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3 HEARING ON ``CONSUMER PRODUCT SAFETY COMMISSION OVERSIGHT:

4 CURRENT ISSUES AND A VISION FOR THE FUTURE''

5 THURSDAY, SEPTEMBER 10, 2009

6 House of Representatives,

7 Subcommittee on Commerce, Trade and Consumer Protection

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 10:10 a.m.,  
11 in Room 2322 of the Rayburn House Office Building, Hon.  
12 Bobby Rush [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Rush, Schakowsky,  
14 Sarbanes, Sutton, Stupak, Green, Barrow, Cstor, Braley,  
15 DeGette, Dingell, Waxman (ex officio), Radanovich, Whitfield,  
16 Pitts, Gingrey, Scalise, and Barton (ex officio).

17 Staff present: Michelle Ash, Chief Counsel; Anna  
18 Laitin, Professional Staff Member; Tim Robinson, Counsel;

19 Angelle Kwemo, Counsel; Will Casey, Special Assistant; Miriam  
20 Edelman, Special Assistant; Jeff Wease, Deputy Information  
21 Officer; Lindsay Vidal, Press Assistant; Brian McCullough,  
22 Minority Senior Professional Staff Member; Shannon Weinberg,  
23 Minority Counsel; Will Carty, Minority Professional Staff  
24 Member; and Sam Costello, Minority Legislative Analyst.

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25           Mr. {Rush.} The subcommittee will come to order. Good  
26 morning, members and also the commissioner and all of the  
27 other folk who are gathered in the room. This subcommittee  
28 is called to order now for the purposes of an Oversight  
29 Hearing on Current Issues and a Vision for the Future for the  
30 Consumer Product Safety Commission, and I welcome everyone to  
31 this hearing. The Chair now without any other delays, the  
32 Chair recognizes himself for 5 minutes for the purposes of an  
33 opening statement.

34           The Consumer Product Safety Improvement Act was one of  
35 the premier accomplishments of the 110th Congress. The law  
36 created basic safety standards for keeping toxic lead and  
37 phthalates out of children's products, engaging Consumer  
38 Product Safety Commission vital new resources and authority,  
39 and establishing a product testing system that would ensure  
40 product safety.

41           I would like to welcome Chairman Inez Tenenbaum, who is  
42 the ninth Chairman of the Consumer Product Safety Commission.  
43 She hails from the great State of South Carolina. Chairman  
44 Tenenbaum is nationally known and is an advocate for children  
45 and families. She served with distinction as the State of  
46 South Carolina's Superintendent of Education for two terms.  
47 I am looking forward to seeing and hearing from Chairman

48 Tenenbaum as she steers the process of implementing the  
49 CPSIA. Under her leadership, the needed implementation will  
50 go far more smoother then other previous chairmen and the  
51 CPSC will work effectively utilizing the increased resources  
52 that are now at its disposal. This is why I am so pleased to  
53 welcome Chairman Tenenbaum today and to hear from her about  
54 the Commission's new direction and its future vision.

55         It is mentionable that the Chairman now has a full  
56 complement of commissioners, something which it lacked for  
57 far too long under the previous administration. I think that  
58 the President has chosen well in nominating Robert S. Adler  
59 and Anne Northup as commissioners. Commissioner Adler has a  
60 deep history of experience as a former advisor to two CPSC  
61 commissioners, Commissioners Pittle and Steorts.

62         Commissioner Northup is the former Congresswoman from  
63 Kentucky's third district and the mother of six, who served  
64 for 9 years in the House of Representatives. As a  
65 congresswoman, Commissioner Northup founded the House Reading  
66 Caucus and co-chaired the Congressional Coalition on Adoption  
67 which further shows her own personal commitment to helping  
68 and defending children.

69         Madam Chair, when you took the helm you showed great  
70 courage, sound judgment and a purpose for rulemaking over our  
71 safety. One of the first agenda items that you scheduled was

72 whether to include crystal and glass beads in children's  
73 jewelry from the lead content restrictions in Section 101(a)  
74 of the CPSIA. You applied the facts as you found them to the  
75 CPSI lead limits and to the real world facts and foreseeable  
76 possibilities. For example, you talked and wrote about how  
77 children handled and played with this jewelry by mouthing,  
78 ingesting and swallowing the beads and how any amount of lead  
79 constituted too much lead in these beads. You are willing to  
80 grapple with thorny issues and the business of our Pacific  
81 Rim trading products who today manufacture as much as 85  
82 percent of our toys and 95 percent of our solvents, and  
83 almost 60 percent of our electrical products, shows your  
84 leadership and your vision. Unfortunately, more than 85  
85 percent of our country's recalled products are also imported.

86 Chairman Tenenbaum, I will ask you questions this  
87 morning based on remarks you have made in your public  
88 statements on some substantive areas that pose special safety  
89 and recalled challenges and how you will go about  
90 implementing the CPSIA. I am also very interested in hearing  
91 how you see the CPSIA's transitioning from the Nord-era to  
92 Tenenbaum-time. We will look for a shiny, new product safety  
93 product testing facility with more employees and more  
94 appropriated dollars.

95 And as I close, I want you to comment as succinctly as

96 you can about the CPSC's timeline for adopting new rules  
97 under CPSIA, about some of the things that the GAO advised us  
98 and other improvements that you will make at the agency. I  
99 look forward to hearing your testimony and I thank you again  
100 for visiting with us today.

101 [The prepared statement of Mr. Rush follows:]

102 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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103           Mr. {Rush.} The Chair now recognizes the ranking  
104 member, Mr. Radanovich for 5 minutes.

105           Mr. {Radanovich.} Thank you, Chairman Rush, for calling  
106 this important hearing today.

107           The CPSC is a small but important agency whose mission  
108 is implementing and enforcing our nation's Federal Consumer  
109 Protection Safety Laws. The Commission and its staff work  
110 hard to ensure consumer products are safer when they reach  
111 the homes of our constituents.

112           We all remember the increase in commission-mandated  
113 recalls in 2007. Weekly headlines detailed various toy  
114 dangers, most of which were due to manufacturers' failure to  
115 comply with existing standards, for instance, lead paint. To  
116 their credit, the Commission's staff was able to affect more  
117 recalls in 2007 than in any other year in the CPSC history  
118 and despite the Commission's diligence, some observers claim  
119 the increase in recalls was evidence that reform was  
120 necessary and spurred the enactment of the Consumer Product  
121 Safety Improvement Act, also known as CPSIA.

122           CPSIA instituted the most sweeping changes to the  
123 Commission's regulatory environment since it was created.  
124 Among the changes, the law imposes many new requirements on  
125 businesses in the name of providing greater assurances that

126 consumer products reaching our ports and placed on our store  
127 shelves are safer. While no one disagrees with creating  
128 safer products and it is good for public policy, we don't all  
129 agree on how to get there. The law has had consequences  
130 detrimental to many hardworking Americans. Put simply, the  
131 law is not working the way that many of us thought that it  
132 should work.

133         In April, hundreds of business owners that want to abide  
134 by the law came to Washington and voiced their concerns. The  
135 new law is crippling many honest businesses, particularly  
136 small businesses with burdensome and costly testing  
137 requirements for children's products, many of which the  
138 evidence shows are completely safe, and despite the  
139 Commission's stays of enforcement protecting many  
140 manufacturers are still being required to prove that their  
141 products are CPSIA compliant. As a result, testing for  
142 perfectly safe products is costing businesses millions of  
143 dollars, inventory losses for safe but technically  
144 noncompliant products is estimated in the billions and there  
145 is no discernible improvement in child safety.

146         Many small and home-based businesses are already hurting  
147 from the economic recession. On top of the decrease in  
148 consumer spending, manufacturers and retailers are now faced  
149 with the new cost of complying with CPSIA and if they can

150 comply at all. Many of these same small and medium-size  
151 businesses will also suffer punitive effects of the cap and  
152 trade legislation passed by the House and the healthcare  
153 legislation this committee reported out last month.

154         We committed nearly \$1 trillion in stimulus spending for  
155 various industries, bailed out the auto industry, bailed out  
156 financial firms, bailed out homeowners and helped purchase  
157 new cars for some consumers but where is the relief for small  
158 businesses who we now burden with this regulation. These  
159 small businesses are beginning to think that Congress is  
160 waging war against them. Providing sensible regulatory  
161 relief to those affected by CPSIA would be a no-cost stimulus  
162 for the very businesses we are counting on to create new jobs  
163 and to bring us out of an economic recession and it is the  
164 right thing to do.

165         The biggest problem with CPSIA I see is that it doesn't  
166 distinguish between risky and safe products. The law strips  
167 the Commission of discretion in granting CPSIA exemptions for  
168 children's products. The Commission confirmed this  
169 interpretation of the law when it voted to deny exemption  
170 petitions because the law simply does not permit exemptions  
171 if any lead can possibly be absorbed, even if the staff  
172 believes the products are not harmful. This standard is more  
173 stringent than the FDA's limits for milk and for water, the

174 water our children drink.

175         The law is not only impacting businesses, it is also  
176 straining the Commission's resources as they process the  
177 thousands of comments, petitions, rulemakings and other  
178 CPSIA-related actions. The Commission has done the best it  
179 can with the resources that the appropriators granted to  
180 increase its staff in order to meet the stringent deadlines  
181 required by law but it has not received everything we  
182 authorized and therefore, needs relief from these tight  
183 timelines.

