

India's ban of chinese toys- wto report essay



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New Delhi launched 17 investigations into imports from China, 10 of which were anti-dumping probes, and had banned the importation of Chinese-made toys for six months alleging their high content of toxic chemicals is a danger to children. The remedy probes, including those of anti-dumping and anti-subsidy, against Chinese products, covering industrial salt, steel, auto parts, coal products, porcelain products, textile and rubber products. It remains a moot point whether the six-month ban on importing Chinese toys was truly set off by health worries or to protect the domestic industry from competition.

China, thus challenged India's decision to ban Chinese toys, at World Trade Organization. It felt that the ban amounted to violating the WTO laws. The ban is on account of Chinese toys containing excessive poisonous lead and dangerous magnets. Details about the Ban When was the ban imposed: January 2009 Why was the ban imposed: Health and safety faced by users of Chinese toys (Kids).

Duration of Ban: 6 months but was extended conditionally till Jan 2010 Which items were specifically banned: ITC Codes 9501 : Wheeled toys designed to be ridden by children * ITC Codes 9502 : Dolls representing only human beings * ITC Codes 9503 : Other toys Reasons for the Ban * The quality of toys manufactured in China came under the international scanner in 2007 when the world's leading toy manufacturer Mattel called-back over 20 million Chinese-made toys world-wide due to the presence of excessive levels of lead paint and other contaminants. * Dangerous levels of lead and cadmium were found in PVC (polyvinyl chloride) and soft toys sold in India Indian Toy IndustryWorth about USD 1 billion. Out of this, around 75% are imported.

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This includes, more than 80% imported from China itself. It accounts for almost USD 500 million worth of imports each year.

A little over 1.2 million toys are imported from China every week. The Toy Association of India estimates that 90% of India's toy industry is in the unorganized sector. India claimed that, Chinese toys industry must meet the "ASTMF963" or "ISO8124 (parts I-III)" or "IS9873 (parts I-III)" and other safety and health standards and related requirements. Toy imports from China each year account for more than 50 percent of the retail market in India, with an estimated value at more than 500 million U. S.

dollars in 2007, according to the All India Toy Manufacturers Association. Data from China showed the country's trade with India, its 10th largest trade partner, rose 34 percent to 51.78 billion U. S.

dollars last year Impact of Ban on Chinese Toy Industry According to figures disclosed by Commerce and Industry of India in two years, the only Chinese toys in the Indian toy market share rose from 50% to nearly 70%. Relevant authorities facility in Chennai seized 45 containers of Chinese-made toys, the total value of about 1.1 million U.

S. dollars. This was not the first group of detained Chinese toys. Most of the varieties, including wheeled toys, dolls, stuffed toys, toy-guns, wooden and metal toys, musical instruments, electric trains and puzzles were covered under the ban. India's actions had imposed import restrictions on goods worth \$ 4-5 billion and included textiles, steel and petrochemicals as well as toys. It seriously affected the bilateral trade, which grew by 33 per cent last year to nearly \$60 billion.

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It meant a total loss of more than 2.5 billion U. S. dollars for the Chinese producers and traders. There was a significant loss in toys export market, which had already retrenched thousands of toy manufacturing workers. More than 4000 toy manufacturers had to close down their units and lay off workers.

Part of this was also attributable to the financial crisis of 2008. It is also estimated that more than 100,000 people were affected, directly or indirectly, due to this ban. Nearly half of China's toy factories closed last year. The country started the year with 8,610 factories producing and exporting 70 per cent of all the world's toys.

By the end of 2008, only 4,388 remained — a decline of 49 per cent, figures from the customs office showed. Among the biggest closures was that of Smart Union, a Hong Kong-listed maker of toys for companies such as Mattel and Disney in the United States. It closed last October with the loss of 7,000 jobs. Alternative Sources of Import in case of Ban: THAILAND Toy

manufacturing in Thailand has developed from a low-quality, low price industry producing goods for primarily the domestic market, to one that turns out quality products and plays an important role in the country's export sector. The toy industry in Thailand has been dominated by foreign investments, which poured into the country during the 1980's. Asian toy-makers quickly set up production facilities, benefiting from low labor costs in Thailand and GSP privileges available for Thai based toy exporters to the leading markets in the U.

S. and Europe. Over 450 factories are currently operating in Thailand with a combined total production capacity exceeding 1, 000 million pieces per year. The trouble with toys... Latest CSE study finds high levels of toxic phthalates in children's toys in India. * Phthalates are chemicals used in toys to soften plastic.

Exposure to them can lead to a wide range of health disorders. They are especially dangerous for children under three years, who tend to put these toys in their mouth. * CSE lab tests found phthalates in all samples of toys tested — over 45 per cent exceeded the internationally accepted safe limit. India has no regulations to control use of phthalates in toys.

It only has voluntary standards covering safety aspects of toys. * On January 23, 2010, the Indian government's ban on import of toys not meeting these standards will end. In the unregulated free-for-all that threatens to follow, health of children will be compromised, putting them at a huge risk. Plastic toys being sold in India can seriously jeopardise the health of children playing with them, as they may contain an extremely toxic chemical, according to Centre for Science and Environment (CSE). In its latest study released here today, CSE's Pollution Monitoring Laboratory has found high levels of phthalates (pronounced tha-lates), a chemical used to soften plastic, in all samples of toys it tested. Over 45 per cent of the samples exceeded the internationally accepted safe limit for phthalates.

