

**Before the
CONSUMER PRODUCT SAFETY COMMISSION
Washington, DC**

In the Matter Of:]
] **Docket No. CSPC-2011-0070**
Alternative Testing Requirements for]
Small Batch Manufacturers Public Hearing]
]]
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Comments and Hearing Submission

**On Behalf of the
Small Batch Importers Coalition**

October 21, 2011

Submitted by:

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SMALL BATCH COALITION OF IMPORTERS

October 21, 2011

Commissioner Inez Moore Tenenbaum
Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Tenenbaum:

The Small Batch Importers' Coalition wishes to thank the Consumer Product Safety Commission for the opportunity to provide comments in Docket No. CPSC-2011-0070: Alternative Testing Requirements for Small Batch Manufacturers. This is the first time that this group of businesses or any representative group of Fair Trade, sustainable trade, and small batch importers of artisanal items have come together to express their comments. We hope that this pioneering action helps convey the enormity of the problems the businesses face as a result of the third-party certification requirements for children's products and the companies' sincere appreciation of the Commission's recognition and efforts to address the issue.

Executive Summary

The Small Batch Coalition of Importers supports an exemption for small batch manufacturers and importers (as defined by HR 2715) from requirements for third-party testing and certification of children's products concerning:

- 1) lead content in children's metal products (Section 101 of CPSIA and Test Method CPSC-CH-E1001-08 or CPSC-CH-E1001-08.1);
- 2) lead in content in children's non-metal products (Section 101 of CPSIA (Test Method CPSC-CH-E1002-08 and/or CPSC-CH-E1002-08.1));
- 3) phthalate content of children's toys and child care articles (Section 108 of CPSIA (Test Method CPSC-CH-C1001-09.3); and
- 4) toys (ASTM F963).

The Coalition is seeking these exemptions because both the current requirements for testing by a certified third party and alternative testing mechanisms, if they exist, are not available or economically practicable for small batch importers.

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The Coalition's goals, pertinent to these comments, are to ensure that the artisanal items its members sell are safe both for producers and buyers and that the items meet the standards of the applicable laws as noted above. To achieve these paramount goals, the small batch importers and other members of the Coalition have adopted or are in the process of adopting compliance programs within their financial and administrative capabilities. The market (e.g., buyers), in some cases, may still require third-party testing of some batches. The Coalition also would support, comply with the decision, and seek to work with the Commission and its staff regarding registration and other mechanisms as part of exemption actions to ensure the public health and safety.

We understand that the CPSC just issued rules pertinent to periodic testing requirements, record-keeping, use of certified component parts, when initial testing is not enough, and other pertinent elements of the process. We have not been able to review these decisions thoroughly to ascertain their effect on these issues, before submission of these comments. We will do so before the October 26, 2011, public hearing and anticipate being able to address their impact on our concerns.

The Small Batch Coalition of Importers

The Coalition is comprised of many Fair Trade Federation members that are small batch importers of handmade artisanal and personal care products from developing countries worldwide as well as larger importers of handmade goods and a member of the Fair Trade Federation vendor network.

Specifically, the Coalition companies that meet the small batch manufacturer/importer criteria and that import artisanal items subject to third-party requirements for children's products include: Terra Experience (Madison, WI); Jamtown USA (Seattle, WA), Lucuma Design (Sarasota, FL), One World Projects (Batavia, NY), Selyn Exporters PVT) Ltd (Kurunegala, Sri Lanka), Global Goods Partners (New York, NY), WorldCrafts™ (Birmingham, AL), Wanderlust Jewelry (Boulder, CO), Kingdom Ventures (Rochester, NY), Matur Suksema (Bothell, WA), Global Sistergoods (Portland, OR), Sarah's Silks (Forestville, CA), , Mondo Adventure Travel (Vancouver, BC), Aid Through Trade (Annapolis, MD), UPAVIM Crafts and Mayan Hands (Ijamsville, MD), Better Way Imports (Zeeland, MI), Cheppu Himal (Carmel Valley, CA), Tenfold Trade Collection (Harper's Ferry, VA), Unique Batik (Raleigh, NC), Yellow Label Kids (San Rafael, CA), and Zen Zen Garden Home, Inc (Bonsall, CA), Friends of Tilonia, Inc (LaCrosse, WI), and Global Mamas (Minneapolis, MN).

