basis for the current 600 ppm standard for metal, the safety performance advantages offered when a small amount of lead is in the metal, and the technical

and practical difficulties of reducing lead in metal jewelry intended for children below the current 600 ppm standard.

Respectfully submitted,

Michael Gale
Executive Director

Attachments: Exponent Report
Chart of Lead Regulations

cc: The Honorable Joe Barton (w/attachments)
The Honorable Bobby Rush (w/attachments)
The Honorable Cliff Stearns (w/attachments)
Valerie Baron (w/attachments)

Primer on Lead Regulations, Guidelines and Standards				
Regulation or Standard	**Product(s) Covered**	**Limit**	**Test Method Specified**[1]	**Exemptions**
Regulations, Guidelines and Testing Standards Applicable to Lead in Jewelry – U.S.				
CPSC Interim Enforcement Policy for Children's Metal Jewelry Containing Lead (February 3, 2005)	Children's metal jewelry	Less than or equal to 0.06% by weight (600 ppm) and accessible lead exceeds 175μg	CPSC methodology – Standard Operating Procedure for Determining Lead (Pb) and Its Availability in Children's Metal Jewlery (February 3, 2005) (for components other than coatings) AOAC 974.02 "Lead in Paint" (for coatings)	
16 C.F.R. Part 1303	1) Toys or other articles intended for use by children that bear lead-containing paint (includes paint on children's jewelry and on toy jewelry) 2) Furniture articles for consumer use that bear lead – containing paint	0.06% by weight of the total nonvolatile content of the paint or the weight of the paint or the weight of the dried paint film (calculated as lead metal)	AOAC 974.02 "Lead in Paint"	House paint

[1] Tests in italics are not specified but commonly used. Total lead is determined by digestive lead test. Accessible lead is determined by: 1) wipe tests (simulating hand to mouth transfer), NIOSH Manual of Analytical Methods, Method 9100 (Lead in Wipe Samples), Issued 1994 or CPSC Wipe Test Method as presented in "CPSC Staff Report on Lead and Cadmium in Children's Polyvinyl Chloride (PVC) Products, Appendix (Nov.21, 1997); 2) saline extraction testing (simulating mouthing and sucking) CPSC Saline Extraction Method as presented in "CPSC Staff Report on Lead and Cadmium in Children's Polyvinyl Chloride (PVC) Products, Appendix (Nov.21, 1997); and 3) acid extraction test (simulating ingestion), ASTM C 927.

Primer on Lead Regulations, Guidelines and Standards				
Regulation or Standard	**Product(s) Covered**	**Limit**	**Test Method Specified**[1]	**Exemptions**
ASTM F963-96a "Standard Consumer Safety Specification on Toy Safety" Section 4.3.5.2	Toys with lead-containing paint (surface coatings) (includes toy jewelry)	90 ppm (μg/g) of soluble levels of lead in dried surface coatings on the toy article 0.06% (600 ppm) by weight of total lead in the dried surface coating on the toy article	ASTM F963-96a	
A.B. 1681--Jewelry Material Standards (California) Cal. Health & Safety Code §§ 25214.1-25214.4.2 AND **Regulating the Manufacture and Sale of Jewelry Products Containing Lead (Minnesota)** Minn. Stat. § 325E.389	Children's Jewelry (jewelry made for, marketed for use by, or marketed to children 6 and under, including vending machine jewelry)	- Metal (plated and unplated): 0.06% (600ppm) - Dyes, surface coatings: 0.06% (600ppm) - Glass, crystal: 0.02% (200 ppm) *if* component exceeds 1 gram - Plastic and rubber: 0.06% (600 ppm) (until 8.31.09); 0.02% (200 ppm) (after 8.31.09) - Miscellaneous items to which lead is added: 0.02% (200 ppm)	EPA Method 3050B (Acid Digestion of Sediments, Sludges or Solids) or EPA Method 3051 (Microwave Assisted Digestion/Sludges, Solids) with test modifications according to Health and Saftey Code Section 25214.1 – 2544.4.2[2]	List of Class I materials
A.B. 1681--Jewelry Material Standards (California) Cal. Health & Safety Code §§ 25214.1-25214.4.2 AND **Regulating the Manufacture and Sale of Jewelry Products Containing Lead (Minnesota)** Minn. Stat. § 325E.389	Other Jewelry (jewelry not covered by the definition of children's jewelry)	- Properly plated metal:10% (until 8.31.09); 6% (after 8.31.09) - Unplated metal: 1.5% - Glass, crystal: no limits - Plastic and rubber: 600 ppm (until 8.31.09); 200 ppm (after 8.31.09) - Dyes, surface coatings: 600ppm - Miscellaneous materials not listed or exempt: 600 ppm	EPA Method 3050B (Acid Digestion of Sediments, Sludges or Solids) or EPA Method 3051 (Microwave Assisted Digestion/Sludges, Solids) with test modifications according to Health and Saftey Code Section 25214.1 – 2544.4.2	List of Class I materials

[2] This method is also mandated by a consent agreement settling a Proposition 65 lawsuit to which approximately 70 companiesin the jewelry industry are subject.

