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Hearing on Protecting Children from Lead-Tainted Imports

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Mr. Chairman and members of the subcommittee, on behalf of Public Citizen's 200,000 members, thank you for the opportunity to discuss some of the root causes of the serious safety problems with various imported products, including toys, which are increasingly coming to the public's attention.

Public Citizen is a nonprofit research, lobbying and litigation group based in Washington, D.C. Founded in 1971, Public Citizen accepts no government or corporate funds. Public Citizen's Global Trade Watch division focuses on how the current globalization model and its implementing mechanisms, including the World Trade Organization (WTO) and North American Free Trade Agreement (NAFTA), affect our goals of promoting democracy, economic and social justice, health and safety, and a healthy environment.

The imported product safety crisis has a root cause in U.S. trade policies, trade agreements and tax and other incentives that have promoted the export of whole swaths of the U.S. manufacturing base, while simultaneously imposing limits on import safety standards and inspection. To effectively remedy the imported product safety crisis, Congress must act on three levels:

- Provide new authority for domestic agencies responsible for product safety and inspection that brings these agencies' responsibilities and authorities up to date with the reality that a significant portion of products circulating in the United States are no longer made here, but rather are being produced in developing countries, where often product safety systems are insufficient to safeguard consumers against even the most egregious hazards.

- Provide greater funding for U.S. safety inspections both at overseas plants and at the border in recognition that a significant portion of products circulating in the United States are in fact not being produced under U.S. domestic environmental, safety and other regulatory standards, and develop a mechanism to ensure companies choosing to produce in such environments offset the additional expenses connected with ensuring import safety. Clearly, Congress must take action to ensure that a strict standard of safety for imports is set and enforced to keep unsafe product out of the market, including through the inspection of foreign plants and through much more border inspection of imported goods. The new U.S.-China product safety agreement being touted by the Bush administration closely mirrors the one signed three years ago by former CPSC chairman Hal Stratton – which, as we have seen, is not being enforced by China,and has proven meaningless.

- Alter various provisions of U.S. trade agreements, including the World Trade Organization's Technical Barriers to Trade (TBT) agreement, whose rules currently limit border inspection and the safety standards that signatory countries can require of imported goods. Absent such changes in existing trade agreements and rejection of future agreements with such limits, any improvements Congress may make to U.S. policy regarding import safety would be exposed to challenge as "non-tariff trade barriers" before trade tribunals. With the exception of the recent WTO ruling against the U.S. internet gambling ban, both Democratic and Republican administrations have systematically worked to implement such trade tribunal rulings, including a NAFTA order to allow access to all U.S. roads for Mexican-domiciled trucks and WTO orders to weaken Clean Air Act and Endangered Species Act rules, among other examples.

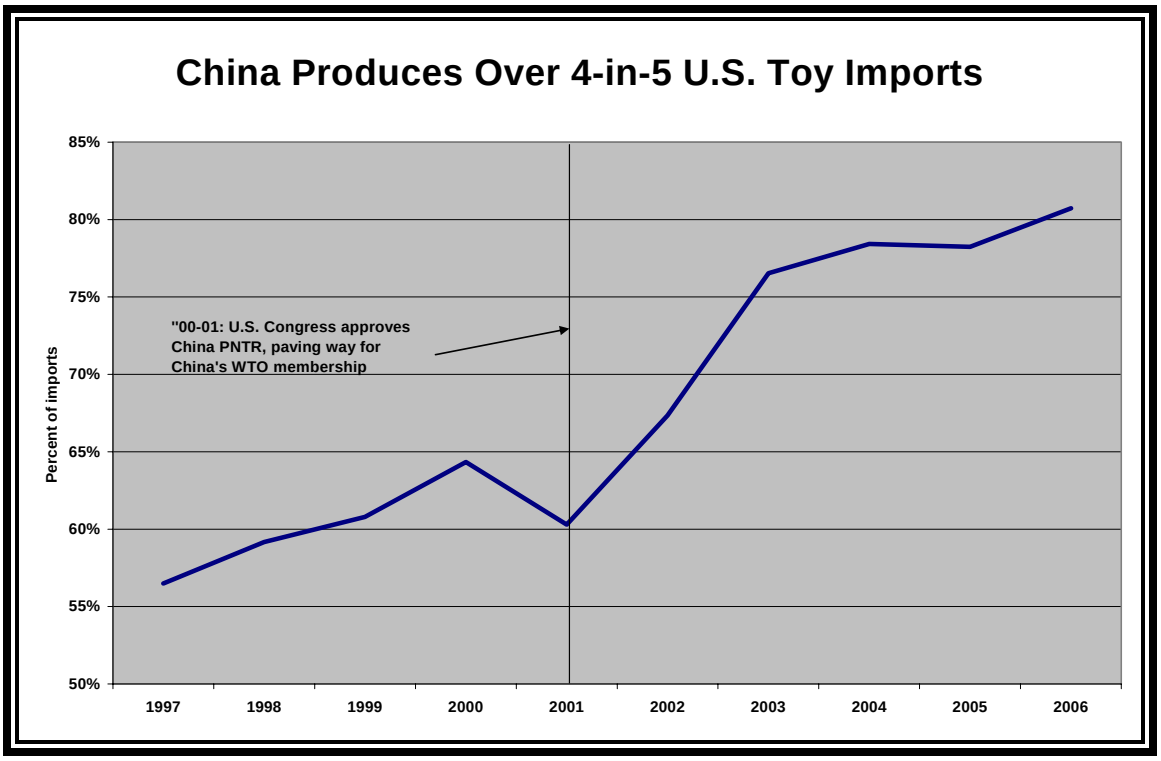
While Congress has been increasing its attention to the first two matters, less focus has been paid to the fact that provisions of various U.S. trade agreements conflict with Congress' stated goal of ensuring that some of our most vulnerable citizens – children – are not exposed to avoidable risk of injury or death from their imported playthings. Our current trade agreements prioritize ensuring a favorable investment climate for U.S. firms seeking to relocate production overseas, and facilitating access for imports from those overseas facilities, over consumer safety. Effectively, the American public is being left to rely on foreign regulatory structures and foreign safety inspectors to ensure that product imports are safe. Unfortunately, our recent experience has highlighted that many foreign regulatory systems are simply not up to the task.

