

**Bills Committee on
Toys and Children's Products Safety (Amendment) Bill 2013**

The Administration's Response to Written Submissions

Purpose

At the Bills Committee meeting on 5 November 2013, the Administration has responded to most of the points raised in the written submissions on the Toys and Children's Products Safety (Amendment) Bill 2013. Our written response is set out at the Annex.

2. Separately, in response to some Members' enquiry at the meeting on 24 October 2013, we would like to clarify that the Commissioner of Customs and Excise could have a toy/ children's product tested by other approved laboratories for determining whether it complies with the relevant safety standard, apart from having it tested by the Government Chemist under section 9(3) of the Toys and Children's Products Safety Ordinance (Cap. 424).

Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
November 2013

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As explained in the Legislative Council Brief, the main purpose of the Toys and Children’s Products Safety (Amendment) Bill 2013 is to expand the application of the Ordinance so that it could cover, in addition to toys and children’s products specified in Schedule 2, certain other children’s products. The expansion of the application of the Ordinance will also enable subsidiary legislation to be made under the amended Ordinance upon the passage of the Bill, for regulating the concentration of six types of phthalates, namely DEHP, DBP, BBP, DINP, DIDP and DNOP, in certain toys and children’s products. The views expressed in the submissions and our response below are mainly subject matters of the proposed subsidiary legislation.

Salient Points of Submissions	Administration’s Response
<i>Hong Kong Toys Council – LC Paper No. CB(2)228/13-14(01)</i>	
(1) If the phthalate requirement is intended to apply to individual plasticized material, it is suggested to delete the words in <i>italics</i> from the requirement “the total weight of the chemicals DEHP, DBP and BBP in toy must not exceed 0.1% of the <i>total</i> weight of <i>all</i> the plasticized materials in the toy”. Similar deletion is suggested for the requirements on DINP, DIDP and DNOP.	The proposed formulation of “... must not exceed 0.1% of the total weight of all the plasticized materials in the toy/ children’s product” (as set out in the Proposed Framework for Regulating the Concentration of Phthalates in Toys and Children’s Products (Annex to LC Paper No. CB(2)209/13-14(01)) submitted to the Bills Committee meeting on 5 November 2013) clearly sets out how the concentration of phthalates is calculated. We consider that it is not necessary to delete the two words “total” and “all” from the formulation.
(2) Clear definitions of “be entirely placed in the mouth” and “be placed in the mouth” should be provided.	As set out in the Proposed Framework for Regulating the Concentration of Phthalates in Toys and Children’s

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	<p>Products (Annex to LC Paper No. CB(2)209/13-14(01)) submitted to the Bills Committee meeting on 5 November 2013, “can be placed into the mouth of a child under 4 years of age” refers to a toy or children’s product that can be brought to the child’s mouth and kept there so that it can be sucked or chewed.</p>
<p>(3) Whether the proposed phthalate control applies to internal/ inaccessible parts of plasticized materials of toys and child care articles should be made clear.</p>	<p>The main consideration for determining if a toy or children’s product (or a part of it) should be subject to the proposed phthalate control is whether it has any plasticized part that can be mouthed by or come into close contact with young children. It is not our intention that the proposed phthalate control applies to internal/inaccessible parts (e.g. cables enclosed inside a toy), if they cannot be mouthed by or come into close contact with young children in a reasonably foreseeable manner. We will consider how this should be reflected in the proposed subsidiary legislation, taking reference from the practices of overseas economies.</p>
<p>(4) The proposed phthalate control covers packaging materials, which is more stringent than the requirements of the US and the EU, and is not practical.</p>	<p>As explained in the Proposed Framework for Regulating the Concentration of Phthalates in Toys and Children’s Products (Annex to LC Paper No. CB(2)209/13-14(01)) submitted to the Bills Committee meeting on 5 November 2013, the proposed phthalate control does not apply to the packaging of toys, Schedule 2 products and other children’s</p>