Primer on Lead Regulations, Guidelines and Standards				
Regulation or Standard	**Product(s) Covered**	**Limit**	**Test Method Specified[1]**	**Exemptions**
Illinois Lead Poisoning Prevention Act 410 ILCS 45/4 (amended June 20, 2006)	Clothing, accessories, jewelry, decorative objects, or other articles used by or intended to be chewable by children	Less than or equal to 0.06% by total weight (600 ppm)	None specified, but pending legislation may mandate testing protocols based on EPA Method 3050B or 3051	
Regulatory Action on Lead in Children's Jewelry (Baltimore City, MD) *available at* http://baltimorehealth.org/press/2006_12_07_lead_regs.pdf.	Children's metal jewelry	Metal component may not exceed 600 ppm	CPSC methodology – Standard Operating Procedure for Determining Lead (Pb) and Its Availability in Children's Metal Jewlery (February 3, 2005)	
Regulations, Guidelines and Standards Applicable to Lead in Jewelry – Non-U.S.				
General Product Safety Directive 2001/59/EC	Requires that safe products be placed on the market	No specific restrictions on jewelry; toy jewelry subject to Toy Safety Directive. Jewelry meeting U.S. standards would be deemed safe.		
European Toy Safety Standard, EN 71-3:1994	1) All toys, cosmetic toys, and writing instruments categorized as toys which may undergo food or oral contact intended for children up to 6 years old (includes toy jewelry) 2) Modelling clay and finger paint	90 mg/kg (90 ppm) of *extractable* lead (test results subject to a correction factor based on inter-laboratory variability)	EN 71-3:1994, Annex C (test results subject to a correction factor based on inter-laboratory variability)	Toys and parts of toys which, due to their accessibility, function, mass, size, or other characteristics obviously exclude any hazard due to sucking, licking, or swallowing.
Canada – Children's Jewelry Regulations in Canada (May 10, 2005)	Children's jewelry	1) 600 mg/kg (0.06%) total lead in metal components 2) 90 mg/kg migratable lead	1) Method C-02.4 – Determination of Total Lead in Metallic Consumer Products (Health Canada) 2) EN 71-3: 1994 test for extractable lead	

Details of Acute Exposure Calculations of Blood Lead Levels

CPSC relied on observational data of the decline of blood lead levels in children who were exposed to lead during renovation of their houses (Manton et al. 2000). In such a situation, some lead exposure likely preceded the elevated blood lead level, because the houses had lead-based paint. Though not described by Manton et al. (2000), the period of increased lead exposure may also have continued for some time during and/or after renovation activities. The difficulty of removing all sources of lead exposure was specifically discussed by O'Flaherty (1995), who was forced to presume substantial post-abatement sources of lead exposure in order for her PBPK model to adequately predict fairly rapid blood-lead-level rebound and apparent absence of any clear decay in blood lead levels after chelation therapy was conducted in the Baltimore Lead Study (Chisholm et al. 1985). It is noteworthy that Manton et al. (2000) did not cite or discuss the large study done 15 years earlier by Chisholm et al. (1985), nor did they discuss O'Flaherty's model fits to these data (see Figure 6 and related discussion by O'Flaherty 1995). A previous lead body burden and continuing sustained, but tapering environmental exposures to lead after abatement would be expected to produce blood lead levels that decline much more slowly than the intrinsic biokinetic rate predicted by the *in vivo* human data referred to above.

The kinetics of lead absorption, sequestration in soft tissue and bone, turnover, and excretion have been sufficiently well studied in rodents and humans to have enabled the development and validation of physiologically based pharmacokinetic (PBPK) models (Rabinowitz 1976, 1984, 1998; Zielger et al. 1978; Stark 1982; Ryu 1983; Chamberlain 1985; O'Flaherty 1991a–c, 1993, 1995, 1998; Leggett 1993; Polak et al. 1996; Pounds and Leggett 1998; Flemming et al. 1999; Pounds and Leggett 1998; White et al. 1998; Beck et al. 2001). In particular, data obtained from multiple studies of blood lead levels in humans after injection with or inhalation of a known amount of lead radioisotope are consistent with approximate first-order loss of lead from blood following exposure, with a rate of decline corresponding to a half-life of 15 to 40 days (see Leggett 1993). Observed patterns of blood lead decline in humans were reasonably well predicted, for example, by the Leggett/ICRP biokinetic/PBPK model for lead (Leggett 1993).

These observed loss rates are roughly 10- to 20-fold lower than that assumed by CPSC based on data discussed by Manton et al. (2000). A consensus that lead is lost from blood relatively rapidly (assuming no continued inputs from bone stores or additional exposure) is consistent with the following summary of lead toxicokinetics (U.S. EPA 1994, p. 4-43, 4-44, 4-46):

> In terms of exposure, however, it is generally accepted that blood lead concentrations yield an index of relatively recent exposure because of the rather rapid clearance of absorbed lead from the blood. Such a measure, then is of limited usefulness in cases where exposure is variable or intermittent over time, as is often the case with pediatric lead exposure.
>
> ... [I]n an actual population of children, there will be substantial opportunity for non-residential lead exposures.
>
> ... Blood lead concentrations show seasonal fluctuations due to factors such as the relatively short half-life of lead in blood, reduced outdoor exposures in the wintertime, and perhaps to physiological (hormonal) changes. Cold weather, attending school, and snow cover tend to reduce the amount of time a child spends outdoors, and the child's direct contact with contaminated soil. The amount of this fluctuation is variable depending on physiological and behavioral factors as well as climatic ones. Seasonal fluctuations in blood lead concentrations as great as 4 to 6 μg/dL have been observed in some studies (Stark et al., 1982; Rabinowitz et al., 1984; Menton et al., 1994).