Moreover, as Congress steps up action to address the imported toy safety threat, proposed trade pacts now pending before Congress would replicate and lock in limits on the U.S. government's ability to ensure the safety of imported products and food. Incorporated in the proposed Free Trade Agreements with Peru, Panama, Colombia and South Korea are rules that limit both what safety standards the United States can require for imported products, and how much border inspection is permitted. Given the array of problems being caused by a flood of unsafe imports, certainly the American public would be astonished to learn that Congress is considering NAFTA expansion agreements that would reaffirm the very trade and investment rules that are a root cause of the current imported product safety crisis.

This testimony presents the data on how the offshoring of production of toys with which U.S. children play peaked after various U.S. trade agreements, how trade agreement-granted foreign investor privileges created incentives to export products from the United States, and which trade agreement rules limit safety standards and inspection of imported products. This testimony concludes with a summary of policy changes that could help address the imported product safety crisis regarding toys and beyond.

1. The Export of U.S. Toy Production Surged Following NAFTA and China's Entry into the WTO

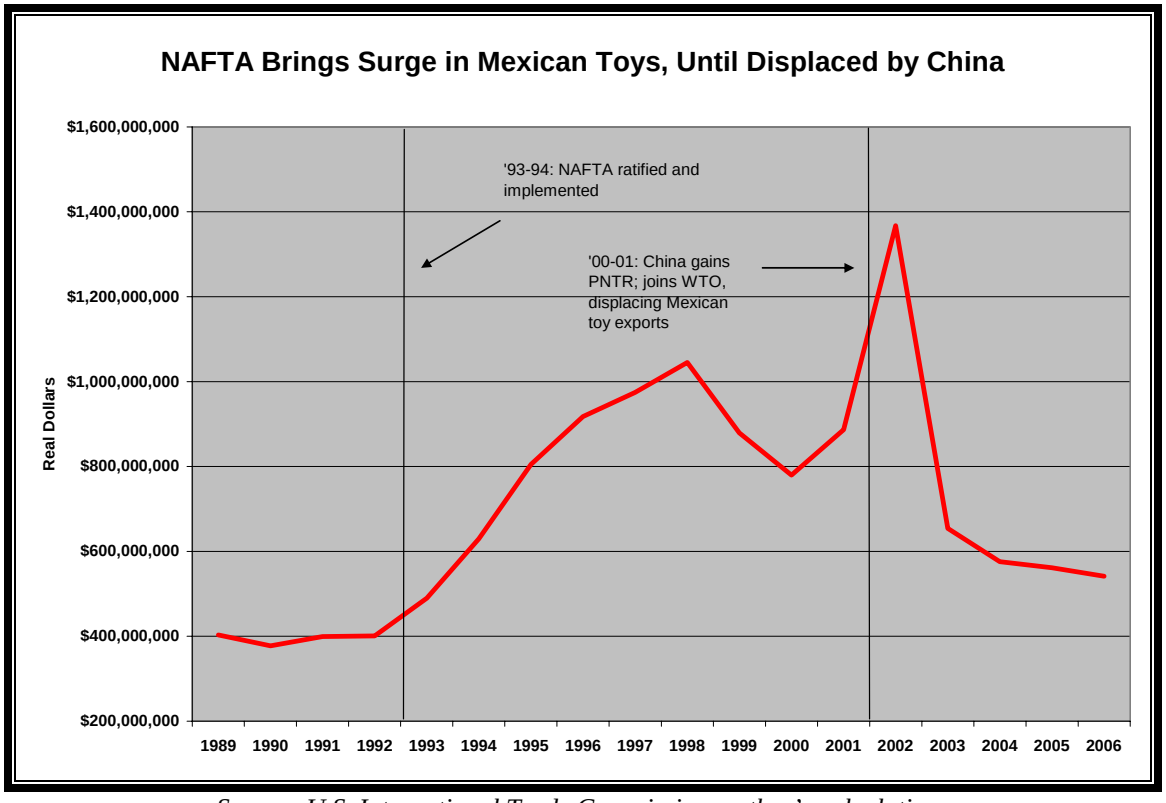
According to the U.S. International Trade Commission, more than 80 percent of toys sold in the United States now are being manufactured in China. The production of toys destined for the U.S. market surged immediately after China's entry into the World Trade Organization in January 2001. The WTO's Trade-Related Investment Measures (TRIMs) agreement provided an array of guarantees for foreign investors that reduced the risks of relocating production to facilities in China. At the same time, under the WTO, U.S. toy tariffs were reduced beginning in 1995, and eliminated by 1999. Thus, when Congress approved permanent Most Favored Nation status for China in the fall of 2000, facilitating China's entry into WTO, Congress provided incentives for toy production to relocate to China.



Source: U.S. International Trade Commission, author's calculations

Prior to China's WTO accession, U.S. toy production had already begun to relocate en masse to Mexico after Congress passed NAFTA. Total employment in the U.S. doll, toy, and game industry declined from its high in 1993 (the year before NAFTA went into effect) of 42,300 workers, to 17,400 workers in 2005.[1] With toy firms seeking ever-lower-waged workers, U.S. trade and investment pacts paved a race to the bottom in labor costs – from Mexico's $6 per day to China's $1-2 per day.

