

## The Global Expansion Of Toy Legislation

*Law360, New York (July 22, 2010)* -- Legislation governing the safety of children's products and toys continues to expand in countries across the globe. Both the United States and the European Union have recently enacted legislation to dramatically expand the legal requirements applicable to certain products intended for children. Several other countries are expected to update and expand their laws governing toys in the near term and many more have robust requirements already in place.



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For companies manufacturing or distributing toys worldwide, understanding and complying with these expanding legal requirements in key markets will present new compliance challenges. Typically, legal measures governing toys prohibit the sale of noncompliant products and impose some combination of product design requirements, restrictions on the use of various metals and chemicals, as well as product labeling, testing and certification requirements. In many instances, the legislation is tied to evolving international toy technical safety standards.



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The failure of manufacturers and importers to assess and comply with the expanding universe of toy legislation can present significant legal and reputational risks.

Market access in many countries is linked to compliance with toy legislation and standards. In addition to business disruption, companies that fail to meet these requirements can face monetary penalties and potential tort liabilities. The interest among regulators and the wider public in protecting children from product-related health and safety risks means instances of noncompliance can also become high-profile media events, as several recent product recalls in the United States make clear.

This article provides an overview of the recent international trends in toy regulation and perspectives on how companies in the global toy industry can meet growing compliance challenges in key markets.

## **Evolving Regulatory Landscape**

Navigating regulatory requirements to ensure market access for products on a global level is an expanding challenge for many companies in a variety of product sectors. Complicating matters for toy manufacturers and importers is the fact that the regulatory requirements applicable to their products are rapidly evolving.

In the United States, the Consumer Product Safety Improvement Act of 2008 marked a dramatic expansion of safety requirements governing children's products and toys. Congress passed the CPSIA following several high-profile product recalls involving lead-tainted toys. The CPSIA imposes new material restrictions and labeling obligations on children's products and toys as well as expanded testing and certification requirements for a broad range of consumer products.

Several regulations applicable to toys, such as restrictions on small parts that present a choking hazard and on lead in paint, predate the CPSIA and have been in effect for years.

The European Union passed a new directive regulating phthalates (a kind of plasticizer) in toys and childcare articles in 2005 and substantially amended its Toys Directive just last year. Under the new Toys Directive, all substances classified in the EU as carcinogenic, mutagenic, or toxic for reproduction are banned in toys, and the list of restricted heavy metals was increased from 8 to 19.

Several countries, including Australia, Canada and China, are currently in the process of overhauling their consumer product and/or toy safety laws with potentially significant implications for how toys will be regulated.

Many countries, such as India and New Zealand, incorporate into their national legislation or simply require compliance with international harmonized toy standards, like ISO 8124, EN 71, or ASTM F963. Depending on the jurisdiction, changes to these technical standards will in effect amend applicable legal requirements.

For example, while the CPSIA made compliance with the 2007 version of ASTM F963 mandatory in the United States, the Consumer Product Safety Commission has the authority to require compliance with any subsequent amendments to the toy standard as well.

## **Covered Products**

Because toys are often subject to safety standards and certification or labeling obligations that are far more restrictive than those governing consumer products generally, determining whether a product qualifies as a "toy" subject to these more stringent requirements is a critical first step in ensuring compliance. The challenge for global toy companies and distributors is that such a determination may vary between jurisdictions.

Typically the definition of "toy" is linked to whether the product is intended for children and has play value. This often requires consideration of many factors, including how the product is marketed, where it will be sold, whether it has cartoons or other features appealing to children, and whether it has play or entertainment value for children.

Most jurisdictions define toys roughly as products designed or intended for use by children under age 14 in play. The subtle variations between laws, however, could result in the same product being regulated in one country but not another.

For example, Canada's Hazardous Products Act and related regulations limit certain substances in "toys, equipment and other products for use by a child in learning or play." In contrast, the new EU Toys Directive excludes from the meaning of "toy" certain educational products intended for use for in schools, such as science equipment.

In addition, some jurisdictions regulate a broader scope of products intended for children. In addition to the Canadian example, the CPSIA restricts lead in “children’s products,” which are defined as consumer products designed or intended primarily for children 12 years of age or younger.

A determination of whether a product is subject to potentially applicable toy legislation thus requires a country and product-specific analysis that is becoming increasingly complex as requirements expand.

### **Types of Requirements**

Despite the significant variation in the approach and focus of worldwide toy laws, some requirements are fairly common.

For example, nearly every jurisdiction regulating toys limits lead in the product, in paint or surface coatings on the product, or in both ways. Other common material restrictions include heavy metals, such as cadmium, chromium, barium and mercury, and six types of phthalates. Many jurisdictions restrict a longer list of materials, often borrowing from the specifications of international toy standards.

Some restrictions are expressed in terms of bioavailability or migration while others are expressed in terms of concentration. Thus, the specific regulation must be carefully reviewed and test methods assessed to ensure compliance.

Design requirements are also common in toy laws to minimize risk of injury to children from hazards like sharp edges, small parts and loud noises. Finally, additional market access requirements in the form of testing, certification and labeling abound and can present further compliance challenges.

### **Going Forward**

The expansion of toy legislation is part of a larger global trend toward increased regulation of products generally. The recent expansion of toy regulation can be expected to continue for some time as governments respond to new research findings on risks posed by certain materials, public access to testing facilities expands, and consumer advocacy campaigns press for more stringent standards and requirements aimed at protecting children’s health and safety.

While the evolution of worldwide toy regulation presents new compliance challenges for companies operating in the global toy market, it also presents important business opportunities for those companies best able to anticipate, assess and comply with these new toy requirements in key markets.

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