Likewise, a recent draft UN scientific consensus document states that the "half-life of lead in blood is estimated to be 20–40 days" (UNEP 2006). Any current fundamental uncertainty about whether or to what extent well-established rates of lead elimination from blood in adults may pertain to children could now quite easily be resolved experimentally using accelerator mass spectrometry (AMS) methods, with a study protocol that would pose negligible risk to participating children in view of the extreme (attomole) sensitivity of these methods (Bogen et al. 1998; Dingley et al. 1998; Williams et al. 2002; Cupid et al. 2004).

Using an adaptation of the age-specific Leggett (1993) biokinetic model for lead, together with previously reported reference patterns of age-specific body-organ growth (ICRP 1975, 1988, 1990, 1995), we conducted a more realistic evaluation of the impact on blood lead of 175 μg of lead leaching into the stomach over a 6-hour period. The following adaptations were made to the original Leggett model. The Leggett model assumed that the fraction of ingested lead declines from 45% at birth to 15% by adulthood, whereas the O'Flaherty (1995) PBPK model assumed that this fraction declines from 60% at birth to 8% by age 10 years. The adapted model we applied assumed that this fraction declines from 60% at birth to 10% by age 25 years, in decrements of 10% that occur at ages 1, 5, 10, 15, and 25. U.S. EPA (1990) values were used for age-specific intake rates of tap water plus water-based foods, and for age-specific rates of indoor and outdoor respiratory ventilation. It was assumed that the lead concentration in outdoor and household soil is three times greater than that in household dust (Lark et al. 1991). It was assumed that indoor air concentrations of lead are 60% of corresponding outdoor concentrations (Davies et al. 1987). To model a typical exposure scenario that generates a target-background time-weighted average (TWA) blood lead level of 2.2 μg/dL for the period from 1 to 5 years after birth, the following route-specific levels of chronic exposure to environmental lead were assumed: 0.2 $\mu g/m^3$ in outdoor air, 2 μg/L in tap water plus water-based foods, and 15 μg/day in the diet for a reference (70-kg) adult (age-scaled as a linear function of body weight). Finally, the lead concentration in soil was optimized to yield the specified target-background blood lead level, assuming that (1) age-specific rates of soil and dust ingestion during childhood are those shown in Figure 1, which were estimated by O'Flaherty (1995), and (2) maternal/fetal blood lead concentration is that predicted by the model for a reference adult at age 20. Lead accumulation prior to birth was then approximated as that predicted by the model during the first 9 months of life, conditional on the assumed maternal blood concentration plus the chronic environmental intakes noted above. The resulting numerically optimized concentration of 22 ppm lead in soil was assumed in all chronic exposure scenarios considered. All calculations were done using *Mathematica*® 6.0 software (Wolfram 1999), and are reported in Attachment B.

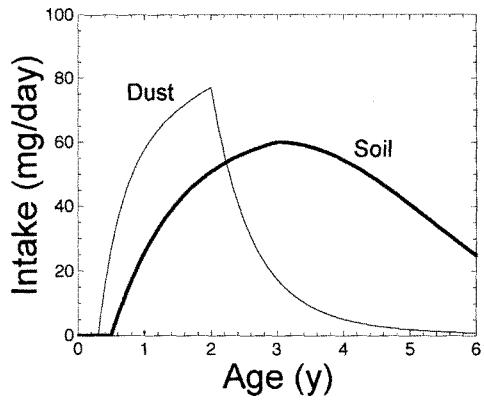

Figure 1. Rates of dust and soil ingestion estimated by O'Flaherty (1995, 1998). Peak dust intake was assumed to be 77 mg/day at age 2, and that for soil to be 60 mg/day at age 3.

Compartmental predictions of the adapted Leggett biokinetic model for lead are shown in Figure 2 for an adult reference male injected at age 25 with 175 μg Pb into diffusible plasma over a period of 1 minute. While resulting excretion of lead is predicted to persist for decades, the model predicts that little of the injected lead persists in the blood compartment (comprising red blood cells plus diffusible plasma plus lead-bound plasma), and that which does declines with a half-life of about 15 days.

Model-predicted blood lead levels are compared in Figure 3 for a child who has experienced chronic background levels of multi-route (diet + water + indoor air + outdoor air + dust + soil) exposure to environmental lead sufficient to generate a time-weighted average (TWA) blood lead level (BPb) of 2.2 μg/dL during age 1–5 years (nearly horizontal light red curve), with that attained assuming an additional uptake of 175 μg ingested lead over a 6-hour period starting at age 5 (bold red curve). These predictions are compared in Figure 3 to corresponding BPb predictions for a child and for a reference adult in the absence of any chronic lead exposure. Note that the predicted rate of lead elimination from blood shown in Figure 3 for a child in the

absence of any chronic lead exposure (blue curve) is slightly *greater* than that of a corresponding adult (green curve), over the 91-day post-exposure period shown.

