



TIE contribution to the Commission’s consultation on EU-US harmonisation

31 October 2012

“I am pleased to report that the state of toy safety is strong—it is strong thanks in large part to the actions of many of you [industry]” - CPSC Chairman Inez Tenenbaum, Hong Kong , January 11, 2012

“There will be no more places for defective and dangerous toys in the EU market. As from today, new EU rules for toys are in force to fulfil the highest safety requirements” - European Commission statement about the new Toy Safety Directive, July 20, 2011

Introduction

Toy Industries of Europe (TIE) welcomes the opportunity to contribute to the current consultation carried out by the European Commission, which aims to promote greater transatlantic regulatory compatibility between the EU and the US.

Collectively, US and EU citizens share the same values and expect the same high level of regulatory protection. As toy safety is our number one priority, we understand and support such high expectations.

Consumers can be confident that toys sold in Europe and the US must adhere to the highest standards of quality and safety. Both EU and US authorities are certain that toys sold in their markets are the safest in the world.

Toys are one of the most strictly regulated consumer goods and toy manufacturers are committed to assuring the safety of the toys they produce. In the EU, the new Toy Safety Directive 2009/48 substantially upgrades previous standards for toys put on the market.

TIE applauds the increasing cooperation between EU and US authorities, which is evident in regular meetings and cooperation to ensure that the toys children play with are of the highest standards. Despite this collaboration, it is regrettable that manufacturers still need to comply with different regulations in the UE and the US. Due to these differences, duplicative testing is required to sell in both markets. This is very costly and burdensome, in particular for small and medium-sized enterprises (SMEs), which represent more than 80% of the toy sector in the EU.

Some economic facts on the toy markets in the EU and the US:

EU	US
<ul style="list-style-type: none">• Significant differences in average price of toy per market• An estimated 1.4 billion units sold each year	<ul style="list-style-type: none">• Average price of a toy is under US\$8.00• An estimated 3 billion units sold each year• Total annual economic impact of US\$68.75


<p>(2009)</p> <ul style="list-style-type: none"> • 73% of sales in France, Germany, Italy, Spain and UK (2010) • Overall retail market over US\$18 billion (2010) • Around 220.000 toy industry jobs in the EU • 25% of the global toy market (2010) 	<p>billion</p> <ul style="list-style-type: none"> • US\$21.87 billion in direct toy sales (2010) • Toy Industry provides 500,000+ jobs and nearly US\$69 billion in direct economic impact in US
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Need for more harmonisation: regulations and standards

- EU and US toy safety standards both effectively address the same hazards, but in different ways; neither approach is consistently “better”
- Differences are often due to political considerations, not technical ones
- Differences in the legislative procedures that set the EU and US requirements also influence the final regulations and standards
- The regulatory response to emergency issues (e.g. magnets in 2007) differs on each side of the Atlantic
- Due to these differences and the differing requirements for certification of conformance to each set of standards, duplicative testing is required to sell toys in both markets
- When the chemical requirements of the TSD come into force in July 2013, the divergence between EU and US toy safety standards will significantly increase.

We would like to highlight the fact that these regulatory differences are often politically motivated. Very often these measures only add burden to companies without introducing a significant difference in the level of safety. TIE would like to point out that this is a dangerous approach. The toy industry supports decisions based on sound science and is opposed to children’s safety being used for electoral purposes. Some decision-makers and EU Member States have recently proposed unscientific restrictions in an effort to be seen by citizens as “stricter” than their counterparts. Industry will do its best to meet all legal requirements. However, we urge authorities to set rules based on sound scientific evidence. We regret that the differences in regulations in the EU and US are often caused by the result of politics rather than a different approach to ensuring safety.

Here is an example of the rules a simple plastic toy is required to comply with for both EU and US markets. All these requirements aim to ensure children safety. However, due to the legislative differences, these requirements oblige industry to carry out duplicative tests in order to comply with similar, if not identical, requirements.

EU	US
	
<ul style="list-style-type: none"> • EN71-1 Mechanical and Physical Properties • EN71-2 Flammability Requirements • EN71-3 Migration of Certain Elements 	<ul style="list-style-type: none"> • ASTM F963 / 16 CFR 1500 Physical and Mechanical Requirements • ASTM F963 / 16 CFR 1500 Flammability

<ul style="list-style-type: none"> • Total Cadmium Content, REACH Annex XVII • Total Phthalate Content, REACH Annex XVII • Total Benzene Content, REACH Annex XVII 	<p>Requirements</p> <ul style="list-style-type: none"> • ASTM F963 Soluble Migrated Elements Requirements • Total Lead Content, Consumer Product Safety Improvement Act of 2008 • Total Phthalate Content, Consumer Product Safety Improvement Act of 2008
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- This duplicative testing does not improve safety but simply establishes conformance to each market's set of requirements
- In addition, changes in the design and/or manufacturing process may be required to meet both sets of requirements. This limits consumer choice by deterring market entry
- Collectively, these costs are estimated to total US\$3 billion annually. These are incurred by consumers even though toys are not any safer as a result
- Industry supports the harmonisation of toy safety standards in both markets, but recognises that this is no small task
- Apart from the differences in the EU-US toy-specific legislation and standards, other pieces of legislation such as REACH could be further harmonised with the US chemicals legislation.
- It is important to note that promoting regulatory cooperation does not mean simply adopting the strictest rules. For example, regulatory alignment should not result in EU adoption of the US third party test requirements for toys (as mandated by the US Consumer Product Safety Improvement Act). Third party testing has taken away a manufacturer's ability to determine a "reasonable testing programme" and forced companies to divert resources towards ensuring compliance with extensive paperwork and tracking requirements. The rigid requirements have also disproportionately impacted small businesses. Effective quality control can be done without mandating third party testing and companies should be permitted to design their own quality control programmes and means of demonstrating compliance.