Other members of the Coalition include Tesoros Trading Co (Austin, TX); Charity USA (Seattle, WA); WorldFinds Fair Trade (Westmont, IL); Global Crafts (Edgewater, FL); Partners for Just Trade (St. Louis, MO); Tenfold Fair Trade Collection (Harper's Valley,

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WV), Aid to Artisans (West Hartford, CT); Duerst Lahti Global (Madison, WI); and Sandler Trade LLC (Washington, DC).

The small batch importers of the Coalition are also members of the national Fair Trade Federation or of regional fair trade organizations, such as Fair Trade Chicago. They are either for-profit or non-profit organizations whose goals are to help disadvantaged suppliers in developing nations earn sustainable incomes through the export of crafts to the United States, Canada, Japan, Australia, the European Union, and other developed-country markets. The importers also focus on women in vulnerable positions in their communities by helping them use the development and sale of handicrafts to generate income for their families. In many cases, the small batch importers have built a strong, long-term, and very personal relationship with the artisans and their families, and may also provide health care, education, and other social services and support.

The small batch importers work with suppliers in a wide variety of emerging economies, many of which do not have certified testing laboratories. These countries include Afghanistan, Bolivia, Cambodia, Cameroon, Colombia, Ghana, Haiti, Jordan, Kazakhstan, Kenya, Kosovo, Kyrgyzstan, Laos, Malawi, Nepal, Nigeria, Rwanda, South Africa, Tanzania, Uganda, and Zimbabwe.

It is important to note that several of the principles of Fair Trade to which all of the small batch members of the Coalition adhere are parallel to the purposes of the Consumer Product Safety Improvement Act and the goals of the Commission. These include product safety, both for the producers and end-users, as well as environmental stewardship and the use of environmentally sustainable practices throughout the entire trading chain.¹

Fair Trade is a strategy for poverty alleviation and sustainable development in which these small batch importers place the interests of producers and their communities as the primary concern of their business enterprise. From a financial perspective, the small batch importers tie up their capital in ways unlike many mass market manufacturers in that they advance the producers fifty percent of the agreed sales price pre-production, with the remaining fifty percent paid upon shipment of the product to the United States. This creates fiscal constraints for the small batch importers of fair trade handmade products in regard to paying for not inexpensive third party testing.

A number of the Coalition's small batch importers are listed in [Green America's National Green Pages.™](#), including Sarah's Silks, Terra Experience, One World Projects, and Matur Suksema. The member businesses of the Green Business Network (listed in the *Green Pages*) are "screened for their commitment to the health and safety of people

¹ <http://www.fairtradefederation.org/ht/d/sp/i/2733/pid/2733>

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and the planet” to provide the “safest and most responsible products” for consumers, in part, through close supervision of the suppliers’ production inputs and processes. For example, Terra Experience’s doll clothes imported from Guatemala were identified as one of the top ten green picks for the 2008 holiday season.²

Annual sales in 2010 for these small batch importers ranged from \$30,000 to \$650,000, with most of the companies importing a range of items of which children’s items are usually a small part. These companies sell largely to wholesale businesses numbering between 300 and several thousand businesses. Their average-sized import batches range in size from one dozen to 1000 units over the course of a year. What they consider to be best-selling items are imported in batches between five dozen (60) to 5,000 units, depending on the size of the small batch importer.

Results of product tests show lead levels below the 100 ppm standard, no phthalates, and passage of toy standards

Test results of children’s items imported by the Coalition’s members – both small batch importers and those larger (that have the funds to do third party testing) have shown no lead content exceeding the current 100 ppm standard (See Attachment One). The tested lead content for acrylic, cotton, and wool finger puppets was between 1.8 and 15 ppm. Painted products such as wood puzzles, wood school buses with people, cat box and frog pencil had lead test results between less than 1.67 ppm to 63 ppm. The metal wire Galimoto Toy, a very popular item, tested for 70 ppm. Other tests provided to the Coalition by its members and supporting organizations screened for phthalates and flammability with all items passing.