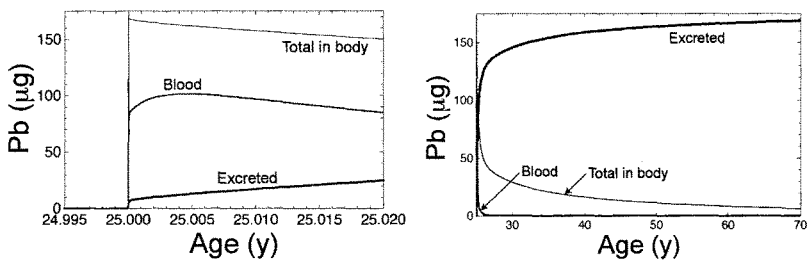

Figure 2. Compartmental predictions of the adapted Leggett (1993) biokinetic lead model for an adult reference male injected at age 25 with 175 µg Pb into diffusible plasma over a period of 1 minute. Left and right panels show the same model predictions over different time periods.

Model-predicted blood lead levels are compared in Figure 3 for a child who has experienced chronic background levels of multi-route (diet + water + indoor air + outdoor air + dust + soil) exposure to environmental lead sufficient to generate a time-weighted average (TWA) blood lead level (BPb) of 2.2 μg/dL during age 1–5 years (nearly horizontal light red curve), with that attained assuming an additional uptake of 175 μg ingested lead over a 6-hour period starting at age 5 (bold red curve). These predictions are compared in Figure 3 to corresponding BPb predictions for a child and for a reference adult in the absence of any chronic lead exposure. Note that the predicted rate of lead elimination from blood shown in Figure 3 for a child in the absence of any chronic lead exposure (blue curve) is slightly *greater* than that of a corresponding adult (green curve), over the 91-day post-exposure period shown.

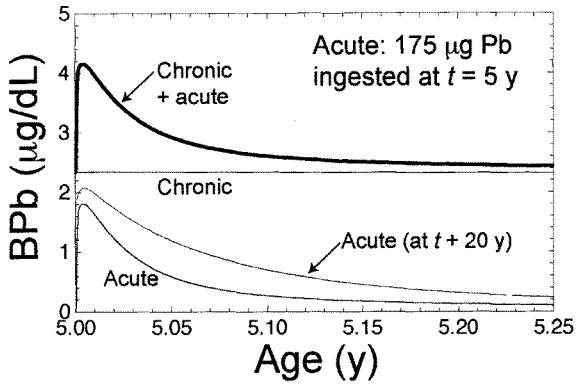

Figure 3. Compartmental predictions of the adapted Leggett (1993) biokinetic lead model for a child who has experienced chronic background levels of multi-route (diet + water + indoor air + outdoor air + dust + soil) exposure to environmental lead sufficient to generate a time-weighted average (TWA) blood lead level (BPb) of 2.2 μg/dL during age 1–5 years (nearly horizontal light red curve), to that attained assuming an additional uptake of 175 μg ingested Pb over a 6-hour period starting at age 5 (bold red). Model predictions are also shown for a corresponding acute-only exposure occurring at age 5 (blue), and one occurring at age 25 (green, shown shifted leftward by 20 years along the axis to facilitate comparison with the other plots shown).

A TWA BPb value of 2.34 μg/dL corresponds to a 1-month period along the light red "line" shown in Figure 3 starting at age 5 years. The exposure scenario that includes a 175-μg oral dose of lead at age 5 corresponds to a 1-month TWA BPb value of 3.18 μg/dL, for the 1-month period along the bold red curve commencing at year five. The latter 1-month TWA BPb level (3.18 μg/dL) attained after ingesting 175 μg of lead is only 36% greater than that pertaining to the scenario that does not include any acute oral dose of lead, and is about 3-fold lower than the 10-μg/dL level of concern addressed by the CPSC. Consequently, it appears that a 175-μg dose of lead, associated by the CPSC with lead concentrations of up to 600 ppm in consumer products that might be ingested by young children, implies an approximate 3-fold margin of exposure relative to that agency's specified exposure level of concern.

Additional model predictions shown in Figure 4 provide insight into biokinetic predictions of the Leggett (1993) model. The model clearly predicts a substantial reduction in blood lead elimination starting at age 10, compared to earlier ages, as shown by the difference in magnitudes of the downward slopes that appear for the red versus the blue curve starting at age 10 in that figure. Despite the fact that the blue reflects exposures to environmental lead concentrations that are assumed to be *constant* over the first 20 years of life, the corresponding predicted level of blood lead *declines* markedly starting at age 10 years (in the middle of the period of presumed constant exposure), just when the modeled rate of bone growth accelerates along with the rate of lead absorption into bone. The model thus appears to predict that relatively higher concentrations of lead in bone during ages 10 to 15 are associated with higher blood lead levels and relatively reduced elimination of lead from blood during this period.

