

# **Santa's Sweatshop: "Made in D.C." with Bad Trade Policy**



**U.S. Toy Corporations' Greedy  
Offshoring Push Puts Kids at Risk**



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## EXECUTIVE SUMMARY AND INTRODUCTION

Toys covered in lead; plastic beads coated in date-rape drugs; lead in vinyl baby products; kerosene in Halloween toy eyeballs; jewelry charms that kill; formaldehyde and lead in kids clothes; powerful magnets which perforate intestines when swallowed; toy parts that lacerate, burn, asphyxiate and explode – anxiety levels about toy safety this holiday season are as high as the U.S. trade deficit.<sup>1</sup> The two trends are not unrelated.

**Despite non-stop exposés about dangerous toy imports,<sup>2</sup> little attention has been given to the underlying cause of the crisis: the wholesale relocation by major U.S. toy corporations of their production to countries with little or no safety regulation.** Sweatshop working conditions proliferate in many of these countries, where workers have no ability to report safety problems, much less protect themselves from exposure to toxics. Toy and retail companies' profits and CEOs' compensation has soared, but at what cost to our children's safety?

The same toy corporations have worked feverishly to pass U.S. "trade" agreements that provide new "foreign investor" protections that remove much of the risk otherwise associated with relocation of production to developing countries. These agreements also include rules that limit safety standards and inspection rates for the goods sent back to the United States for sale. **Santa's sweatshops were "Made in D.C." by corporate lobbyists who convinced the U.S. Congress to pass the bad trade policy that underwrites their overseas operations.**

During the 1970s, nearly 90 percent of U.S. toys were produced domestically. U.S. toy manufacturers began sending production to countries with low wages and weak safety regimes, and by the late 1980s, imports overtook domestic toy production. Simultaneously, negotiations were beginning to transform the General Agreement on Trade and Tariffs (GATT), a 1947 pact covering tariff and quota rates, into the World Trade Organization (WTO). Over 500 U.S. corporations were official advisors to the WTO negotiations and the North American Free Trade Agreement (NAFTA) talks that soon followed.<sup>3</sup>

The corporations were able to use these "trade" negotiations to establish a totally different type of international commercial agreement that protected and promoted their strategy of relocating production to low-wage countries. The WTO enforces 17 different agreements, including one providing foreign investor protections and another limiting product safety standards and inspection. NAFTA included the same and even more expansive foreign investor protections that remove most of the risks otherwise associated with relocating to a developing country, and permit corporations to directly sue governments in foreign tribunals when they think safety standards are undermining their profits.

**These agreements prioritize ensuring a favorable investment climate for U.S. firms seeking to relocate production overseas to take advantage of sweatshop wages, weak regulatory systems, and cheap product inputs over the concern of most Americans, which is ensuring that the products we use are safe.** These 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. Trade lawyer James Bacchus, a former U.S. representative who voted for the WTO and went on to work there as a tribunalist, noted that the WTO puts constraints on any effort by the United States to increase food and product safety: "If, in their actions on health and safety issues, they choose to ignore their obligations under these three WTO agreements, they could face costly

economic sanctions in the form of lost access to the other's market. Such sanctions could range into the billions of dollars in lost sales annually."<sup>4</sup> The corporate strategy enabled by these agreements has not only offshored U.S. jobs, but it has outsourced our safety policy to foreign governments and producers. The wholesale relocation of toy production has also curtailed consumers' ability to seek redress from harm in the U.S. court system.

Because the overwhelming majority of toys sold in the United States are now produced in China, significant wrath about safety problems has been aimed at that country. This report reviews the special problems associated with Chinese toy production. However, the main villains in this unhappy holiday story are the CEOs of major U.S. toy and retail companies who have chosen to relocate their production to venues where they cannot ensure the safety of their products.<sup>5</sup> Absent addressing the root causes of the crisis, even the needed improvements in U.S. safety laws and toy company and retailer inspection systems cannot counter the conditions under which the toys are produced.

Not only do the current Congress' laudable goals on consumer safety conflict with trade pacts like NAFTA and the WTO passed by previous Congresses, but they also conflict with proposed trade pacts recently passed or now pending before Congress. The U.S.-Peru Free Trade Agreement (FTA) and similar NAFTA expansions to Colombia, Panama and Korea replicate and lock in limits on the U.S. government's ability to ensure the safety of imported products and food. These agreements not only provide corporations with incentives to relocate production overseas, they grant expansive "foreign investor" rights to challenge U.S. public interest laws in foreign tribunals and to demand U.S. taxpayer compensation for regulations that undermine their FTA rights. Not surprisingly, these agreements are being promoted by large and politically influential corporations seeking to lock in their offshore production strategy, while they are opposed by consumer groups worried about the safety implications.

The "low road" business strategy pursued by major U.S. toy and retail firms has eviscerated democratic oversight of their operations, the consumers' right to seek redress in our court system, economic security at home and abroad, children's safety, and ultimately even cost the companies themselves dearly. In this report, Public Citizen provides for consumers, press and policymakers data not previously compiled or analyzed:

- In the 1970s, there were never more than a dozen toy recalls a year. From 2003 to 2007, the period examined in a new database created for this report, the frequency of dangerous toys sold in the United States skyrocketed, with imports comprising almost all toy recalls. In 2003, there were 37 toy recalls worth \$44 million. In 2007, there were 120 toy recalls worth \$384.8 million – an astonishing 224 percent jump in recalls and a 773 percent jump in the dollar value of recalls;
- Toys made in China account for 94 percent of recalls in 2007. However, by disaggregating the recall data, we find that this phenomenon is driven almost entirely by recalls related to lead problems. The increased use of lead is being driven in part by U.S. companies' efforts to procure sweatshop goods from China at the same low prices even as Chinese wages continue to slowly increase. Specific attention needs to be paid to address the China lead issue;
- China accounts for a roughly proportionate share of design flaw recalls, which continue to be at a troublingly high level, but are as likely to be found in recalled goods made in the United States, China, or elsewhere. This data shows that a global response is needed to redress the high level of

built-in design flaws. Further, Congress must take action so that companies cannot avoid liability and injured consumers' right for redress in our court system by offshoring their production;

- The surge in recalls has coincided with the wholesale relocation of toy production offshore. U.S. toy production jobs have declined 70 percent since NAFTA and the WTO, and over 500 percent from their 1970s levels. Imports now constitute 87 percent of domestic toy purchases;
- Major U.S. toy firms have cuts costs enormously by moving production to sweatshop venues. Toy worker wages in China are as low as 36 cents an hour, half that of other *developing countries* and 2.5 percent that of U.S. toy workers;
- The money they have saved through labor arbitrage has gone to soaring profits and CEO salaries. In the 1970s, toy and retail companies made an average of \$50 million in today's dollars. In 2006, that has soared over 1,750 percent to \$930 million. Toy and retail industry CEO salaries have shot up even more dramatically during this period. Three decades ago, CEOs made roughly 50 times what U.S. toy production workers made; in 2006, they make over 500 times what remaining U.S. toy production workers make, and over 21,000 times what Chinese production workers make;
- While imports have soared over 400 percent since 1980, pro-corporate legislators pushed by anti-government ideologues have cut the Consumer Product Safety Commission's (CPSC) budget by a third in real terms, and staffing levels by 60 percent. The commission's staffing levels have been steadily eviscerated since the start of the Reagan administration, undermining the safety of both domestic and imported products; and
- WTO and NAFTA rules pushed by major corporations impose limits on safety standards and inspection rates for imported products, and have promoted and protected the toy industry's "low road" practices with expansive foreign investor protection that promote offshoring and a system where U.S. public interest and other policies can be and have been challenged in foreign tribunals as "barriers to trade," with our policies being ruled against at the WTO over 80 percent of the time.

**To effectively remedy the imported product safety crisis, Congress must:**

- **Alter various provisions of U.S. trade agreements, whose rules currently encourage the offshoring of manufacturing and limit border inspection and imported product safety standards; and**
- **Provide new authority focused on import safety and greater funding for domestic agencies responsible for product safety.**

## **I. Imported toy safety crisis is a corporate globalization problem, not just a “China problem”**

Ask a person on the street to describe the current toy safety crisis, and they are likely to respond with one word: “China.” **But major toy companies that have relocated production to venues where they cannot guarantee safety, and those in Congress they convinced to implement trade policies that promote and protect their production offshoring strategy, are the culprits of the current toy safety crisis.** Foreign-owned (not Chinese-owned) global corporations account for 60 percent of Chinese exports to the United States. For instance, if Wal-Mart were a country, it would be one of China’s largest trading partners.<sup>6</sup> Anti-sweatshop campaigners have long recognized that the “Chinese threat” is less about a nation with weak regulatory standards (although that is certainly true), and more about U.S. manufacturers and retailers who pushed for, and then eagerly took advantage of, trade rules in a relentless push to lower labor and input costs.

U.S. corporations pushed for less accountability: they got it when Congress yielded its constitutional responsibility to set the terms of U.S. trade policy by passing the Nixon-hatched Fast Track in 1973-74,<sup>7</sup> and then in later years when Congress gutted the funding for consumer regulatory bodies like the CPSC.<sup>8</sup> Corporations pushed for greater ease in offshoring their production to countries with low wages and weak regulation: they got it when successive U.S. administrations and sessions of Congress signed off on a series of harmful trade policies under Fast Track. Simultaneously, corporations wanted to lock in their offshoring strategy’s profitability and insure against democratic accountability *in the future*: they got this too when Congress signed off on the expansive investment, trade and safety deregulation rules of agreements such as NAFTA and the WTO, which authorize challenges in foreign tribunals of domestic safety policies that could limit imports.

Companies that once manufactured their own toys domestically with the help of American workers now only design toy blueprints, outsource and offshore the production, and then manage the distribution to American consumers. Mattel – to name just the top toy company – shut down their last American factory in 2002.<sup>9</sup> Meanwhile, powerful retailing corporations put extreme cost pressures on companies and producers for even further reductions in costs.<sup>10</sup>

***A Barbie doll costs around \$9 to manufacture in China, retails for more than \$29 – a markup of 222 percent.***

Corporations have lobbied for low wages and weak labor conditions even within China itself.<sup>11</sup> Recent efforts by the government of China (and pressure from human and labor rights groups) to crack down on sweatshop conditions and improve workers collective bargaining rights were fought tooth and nail by associations representing U.S. companies in China such as the

American Chamber of Commerce and the U.S.-China Business Council. This “sweatshop lobby” was successful in weakening the landmark law.<sup>12</sup>

When testifying for various trade agreements, corporations have claimed that the pacts were needed to keep down consumer prices.<sup>13</sup> But as Charles Kernaghan of the National Labor Committee noted when testifying before a Senate committee on the terrible conditions in Chinese toy sweatshops, a Barbie doll costs around \$9 to manufacture in China but retails for more than \$29 – a markup of 222 percent. “There is clearly sufficient money here both to make toys safe and to treat the workers as human beings,” Kernaghan emphasized.<sup>14</sup>

The money they have saved through labor arbitrage has gone to soaring profits and CEO salaries. In the 1970s, toy and retail companies made an average of \$50 million in today's dollars. In 2006, that has soared over 1,750 percent to \$930 million.<sup>15</sup> Toy and retail industry CEO salaries have shot up even more dramatically during this period. Three decades ago, CEOs made roughly 50 times what U.S. toy production workers made;<sup>16</sup> in 2006, they make over 500 times what remaining U.S. toy production workers make,<sup>17</sup> and over 21,000 times what Chinese production workers make. Disney CEO Robert Iger is paid a \$23.6 million compensation package;<sup>18</sup> Wal-Mart CEO Lee Scott receives nearly \$29.7 million; and Mattel CEO Bob Eckert earns nearly \$6 million.