NAFTA not only includes the foreign investor protections found in WTO, but contains additional investor rights that actually promote offshoring of production. NAFTA's "Chapter 11" investor protections guarantee a minimum standard of treatment for U.S. firms relocating to Mexico, and provide the right for U.S. firms to obtain compensation for regulatory takings. These extraordinary rights, which extend beyond U.S. property rights law, are privately enforceable by foreign investors using NAFTA's "investor-state" mechanism, which empowers them to directly demand compensation in UN and World Bank tribunals for government regulatory policies that might undermine expected profits. Such compensation is not permitted in U.S. courts, even under an increasingly conservative Supreme Court's interpretation of U.S. Constitutional property rights. Rather, here, such regulatory compliance requirements are considered a cost of doing business under a social contract that ensures that products and working conditions are safe and the environment protected. Under NAFTA, some $35 million in claims by foreign investors has been paid out in challenges to toxics bans and more.[2]



Source: U.S. International Trade Commission, author's calculations

With various U.S. trade agreements directly leading to the wholesale relocation of toy production overseas, and in the absence of U.S. laws requiring inspection and pre-certification of toy safety prior to import here, the American public is being left to rely on the safety regulatory structures of foreign countries to ensure that the imported products they purchase and use here are safe. Some countries have superior product safety systems; however, the vast majority of U.S. toy imports come from China. Horror stories of child injuries and death caused by dangerous products, medicines and food in China are sadly common. China's rapid industrialization is occurring in a regulatory climate often described by U.S. businesses operating there as the "wild wild east" – with dire implications for the health and safety of the Chinese public. Our trade agreements have now exported this safety crisis to the United States. Add to the absence of an operational safety and inspection system the long supply chains – involving multiple contractors and subcontractors – that are common in China, with every link in the chain susceptible to fraud or contaminated goods, and serious safety problems were foreseeable as production was offshored under various trade agreements.