Shockingly, there are no regulations to control or monitor the use of these toxins in India. Says Chandra Bhushan, associate director, CSE: " What India has is a set of voluntary standards covering safety aspects of toys. The

government has banned the import of toys not meeting these standards, but what will happen when this ban ends on January 23 this year? " All India toy manufacture association- Quality Standards International Toy Safety Requirements Toy Abuse Test Conditions comparison for International toy Safety requirements Toys Heavy Metal Requirements What are phthalates? Phthalates are organic chemicals commonly used as plasticizers to make plastic supple. They are responsible for plastic products being cheap, easy to clean — and toxic. Phthalates can damage the male reproductive system, impair the lungs and affect the duration of pregnancy.

Laboratory tests on mammals indicate phthalates can trigger asthma and allergies, and lead to poor semen quality, genital defects, premature breast development and skeletal defects. Children under three years are more likely to be exposed to phthalates because they tend to chew and suck on plastic toys - and since their metabolic, endocrine and reproductive systems are immature, they are more vulnerable as well. Phthalates are produced from petrochemicals. They look like clear vegetable oil and are odourless.

Till recently, di-2-ethylhexyl phthalate (DEHP) dominated the use of plasticizers in toys. After scientific studies showed DEHP as toxic, di-isononyl phthalate (DINP) has become the most commonly used plasticizer. But studies show that DINP is also harmful. * The CSE lab tested 24 toy samples - all randomly bought from markets and toyshops in Delhi — for the presence of phthalates. Fifteen were soft toys and nine hard toys.

The samples were found to have been manufactured in four countries: India, China, Taiwan and Thailand. The tests showed: * All samples contained one

or more phthalates — DEHP, DINP, DBP (di-n-butyl phthalate) and BBP (benzyl butyl phthalate), all harmful. 46 per cent of the samples had phthalates exceeding the EU limit of 0.1 per cent by mass of plasticized material. * Of the sampled toys that children generally put in their mouths (such as teething rings), 29 per cent exceeded the phthalate limit. * Of the 24 samples picked randomly, 14 were found to be from China and 2 from Taiwan — 57 per cent of the China-made toys and 100 per cent of the Taiwan-made toys crossed the safe limit.

* Indian manufacturers accounted for 7 samples: 14 per cent of these were above the phthalate limit. * The study also proved that claims of 'non-toxic' which some toy labels carry are completely false and fraudulent. For example, a soft toy manufactured by Funskool India Limited, that claimed to be safe for children aged 3-18 months, had phthalate content 162 times above the safe limit! What did the lab study find? The CSE lab tested 24 toy samples — all randomly bought from markets and toyshops in Delhi — for the presence of phthalates. Fifteen were soft toys and nine hard toys. The samples were found to have been manufactured in four countries: India, China, Taiwan and Thailand. The tests showed: * All samples contained one or more phthalates — DEHP, DINP, DBP (di-n-butyl phthalate) and BBP (benzyl butyl phthalate), all harmful.

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For example, a soft toy manufactured by Funskool India Limited, that claimed to be safe for children aged 3-18 months, had phthalate content 162 times above the safe limit! Lethal Games While phthalates are nowhere on the radar of Indian authorities, they have made a few botched attempts to regulate other safety aspects of toys like mechanical and chemical properties and presence of certain heavy metals. Domestically, these standards remain voluntary. But since January last year, the authorities, mostly under pressure from a vigilant judiciary, have tried to regulate the quality of toys being imported. First they banned the import of toys from China, one country notorious for the poor quality of its toys. Then they issued notification asking for all Chinese imports to conform to Indian standards and then broadened this notification to cover imports from all countries. But the government is on a sticky wicket here.

While making it mandatory for imports to conform to standards, it does not ask of its own industry to meet the same. This is clearly a non-tariff barrier to trade, and officials know it. They have been fortunate no one has complained till now. The regulation on imports expires on January 23. The government has two options.

Either regulate all toys, both domestic production and imports. Second, and the easier option, let the order expire and leave the entire market

unregulated. As things stand now, the government does not want to make the effort to make standards mandatory for all. Something for parents to chew on Eighteen-month-old Ishleen gets a toy almost every week.

Whenever her parents visit markets in west Delhi they pick up something for her. Ishleen has a collection of squeezies, soft toys and rattles.

“ She began teething a year ago. So she chews on just about anything,” said her mother Manjeet Singh. Her husband Jaspal Singh inspects the toys before buying them but she agreed they did not give much thought to health effects. Chances are when Ishleen chews on these toys she ingests tiny doses of chemicals.

One of them is phthalates that makes plastics flexible but can interfere with the reproductive system. * Romila Bahl, mother of two children now adult, knows toys can be toxic. “ I’m not a scientist but as a mother I knew what was good for my children, especially knowing it may go into their mouth,” said Bahl, who runs a flower business in Delhi. “ I always asked my eldest sister in Chicago to bring toys for my children,” she said. Her children, Omar and Mandira, would eagerly look forward to their aunt’s annual visit. * “ I didn’t mind shelling out an extra buck because I never trusted the cheap imports.