**FIGURE 1  
CEO SALARIES RELATIVE TO CHINESE WAGES**

<b>Firm</b>	<b>CEO</b>	<b>2006 Salary</b>	<b>No. of Chinese workers' wages\$</b>
Target	Robert Ulrich	\$ 36,428,691	48,572
Wal-Mart	Lee Scott	\$ 29,672,533	39,563
Disney	Robert Iger*	\$ 23,600,000	31,467
Hasbro	Al Verrecchia	\$ 8,406,288	11,208
Toys R Us	Gerald Storch#	\$ 7,186,713	9,582
Mattel/Fisher Pr	Robert Eckert	\$ 5,994,559	7,993
RC2 Corp	Curtis Stoelting	\$ 1,377,978	1,837
	<b>Average</b>	<b>\$ 16,095,252</b>	<b>21,460</b>

*Source: SEC Proxy Reports; \*WSJ CEO Compensation Survey ;^ Salary.Com; \$Worker Rights Consortium<sup>19</sup>*

Not surprisingly, large global corporations have spent millions in lobbying and political action committee expenditures to lock in the considerable privileges they enjoy under NAFTA and WTO-style trade policy. The toy safety crisis was “Made in D.C.,” as shown in Figure 2 below.

**FIGURE 2  
TOY INDUSTRY BUCKS IN WASHINGTON, SELECT YEARS**

<b>Firm</b>	<b>Money Spent Lobbying, 1998-2004</b>	<b>Percent of lobby filings related to trade and safety, 1998-2004</b>	<b>PAC Donations to Federal Candidates, 1998-present</b>
<b>Toy Industry Association</b>	\$400,000	85%	n/a
<b>Mattel</b>	\$620,000	66%	\$92,750
<b>Target</b>	\$1,280,000	44%	\$820,915
<b>Wal-Mart</b>	\$4,590,000	18%	\$5,185,850
<b>Disney</b>	\$23,626,800	12%	\$1,670,557

*Source: Center for Public Integrity; Center for Responsive Politics; data for years available*

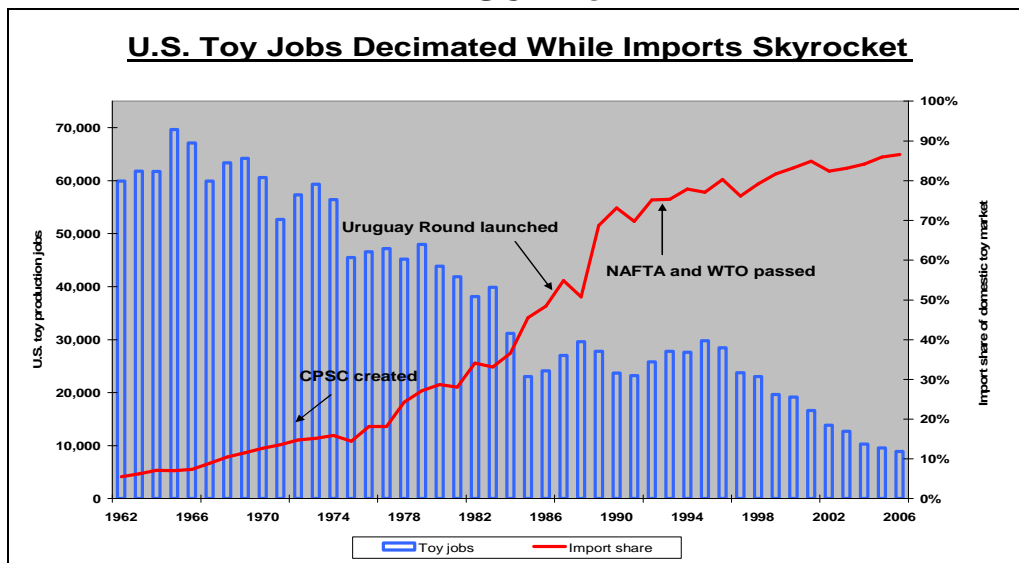
## II. The race to the bottom in toy production costs

Once upon a time, way back in the 1970s, nearly all toys purchased in America were “Made in America” (86 percent). During that decade – which also happens to be the last time that overall U.S. trade was balanced – nearly 60,000 American workers found gainful employment making toys for American children. Five-in-six dollars spent on toys supported these workers.

Things began to change in the late 1960s and early 1970s, when mega-retailers were building a national presence, and putting downward pressure on producers’ costs.<sup>20</sup> An illustrative example is Charles Lazarus, the founder of Toys R’Us, once a Washington, D.C. mom and pop outfit (that operated out of the current Madam’s Organ Bar on 18th St., NW)<sup>21</sup> that through a series of expansions and corporate mergers became America’s leading toy retailer over just a few decades. As one colleague told the *Wall Street Journal* in 1985, while many retailers set their selling price based on what they must pay wholesale, “Charles never did that. He would first say, ‘I can sell this product in great volumes at a certain price.’ He would *then* decide at what price he had to buy it.”<sup>22</sup> Such extreme cost pressures led inexorably to a search for ever cheaper toys, which led the industry to look increasingly to overseas labor markets.<sup>23</sup>

Fast forward to 1993 – the year NAFTA was approved and one year before the WTO was approved. While imported toys had overtaken domestic production in 1987, *still* 27,000 workers made toys in the United States in 1993. Many of these workers were proud members of union shops, such as the Playthings, Jewelry and Novelty Workers Union. Union workers not only received better wages but had pension and health care benefits as well.<sup>24</sup> Today, total employment in the U.S. doll, toy and game industry declined nearly 70 percent relative to pre-NAFTA and WTO levels and more than over 500 percent relative to 1970s levels, to less than 9,000 today.<sup>25</sup> Imports now constitute 87 percent of domestic toy purchases, and China alone accounts for 74 percent. (See Appendix III for a complete explanation of our trade and economic data methodology; and Appendix IV for a table of key numbers and events presented in this report.)

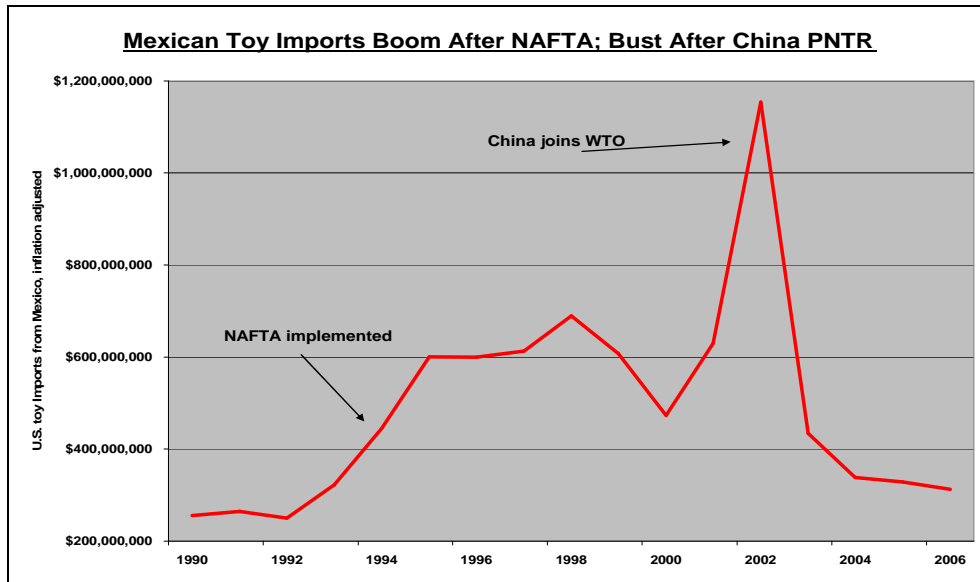
**FIGURE 3**



Source: Annual Survey of Manufactures; UN Comtrade

The massive offshoring of U.S. toy production and jobs occurred in waves. Already by the late 1980s, the United States was importing more toys than were being produced domestically, with production shifted to Mexico and parts of Asia. After the passage of NAFTA in 1993, major toy manufacturers rushed to relocate to Mexico.<sup>26</sup> According to the International Labor Organization, the average wage in Mexico for light manufacturing was \$0.65-\$0.77 per hour in 1993. Mexico's toy exports to the U.S. market surged a whopping 264 percent from 1993 to 2001, as shown in Figure 4. U.S. toy workers on production lines, by contrast, earned an average of \$11.24 per hour in 1993.<sup>27</sup>

**FIGURE 4**



Source: UN Comtrade

At the time of the NAFTA vote, Mattel justified NAFTA as necessary in order to keep production in the Western Hemisphere, and suggested it would usher in a new era of U.S.-Mexican unity:

“Under NAFTA, it is likely that Mattel would shift more of its Asian production to Mexico, to the benefit of U.S. industries and workers. The proximity of Mexico to the United States has fostered a strong relationship between U.S. suppliers and Mexican producers, a relationship that simply does not exist for Asian production... while Mattel already receives duty free treatment for many of its products imported from Mexico... *these benefits are not guaranteed [and are] still subject to review annually...* NAFTA, therefore, will provide Mattel *with much needed certainty...*”<sup>28</sup> [emphasis added]

But a few years after NAFTA's implementation, not satisfied with the over 2,000 percentage point reduction in wages, toy manufacturers and major retailers quickly shifted production to China when China joined the WTO in 2001. Mexico's U.S. toy imports collapsed virtually overnight, returning to their pre-NAFTA levels. As a 2003 Government Accountability Office report noted:

“Mexico recently lost market share in 47 out of 152 major U.S. import categories. At the same time, China gained U.S. market share in 35 of those 47 import categories, including toys,

furniture, electrical household appliances, television and video equipment and parts, and apparel and textiles. Some of these industries represent significant sectors of *maquiladora* production... China has competitive advantages over Mexico in terms of labor costs, electricity costs, and diversity of component suppliers.”<sup>29</sup>

As the International Labor Rights Fund’s Bama Athreya told a congressional committee,

“There are approximately 8,000 toy factories in China today, employing more than three million workers. Most of these factories and workers are in the Pearl River Delta area of southern China. Virtually every American toy company produces its wares in this region. Mattel, Hasbro, Fisher-Price, Toys R Us, and Disney are all well documented end users of China’s toy factories.”<sup>30</sup>

Moreover, workers frequently breathe in the lead paint and other toxins applied to toys without any protection,<sup>31</sup> many work seven days a week for months at a time with no day off, and workers are often cheated out of overtime pay.<sup>32</sup> (See Box on Thomas the Tank on page 13 for the story of workers that make Thomas the Tank toys.) As Figure 5 shows, corporations sourcing from China face a labor market where workers are paid hourly prevailing wages of as low as 36 cents an hour,<sup>33</sup> which is less than prevailing wages in other developing countries, and a mere 2.5 percent of what U.S. toy production workers are paid on average today.