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	products. This will be reflected in the proposed subsidiary legislation.
(5) Whether the proposed phthalate control would refer to testing standards EN 14372 and CPSC-CH-C1001-09.3 to demonstrate compliance should be made clear.	Whilst the proposed subsidiary legislation would provide for the concentration limits for six types of phthalates, we do not intend to further specify a particular phthalate testing standard or method in the subsidiary legislation.
(6) 在擴闊的“兒童產品”的定義中，“任何塑化物料”廣義地泛指所有用了“鄰苯二甲酸酯”和“非鄰苯二甲酸酯”或未滿 4 歲兒童可接觸到和不可接觸到的塑化物料。一方面扼殺了“非鄰苯二甲酸酯”的塑化物料的存在價值，另一方面對未滿 4 歲兒童不可接觸到的塑化物料作出不合理的管制。建議改為“未滿 4 歲兒童可接觸到的、並且含有特定塑化劑的塑化物料...”。	Upon the passage of the Toys and Children's Products Safety (Amendment) Bill 2013, the Secretary for Commerce and Economic Development will make a piece of subsidiary legislation under the amended Ordinance for regulating the concentration of six types of phthalates, namely DEHP, DBP, BBP, DINP, DIDP and DNOP, in toys and children's products. The amended Ordinance and the proposed subsidiary legislation will not prohibit the use of other phthalates.
<i>Professor Jim Bridges – LC Paper No. CB(2)228/13-14(02)</i>	
(7) The toxicological data of DIDP and DINP is different from that of DBP, DEHP and BBP. A group tolerated daily intake cannot be allocated for these phthalates. EU regulation by REACH of these chemical shows a quite separate treatment of lower and higher molecular phthalates: DBP, DEHP and BBP are classified as hazardous while DIDP and DINP are not so classified. The Australian authorities in 2012 having	Our proposed phthalate control on the use of six types of phthalates, namely DEHP, DBP, BBP, DINP, DIDP and DNOP, is on par with the legislation of advanced overseas economies (including the EU, the US, Canada and Singapore). These economies have noted the relevant scientific information about the health hazards of DINP, DIDP and DNOP to humans, and have adopted a precautionary approach in regulating

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<p>examined child exposure to DINP did not identify a health concern even at the highest exposure scenarios. It should be concluded therefore that the risks to young children from mouthing toys and other objects are very low in the case of DIDP and DINP.</p> <p>The proposed replacements of phthalates and the evidence that the replacements will produce advantages from a health view point over DIDP and DINP are questionable.</p>	<p>these three types of phthalates as the potential risk cannot be excluded.</p> <p>We consider it necessary to ensure that our proposed regime is on par with those in these advanced economies in protecting children and preventing Hong Kong from becoming the dumping ground for non-compliant products.</p>
<i>ExxonMobil Hong Kong Limited – LC Paper No. CB(2)228/13-14(03)</i>	
<p>(8) Scientific evidence from both industry and government related bodies have continued to find high molecular weight phthalates (DINP and DIDP) to be safe for use in their current applications.</p> <p>Given the extensive EU and US re-evaluations of the use of DINP and DIDP, and the numerous previous independent confirmation of product safety, the proposal to restrict DINP and DIDP in the mouthing toys and children articles should be deferred.</p>	<p>Our proposed phthalate control on the use of six types of phthalates, namely DEHP, DBP, BBP, DINP, DIDP and DNOP, is on par with the legislation of advanced overseas economies (including the EU, the US, Canada and Singapore). These economies have noted the relevant scientific information about the health hazards of DINP, DIDP and DNOP to humans, and have adopted a precautionary approach in regulating these three types of phthalates as their potential risk cannot be excluded.</p> <p>We consider it necessary to ensure that our proposed regime is on par with those in these advanced economies in protecting children and preventing Hong Kong from becoming the dumping ground for non-compliant products.</p>