Indeed, given the safety issue is directly linked to the lack of safety regulation in some offshore venues and over 80 percent of U.S. toys come from China, the imported toy safety problem is probably more pervasive than the recent recalls have suggested. The lack of government oversight – resulting from the laissez-faire attitude of the Consumer Product Safety Commission (CSPC) and antiquated safety policies premised on U.S. production of most products in our markets – regarding the safety of imported toys being produced in the absence of operating safety regulatory systems has resulted in the exposure of our children to well-known hazards, such as lead paint contamination. Most likely, we only know a fraction of the problems.

Indeed, now the American public only finds out about dangers with toys manufactured overseas when a toy retailer or a toy branding company like Mattel reveals company testing. Some of our nation's largest brand-name toy companies have agreed to recalls of their imported products when their in-house or their retailers' testing has revealed problems. However, consider the many products that are not subject to such industry testing! As previous witnesses have described, neither the CPSC nor any U.S. government agency is testing

these toys, nor is there U.S. inspection of plants abroad, as is required (if inadequately) for meat to be imported into the United States. The prospect for avoidable death and injury is enormous, as we saw with the tragic lead-poisoning death of four-year-old Jarnell Brown of Minneapolis in 2006 after he ingested a heart-shaped Reebok charm dangling from an imported bracelet provided as a free gift with the purchase of various styles of children's footwear.[3]

After decades of the consumer movement working to fight for strong safety standards and for a robust civil justice system that creates incentives for industry to be careful, American consumers assume products on our store shelves are safe. For instance, given lead paint was banned in the United States in 1978, parents who may well be vigilant about the hazards of old paint in their homes would not expect that the toys they bring into their homes could pose an enormous lead paint hazard.

2. <u>While Promoting Relocation of Production Overseas, U.S. Trade Agreements Also Contain Limits on Imported Product Safety Standards and Border Inspection</u>

In response to a growing number of major recalls of imported toys, Congress is now considering how to fix this intolerable situation – as well as threats regarding the safety of imported food, the amount of which has doubled since the United States implemented NAFTA and WTO. Yet, perversely, our current trade agreements that have caused this surge in imports *also* impose limits on domestic regulatory policy of signatory countries. Domestic laws that provide a level of protection that extends beyond that allowed in these trade agreements, that fail to use international standards when they exist, or that provide for more intense inspection of imported goods relative to domestic goods are all subject to challenge in trade tribunals as violating U.S. "trade" obligations. Clearly, Congress should move ahead immediately to implement new policies to address the immediate import safety threat. However, to ensure that these laws remain on the books and effective, changes must be made to aspects of existing U.S. trade agreements, and the United States must not adopt more trade agreements containing such regulatory limits.

Many people are surprised when they first learn that actual *trade between countries* is only one element of the policies established and enforced by NAFTA and the WTO. These "trade" agreements also require that countries alter wide swaths of domestic non-trade policy or face sanctions. For instance, an element of our imported food safety crisis can be directly tied to changes made in the WTO implementing legislation that replaced a longstanding requirement that imported food meet U.S. standards with a weaker requirement allowing imports of food that exporting countries attest was produced under "equivalent" safety standards. Laws that are not immediately changed upon implementation can be challenged in trade tribunals later.

NAFTA and the WTO are dramatically different from all other trade agreements that preceded them. Traditionally, trade agreements focused on tariffs, quotas and border customs inspections. NAFTA and the WTO exploded the boundaries of what was included in trade pacts, establishing over 800 pages of non-tariff policies to which signatory countries must conform their domestic laws. Unlike prior trade agreements, NAFTA and the WTO agreements constrain the options that signatory governments may use when setting their *domestic* public health, food safety, consumer, worker and environmental policies − even when such policies treat domestic and foreign goods, producers, services or investors the same. (Under NAFTA and the WTO, non-discriminatory regulations may still violate the constraints on regulatory action the pacts establish.) Indeed, these agreements set specific constraints on signatory countries' *domestic* product and food safety standards, environmental rules, service-sector regulation, investment and development policy, intellectual property standards, government procurement rules, tax policy and more. When NAFTA's implementing legislation and the WTO Uruguay Round Agreements Act passed Congress in the early 1990s, the text of the agreements became binding federal law.

A key WTO and NAFTA provision requires each signatory country to ensure the conformity of all of its laws, regulations and administrative procedures to the agreements' terms.[4] Other WTO and NAFTA signatory nations – and private foreign investors through NAFTA and its various extensions such as the Central America Free Trade Agreement (CAFTA) and other bilateral FTAs – can challenge U.S. national

or local policies before foreign tribunals for failure to comply with the pacts' terms. Nations whose policies are judged to be "non-tariff trade barriers" are ordered to eliminate them or face indefinite trade sanctions.