**FIGURE 5**  
**Prevailing Wages by Country for Toy Industry or Comparable Sector, 2006**

	Prevailing hourly wage	Percent of U.S. wage
<b>United States</b>	\$14.26	100.0%
<b>Mexico</b>	\$1.05	7.4%
<b>Dominican Republic</b>	\$0.81	5.7%
<b>China</b>	\$0.36	2.5%

*Source: Worker Rights Consortium; Annual Survey of Manufactures*<sup>34</sup>

As a 1998 Congressional Research Service survey of corporate leaders concluded, “specific motivations of American companies for investing in China vary greatly from sector to sector. For some producers of toys and clothing, for example, a primary attraction has been to utilize China’s low-cost labor for assembly operations geared toward exporting.”<sup>35</sup> Far from the invisible hand of the market, the visible hand of corporate and government-sponsored violence keeps workers in their place. This can be seen in places like Shenzhen, China, where a worker active in a local workers’ center was brutally attacked by goons in November, and the government did not react.<sup>36</sup> (For more detail on why corporations are choosing China, see Appendix I: “Why China?”)

### **III. Is kids' safety the price of relentless cost-cutting? New analysis shows lead driving the increase in recall activity**

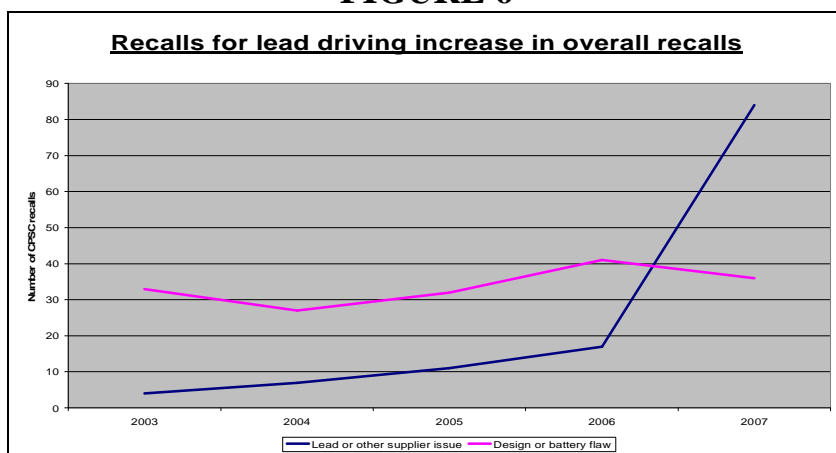
The toy industry's designs and blueprints sometimes have built-in safety hazards, before a Chinese or Mexican worker ever begins the assembly in an overseas factory. Indeed, *design* flaws, such as those that lead to choking, were until this year the primary toy safety hazard and as likely to be found in a toy produced in China, Europe *or* America for the big toy companies. Now, however, the primary hazard leading to recall has become lead.

To better understand the nature of the toy safety crisis as well as what policies are needed to effectively address it, Public Citizen created a database of CPSC-recalled items from 2003 to the present, coded by country of manufacture, year, retail value and the posed safety hazard. This analysis is presented in this report for the first time. As we note in Section IV, these recalls likely represent only the tip of the iceberg of unsafe toys. Even after extensive press coverage and significant congressional scrutiny, the full extent of the imported toy safety crisis problem is not yet known, as consumer groups and investigative journalists continue to release evidence of hazardous products on store shelves that have not yet been recalled.<sup>37</sup> (See Appendix II for a list of the top 2007 recalls and Appendix III for an explanation of our methodology.)

In 2003, there were 37 CPSC toy recalls worth \$44 million, while in 2007, there were 120 toy recalls worth \$384.8 million. This is an astonishing 224 percent increase in the number of recalls and a 773 percent increase in the dollar value of recalls in just four years.<sup>38</sup>

From 2003-06, 77 percent of toy recalls were due to design or battery flaws, while only 23 percent were due to presence of lead or other supplier issues.<sup>39</sup> But in just 2007, these proportions are reversed, with design and battery flaws accounting for 30 percent and lead and other supplier issues accounting for 70 percent of toy recalls.

**FIGURE 6**

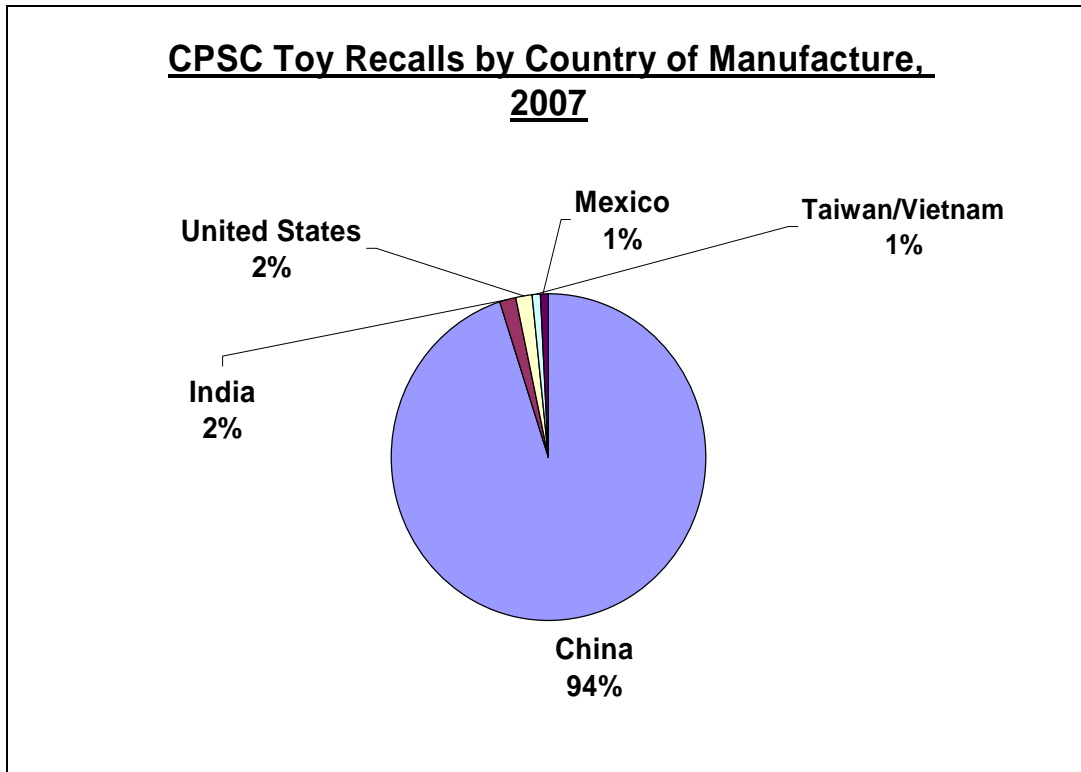


Source: Public Citizen database of CPSC recalls

The disproportionate majority (94 percent) of overall toy recalls involved toys from China, even though China's share of the U.S. toy market is 20 percentage points lower (74 percent). (Econometric

studies have also confirmed China’s share in total toy recalls to be disproportionate to its share of the U.S. market.<sup>40)</sup> Lagging far behind are toy recalls from India, Mexico, Taiwan, Vietnam and the United States, each at 2 percent or less, as shown in Figure 7.

**FIGURE 7**



*Source: Public Citizen database of CPSC recalls*

However, the disproportionate recall of Chinese-made toys is driven almost entirely by recalls related to lead problems. On the other hand, China accounts for a roughly proportionate share of design flaws (79 percent), which continue to be at a troublingly high level and are as likely to be found in recalled goods made in the United States, China or elsewhere. This is shown in Figure 8 below, suggesting that specific attention needs to be paid to address the China lead issue. This data also shows that a global response is needed to redress the high level of built-in design flaws.

**FIGURE 8  
REASON FOR CPSC RECALL**

Reason for recall	2003-06, global	2007, global	China share, 2003-07
Design or battery flaw, %	77.3%	30.0%	78.7%
Lead or supplier issue, %	22.7%	70.0%	93.5%
For all reasons	Avg. # of recalls: 43	# of recalls: 120	84.9%

*Source: Public Citizen database of CPSC recalls*

### **Companies complain about mess they created**

The very companies that have offshored so much U.S. toy production in fact complain when the government has attempted to hold them accountable for the safety of the toys they sell. *The Washington Post*, in a story about a federal lawsuit against toy companies selling unsafe toys, reported one toy company executive as saying the federal actions “were unfair because they ‘place a 100 percent burden on wholesalers and importers that is physically impossible to meet.’ He said his company, which sells thousands of toys to major retailers nationwide, has to trust that manufacturers are complying with the regulations. Like most wholesalers, [this company] imports most of the toys from the Far East.” See Lori Silver, “Toy retailers, importers sued over product safety,” *Washington Post*, Aug. 21, 1990.

### **Thomas the Tank Engine Recall: A Global Fiasco**

*Adapted from National Labor Committee's congressional testimony:*

Many of the Thomas & Friends toy trains that were recalled due to lead were produced at the Hansheng Wood Product factory in Dongguan, China. In that factory, workers were regularly mandated to toil up to 16-hour shifts, from 8 in the morning to nearly midnight, sometimes with not a single day off over an entire month. While required to put in long hours of overtime, the workers were routinely cheated out of around a sixth of their overtime wages. After the recall, the factory shut down. 1,500 workers were laid off without the majority of severance owed them. It is unclear if any of these fired workers were screened to see if they are suffering the affects of lead poisoning. Thomas the Tank Engine toys are made by the RC2 global toy corporation.

Why has there been such a steep increase in lead-related recalls (from 37 in 2003 to 120 in 2007)? One explanation may be that the lead has always been out there but has simply gone undiscovered due to toy manufacturers' lax self-policing and the inability of the CPSC to test toys. But it may also be true that there is an increased reliance on cheaper lead paints in China driven by U.S. companies' efforts to procure sweatshop goods from China at the same low prices, even as Chinese wages continue to increase slowly. Indeed, wage increases and persistent labor shortages in Chinese factories led one economist to conclude that China's "golden period of extremely low-cost labor" is over.<sup>41</sup> To make up for paying higher wages, manufacturers may be increasingly relying on cheaper inputs such as leaded paint, which sells for a third of the cost of paint with lower levels of lead.<sup>42</sup> (See Appendix I for more details on "Why China?")

#### IV. Tiny consumer protection agency unable to cope with flood of imports

While toy corporations have systematically offshored their production, public policy has not kept up. America's toy safety policy was designed in 1972, when nearly all toys were "Made in America."<sup>43</sup> After many years of campaigning on consumer safety, U.S. consumer groups were instrumental in passing the Consumer Product Safety Act and creating the CPSC in 1972. The CPSC was part and parcel of a wave of historic consumer and environmental advances, which included the formation of the National Highway Transportation Safety Administration, the Environmental Protection Agency, and a series of new environment, public health and safety laws.<sup>44</sup>

**"The CPSC should be abolished."  
- National Mass Retail Institute,  
WSJ, 4/30/81**

The CPSC's mission is to "protect the public against unreasonable risks of injury associated with consumer products."<sup>45</sup> The agency's brief is enormous, encompassing an incredibly diverse array of 15,000 consumer products including: toys, cribs, sports equipment, fireworks, mattresses, electrical appliances and swimming pools. The CPSC was granted a great deal of statutory authority to set mandatory safety standards, require labeling, order recalls, ban products, collect death and injury data, inform consumers about product safety, and contribute to the voluntary standards setting process.