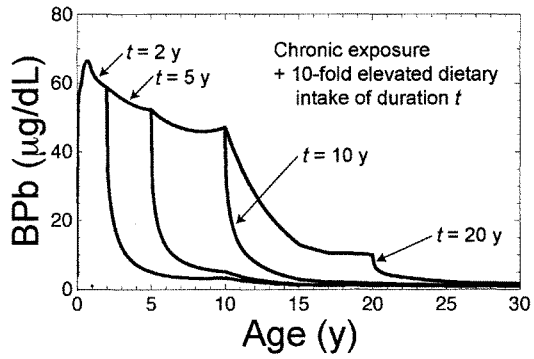

Figure 4. Compartmental predictions of the adapted Leggett (1993) biokinetic lead model for a reference person experiencing chronic lead exposure as defined for Figure 3, plus a 10-fold elevated rate of dietary lead intake starting at birth and lasting a total time *t* (in years, as indicated). The blue curve (*t* = 20 y) reflects a sharp decrease in the predicted rate of lead elimination from blood, although the corresponding exposure scenario assumes strictly constant rates of multi-route exposure to environmental lead for a 20-year period starting at birth.

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October 19, 2007

Mr. Michael Green
Executive Director
Center for Environmental Health
528 61st St., Ste. A
Oakland, CA 94609

Dear Mr. Green:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Thursday, September 20, 2007, at the hearing entitled "Protecting Children from Lead-Tainted Imports." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached is a question to you from Subcommittee Chairman Rush. In preparing your answer to this question, please address your response to Mr. Rush and include the text of his question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Friday, November 2, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-226-5577** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

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U.S. House Committee on Energy and Commerce
Subcommittee on Commerce, Trade and Consumer Protection
"Protecting Children from Lead-Tainted Imports"
September 20, 2007

Response from Michael Green, Executive Director, Center for Environmental Health, to the Honorable Bobby L. Rush, Chairman

The Honorable Bobby L. Rush

Has the Center for Environmental Health done any work with home lead test kits? Can consumers rely on these kits to test products that raise concerns about lead paint or lead content?

Michael Green

The Center for Environmental Health has extensive experience using home lead tests made by Hybrivet Systems Inc., marketed as various "Lead Check" brands. Since our experience is primarily with this test kit, my remarks should be understood to apply only to this product, as I cannot comment on other kits that may be on the market.

In our work, we often use home lead test kits as a screening tool, to identify products for follow-up testing at an independent private laboratory, which we then employ for a more complete lead analysis of the product. We find the home test kits to be a useful tool in identifying the presence of lead in products, but in our work, we need a quantitative analysis to determine more fully the extent of the lead threat to consumers. Laboratory analyses are necessary to determine the exact percentage of lead in the product, and can also be useful in quantifying the extent of the exposure to consumers. Using this two-step

process, a screening with home lead test kits followed by lab analyses, we have identified risks to children and forced industry to reformulate products to end lead threats from hundreds of products, including vinyl lunchboxes, children's jewelry, vinyl baby bibs, and many other products.

Most consumers obviously can not take the time and do not have the resources to hire a testing lab, nor can they use other testing technologies (like portable x-ray fluorescence (XRF) machines that can test for lead) that are prohibitively expensive. Thus, we agree with *Consumer Reports*, which found the "Lead Check" home test kits to be a useful tool (see http://blogs.consumerreports.org/safety/2007/10/testing-the-lea.html), acknowledging that consumers also need to understand the limitations of the test kits. For example, the tests will not find lead below the surface, as is possible with some plated metal jewelry, or if a layer of lead-free paint has been applied over lead-containing paints (which was the procedure used by the Consumer Product Safety Commission in their recent tests). Also, a false negative may result on a product with very low lead levels (according to Hybrivet Systems, the kits are sensitive to .05%, or 500 parts per million of lead). The *New York Times* reported on recent XRF-testing of toys that found eleven of fifty toys tested contained lead (see http://www.nytimes.com/2007/09/27/business/27toys.html?_r=1&ref=business&oref=slogin). Eight of the eleven lead-tainted toys contained less than 500 parts per million (ppm) of lead. It is possible that home lead tests would have missed some of these low-levels of lead.

But in our experience, high levels of lead in children's products are all too common. To note just a few examples, in the past two years we have used home lead test kits as a screening tool which helped identify products such as:

- A child's vinyl lunchbox with over 56,000 ppm of lead, and dozens of other vinyl children's lunchboxes with lead levels over 1,000 ppm;

- A Disney "Princess" bracelet with fake pearls that were covered with a glossy coating that contained 166,000 ppm of lead, and dozens of other metal and vinyl pieces of children's jewelry that contained over 1,000 ppm of lead;
- A "Curious George" doll with over 7,000 ppm of lead; and
- Vinyl baby bibs with lead levels up to 9,600 ppm of lead.

Our advice to parents generally is, if they suspect lead in toys or other products for their children, they should replace the product with an alternative that they know to be safe. For example, parents can use cloth baby bibs instead of vinyl ones. There are, however, some cases when replacement is not a simple option. Given our experience, home lead test kits are a useful tool in identifying lead in many children's products, and we recommend that parents who cannot easily replace suspect products can use the test kits to screen many children's products for lead.

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October 22, 2007

Mr. Carter Keithley
President
Toy Industry Association, Inc.
1115 Broadway, Ste. 400
New York, NY 10010

Dear Mr. Keithley:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Thursday, September 20, 2007, at the hearing entitled "Protecting Children from Lead-Tainted Imports." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached is a question to you from Subcommittee Chairman Rush. In preparing your answer, please address your response to Chairman Rush and include the text of the question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Friday, November 2, 2007**. Your written response should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-226-5577** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

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Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

Chairman Rush's Question:

The Toy Industry Association's initiatives require qualified laboratories to do toy safety testing. Are there enough qualified laboratories and testing facilities in existence to handle this load?

