

# 中国 WTO/TBT 国家通报咨询中心

## China WTO/TBT National Notification & Enquiry Center

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| <b>Date:</b> January 30, 2008   | <b>Number of pages:</b> 2+3  |
| <b>Copies:</b>  |  |
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| <b>Subject:</b><br><b>Comments on USA Notification G/TBT/N/USA/322</b><br>Lead-Containing Products -- Prohibition, House Bill Number 8  |  |

## **Comments on USA Notification G/TBT/N/USA/322**

Lead-Containing Products -- Prohibition, House Bill Number 8

Dear Sir or Madam,

We appreciate the opportunity to submit comments on the notified regulation proposed by State of Maryland.

Enclosed please find comments in English and Chinese.

Please acknowledge receipt of the comments by e-mail to [tbt@aqsiq.gov.cn](mailto:tbt@aqsiq.gov.cn).

Thank you very much in advance for State of Maryland to take into account our comments. Your formal reply will be appreciated.

Best regards

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## **Comments on USA Notification G/TBT/N/USA/322**

### **Lead-Containing Products -- Prohibition, House Bill Number 8**

The government of China appreciates USA to allow Members to make comments on the notification G/TBT/N/USA/322. China would like to put forward the following comments on the notified regulation.

1. As everyone knows, the total lead content in the toy includes the soluble lead content and insoluble lead content. Soluble lead, due to its characteristic of bioavailability, will bring harm to human health; while the insoluble lead will not bring harm to human health. Therefore, only the soluble lead in total lead can bring harm to the health. In view of this, besides North America, other countries in the world only limit the soluble lead in toys, but not limit the total lead content. According to Article 2.3 of WTO/TBT Agreement, "Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner." The circumstances or objectives giving rise to limit the total lead content adopted by the notified technical regulation no longer exist, therefore we suggest you cancelling the notified technical regulation. Otherwise, please provide relevant scientific basis for above-mentioned conditions of the technical regulation.

According to Article 6.3 of WTO/TBT Agreement, "Members are encouraged, at the request of other Members, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each others conformity assessment procedures. Members may require that such agreements fulfill the criteria of paragraph 1 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned", we suggest entering into negotiations with USA on above issues, so as to make an effort in facilitating the international trade.

2. In Article (G) of the notified technical regulation, "The leaded products" is defined as "Products of any component, ingredient or coating containing lead or lead compound." While according to general knowledge, some components that are impossible for child to touch, will not bring harm to the health of children. And in this regulation, the range of "The leaded products" does include all components and materials that is impossible to bring harm to the health of children, which is obviously not scientific. In view of the strictness and rationality of the regulation, we suggest you limiting the range of "The leaded products" to accessible component.

3. It is stipulated in Article (H) of the notified technical regulation that, "products" that limit the lead content include "clothes and ornament". Thus, it maybe concluded that the legitimate objective that the technical regulation will realize is to protect the health of children, which may create unnecessary barriers to international trade. In assessing such risks, relevant elements of consideration are: available scientific and technical information proving that the "clothes and ornament" will bring harm to health of children; as well as intended end uses of

the “clothes and ornament” for wearing. According to Article 2.2 of WTO/TBT Agreement, “Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products”, we suggest you cancelling the provision of “clothes and ornament” in the range of “products”, or please assess the risk on the base of fully considering the above relevant elements.

4. The regulation has laid down clear limit of total lead content in the product, but it stipulates that the limit can be determined by the Secretariat in certain cases at the same time, however, it fails to clarify in what case the limit can be determined by the Secretariat and how to determine the limit, please clarify in what case the limit can be determined by the Secretariat and provide relevant scientific basis.

5. The notified technical regulation has made clear provision for total lead content limit of various materials in many kinds of product, but does not provide the test method for total lead content in materials. Because the category of materials addressed in the notified technical regulation is numerous and relatively complicated, in addition, considering strictness and operability of the technical regulation, we suggest you providing corresponding test method, as well as reasonable scientific and technical basis for these test methods.