184         I commend the Commission for finding creative ways to  
185 provide some relief to businesses with a few commonsense  
186 exemptions and stays of enforcement. Unfortunately, some of  
187 these actions are only temporary and they don't address the  
188 bulk of the problems but the highlight of the recognition  
189 that compliance with the law as written is impossible for  
190 many businesses and it won't improve safety. I am  
191 disappointed that we will not hear from any witnesses from  
192 the many businesses adversely affected by the new law but I  
193 look forward to a robust conversation with the new Chairman  
194 on these matters.

195         Mr. Chairman, I appreciate your desire to conduct this  
196 oversight hearing into the Commission's priorities under a  
197 new administration. It is clear that the top priority for

198 all of us should be to fix the law that we wrote so that it  
199 works for everybody. A one-size-fits-all approach is not  
200 working and will not improve safety. The time has come for  
201 us to work together and fix the problem by restoring  
202 flexibility for the Commission to determine what presents a  
203 real risk to children's safety, and appropriately target  
204 those risks and I stand ready to work with you on this, Mr.  
205 Chairman, and I welcome Chairman Tenenbaum to the committee.  
206 Thank you.

207 [The prepared statement of Mr. Radanovich follows:]

208 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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209           Mr. {Rush.} Thank you. The Chair now recognizes the  
210 Chairman of the full committee, Mr. Waxman, for 5 minutes for  
211 the purposes of opening statement.

212           The {Chairman.} Thank you very much, Mr. Chairman, for  
213 holding this important oversight hearing and I want to  
214 welcome Chairman Tenenbaum to this hearing today, as well.

215           Last year Congress enacted the truly historic  
216 legislation on product safety. Our product safety system and  
217 especially our toy safety system was terribly broken. We saw  
218 record recalls and the total loss of consumer confidence in  
219 the safety of products, and children were killed and horribly  
220 injured by defective and dangerous products, and the stories  
221 were shocking. The situation was unacceptable to the  
222 American people and Congress responded. Following a lengthy  
223 and careful process, we enacted legislation that is strong,  
224 well-designed and effective.

225           The law bans lead in children's products, a step that is  
226 decades overdue. There is no safe level of lead and no  
227 reason that children should be exposed to lead in their toys.  
228 The law establishes a safety net for product safety that many  
229 consumers already assumed was in place. For the first time  
230 under this law, manufacturers need to demonstrate their  
231 products are safe before they can be sold. The law bans

232 phthalates in certain children's products in recognizing  
233 science that shows these chemicals to be dangerous,  
234 especially to the youngest and most vulnerable children.

235         And finally, the law addresses systemic problems at CPSC  
236 to provide them with stronger legal authorities to carry out  
237 their mission and additional funding for the agency, and we  
238 restored the Commission to its full size of five  
239 commissioners. This is a key step that enables the  
240 Commission to carry out its critical mission after years of  
241 neglect and dysfunction. So in short, the law is a good,  
242 strong one and it vastly improves our children's health and  
243 safety.

244         Now that we are a year away from the recalls, the most  
245 dramatic stories have left the front pages, some suggest that  
246 we don't really need such a strong law but the fact remains  
247 that the system we had in place was a failure. This law was  
248 necessary. To retreat now from the proven consumer  
249 protections achieved under this law would be a huge mistake.  
250 There is no question however, that implementation has at  
251 times been uneven. Since the law went into affect, there has  
252 been unnecessary and widespread confusion among businesses  
253 and consumers, and I am committed to working with the  
254 Commission and with interested members of Congress and to you  
255 particularly, Mr. Chairman, to assure that moving forward,

256 implementation of the law is clear and comprehensible.

257           And that is why I am very pleased that Ms. Tenenbaum is  
258 here and we will hear from her about her plans for the  
259 Commission and for the law. I have great confidence in the  
260 Chairman together with the other four commissioners that they  
261 will restore the agency to one capable of carrying out this  
262 law and its entire mission effectively and efficiently. I  
263 look forward to hearing the Chairman's testimony and I look  
264 forward to engaging in a productive relationship with  
265 leadership that is truly committed to protecting all  
266 consumers, especially our children.

267           Thank you, Mr. Chairman.

268           [The prepared statement of Mr. Waxman follows:]

269 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
270 Mr. {Rush.} The Chair now recognizes the ranking member  
271 of the full committee, the gentleman from Texas, Mr. Barton,  
272 for 5 minutes.

273 Mr. {Barton.} Thank you, Mr. Chairman, and thank you,  
274 Chairwoman, for being here.

275 I voted for the bill last year. I was on the conference  
276 committee along with Chairman Waxman and Mr. Dingell and Mrs.  
277 Schakowsky and others so I am a supporter of the bill.  
278 Having said that, I listened with some astonishment to what  
279 our distinguished Chairman, Mr. Waxman, just said. I  
280 interpret what he said to mean that it's just a problem with  
281 implementation. It is not a problem with implementation.

282 As you have said, Madam Chairwoman, the law doesn't give  
283 you the flexibility to do some of the things that you have  
284 been encouraged to do to implement the law. We need to  
285 change the law. We need to perfect it. We need to modify  
286 it. We need to give some flexibility and some discretion to  
287 your agency to implement this law.

288 I and Mr. Radanovich and others have repeatedly asked  
289 Chairman Waxman to hold a markup or work with us on a  
290 bipartisan basis to come up with a bill to fine tune the law  
291 that we passed last year. We started making those requests  
292 informally in January. Today is a hearing which is a good

293 step but that is all this is. It is a hearing. We need to  
294 do more, in my opinion, than hold a hearing. I have got  
295 right here, I would say that is 200 letters, maybe 150 of  
296 small businesses around this country that have written to  
297 myself and to the Chairman and other members of the committee  
298 to do something to fine-tune the law.

299         Mr. Radanovich is going to ask unanimous consent at some  
300 point in time to put those letters in the hearing record. We  
301 have products before us. The dress that is in front of Mr.  
302 Radanovich can't be tested because if you test it, it  
303 destroys it. These products are going to be pulled off the  
304 shelves because the cost of the test is more than the value  
305 of the products that are sold. There should be some  
306 commonsense implementation, some commonsense refinement. We  
307 are not trying to change the lead standard. We are not  
308 trying to backpedal on the intent of the law but when you  
309 can't sell an all-terrain vehicle because of concern that a  
310 child is going to ingest the tailpipe or something like that,  
311 there needs to be some discretion given to the regulatory  
312 agency to use a commonsense approach to implementing the  
313 regulations.

314         So, Mr. Chairman, I am glad that you are holding this  
315 hearing. I am going to submit my formal statement for the  
316 record. I hope it doesn't--I know you are a White Sox fan

317 and not a Cubs fan but I hope it doesn't take the Cubs  
318 winning the pennant before we decide to act to change this  
319 bill. You know, we need--and the good news is that what we  
320 have done it is not that difficult and that it can be done in  
321 a bipartisan basis and it can be moved out of committee and  
322 it can be moved to the House and the other body for the  
323 President to sign in the next 2 to 3 months. I mean this is  
324 not a huge mountain that we are trying to overcome and there  
325 is not--if we get past the insistence that it is a perfect  
326 bill and it is like the Ten Commandments, you can't change a  
327 letter even in any of the Ten Commandments, we can get this  
328 done, and I hope that is what this hearing is about is  
329 finding a way to get it done.

330 With that, Mr. Chairman, I yield back.

331 [The prepared statement of Mr. Barton follows:]

332 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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333           Mr. {Rush.} The Chair wants to thank the ranking member  
334 and wants to ensure the ranking member that we will get  
335 something done before the Aggies win the BCS.

336           Mr. {Barton.} It could happen, Chairman.

337           Mr. {Rush.} The Chair now recognizes the Chairman  
338 Emeritus of the full committee, my friend from Michigan, Mr.  
339 Dingell, for 5 minutes.

340           Mr. {Dingell.} Mr. Chairman, I commend you for holding  
341 today's hearing. It is an important one. I would like to  
342 extend my warm regards and welcome to Chairman Tenenbaum and  
343 I would like to thank her for appearing before us today to  
344 discuss issues facing her agency and her vision of the  
345 agency's future.

346           I want to make it very clear, Mr. Chairman, this hearing  
347 is needed. It is oversights in the way that it should be  
348 conducted and again I commend you for it.

349           A long time ago, a dear friend of mine by the name of  
350 John Moss, then a member of this committee, and I in this  
351 room held a series of hearings which led to the enactment of  
352 legislation creating the consumer product safety which he and  
353 I and other members were co-sponsoring. Last year, my dear  
354 friend, the ranking Republican member of this committee, and  
355 I got together with other members of this committee including

356 you, Mr. Chairman, all in a sense of concern about the fact  
357 the Consumer Product Safety Commission was not able to do its  
358 job because of budget cuts, personnel cuts, demoralization,  
359 the inadequacy of researchers and personnel to do its job.  
360 And from that came the successor Act to the original Consumer  
361 Product Safety Act which was passed in '72, and which  
362 returned it somewhat, and the Commission somewhat, to the  
363 state that it had had at the time that we offered the first  
364 legislation.