The record of challenges to U.S. domestic laws shows why real redress of our import safety crisis also must include changes to our trade agreements. The United States is the country which has faced the largest number of WTO challenges to its laws, and has lost 86 percent of such cases. That an improved U.S. product safety policy could be challenged is a very real threat. As a WTO member, China could initiate such a challenge as soon as more stringent import safety laws were passed, if China believed such laws violated their WTO rights. As described below, the WTO constraints on domestic product regulation are both broad and vague, exposing a wide swath of possible U.S. policies to attack.

The diversity of U.S. laws that have been successfully challenged using WTO or NAFTA is stunning. The United States has been ordered by a NAFTA tribunal to open its road to Mexico-domiciled trucks despite serious safety problems. Under the WTO, U.S. tax, environmental, anti-dumping, safeguard, procurement and gambling policies have all been challenged. The United States has been the number one target of challenges at the WTO, where domestic laws are almost always ruled against in tribunal hearings.

U.S. WTO disputes:

	United States as Complainant	**United States as Respondent**	**All Disputes *(including U.S. and non-U.S. cases)***
Complainant Win	24	43	114
Respondent Win	5	7	15
% Cases Won By Complainant	82.8%	86.0%	88.4%

The United States has lost an array of WTO attacks against domestic public interest laws, a pattern that extends to successful WTO attacks on other nations' environmental, food safety and other public interest laws. The United States weakened gasoline cleanliness standards after a successful WTO assault on Clean Air Act regulations by several countries. Even though the United States signed a global environmental treaty called the Convention on International Trade in Endangered Species, American rules requiring

shrimp fishers not to kill sea turtles were diluted after a WTO challenge to U.S. Endangered Species Act regulations enforcing the treaty. The U.S. Marine Mammal Protection Act was weakened after Mexico threatened WTO action to enforce an outstanding ruling against the law under the General Agreement on Tariffs and Trade (GATT). These are only a few of the negative results for U.S. domestic non-trade regulatory policy during the 12 years of WTO implementation.

Non-trade public interest laws challenged at WTO:

	All Public Interest Disputes	**Public Interest Disputes – U.S. as Complainant**	**Public Interest Disputes – U.S. as Respondent**
Complainant Win	16	7	5
Respondent Win	3	2	0
% Cases Won By Complainant	84.2%	77.8%	100%

What would happen if Congress refused to weaken a new imported product safety law if it were successfully challenged at the WTO? WTO rules allow the winning countries to impose trade sanctions against the United States *until* we change our law as ordered for the full amount of trade that is affected. Alternatively, the United States can offer to negotiate compensation. That would mean, for instance, if China successfully challenged an imported toy safety law at the WTO, the United States would offer to pay China not to send unsafe toys to us as an alternative to having China impose trade sanctions on whatever U.S. economic sectors they chose. China would get to choose which option it desires.

To put in perspective the seriousness of this problem, consider the multi-billion dollars in U.S. liability after a WTO enforcement panel recently ruled that the U.S. government failed to comply with a 2005 final WTO order to change certain laws related to the U.S. ban on Internet gambling. The WTO Internet gambling ruling implicates large swaths of state and federal gambling law unrelated to online gaming as potential trade barriers, and a follow-up WTO challenge already has been threatened by the European Union. The ruling clears the way for tiny Antigua, which challenged the ban, to demand compensation from the United States, and if an agreeable deal cannot be struck, to impose trade sanctions. To avoid the follow-up WTO challenges on our domestic gambling regulations, the U.S. Trade Representative has given

notice to the WTO that it is seeking to remove gambling from WTO jurisdiction; however, this requires negotiating compensation with other WTO signatory countries. There is no way to get out of one of these rulings against U.S. law without paying. Currently, over $3.4 billion in demands have been tabled.

The limits on domestic safety, health and environmental regulation contained in both NAFTA and the WTO are based on certain underlying premises, among them: domestic regulatory policies must be designed in the "least trade restrictive" manner, and national laws and standards should be "harmonized" (homogenized) internationally so as to maximize cross-border trade.

The Technical Barriers to Trade agreement is the WTO agreement that sets the criteria that WTO signatory nations must follow concerning standards, technical regulations, and conformity assessment rules for all products, including industrial and agricultural products.[5] The TBT agreement's rules cover toy safety standards. The overarching purpose of the agreement is to make national standards globally uniform, discipline domestic regulatory standards that limit trade beyond TBT-permissible standards, and make WTO signatory countries' standard-setting processes transparent, albeit to other WTO countries, not to consumer and environmental groups.