” But she has not heard of phthalates, which were not banned in the US when she used to get toys from Chicago some 15 years ago. * Aparna Pandey, a kindergarten teacher in Delhi, gave birth to a girl three months ago. Although her child responds to the rattles Pandey bought from a crafts

bazaar, she is too young to hold on to them. But once she begins to, Pandey is clear what kind of toys she will buy.

I love India's toymaking traditions," she said. " Luckily, you can still find them in Delhi. I would only buy those using natural vegetable dyes, meeting food grade standards. " Parents often give in to their child's demand for flashy plastic toys. * Pandey, still on maternity leave, said she always warned parents about the potential health hazards of playthings for their children. * When Shoom Gupta, 63, walked into the oldest toy shop in Delhi he was overcome with nostalgia.

He had last visited the store, Ram Chander & Sons, in Connaught Place, 35 years ago before moving to Copenhagen. Growing up in India during the 1950s he played with toys made of terracotta, wood and clay. " I used to buy slingshot model planes made of balsa wood," he recollected. * The Danish toy company Lego, he said, began by making toys from leftover wood when he was still working as a carpenter. But Lego no longer uses wood.

With the introduction of plastic softeners and moulding agents, plastic became the medium of choice. Then came the Chinese manufacturing revolution. Gupta's two daughters Maya and Carolina grew up playing with Lego toys. The name comes from the first two letters of the Danish words *leje godt* , meaning ' play well'.

" Till the time the manufacturing unit was in Denmark, I was not really worried when children put the plastic pieces in the mouth," Gupta said. But with manufacturing moving to China and lack of quality control standards, he is no more sure of toys' safety. * Shop owner Satish Chander agreed. "

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Quality standards in the US and EU differ from those in Latin America and South Asia. Don't touch They lurk inside plastics, and from there migrate to air, food, human body and even unborn babies.

Phthalates or phthalate esters are organic chemicals commonly used as plasticizers to make plastic supple. They are responsible for plastic products being cheap, easy to clean—and toxic. Phthalates can damage the male reproductive system, impair the lungs and affect the duration of pregnancy. They also reach babies through breastfeeding. Animal studies have shown phthalates cross the placenta barrier. Children under three years are more likely to be exposed to phthalates because they tend to chew and suck on plastic toys.

Since their metabolic, endocrine and reproductive systems are immature, they are more vulnerable. * Phthalates are produced by removing water molecules from petrochemicals. They look like clear vegetable oil and are odourless. Till recently di-2-ethylhexyl phthalate (dehp) dominated the use of plasticizers in toys. After scientific studies showed dehp as toxic, di-isononyl phthalate (dinp) has become the most commonly used plasticizer.

Studies show dinp is also harmful. The EU and the US strictly regulate the use of phthalates in toys but in India there are no checks on their use. Lab Report Delhi ngo Centre for Science and Environment tested 24 toy samples of major brands for the presence of phthalates. In October 2008, it randomly purchased toy samples from markets in Delhi. Fifteen were soft toys and nine hard toys made in four countries. Tests showed all samples contained

one or more phthalates— dehp, dinp, dbp (di-n-butyl phthalate) and bbp (benzyl butyl phthalate), all harmful—in varying concentrations.

Eleven samples (46 per cent) had phthalates exceeding the EU limit of 0. 1 per cent by mass of plasticized material. The threshold limit cannot be set lower than 0. 1 per cent as phthalates can be found below this level as contaminants in the manufacturing process even if not used as plasticizers. dinp was detected in nearly 42 per cent of the samples.

In 29 per cent of the samples it exceeded the EU limit. The highest concentration of dinp, which is restricted in the US and EU in toys that can be put in the mouth, was found in the squeaky toys made by Indian company Funskool India. At 16 per cent concentration it was 162 times the EU limit. dehp was detected in 96 per cent of the toys but in concentrations below the EU limit, except in a teether and two toys: inflatable bop bag dinosaur (0.

2 per cent, twice the EU limit) and bath duck (2. 6 per cent). The baby teether ostensibly made of non-toxic, food-grade silicone rubber had dehp at a concentration three times the EU limit. It was made by a company in Taiwan.

bp was found in soft and hard biters at levels two times the EU limit. The majority of the toys, which contained high levels of phthalates, were made in China. Six squeeze toys from China contained phthalates two to 80 times above the EU limit. Four of these were made by Lovely Collection, which did not even bother to mention the address of the manufacturer and the date of manufacture on the package.

How harmful? * DEHP: It is considered one of the most toxic phthalates and has been banned in toys in several countries. Exposure to it via house dust is known to cause asthma and allergy in children. In mammals it has been found to interfere with male and female reproductive systems such as early development of testes. It has also been found responsible for poor semen quality, genital defects and premature breast development in humans, and reduced testosterone in male rats.

Exposure to DEHP during pregnancy has also been linked to pre-term birth in human beings. * DINP: Prenatal toxicity studies on rats have shown slightly increased rates of skeletal retardation and occurrence of soft tissue and skeletal malformations. When fed to rats it leads to increased liver and kidney weights. DBP: It has been linked to poor semen quality in men, premature breast development in females and asthma and allergic symptoms in children. In male rat pups developmental defects similar to the testicular dysgenesis syndrome have been documented. Genital defects and reduced anogenital distance between the anus and the base of the penis a sign of reproductive disorder, in male rats have also been observed.