365         Now, I want to make it very clear that as the original  
366 author or the remaining original author of the Consumer  
367 Product Safety Act and the author of last year's legislation,  
368 I feel very strongly about the needs for strong protection  
369 for the nation's consumers. And I feel very keenly that the  
370 Consumer Product Safety Commission who has not been able to  
371 do its job because of the deregulatory attitude and a skimpy  
372 attitude with regard to funding in the nation's regulatory  
373 agencies. And so with my colleagues on this committee, I  
374 wholeheartedly supported a restoration of a good regulatory  
375 framework to ensure the safety of consumer products  
376 distributed in the commerce of the United States,  
377 particularly those meant for use by children. And that is  
378 the feeling which I shared with my colleagues on this  
379 committee and we tried to see to it not only did they get the

380 authorities and use the authorities which they had at the  
381 CPSC but also that they got the researchers which had been  
382 permitted to shrivel in a most lamentable fashion. Indeed,  
383 to laughable proportions compared with those of other federal  
384 regulatory agencies so that the agency was in effect  
385 completely neutered and incapable of doing its business but  
386 we thought we had corrected that, and I would note that until  
387 recently CPSC might well have been described as a moribund  
388 agency, hampered by inadequate funding and all too limited  
389 statutory mandates.

390         For these reasons, we did what we did in terms of the  
391 Consumer Product Safety Improvement Act, CPSIA, which I have  
392 alluded to earlier which was ultimately signed into law by  
393 President Bush last August. CPSIA is meant to bolster the  
394 agency and to enhance its authorities in order to improve  
395 CPSC's ability to carry out its fundamental purpose, again  
396 the protection of consumer health and safety.

397         It should be noted though that a funny thing happened on  
398 the way to the forum. Our dear colleagues on the other end  
399 of the building called the United States Senate got into the  
400 act and with profound ignorance of the way the law worked or  
401 the intention of this committee and the authors of the  
402 legislation, proceeded to do extensive redrafting and it  
403 created difficulties which we were unable to cure in the

404 conference between the House and the Senate. We had abundant  
405 outside assistance which confused the issues further, from  
406 consumer representatives and enthusiasts who did not know how  
407 government works or how government should work, and we had  
408 considerable messing around from both the Senate and from  
409 this body which has created confusions which remain today.

410 Now, I remain concerned about the difficulties that have  
411 been encountered in the implementation of the CPSIA as  
412 improved by the United States Senate. I would remind all  
413 persons that legislation passed this committee unanimously in  
414 a bipartisan fashion and again I commend my friend, the  
415 ranking minority member, for his leadership in this matter  
416 and his cooperation and assistance. And it passed the House  
417 unanimously and then it came back from the Senate and all of  
418 a sudden we had a lot of negative votes because people were  
419 honestly concerned about the confusion that had been  
420 inflicted by the United States Senate through it's own  
421 amendment process and through the process which we sought  
422 advice in the country. In any event, there appears now to be  
423 problems and I am hopeful, Mr. Chairman, that we will be able  
424 through this process to ferret them out and to correct them,  
425 and indeed to find out what they might be and how they are  
426 impacting upon the American people, upon consumers and upon  
427 businesses.

428           In January on the 30th, in a letter to the committee,  
429 former CPSC Chairman Nord wrote, ``The timelines in the law  
430 are proving to be unrealistic,'' which in fact, they are, and  
431 then ``[CPSC] will not be able to continue at this pace  
432 without real risk of promulgating regulations that have not  
433 been thoroughly considered.'' Moreover, Chairman Nord  
434 stated, ``Although CPSC staff has been directed to move as  
435 quickly as possible to complete its work, short circuiting  
436 the rulemaking process gives short shrift to the analytical  
437 discipline contemplated by the statute.''

438           In brief, Mr. Chairman and Madam Chairman, I intend to  
439 use my time today to discuss with you whether you share this  
440 view and more specifically whether you believe that CPSIA  
441 contains realistic deadlines for rulemakings and compliance  
442 as well as too little implementation discretion to CPSC.  
443 These problems have triggered a number of meetings between  
444 members of the House and Senate in which it discussed that  
445 perhaps maybe the House and the Senate should pressure CPSC  
446 to come to conclusions which may or may not be supported by  
447 the law. And I wish to state with great clarity that it is  
448 not my intention to undo anything that has been achieved via  
449 CPSIA but rather to discover what action by this committee as  
450 a part of its oversight may be necessary to correct any  
451 shortcomings that have been inflicted on the law and on the

452 people of the United States by the actions of our dear  
453 friends in the Senate who have confused in a splendid fashion  
454 an otherwise excellent statute.

455 I want to thank you, Mr. Chairman, and thank you, Madam  
456 Chairman, for coming before the committee today and I look  
457 forward to a frank and productive discussion about the  
458 matters currently confronting the CPSC as well as the future  
459 of the agency in the hope that perhaps our current efforts  
460 may achieve without the assistance of our dear friends and  
461 colleagues in the Senate the kind of confusion that has been  
462 inflicted upon your agency in the time since we passed CPSIA.  
463 I thank you, Mr. Chairman.

464 [The prepared statement of Mr. Dingell follows:]

465 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
466           Mr. {Rush.} The Chair thanks the Chairman Emeritus and  
467 now the Chair recognizes the gentleman from Kentucky for 2  
468 minutes for the purposes of opening statements.

469           Mr. {Whitfield.} Thank you, Chairman, for having this  
470 hearing today.

471           I also was a conferee on this legislation that met with  
472 the Senate to adopt this legislation and it passed  
473 overwhelmingly in the House and also in this committee as  
474 former Chairman Dingell said. I think we also have a  
475 responsibility to protect our children and this legislation  
476 does precisely that but it also has had unintended  
477 consequences and many members have already discussed that  
478 today. The timelines are in question, the exemption  
479 authority that was taken away really from the consumer  
480 protection Commission. The sad thing is now the standard is  
481 so strict that the CPSC does not have the flexibility to  
482 exempt seemingly obvious products that do not contain a lead  
483 or other chemically hazardous materials and so we have a lot  
484 of small business people today spending thousands of dollars  
485 to prove that their product is safe, knowing full well that  
486 it is safe.

487           And so it seems to me that it is not right that Congress  
488 passes a law so stringent that the Commission with the

489 authority to enforce these laws does not have any  
490 flexibility. And I think we have an obligation to the people  
491 of the United States, particularly at this time of an  
492 economic downturn that we do not want to make it more  
493 difficult for small business people to stay in business, and  
494 we need to do everything that we can do to correct the  
495 problems that are in the legislation that was passed  
496 overwhelmingly by the House and Senate.

497 Now, I yield back the balance of my time.

498 [The prepared statement of Mr. Whitfield follows:]

499 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
500           Mr. {Rush.} The Chair thanks the gentleman. The Chair  
501 now recognizes my friend, the Vice Chair of the subcommittee,  
502 the gentlelady from Illinois, Ms. Schakowsky, for 2 minutes.

503           Ms. {Schakowsky.} I thank you, Chairman Rush, and I  
504 want to welcome Chairman Tenenbaum. We had the pleasure of  
505 meeting each other recently. I appreciate very much your  
506 reaching out to me and hearing about your commitment to make  
507 the Consumer Product Safety Commission and agency that will  
508 truly live up to its name and I look forward to working with  
509 you.

510           I too wanted to talk about the Consumer Product Safety  
511 Improvement Act. There were many, many important provisions  
512 in the bill which I think everybody would agree to. Some  
513 that I worked on, including mandatory infant and toddler  
514 durable product standards and testing, and the Danny Keysar  
515 Child Product Safety Notification Act, and the first  
516 mandatory safety standards for children's toys are going to  
517 help grandmothers like me feel confident when I buy supplies  
518 or gifts for my grandkids that those things are going to be  
519 safe.

520           And I know that there have been problems with  
521 implementation of the new law, particularly under the  
522 previous leadership at the CPSC. I personally think that the

523 law can be successfully implemented and I just wanted to  
524 point out some flexibility that I do see in the law. The law  
525 includes language that empowers the CPSC to exempt certain  
526 materials from the testing and certification requirements,  
527 and to relieve those manufacturers of products that are in no  
528 danger of violating the new standards, and I know that the  
529 CPSC has begun to apply some of those exclusions and so I  
530 think there are opportunities within the existing bill to  
531 deal with complications. For example, I know that the CPSC  
532 has exempted from the lead testing requirements components  
533 that can't be accessed by a child, components of electronic  
534 devices, the inside, intended for children, a stay of  
535 enforcement of the lead and phthalates testing rules for a  
536 year or so. A number of things have been done and I think we  
537 should first before we change the law, look at those and see  
538 if they can provide the kind of relief to issues that have  
539 been raised today.

540 I thank you, Mr. Chairman, and I yield back.

541 [The prepared statement of Ms. Schakowsky follows:]

542 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
543           Mr. {Rush.} The Chair thanks the gentlelady. The Chair  
544 now recognizes the gentleman from Louisiana, Mr. Scalise, for  
545 2 minutes for the purposes of opening statements.

546           Mr. {Scalise.} Thank you, Mr. Chairman. I want to  
547 thank you and Ranking Member Radanovich for having this  
548 hearing and I would like to congratulate Chairwoman Tenenbaum  
549 on her confirmation and welcome her before our subcommittee.

550           The Consumer Product Safety Commission has a very  
551 important job. It protects consumers and families from  
552 products that may pose hazard or injure children. We must  
553 ensure that the CPSC effectively carries out this mission and  
554 has the tools to do so. As the father of two young children,  
555 I want to be assured that the CPSC does its job and that the  
556 toys all children are playing with are safe.