Limitations on the ability of small batch manufacturers to comply with pertinent third-party testing requirements

Economic Limitations

The reason these exemptions are so important to these Fair Trade Federation members is because they are committed to supporting artisans and producers living in poverty, and because their experience is that the current regulations make it difficult for them to fulfill their mission and support people in need.

Third-party testing in the United States is expensive. Small importers are not able to get volume discounts that would allow them to obtain lead testing at a cost as low as \$35/product. Instead, the current quotes or actual costs from certified labs have been

² <http://www.greenamerica.org/programs/shopunshop/10greentoys.cfm>

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between \$200-250 per test, and even as high as \$700 per product per color and material type.³

These testing costs, depending on the product, equal the cost to the importer of a product's entire batch. For example, if a finger puppet costs 80 cents wholesale plus 20 cents for transportation to the United States, the small batch importer is paying the artisan \$1 per finger puppet. If the importer's batch is less than 250 items (which all of the small batch importers' batches are⁴, except for the few best selling items), even in the most inexpensive of third-party testing cases, the testing will exceed the importers' cost for the entire batch. (The additional costs of duties and expeditors' fees have not been factored in as well.)

Some larger importers have sent their products to China for testing, which ties up the products for a month due to transportation and adds logistics and transportation costs as well. This is not an option for small batch importers because of the cost and time delay to get the product to customers.

These high testing costs pose even greater difficulties for non-profit businesses whose earnings go back to the communities.

ASTM F963 toy safety standard may pose a threat to small batch importers who have limited manpower to understand the restrictive requirements. In their attempt to comply with the rules, they depend on the judgment of third-party testing agencies in determining the required tests. In this case, there is a conflicting interest, where importers try to minimize the number of tests for cost savings and the testing agencies may recommend tests in order to maximize their revenues although they are not necessary. Unlike importers, testing agencies are not held accountable by the CPSC regarding the necessities of each recommended test. Additionally, the mandate tests are quite numerous and require advanced technologies, and hence, bring down the total cost would be a challenge for the testing laboratories.

Phthalate testing also brings more challenges for small batch importers. First, the cost for each sample ranges from \$100 to \$350; Coalition members indicate that the \$100 cost is only offered by Chinese laboratories. Secondly, the definition of products that are subject to the phthalate standards is a vague one: "plastic parts or other product parts which conceivably contain phthalates". This will mislead importers to thinking that all of

³ Lucuma Designs had testing done for lead in February 2009 at a cost of \$280 for eight products (all of which passed). That lab now tests only groundwater, wastewater and solid waste for environmental contaminants.

⁴ The largest small batch importer in the Coalition has calculated that the company's average batch size for children's and non-children's products is 48.7 items. The company's batches for children's products are even fewer in unit size.

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their products require phthalate screening. And third, phthalates are not ordinarily contained in materials - because they are an additive. Therefore, to test products in which phthalates have not been intentionally added by the customer can be a waste of resources.

Administrative Limitations

The third-party testing requirements significantly limit product innovation, small business growth, and the ability of small batch firms to compete in the marketplace. This is due to the lack of accredited labs located where the producers are and the tests' high costs in the United States - to where the items must be sent for testing - relative to the small amounts of handmade products produced by the artisans.

For example, Global Goods Partners works with forty women's groups in twenty countries, such as Swaziland, Tanzania, Nepal, Cambodia, and Bolivia. Although entirely committed to the safety of its products, the company sees the effect of the third-party testing requirement to be the virtual end of the company's and artisans' opportunity to add new products and experiment with new samples due to the cost and logistical demands of producing the product, sending it to the United States for testing (there are no certified labs in any of these countries), making any necessary design changes, and then resending a sample for hopefully final testing and certification. That process significantly increases product cost in a marketplace where margins are thin.

Compliance with the ASTM F963 toy safety standard is especially difficult in that it requires small batch importers to commit significant efforts in understanding each and every rule that pertains to a wide variety of children's products so that they know exactly for what their products need to be tested. Neither the importers nor producers have that knowledge now, nor is it reasonable for them to expect that they would gain that detailed knowledge without having direct access to a certified testing lab (which is unlikely). In order for small batch importers to minimize third-party testing costs, comprehension is important to be able to dictate which tests need to be conducted; whereas most of them run on lean organizational structures with limited range of expertise.