A free ride * Phthalates have pervaded the toy market without raising much alarm. China that has cornered 70 per cent of the global toy market does not regulate their use. International standards dealing with toy safety ignore them. While EU took the lead in imposing limits for phthalates in toys, the US has only recently passed the law regulating phthalates.

Europe * EU was the first to regulate the use of phthalates in toys. In 1999, it temporarily banned six phthalates used in childcare articles and toys made

of soft pvc that can be put in the mouth by children under three. In 2005, it decided to restrict the use of three phthalates— dehp, dbp and bbp— in all childcare articles and toys to 0.1 per cent concentrations by mass of the plasticized material. Toys containing these chemicals in higher quantities cannot be sold in EU countries.

The EU proposed the same limit for three more phthalates— dinp, didp and dnop (di-n-octyl phthalate) —but only in toys and childcare articles meant to be put in the mouth by children. Other toys were exempted from this restriction for want of more evidence of the toxicity of the three phthalates. The EU, however, noted that the three pose a potential risk if used in toys. * The restrictions came into force from January 16, 2007 and shall be reviewed by January 16, 2010. The EU is now considering evidence that shows phthalates acting together harm health in ways each by itself would not. Denmark has gone a step ahead and placed a ban on the sale and import of toys and childcare articles meant to be put in the mouth that contain phthalates, not covered by EU regulations, at levels exceeding 0.

0.5 per cent. To ensure that toys available in the country are phthalate-free, the Danish government has also negotiated an agreement with retailers to voluntarily refrain from selling phthalate-containing toys (like musical instruments) meant to be put in the mouth by children between three and six years. * Denmark taxes pvc —plastic used in toys—and phthalate-containing products, domestic and imported. EU regulations say products using phthalates do not have to mention their presence or carry a warning on the packaging. Only containers with more than 0.5 per cent of dbp, bbp and dehp have to be labelled with the skull and crossbones symbol for the

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purpose of handling, according to the Phthalates Information Centre Europe, an industry body.

* The EU also has a rapid alert system for non-food consumer products, under which member nations can access information about steps being taken by other member states and economic operators with regard to products posing a serious, long-term risk to health and safety of consumers.

USA * The US Congress enacted the Consumer Product Safety Improvement Act (cpsia) in August 2008, prescribing restrictions broadly similar to those in the EU on toys and childcare articles sold in US markets. The ban on dinp, didp and dnop is interim. * The Act stipulates two types of restrictions on phthalates.

The first part of the regulation, which came into force last February, permanently bans manufacturing for sale, distribution and importing of children's toys and childcare articles containing more than 0.1 per cent of either dehp, dbp or bbp. * A toy is a product meant for a child of up to 12 years, while a childcare article refers to a product that a child of three years or younger uses for feeding, sleeping, sucking and teething. * The second part of the regulation seeks an interim ban on dinp, didp and dnop (above 0.1 per cent) from being used in childcare articles or toys that can be placed in a child's mouth. By definition a toy or part of a toy can be placed in a child's mouth if in one dimension it is smaller than five centimetres.

Toys that can only be licked are not covered under the regulation. The threshold levels are prescribed only for individual chemicals; no composite threshold is prescribed for more than one phthalate present in toys. The Act

does not mandate labelling toys to indicate compliance with phthalate standards. * A seven-member Chronic Hazard Advisory Panel of scientists established under cpsia will look at health effects of the full range of phthalates, individually and in combination, used in children's products.

* The panel has 18 months to complete its study. After this the Consumer Product Safety Commission, tasked with implementing the Act, will evaluate the findings and consider banning products containing phthalates as hazardous. * The commission has devised detailed testing methods to identify the presence of phthalates. Under these methods the manufacturer is required to provide a certificate testifying its products have been tested for compliance with the commission's guidelines. Since September 2009 the testing is specified to be done by an accredited third party laboratory.

But the commission has stayed general certification until a panel of accredited labs is established. So the law is yet to be implemented effectively. India * The Bureau of Indian Standards (bis) has issued three sets of standards covering safety aspects of toys but none covers phthalates. These standards deal with safety aspects related to mechanical and physical properties and flammability and specify the maximum acceptable levels for eight metals in toys (see table: Indian standards for toys). Even these standards are voluntary in nature.

The bureau is revising these standards to align them with the international iso standards, a bis official said. The process began in June 2008 but has taken a backseat. The agency is drafting standards covering the use of phthalates in toys. China * According to the Toy Industry Association, China

follows international standards dealing with safety aspects of toys related to mechanical and physical properties.

Phthalates are not covered under these standards. Double Standards India faces a challenge: how to keep alive its only measure ensuring safety of imported toys. Its ban on import of toys not meeting specified safety standards lapses on January 23. Since Indian toy makers are not required to adhere to any mandatory safety standards it will be discriminatory to impose them on others; it would be a non-tariff trade barrier.