TIA's Response:

As you know, the Toy Industry Association's (TIA) proposed mandatory testing program will require all toys manufactured for the U.S. market be tested to U.S. standards. Under the ANSI Conformity Assessment Program, testing procedures and protocols will be standardized and used industry-wide and a system to accredit testing laboratories implemented.

In response to your question about there being enough qualified laboratories and testing facilities in existence to handle the work load, TIA believe s that there will be sufficient laboratories and facilities. Currently many companies already test their products to the US requirements, using recognized toy testing laboratories. In addition, many retailers, toy brands and importers are utilizing these labs to conduct massive re-testing right now to ensure the safety of products on the shelves and in the pipeline for this holiday season and in order to reassure consumers in the safety of toys.

A new mandatory testing requirement will create a demand for additional testing, particularly from those companies who are not already testing their toys for compliance with the standards. However, we know that there is a sufficient number of qualified labs worldwide that could handle the additional testing and that they are gearing up already, during this time of massive retesting, in preparation. We believe these accredited laboratories and facilities will be fully equipped and ready by the time the American National Standards Institute (ANSI) implements the new Conformity Assessment Initiative.

1115 Broadway : Suite 400 : New York : NY 10010 : Tel 212.675.1141 : Fax 212.633.1429 : info@toy-tia.org

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October 22, 2007

Ms. Mary Teagarden
Professor of Global Strategy
Thunderbird School of Global Management
15249 N. 59th Ave.
Glendale, AZ 85306

Dear Ms. Teagarden:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Thursday, September 20, 2007, at the hearing entitled "Protecting Children from Lead-Tainted Imports." We appreciate the time and effort you gave as a witness before the Subcommittee.

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Ms. Mary Teagarden
Page 2

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The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

November 2, 2007

The Honorable John D. Dingell, Chairman
U..S. House of Representatives
Committee on Energy and Commerce
Washington, D.C. 20515-6115
USA

Dear Mr. Dingell,

Thank you for the opportunity to provide additional commentary to that I presented on September 20, 2007 before the Subcommittee on Commerce, Trade and Consumer Protection hearing entitled, "Protecting Children from Lead-Tainted Imports." You will find my responses below.

1. **You state in your written testimony that "{...} knowing how to produce products that are lead-free is not the problem. It is a question of constant process and material vigilance throughout the supply chain." Thus, would you recommend that U.S. manufacturers require their own full-time audit personnel to be present in their contractors' factories in China to monitor compliance with quality control and safety standards? Would this be financially feasible for most companies?**

My recommendations apply to any manufacturer that sells products in the U.S. market, not just U.S. manufacturers. Constant process and material vigilance is key to avoiding lead-tainted products. Companies can accomplish this in a variety of ways including their own on-site audit personnel, contracted third party on-site audit personnel, testing finished product to verify standards compliance before it enters the distribution chain in their own laboratories with their own personnel or using third party laboratories to do the testing.

The audit process is complex if the supply chain is long. In other words, it is considered long if there are many sub-contractors or component suppliers in the supply chain. These multiple "hand-off" points introduce many opportunities at which there can be a breach of standards or introduction of lead-tainted inputs. This is why companies that rely on high quality tend to use fewer, trusted suppliers whose processes are certified on a regular basis usually to global standards like ISO 9000. Supply chain length has financial implications.

Some companies choose to have their own audit personnel in each of the suppliers and sub-contractors in their supply chain. Other companies have found that doing inspection of finished goods is sufficient to ensure quality. Yet others use a hybrid approach that blends these approaches. The choice of process has different financial implications. Audit personnel throughout the supply chain enable companies to catch problems early and correct at the lowest cost point in the supply chain. They avoid hidden costs like the cost of rework of finished goods and/or the cost of holding inventory while waiting for test results. On the other hand, personnel costs can be avoided if the testing is done at the finished goods point in the process. If goods are held until the testing results are available, there is the cost of holding inventory that must be absorbed. This approach presents less risk of lead-tainted products entering the supply chain. Far and away, the riskiest approach is to ship finished goods and recall them if they are found defective. This is probably the costliest approach too since recalls have an impact on stock price, brand equity and sales.

I believe that all manufacturers regardless of their home country should be required to be in compliance with our safety standards before their products enter the distribution chain. To be very clear, they should know that their products targeted for sale in the U.S. are in compliance before they are shipped. I believe that failing to do so should subject the company to severe sanctions. I do not believe that we should mandate how companies control their supply chain to be in compliance. All of the approaches I discussed above, and others, have financial trade-offs that can best be made by the company and all work. If a company claims that it cannot afford the cost of compliance with safety standards, they simply cannot afford to be in business.

2. **Given poor supply chain security and price pressures by large retailers, how can smaller importers ensure that the goods they receive from China meet applicable U.S. safety standards?**

I would hold smaller importers to the same standards as larger ones. It would probably be most feasible for them to use third party audit laboratories to ensure that the quality of the products they are importing meet applicable U.S. safety standards. One approach I have seen is for small importers to band together to work with suppliers and third party audit laboratories to reduce their costs. The competitive reality is that large retailers simply have a cost advantage that smaller importers do not.

