Summary of Commissioner Thomas H. Moore's written testimony

Recalls of children's products containing lead or lead paint have received an enormous amount of attention during recent times. It is very encouraging for me to see that our lawmakers are dedicating themselves to working with the Commission to define real solutions to resource and authority issues that may be at the root of these kinds of, and other, product safety problems finding their way into the stream of commerce in this country.

The key to an effective regulatory and enforcement body is sufficient resources to carry out its responsibilities and mission. The CPSC is a staff intensive organization. I have always expressed that at the heart of CPSC's operation is its staff, without question, our greatest and most important asset.

Over the last few years, because we have achieved our budget required staff reductions through non-targeted means such as attrition, early-outs and buy-outs, we have lost some very key staffers. Over time we hope to be able to train replacements, but the experience that we have lost will take years to recover. Moreover, the lack of sufficient resources has severely limited our ability to do succession planning and severely limited our ability to have depth of personnel behind our key positions.

This summer has most definitely been the summer of the recalled toy made in China. There have been several highly publicized recalls of children's products made in China for importation and sale by well established and long trusted domestic toy manufacturers. The safety issues associated with the increase in imports have created new challenges for our Commission. The Commission is currently looking at ways to address the developing issues surrounding imported consumer product safety. We are involved in some activities such as dialogue and initiatives with foreign governments and the private sector, including domestic and foreign manufacturers.

For example, last week the Commission signed a joint statement in which our product safety counterparts in the Chinese government proposed to stop the use of lead paint in the manufacture of toys they export to the U.S. However, we must be cautious in our dependence on foreign governments to make sure that products exported from their countries comply with our U.S. safety standards. Other countries expect, as we do, that the receiving countries' regulators (or the marketplace) will find and address problems with products within their own borders. Our own statute makes it clear (as does the legislative history) that it is not the Commission's concern whether products made in the U.S. for export meet the mandatory or voluntary product safety standards of other countries. It may be a bit unreasonable for us to realistically expect more from other countries than that which we expect of ourselves.

We at the Commission are also working with interested Congressional members in both the House and Senate to modernize our governing statutes to give us more leverage through the regulatory process and our enforcement activities. This subcommittee, in particular, has been tremendously engaged in our issues from the very beginning of this Congress and must be given credit for providing the impetus for recommendations for legislative action submitted by members of the Commission to the House, the Senate and the Administration.

Some of the highly publicized recalls have involved children's products that contain lead or lead containing paint. Toys or other articles intended for use by children that bear "lead containing paint" are banned hazardous products. It is a prohibited act to introduce or deliver for introduction into interstate commerce a banned hazardous substance. Any person who violates this law could be subject to both criminal and civil sanctions.

As far as children's products such as jewelry or vinyl baby's bibs containing accessible lead, I wish that the Commission had the authority to find it unacceptable for any amount of lead (or any other toxic substance) to be in a children's product. However, our statute requires us to assess the accessibility of the lead and this is the key measure under the Federal Hazardous Substances Act (FHSA). We know that exposure to lead can elevate blood lead levels and that such exposure could bring about developmental problems in children. I am absolutely certain that parents would agree that if we could require the elimination of lead in children's products, we should. I understand that some members of Congress are interested in this issue and I hope that through their efforts we can address this problem and get it resolved in favor of thoroughly protecting our children from unnecessary exposure to lead containing products.

Last week, Senator Mark Pryor introduced legislation with Commerce Chairman Senator Daniel Inouye that will severely test the real will of Congress to provide the Commission with the necessary tools it needs to be an effective force in protecting consumers from product safety hazards. This House Committee has also addressed some of these issues and, I understand, is working on its own comprehensive reauthorization bill. I am hopeful that we see significant results from all of our efforts.

I know that the American public, especially parents and their children, will be thankful.

U.S. CONSUMER PRODUCT SAFETY COMMISSION

STATEMENT OF COMMISSIONER THOMAS H. MOORE

Submitted to the

Subcommittee on Commerce, Trade, and Consumer Protection
House Committee on Energy and Commerce

September 19, 2007

Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for providing me with this opportunity to present testimony at your hearing today on the important issues surrounding "Protecting Children from Lead-Tainted Imports." Recalls of children's products containing lead or lead paint have received an enormous amount of attention during recent times. It is very encouraging for me to see that our lawmakers are dedicating themselves to working with the Commission to define real solutions to resource and authority issues that may be at the root of these kinds of, and other, product safety problems finding their way into the stream of commerce in this country.

