

Proposed Policy Statement on Potentially Hazardous Products  
Distributed Outside the United States

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Section 15b  
Comments  
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**Comments of Consumers Union, U.S. Public Interest Research Group, and  
Consumer Federation of America  
to the  
Consumer Product Safety Commission  
for  
Policy Statement on,  
Reporting Information Under 15 U.S.C. 2064(b) About  
Potentially Hazardous Products Distributed Outside the United States**

These comments are submitted by Consumers Union<sup>1</sup> (CU), U S Public Interest Research Group<sup>2</sup> (US PIRG) and Consumer Federation of America<sup>3</sup> (CFA) They are in response to the Consumer Product Safety Commission's (CPSC) request for comments on its policy statement that information concerning products sold outside the United States that may be relevant to evaluating defects and hazards associated with products distributed within the United States is reportable under section 15(b)

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<sup>1</sup> Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare Consumers Union's publications carry no advertising and receive no commercial support

<sup>2</sup> The U S Public Interest Research Group (U S PIRG) is the national lobbying office for the State PIRGs which are non-profit, non-partisan public interest advocacy groups with half a million members across the country

<sup>3</sup> Consumer Federation of America (CFA) is a non-profit association of over 260 pro-consumer groups, with a combined membership of 50 million that was founded in 1968 to advance the consumer interest through advocacy and education

We wish to put the issue into context by referring to a case at NHTSA with similar elements to those confronting CPSC. On August 9, 2000, Bridgestone/Firestone, Inc (Firestone) announced that it would recall 6.5 million tires that contained a defect related to sudden tread separation. As of the previous February, Firestone had recorded 193 personal injury claims, 2,288 property damage claims, and was a defendant in 66 lawsuits related to tires covered by NHTSA's investigation.

In May of 2000, the National Highway Traffic Safety Administration (NHTSA) opened an investigation into the tires ultimately subject to recall. The agency did so after receiving 90 complaints about the tread separations on these tires, most of which had occurred on Ford Explorers. Unbeknownst to NHTSA, however, Ford Motor Company (Ford) had previously taken several actions overseas to address safety problems related to the same model tires involved in Firestone's recall. In August 1999, Ford had offered to replace one of the recalled models in use in the Persian Gulf region. Ford stated that this action was taken because the tires "may experience interior tire degradation and tread separation, due to unique Gulf Coast usage patterns and environmental conditions, resulting in loss of vehicle control." Late in February 2000, Ford made a similar offer for almost identical reasons to owners in Malaysia and Thailand. A third offer was made, for the same reasons, in May of 2000, to owners in Venezuela covering certain tire models. Firestone was aware of all of these actions.

In none of these three instances did Ford or Firestone notify NHTSA of these actions.

There is no question that the Motor Vehicle Safety Act, 49 U.S.C. 30166(f), as

implemented by 49 CFR 573.8, would have required Ford to notify the agency of these actions had they occurred in the United States. NHTSA concluded after the fact, however, that neither company had broken the law because there was no express requirement for companies to report these events since they had not occurred in the United States.

In direct response to deaths and injuries related to the Firestone tire failures and subsequent tire recall, and evidence that NHTSA had either not been empowered to collect important information or was not adequately carrying out its mandate, Congress enacted the "Transportation Recall Enhancement, Accountability, and Documentation Act," (TREAD) which was signed into law by President Clinton on November 1, 2000, Pub. L. 106-414. In H.R. Rep. 106-954, accompanying H.R. 5164, the bill that became law, Congress noted

First, it is clear that the data available to NHTSA regarding the problems with the Firestone tires was insufficient. While testimony showed that the agency had received some complaints about the tires, both from consumers and from an automobile insurance company, they did not receive data about Ford's foreign recall actions or internal company data on claims related to this data. The Committee believes that the provisions of this legislation are an initial step toward correcting these problems.

The TREAD bill seeks to insure that NHTSA receives important data in a timely manner, including data related to foreign recall actions, by specifically stating in Section 30166(m)(3)(C) that,

.. the manufacturer .. shall report to the Secretary .. all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment in the United States, or in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States (emphasis added)

This background, we believe, helps to demonstrate a simple principle that policies of federal safety agencies must be clear that information about potential safety defects or actual recalls that occur in foreign countries that may have an impact on products sold in the United States must be reported promptly to these federal agencies CPSC's "Notice of proposed policy statement" on "Reporting Information Under 15 U S C 2064(b) About Potentially Hazardous Products Distributed Outside" states that,

Nothing in the reporting requirements of the CPSA or the Commission's interpretive regulation at 16 CFR Part 1115 limits reporting to information derived solely from experience with products sold in the United States.

Unlike NHTSA's authority, we believe that the Consumer Product Safety Act is clear CPSC has the authority to require that, at the earliest time possible, all available information that can assist the agency in evaluating potential product hazards be made available to CPSC by manufacturers, importers, distributors, and retailers. In this regard, we urge the Commission to clarify and set out this obligation in a specific policy statement. In addition to making this available in the Code of Federal Regulations, we urge that this policy statement be disseminated broadly to companies doing business in the United States and abroad.

We believe that it is important for all manufacturers, importers, distributors, and retailers that fall under CPSC's jurisdiction to understand clearly the agency's expectations for reporting. In that regard, we support CPSC's efforts to clarify the obligations of Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064 (b). Because the identification of defects, along with injuries and deaths to consumers happen randomly and in different geographical settings, it is vitally important that CPSC receive reports of suspected defects, injuries and deaths regardless of where those incidents occur. CPSC can evaluate the relevance of foreign information just as it does Section 15 information concerning reports of incidents in the United States. It is important for CPSC to learn about injury patterns and product trends. Information from a foreign source could supplement an otherwise isolated or limited U.S. experience and lead to the recall of unsafe products.

The Consumer Product Safety Act and other CPSC-administered statutes were intended to provide protection to American consumers. These Acts in no way limit CPSC's data collection to domestic sources, but rather anticipate agency collection of all information relevant to potential product hazards. This clarification of the reporting obligations required under Section 15(b) will further enhance the CPSC's ability to protect American consumers from product safety hazards.

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Respectfully submitted,

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