The following is information provided by Selyn Export PVT Ltd. in remote Kurunegala, Sri Lanka, which produces handmade fabric toys, many made from "left-over" woven pieces, as well as hand-woven apparel items for adults and children:

"This is a great effort by the Small Batch Coalition – and an absolute necessity in order to prevent the "death" of small and medium import/export enterprises, which deal in the import, export and manufacture of children's products

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The cost of repeated testing is enormous and it takes away all the profit which could be otherwise used for the benefit of the people who are involved in the production – which indirectly contributes to alleviating poverty especially among women who are mostly involved in the production of these products – Lots of businesses including ours are going out of the toy production because these repeated costs cannot be made back –

Each Market needs different test reports – e.g., Europe – CE EN 71 and now it is more stringent; USA ASTM – then we have to do AZO PCP, etc., various tests for the fabric – the buyer always passes the testing to us

We as small producers sometimes wonder whether it is a conspiracy or mafia in order for the BIG suppliers to dominate and have the monopoly in the market – we are really penalized –

Long years have passed – many children have grown including our generation – the use of toys have been a legend –

We at SELYN do sincerely wish that this effort would succeed -so that we could continue to produce the beautiful toys which we have been always producing.”

Alternative testing methods

The only alternative to third-party testing for lead content that was identified by the Coalition is the use of XRF screening (the use of an XRF gun), which the Commission has approved in appropriate circumstances for lead testing. However, the cost of buying an XRF gun is in the range of \$30,000 to \$40,000 – an expense not affordable by small batch importers. Renting an XRF gun costs \$1,000 but operating the gun is also complex. It requires the training or hiring of experts to ensure that it is precisely calibrated and used in a careful and consistent manner to ensure reliable and reproducible results.

The Coalition has explored whether artisans’ assistance organizations or larger importers would be interested in offering XRF testing. We have received only negative responses due to funding, liability, and other constraints.

Phthalate screening can be achieved in the case of recycled plastics. Phthalates are more likely to be contained in code 3 and 7 plastics (based on the SPI resin identification coding system). Producers and importers can rely on this coding system to identify the raw materials used in their products and be aware of their choices when including (or not) plastics prone to high phthalate content such as acrylic, fiberglass, and nylon. With their financial constraints, small batch importers should be exempted

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from third-party phthalate testing as long as they educate their producers to focus on the resin code on their recycled plastic products.

No alternatives have been identified to meet ASTM F963 requirements.

Reasons for exemptions

The Coalition of Small Importers supports an exemption for small batch importers from the requirements for third-party testing for lead content in children's metal and non-metal products, for phthalates and for the requirements found in ASTM F963, because of the lack of available and economically feasible third-party testing options.

As referenced earlier, there are no certified third-party labs in most of the developing countries from which the small batch importers source artisanal items. If there is one, it is located in the capitol or urban region of the country far away from most artisans and is difficult and expensive for the suppliers to access. Availability of an alternative testing mode for lead content testing, for example, (an XRF gun), in these countries is also problematic. It is too expensive for an individual company or group of companies in-country to purchase. The operators must be trained – another expense and logistical challenge - in their country's language to ensure that the testing producers are well understood so that the testing produces accurate and reproducible results.

Small batch importers sell very small numbers of products into the U.S. market because of their small size and the limited production capacity of their developing-country suppliers. Because the high cost of having a product tested by a third-party certified laboratory in the United States (as explained above) cannot be spread over a large number of products that are eventually imported and sold, as can mass manufacturers and importers, many small batch importers have ceased or are deciding not to import children's products (a situation that is putting developing-country producers that focus on handmade children's items out of business).

Lastly, the importation of products containing lead and phthalates has not been a problem. In all cases except one (a yellow painted music drum⁵), the results of testing of lead content has shown that all are far below the CPSIA thresholds both official at the time of testing as well as the current 100ppm standard. Included with these comments as Attachment One are test results obtained on a number of handmade products⁶ that

⁵ In the case of the painted music drum, the importer reported the problem himself and acted quickly to correct the situation. Since that time, he has eliminated much of the use of finishes, varnish, and paints on his items. As he has said, "This has lead to a duller product line~ but [it] is part of my plan to meet the intent of the law."