While the statutory authority for the agency is strong, its ability to act to protect consumers has been eviscerated by two trends. First, the agency has been the subject of a relentless attack by conservative politicians determined to narrow the scope of governmental activities and free manufacturers from "burdensome" regulation. Starting with the anti-government Reagan administration in 1980, the CPSC's staffing levels have been chipped away, resulting in the deepest cuts of any health or safety agency.<sup>46</sup> Rachel Weintraub of the Consumer Federation of America likened the destruction of the CPSC to "death by a thousand cuts."<sup>47</sup> The CPSC went from having a budget of \$41.4 million and 978 staff (FTE<sup>48</sup>) in 1980 (the equivalent of \$96.4 million dollars in 2006) to a budget of \$62.4 million and 420 staff in 2007.<sup>49</sup> And the agency's budget has steadily decreased in inflation-adjusted terms since its began operations in 1974. (See Appendix IV for the full details.)

Second, when the agency was created, most consumer products were made in America. The producers (and their attorneys) were within easy reach of agency investigative and enforcement personnel. The

***"I don't want to abolish government. I simply want to reduce it to the size where I can drag it into the bathroom and drown it in the bathtub."***

**Conservative lobbyist Grover Norquist on NPR, 5/25/01.**

same producers were more mindful of safety issues because they were potentially liable under the U.S. justice system for any defective product. Indeed, the agency was designed to be complimentary to the U.S. tort system, where injured consumers can have their day in court against negligent manufacturers.<sup>50</sup>

However, as Figure 9 shows, in 1980, when the agency was at its highest staffing levels,<sup>51</sup> the United States only imported \$3.3 billion (adjusted for inflation) worth of toys.

Today, under NAFTA and the WTO agreements, the United States imports nearly \$17 billion worth of toys. Not only are manufacturers far from U.S. shores and outside the jurisdiction of U.S. civil or criminal courts, but the decimated agency is simply unable to keep up with the flood of imports.

Unlike the Food and Drug Administration, the CPSC does not have a “stop button” or “hot button” which allows it to halt trade in dangerous imports at the border without first having a hearing on the matter, nor does it have a program which permits it to visit and inspect overseas facilities shipping products to America.

According to the CPSC, the agency has no staff that work full-time at any of the 326 U.S. ports, and mostly focus part-time energies on Los Angeles and New York, leaving 324 ports virtually unchecked.<sup>52</sup> A September 2007 *New York Times* exposé put it starkly: “In Los Angeles area ports, through which 15 million truck-size containers move a year, a single agency inspector, working two or three days a week, spot-checks incoming shipments. Agency officials would not permit the inspector to speak with a reporter, but colleagues said her assignment was all but hopeless. ‘It is completely ineffective,’ one agency official said... In New York harbor, a safety commission inspector rarely shows up, said two customs officers who check imports to see if they comply with trade laws. Asked recently when he last saw a commission inspector, Ted Fronckowiak, a customs supervisor, responded: ‘It was around December.’”<sup>53</sup>

As is graphically demonstrated below, in the era of globalization, the CPSC is overwhelmed with imports and faced with the impossible task of monitoring toy imports which have surged over 400 percent, while its budget was cut by a third in real terms, and its staff by sixty percent. Meanwhile, incomprehensible opposition by current CPSC Chair Nancy Nord for additional agency funding has resulted in calls for her resignation.<sup>54</sup>

**FIGURE 9  
CPSC BUDGET CUT WHILE TOY IMPORTS SURGE**

	<b>1980</b>	<b>2006</b>	<b>Change 1980- 2006</b>
<b>Imports</b>	\$3,267,835,006	\$16,971,999,361	419%
<b>CPSC budget</b>	\$96,331,511	\$62,370,000	-35%
<b>CPSC staff level</b>	978	401	-60%

*Source: Consumer Federation of America; News reports; UN Comtrade*

Although it is a very small agency with virtually no border inspection capacity, the CPSC generally had been a trusted part of the consumer safety network. Consumers rely on CPSC recall notices, especially for toys and other important children’s products, such as car seats, strollers and cribs. The combined trends of U.S. toy firms’ offshoring of production and the CPSC’s inability to deal with imports have done significant damage to both the agency and the toy companies’ reputations. Flaws in toy design and production generally have been discovered by the toy industry itself, leaving the CPSC to basically serve the role as press officer to the flawed attempts by the industry to regulate itself.<sup>55</sup>

## **Corporations Avoid Product Liability By Offshoring Production**

In 1988, just as toys were becoming made mostly overseas, the American Enterprise Institute's Douglas Besharov identified numerous legal and practical obstacles to U.S. consumers ever obtaining redress against foreign manufacturers, citing a ruling to this effect by the Supreme Court a year earlier. Besharov wrote:

*“A major purpose of American tort law is to remove dangerously defective products from commerce. When foreign producers avoid the force of the tort law, some American consumers will go without this intended protection. Moreover, the relative freedom of foreign producers from United States torts claims gives them a substantial cost advantage over companies that must price their goods to include American levels of liability. For some products, the difference is a substantial one that can clearly affect United States competitiveness. According to Howard J. Bruns, president of the Sporting Goods Manufacturers' Association, products liability costs his American member companies over eight times what it costs Japanese companies ( 4.2 percent of the price compared with 0.5 percent).*

*“In principle, the tendency of foreign producers to escape liability should reduce the attractiveness of their products, compensating for their lower price. Or, by putting retailers and other middlemen at greater risk, it should cause them to insist on a higher price markup. However, not many consumers realize that the level of liability protection differs from one good to the next... Moreover, many sophisticated buyers expect their insurance to cover their economic losses in any case and know that premiums do not go up when they purchase foreign goods. One Fortune 500 executive, when asked whether the lack of recourse against a foreign producer might lead his company to purchase a more expensive American product, answered no - because the company's insurance would cover any accidents. Middlemen, for the same reason, may find that their liability insurance premiums do not vary according to the proportion of the goods they import...*

*“[f]or many American claimants, the full enforceability of products liability laws stops at the shoreline. The situation worsens every year as imports fill more and more of the United States market... [the lack of liability creates an] artificial price advantage [that] will help [foreign producers] build market share, at the expense of United States consumers and insurers as well as competitors.”*

Besharov, writing before the implementation of the WTO, concludes as we do, that a long arm statute and increased bonding requirements are needed. He additionally calls for strong international agreements that would have provided greater consumer protection. History, unfortunately for kids' safety, went in the opposite direction, a story to which we now turn.

*Taken from Douglas J. Besharov, “Forum Shopping, Forum Skipping, and the Problem of International Competitiveness,” Proceedings of the Academy of Political Science, Vol. 37, No. 1, New Direction in Liability Law, 1988, at 143-145.*

## **V. While promoting relocation of production overseas with new foreign investor protections, U.S. trade agreements also contain limits on imported product safety**

Corporations have systematically pursued a “low road” business strategy that has eviscerated democratic oversight of their operations, consumers’ right to seek redress in our court system, and economic security at home and abroad. The toy safety crisis that has resulted is not some accident of the “market” simply doing its job: it has been enabled directly by a generation of public policy, and in particular, ever more draconian trade policy.

How has trade policy contributed to this state of affairs? Both the WTO and NAFTA, as well as more recent trade agreements modeled on NAFTA, contain strong investor protections that encourage the offshoring of U.S. production by removing various costs and risks otherwise associated with locating production in a developing country. For instance, the WTO’s Trade Related Investment Measures (TRIMs) agreement guarantees that firms interested in offshoring will not be subject to measures such as local content requirements, trade balancing requirements or export restrictions that developing countries frequently employed prior to the WTO. NAFTA’s investor protections, an expanded version of which are also included in the Central America Free Trade Agreement (CAFTA) and the three pending U.S. FTAs, go even further. The NAFTA-style foreign investor rules guarantee a “minimum standard of treatment” that “host” countries must provide foreign investors,<sup>56</sup> and they eliminate the uncertainty of having to use “host” country courts to settle many common disputes. These pacts grant foreign investors a private right of action to enforce their “trade” agreement investor rights, through which they can challenge government policies in international tribunals at the World Bank and United Nations and demand compensation for measures they consider to have impaired their investment. This includes compensation for lost profits when government regulatory policy undermines their “expectation of gain or profit.”<sup>57</sup> Under NAFTA, around \$35 million has been paid out by governments in cases relating to toxic substance bans, logging rules, operating permits for a toxic waste site, and more.<sup>58</sup>

Not only do the investment provisions in various trade agreements extend strong protections to manufacturers that encourage them to move overseas, perversely, our current trade agreements *also* impose limits on domestic regulatory policy of signatory countries. Domestic laws providing a level of protection extending beyond that which is allowed in these trade agreements and also resulting in imports being kept out of the U.S. market are all subject to challenge in trade tribunals as “non-tariff trade barriers.”

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. A key WTO and NAFTA provision requires each signatory country to ensure the conformity of all of its laws, regulations and administrative procedures at every level of government to the agreements’ terms.<sup>59</sup> If they do not, other WTO and NAFTA signatory nations 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 United States has been the number one target of challenges at the WTO, where domestic laws are almost always ruled against in tribunal hearings. According to Public Citizen’s ongoing tally, the

United States has lost 86 percent of the WTO cases lodged against it. Furthermore, on cases brought against U.S. public interest policies, ranging from sea turtle protection to gambling regulation, the United States lost 100 percent of the time. Unfortunately, we are not alone: defendants lose cases roughly the same percentage of the time, showing how globally and systematically the WTO system pushes deregulation at the domestic level.<sup>60</sup>

While the WTO's Trade Related Aspects of Intellectual Property (TRIPs) agreement requires government action to protect the monopoly patent rights of corporations, the WTO's Technical Barriers to Trade (TBT) agreement limits governments' ability to protect society's most vulnerable workers and consumers. The WTO's TBT agreement sets the criteria that WTO signatory nations must follow concerning standards, technical regulations, and conformity assessment rules for most products, including industrial and agricultural products but not food. The TBT agreement's rules not only cover toy safety standards, they also limit the options that Congress may pursue to fix the import safety crisis. NAFTA and other FTAs incorporate the TBT agreement obligations.