As I have indicated to this House subcommittee and to the Senate, I am gratified by the very clear signals given by both the House and the Senate Authorizers and Appropriators that they understand the very difficult position that the Consumer Product Safety Commission (CPSC) finds itself in. For the first time since I came to the Commission, over twelve years ago, I have the sense that there is a realization of the need for <u>both</u> a substantial and sustained increase in our funding level as well as the need for real and important changes to our statutes which could give us new authorities and clearer direction in achieving our mission.

In March of this year, in a written statement to the Senate Committee on Commerce, Science, and Transportation, I spoke about the problems associated with any perception of our modern, sophisticated marketplace of today effectively regulating itself for product safety. "Simply stated, competition and voluntary actions of today's businessmen do not always suffice to safeguard the public interest. Competition does not and will not inevitably take the form of a rivalry to produce the safest product. The role of the CPSC in today's consumer product

marketplace remains compelling, substantial and relevant."

As if on cue, we now sit here less than six months later facing the growing alarm about possibly unsafe consumer products, some produced in violation of current, longstanding regulations, cheaply manufactured in foreign facilities and now flooding our marketplace and providing a risk of harm to those consumers who purchase them. I think it is extremely important that you have engaged the importer community in the discussion of this problem. I will be very interested in their response as I believe that they are a key link in protecting consumers.

Everyone wants to know who is to blame and what steps we can now take to address this problem. The short and easy answer to the first question is that we are all to blame - the Administration, the Congress, the Regulators, the manufacturers, importers and retailers, and anyone else who may have been active or inactive participants in enabling the policy decisions and priorities that have led us to this point. And certainly, those who stood by and quietly acquiesced while the Commission was being reduced to a weakened regulator, largely relying on the regulated to regulate themselves, must examine and correct the role that they played in putting the Commission in its current state. The only blameless ones are the unsuspecting consumers who unwittingly place their confidence in a system designed to protect them from the unreasonable risk of harm from the products that they find in their marketplace.

The second question does not have as short or easy an answer.

RESOURCES, RESOURCES, RESOURCES

The key to an effective regulatory and enforcement body is sufficient resources to carry out its responsibilities and mission. The CPSC is a staff intensive organization. I have always expressed that at the heart of CPSC's operation is its staff, without question, our greatest and most important asset.

Over the last few years, because we have achieved our <u>budget required</u> staff reductions through non-targeted means such as attrition, early-outs and buy-outs, we have lost some very key staffers. We did not want to have to do a reduction-in-force (RIF) to accomplish the staff reductions and, having a number

of older employees, we felt it was likely we would have enough employees willing to take advantage of incentives to be able to avoid a RIF, which was in fact the case.

Over time we hope to be able to train replacements, but the experience that we have lost will take years to recover. Moreover, the lack of sufficient resources has severely limited our ability to do succession planning and severely limited our ability to have depth of personnel behind our key positions. In addition, dwindling resources and staff reductions have had some negative impact on our agency's ability to attract high level qualified candidates for our critical vacancies as well as our ability to retain some of our own top level employees.

The result is that the Commission is at a crossroads. Any additional reductions in staff or resources will ultimately place the Commission in a position where it will no longer have any effective force in consumer protection. The first step that must be taken is to reject the administration's staffing and budget proposal for fiscal year (FY) 2008 which requires an additional reduction of 19 FTEs. Fortunately, Congress, both the House and the Senate, have done just that. This Congress has sent clear signals that it understands that the Commission needs more funding to increase its staff and to be able to do work on rulemakings and other projects that have been shelved or slowed down because of lack of resources. It is crucial that we have a period of stability, to move away from what has been a pattern of trying to see how we can manage with less and to begin a process of determining what more we need to have in order to ensure that we do our job more effectively.

However, I must point out that it would not serve the Commission or the public well to just indiscriminately throw resources at the Commission in response to the public alarm surrounding some highly publicized recalls. It has taken years for the Commission to get to its present position and it will take years to correct. I support an incremental approach to increasing our budget and staff. Since we require a yearly increase of about three to four percent to keep current with increases in salaries, rents and other operating costs, yearly increases in the range of 10 to 15 percent would, in my mind, provide the Commission with a good growth pattern. This growth pattern would also allow the Commission to do a yearly assessment of where the areas of needs most exist at the Commission therefore allowing the Commission to address its needs in the light of the current consumer product safety problems.