⁶ Wool and cotton finger puppets, painted gourd musical instruments and piggy bank, painted wood puzzle, wooden school bus with people, bobble head turtle, galimoto toy, ceramic ocarina (a musical instrument), painted cat box, and wooden frog pencil.

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the Coalition's small batch companies import. In addition, the small batch importers are redesigning their products not to use paint, varnishes and other finishes, which will continue to be tested; and have worked closely with producers to seek to ensure that they use natural dyes and inputs and do not buy other dyes, jewelry fittings or other inputs that could contain lead.

Small batch importers believe and, more importantly, act in a manner in which the health and safety of their suppliers and buyers are paramount. They work closely with the producing communities to seek to ensure that product inputs are lead-free and phthalate-free and that the production methods do not add lead or phthalates to the final products. The small batch importers guide their producers to comply with lead-free, phthalate-free, ASTM F963 toy safety standards through product design and material selection. These actions are part of these small-producers' "double-bottom-line," which is to be sustainable financially but also facilitate the sustainable economic development of the producers' communities in an environmentally safe manner.

Summary

The Small Batch Importers Coalition greatly appreciates this opportunity to provide comments and to testify before the Commission concerning Alternative Testing Requirements for Small Batch Manufacturers. The Coalition respectfully requests that the Commission exempt small batch manufacturers and importers (as defined by HR 2715) from the requirements for children's products that require third-party testing and certification regarding lead in children's metal and non-metal items, phthalates, and ASTM F963 requirements. The Coalition is seeking these exemptions to third-party testing and certifications because both the current requirements for testing by a certified third party and the only alternative testing requirements the Coalition has identified (such as the use of XRF screening for lead content) are not available or economically practicable for small batch importers.

The Coalition would not be adverse to the need to register with the Commission and are committed to continue to have control over their products and the production process to ensure that the lead content of these items are below the lead threshold. As indicated above, the small batch importers and other members of the Coalition have adopted or are in the process of adopting compliance programs within their financial and administrative capabilities. The market (e.g., buyers), in some cases, may still require third-party testing of some batches. The Coalition will support, comply with the decision, and seek to work with the Commission and its staff regarding registration and other mechanisms as part of exemption actions to ensure the public health and safety.

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Thank you very much for your consideration of the views of the Coalition of Small Batch Importers. We look forward to presenting our testimony at the public hearing and answering any questions you may have.

Sincerely,

Aid Through Trade (Annapolis, MD)
Aid to Artisans (West Hartford, CT)
Better Way Imports (Zeeland, MI)
Charity USA (Seattle, WA)
Cheppu Himal (Carmel Valley, CA)
Duerst Lahti Global (Madison, WI)
Friends of Tilonia, Inc (LaCrosse, WI)
Global Crafts (Edgewater, FL)
Global Goods Partners (New York, NY)
Global Mamas (Minneapolis, MN)
Global Sistergoods (Portland, OR)
Jamtown USA (Seattle, WA)
Kingdom Ventures (Rochester, NY)
Lucuma Design (Sarasota, FL)
Matur Suksema (Bothell, WA)
Mondo Adventure Travel (Vancouver, BC)
One World Projects (Batavia, NY)

Partners for Just Trade (St. Louis, MO)
Sandler Trade LLC (Washington, DC)
Sarah's Silks (Forestville, CA)
Selyn Exporters (PVT) Ltd. (Kurunegala, Sri Lanka)
Tenfold Fair Trade Collection (Harper's Valley, WV)
Terra Experience (Madison, WI)
Tesoros Trading Co (Austin, TX)
Unique Batik (Raleigh, NC)
UPAVIM Crafts and Mayan Hands (Ijamsville, MD)
Wanderlust Jewelry (Boulder, CO)
WorldCrafts™ (Birmingham, AL)
WorldFinds Fair Trade (Westmont, IL)
Yellow Label Kids (San Rafael, CA)
Zen Zen Garden Home, Inc (Bonsall, CA)