3. **You state in your written testimony, "American big box retailers and their unrelenting pressure on suppliers for ever lower prices bear part of the responsibility" for unsafe imported products. Are all manufacturers susceptible to this price pressure, or are some larger companies, such as Mattel, able to resist it? If so, wouldn't that free up more of their resources for better quality control?**

All manufacturers who chose to supply big box retailers are subject to unrelenting pressure for ever lower prices. Big box retailers pressure suppliers to bear increasing

costs like packaging innovation, cost of holding inventory and similar activities that shift cost to the manufacturers who supply them. In exchange they provide the manufacturer with rich industry specific information that can help the manufacturer improve their processes and reduce cost.

Many manufacturers choose to sell to the big box retailers because big box retailers control so much of the shelf space. They are the final step in the distribution chain and are needed to get the manufacturers' products to customers. If a manufacturer chooses to supply to a big box retailer, they will be susceptible to these cost pressures. Some manufacturers decide to not supply big box retailers because of this practice.

Given the sheer size of the market share of big box retailers like Wal-Mart, making the choice to not supply them limits the volume and efficiencies possible for the manufacturers--there simply are not that many other outlets. Big, nationally branded products need the volume to compete and face a "catch-22": if they do not supply the big box retailers, they do not have needed volume and if they do they face very strong pressures to reduce costs. One of the implications of this dynamic is that if the manufacturer chooses to avoid supplying big box retailers, they are very likely to have a higher cost structure which might mean they have **less** money to spend on quality.

I hope these responses are adequate. Please do not hesitate to contact me if you need additional information.

Sincerely,

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cc. The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on commerce, Trade and Consumer Protection

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October 22, 2007

Ms. Lori Wallach
Director
Global Trade Watch
215 Pennsylvania Ave., SE
Washington, DC 20003

Dear Ms. Wallach:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Thursday, September 20, 2007, at the hearing entitled "Protecting Children from Lead-Tainted Imports." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions to you from Subcommittee Chairman Rush. In preparing your answers to these questions, please address your response to Chairman Rush and include the text of the question along with each of your responses.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Friday, November 2, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-226-5577** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

CHAIRMAN RUSH'S QUESTION #1.

There are several mechanisms that could ensure that importers of unsafe products, not U.S. consumers, bear the cost of ensuring such imported products are safe – and that also create market incentives for foreign producers and importers to ensure the products that they send here are safe.

When an importer seeks entry for a product into the United States, current U.S. customs law requires certain procedures and customs inspectors check products under current law to stop counterfeits. However, the current statutes under which the Consumer Product Safety Commission (CPSC) operates does not require any specific systems of testing of such products for safety nor are there CPSC inspectors at almost any U.S. ports of entry. The changes that I would recommend include:

1. DO NOT TRUST, TEST: The CPSC must be required to develop a reasonable testing program administered by the Commission for toys and children's products imported into, or sold in, the United States designed to eliminate or prevent any unreasonable risk to children. Our current import safety crisis has proved that the current system of relying on importers to ensure safety and conduct testing has totally failed. That said, if importers knew that a significant share of their products would face testing and be denied entry if they were unsafe, an important market incentives would be created for better safety practices by foreign manufacturers desiring access to the lucrative U.S. market – as well as create incentives on importers who may not be the manufacturer to invest in systems to ensure safety. To focus in such testing on the most potentially dangerous products, Congress should designate a new classification called "potentially hazardous consumer product" -- a consumer product, including any toy or other product intended for use by children, that could cause death, injury or impairment, including by exposing consumers to toxic substances. The designation of what goods should be so characterized should be determined via criteria including: whether the product is likely to pose long-term or short-term hazards to health or safety, including such factors as whether the product is painted or has a chemical coating, whether the product includes small parts that could pose a choking hazard or be ingested or whether components of the product could contain substances that pose a risk to human health; the number of prior recalls or bans of such product or of similar products; the number of violations of the Act or other acts administered by the Commission related to the product or of voluntary standards, by either the importer or manufacturer of such product, or both; the level of likely risk to the public from the product and the number of products, by type and intended use, sought to be imported into the United States although the volume of the product shall not be determinative of whether a product may impose risks on the public.

2. DESIGNATE PORTS FOR POTENTIALLY HAZERDOUS PRODUCTS AND STAFF AND EQUIP THEM PROPERLY: Congress should require the Commission to designate certain selected ports of entry into the customs territory of the United States for "potentially hazardous consumer products." No consumer product could enter the customs territory of the United States at any port not so designated. To limit expenses but not unduly effect trade flows, Congress should consider requiring the Commission to so

designate one hundred and seventy-five ports of entry (approximately half of all U.S. ports of entry.) Congress should require the CPSC to have such ports staffed by at least two product safety inspectors employed by the Commission, or other federal agencies qualified to determine the safety of such products – including specifically whether they meet U.S. laws and standards. The Commission must be required to maintain, or to contract for the maintenance of, adequate testing facilities at such designated ports of entry.