557           One particular issue before the CPSC that has affected  
558 my district as well as many across this country is Chinese  
559 drywall. After Florida, Louisiana has had the most cases in  
560 the Nation of toxic drywall. The Louisiana Department of  
561 Health and Hospitals has received over 800 complaints about  
562 Chinese drywall and it is estimated that the amount of  
563 Chinese drywall brought into Louisiana after Hurricanes  
564 Katrina and Rita could potentially affect approximately 7,000  
565 homes. My office has received numerous complaints from

566 constituents affected by Chinese drywall. One man who called  
567 lost his home to Hurricane Katrina and had to relocate his  
568 family to another town, only to find out that the home he  
569 moved into was built with Chinese drywall. Another  
570 constituent realized he had Chinese drywall in his home when  
571 his wife, who was four months pregnant wasn't gaining any  
572 weight. Her doctor told her to move out of the home and now  
573 she and her husband are living in separate towns while their  
574 home is repaired.

575         During these economic times, many of our constituents  
576 cannot afford to purchase another home or rent a second one  
577 while repairs are being made. It is clear that Chinese  
578 drywall is reeking havoc in homes, charring electrical wires,  
579 corroding metal and causing serious health problems. We must  
580 determine the origin and scope of the toxic drywall and we  
581 must take action against those who introduced the drywall  
582 into American markets. It is also important that we continue  
583 to testing in order to realize the potential health problems  
584 that Chinese drywall can cause.

585         Chairwoman Tenenbaum, in your testimony you mentioned  
586 that the CPSC is committed to finding answers and solutions  
587 for all the homeowners impacted by this issue. I want to  
588 know what those answers are and solutions you have found.  
589 The citizens of Louisiana and elsewhere in the country who

590 have been impacted by Chinese drywall deserve clear answers  
591 and solutions. Those affected in my State have already been  
592 through so much and now 4 years after Katrina many once again  
593 have to rebuild their homes. This is unacceptable and we  
594 must ensure that no one has to encounter these problems in  
595 the future.

596 I look forward to your testimony and I yield back.

597 [The prepared statement of Mr. Scalise follows:]

598 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
599           Mr. {Rush.} The Chair recognizes now the gentle lady  
600 from Florida, Ms. Castor, for 2 minutes for the purposes of  
601 opening statements.

602           Ms. {Castor.} Thank you, Mr. Chairman, very much for  
603 calling this important oversight hearing of the Consumer  
604 Product Safety Commission.

605           Welcome to Chairman Tenenbaum. I am pleased that we  
606 have this opportunity to discuss the Consumer Product Safety  
607 Act with you. You have outstanding experience and your  
608 background as a teacher and the State School Superintendent  
609 for the State of South Carolina demonstrates your commitment  
610 to families and consumer issues and you are off to a great  
611 start, and in many ways, this hearing is going to be very  
612 different than if we had proceeded with the one scheduled a  
613 few months ago. At that time, many concerns were expressed  
614 to me about the CPSIA implementation, many of them stemming  
615 from the lack of information and what to expect from the  
616 Consumer Product Safety Commission. Rumors were flying that  
617 children's bookstores would be forced to close or thrift  
618 stores would not be able to sell toys at all, but under your  
619 leadership in the last few months many of these concerns have  
620 been addressed, and I thank you for that.

621           I appreciate that the assignment that was given to the

622 Consumer Product Safety Commission was not an easy one. The  
623 new Consumer Product Safety Improvement Act was a fundamental  
624 shift from a reactive product safety regime to a proactive  
625 approach. Before parents just had to hope that toys they  
626 were buying for their kids were safe and watch for product  
627 recalls, and all too often the prevailing consumer safety  
628 policy with regard to toys was caveat emptor and this  
629 resulted in a disastrous 2007 Christmas shopping season when  
630 popular toy trains had friendly, inviting faces painted on  
631 them with Chinese lead paint, and one popular toy called Aqua  
632 Dots allowed children to arrange brightly colored beads into  
633 designs and then bind them together with water.  
634 Unfortunately, the beads gave off the so-called--the drug GHB  
635 when swallowed, so Congress gave the CPSC a big  
636 responsibility last year and there have been some bumps in  
637 the road.

638         For too long there has been a lack of guidance from the  
639 agency for retailers and manufacturers and some of the  
640 deadlines for guidance came and went without the required  
641 guidance but I am extremely encouraged by the actions taken  
642 by the Commission in recent months. The quality and quantity  
643 of the proposed rules that have come out just since your  
644 swearing in is truly encouraging and like my colleague from  
645 Louisiana, I do hope you will address the important Florida

646 issue important to many other States and that is the unsafe  
647 Chinese drywall that has been used in the construction of  
648 homes. It is making many families in Florida sick. Families  
649 should not have to worry that the building materials in their  
650 walls emit corrosive, toxic gases into their home so I look  
651 forward to hearing more from you about what the Commission is  
652 doing about toxic drywall and what we can do to help on that  
653 issue.

654 Thank you being here. I yield back my time, Mr.  
655 Chairman.

656 [The prepared statement of Ms. Castor follows:]

657 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
658           Mr. {Rush.} The Chair recognizes the gentleman from  
659 Pennsylvania, Mr. Pitts, for 2 minutes.

660           Mr. {Pitts.} Thank you, Mr. Chairman. Thank you for  
661 holding this important hearing on the issues and the future  
662 of the Consumer Product Safety Commission.

663           I think we all agree that protecting consumers,  
664 especially children from unsafe products is a worthy goal of  
665 government regulation. In 2008, the House Representatives  
666 passed the Consumer Product Safety Improvement Act with the  
667 goal of improving the safety of products that children and  
668 parents use everyday. However, the implementation of this  
669 law has given me cause for concern. We have observed a  
670 number of unforeseen and negative consequences arise and that  
671 are now putting undo pressure on businesses and manufacturers  
672 here in the United States. These consequences are  
673 increasingly problematic, especially during tough economic  
674 times when we desperately need the jobs provided by  
675 businesses and manufacturers.

676           I received countless e-mails and phone calls and letters  
677 from businesses expressing the difficult and damaging affects  
678 this law is having on them. The CPSC needs the proper  
679 resources and the time and the flexibility to carry out the  
680 implementation of this law in a reasonable and thoughtful

681 manner. I have grandchildren and I want to be sure their  
682 toys are safe. I don't want to weaken laws that ensure the  
683 products on the market are safe for all consumers but we need  
684 to do this in a way that is realistic, clear and fair and  
685 that is why I have joined many of my colleagues in co-  
686 sponsoring H.R. 1815. I believe this bill institutes the  
687 needed flexibility the Commission needs in order to respond  
688 to the concerns of businesses and industry.

689 I welcome Chairman Tenenbaum. I look forward to hearing  
690 your testimony and appreciate you coming here today, and  
691 yield back.

692 [The prepared statement of Mr. Pitts follows:]

693 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
694           Mr. {Rush.} The Chair recognizes the gentleman from  
695 Iowa, Mr. Braley, for 2 minutes.

696           Mr. {Braley.} Thank you, Mr. Chairman, and, Chairman  
697 Tenenbaum, I think the most important component of your very  
698 impressive resume is your experience as an elementary school  
699 teacher because elementary school teachers use commonsense in  
700 enforcing the law of their classroom everyday. My mother has  
701 been teaching in Iowa for over 50 years and at the age of 80  
702 she is still subbing so I have great respect for elementary  
703 school teachers.

704           But I want to focus on a couple of things that have not  
705 really been discussed here this morning and one is the point  
706 that you raised in your opening statement about the need for  
707 increased port monitoring. But underneath that there is a  
708 subtext that we rarely talk about and that is the incredible  
709 impact of foreign manufactured goods on the safety of  
710 consumers in this country. We have seen an incredible shift  
711 in consumer products that were manufactured in the United  
712 States that are now being made overseas. Most States have  
713 product liability laws that limit recovery in the chain for  
714 distribution to the manufacturer of those products if the  
715 manufacturer is subject to the jurisdiction of the courts and  
716 has not been declared insolvent. Anyone who ever tries to

717 hold a Chinese manufacturer accountable to the jurisdiction  
718 of the courts in the State will tell you it is an immense  
719 challenge. In fact, many of these factories in China are de  
720 facto agents of the Chinese government and so the whole  
721 concept of accountability in U.S. courts is an enormous  
722 impediment to consumer safety. That is why the role of your  
723 agency is so critical and that is why the lack of enforcement  
724 on defective foreign products is one of the biggest  
725 challenges U.S. consumers face so I applaud your efforts to  
726 focus on this. We need to realize that many U.S. consumers  
727 are not being protected for the injuries and deaths caused by  
728 foreign manufactured products and come up with a joint  
729 strategy to address those concerns.

730         On the issue of Chinese drywall, I inspected homes in  
731 Boynton Beach, Florida with defective Chinese drywall and  
732 came back here and was sick for the next 6 weeks. I saw with  
733 my own eyes the corrosive effect on metal that this drywall  
734 is having. I smelled the odors in these homes. It is an  
735 enormous crisis and it is just the tip of the iceberg of what  
736 is wrong with my import monitoring in this country. We have  
737 a lot to do to improve the enforcement of the quality of  
738 goods coming into this country and I pledge my commitment to  
739 work with you and your office to make sure that we are doing  
740 a better job of protecting U.S. consumers.

741 And I yield back my time.

742 [The prepared statement of Mr. Braley follows:]

743 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
744           Mr. {Rush.} The gentleman from Georgia, Mr. Barrow, is  
745 recognized for 2 minutes.

