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Subject: RE: CPSIA - Retroactivity Fun!

From my contact with you, I know that Congress is very proud of its "intention" to make the new lead rules retroactive. I realize that this was based on the "well-intentioned" view that it was necessary to remove "dangerous" products from the marketplace urgently. The opinion of the CPSC General Counsel on September 12, 2008 set off a storm of protest (see, e.g., video of my speech at the CPSC Lead Panel meeting on November 6, 2008 at www.learningresources.com/CPSIA) yet Congress has elected to stand by in silent affirmation. As predicted, the markets have become to implode under the weight of this cataclysmic rule. You have received numerous letters from me on this topic, so I am sure you recall the details.

I think it's time that the silence ends. There are many convincing arguments (and data) to demonstrate the evils of the retroactive bans. Remember, this retroactive rule affects children's products as Prohibition affected alcohol - except that this form of Prohibition touches perhaps 60% of the U.S. economy - and will gut many a balance sheet. With this in mind, I thought you might want to read the below comment which we recently found. It is from a toy company (who shall remain nameless):

"However, one issue we find is of the utmost importance in the very short term is to get the CPSC to override the legal opinion the lead ban applies retroactively to product already made. This is imposing severe sanctions on us because retailers are refusing payments for product unless we can guarantee them product previously produced complies with future laws. This issue will be moot in a few months time as newly manufactured product enters the market place, but by freezing money supply, especially in times of tight credit, applying the law retroactively means that manufacturers cannot produce new product without being paid for old product. There is a danger of putting many businesses out of business simply because they cannot guarantee products out of our control comply with the law."

Yes, and there's that little issue about bank loan defaults, too. In our discussions with the SEC, there appears to be serious Sarbanes-Oxley problems created by the same issue. That may come as a rude surprise to a few companies down the road.

Maybe it's time to do something about all this.

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