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Attachment 1: Results from Lead, Phthalate and ASTM F-963 Testing

Lab results from July 2006 to July 2011

Product	Country	Component	Result	Conclusion
			mg/kg=ppm	
Painted wooden puzzle	Sri Lanka	Black, White and Yellow coating	<7 mg/kg	Pass
		Green, Orange and Red coating	<7 mg/kg	Pass
Wooden school bus w/ people	Sri Lanka	Composite yellow, red, black and white surface coatings	25 mg/kg	Pass
		Composite light pink, bright pink, green and orange surface coatings	35 mg/kg	Pass
		Composite light blue, dark blue, grey and black surface coatings	24 mg/kg	Pass
		Composite light yellow, brown, peach and light peach surface coatings	26 mg/kg	Pass
Bobble Head Turtle	Burkina Faso	White Paint Swatch	<50 mg/kg	Pass
		Blue Paint Swatch	63.4 mg/kg	Pass
		Red Paint Swatch	<50 mg/kg	Pass
		Yellow Paint Swatch	<54 mg/kg	Pass
Galimoto Toy	Kenya	Metal wire	70 ppm	Pass
Ceramic Ocarina (musical instrument)	Peru	Composite light blue, dark blue, orange and yellow surface coatings	9 mg/kg	Pass
Painted Cat Box	India	Composite pink and black paint	< 59.2 mg/kg	Pass
		Composite yellow and white paint	< 51.5 mg/kg	Pass
Wooden Frog Pencil	Indonesia	White/black/red/orange/yellow coating	<1.67 mg/kg	Pass
Acrylic Finger Puppet	Peru	Coloring dyes	14 mg/kg	Pass

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Cotton Finger Puppet	Peru	Coloring dyes	3.8 mg/kg	Pass
ALPACA Wool Finger Puppet	Peru	Coloring dyes	1.8 mg/kg	Pass
Organic Cotton Finger Puppet	Peru	Coloring dyes	15 mg/kg	Pass
Red color Gourd Maraca	Peru	Red paint	< 0.37 mg/kg	Pass
Orange color Gourd Maraca	Peru	Orange paint	< 0.32 mg/kg	Pass
Natural Gourd Maraca	Peru	Naturally colored with fire with little metal pieces inside	4.1 mg/kg	Pass
Gourd Piggy Bank	Peru	Plastic red plugs	< 2.7 mg/kg	Pass
Six paint colors for use by artisans	Bolivia	White, black, yellow, red, blue, green	Each <50 ppm	NA
Snow White Doll	Thailand	ASTM F963	All required tests fulfilled	pass
Ballet Slipper with Bear Family (large)	Thailand	ASTM F963-08	All required tests fulfilled	Pass
Red Riding Hood Doll-Light/blonde (406)	Thailand	ASTM F963	All required tests fulfilled	Pass
Octopus	Thailand	ASTM F963-08	All required test fulfilled	Pass
Humpty Dumpty (blue)	Thailand	ASTM F963-08	All required tests fulfilled	Pass
Frog Prince Doll: Blonde	Thailand	ASTM F963	All required tests fulfilled	Pass
African Floppsy Doll	Kenya	ASTM F963	All required tests fulfilled	Pass

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Hand Puppet (various animals)	Thailand	ASTM F963	All required tests fulfilled	pass
Doll Handbag w/zip (various colors)	Thailand	ASTM F963	All required tests fulfilled	Pass
Hand Puppet (cow)	Thailand	ASTM F963	All required tests fulfilled	Pass
Stuffed ball (small)	Thailand	ASTM F963	All required tests fulfilled	Pass
Carrot with Rabbit Family (medium)	Thailand	ASTM F963-08	All required tests fulfilled	Pass
Pineapple with 6 teddy Bears	Thailand	ASTM F963-08	All required tests fulfilled	Pass
Animal Bowling set	Thailand	ASTM F963	All required tests fulfilled	Pass
Mother pig with piggies	Thailand	ASTM F-63	All required tests fulfilled	Pass
BIB Velcro Fastener	Vietnam	Velcro fastener on bib	No phthalates	Pass