746           Mr. {Barrow.} I thank the Chairman.

747           In the interest of Chairman Tenenbaum's time, I will  
748 refrain from offering an opening statement but I cannot  
749 refrain from taking this opportunity to personally welcome  
750 you and congratulate you on your appointment. Our paths  
751 first met 5 years ago when I was seeking election to the  
752 House and our guest today was seeking election to the other  
753 body and all I can say is that the other body's great loss is  
754 the Consumer Product Safety Commission's great gain. You are  
755 certainly one of the best things to have come from South  
756 Carolina in a long, long time and on behalf of your kinfolk  
757 in Savannah, I personally congratulate you and welcome you to  
758 the committee and thank you for your service to our country.

759           With that, I yield back.

760           [The prepared statement of Mr. Barrow follows:]

761 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
762           Mr. {Rush.} The Chair now recognizes the gentlelady  
763 from Ohio, Ms. Sutton, for 2 minutes.

764           Ms. {Sutton.} Thank you, Chairman Rush, and thank you  
765 for holding today's important hearing on the Consumer Product  
766 Safety Commission.

767           I am pleased to welcome you, Chairman Tenenbaum.  
768 Congratulations on your confirmation. You have such an  
769 important role and responsibility as the head of the agency  
770 charged with protecting the public, especially children from  
771 unsafe and dangerous products and with your appointment I am  
772 starting to feel better already. I wish you the best of  
773 luck.

774           Consumer product safety is not an area that we can  
775 afford to ignore and last year I was proud when we passed the  
776 Consumer Product Safety Improvement Act. That law created  
777 basic safety standards for keeping toxic lead out of  
778 children's products. Manufacturers must affirmatively  
779 demonstrate that those products are safe. The Act also  
780 provides vital new resources and authority including the  
781 Import Safety Initiative which puts inspectors at key U.S.  
782 port, because as we have heard here today, in recent years  
783 the relationship, and I know you are well aware of this, the  
784 relationship between our Nation's import safety crisis and

785 our Nation's trade policy has become painfully obvious. As  
786 imports have continued to grow, 80 percent of all toys sold  
787 in the U.S. are imported from China alone. Some  
788 manufacturers have shown a remarkable failure to adhere to  
789 basic safety standards. It is a national shame and  
790 embarrassment when companies and importers pay more attention  
791 to their costs than our safety and the safety of our children  
792 and our families. Product safety must be the primary focus.  
793 In 2007 and 2008, more than 37 million toys were recalled in  
794 the U.S. This year there have been 23 toy recalls issued  
795 affecting over 4 million toys and every single recalled toy  
796 was manufactured in China.

797 We have also seen reports of serious health problems in  
798 residents of homes containing imported Chinese drywall and in  
799 response I am pleased that the CPSC established a drywall  
800 task force working with other agencies to investigate the  
801 hazards of imported drywall. And I am very interested to see  
802 the results of the task force studies and see what we can do  
803 to ensure that things being imported into this country are  
804 safe for consumers in the United States.

805 Yield back.

806 [The prepared statement of Ms. Sutton follows:]

807 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
808 Mr. {Rush.} The Chair now recognizes the gentlelady  
809 from Colorado, Ms. DeGette, for 2 minutes.

810 Ms. {DeGette.} Thank you very much, Mr. Chairman.

811 I want to add my welcome to our new Commissioner and say  
812 hallelujah, we are glad you are here.

813 I have been working on this legislation for a long time.  
814 I was on the conference committee that after we passed the  
815 Act to try to bring it to the floor and I was really happy to  
816 work with my friends on the other side of the aisle, in  
817 particular Ranking Member Barton to come up with these  
818 compromises.

819 What I am now interested in is how the Consumer Product  
820 Safety Commission is going to implement these far-ranging  
821 provisions of the legislation. Some issues have come up as  
822 we are all aware since the enactment of the bill and one of  
823 the things I am interested to know, and I think Chairman  
824 Dingell and Chairman Waxman and others are interested as  
825 well, is can we fix these issues administratively? Do we  
826 need to amend the bill? What do we need to do, in  
827 particular, ATVs and other consumer products?

828 I think though that the change that both the legislation  
829 and the new administration have brought to the agency are  
830 exciting. I think that we are going to be able to do a lot

831 for the consumers of America and I am really proud to be a  
832 part of this process.

833 With that, Mr. Chairman, I will yield back.

834 [The prepared statement of Ms. DeGette follows:]

835 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
836 Mr. {Rush.} The Chair thanks the gentlelady.

837 It is now my pleasure and my privilege to recognize the  
838 Chairman of the U.S. Consumer Product Safety Commission and  
839 to extend to her the customary 5 minutes for the purposes of  
840 opening statement but prior to her opening statement I would  
841 ask that she understand that it is now the practice of this  
842 subcommittee that you be sworn in before you issue your  
843 opening statement, and so would you stand and please raise  
844 your right hand.

845 [Witness sworn.]

846 Mr. {Rush.} Her credentials have been well-established  
847 earlier in this hearing and now it is my pleasure to  
848 recognize you for 5 minutes for the purposes of opening  
849 statement.

|  
850 ^TESTIMONY OF HONORABLE INEZ MOORE TENENBAUM, CHAIRMAN,  
851 CONSUMER PRODUCT SAFETY COMMISSION

852 Ms. {Tenenbaum.} Good morning, Chairman Rush, Ranking  
853 Member Radanovich and members of the Subcommittee on  
854 Commerce, Trade and Consumer Protection. I am pleased to be  
855 here today to talk about the current actions that we are  
856 taking at the U.S. Consumer Product Safety Commission to  
857 protect the safety of children and consumers as well as give  
858 you my vision of this agency.

859 Let me begin by saying that I am deeply honored to have  
860 the privilege of serving as Chairman at such an important  
861 time in the Commission's history. In my first two months  
862 leading the CPSC I have focused on three key goals,  
863 transparency and openness in those we service, a renewed  
864 focus on education and advocacy for all Americans, and firm  
865 but fair enforcement of the product safety laws and  
866 regulations. My top priority since assuming the Chair of the  
867 Commission has been meeting the statutory deadlines for rules  
868 and reports required by the CPSIA. Through the hard work of  
869 the CPSC staff, and I must say I have never met more  
870 dedicated, hardworking people than those people who serve at  
871 the Commission, I am pleased to announce that 12 substantive

872 rules and policy guidance documents have been released since  
873 I was sworn in on June 23, 2009. In each of these  
874 proceedings I have directed the Commission staff to work  
875 closely with all impacted stakeholders to ensure that the  
876 rules that we implement remain true to the statutory intent  
877 of the CPSIA while minimizing undue burdens on small  
878 businesses and other stakeholders. As we move forward, I  
879 assure you this subcommittee that we will continue to solicit  
880 feedback from all involved parties and work to implement  
881 commonsense rules that are squarely focused on maximizing  
882 product safety and reducing administrative burdens.

883 Another key priority of mine is the rebuilding and  
884 revitalization of the CPSC's internal business processes.  
885 The Commission's information technology systems are truly the  
886 lifeblood of this agency. Sadly, these systems were  
887 neglected for far too long. Early today the Commission  
888 released a plan to Congress outlining phase one of our  
889 business process modernization initiative which is the  
890 implementation of a searchable product information database.  
891 By leveraging technology, the CPSC can take a proactive  
892 approach to protect public health and safety, and recognize  
893 emerging hazards more effectively.

894 Consumer education is another key mission and component  
895 of my tenure at the agency. Through network television

896 appearances and newspaper interviews I have worked to reach  
897 millions of families with information about dangerous cribs,  
898 bassinets and window blinds, products that have killed young  
899 children. Last month the GAO released a report noting that  
900 the Commission could do a better job of reaching out to poor  
901 and minority communities that often do not receive critical  
902 consumer product safety information and, Chairman Rush, I  
903 know that this is a key priority of yours and I want to  
904 assure you that it is also a key priority of mine. To that  
905 end, I have directed the Commission staff to expand our  
906 education and consumer outreach efforts to underserved  
907 Americans.

908         Later this month, the CPSC also plans to launch a social  
909 networking, social engagement program that will establish the  
910 CPSC's presence on various new media sites including  
911 Facebook, Twitter and YouTube. Through these efforts we can  
912 educate a greater number of consumers and save lives.

913         Increased oversight of the products coming through our  
914 ports is another key priority. The GAO recently released a  
915 study that audited and analyzed the agency's effort to police  
916 imports and prevent the entry of unsafe products into the  
917 U.S. market. I agree with all of these recommendations and I  
918 have directed the Commission staff to update agreements with  
919 the Customs and Border Protection to allow better

920 information-sharing.

921           It is also critical for this agency to respond  
922 diligently to new and emerging product safety issues such as  
923 problems now being reported with certain types of imported  
924 drywall. The CPSC is vigorously pursuing its investigation  
925 of imported drywall that has been linked to the corrosion of  
926 metal components and possible health impacts by homeowners in  
927 a number of States, and I understand the personal hardships  
928 that this issue has caused impacted homeowners and want to  
929 assure the members of this subcommittee that effective and  
930 efficient completion of this investigation is a key priority  
931 of the CPSC and our Federal and State partners.