One way is to put in place mandatory standards for domestic manufacturers but that is yet to be done. * It goes to show how serious the government is about toxicity in toys. The ban was imposed last year and at the time applied only to China. Following worldwide concerns over the toxicity in Chinese toys, the directorate general of foreign trade under the department of commerce banned import of Chinese toys in January 2009 for six months, including wheeled toys and dolls. Soon it realized it cannot continue with the ban. In March it announced import of Chinese toys which conformed to international or Indian standards would be permitted.

* Conforming means the toy importer has to ensure two things. One, it has to produce a third party certificate that imported toys meet standards prescribed by ASTM International under the Standard Consumer Specification for Toy Safety meant to prevent injuries from choking, sharp edges and other potential hazards, including those from chemicals like lead. ASTM International is one of the world's largest voluntary standards development organizations and has members from over 100 countries. Else, the importer

can show the toys conform to the safety standards prescribed by India or the International Organization for Standardization. All three standards are similar, but they do not cover phthalates. * Two, the manufacturer should have a certificate stating that a representative sample of the toys being imported has been tested by an independent laboratory accredited to the International Laboratory Accreditation Cooperation (ilac)-Mutual Recognition Arrangement and found to meet the required specifications.

ilac is a network of laboratory and inspection accreditation bodies formed to remove technical barriers to trade. It has 66 members, including India's National Accreditation Board for Testing and Calibration Laboratories. * Indian customs officials only check whether importers have the required document, said a customs official requesting not to be named. There is no regular testing done by the Indian authorities to confirm whether the imported toys meet the specified standard or not. * Following threats from China that it will challenge the import restrictions at wto, India expanded the restrictions in June to cover toy imports from all countries.

It also extended the restrictions till January 23, 2010. A source in the commerce department admitted the import requirements are discriminatory and the department is likely to withdraw them if China mounts more pressure. " We are biding time hoping the government would mandate standards for the domestic industry as well," he said. * The commerce department is looking to the department of industrial policy and promotion (dipp), the nodal department for toys, to issue a quality control order making toy safety standards mandatory.

Once that happens both domestic and foreign manufacturers would be have to adhere to them. Even if the quality control order was formulated it would not have covered standards for phthalates because the Bureau of Indian Standards (bis) is not ready with them. Officials at bis say the standards are not a priority for the agency because it is preoccupied with other tasks. The court route * In 2007, Consumer Welfare Association, a non-profit in Mumbai, had filed a public-interest petition in the Bombay High Court, seeking a ban on the import of toys made in China on the ground that they are toxic. “ Our main idea was to wake up the government,” said A M Mascarenhas, secretary to the association. The court has directed the government to file a report detailing interim measures taken to curb imports of toxic Chinese toys, informed Rajiv Chavan, the counsel for the ngo.

At the last hearing on December 2, 2009, the court asked the government to submit a report on toxicity of toys. * The government has, in turn, asked three organizations—All India Institute of Medical Sciences in Delhi, National Institute of Occupational Health in Ahmedabad and National Institute of Nutrition in Hyderabad—to establish the presence of heavy metals, phthalates and their leaching in toys in the Indian market, said sources. The study is likely to be completed in 8-10 months, said a scientist involved in the study. * Indian toymakers are ready to adhere to standards for phthalates, Rajesh Arora, general secretary of the Toy Association of India, claimed. Arora argued the Indian toy industry, which clocked 20 per cent growth in exports in 2008-09, is already meeting Western standards for phthalates. Only for export products What about regulations? The EU has been the first to regulate the use of these chemicals in toys.

It has restricted the use of some phthalates in all childcare articles and toys to 0.1 per cent concentration by mass of the plasticized material. Toys containing these chemicals in higher quantities cannot be sold in EU countries. In 2008, the US Congress enacted the Consumer Product Safety Improvement Act, prescribing restrictions broadly similar to those in the EU on toys and childcare articles sold in US markets.

Neither India nor China has any regulations to control or monitor the use of phthalates in toys. According to China's Toy Industry Association, the country follows international standards dealing with safety aspects of toys related to mechanical and physical properties. Phthalates are not covered under these standards. In India, the Bureau of Indian Standards (BIS) has issued three sets of standards covering safety aspects of toys, but none covers phthalates - and even these standards are voluntary in nature. Strangely, while Indian toymakers are not required to adhere to any mandatory safety standards, the country had banned the import of toys not meeting the standards.

Since January 2009, under pressure from a vigilant judiciary, Indian authorities tried to regulate the safety aspects of imported toys. First, they banned the import of toys from China. Then they issued a notification asking all Chinese imports to conform to Indian standards, and then broadened this notification to cover imports from all countries. But the government is on a sticky ground here. While making it mandatory for imports to conform to standards, it does not ask of its own industry to meet the same.

This is clearly a non-tariff barrier to trade. This ban lapses on January 23, 2010. Says Kushal Pal Singh Yadav, head of CSE's toxins team, " After the

deadline, the government would have two options — either regulate all toys, or leave the entire market unregulated. It appears India is not serious about setting toxicity standards for toys. The government does not want to make the effort to make standards mandatory for all. ” About CSE's Pollution Monitoring Laboratory In 2003 and 2006, the Pollution Monitoring Laboratory (PML) had tested pesticide levels in soft drinks (Coca Cola and Pepsi).