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	We will keep in view the updates of the phthalate control in overseas economies.
<i>Mattel Asia Pacific Sourcing Limited – LC Paper No. CB(2)228/13-14(04)</i>	
(9) A clear definition of packaging in the proposed new section 2B(2)(b) should be provided. If ordinary packaging is covered by the definition of “children’s product” under the proposed new section 2B(1)(b)(ii), it will deviate from international standards.	<p>The proposed new sections 2B(1)(b) and 2B(2)(b) seek to expand the application of the Ordinance.</p> <p>As explained in the Proposed Framework for Regulating the Concentration of Phthalates in Toys and Children’s Products (Annex to LC Paper No. CB(2)209/13-14(01)) submitted to the Bills Committee meeting on 5 November 2013, the proposed phthalate control does not apply to the packaging of toys, Schedule 2 products and other children’s products. This will be reflected in the proposed subsidiary legislation.</p>
(10) Regarding the age threshold for a “children’s product” under the proposed new section 2B(1)(b)(ii), it is highly recommended that “under 3 years of age” instead of “under 4 years of age” should be used. The “under 3” limit is consistent with international definitions including those of the US, Australia and the EU.	<p>The proposed use of “under 4 years of age” (i.e. “under 48 months of age”) is adopted by Canada, and is the same as “age 3 <u>and</u> younger” used in the Consumer Product Safety Improvement Act of the US.</p> <p>We consider using “under 4 years of age” appropriate, for better protection of children.</p>
(11) A guideline on the interpretation of the concept “can be placed in the child’s mouth in a reasonably foreseeable manner” should be provided. This should align with the approach in the	As set out in the Proposed Framework for Regulating the Concentration of Phthalates in Toys and Children’s Products (Annex to LC Paper No. CB(2)209/13-14(01)) submitted to the

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<p>US/EU (i.e. any part of an article in one dimension smaller than 5 cm, is considered to be capable of being taken into the child's mouth.)</p>	<p>Bills Committee meeting on 5 November 2013, "can be placed into the mouth of a child under 4 years of age" refers to a toy or children's product that can be brought to the child's mouth and kept there so that it can be sucked or chewed.</p> <p>We note that some overseas economies (e.g. the EU, the US and Canada) regard a toy or children's product with any of its dimension less than 5 cm as being able to be placed into the mouth of a child. We will consider whether this should be adopted in our proposed control.</p>
<p>(12) The US approach of restricting the control to the accessible plasticized materials is highly recommended, since the risk of exposing phthalates in inaccessible materials to young children through mouthing, sucking or ingestion is extremely low.</p>	<p>The main consideration for determining if a toy or children's product (or a part of it) should be subject to the proposed phthalate control is whether it has any plasticized part that can be mouthed by or come into close contact with young children. It is not our intention that the proposed phthalate control applies to internal/inaccessible parts (e.g. cables enclosed inside a toy), if cannot be mouthed by or come into close contact with young children in a reasonably foreseeable manner. We will consider how this should be reflected in the proposed subsidiary legislation, taking reference from the practices of overseas economies.</p>
<p>(13) The testing method CPSC-CH-C1001-09.3 should be accepted as one of the phthalate testing methods.</p>	<p>Whilst the proposed subsidiary legislation would provide for the concentration limits for six types of</p>

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	phthalates, we do not intend to further specify a particular phthalate testing method in the subsidiary legislation.
(14) A grace period for the industry to get ready for the new legislation should be provided.	We will take this into consideration when determining the commencement of the subsidiary legislation on the proposed phthalate control.
<i>Consumer Council – LC Paper No. CB(2)228/13-14(05)</i>	
(15) The imposition of concentration limits of phthalates in toys and children's products, in line with those adopted overseas such as the EU, the US, Canada and Singapore, is supported.	We have noted the support.
(16) Consideration should also be given to further expanding the definition of "children's product" to cover other general consumer products and household products which may be used by children.	We will keep in view the development of phthalate control in overseas economies, and update our regime as necessary.
(17) Publicity and education for parents and care takers about the risks of phthalates to children and purchasing compliant products should be reinforced.	We will strengthen publicity and public education on the proposed phthalate control accordingly.