932           Finally, I want to say a few words about the importance  
933 of pool and spa safety. Ensuring the compliance with the  
934 Virginia Graeme Baker Pool and Spa Safety Act is a critical  
935 priority of mine. I am happy to share good news with the  
936 Congress today about what we found in the last few months.  
937 We have sent our field investigators out to inspect over 1200  
938 pools and spas in 38 States as a part of a recently launched  
939 enforcement initiative and we have found that 80 to 90  
940 percent of the pools and spas inspected were found to be  
941 compliant. This is very good news and means that the  
942 children will be safe when they go swimming. We are also  
943 working with the States Attorneys General to find out why the

944 other 10 percent are not in compliance.

945 Chairman Rush and Ranking Member Radanovich, thank you  
946 again for allowing me the opportunity to update the  
947 subcommittee on my vision for the future of the Consumer  
948 Product Safety Commission. I believe that CPSC stands for  
949 safety, especially the safety of children, so with your  
950 support I intend to continue the transformation of this  
951 agency from what some have described as a teething tiger into  
952 the world's leading lion in consumer protection. Thank you  
953 and I look forward to answering your questions.

954 [The prepared statement of Ms. Tenenbaum follows:]

955 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
956 Mr. {Rush.} The Chair thanks the Chairman.

957 Before we engage in the questioning from the members of  
958 the subcommittee, the Chair requests unanimous consent that  
959 letters from five consumer groups and a letter that was sent  
960 to me through the offices of Congressman Schauer of Michigan,  
961 that these letters be entered into the record. Without any  
962 objections or hearing no objections, so ordered.

963 [The information follows:]

964 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
965           Mr. {Rush.} Do you want to report unanimous consent  
966 requests at this time?

967           Mr. {Radanovich.} I would. Thank you, Mr. Chairman. I  
968 have got a couple of unanimous consent requests, statements  
969 on behalf of Congressman Gingrey and Burgess and also letters  
970 from constituents, over 100 here of constituent companies,  
971 small businesses that are impacted by the effects of CPSIA,  
972 of this legislation. I would ask that all three of these  
973 items be accepted into the record.

974           Mr. {Rush.} Hearing no objections, so ordered.

975           [The information follows:]

976 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
977           Mr. {Rush.} The Chair recognizes himself for 5 minutes  
978 for the purposes of questioning the witness.

979           Madam Chairman, last year the CPSC requested \$8 million  
980 for fiscal year 2009 as part of its performance budget  
981 statement to the Congress and that request has funded 444  
982 full-time employees which is an increase of 24 over the full-  
983 time employee staffing level for '08, and my question is how  
984 many of these additional employees have been hired by the  
985 agency? Do you seem to need additional employees and are any  
986 of those funds still going to CPSC's enhancements in import  
987 safety and product testing capabilities? What proportion of  
988 the FTE's and of your budget will go to each category and  
989 what other roles do you anticipate the needs FTE will play  
990 under your administration?

991           Ms. {Tenenbaum.} Thank you, Mr. Chairman. The CPSC has  
992 a staffing level of 530 FTEs. We are currently at 458  
993 employees at the agency. We have 18 pending hires that have  
994 accepted offers for employment and we have 36 full-time  
995 employees that we have hired since January, 2009. We have 29  
996 vacancies where interviews are currently underway and 27  
997 other positions are in the stages of the recruitment process.  
998 We hope by October to reach the ceiling of 530 employees so  
999 that we will be fully staffed and we will be putting

1000 additional staff in port security and surveillance as well as  
1001 compliance, and throughout the agency to see that we  
1002 implement the CPSIA and other statutes. I can give you the  
1003 breakdown for every division and how many will be added to  
1004 those divisions. I can send it over but I did not bring it  
1005 with me today.

1006 Mr. {Rush.} Would you please supply that?

1007 Ms. {Tenenbaum.} We will get that to you but we are  
1008 hoping by October we will meet the ceiling of 530 which is  
1009 the maximum FTEs that we are supposed to have.

1010 Mr. {Rush.} Can you--the GAO's report on improving  
1011 safety for minority children and families as you indicated  
1012 was a major concern of mine and I know from your previous  
1013 statements that you have committed to reversing or to  
1014 improving the patterns of safety for minority children and  
1015 families. Can you expound a little bit more on some of your  
1016 priorities in that particular area, please?

1017 Ms. {Tenenbaum.} Well, we found that overall the  
1018 Commission needs to improve our ability to educate consumers.  
1019 There is nothing more disheartening and sad than to find out  
1020 that products that were recalled several years ago are  
1021 resulting in injury and deaths, and we have found that  
1022 recently we had to go back and reissue press releases, and we  
1023 did this recently on bassinets but so that is why we want to

1024 step it up. We have a CPSC 2.0 where we are going to be  
1025 using new media as others are to get the messages out. We  
1026 also want to focus in the minority outreach of looking at how  
1027 we can enhance our ability to talk directly with minority  
1028 organizations. We welcomed the recommendation of the GAO and  
1029 information that we hope, we think we need to have and the  
1030 other thing is just the information efforts, not only to  
1031 consumers as a whole but targeting minorities. We believe  
1032 that a child's economic background should not affect the risk  
1033 of injury. Now, we will be leading a minority outreach day  
1034 to increase awareness in product safety in targeted markets  
1035 which will be a media event and working with organizations,  
1036 and then we also work with the Neighborhood Safety Network  
1037 members, and these are several hundred organizations where we  
1038 can get information to them and they disseminate it to other  
1039 minority organizations. We are going to report to you at the  
1040 end of October on the GAO report so we will address that in  
1041 detail in our report to you in October.

1042 Mr. {Rush.} My time has expired. I want to thank you  
1043 for your responses to my questions.

1044 The Chair recognizes Mr. Radanovich for 5 minutes.

1045 Mr. {Radanovich.} Thank you, Mr. Chairman, and welcome,  
1046 Chairman Tenenbaum, to the committee and I enjoyed our  
1047 getting a chance to know each other and appreciate your

1048 outreach and welcome you to the Commission.

1049 I want to just highlight a couple--I have got a couple  
1050 of items in the committee room here to kind of highlight some  
1051 of the problems that CPSIA seems to have with small business  
1052 and there is a couple of products over there that cost \$65, a  
1053 microscope for \$60 and testing for those products for the  
1054 microscope is \$3,678 for--that was for one of 24 samples that  
1055 were submitted, and the other one was \$5,973. But I think  
1056 the item that represents problems with small business the  
1057 most is this Native American ceremonial costume that was  
1058 created in the Southwest somewhere. Recently my family and I  
1059 came across the country, California to Washington, D.C. in a  
1060 cross-country trip this August and there were a lot of  
1061 vendors at the reservations and such that were making a  
1062 living by selling similar costumes like this, and many of  
1063 these have beads or special designs that make each one of  
1064 them individual. None of them are made the same and this  
1065 poses a real problem because under CPSIA this would have to  
1066 be--one costume at a time would have to be tested and you  
1067 would be destroying the costume at the time that it is  
1068 testing so it is really a small batch run product problem  
1069 with CPSIA, and I think this item highlights the problem the  
1070 most. Now, products like this were especially with crystal  
1071 beads and such that folks had a problem with and they

1072 submitted a request to exclude crystal and glass beads from  
1073 the lead provisions in CPSIA and it was denied, and I want to  
1074 read if I can your comment on the denial of the request. It  
1075 said, ``In making a determination, I was mindful that the  
1076 statute does not use the term harmful amount which would  
1077 allow staff to utilize a risk-based approach. Thus, while  
1078 Commission staff recognized that most crystal and glass beads  
1079 do not appear to pose a serious health risk to children, the  
1080 request for the exclusion must be denied.''

1081         So I guess I have a couple of questions that kind of  
1082 revolve around this problem of small batch testing and the  
1083 crystal and glass bead exclusion from the lead provisions.  
1084 Do you think the Commission has the flexibility to exempt  
1085 safe products that don't meet the exemption standard or is it  
1086 virtually impossible under the standard of any lead  
1087 absorption for most products and materials?

1088         Ms. {Tenenbaum.} I appreciate your question, Ranking  
1089 Member Radanovich, because I think there has been some  
1090 interpretation of my comments that have muddied the waters  
1091 around this issue so I appreciate the opportunity to comment.  
1092 You did read the section of my comments that have people  
1093 wondering were the crystals--did they pose no hazard at all  
1094 to children. And I met with the staff yesterday to make sure  
1095 that I understand and it was really, I guess, poorly worded

1096 that part of my statement and what the staff meant when they-  
1097 -and I was taking it from their memorandum, was that under  
1098 the Federal Hazardous Substance Act which was the old Act.  
1099 The Act that we enforced and continue to but before it was  
1100 amended by the CPSIA, that CPSC had to determine whether a  
1101 product can contain lead and it resulted in substantial  
1102 illness or injury. So before you could regulate the lead  
1103 content, you had to prove that there was substantial illness  
1104 or injury. When you passed the CPSIA, we were not required  
1105 to prove that standard, in fact, Congress struggled over  
1106 where to set the lead limits and you determined that there  
1107 was no safe level of lead based on testimony and, you know,  
1108 Congress did.

1109 Mr. {Radanovich.} Which did not allow you to do any  
1110 risk-based assessment of any of the products?

1111 Ms. {Tenenbaum.} Well, going back to the lead crystals,  
1112 Congress has set the threshold after August 14 of this year  
1113 to be 300 parts per million. These lead crystal beads were  
1114 900 parts per million up to 23,000 parts per million per bead  
1115 so I think it was poorly worded.