Following its findings, a Joint Parliamentary Committee was set up by the Central government to evolve criteria for setting standards for such food items. The PML has also conducted tests to determine pesticide residue levels in human blood samples, an endosulfan analysis, a study of trans fats in edible oils, and studies to detect contamination levels in the soil and groundwater in and around the Union Carbide factory in Bhopal. The lab's full reports, research methodologies and equipments used are available on www.cseindia.org. Other Aspects of the Ban “ If India insists on this decision, China will respond to the safety and quality of imported products from India,” the Indian daily quoted from a letter sent by the Chinese quality control bureau to the Indian embassy in Beijing.

The statement came after India announced 17 June that it would extend its ban on Chinese dairy imports for six months. The ban, in effect since September 2008, was slated to expire last week. In the fall of 2008, more than 20 countries imposed at least a partial ban on Chinese dairy after the chemical melamine was found in milk, infant formula, and other products. Melamine, which is used to make plastics and fertiliser, is known to cause kidney stones and organ failure when ingested. Thousands of people, mostly children, became sick after consuming the tainted dairy products. But milk is <https://assignbuster.com/indias-ban-of-chinese-toys-wto-report-essay/>

far from the only Chinese product that has been the subject of trade tensions between the world's two most populous countries.

In addition to the dairy ban, New Delhi has banned cell phones and toys made in China, citing safety and health concerns. The ban might have been politically motivated. Significantly, the toy ban came a day after India expressed objections to Pakistan "outsourcing" its foreign policy to China, with Pakistan Foreign Minister Shah Mahmood Qureshi on January 22 giving China a "blank check" to negotiate with India in resolving the crisis in relations sparked by the November 26, 2008, terrorist strike in Mumbai. The ban might have been economically motivated to protect the domestic industry. Case and WTO BACKGROUND 1. India's Department of Commerce of Ministry of Commerce and Industry issued Notification No. 82 on 23 January 2009, which declares that: "Import of 'Toys'" from China appearing under ITC Codes 9501, 9502, 9503 of Schedule-I of ITC (HS) Classification of Export and Import Items is prohibited for six months with immediate effect and until further orders.

2. This Notification imposes a general ban only on Chinese toys for at least six months without specifying reasons for the restriction. After a 38-day implementation, a new notification, namely Notification No. 91, was issued by the Department of Commerce of India's Ministry of Commerce and Industry on 2 March, which states: Import of "Toys" from China appearing under ITC Codes 9501, 9502, 9503 of Schedule-I of ITC (HS) Classifications of Export and Import Items is prohibited for six months with immediate effect and until further orders. However, import of toys from China accompanied by the following certifications shall be permitted: (i) A certification that the toys

being imported conform to the standards prescribed in ASTM F963 or standards prescribed in ISO 8124 (Parts I-III) or IS 9873 [Parts I-III]; (ii) A certification of Conformance from the manufacturer that representative sample of the toys being imported have been tested by an independent laboratory which is ILAC accredited and found to meet the specifications indicated above. The certificate would also link the toys in the consignment to the period of manufacture indicated in the Certificate of Conformity.

THE INDIAN NOTIFICATIONS ARE INCONSISTENT WITH ITS WTO OBLIGATIONS

3. China notes that Notification No. 82 applies only to Chinese toys while not applicable to toys of Indian origin or those originating from other WTO Members. Therefore, Notification No.

82 constitutes a general ban on and a discriminatory measure against Chinese toys, which breaches a series of fundamental principles embodied in the multilateral trading agreements, especially the general elimination of quantitative restrictions under Article 11 of GATT 1994, the most favored nation treatment and national treatment principles in Articles 1 and 3 of GATT 1994 and Articles 2. and 5. 1 of the TBT Agreement. China believes that the ban also creates unnecessary obstacles to the international toy trade and is much more trade-restrictive than necessary, which does not conform to Article 2.

2 of the TBT Agreement. 4. Although India issued Notification No. 91 on 2 March 2009 to replace the Notification No. 82, the discriminative nature of the restriction remains unchanged.

(i) Notification No. 91 requires Chinese toys to conform to the related standards while toys manufactured in India are not subject to the same requirement. Therefore, the Notification discriminates against toys from China and is inconsistent with India's obligations of national treatment under Article 3 of GATT 1994 and Article 2. 1 of the TBT Agreement.

(ii) China notes that the conformance requirement is not imposed by India on toys originating from other WTO Members. Therefore, it violates the MFN principle provided under Article I of the GATT 1994 and Article 2. 1 of the TBT Agreement. (iii) Notification No.

1 imposes a ban on Chinese toys without related certificates while toys from India and other origins, regardless of their conformance to the standards provided, are exempted from the discriminatory ban. Therefore, China believes that Notification No. 91 accords unfavorable treatment to Chinese toys specifically and obviously violates WTO fundamental principles of national treatment, MFN and general elimination of quantitative restrictions provided under Articles I, III and XI of the GATT and Articles 2. 1 and 5.

of the TBT Agreement. (iv) China notes that India didn't notify its Notification No. 82, and has not notified Notification No. 91 to the WTO. China would like to remind India of its transparency obligations under Articles 2. 9, 2.