3. EMPOWER THE CPSC TO ISSUE PRELIMINARY STOP ORDERS: The CPSC must be authorized to refuse admission of goods if the Commission determines, from an examination of samples of such product or otherwise, that a product may be a "potentially hazardous consumer product" Further, Congress must adjust current law so that any such refusal of admission shall continue *unless the manufacturer or importer establishes* that the product does not present an unreasonable risk of death or injury to consumers and that such product complies with U.S. safety standards. Such a change would stop exposure to potentially unsafe products instead of waiting for them to be found unsafe after injuring consumers and then never be fully recalled from doing further harm. Further, shifting the burden onto producers and importers to prove their product is safe once initial testing suggest otherwise could shift some of the expense of further testing and verifications off of the government. Finally, such a requirement would create further incentives for foreign manufacturers and importers to ensure their goods were safe in the first instance, as a preliminary finding of problems would at a minimum cause delay and expense that could be avoided by an investment in safety in production.

4. REQUIRE IMPORTERS TO POST BONDS FOR RECALL AND HAZARDOUS PRODUCT DISPOSAL: Importers of products that meet the characteristics of "potentially hazardous consumer products" must be required to post a bond that could fund recalls of such products, the holding of product at the port of entry or fund destruction of such products, which when they contain lead is a costly process. Such a bond could ensure that funds exist not only to collect the unsafe products in a more complete manner, but also to provide consumers with safe replacements so that they are not forced to spend additional money to replace an unsafe imported product.

5. REQUIRE IMPORTERS OF POTENTIALLY HAZERDOUS CONSUMER PRODUCTS TO CONSENT TO INSPECTION OF PRODUCTION FACILITIES AND U.S. COURT JURISDICTION: Every manufacturer, importer, and subcontractor supplying component parts or materials to any such manufacturer or importer of a consumer product seeking entry for into the United States shall must be required to file a certificate along with existing Customs documents now required that provides:

    - A consent authorizing officials of the United States government to enter any manufacturing facility or storage facility of such persons, wherever located, for the purpose of inspecting facilities to ensure product safety. Such consent should also provide for access to all records of such parties relating to the safety, testing, production and shipment of such imported consumer product.

- A consent by each such manufacturer, importer, or subcontractor, of such consumer product, or the parts and materials thereof, to be subject to the jurisdiction of the courts of the United States, in any jurisdiction where such product is sold, in any litigation relating to the safety of such product or compliance with the provisions of this Act or any other act administered by the Commission. Such consent should provide that it shall apply to litigation by any person relating to injuries caused by such product or by any violation of U.S. law. This change would create further market incentives for manufacturers and importers to ensure their products' safety. Moreover, it would level the playing field for U.S. manufacturers who are liable under U.S. law for injury caused by the products.

6. CONSIDER A USER FEE TO COVER NEWLY REQUIRED TESTING AND PORT FACILITY IMPROVEMENTS Because of the risk of agency capture inherent in requiring industry to pay for testing services for a government agency, Public Citizen generally opposes user fees. However, it would be worth consider how a user fee system could be designed that would ensure that importers – not U.S. taxpayer – fund the additional testing needed to ensure import safety while avoiding such risks of agency capture. For instance, if such funds were required for categories of goods meeting the "potentially hazardous' criteria, they should not be segregated to support only such testing, but be accounted for with other customs fees now required for all goods. The overall cost of such improvement could be limited by implementing the above recommendations, which would create incentives for better safety practices at the front end of production and shift certain costs onto the producer if initial problems were uncovered.

CHAIRMAN RUSH'S QUESTION #2

Given the large volume of consumer goods being imported into the United States which do not comply with our safety laws and standards, the United States must increase testing of imports. There are several ways in which conflicts with WTO Technical Barrier to Trade (TBT) Agreement rules that require inspection of imported and domestic goods be conducted at the same rate can be minimized, which I enumerate below. However, the WTO's TBT Agreement requires amendment. It contains limits on reasonable government regulation necessary to ensure consumer safety that expose legitimate public safety policies to challenge and designation as 'illegal trade barriers' which must be eliminated with trade sanctions applied until such policies are changed or eliminated. In the interim, ways conflicts could be minimized include:

1. Increased testing requirements should avoid targeting specific countries, but rather apply to goods from all countries that meet certain criteria of risk. WTO 'most favored nation' rules are unambiguous: even if a record of violations thoroughly justifies targeting specific countries' products, such differential treatment violates WTO requirements.

2. WTO rules allow imports to be tested at the same rate as domestic goods. I am not aware of documentation of U.S. product safety inspection rates, but it is possible that there is room to increase import inspection rates so as to bring them to domestic inspection rate levels. That said, the CPSC has done a woeful job of ensuring the safety of U.S. manufactured products. For U.S. producers, the greatest incentive to ensure their products are safe is not concerns about CPSC standards or testing, but rather the liability they face in the U.S. civil justice system if their product injures or kills a consumer. The improvement noted above that would require foreign producers and importers to consent to jurisdiction of U.S. courts could help export this important incentive for safety.

3. The United States could seek voluntary agreements with specific countries, such as China, to allow greater rates of testing of their goods. Such a request could be premised on satisfying an important interest of the importing country: no importing country wants to obtain a 'bad name' with consumers be refusing such testing and doing so suggests that the country itself suspects that its products could not meet U.S. standards. However, if a country refuses, under WTO rules the United States cannot penalize that country by limiting access of their products. This dilemma highlights why WTO rules must be changed. That said, were a country to agree that increased testing was permitted, that would avoid a WTO challenge of such a practice, as countries must bring challenges against each other. There is no WTO enforcement squad that instigates challenges.