



U.S. CONSUMER PRODUCT SAFETY COMMISSION

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TESTIMONY OF COMMISSIONER JOSEPH P. MOHOROVIC
BEFORE THE SUBCOMMITTEE ON CONSUMER PROTECTION,
PRODUCT SAFETY, INSURANCE, AND DATA SECURITY OF THE
COMMITTEE ON COMMERCE, SCIENCE, & TRANSPORTATION OF
THE UNITED STATES SENATE

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Chairman Thune, Ranking Member Nelson, Chairman Moran, Ranking Member Blumenthal, and distinguished members of the Subcommittee, I sincerely appreciate the opportunity to speak with you today. As many of you are aware, I am the only MBA – and the only non-lawyer – on the Commission, so I bring a bit of a different perspective. Having managed a global business line for one of the world’s leading consumer product testing firms, the notion of Return on Investment is second nature for me. In the past, I used it to maximize profit. In the new role in which I have the honor of serving, the “profit” I’m looking for is the shared gain of fewer Americans suffering injuries and deaths from consumer products, so I’m thinking more in terms of *Safety* Return on Investment – SROI.

I would like to focus on the area where CPSC can realize the highest SROI, and that is at our ports and borders. CPSC's jurisdiction is huge – over 15,000 product categories – and imports are a very large portion of that – about half. More than 235,000 importers bring in about 14 million shipments annually worth over \$700 billion. In some categories – like toys – more than 90% of products we regulate are imported.

Some of those products are bound to be violative or unsafe. In fact, 80% of our recalls involve imported goods. Stopping products at the ports is more effective than recalling them, which is expensive and has limited effectiveness. To do that, however, requires vigorous inspection efforts. For any agency our size, vigorous inspection requires sophisticated targeting and prioritization. Every false positive – every shipment stopped that ultimately proves compliant – is not only an unnecessary interruption in commerce, but also a wasted opportunity to find and reject non-compliant products.

I am delighted that so many members of your staffs have been able to see firsthand the enormous challenge our small agency faces at the ports, and I would like to talk about three keys to meeting that challenge in the 21st century economy: How we target, how we surveil, and how we maximize our scarce resources.

RAM Scale-Up & User Fees

One key to enhancing our protection is to do more of one thing we are already doing well. As directed by the CPSIA, the Commission has developed a pilot Risk Assessment Methodology (or RAM), allowing us to focus more of our import inspections on products more likely to be violative. Our Fiscal Year 2016 Budget Request includes a request for authorization for a user fee to help fund the \$180 million we plan to spend in the next six years to expand to a full-scale RAM.

I have some reservations about the user fee mechanism. I also have some open questions about the details of our spending plans – particularly about the IT component and missed opportunities for economies of scale I would expect from an operational build-up of this size. However, I wholeheartedly support the notion of nationalizing our pilot targeting program. We have a successful proof of concept, and, at full-scale, RAM will enable us to better-target high-risk products and importers. More importantly, RAM will allow us to prioritize more significant threats to consumer safety over paperwork violations that, while unacceptable, are less likely to injure anyone.

Certificates of Compliance Rule (1110)

Along with the RAM scale-up, we are also overhauling how we bring information in through our proposed changes to our Certificates of Compliance rule, the so-called 1110 Rule. In those revisions, we propose to require

electronic filing of certificates prior to importation. Currently, importers of products that require certificates generally only have to make them available upon demand. I am concerned about the details of our proposal, its size, and the extent to which this strategy contributes to better targeting.

Our proposed Rule requires significantly more information in a certificate than what was required by Congress in the CPSIA. And by requiring certificates for exempt products, the sheer volume of the certificates we envision collecting is enormous. But we don't even have a good handle on what this total scope is. I hope you ask that question directly of us today.

In 2013, we wrote that we expected to see over 7.5 million certificates a year filed through an electronic registry – I suspect that is an astonishing underestimate. Not only is the volume of work staggering – and maybe an undercount – but it is inconsistent with President Obama's Executive Order on creating a single import window. Maintaining a separate, CPSC-specific process is, if not two full windows, at least a window and a mail slot, and it undercuts the efficiency goals of the Executive Order.