10, 5. 6 and 5. 7 of the TBT Agreement. 5. China welcomes India's statements to stand against trade protectionism on various occasions such as at the World Economic Forum in Davos, in January this year.

China hopes that the Indian Government stands by its promises and does not impose trade protectionism. China strongly requests that India revoke its discriminatory and WTO-inconsistent restriction on Chinese toys immediately. Notification No. 91 requires Chinese toys to conform to the related standards while toys manufactured in India are not subject to the same requirement. Therefore, the Notification discriminates against toys from China and is inconsistent with India's obligations of national treatment under Article 3 of GATT 1994 and Article 2.

1 of the TBT Agreement. China notes that the conformance requirement is not imposed by India on toys originating from other WTO Members.

Therefore, it violates the MFN principle provided under Article I of the GATT 1994 and Article 2. 1 of the TBT Agreement.

Ease of Ban by India On March 2, 2009 India's government lifted the ban on imports of Chinese toys that had stoked trade tensions between the world's two biggest emerging economies. But it imposed strict demands for product safety guarantees. India announced the six-month ban in January, prompting Beijing to warn that " bilateral trade relations could be seriously impacted". The Indian trade ministry, which had made the decision on the grounds of " public health and safety", announced Chinese toys could be imported — but needed to be certified as safe according to international standards. Chinese toy imports " shall be permitted" if accompanied by certificates showing they " conform to standards prescribed" by safety bodies such as the International Organisation for Standardization (ISO) or the American Society for Testing and Materials (ASTM), the trade ministry said in a statement. The imports will have to be accompanied by certificates from laboratories

accredited to the International Laboratory Accreditation Cooperation, the ministry further stipulated.

Chinese toys such as dolls, cars, trains and puzzles make up more than 60% of India's \$500 million toy market and the ban sent prices of toys soaring in local markets as imported supplies started running out. Some Indian analysts had seen the ban as a move to protect India's struggling toy industry, which employs some two million workers, and the media had dubbed the row the "toy trade war". The Indian toy sector said it had been pushing New Delhi for higher import tariffs on Chinese toys, which are cheaper than those made locally, but not a full-scale ban. China had warned India to take "cautious and prudent trade remedy measures" at a time when "the world economy faces grim challenges". But India said the toy ban complied with World Trade Organisation rules and would not be lifted until the government was "satisfied" about the safety of the Chinese products.

China's toy industry has come under close scrutiny since millions of goods were recalled globally last year amid fears they were made with toxic lead paints or had design flaws. Thousands of Chinese toy factories have closed because of tighter safety restrictions and falling demand amid the widening global financial crisis. India's toy ban came amid mounting trade frictions between the Asian neighbours. China is India's largest trading partner while India is China's 10th biggest trading partner. Aside from the toy ban, China's commerce ministry has complained that India has launched 17 trade investigations since October into Chinese products, including 10 anti-dumping probes, and curbed imports of iron and steel, chemicals and textiles from China.

Various countries have been moving to shield domestic industries against the worldwide slowdown but India's commerce minister Kamal Nath has insisted New Delhi opposes any form of trade protectionism. China Compulsory Certification (CCM Mark) The CCC safety license requirement by the Government of China requires manufacturers to obtain the China Compulsory Certification (CCC) mark before exporting or selling products covered in the CCC catalogue to or in the China market. The system, implemented on May 1, 2002 and made fully effective on May 1, 2003, impacts many U. S.

exporters across a wide range of manufacturing sectors. Products not meeting CCC requirements may be held at the border by Chinese Customs and may be subject to other penalties. China notified CCC requirements for six categories of toys to the WTO Technical Barriers to Trade (TBT) Committee on October 10, 2005, with a 60-day period for comments. The products include- CHN 154 Bicycles, tricycles, perambulators, baby walking frames, electrically * driven vehicles for young children, toy bicycles * CHN 155 Electric toys * CHN 156 Plastic toys * CHN 157 Metal toys * CHN 158 Dolls * CHN 159 Projectile toys The application process for the CCC mark: 1. Can take sixty to ninety days or longer; 2. Requires testing at accredited laboratories in China; 3.

Generally does not permit self certification or third-party testing results; 4. Requires submission of numerous technical documents; 5. Requires submission of a product sample to a Chinese testing laboratory; 6. Requires a factory inspection by Chinese officials at the applicant's expense; 7.

Requires follow-up inspections every twelve to eighteen months; and 8. Can cost several thousand dollars. Conformity Assessment Conformity assessment, consisting of such activities as certification, testing and inspection, is frequently required by government regulators to ensure that firms' products and production processes meet minimum health and safety standards. Although conformity assessment systems achieve important economic and societal goals, they may also serve as significant technical barriers to trade. Such barriers may emerge from the need for exporting firms to have their products tested overseas, adjust to diverse conformity assessment requirements, undergo duplicative testing, face lengthy approval times, or overcome discriminatory requirements in overseas markets.