Comments in Chinese is as below:

中国政府感谢美方履行 WTO 透明度义务，给予 WTO 成员评议 G/TBT/N/USA/322 号通报的机会。经认真研究，中国愿就美国 G/TBT/N/USA/322 号通报提出如下评议意见，请贵方予以考虑。

1、众所周知，玩具中的总铅含量包括可溶性铅含量和不可溶性铅含量。而可溶性铅，因其生物利用率特性，会对人体健康产生伤害；不可溶性铅则不会对人体健康产生伤害。因此，只有总铅中的可溶性铅才对人体健康产生伤害。鉴于此，世界上除北美地区外，其他国家仅对玩具中的可溶性铅进行限制，没有对总铅含量实施限制。根据 WTO/TBT 协定第 2.3 款“如与技术法规采用的情况和目标已不复存在，或改变的情况或

目标可采用对贸易限制较少的方式加以处理，则不得维持此类技术法规”的规定，本通报的技术法规所采用限制总铅含量的情况或目标已不复存在，因此我方建议贵方取消本通报的技术法规。否则，请提供支持此技术法规上述条件的相关科学依据。

根据 WTO/TBT 协定第 6.3 款“鼓励各成员应其他成员请求，就达成相互承认合格评定程序结果的协议进行谈判。成员可要求此类协议满足第 1 款的标准，并在便利有关产品贸易的可能性方面使双方满意”的规定，我方建议与贵方就上述问题进行磋商，以便对国际贸易的便利作出努力。

2、本通报的技术法规中 ( G ) 条款中有关“含铅产品”的解释是指“含铅或铅化合物产品的任何部件、成分或涂层的产品”。而根据常识，产品中的一些不可能被儿童触及部件，不会对儿童的健康产生伤害。而本法规中“含铅产品”的范围则为包括不可能对儿童健康产生伤害的那些不在内的全部部件和材料，显然是不科学的。考虑到法规的严谨性和合理性，因此我方建议贵方把“含铅产品”的范围限定为可触及部件。

3、本通报的技术法规中 ( H ) 条款中规定对铅含量加以限制的“产品”包括“服装和装饰品”。由此而见，本技术法规所要实现的合法目标是保护儿童健康，可能造成的风险是对国际贸易造成不必要的障碍，在评估此风险时，应考虑的相关因素包括：可获得的证明“服装和装饰品”对儿童健康产生伤害的科学和技术信息；以及“服装和装饰品”用于穿着的预期最终用途。根据 WTO/TBT 协定第 2.2 款“各成员应保证技术法规的制定、采用或实施在目的或效果上均不对国际贸易造成不必要的障碍。为此目的，技术法规对贸易的限制不得超过为实现合法目标所必需的限度，同时考虑合法目标未能实现可能造成的风险。此类合法目标特别包括：国家安全要求；防止欺诈行为；保护人类健康或安全、保护动物或植物的生命及保护环境。在评估此类风险时，应考虑的相关因素包括：可获得的科学和技术信息、有关的加工技术或产品的预期最终用途”的规定，我方建议贵方

在“产品”范围中取消“服装和装饰品”的规定，否则请贵方在充分考虑上述相关因素的情况下，对风险进行评估。

4、本法案中对产品总铅含量限值作了明确的规定，但同时规定在一定条件下可由秘书处对限量做出设定，但未明确在什么情况下由秘书处设定限量以及如何设定限量，请贵方对此予以明确在什么情况下由秘书处对限量做出设定及相关科学依据。

5、本通报的技术法规中对多类产品中的多种材料的总铅含量限值作了明确的规定，但未提供材料中总铅含量的检测方法。由于本通报的技术法规所涉及的材料种类繁多且比较复杂，而且考虑到技术法规的严谨性和可操作性，我方建议贵方给出相应的检测方法，并提供这些检测方法的合理科学技术依据。