- The TBT agreement requires WTO signatory nations to use international standards if such standards “exist or their completion is imminent” (Article 2.4). The only exceptions are for “fundamental climatic or geographical factors or fundamental technological problems.” 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” (Article 2.5). There is however no requirement that all goods moving under WTO rules must meet these international standards. Thus, 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. This is the “race to the bottom” that is built into WTO and NAFTA rules.<sup>61</sup>
- The TBT agreement's “non-discrimination” (or “national treatment”) rule requires that the United States treat foreign produced goods the same as domestically produced goods. For instance, the United States is not permitted under these rules to inspect imported goods at a greater rate than similar domestic goods. Even though the enhanced border inspection may be the only safety check on a wide array of imports, the level of inspection we apply to imports will be closely watched by exporting nations to make sure we apply the same scrutiny to domestically-made goods even if imports represent the majority of the problem.
- The TBT agreement also prohibits WTO members from adopting or applying standards and technical regulations in ways that create “unnecessary obstacles to international trade” (Article 2.2). What constitutes an unnecessary obstacle versus a legitimate safety standard is determined by the closed-door trade tribunals that hear non-tariff barrier challenges. These tribunals are staffed by trade lawyers, who generally lack expertise in consumer safety.
- The TBT agreement requires that countries may only maintain policies that fulfill “legitimate objectives” in the *least trade-restrictive* manner possible, while taking into account the risks that non-fulfillment of such regulations would create (Article 2.2 and 2.3). Again, tribunals of trade lawyers are left to make the subjective determination about whether a less trade-restrictive option might exist.

As Congress considers an array of regulatory measures to address the import safety crisis, such as mandatory third-party inspection for toys, few congressmembers are cognizant of the fact that these requirements could be the subject of a trade dispute. 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 must pay China not to send unsafe toys to us as an alternative to having China impose trade sanctions on whatever U.S. economic sectors of their choosing. China would get to pick which option it desires.<sup>62</sup>

### **From the Source... WTO Undermines Product Safety**

Former U.S. representative James Bacchus (D-Fla.) noted that three WTO agreements (GATT, SPS and TBT) would apply to any effort by the United States to increase food and product safety. "If, in their actions on health and safety issues, they choose to ignore their obligations under these three WTO agreements, they could face costly economic sanctions in the form of lost access to the other's market. Such sanctions could range into the billions of dollars in lost sales annually."<sup>63</sup>

While in Congress, Bacchus was a big WTO booster, exuberantly claiming in his floor speech on implementation of the WTO that it would lead "to workers' rights and environmental protections and all of the things that all of us in both parties want for the American people."<sup>64</sup> The Democratic leadership of the 103<sup>rd</sup> Congress, after having just lost control of the House thanks to voter revolt over their support of NAFTA and other middle-class squashing policies,<sup>65</sup> held this vote in a lame-duck session. Bacchus, a Democrat, gave up his House seat and became a WTO tribunalist and a trade lawyer, and his seat was seized and is still held by a Republican.<sup>66</sup>

Of course, even though such challenges have occurred in the past and are occurring presently, it is possible that U.S. diplomatic pressure could keep China or other WTO member governments from challenging U.S. toy safety laws. But under the aforementioned NAFTA, CAFTA and NAFTA-modeled agreements with Peru, Panama and other countries, investors can directly challenge government policy for taxpayer compensation. Indeed, corporations are pushing the investor-state system further in every U.S. trade pact, to the point where even social security systems and natural resource concessions are covered.<sup>67</sup> **These expansive investor rights, which go beyond what U.S. corporations operating in the United States are allowed under U.S. law, are rapidly becoming a global *ceiling* for public regulation of corporations, while there is no global *floor* for labor, environmental and safety standards in the ongoing, corporate-driven race to the bottom.**<sup>68</sup>

## VI. Policy Recommendations

To effectively remedy the imported toy safety crisis, Congress must act on number of levels. **Congress must provide new authority for domestic agencies responsible for consumer product safety and inspection that brings these agencies' responsibilities and authorities up to date with present realities: namely, 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.**

In Congress, the Senate is considering and the House has approved legislation on the Consumer Product Safety Commission.<sup>69</sup> Remarkably, however, in the midst of our massive imported toy safety crisis, and on the heels of horrifying revelations about unsafe imported pet food, toothpaste and other products, these current proposals do not address in any significant way the import safety crisis. While the Senate bill reported out of the Commerce Committee in October is better than the approved House measure, neither of the bills contains the essential elements below, which have been identified by consumer groups as necessary to improve toy import safety.

To give the CPSC a fighting chance against the flood of overseas imports, the following policies, currently missing from the bills, must be adopted:

- Creation of an Office of Overseas Compliance within the CPSC;
- Creation of a STOP or HOT button for this office that would allow them to temporarily halt unsafe imports at the port of entry on a preliminary determination that they pose an unreasonable risk to public health or safety, without a hearing or other delays required in current law and to allow the products to be held, pending a fuller determination regarding the safety of the products and independent third party certification of their safety;
- Increasing the amount of bond money required to be posted by importers to ensure that importers are able to pay for any product recall (currently, only bonds to cover customs fees are required);
- Increased and adequate staff and funding for border inspection, and the assignment of a limited number of ports of entry for hazardous consumer products;
- Requirements that foreign manufacturers consent to the jurisdiction of U.S. courts so that enforcement officers can seek penalties for violations, providing an incentive for more safety on the front end;
- Requirements that foreign manufacturers consent to allow CPSC investigators into their plants and testing labs for inspection or investigation purposes and provide the CPSC with authority to block imports from countries and companies that do not permit inspections; and
- New authority for CPSC to block/penalize bonding agents and importers who are repeat offenders.

**Finally, Congress must alter various provisions of U.S. trade agreements, including the WTO's TBT agreement, whose rules currently limit border inspection and the safety standards that**

**signatory countries can require of imported goods. Moreover, NAFTA and its various expansions to countries in Latin America, Asia and the Middle East need to be renegotiated to remove the investor-state system that incentivizes corporations to offshore production and provides a private right of action against domestic safety policies.**

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 could 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 Mexico-domiciled trucks, and WTO orders to weaken Clean Air Act and Endangered Species Act rules, among other examples. This readiness to acquiesce to trade agreement panels’ orders to weaken our domestic public interest laws must stop.

In the past, most American anxiety about trade agreements has focused on jobs, wages and offshoring. The imported toys, product and food safety crisis has made vividly clear to many Americans that our current trade agreements and policies pose much broader threats to their safety and health – and the ability of their government to act in their interest. Changes to our current trade agreements and policies are needed to ensure that policies aimed at countering the import safety crisis are not undermined. More generally, such changes are needed to ensure public support for trade is not thoroughly undermined by our current toxic trade model.

### **Four Resources for Concerned Consumers**

To remedy our import safety crisis, we need to change our trade agreements and domestic safety laws. However, in the short term, if you are concerned about whether there is lead or other toxins in your toys, you can buy an inexpensive lead testing kit at your local hardware store. However, be aware that these kits do not work on all product types. Consumers Union recently tested lead testing products and found that many do not detect lead below the surface of toys (see <http://blogs.consumerreports.org/safety/2007/10/testing-the-lea.html>). You can also check out *The Consumer Action Guide for Toxic Chemicals in Toys*, produced by the Michigan-based Ecology Center: <http://www.healthytoys.org/home.php>

For an analysis of toy-related hazards and a summary of all CPSC toy recalls for the year, please see *Trouble in Toyland: The 22nd Annual Survey of Toy Safety*, produced by the consumer group U.S. PIRG: <http://www.uspirg.org/issues/toy-safety/trouble-in-toyland-report>

For a full listing of Consumer Product Safety Commission (CPSC) recalls, or to receive recall alerts, you can go to the CPSC webpage: <http://www.cpsc.gov/cpsc/pub/prerel/prerel.html>

Finally, if you would like to buy toys Made in America, information is available on numerous private web resources including: <http://www.toysmadeinamerica.com/> and <http://www.stillmadeinusa.com/toysngames.html>

## APPENDIX I: Why China?

As Mattel's CEO told the *New York Times* this summer, "there aren't many companies that own their own factories, and there aren't many companies that manufacture outside of China."<sup>70</sup> The shift of U.S. toy production to China has been a long time in the making. 1972 was the first year that America imported Chinese toys, following President Nixon's visit to the country.<sup>71</sup> China was first granted normal trade relations status in 1981, meaning it faced lower tariffs than a communist country would otherwise face. This status was renewed every year through 2001. By 1986, China was actively liberalizing its economy and lobbying for membership in what would become the WTO, and was rapidly expanding its U.S. toy exports. By 1991, China had overtaken Japan as the number one U.S. source of foreign-made toys. Throughout the 1990s, the Clinton administration passed nearly a dozen trade agreements with China,<sup>72</sup> which continued to edge out other countries for U.S. toy market share. By the end of the decade, China accounted for a majority of toys sold in the United States.<sup>73</sup> When Congress approved China's WTO membership in 2000, Chinese-produced toys *already* accounted for nearly 57 percent of U.S. toy purchases – a figure that has increased to 74 percent (nearly \$15 billion) since that time.

Why China? Because of its size, low wages, anti-democratic government, lack of labor rights or regulatory safeguards, and expansive manufacturing infrastructure established during its socialist past. The website for a China-sourcing specialist sells the country thusly:

"Why look at China? Obviously there are many countries other than China that are candidates for overseas sourcing. China, however, combines advantages that are unique to the world's most populous nation. These include: a. One of the world's lowest labor rates - Labor rates vary from about \$100-\$400 per month depending on the required skill. b. Abundant indigenous raw materials - Most raw materials you will need are available in China as native products. c. A huge well developed industrial base - China developed a highly self-sufficient industry. In the 1950s and 1960s, many large industrial facilities were built. From the perspective of a western observer there seems to be an amazing variety of factories that make the same kinds of industrial goods found in the U.S."<sup>74</sup>

China provides the starkest example of the outcomes of race-to-the-bottom globalization. While global corporations made a pit stop in other low-wage markets like Mexico, China was different in that it not only had the capacity to manufacture components, but indeed required (prior to WTO membership) that foreign companies partner with local, state-owned enterprises that had been built up over decades and engaged in small-scale manufacturing.<sup>75</sup> Other developing countries such as Mexico – more subject to World Bank, IMF, or other trade-related conditionalities and rules – would have been less able to place these kinds of conditionalities on foreign investment.<sup>76</sup> As a United Nations' study put it:

"Japan in the 1950s and 1960s, the East Asian newly industrializing economies (NIEs) in the 1970s and 1980s and China in the 1990s became world-class exporters primarily by mastering the dynamics of buyer-driven value chains. The key to East Asia's success was the move from mere assembly of imported inputs (traditionally associated with export processing zones or EPZs) [like those found in Mexico and elsewhere] to a more domestically integrated and higher value-added form of exporting known as full-package supply or OEM (original equipment manufacturing) production."<sup>77</sup>

Global manufacturing and retail corporations now use China as a staging ground to squeeze suppliers for ever lower costs. China's low wages certainly facilitate this trend, but the breakneck pace of China's economic growth – along with recent and welcome reforms to encourage labor rights – has put some damper on corporations' ability to keep China's wages permanently at half that of other countries and less than 3 percent that of U.S. toy workers. Thus Chinese suppliers are forced to cut costs in other ways, of late through unsafe, lead-covered inputs into the production process. In the words of one Mattel executive, "In the last three or five years, you've seen labor prices more than double, raw material prices double or triple, and I think that there's a lot of pressure on guys that are working at the margin to try to save money." According to the *New York Times*, while Mattel claims to not be putting pressure on its paint and other vendors to save money, "Mattel makes its best-known toys, like Barbie dolls, in its own 12 factories. But even as it has increased the share of toys it makes itself to about half, it still relies on roughly 30 to 40 vendors to make the other half ... Mattel vetted the contractors, but it did not fully understand the extent to which some had in turn subcontracted to other companies – which in turn had subcontracted to even more."<sup>78</sup>