As the costs of conformity assessment activities and their effects on trade have increased, manufacturers, trade officials, and regulators have pursued approaches that they hope will ensure that safe products are placed on global markets promptly and in the least trade restrictive manner possible to ensure compliance with the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT agreement). Some of the approaches for reducing the impact of conformity assessment have included mutual recognition agreements among trading partners, unilateral recognition by a country of another country's conformity assessment results, and increased acceptance of a supplier's declaration of conformity (SDoC). When conformity assessment is mandatory, businesses have increasingly come to prefer SDoC over third-party conformity assessment. Supporters of SDoC point out its benefits, including flexibility and nondiscriminatory treatment for firms in choosing where to have their products tested, decreased

uncertainty associated with mandatory testing by designated testing bodies based in foreign countries, high compliance levels, and lower administrative costs.

The challenge to industry and trade officials is convincing regulatory authorities that alternatives such as SDoC will not compromise regulators' obligations to assure the safety of workers and consumers. Generally, governments in advanced countries have regulated consumer product safety through SDoC and postmarket monitoring to identify defective or potentially defective products once on the market and worked with manufacturers to ban or recall products when necessary. In the United States, the Consumer Product Safety Commission (CPSC) is the federal regulatory agency responsible for protecting the public from unreasonable risks of injury and death associated with consumer products (box 5).⁸ The CPSC is responsible for developing voluntary safety standards with industry; issuing and enforcing mandatory standards; banning consumer products if no feasible standard would adequately protect the public; arranging the recall or repair of products by manufacturers; conducting research on potential product hazards; informing and educating consumers through the media, local and state governments, and private organizations; and responding to consumer inquiries (CPSC 2005, 1 and CPSC 2007b, 1) Reducing Conformity Assessment Barriers to TradeManufacturers and regulators are pursuing new approaches, such as establishment of mutual recognition agreements (MRAs) among trading partners, unilateral recognition by a country of another country's conformity assessment results, and increased acceptance of SDoC, to address the increasing costs and challenges of conformity assessment on

trade. Such costs have become more apparent with the greater globalization of production and markets and the increasing adoption of product regulation in developing countries.

The implementation of these measures may improve the ability of manufacturers and regulators to ensure that safe products are placed on global markets quickly, and in the least trade restrictive manner possible, while achieving legitimate regulatory objectives. MRAs The establishment of MRAs may reduce firms' conformity assessment costs for demonstrating compliance to requirements in multiple markets. MRAs allow product testing and approval in the home country for compliance with other countries' technical regulations. For example, under the Asia Pacific Economic Cooperation (APEC) telecom MRA between the United States and Singapore, a cellular phone tested and certified in the United States may meet Singapore's technical requirements and be shipped and marketed throughout Singapore without the need for any further testing or approvals. A number of policy experts state that such agreements between governments to recognize one another's national conformity assessment mechanisms can facilitate trade. An empirical study investigating the trade effects of MRAs found that " MRAs have a positive influence on both export probabilities and trade volumes for partner countries".

Unilateral Recognition A less costly and less trade restrictive alternative to MRAs is unilateral recognition. The TBT agreement calls on members to " accept unilaterally the results of the conformity assessment procedures in other [m]embers whenever possible. " Such acceptance could contribute to the reduction of unnecessary barriers to trade associated with duplicative

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testing and certification. Upon a finding of equivalent competence of a foreign conformity assessment body compared to domestic conformity assessment bodies, foreign test reports and certifications may be recognized unilaterally by regulators.

To provide assurance of equivalence to regulators, conformity assessment bodies may seek accreditation under recognized international accreditation systems or prove their competence by other means . Governments may also designate specific conformity assessment bodies located outside their territories to undertake conformity assessment to their own regulations.

Acceptance of SDoC When conformity assessment is mandated by the government, businesses have increasingly come to prefer first-party, or SDoC, over third-party conformity assessment. The WTO, in a review of the TBT agreement, found that “[r]eliance on a supplier’s declaration of conformity could also be a cost-saving and efficient tool for regulators to ensure that regulatory requirements and legitimate policy objectives were met ”. Supporters of SDoC point out its benefits, including flexibility and nondiscriminatory treatment for the firm in choosing the location to have a product tested, decreased uncertainty associated with mandatory testing by designated testing bodies based in foreign countries, high compliance levels, and lower administrative costs.

Conclusion Although conformity assessment requirements serve important economic and societal goals by ensuring that products meet appropriate quality and safety standards, such requirements may also serve as significant trade barriers. Conformity assessment barriers have been shown to increase manufacturers’ costs, which result from requirements that

manufacturers have their products tested overseas, adjust to diverse conformity assessment requirements, undergo duplicative testing, face lengthy approval times, or overcome discriminatory requirements in overseas markets. As the costs and trade effects of conformity assessment have multiplied, manufacturers, trade officials, and regulators have tried different approaches to ensure that products are safely placed on global markets promptly and in the least trade restrictive manner possible. These approaches have included MRAs, unilateral recognition by a country of another country's conformity assessment results, and increased acceptance of SDoC.

When conformity assessment is mandatory, companies often favor SDoC over third-party conformity assessment as it provides them with greater flexibility, non-discriminatory treatment, and lower costs when entering overseas markets. The challenge to supporters of SDoC is convincing regulatory authorities that it will not compromise regulators' obligations for reducing risks to human and animal health and safety, or to the environment. These bans on the basis of quality would be effective only if these are standardized. Otherwise they can be termed as for domestic industry progress and discriminatory against the exporting countries.

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