But the most important concern about our certificate proposal is: how is this in the public interest? How, exactly, are all these pieces of information contributing to better targeting and, as a result, fewer unsafe products? Moreover, we have not done enough to explain *why* we need all of the information the proposed rule identifies. The notion seems to have been that we should get all the information we can and *then* figure out what to do with it.

While I understand the impulse to leave no stone unturned, I believe we need to make every effort to ensure that we get what we need while not demanding any more than that.

One effort we can and should make is to subject this proposed rule to some form of cost-benefit analysis. When the agency issued its current rule, it did so through a direct-final rule that was promulgated without cost-benefit analysis or notice-and-comment. This decision was a pragmatic one: In addition to the certificate rule, the CPSIA required dozens of other rules and other agency actions across a wide swath of its jurisdiction, and there was simply too much to do to give every part of it the consideration it would otherwise have deserved.

Now, nearly seven years later, we do not have the same time pressure. We have done almost all of the work the CPSIA required, and, as a result, we have both the time to get this sweeping rule right and a better understanding of how it fits in our regulatory puzzle.

We are not required to perform any cost-benefit analysis of the certificate rule, let alone the robust examination reflected in Section 7 of the Consumer Product Safety Act.¹ The fact that there is no law telling us we *must* look at the costs and benefits of this proposed rule, however, does not mean we should not choose to do so. One of our basic obligations as federal officers is to ensure that we are not wasting taxpayers' money. When we write a check on the

¹ That analysis is required for any mandatory consumer product safety standard we wish to implement, but the certificate rule is not such a standard.

people's behalf, we need to make sure they get something of similar value in return.

In the case of the certificate rule, my strong suspicion is that even a rudimentary cost-benefit analysis will show that the costs we would impose on the economy in collecting tens of millions of certificates and perhaps billions of data points would dwarf the safety benefits consumers would see from that information. Done properly, our analysis could help us understand which data elements help us target unsafe products and which do not, allowing us to make a conscious choice about exactly how much burden we will impose for exactly how much benefit we will receive in return.

Trusted Trader

Even if they are better-defined, user fees and certificate pre-filing will impose considerable burdens on importers. We should look for ways to offset those. One such offset I have advocated for is to make the import process simpler and faster for the demonstrated good actors in our regulated community through a Trusted Trader program.

Our partner agencies – including CBP and TSA, and soon FDA – have created programs through which their regulated entities subject themselves to greater advance scrutiny in exchange for reduced regulatory supervision. The agencies, in turn, benefit from more insight and the opportunity to redirect scarce inspection resources, and they cannot sign up volunteers fast enough. CPSC

should emulate that model with a robust, sophisticated Trusted Trader program.

As I mentioned earlier, RAM is a valuable tool and one we need to maximize. However, its focus is on finding the needles in our import haystack. Trusted Trader shrinks the stack. It allows us to spare the agency *and* importers the waste of inspecting goods we could have already determined to be low-risk.

To reach the level of confidence necessary for that determination, CPSC program administrators should not only put the *applicant* under a microscope, but pull back the curtains on its *suppliers*, as well. To interest companies in this poking and prodding, we should offer significant benefits, primarily in fewer inspections, lower administrative burdens and faster, more predictable, time-to-market.

My priority is strengthening our safety efforts. While Trusted Traders would enjoy real benefits, those would come only after CPSC has developed empirical evidence of the competency of their supply chains. The bar should be reachable, but high. Of course, if we learned of a Trusted Trader falling short of its responsibilities, the response would be strong and swift.

President Reagan espoused the principle that we should “trust, but verify.” In an evolved CPSC import surveillance system, we would verify, then trust – and continue to verify. By doing so, we reduce the enormity of the out-sized challenge and make the mission a more achievable one.

Conclusion

The ports are a natural bottleneck in the stream of commerce. That creates both a great opportunity for protecting consumers and a high risk of stifling legitimate trade. With a robust RAM program, we can more readily identify likely violative products and keep them out of the stream of American commerce. With a robust Trusted Trader program, we can more readily identify likely *compliant* products and rapidly get them to market so that consumers can enjoy them more cheaply, more quickly, and more safely.