The TBT agreement requires WTO signatory nations to use international standards if such standards "exist or their completion is imminent." The agreement requires signatory nations to use international standards as the basis for their technical regulations and standards, unless the international standards would not be appropriate "because of fundamental climatic or geographical factors or fundamental technological problems."[6] If a member adopts a standard "which may have a significant effect on trade of other Members," the member must justify the standard to other members upon request.[7] However, if a member's standard conforms with the relevant international standard, "it shall be rebuttably presumed not to create an unnecessary obstacle to international trade."[8]

Under NAFTA and the WTO, international standards serve as a ceiling which countries cannot exceed, rather than as a floor that all countries must meet. The agreements provide for the challenge of any domestic policies that provide greater consumer safeguards than international standards, but contain no mechanism to challenge standards that fall below the named international standard. Thus, the NAFTA and WTO harmonization provisions are likely to serve only as a one-way downward ratchet on the most progressive domestic standards. Challenges to domestic standards that exceed international standards occur in the binding dispute resolution system built into these agreements, which is closed to public participation or observation, and which can result in millions of dollars in punitive trade sanctions against the losing country. This is the "race to the bottom" that is built into WTO and NAFTA rules.

The TBT agreement also requires WTO member nations to treat imported and domestic products alike. Even though the future enhanced border inspection that Congress could mandate may be the *only* safety check on an imported toy, the TBT agreement's "non-discrimination" or "national treatment" rules require that the United States not inspect imported goods at a greater rate than similar domestic goods. The U.S. Department of Agriculture, for instance, in order to conform to this requirement, has already specifically and voluntarily weakened a U.S. policy requiring monthly supervisory inspections of foreign meat plants producing meat for export to the U.S. market.[9]

The TBT agreement also prohibits WTO members from adopting or applying standards and technical regulations in ways that create "unnecessary obstacles to international trade."[10] What is an unnecessary obstacle versus a legitimate safety standard is determined by the closed-door trade tribunals, which are staffed by trade lawyers without expertise in consumer safety. As well, the TBT agreement requires that countries may only maintain policies that fulfill "legitimate objectives" (defined as "national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment"[11]) in the *least trade-restrictive* manner possible, while taking into account the risks that non-fulfillment of such regulations would create.[12] However, in assessing such risks,

the only factors that members may consider are "available scientific and technical information, related processing technology or intended end-uses of products."[13] Again, tribunals of trade lawyers are left to make the subjective determination about whether a less trade restrictive option might exist.

In the name of harmonizing product standards worldwide, the WTO's TBT agreement gives almost absolute authority to international standard-setting organizations. NAFTA and the WTO set minimalist guidelines on what international standard-setting bodies or standards are presumed to be NAFTA or WTO compliant. The TBT agreement cites the product standards of the International Organization for Standardization (ISO) in Geneva. However, the agreements also state that the standards of any other international institution, including industry organizations, may also apply as long as the institutions are open to participation by representatives of WTO member countries.

For instance, the ISO is a private-sector body comprised of industry representatives. Until a few years ago, ISO only developed technical standards (e.g. the standard size of a light bulb) for industry. However, it recently began producing environmental standards. When the toy industry discusses setting new industry-wide standards, such private bodies are the likely venues. Although the TBT agreement designates ISO and other private organization standards as presumptively trade-legal, consumer groups, and even government officials, have been excluded from ISO's standards-developing process. In fact, according to a report for the European Environment Bureau, ISO's standards drafting committee is "made up principally of executives from large international corporations, national standards-setting firms and consulting firms."[14] If a new U.S. government toy safety standard were more stringent than an industry-set standard developed in such an international standard-setting body, the U.S. standard would be in violation of WTO requirements.

In addition, the TBT agreement requires members to consider accepting the standards of other members as "equivalent," even if they differ, if they meet the objectives of their own standards then allow "free passage" of products from such countries.[15] That is to say that the United States would be required to

accept imports that met the exporting countries' standard, once deemed equivalent, not the U.S. standard. However, the very concept of determining whether different standards are "equivalent" has been criticized, given neither the TBT agreement nor U.S. law defines what is "equivalent." This has resulted in various equivalence determinations being made by U.S. government agencies that are bureaucratic guesswork based on no objective basis that different standards can meet the same goals. Under this process, some 40-plus countries' meat inspection systems have been declared equivalent, even though some countries used company-paid inspectors and did not have continuous inspection regimes in clear violation of U.S. law.[16]

Finally, the TBT agreement requires member nations to ensure that their local governmental bodies, which in the United States includes state, county, and municipal governments, comply with the agreement's terms.[17] This is not an issue when state regulations mirror the corresponding federal regulations. However, a few states, most notably California, employ public referendums to pass consumer and environmental protection standards that are more stringent than federal or international standards. Several U.S. states are considering action on imported toy safety.