Thus, China's place in the global toy industry is determined by a specific kind of race-to-the-bottom, as much in regulatory and production standards as wages, that only a country with extensive industrial capacity – and therefore the ability to economize on the cost of inputs – can occupy. According to the *New York Times*, Chinese factories are squeezed to make profits in a hyper-competitive and poorly regulated market. They cut corners by using cheap product inputs like leaded paint which is used extensively in the industrial sector. Paint with higher levels of lead often sells for a third of the cost of paint with lower levels.<sup>79</sup> According to a manufacturer who has sourced from China:

"Some blame quality problems and product recalls on the relentless pursuit of lower prices. Importers most often go to the cheapest supplier, so the supplier who quotes low and quietly cuts corners on quality is the one who wins. Honest suppliers who prefer to quote higher and offer a better quality product lose out. The supplier who obfuscates catches orders first – and most often. Chinese suppliers are excellent at playing the short game. When an importer discovers a quality problem late, the factory turns around and suggests, 'But you signed off on the original production sample yourselves.' When goods arrive damaged in the U.S., the factory claims that the importer has been making up the story in order to lower import costs."<sup>80</sup>

Ironically, on paper China has a stricter standard for lead in toys than the United States. The Chinese standard is 90 parts per million (ppm) while the old U.S. standard (currently under review by Congress) is 600 ppm.<sup>81</sup> Indeed China has many good consumer safety and worker protection standards on the books. What China lacks is a regulatory apparatus that inspects and enforces standards on private industry. According to Chen Tao, sales manager at the Chenghai Guangxin Plastic Toys Factory, while there is a national standard on the lead level in toys "no one really enforces it. Factories can pick whatever paint they want."<sup>82</sup>

That China's integration into the global economy would occur at a time when toy corporations had embraced leaner, global supply chains and global trade rules locked in neo-liberalism was serendipitous for profit-seeking corporations, and extremely troubling for consumer safety. When the global reach of corporations are coupled with design flaws in their toys and extreme cost pressures on their suppliers, children become canaries in the coal mine of global trade.

## APPENDIX II: TOP 2007 TOY RECALLS

Date of Recall	Firm	Product	Units	Hazard	Origin
8/14/2007	Mattel, Inc.	Various Polly Pocket Dolls	7,300,000	Choking/Intestinal Perforations, Blockages	China
6/13/2007	RC2 Corporation	Thomas and Friends	1,500,000	Lead Paint	China
2/6/2007	Easy-Bake, Hasbro	Easy Bake Ovens	985,000	Burn and Trapped Hands	China
8/2/2007	Fisher-Price	Sesame Street, Dora the Explorer, others	967,000	Lead Paint	China
8/14/2007	Mattel, Inc.	Doggie Day Care Play Sets	1,000,000	Choking/Intestinal Perforations, Blockages	China
8/14/2007	Mattel, Inc.	Barbie and Tanner Play Sets	683,000	Choking/Intestinal Perforations, Blockages	China
11/6/2007	Fisher-Price	Laugh and Learn Kitchen Toys	155,000	Small Parts/Choking	Mexico
2/15/2007	Fisher-Price	Laugh and Learn Bunny Toys	500,000	Small Parts/Choking	China
2/13/2007	JAKKS Pacific, Inc.	Battery Packs for Toy Vehicles	245,000	Battery Malfunction/Burn	China
5/30/2007	Fisher-Price	Rainforest Open Top Take-Along Swings	112,000	Entrapment	China
9/4/2007	Mattel, Inc.	Various Barbie Accessory Toys	675,000	Lead Paint	China
9/26/2007	RC2 Corporation	Thomas and Friends	200,000	Lead Paint	China
11/7/2007	Spin Master Toys	Aqua Dots	4,200,000	Coating causes severe illness if ingested	China
8/14/2007	Mattel, Inc.	Batman/One Piece magnetic figure sets	345,000	Choking/Intestinal Perforations, Blockages	China
8/14/2007	Mattel, Inc.	Sarge die cast toy car	253,000	Lead Paint	China
5/2/2007	Graco Children's Prod.	Soft Blocks Tower Toys	40,000	Small Parts/Choking	China
3/13/2007	Toy Century Industrial	Elite Operations Toy Sets	128,700	Lead Paint	China
1/18/2007	Geometix International	MagneBlocks Magnetic Construction Toys	40,000	Choking/Intestinal Perforations, Blockages	China
11/8/2007	Marvel Toys	Curious George Plush Dolls	175,000	Lead Paint	China

## APPENDIX III: METHODOLOGY

We took U.S. import and export numbers from the Standard Industrial Trade Classification (SITC) data from the United Nations' Comtrade system.<sup>83</sup> For 1962-1996 numbers, we used SITC category 8942 (children's toys), which includes:

- [894.21](#) - Wheeled toys designed to be ridden by children (e.g., tricycles, scooters and pedal cars, but excluding bicycles); dolls' carriages
- [894.22](#) - Dolls representing only human beings, whether or not dressed
- [894.23](#) - Parts and accessories of dolls representing only human beings
- [894.24](#) - Construction sets and constructional toys
- [894.25](#) - Toys representing animals or non-human creatures
- [894.26](#) - Toy musical instruments and apparatus
- [894.27](#) - Puzzles
- [894.29](#) - Toys, n.e.s.<sup>84</sup>

For 1997-present, we utilized the roughly correspondent North American Industrial Classification System (NAICS) category 33993.<sup>85</sup> For domestic production data (including number of jobs, annual wages and value of shipments), we utilized the Census Bureau's Annual Survey of Manufactures' data on domestic product shipments. For 1961-1996, we considered the Standard Industrial Classification's (SIC) categories 3942 and 3944; for 1997-present, the line considered was NAICS 33993.

To determine domestic consumption, we summed the domestic shipments and imports and subtracted the value of exports (since they are not consumed here). Alan Tonelson of the U.S. Business and Industry Council was helpful in explaining this methodology.

All statistics for past years were inflation adjusted using the CPI-U-RS, which takes into account differing methodologies for considering housing costs. The purpose of this inflation adjustment is to give ballpark estimates of what dollar values would look like in today's dollars. The purpose is *not* in every case to adjust specifically for indices relevant to the toy industry or imports.

To create Public Citizen's recall database, we read hundreds of CPSC press releases from 2003-present, and processed the information into a database format. We grouped the wide array of hazards (reasons for recall) into the categories "design and battery related" and "lead and supplier related" as well as by country of origin. While we did not include costume jewelry in the general trade numbers, these were included in the recall database.

## APPENDIX IV: KEY NUMBERS AND CHRONOLOGY<sup>86</sup>

Year	CPSC staff	CPSC budget (millions)	U.S. toy jobs (1000s)	U.S. toy imports (billions)	Import % domestic market	China % domestic market	Key Events
1974	786	\$ 125	56	\$ 1.4	16%	0%	CPSC created; has peak budget
1975	890	\$ 123	46	\$ 1.1	14%	0%	Ford gets Fast Track; last year U.S. trade balanced
1976	890	\$ 125	47	\$ 1.5	18%	0%	
1977	914	\$ 118	47	\$ 1.9	18%	0%	
1978	900	\$ 115	45	\$ 2.6	24%	0%	
1979	881	\$ 111	48	\$ 3.1	27%	0%	Carter gets Fast Track
1980	978	\$ 96	44	\$ 3.3	29%	0%	CPSC's peak staffing
1981	891	\$ 90	42	\$ 3.6	28%	0%	China first granted NTR
1982	649	\$ 65	38	\$ 4.5	34%	0%	
1983	636	\$ 65	40	\$ 3.5	33%	0%	
1984	595	\$ 65	31	\$ 4.6	37%	2%	Reagan gets Fast Track
1985	587	\$ 65	23	\$ 5.3	46%	4%	
1986	568	\$ 60	24	\$ 5.7	48%	6%	WTO negotiations begin
1987	527	\$ 59	27	\$ 6.8	55%	10%	
1988	513	\$ 54	30	\$ 6.2	51%	14%	Reagan gets Fast Track
1989	529	\$ 54	28	\$ 11.3	69%	18%	
1990	526	\$ 53	24	\$ 11.6	73%	22%	
1991	514	\$ 54	23	\$ 10.2	70%	27%	China #1 toy import source
1992	515	\$ 57	26	\$ 12.2	75%	33%	
1993	515	\$ 67	28	\$ 13.2	75%	34%	NAFTA passed; Clinton gets Fast Track extension
1994	518	\$ 57	28	\$ 12.4	78%	44%	WTO passed; Dems ousted after NAFTA support
1995	487	\$ 56	30	\$ 13.6	77%	47%	WTO begins operations
1996	487	\$ 51	29	\$ 15.1	80%	51%	
1997	480	\$ 53	24	\$ 15.1	76%	47%	Congress rejects Fast Track
1998	480	\$ 56	23	\$ 16.0	79%	51%	China 50% of U.S. toy market; Congress rejects Fast Track
1999	480	\$ 57	20	\$ 15.9	82%	53%	WTO Seattle protests
2000	480	\$ 57	19	\$ 15.7	83%	57%	Congress ok's China PNTR; weak trade position hurts Gore
2001	480	\$ 60	17	\$ 16.2	85%	52%	China joins WTO
2002	480	\$ 62	14	\$ 16.9	82%	57%	Bush gets Fast Track
2003	471	\$ 62	13	\$ 15.5	83%	68%	Congress ok's 2 NAFTA expansions
2004	471	\$ 64	10	\$ 15.2	84%	71%	Congress ok's 2 NAFTA expansions; weak trade position hurts Kerry
2005	471	\$ 64	10	\$ 16.8	86%	71%	Congress ok's 2 NAFTA expansions; most Dems oppose CAFTA
2006	446	\$ 62	9	\$ 17.0	87%	74%	Congress ok's 1 NAFTA expansion opposed by most Dems; Dems campaign and win on fair trade platform
2007 (est)	420	\$ 62	n/a	\$ 23.0	91%	78%	Major toy recalls; Congress strengthens CPSC, but contradictorily ok's NAFTA expansion

## ENDNOTES

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<sup>1</sup> The top 2007 toy recalls by dollar value are listed in Appendix II. See CPSC web page for a complete list of recalls: <http://www.cpsc.gov/cpsc/pub/prerel/prerel.html>.

<sup>2</sup> See Consumer Reports press release, “Tests Find More Lead in Products,” Oct. 29, 2007; see Ecology Center’s toy website: [www.HealthyToys.Org](http://www.HealthyToys.Org); and most recently, Ted Gregory and Sam Roe, “Hidden Hazards Kids at Risk: Many more toys tainted with lead, inquiry finds,” *Chicago Tribune*, Nov. 18, 2007.

<sup>3</sup> “Trade Advisory Committees: Privileged Access for Polluters,” Public Citizen, December 1991.

<sup>4</sup> James Bacchus, “WTO obligations still apply,” *National Law Journal*, Sept. 10, 2007.

<sup>5</sup> Barry Meier, “To insure toy safety, U.S. shifts its attack,” *New York Times*, Aug. 25, 1990.

