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**STATEMENT OF CHRISTINE HINES
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BEFORE THE U.S. CONSUMER PRODUCT SAFETY COMMISSION

**COMMISSION AGENDA AND PRIORITIES DURING FISCAL YEAR 2012,
BEGINNING OCT. 1, 2011**

PUBLIC HEARING ON AUGUST 11, 2010

Thank you to the Chairman and the Commissioners for inviting public comment on the Commission's Agenda and Priorities for fiscal year 2012, which begins next October. I am Christine Hines, Consumer and Civil Justice Counsel at Public Citizen. Public Citizen is a national non-profit organization with over 150,000 members and supporters. We advocate for consumer rights in the marketplace, and promote corporate and government accountability through advocacy, research, litigation, and public education.

I will use this opportunity to address the strategic components that the Commission identified in its Performance Budget to reduce risks associated with hazardous consumer products. In short, Public Citizen has five recommendations:

- (1) We urge the Commission to maintain, scrutinize, and improve the database as appropriate immediately after it launches.
- (2) We urge the Commission not to extend further the stay of enforcement of the testing and certification requirements.
- (3) We urge the Commission to support legislation requiring that companies importing goods into the United States maintain registered agents in the U.S. to receive service of process.
- (4) We urge the Commission to propose specific performance measures that the agency would use to fulfill its objective of reducing the time between learning of a product hazard and informing the public about it.
- (5) We urge the Commission not to allow conjecture about so-called "recall fatigue" distract it from its mission to vigilantly inform the public about dangerous consumer products.

Implementation of Rules

The beginning of fiscal year 2012 will mark the third year in which the Consumer Product Safety Improvement Act will be in effect. Public Citizen's first implementation priority is the publicly available Web-based product incident database, which the Commission has announced will be launched in March 2011. So far, we are pleased with the Commission's handling of the building of the database and its consistent effort to seek public input. The database launch will mark a significant shift in favor of empowering consumers to more efficiently report potential hazards and enable them to better research products before purchase.

The first year of the database operation will be critical. In the months after its launch, the agency will likely need to make changes to fix glitches and improve ease of use by the public. We urge the Commission to remain vigilant regarding the database and make timely improvements after its launch to ensure that it is maximally useful to the public. We also hope the Commission will remain mindful of new product safety information that would be suitable for the database. We previously have urged the Commission to consider adding staff-generated research to the database. We hope it will act to make these determinations now, as well as after the database launches.

Compliance and Enforcement

In its 2011 budget request, the agency said that it will transition from developing to enforcing CPSIA rules. We agree with this position. First, we believe that the new testing and certification requirements of both non-children's and children's products under the CPSIA should be fully effective and enforceable within the next year.

The Commission has twice-imposed what it calls a "stay of enforcement" of the testing and certification provisions for general conformity certification for most consumer

products and third-party testing requirements for children's products. The most recent delay was imposed for a year and is due to expire February 10, 2011. We understand that the enforcement of the provisions was delayed to establish proper implementation procedures and guidance for these requirements.

The Commission has taken recent actions which we hope signal that the delay in enforcement will not be extended again. Most recently, the comment period expired last week for the CPSC's proposed rule that would establish requirements for a reasonable testing program; compliance and continuing testing for children's products; and labeling to show compliance with certification requirements for non-children's products. Consumers had always believed that the products they bought were required to be tested before they were sold on the market. Until the passage of the CPSIA, this was not the case. The proposed rule is a significant step towards enforcing these critical provisions of the CPSIA.

In addition, this year the Commission has finalized rules for civil penalty factors, recalls, and other corrective actions. We hope that the agency will vigorously exercise its new authorities to dramatically reduce the number of potentially harmful products on the market.

Safety of Imported Products

The Commission has begun a number of programs to monitor imported products, not least of which is the creation of the agency's Import Surveillance Division. Jeremy Baskin, an attorney with the Division testified at a House Committee hearing in June to address H.R. 4678 the Foreign Manufacturers Legal Accountability Act. This piece of legislation would direct the Commission, the Food and Drug Administration and the Environmental Protection Agency to require foreign manufacturers to establish a

registered agent in the United States to accept service of process for civil and regulatory actions.

Mr. Baskin noted in his written testimony that the lack of registered agents has hindered the agency's ability to obtain information on consumers' behalf, and that certain foreign industry groups have used their local lawyers to take advantage of the absence of a U.S. registered agent. He mentioned, as an example, the Chinese-imported drywall problem and the building industry group's observation that it is impossible to hold manufacturers accountable when they do not operate their businesses in the United States.

We agree that the requirement of a registered agent would empower the agency and consumers to hold foreign manufacturers accountable, especially given the fact that the majority of potentially harmful consumer products are imported. We also appreciate Chairman Tenenbaum's statement in the Commission's report to Congress earlier this year in which she supported service of process requirements for foreign manufacturers so that the agency can more easily pursue recalls. We urge the agency to continue to support this bill or any other effort to enhance its ability to identify and notify foreign manufacturers when the need arises.

Identifying hazards

The Commission's primary mission is to identify and prevent potential hazards. We have been critical in the past of the long lag time between the agency's learning of a hazard and its informing the public of that hazard, and we are pleased that the agency has identified reducing the lag time as an objective in its draft strategic plan. A well-functioning publicly available incident database will help close the gap by providing timely incident reports on the Web. To the extent that the agency considers other specific actions and

performance measures to fulfill its objective, we would be interested in reviewing and commenting on them.

Alerting the Public

Finally, the Commission has named alerting the public as one of its strategies to reduce the risks associated with hazardous consumer products. We are pleased that the agency uses a variety of methods to notify the public of potential harms including press releases and social media technology.

Last month, the Washington Post published an article claiming a phenomenon called “recall fatigue” – in which consumers receive too much information related to recalls, leading them to ignore messages to destroy or return products. The term is not new. In 2007, USA Today published a similar story on “recall fatigue” related to the numerous food recalls at the FDA.

The article is not supported by much evidence that consumers are ignoring the recall notices. In fact, it could very well be that consumers are not receiving sufficient notice for everyday consumer goods. The article states that car owners return 73 percent of recalled autos, and a Costco representative quoted in the article said that the vast majority of its customers return recalled products to the store. This suggests that fatigue is not the problem for consumers; it suggests that the lack of notice of recalls is the problem.

The first and most obvious antidote is prevention. The Commission can use its expanded authorities to prevent harmful products from entering the market in the first place. The CPSIA testing and certification provisions, for example, would reduce the likelihood that dangerous products would be present on store shelves. Second, the agency’s enhanced recall authorities under the CPSIA, including the guidelines and requirements for

recall notices that it issued in January promise to improve the communications between industry, the Commission, and the public to remove products from store shelves and consumers' homes.

Finally, federal agencies, including the Commission, have a duty to notify the public of potential harms. As the Commission plans its priorities for FY 2012, we encourage it to adhere to its mission and implement its plan to educate consumers. Urgent notices of potential harm from products and reminders on improving product safety will penetrate the public consciousness even in a 24-hour news cycle. After years of neglect, we are far from the day when the CPSC can be accused of providing the American people with too much information.

Thank you for your time.