3. Ten Steps to Improving Import Safety

While this hearing is focused on toy safety and specifically the issues of lead contamination in toys from China, many of the broader issues regarding imported product and food safety fall under the jurisdiction of the Commerce Committee. Thus, this testimony concludes with ten steps towards addressing the overall imported food and product safety crisis.

1. Fix existing trade pacts that limit import safety standards and border inspection.

- **A thorough review is needed now of our existing trade agreements – from the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) pacts to recent NAFTA-clone regional agreements – to carefully identify the provisions that are**

causing problems. We must fix these existing agreements – and do better in the future. If we are to enjoy the benefits of trade, we must remove these non-trade limits on our basic health and safety that have been inserted into recent trade agreements. Specifically, our current trade agreements must be modified to remove provisions that:

→ Limit countries' rights to inspect imports at a more intensive rate than similar domestic goods. We must be free to inspect imports at whatever rate government safety agencies determine is needed to ensure safety.

→ Require the United States to allow imports of meat and poultry and non-food products from foreign countries that use "equivalent" and often lesser safety standards. We must be free to require that only goods that meet our U.S. safety and environmental standards can be imported.

→ Limit the level of food or product safety protection countries choose to implement. We must be free to set our own level of desired safety and environmental protection.

→ Include trade agreement harmonization requirements that give primacy of internationally harmonized rules relative to domestic law. Unless they are designed with the *intent* of discriminating against foreign goods, our domestic safety standards and the level of safety protection we desire are not a trade issue.

2. <u>Reject four pending NAFTA expansion agreements that would worsen the problem</u>.

- **Congress must reject the pending NAFTA expansion deals so that the Bush administration is forced to remedy the limits on safety standards and border inspection *in the current model* before any new deals are approved.** The four pending NAFTA expansion agreements with Peru, Panama, Colombia and South Korea would make the situation worse by increasing the import of food and products while limiting U.S. safety standards and border inspection.

3. <u>Ensure products meet U.S. safety standards before they enter the U.S. market.</u>

- **Require pre-shipment inspections and create a program of government-administered mandatory 3rd party testing of imported toys and consumer goods to ensure product safety**.

4. **Give the Food and Drug Administration (FDA) the authority to examine and approve other nation's regulatory systems as meeting U.S. safety standards *before* imports from a country can enter the U.S. market and tighten USDA rules.**

   - **The FDA needs new authority to examine and approve other nations' regulatory systems and food safety laws as the same as ours or better, before imports from a country can enter the U.S. market.** Currently, 80 percent of food products we eat come under FDA jurisdiction. These imports currently are permitted to enter the U.S. market without FDA's pre-approval of the food safety systems of the exporting countries. In contrast, USDA, which regulates less than 20 percent of the foods we eat, has authority to inspect plants abroad and decide which countries will be allowed to import meat and poultry here. Unfortunately, USDA does not require that foreign food safety systems be the same as the U.S. safety system, but rather (as required by WTO and NAFTA) allows imports from countries deemed to have "equivalent" systems.
   - **USDA needs to tighten its foreign food production safety standards to only allow food that meets our standards to enter, not food produced under "equivalent" systems.** There is no definition of equivalence in the trade pacts – and failure to find another country's system equivalent can be challenged. Countries whose safety systems differ significantly from ours have been deemed equivalent, and their products often enter our market in violation of U.S. law.

5. **Give U.S. agencies with enforcement authority the power to levy meaningful civil penalties for manufacturers, importers, distributors, and retailers who fail to meet safety standards, and criminal penalties for those who knowingly and repeatedly jeopardize public safety.**

6. **Border inspection of imported food and products must be greatly increased.**

- **Congress must require and fund greatly increased border inspection to prevent unsafe products from crossing our borders**. It is unconscionable – and dangerous – that the U.S. inspection rates for produce and seafood is less than one percent and meat and poultry inspection is only 11 percent. In contrast, the European Union physically inspects many high risk imports, such as seafood, at a rate of 20-50 percent. Currently, the CPSC has a total of only 15 border inspectors to inspect all non-food imported products!