<sup>6</sup> Neil C. Hughes, “A Trade War with China?” *Foreign Affairs*, July/August 2005.

<sup>7</sup> Fast Track is the process whereby Congress delegates its constitutional authority to set the terms of trade policy to the executive branch. The executive branch picks the countries with which to negotiate trade agreements and even signs the agreements before Congress gets an up-or-down vote on massive trade bills, with limited debate and no amendments allowed. See Hal S. Shapiro, *Fast Track: A Legal, Historical, and Political Analysis*, (Ardsley, N.Y.: Transnational Publishers, 2006); Edward Rohrbach, “Nixon asks free hand in trade, tariffs,” *Chicago Tribune*, April 11, 1973; Edwin L. Dale, Jr., “Credits to Soviet barred as House backs trade bill,” *New York Times*, Dec. 12, 1973; “The deal on the trade bill,” *Washington Post*, Dec. 20, 1974; Bernard Gwertzman, “Ford signs the trade act,” *New York Times*, Jan. 4, 1975.

<sup>8</sup> One lobbyist for the National Mass Retailing Institute said in 1981, “The CPSC should be abolished.” See Stan Crock, “Product-safety agency fights cuts in budget and power as Congress mulls role of regulators,” *Wall Street Journal*, April 30, 1981. Another toy producer told the *New York Times* in 1974 that the CPSC and other regulatory efforts “all add up to over-regulation.” See Leonard Sloane, “Sharp-eyed regulators reign in Toyland,” *New York Times*, Dec. 22, 1974.

<sup>9</sup> See Louise Story, “After Stumbling, Mattel Cracks Down in China,” *New York Times*, Aug. 29, 2007; Statement of Thomas F. St. Maxens, Mattel, Inc., Ways and Means Committee hearing, March 7, 2001.

<sup>10</sup> As G. Wayne Miller wrote in his comprehensive survey of the toy industry, “there were powerful new external forces at work. Following consumers, who increasingly bought their toys at discount at retail chains, the bulk of Hasbro’s business was gravitating to four retail giants: Toys R’ Us, Wal-Mart, Kmart and Target, part of Dayton Hudson. All were placing new pressures on suppliers, notably with just-in-time inventory, a system of shipping on demand that shifted much of the warehousing burden back to manufacturers.” See G. Wayne Miller, *Toy wars*, (New York: Random House, 1998), at 132. See also Barry C. Lynn, *End of The Line: The Rise and Coming Fall of the Global Corporation*, (New York: Doubleday, 2005).

<sup>11</sup> David Barboza, “China Drafts Law to Empower Unions and End Labor Abuse,” *New York Times*, Oct. 13, 2006.

<sup>12</sup> In December 2006, the Chinese government released a revised draft of the Labor Contract Law with significant changes that would favor corporate interests. The US-China Business Council touted the new draft as a “significant improvement,” and lobbyists for U.S. corporate interests claimed credit. “Comments from the business community appear to have had an impact. Whereas the March 2006 draft offered a substantial increase in the protection for employees and a greater role for union than existing law, [the new draft] scaled back protections for employees and sharply curtailed the role of unions,” stated one lobbyist. See Brenda Smith and Tim Costello, “Undue Influence: Corporations Gain Ground in Battle over China’s New Labor Law – But Human Rights and Labor Advocates Are Pushing Back,” *Global Labor Strategies / ZNet*, April 6, 2007. See also “Undue Influence: Corporations Gain Ground in Battle Over China’s New Labor Law, - But Human Rights and Labor Advocates Are Pushing Back,” *Global Labor Strategies Report*, March 2007; “Behind the Great Wall of China,” *Global Labor Strategies Report*, 2006.

<sup>13</sup> For instance, as a lobby group that represents toy and other importers testified on a measure related to China’s WTO membership in 2001: “Every day, [our] members shop the United States and the world in search of consumer goods that meet American families’ demands for quality at competitive prices. China offers us an opportunity to provide the goods these consumers demand at prices that fit their increasingly tight budgets. For many products, such as toys and consumer electronics, China is a low-cost alternative to other foreign producers. Imports of consumer products from China are clearly significant, and failure to [pass this legislation] would have broad effects on American families...Imagine what would happen to the inflation rate – and American families’ budgets – if the prices of consumer goods imported from China shot up by as much as 66 percent.” Statement of Eric Author, Vice President and International Trade Council, National Retail Federation, July 10, 2001, Ways and Means Committee hearing. See also Harry J. Pearce, CFO of Tyco Toys, Testimony for Senate Finance Committee on China MFN, June 6, 1996.

<sup>14</sup> Charles Kernaghan, Director National Labor Committee, Testimony before United States Senate Committee on Commerce, Science & Transportation Thursday, Oct. 25, 2007.

<sup>15</sup> Average of Toys R’ Us, Hasbro, Mattel and Target, for 2006 (company 10-K filings) and assorted years from the early 1970s (10-K filings and news reports).

<sup>16</sup> In 1972, toy production workers made \$5,370 on average. According to the *Los Angeles Times*, Mattel’s CEO made \$125,060 a year in 1974. According to the *Chicago Tribune*, in 1979, Target’s CEO made \$440,000. A *Los Angeles Times* story from 1982 put the average CEO pay in America at the time at \$400,000. From these numbers, we estimate roughly that CEO compensation

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in the toy and retail sector was \$300,000 a year, which is 56 times what the average toy production worker made. Toy production worker numbers taken from Annual Survey of Manufactures, and CEO pay for 1981 taken from Linda Grant, "Superpay: Justified or Out of Line," *Los Angeles Times*, Aug. 19, 1982; Charles Storch and George Lazarus, "Wards changes retirement plan to save millions," *Chicago Tribune*, Jan. 31, 1981; Robert A. Rosenblatt, "Mattel's 1971 profits padded by \$18 million," *Los Angeles Times*, Oct. 3, 1974. See Appendix III for a full description of methodology.

<sup>17</sup> According to the Annual Survey of Manufactures, U.S. toy production workers make on average a little less than \$30,000 a year. This is 542 times what the average CEO in the toy and retail sector is compensated, as reported by the companies' proxy disclosure forms filed with the Securities and Exchange Commission.

<sup>18</sup> *The Wall Street Journal-Mercer 2006 CEO Compensation Survey*, released April 2007.

<sup>19</sup> The Worker Rights Consortium numbers (based on forthcoming research) for Chinese prevailing wages come from the apparel sector, which it estimates are slightly higher than in the toy sector. The 36 cents estimate for prevailing hourly wages described below corresponds to roughly \$700 in annual wages. Iger's current compensation package comes from WSJ-Mercer survey; Storch's from Salary.Com; and the others from companies' Schedule 14A Proxy Statements for 2006, available online at [www.sec.gov](http://www.sec.gov).

<sup>20</sup> As Barry C. Lynn writes in his book *End of the Line*, "Wal-Mart's power is so extreme that – like many lead firms in a production chain – it can all but dictate how much producers earn and, to a growing degree, how much they spend and how they spend it. Take, for instance, Levi's. When that company finally decided it had no option but to distribute its clothes through Wal-Mart, the big retailer required Levi's to both revamp its entire logistics system and to introduce a new lower-quality and lower-cost version of its famous pants." See Barry C. Lynn, *End of The Line: The Rise and Coming Fall of the Global Corporation*, (New York: Doubleday, 2005), at 230. For other examples of aggressive pricing strategies by retailers, see Isadore Barmash, "Interstate chief expected to quit," *New York Times*, May 22, 1976; Isadore Barmash, "In Toyland, Armies of Supermarts," *New York Times*, Dec. 3, 1978; Linda Grant, "At Toys R Us, Price Discounts Make Child's Play of Rough-and-Tumble Field," *Los Angeles Times*, Dec. 3, 1980; Stephanie Strom, "For the toy king, new challengers," *New York Times*, Dec. 1, 1994.

<sup>21</sup> See <http://local.yahoo.com/details?id=12384577>, [http://www.culturaltourismdc.org/usr\\_doc/AMHT\\_English.pdf](http://www.culturaltourismdc.org/usr_doc/AMHT_English.pdf).

<sup>22</sup> See Hank Gilman, "Founder Lazarus is A Reason Toys R Us Dominates Its Industry," *Wall Street Journal*, Nov. 21, 1985.

<sup>23</sup> See G. Wayne Miller, *Toy wars*, (New York: Random House, 1998), at 56-57.

<sup>24</sup> According to the 1994 Annual Survey of Manufactures (Table 3, 1-36 Industry Statistics), benefits were equal to one-sixth of total compensation costs in 1993.

<sup>25</sup> As with all manufacturing job loss, otherwise beneficial technological changes also play a role. But there is no debate that rising imports in a given sector, and an increasing trade deficit for the overall economy, also play a major role in eliminating potential manufacturing job growth.

<sup>26</sup> In the early 1990s, Tonka shifted production from Ohio to Mexico, for instance. G. Wayne Miller, *Toy wars*, (New York: Random House, 1998), at 105.

<sup>27</sup> According to International Labor Organization figures for other manufacturing activities (subclass 36), Mexican workers were paid 5.09 pesos per hour in 1993 and 993 pesos per month. This translates to roughly 65-77 U.S. cents in today's dollars. See ILO Yearbook, Table 5B, available at: <http://www.xe.com/ucc/convert.cgi> and <http://laborsta.ilo.org/>. Average U.S. toy production workers wages taken from Annual Survey of Manufactures.

<sup>28</sup> Written Statement of Mattel, Inc. in Support of the North American Free Trade Agreement, Submitted to the Subcommittee on Trade of the Committee on Ways and Means, Hearings in 103<sup>rd</sup> Congress, Serial 103-48, at 811-812.

<sup>29</sup> "Mexico's Maquiladora Decline Affects U.S.- Mexico Border Communities and Trade; Recovery Depends in Part on Mexico's Actions," Government Accountability Office Report 03-891, July 2003, at 27-28.

<sup>30</sup> Bama Athreya, Executive Director, International Labor Rights Forum, Testimony Before the Committee on Commerce Science and Transportation, United States Senate, Oct. 25, 2007, at 2.

<sup>31</sup> Bama Athreya, Executive Director, International Labor Rights Forum, Testimony Before the Committee on Commerce Science and Transportation, United States Senate, Oct. 25, 2007, at 1.

<sup>32</sup> Charles Kernaghan, Director National Labor Committee, Testimony before United States Senate Committee on Commerce, Science & Transportation Thursday, Oct. 25, 2007.

<sup>33</sup> Worker Rights Consortium figures.

<sup>34</sup> The Worker Rights Consortium numbers (based on forthcoming research) for Chinese, Mexican and Dominican prevailing wages come from the apparel sector, which it estimates are slightly higher than in the toy sector. The figures for U.S. workers are an average based on the total wage bill and total production workers for the U.S. toy industry. Taken from the Annual Survey of Manufactures.

<sup>35</sup> See Raymond J. Ahearn, "China's Economy: Findings of a Research Trip," Congressional Research Service 98-131-F, February 1998, at 14.

<sup>36</sup> "Condemnation against continued violence directed at a Shenzhen labour group," Joint statement from Hong Kong civil society organizations, Dec. 12, 2007.

