



Inspiring Generations of Play

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February 8, 2019

**The European Commission
Brussels, Belgium**

Re: Comments of the Toy Association and the U.S. Toy Industry Regarding Proposed Revision of the CLP Regulation (specifically, the proposal to amend Annex II of Regulation (EC) 1272/2008 regarding titanium dioxide) (TBT Notification EU/629)

Sent via U.S. TBT Enquiry Point

Dear Sir or Madam:

The Toy Association appreciates the European Commission's efforts to protect the health of European Union consumers and values the Commission's willingness to consider industry inputs as part of its regulatory process. Unfortunately, the above-referenced proposal would have far-reaching negative effects on the toy industry by prohibiting many current safe uses of titanium dioxide. This inert mineral is widely employed as a pigment in plastics, in printing inks, and in many other applications; there are no readily-available substitutes with comparable performance. We therefore respectfully submit the following comments on the proposal referenced above.

The proposed revision of the EU Classification, Labeling, and Packaging (CLP) regulation contains two areas of significant concern to our industry:

1. While there are some uses of titanium dioxide that may present a risk to health (i.e. respirable small particles), as currently proposed, the revision would impose labeling mandates on liquid mixtures containing $\geq 1\%$ titanium dioxide with particle size $< 10\mu\text{m}$; it would also mandate warnings on solid mixtures containing $\geq 1\%$ titanium dioxide, regardless of particle size. Unfortunately, due to the Carcinogen, Mutagen, and Reprotoxin (CMR) restrictions in the EU Toy Safety Directive (TSD), the toy industry would not be allowed to warn by labeling, but would instead be prohibited from using 1% or more of titanium dioxide in toys -- even if in liquids not intended and not conceivably likely to be sprayed or in solid parts where there are no likely uses which could create respirable particles (e.g. molded plastic parts containing titanium dioxide as a white pigment). This means that the revised regulation would be more stringent than necessary to accomplish its intended purpose, which is a violation of the EU's WTO obligations regarding Technical Barriers to Trade.

2. Even if a derogation to the TSD CMR requirement allowing higher levels of titanium dioxide were to be issued, the toy industry would still presumably be obligated to label, even for uses where respirable TiO₂ particles could not conceivably be liberated. Such a requirement would not only *not* improve safety but might instead *detract from it* by diverting consumer attention from warnings which describe a demonstrated risk (such as the presence of small parts which might cause choking), to those cautioning about a non-existent risk such as that from applications like those described above, where titanium dioxide could not conceivably become respirable in any significant amount. Such an outcome would clearly not be in the interest of The Commission, industry, or consumers.

We leave it to the Commission to determine the most appropriate path to address this suboptimal situation, but one possibility is to issue a derogation (including from the labeling mandate) to the TSD CMR requirement. This should apply for titanium dioxide used in toys where the intended use of such toys is unlikely to create significant respirable titanium dioxide.

Again, we appreciate the opportunity to provide these comments, and the Commission's willingness to consider industry concerns and input. If you should have any questions, please do not hesitate to contact me at [REDACTED]@toyassociation.org.

Thank you for your consideration.

Sincerely,

[REDACTED]

[REDACTED]

Technical Affairs

About The Toy Association: The Toy Association™, Inc. represents more than 900 North American-based businesses – toy manufacturers, importers and retailers, as well as toy inventors, designers and testing labs – who are all involved in bringing safe and fun toys and games for children to the U.S. and global markets. Safe play is the number one priority for the Association and its members. Approximately 3 billion toys are sold in the U.S. each year, totaling \$25 billion at retail; Association members account for approximately 90% of this market. Many of our members' products are sold in the EU market.



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