1116 Mr. {Radanovich.} But during the conversation too, it  
1117 was known that the lead in those beads were not in a form  
1118 that was going to cause a problem even if they were ingested  
1119 and I think that is where the devil is in the detail of a lot

1120 of this. Some of those beads would have to be crushed up  
1121 into powder and then swallowed in order to have the adverse  
1122 affect of the lead which makes me think that the Commission  
1123 needs some type of some ability to test things on a risk-  
1124 based assessment. And I guess what I think I would like to  
1125 get an answer from is do you think that products that are  
1126 excluded such as crystal present an unreasonable risk of  
1127 injury or are unsafe and do you need flexibility to grant  
1128 permission exemptions to permit safe products that can't meet  
1129 the statutory limit?

1130 Ms. {Tenenbaum.} Well, in the lead we showed that there  
1131 was some leaching but it did not rise to the level with one  
1132 bead to oppose to be listed under the Federal Hazardous  
1133 Substance Act.

1134 Mr. {Radanovich.} But then that doesn't give you--but  
1135 you don't have any flexibility to exempt that?

1136 Ms. {Tenenbaum.} But what if the child swallowed 50  
1137 small beads, we could not determine whether or not one, you  
1138 know, one bead. It was determined we would not put one bead  
1139 on the Federal Hazardous Substance Act but what if a child  
1140 swallowed multiple beads and it would have raised the blood  
1141 level.

1142 Mr. {Radanovich.} And if I may get you to answer this  
1143 one last question though, do you need flexibility to grant

1144 exemptions to permit safe products that can't meet the  
1145 statutory limit?

1146 Ms. {Tenenbaum.} Well, it goes to the heart of the  
1147 matter on what is a safe level for lead and Congress  
1148 struggled with it.

1149 Mr. {Radanovich.} But do you feel you need that  
1150 flexibility so that you can exempt safe products?

1151 Ms. {Tenenbaum.} I feel it would be premature for me to  
1152 answer that question at this time because these beads went  
1153 all the way up to 23,000 parts per million.

1154 Mr. {Radanovich.} Well, let us just in all products, do  
1155 you need in any case do you feel that you need the  
1156 flexibility to grant exemptions for safe products?

1157 Ms. {Tenenbaum.} I believe that we have to look at  
1158 products on a case-by-case basis and with good science wedded  
1159 with a good statute determine whether or not it is at risk.

1160 Mr. {Rush.} The gentleman's time has expired.

1161 Ms. {Tenenbaum.} So I think it is premature for me to  
1162 say when Congress struggled with this very issue it was the  
1163 heart of the CPSIA lead limits and Congress collectively  
1164 decided and overwhelmingly passed a statute that said we will  
1165 have any lead--we will not allow a product that had any lead.

1166 Mr. {Radanovich.} Even if those products are safe.

1167 Mr. {Rush.} The Chair has been very lenient with the

1168 gentleman.

1169 Mr. {Radanovich.} Thank you, Mr. Chairman.

1170 Ms. {Tenenbaum.} Thank you. That's the heart of the  
1171 matter really.

1172 Mr. {Rush.} The Chair now recognizes the Chairman  
1173 Emeritus for 5 minutes for questioning the witness.

1174 Mr. {Dingell.} Mr. Chairman, I thank you.

1175 On March 4, 2009, I sent a letter to CPSC with 10  
1176 detailed questions concerning implementation of the Consumer  
1177 Product Safety Improvement Act, the CPSIA. I would ask  
1178 unanimous consent that that be inserted in the record at this  
1179 time, Mr. Chairman.

1180 Mr. {Rush.} Hearing no objection, so ordered.

1181 [The information follows:]

1182 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
1183           Mr. {Dingell.} At the request or rather at the  
1184 instruction of former Chairman Nord, CPSC prepared responses  
1185 to the questions which I ask unanimous consent be inserted  
1186 into the record at this point.

1187           Mr. {Rush.} Hearing no objections, so ordered.

1188           [The information follows:]

1189 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|

1190           Mr. {Dingell.} Those responses indicated support for  
1191 amendment of the statute, ``in order to allow CPSC to set  
1192 risk-based priorities given the finite resources available to  
1193 it.'' I would appreciate now your candid responses to the  
1194 following questions in order to ascertain whether you support  
1195 such course of action or how we should address the problems  
1196 that the Commission has with the implementation of that  
1197 statute. As my time is limited, Madam Chairman, I ask that  
1198 you respond to these questions with a yes or no. I will note  
1199 that I will submit these and other questions for the record  
1200 in order to allow you to provide more detailed answer.

1201           First question, given widespread concern about the  
1202 practicality of retroactively applying CPSIA's requirement to  
1203 existing inventory, do you believe that the applicability of  
1204 such requirements should instead be limited to products  
1205 manufactured after the effective date of the statute except  
1206 in circumstances where the Commission decides that the  
1207 exposure to a product presents a health and safety risk to  
1208 children, yes or no?

1209           Ms. {Tenenbaum.} Well, I would have to say no. The  
1210 Federal Court decided in the phthalate case that we could not  
1211 exempt products that were manufactured before the statute was  
1212 passed.

1213 Mr. {Dingell.} Thank you, Madam Chairman.

1214 Next question, I am concerned that the age limit for  
1215 children's products defined in CPSIA unnecessarily subject  
1216 certain products such as bicycles or books or magazines to  
1217 more rigorous standards than otherwise necessary. Do you  
1218 believe the age limit used in the definition of children's  
1219 products should be lowered to better reflect exposure, yes or  
1220 no?

1221 Ms. {Tenenbaum.} No, because you often have a home  
1222 where multiple children are at all ages using the same  
1223 product.

1224 Mr. {Dingell.} Now, do you believe that CPSC should be  
1225 given the discretion to set a further age or rather to set a  
1226 higher age for certain materials or classes of products that  
1227 pose a risk to older children or to younger ones in the same  
1228 household, yes or no?

1229 Ms. {Tenenbaum.} I think I answered that in number two  
1230 that we need to.

1231 Mr. {Dingell.} Do you mean the same no answer, Madam  
1232 Chairman?

1233 Ms. {Tenenbaum.} Right, no.

1234 Mr. {Dingell.} Thank you. I hope you understand this  
1235 is not an attempt on my part to be discourteous but I have a  
1236 lot to get in here and I am much concerned about that the

1237 fact the time is running very fast.

1238 I am also concerned that the blanket applicability to  
1239 products of certification tracking label requirements would  
1240 be unduly cumbersome, both from the standpoint of CPSC and  
1241 consumer product manufacturers. Should CPSC be allowed to  
1242 address certification tracking labels and other issues on a  
1243 product class or other logical basis using risk assessment  
1244 methodologies to establish needs, priorities and a phase-in  
1245 schedule, yes or no?

1246 Ms. {Tenenbaum.} It depends on the individual product.  
1247 We have to look at it product by product.

1248 Mr. {Dingell.} I am going to ask that you will have  
1249 time to respond further to these questions and I will be  
1250 submitting additional questions to you as Chairman of the  
1251 Commission.

1252 Do you believe the implementation of CPSIA has  
1253 overstretched CPSC's staff and resources, yes or no?

1254 Ms. {Tenenbaum.} It has but they are hardworking and  
1255 our staff is working until midnight many nights. Many worked  
1256 the 4th of July. They are working many weekends to work out  
1257 to get these rules finished so that you can have it.

1258 Mr. {Dingell.} Madam Chairman, thank you. I have a  
1259 couple more questions here.

1260 Put differently, does CPSC have adequate resources with

1261 which to implement CPSIA as well as to carry out its other  
1262 mandates, yes or no?

1263 Ms. {Tenenbaum.} No.

1264 Mr. {Dingell.} I am sorry?

1265 Ms. {Tenenbaum.} No, we don't have adequate resources  
1266 but we are working hard to do the best we can.

1267 Mr. {Dingell.} If not, what amount of funding would you  
1268 suggest be given to CPSC to allow it to perform its  
1269 functions satisfactorily?

1270 Ms. {Tenenbaum.} Well, we are not--we submitted our  
1271 budget to OMB and we cannot discuss it until September the  
1272 14th, I understand, publicly.

1273 Mr. {Dingell.} Well, we do need the answer to that  
1274 question for us to see that you can function. This committee  
1275 has legislative jurisdiction over these matters and OMB lacks  
1276 that jurisdiction.

1277 Ms. {Tenenbaum.} Well, we can give it to you on  
1278 September the 14th.

1279 Mr. {Dingell.} Remember that difficult fact so I am  
1280 asking that you submit that to us for the record.

1281 Ms. {Tenenbaum.} Thank you.

1282 Mr. {Dingell.} Madam Chairman, in conclusion, do you  
1283 believe that the problems encountered in implementing CPSIA  
1284 can be remedied solely via administrative action by CPSC, yes

1285 or no?

1286 Ms. {Tenenbaum.} I would say most of them can by  
1287 administrative action.

1288 Mr. {Dingell.} Most, so that means some cannot?

1289 Ms. {Tenenbaum.} There will be some areas where we  
1290 still have not come up with a solution.

1291 Mr. {Dingell.} I will be asking further information so  
1292 as you can identify that. Now, if not, do you support  
1293 targeted amendments to CPSIA to address the concerns which  
1294 have arisen during the Act's implementation, yes or no?