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- <sup>37</sup> See Consumer Reports press release, “Tests Find More Lead in Products,” Oct. 29, 2007; see Ecology Center’s toy website: [www.HealthyToys.Org](http://www.HealthyToys.Org); and most recently, Ted Gregory and Sam Roe, “Hidden Hazards Kids at Risk: Many more toys tainted with lead, inquiry finds,” *Chicago Tribune*, Nov. 18, 2007.
- <sup>38</sup> Numbers derived from an analysis of CPSC toy recall press releases, which unlike previous trade analysis includes costume jewelry. See Appendix III for description of methodology.
- <sup>39</sup> One survey of toy recalls in Canada found the majority of recalls in that country were due to design flaws and not manufacturing issues such as lead paint. See Naomi Kim, “Focus of toy recalls misdirected at China: survey,” *Reuters*, Nov. 13, 2007.
- <sup>40</sup> Forthcoming research paper by Lindsey Pullen, Department of Economics, American University.
- <sup>41</sup> David Barboza, “Labor Shortage in China May Lead to Trade Shift,” *New York Times*, April 3, 2006, quoting Hong Liang of Goldman Sachs.
- <sup>42</sup> David Barboza, “Why Lead in Toy Paint? It’s Cheaper,” *New York Times*, Sept. 11, 2007.
- <sup>43</sup> See Appendix III for a description of methodology for all otherwise unsourced trade numbers.
- <sup>44</sup> Barbara Hinkson Craig, *Courting Change: The Story of the Public Citizen Litigation Group*, (Washington, D.C.: Public Citizen, 2004); Grace Lichtenstein, “Toys of 70’s: Guillotines and Hypodermic Needles,” *New York Times*, July 12, 1971.
- <sup>45</sup> Consumer Product Safety Act, 15 U.S.C. 2051, section 2(b)(1).
- <sup>46</sup> Sari Horwitz, “Consumer agency faces an uncertain future after tumultuous week,” *Washington Post*, Jan. 6, 1985.
- <sup>47</sup> Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America, Testimony Before the Appropriations Subcommittee on Financial Services and General Government Committee on Appropriations, U.S. House of Representatives, Hearing on Consumer Protection Issues, Feb. 28, 2007, at 3.
- <sup>48</sup> FTE represents a full time equivalent staffing ratio. Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America, Testimony Before the Appropriations Subcommittee on Financial Services and General Government Committee on Appropriations, U.S. House of Representatives, Hearing on Consumer Protection Issues, Feb. 28, 2007, at 3.
- <sup>49</sup> Figures taken from Weintraub testimony and inflation adjusted. For reports on the CPSC’s early years through 1980, see Burt Schorr, “Consumer product safety commission finds deep hazards in just getting itself rolling,” *Wall Street Journal*, May 6, 1975; Stan Crock, “Product-safety agency fights cuts in budget and power as Congress mulls role of regulators,” *Wall Street Journal*, April 30, 1981.
- <sup>50</sup> While collective liability theories have evolved to better reflect the disperse nature of production in a “contemporary complex industrial society,” many such theories are still “based on a national market.” See John B. Isbister and Jaime W. Luse, “Liability for a product that you did not make,” *Federation of Defense & Corporate Counsel Quarterly*, Vol. 57, Issue 1, Fall 2006.
- <sup>51</sup> In inflation adjusted terms, the CPSC’s highest budget level was in its first year – 1974 – when it had a budget authority of \$125.5 million.
- <sup>52</sup> Scott Wolfson, Deputy Director, Office of Information and Public Affairs, U.S. Consumer Product Safety Commission, communication with Mary Bottari, Public Citizen, Nov. 13, 2007.
- <sup>53</sup> Eric Lipton, “Safety Agency Faces Scrutiny Amid Changes,” *New York Times*, Sept. 2, 2007.
- <sup>54</sup> Annys Shin, “CPSC Leader Called On to Resign, Pelosi Cites Opposition to Expanded Role,” *Washington Post*, Oct. 31, 2007.
- <sup>55</sup> A *Wall Street Journal* article reported that “the relentless migration of manufacturing to far-flung factories in China and other developing countries has made it increasingly impractical for Western retailers to rely solely on in-house product testing. As a result, more large chains are outsourcing the task to independent [foreign] specialists... Using independent testers can also *reduce a retailer’s liability if a customer sues*, because it shows a good-faith effort by the retailer to offer safe products” (emphasis ours). The article noted that many such contractors are not testing for everything that they should: in one case, a contractor was “hired to test whether the toys posed a choking hazard, but not whether they posed a suffocation risk.” See Matt Pottinger, “Outsourcing safety tests,” *Wall Street Journal*, Nov. 26, 2004.
- <sup>56</sup> For instance, NAFTA Article 1105.
- <sup>57</sup> For instance, NAFTA Article 1105.
- <sup>57</sup> For instance, U.S.-Peru FTA Article 10.28.
- <sup>58</sup> Mary Bottari and Lori Wallach, “NAFTA Threat to Sovereignty and Democracy: The Record of NAFTA Chapter 11 Investor-State Cases 1994-2005,” Public Citizen’s Global Trade Watch, February 2005.
- <sup>59</sup> See e.g. Agreement Establishing the WTO, Article XVI-4.
- <sup>60</sup> Public Citizen’s database on WTO win-loss ratios.
- <sup>61</sup> The TBT agreement cites the product standards of the International Organization for Standardization (ISO) in Geneva. The ISO is a private-sector body comprised of industry representatives, and very few public interest organizations are able to sit on its 2500 working groups. Its technical committee 181 sets standards for toys. The current ISO standard for lead in toys is 90 ppm. While this standard is currently stricter than the out-of-date U.S. standard of 600 ppm, it is less strict than the 40 ppm standard supported by the American Academy of Pediatrics and other health groups in a proposed bill in Congress, HR 3691. If HR 3691 passes, our trading partners could argue that it constitutes a barrier to trade as it is more consumer protective than the weaker ISO standard.

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- <sup>62</sup> As examples, the European Community demanded and received cash compensation from U.S. taxpayers for harm to Irish musicians alleged to have arisen from provisions of U.S. copyright law; while Antigua & Barbuda (along with other countries) is currently seeking compensation in the form of trade sanctions on other U.S. industries for harm to Antiguan Internet gambling operators alleged to have arisen from the U.S. Internet gambling ban. See World Trade Organization, WT/DS160/23, June 26, 2003; and Gary Rivlin, "Gambling dispute with tiny country puts U.S. in a bind," *New York Times*, Aug. 23, 2007.
- <sup>63</sup> James Bacchus, "WTO obligations still apply," *National Law Journal*, Sept. 10, 2007.
- <sup>64</sup> House of Representatives Debate on Uruguay Round Agreements Act (H.R. 5110), Congressional Record, Nov. 29, 1994, at H11484.
- <sup>65</sup> See Ruy Teixeira and Joel Rogers, *America's Forgotten Majority*, (New York: Basic Books, 2000).
- <sup>66</sup> Jerry Jackson, "World Trade Organization Judge Urges Orlando, Fla., To Tap Its Advantages," *Orlando Sentinel*, May 7, 1998.
- <sup>67</sup> See Todd Tucker and Lori Wallach, "Peru-U.S. 'Free Trade Agreement' Would Help Lock In Failed Social Security Privatization in Peru," Public Citizen, June 2007; and Letter from AIDSESEP (Peruvian indigenous peoples' organization) to U.S. Congress expressing opposition to the Peru FTA, Oct. 30, 2007.
- <sup>68</sup> Matthew C. Porterfield, "An International Common Law of Investor Rights?" Harrison Institute for Public Law, 2006.
- <sup>69</sup> As Rep. Jan Schakowsky (D-Ill.) said during the House debate on the bill, "Even with added resources authorized from the bill, a major improvement from the levels requested by President Bush, we could do better, particularly when it comes to monitoring imports." See House debate on H.R. 4040, "Consumer Product Safety Modernization Act," *Congressional Record*, Dec. 19, 2007, at H16883. For a consumer response, see "Consumer Product Safety Bill Is Grossly Inadequate, Won't Protect Children," Public Citizen, Dec. 18, 2007. For information on the Senate bill, see "Commerce Committee Approves Pryor-Inouye CPSC Reform Act," (S. 2045), Senate Commerce Committee Press Release, Oct. 30, 2007.
- <sup>70</sup> See Louise Story, "After Stumbling, Mattel Cracks Down in China," *New York Times*, Aug. 29, 2007.
- <sup>71</sup> Allen T. Matusow, *Nixon's Economy: Booms, Busts, Dollars & Votes*, (Lawrence, Kan.: University of Kansas Press 1998), at 182.
- <sup>72</sup> "WTO Membership and Most Favored Nation Status," Government Accountability Office Report 98-209, June 1998.
- <sup>73</sup> "Over the past dozen years, American firms invested heavily in China... as a result, China has emerged to become the world's leading supplier [of] low-cost, mass-produced toys." See Harry J. Pearce, CFO of Tyco Toys, Testimony before Senate Finance Committee on China MFN Status, June 6, 1996.
- <sup>74</sup> See <http://www.889globalsolutions.com/imexport.htm>.
- <sup>75</sup> Daniel Rosen, *Behind the Open Door: Foreign Enterprises in the Chinese Marketplace*, (Washington, D.C.: Peterson Institute for International Economics, 1999), at 39-44 and 134-136; available at <http://bookstore.petersoninstitute.org/book-store/23.html>.
- <sup>76</sup> Kevin P. Gallagher and Lyuba Zarsky, *The Enclave Economy: Foreign Investment and Sustainable Development in Mexico's Silicon Valley*, (Cambridge: MIT Press, 2007).
- <sup>77</sup> Gary Gereffi and Olga Memedovic, "The Global Apparel Value Chain: What Prospects for Upgrading for Developing Countries," United Nations Industrial Development Organization, 2003, at 3.
- <sup>78</sup> Louise Story, "After Stumbling, Mattel Cracks Down in China," *New York Times*, Aug. 29, 2007.
- <sup>79</sup> David Barboza, "Why Lead in Toy Paint? It's Cheaper," *New York Times*, Sept. 11, 2007.
- <sup>80</sup> Paul Midler, "Quality Fade: China's Great Business Challenge," *Knowledge @ Wharton*, July 25, 2007.
- <sup>81</sup> David Barboza, "Why Lead in Toy Paint? It's Cheaper," *New York Times*, Sept. 11, 2007.; and <http://www.healthytoys.org/about ranking.php>
- <sup>82</sup> David Barboza, "Why Lead in Toy Paint? It's Cheaper," *New York Times*, Sept. 11, 2007.
- <sup>83</sup> See <http://comtrade.un.org/db/default.aspx>
- <sup>84</sup> See <http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=14&Lg=1&Co=894.2>
- <sup>85</sup> See <http://www.census.gov/mcd/asmhome.html>
- <sup>86</sup> Source: Public Citizen analysis of data from Census Bureau's Annual Survey of Manufacturers (numbers for U.S. toy production jobs and other domestic production data), UN Comtrade (for U.S. imports and exports), U.S. International Trade Commission (for current year imports), Consumer Federation of America (for CPSC budget authority numbers). All dollar values presented in inflation-adjusted terms.