Possible solutions for bridging these differences

- The search for more harmonisation should not only focus on the technical specifications detailed by standards. Existing legislation, forward looking requirements and emerging hazards should also be subject to an alignment process.
- EU and US policy-makers should aim at aligning their respective decision-making procedures. These converging procedures must take into account the point of view of the scientific community and aim at getting the same information from Governments and stakeholders.
- EU and US authorities should work together to combat emerging hazards. They should be able to agree on common approaches to address emergency issues. This would lead to a quicker regulatory response and to more cost effective obligations for the manufacturer.
- As an interim step, mutual recognition should be considered. Each jurisdiction should agree to accept the other's declaration of conformity as evidence of an adequate level of safety and acceptability for importation and sale.
- EU and US authorities could consider greater involvement in - and acceptance of - the international toy safety standards under the ISO banner.
- In order to implement, promote and enforce regulatory cooperation, an agreement should create a Trans-Atlantic Regulatory Cooperation Committee consisting of stakeholders from regulatory standard setting bodies on both sides of the Atlantic. Enforcement of a regulatory cooperation agreement would

be an important element as an agreement would not be useful if the regulatory bodies do not feel any obligation to follow its mandates. Broadly, the Committee would coordinate between governmental bodies; be engaged during any regulatory development process to ensure trans-Atlantic alignment to the greatest extent possible; meet regularly to track progress of regulatory cooperation and set realistic goals for future alignment; and communicate and solicit comments from the public and industry about regulatory alignment objectives.

- The toy industry stands ready to assist in the harmonisation effort.

Leading regulatory agencies in charge of toy safety:

EU	US
<ul style="list-style-type: none"> • European Commission, DG Enterprise, Unit C/1 Internal Market and its International Dimension (lead within the Commission) • National and regional Governments (implementation, market surveillance) • CEN/CENELEC (standards) 	<ul style="list-style-type: none"> • Consumer Product Safety Commission (CPSC) • Food and Drug Administration (FDA) • Federal Trade Commission (FTC) • Customs and Border Protection (CBP) • ASTM (standards)

Main legislation on toy safety

EU	US
<ul style="list-style-type: none"> • Toy safety Directive 2009/48 <p>Other relevant legislation includes:</p> <ul style="list-style-type: none"> • General product safety directive 2001/95 • Regulation 765/2008 on requirements for accreditation and market surveillance • Decision 768/2008 on the marketing of products • Regulation 1907/2006 REACH (Registration, Evaluation and Authorisation of Chemicals) • Regulation 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP) • Directive 2011/65 RoHS (Restriction on the use of certain Hazardous Substances in electric and electronic products) • Directive 2012/19 WEEE (Waste Electrical and Electronic Equipment) • Regulation 1223/2009 on Cosmetics • Directive 2008/98 on waste • Directive 94/62 on packaging and packaging waste 	<p>(Key federal regulations)</p> <ul style="list-style-type: none"> • Consumer Product Safety Improvement Act • Federal Hazardous Substances Act • Flammable Fabrics Act • Child Safety Protection Act • Consumer Product Safety Improvement Act • Food, Drug and Cosmetic Act • Fair Packaging and Labeling Act • Country of Origin Marking <p>Plus a number of State restrictions and legislation applying only in some States.</p>

<ul style="list-style-type: none"> • Directive 87/357 concerning products which, appearing to be other than they are, endanger the health or safety of consumers • Regulation 1935/2004 on materials and articles intended to come into contact with food • Regulation 10/2011 on Food contact plastic materials and articles • Directive 1999/5 Radio- and tele-terminal equipment (R&TTE) • Directive 2004/108 Electromagnetic Compatibility (EMC) • Directive 2006/66 Batteries • Directive 2006/95 Low voltage <p>Plus a number of national restrictions applying only in some Member States.</p>	
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Standards on toy safety

EU	US
<ul style="list-style-type: none"> • EN71-1 Mechanical and physical properties • EN71-2 Flammability • EN71-3 Migration of certain elements • EN71-4 Chemical experimental sets • EN71-5 Chemical toys • EN71-6 Graphical symbols for age warnings • EN71-7 Finger toys • EN71-8 Activity toys • EN71-9 to 11 Organic chemical compounds • EN71-12 N-Nitrosamines and N-Nitrosatable substances • EN71-13 Olfactory board games, cosmetic kits and gustative games • EN71-14 Trampolines • EN62115 Electric toys 	<ul style="list-style-type: none"> • ASTM F963 series

About TIE

Toy Industries of Europe (TIE) is the trade association for the European toy industry, which comprises over 25% of the total world toy market. The toy industry is highly international and is one of the most dynamic business sectors in Europe. Around 80% of the sector is composed of small and medium sized enterprises (SMEs) which have less than 50 employees. Members of TIE include corporate companies as well as national associations from Bulgaria, France, Germany, Italy, the Netherlands, Spain, Sweden, the UK and the Nordic region. TIE membership is open to both corporate companies with a presence in Europe and national associations from European Union Member States (including candidate countries).