IMPORT PRODUCT SAFETY

Again, in March of this year, I informed the Senate Committee on Commerce, Science and Transportation about my concerns with the growing numbers of possibly harmful imported consumer products coming into our country. "In the future, the problems associated with increasing numbers of possibly dangerous imported products will present the Commission with more and more of a challenge. Increasing numbers of U.S. companies are either importing finished products or component parts made in other countries or establishing their own production plants outside of the U.S. In most cases, domestic companies are not going to have the same degree of control over these products as they would have if their products were being made in this country. This inability to have constant hands-on supervision can result in products entering this country that do not meet U.S. safety standards."

This summer has most definitely been the summer of the recalled toy made in China. There have been several highly publicized recalls of children's products made in China for importation and sale by well established and long trusted domestic toy manufacturers. Thus far in 2007, CPSC has recalled a record number of hazardous imported products from China including a wide variety of toys and children's jewelry. The safety issues associated with this increase in imports have created new challenges for our Commission. The Commission is currently looking at ways to address the developing issues surrounding imported consumer product safety. We are involved in some activities such as dialogue and initiatives with foreign governments and the private sector, including domestic and foreign manufacturers.

For example, last week the Commission signed a joint statement in which our product safety counterparts in the Chinese government proposed to stop the use of lead paint in the manufacture of toys they export to the U.S. However, we must be cautious in our dependence on foreign governments to make sure that products exported from their countries comply with our U.S. safety standards. Other countries expect, <u>as we do</u>, that the receiving countries' regulators (or the marketplace) will find and address problems with products within their own borders. While our agency's attempts to go to the source before the problem products arrive on our shores are necessary and admirable, our own statute makes it clear (as does the legislative history) that it is not the Commission's concern whether products made in the U.S. for export meet the mandatory or voluntary product safety standards of other countries. It may be a bit unreasonable for us to realistically expect more from other countries than that

which we expect of ourselves. We should consider whether this policy is still appropriate today. If we export our safety standards along with our products, we take an important step in harmonizing standards in what is increasingly a global marketplace.

In addition, to engaging in activities intended to elicit cooperation from manufacturers and foreign governments, the Commission must advocate for additional resources to increase surveillance and enforcement activities at the borders and in the marketplace. I note here that in a recent Time Magazine article it stated that the Food and Drug Administration has 1,317 field investigators and inspects just 0.7% of all imports under its jurisdiction. CPSC has perhaps a total of 15 people (out of a total field investigative staff of less than 90) to visit those same ports of entry to inspect for the more than 15,000 product types under our jurisdiction. I think those numbers speak volumes about why products under our jurisdiction that violate our mandatory safety standards keep finding their way into the marketplace.

We at the Commission are also working with interested Congressional members in both the House and Senate to modernize our governing statutes to give us more leverage through the regulatory process and our enforcement activities. This subcommittee, in particular, has been tremendously engaged in our issues from the very beginning of this Congress and must be given credit for providing the impetus for recommendations for legislative action submitted by members of the Commission to the House, the Senate and the Administration.

However, I think that it is very important that in whatever we do collectively - through efforts at the Administration level, Congress and the Commission - to address import product safety, we must send a clear, unequivocal message to manufacturers, importers and retailers who bring and offer for sale in this country products which present a substantial product hazard or that do not comply with a U.S. product safety standard. That message should be that, "your actions are unacceptable and you will be held accountable." The Commission must have the sufficient resources, the adequate authority and the internal willingness to deliver that message with no hesitation.

STATUTORY AND OTHER MODERNIZATION

Some of the highly publicized recalls have involved children's products that contain lead or lead containing paint. Toys or other articles intended for use by children that bear "lead containing paint" are banned hazardous products. It is a prohibited act to introduce or deliver for introduction into interstate commerce a banned hazardous substance. Any person who violates this law could be subject to both criminal and civil sanctions. Prior to 2007, we had been averaging four recalls a year for children's products with "lead containing paint." This year we have already had 15. This regulation banning children's products that have "lead containing paint" has been on the books for 30 years and there is absolutely no excuse for a violation of this regulation. Violators should be held accountable to the maximum extent for their non-compliance.

As far as children's products such as jewelry or vinyl baby's bibs containing accessible lead are concerned, I wish that the Commission had the authority to find it unacceptable for <u>any</u> amount of lead to be in a children's product. However, our statute requires us to assess the accessibility of the lead and this is the key measure under the Federal Hazardous Substances Act (FHSA). The Commission did issue a guideline document back in January of 1998, which went so far as to urge manufacturers "to eliminate lead in consumer products." In response to that guidance, in August of 1998, the Toy Manufacturers of America pledged to eliminate lead from their products. Yet here we are, nearly ten years later, facing the same problems.