7. **Country-of-origin labeling of ALL imported products so consumers can make informed choices.**

   - **Congress should immediately implement the 2002 law that requires country-of-origin (COOL) labels on beef, pork, lamb, fruits and vegetables. Congress should extend COOL provisions to cover all food products, including poultry, and and all ingredients in food, drugs, cosmetics, dietary supplements and vitamins.** Currently, only manufactured goods, prepackaged retail-ready foods and certain non-processed seafood sold in the United States are required to have COOL labeling.
   - **Develop a product traceability program for food and consumer products as well as for all components and ingredients.**

8. **Hold foreign manufacturers and suppliers, and U.S. importers and distributors, accountable for bringing unsafe products to the market.**

   - **Create market incentives for overseas manufacturers to focus on safety by subjecting them to the possibility of lawsuits in U.S. courts by injured consumers**. Currently, overseas manufacturers escape such liability, allowing those who cut corners on safety to profit without concern. By legislating jurisdiction of U.S. courts to the overseas manufacturers of any product *entering* U.S. markets, Congress would make attention to safety a good business decision for overseas producers.

- **Require importers to post a bond to ensure they have sufficient resources to recall their products should they prove dangerous or defective.**

9. **Authorize mandatory recall authority for all government agencies charged with ensuring food, product or consumer safety. Although the CPSC has recall authority, the FDA and USDA lack such authority for most food products.**

10. **Require all government agencies to publicly disclose information pertaining to safety investigations and adverse event reports. Currently, FDA has such authority, but CPSC does not.**

ENDNOTES

[1] Bureau of Labor Statistics, Employment, Hours, and Earnings from 2005 Employment Statistics survey, cited in U.S. Department of Commerce Industry Outlook, Dolls, Toys, Games, and Children's Vehicles NAICS Code 33993 (2005)
[2] Public Citizen, *NAFTA'S Threat to Sovereignty and Democracy: The Record of NAFTA Chapter 11 Investor-State Cases 1994-2005,* February 2005, at xv.
[3] Consumer Product Safety Commission, Recall Notice, March 23, 2006, Release #06-119.
[4] See e.g. Agreement Establishing the WTO, Article XVI-4.
[5] The TBT Agreement does *not* cover agriculture standards relating to animal, plant or human health. Thus, while a different WTO agreement covers food safety per se, the TBT agreement does cover, for instance, the health and safety issues related to flame retardants in processed cotton or environmental issues relating to pesticides.
[6] WTO Technical Barriers to Trade agreement, at Art. 2.4.
[7] WTO Technical Barriers to Trade agreement, at Art. 2.5.
[8] WTO Technical Barriers to Trade agreement, at Art. 2.5.
[9] In 2004, the Food Safety and Inspection Service (FSIS) changed its requirement that supervisory visits by inspectors take place every month at foreign plants eligible to export to the United States after numerous countries were found to be out of compliance with this basic safety standard. Supervisory visits are needed because without them, plant inspectors can be bullied by firms, bribed and otherwise compromised. FSIS has itself documented many instances, when foreign meat inspectors had their salaries provided by companies and not the government. FSIS amended 9 CFR §327.2(a)(2)(iv)(A) and 9 CFR §381.196(a)(2)(iv)(A) to require that foreign supervisors make "periodic visits." FSIS clearly stated that it was making this move to comply with WTO requirements citing Sanitary and Phytosanitary (SPS) Article 2.3. FSIS stated "The effect of Article 2.3 is that FSIS, acting as a regulatory agency of the United States, may not impose import requirements on inspection systems or establishments in an exporting country that are more stringent than those applied domestically." 69 Federal Register 51194, (Aug. 18, 2004.)
[10] WTO Technical Barriers to Trade agreement, at Art. 2.2.
[11] WTO Technical Barriers to Trade agreement, at Art. 2.2.
[12] WTO Technical Barriers to Trade agreement, at Art. 2.3.
[13] WTO Technical Barriers to Trade agreement, at Art. 2.2.
[14] Benchmark Environmental Consulting, *ISO 14001: An Uncommon Perspective - Five Public Policy Questions for Proponents of the ISO 14000 Series* (Nov. 1995), report produced for the European Environment Bureau, at 13.
[15] WTO Technical Barriers to Trade agreement, at Art. 2.7.
[16] Public Citizen, *The WTO Comes to Dinner: U.S. Implementation of Trade Rules Bypasses Food Safety Requirements*, July 2005.
[17] WTO Technical Barriers to Trade agreement, at Art. 3.1.