We know that exposure to lead can elevate blood lead levels and that such exposure could bring about developmental problems in children. I am absolutely certain that parents would agree that if we could require the elimination of lead in children's products, we should. I understand that some members of Congress are interested in this issue and I hope that through their efforts we can address this problem and get it resolved in favor of thoroughly protecting our children from unnecessary exposure to products containing lead.

Testing of products on the market to determine compliance with safety standards is also an important part of our responsibilities. I can't tell you how troubling the picture of our toy testing facility in the <u>New York Times</u> article was to me. We have been trying to obtain funds to modernize our lab since before I arrived at CPSC in 1995, yet we have never received any significant funding for

that goal. We have been working with GSA on a modernization plan since at least 1999. The Lab Modernization Feasibility Study, completed jointly with GSA in 2005, formed the basis for a capital project submitted to OMB by GSA as part of their FY 2007 Budget. However, other national priorities precluded the project from being funded. There certainly has been a level of frustration associated with the process. We have been forced to accept a band-aid approach to fixing the lab, when what we really need is a major modernization commitment.

I have seen other testing labs, such as those at Underwriters Laboratories, which are much more sophisticated, spacious and up-to-date than our lab. Given that we are the federal agency designated to protect consumers from product hazards and that our laboratory testing plays a key role in making hazard determinations, I think the state of our lab should concern everyone. However, whenever I go to our lab I am constantly amazed at the ingenuity of our lab staff in overcoming space and resource limitations. We often talk about the agency making do with what it has and nowhere can that be seen more strikingly than at the lab. I would like to see a real investment made in upgrading our lab so that we can do more testing in our own facility rather than having to contract the work out and so that tests don't stack up because of a lack of adequate space or other resources, which prevent us from doing simultaneous testing on various products.

We are currently looking at different "real estate" solutions with GSA that would give us a better physical plant. However, these solutions may or may not allow us to function at the same capability we currently have and they would not include any modernization of equipment. It was estimated back in 2005, that the cost to truly modernize our lab, if we were to stay on the current site, would be somewhere around thirty million dollars. This would expand our capabilities plus give us new equipment and a physical plant that is both energy efficient and an effective use of space. A modern facility would also put us in a better position to deal with emerging technologies, such as nanotechnology. It is difficult for us to even contemplate how we would assess potential product-related nanotechnology hazards when we struggle to provide the basic lab capabilities to meet our current needs.

CONCLUSION

Even before several recent highly publicized recalls, members of both the House and the Senate had indicated an interest in reinvigorating the Commission through the reauthorization process. I have strongly supported increasing our

staff and facilities resources and various changes to our statutes over the years. I have submitted to both the House and the Senate proposals for consideration during this process of looking at reauthorization of the Commission. Acting Chairman Nord has also put forth her proposals, many of which I agree with, some of which (in one form or another) I have advocated for years. Thus, for the first time in a long time, there is bi-partisan support on the Commission to make major changes to the Commission's statutes. Some of the suggested changes could help the Commission's enforcement efforts with respect to the type of problems we have been seeing with the safety of imported products.

Last week, Senator Mark Pryor introduced legislation with Commerce Committee Chairman Senator Daniel Inouye that will severely test the real will of Congress to provide the Commission with the necessary tools it needs to be an effective force in protecting consumers from product safety hazards. Many of the provisions of the legislative package come from the recommendations submitted by Acting Chairman Nord and myself. The CPSC Reform Act of 2007 authorizes additional funding to increase staff levels to 500 employees by 2013, improve our antiquated testing facilities, engage in nanotechnology research and increase our staff's presence at U.S. ports of entry. The legislative package also strengthens the agency's enforcement powers by increasing civil and criminal penalties, requiring third party certification on all children's products, banning the use of lead in children's products, requiring labeling of children's products with tracking information to facilitate recalls, making it unlawful to sell recalled products and by streamlining the product safety rulemaking process. There are other provisions as well and, as I said, most of which were endorsed by me or Acting Chairman Nord.

This House Subcommittee has also addressed some of these issues and, I understand, is working on its own comprehensive reauthorization bill. I am gratified by the attention that Congress is paying to the Commission and I am hopeful that we see significant results from all of our efforts.

I know that the American public, especially parents and their children, will be thankful.