1295 Ms. {Tenenbaum.} It is premature for me to answer that.  
1296 We are working with all of the industries that are affected  
1297 and trying to untangle the knots that they have with their  
1298 products and we are making great progress in resolving many  
1299 of these issues.

1300 Mr. {Dingell.} So you are telling me that such cut and  
1301 bite amendments carefully targeted to CPSIA may be required?

1302 Ms. {Tenenbaum.} I said it is premature for me to  
1303 answer that.

1304 Mr. {Dingell.} I said may, I didn't say will be.

1305 Ms. {Tenenbaum.} May be required, may.

1306 Mr. {Dingell.} Okay, now, if they are required will you  
1307 first tell the committee whether they are required or not and  
1308 second of all, will you work with us if such are required?

1309 Ms. {Tenenbaum.} Absolutely, 100 percent.

1310 Mr. {Dingell.} Okay, now, when will you know whether  
1311 these amendments, carefully targeted will be required?

1312 Ms. {Tenenbaum.} Well, there is one rule that we are  
1313 working on and once it--it is called the--it contains the  
1314 component part testing rule that many of these issues dealing  
1315 with handcrafters and other products will be--will find out  
1316 that under the component part they will not have to test.  
1317 For example, a shirt that falls under determinations rule, it  
1318 is cotton so you don't have to test a cotton shirt but the  
1319 buttons, if you have the button manufacturer certify to you  
1320 that the button does not contain lead then the whole product  
1321 would not have to be tested and we feel like that is going to  
1322 untangle a lot of knots.

1323 Mr. {Dingell.} All right, let me try to just--do you  
1324 have problems in involving a rule with regard to bicycles,  
1325 off-road vehicles and things of that kind, right?

1326 Ms. {Tenenbaum.} Well, I met recently.

1327 Mr. {Dingell.} Just yes or no.

1328 Ms. {Tenenbaum.} We are--if you will let me explain on  
1329 the ATVs, we met with the industry.

1330 Mr. {Dingell.} My time is about gone and the Chairman  
1331 is kindly permitting me.

1332 Ms. {Tenenbaum.} There are issues that we are working

1333 with administratively with both industries.

1334 Mr. {Dingell.} Say it again.

1335 Ms. {Tenenbaum.} It has a stay right now on both the  
1336 bikes and the ATVs and we are working with them on how they  
1337 can make the lead inaccessible in the parts that the rider  
1338 comes in contact with, like the handlebars. You know, I  
1339 looked at my bicycle. It has rubber around it so I don't  
1340 come in contact with that.

1341 Mr. {Dingell.} So you have a problem that you can't  
1342 solve very quickly, can you?

1343 Ms. {Tenenbaum.} Yes, we can once we determine that  
1344 they can make those parts inaccessible.

1345 Mr. {Dingell.} Now, you have got a fine problem on  
1346 motorcycles?

1347 Ms. {Tenenbaum.} Motorcycles has the issue of lead in  
1348 the handlebars. There might be lead in the vinyl seats but  
1349 the motorcycle might not be a children's product.

1350 Mr. {Dingell.} Okay and you have got a similar problem  
1351 on all terrain vehicles and snowmobiles and such?

1352 Ms. {Tenenbaum.} There are issues there in  
1353 implementation and we are working with the industry and met  
1354 with them last week.

1355 Mr. {Dingell.} And you have got a problem with regard  
1356 to lead in publications, periodicals, books, children and

1357 adult books, is that right?

1358 Ms. {Tenenbaum.} Well, no we don't.

1359 Mr. {Dingell.} No you don't?

1360 Ms. {Tenenbaum.} This is a book.

1361 Mr. {Dingell.} Why is it that the book publishers are  
1362 calling and telling me so?

1363 Ms. {Tenenbaum.} Because, you know, it would be nice if  
1364 we could and I want to--offering to meet publicly with  
1365 affected industries which we are doing, holding public  
1366 hearings which I want to do. We are resolving many of these  
1367 issues. The ordinary book like this book will contain no  
1368 lead. It is pictures. It is printed with a four-color  
1369 process. This book complies and the reason we have it  
1370 covered is because.

1371 Mr. {Dingell.} But you have books out there that do not  
1372 comply, is that right?

1373 Ms. {Tenenbaum.} The only books that don't comply are  
1374 books that are published prior to 1985 which we don't  
1375 consider children's books. These are vintage books that will  
1376 be considered adult vintage books even if they are for  
1377 children and those books the only ones that don't comply are  
1378 those that have illustrations using color.

1379 Mr. {Dingell.} Madam Chairman, I see that my time has  
1380 been exceeded.

1381 Ms. {Tenenbaum.} Now, the other thing about the books.

1382 Mr. {Dingell.} What I want you to understand is that  
1383 this committee wants to see to it that you have a statute  
1384 that you can properly administer without a lot of toe-dancing  
1385 and improper pressure placed upon you to resolve questions in  
1386 a way which are inconsistent with the statute.

1387 Mr. Chairman, I will ask unanimous consent that I be  
1388 permitted to submit a further letter and information to the  
1389 record and responses by the Chairman to get to the bottom of  
1390 these questions that I am trying to answer.

1391 Mr. {Rush.} Hearing no objection, so ordered and the  
1392 Chair wants the Chairman Emeritus to know that you are in the  
1393 thereabout area of 5 minutes.

1394 Mr. {Dingell.} You have been excessively kind and  
1395 courteous. I give you my respect and thanks.

1396 Mr. {Rush.} Well, the Chair has a deep-seeded love for  
1397 the Chairman Emeritus.

1398 The Chair now recognizes the gentleman from Louisiana,  
1399 Mr. Scalise, for 2 minutes.

1400 Mr. {Scalise.} Thank you, Mr. Chairman.

1401 Madam Chair, on the question of Chinese drywall, looking  
1402 through your opening statements there are a few questions,  
1403 one that you had cited that your office has 1,192 incident  
1404 reports on this issue. Do you know how many of those are

1405 from Louisiana?

1406 Ms. {Tenenbaum.} Well, most of the drywall problems are  
1407 from Florida, Louisiana and Virginia and so a great number of  
1408 those are from Louisiana, and we realize that this is a  
1409 serious problem for your constituents.

1410 Mr. {Scalise.} And of course with all of the rebuilding  
1411 that occurred after Hurricanes Katrina and Rita, our offices  
1412 all throughout our delegation continue to receive more  
1413 complaints and serious problems and I know some of my other  
1414 colleagues from other States have expressed similar things  
1415 they are experiencing in their State but just, I guess,  
1416 because of the high number of homes that have been rebuilt  
1417 and obviously some of this toxic Chinese drywall was used in  
1418 many of these homes, we continue to receive higher numbers.  
1419 Have you talked to our State's Department of Health and  
1420 Hospitals to see if--I don't know if maybe some people might  
1421 have reported incidents to them that didn't find their way to  
1422 your office to make sure that the numbers and the incidents  
1423 that have been reported are accurately being delivered over  
1424 to your office in the cases where the State knows about an  
1425 incident in our State?

1426 Ms. {Tenenbaum.} We are working with our State  
1427 partners, with your State health departments and we are also  
1428 working with our Federal partners, the CDC, HUD, EPA and the

1429 White House Domestic Policy Council to get as much  
1430 information as possible.

1431 Mr. {Scalise.} Okay, I understand your task force on  
1432 this issue is going to be issuing a report it says sometime  
1433 in the fall. Do you know roughly when that report will be  
1434 issued?

1435 Ms. {Tenenbaum.} We are trying to issue this in late  
1436 October and the report will have the EPA pilot study of six  
1437 homes, the indoor test study, the EPA's elemental analysis of  
1438 drywall which breaks down all the account compounds in the  
1439 drywall. We also have been working on a phase two chamber  
1440 test with the Lawrence Berkeley National Laboratory and a 50-  
1441 home indoor air quality test program that is conducted by a  
1442 private company, the Environmental Health and Engineering  
1443 Company.

1444 Mr. {Scalise.} Is that report going to look into how  
1445 this tainted drywall actually came into our country? What  
1446 steps were maybe--what things were missed that allowed it to  
1447 come in?

1448 Ms. {Tenenbaum.} Well, we sent a team over to China and  
1449 our team from the CPSC visited six mines and received samples  
1450 to come back and we are using them in the testing. We are  
1451 tracking distribution of drywall in the United States and  
1452 what we have done is written letters to numerous importers,

1453 builders, companies that sell drywall. One of the issues  
1454 that I have found is that the drywall standards only address  
1455 the structural integrity and did not address what goes in the  
1456 content.

1457 Mr. {Scalise.} The toxic levels, potentially.

1458 Ms. {Tenenbaum.} So that is one of the things that I  
1459 want to do is to create a standard for drywall so we would  
1460 have a universal standard of products that can go into  
1461 drywall.

1462 Mr. {Scalise.} And I would look forward to working with  
1463 you on that. And final question, you had mentioned in your  
1464 testimony that over 500 consumers were asked by your office  
1465 to update their information on their incident reports. What  
1466 types of things did they, you know, was it maybe that they  
1467 didn't fill out all the things you wanted or there was  
1468 additional information you wanted? What types of things did  
1469 those?

1470 Ms. {Tenenbaum.} Do you mean on the drywall?

1471 Mr. {Scalise.} Yes.

1472 Ms. {Tenenbaum.} Well, they have just had new  
1473 information about how it is affecting them physically. There  
1474 are two tracks in this. One is to look at is this drywall--  
1475 are these problems of drywall causing these health problems,  
1476 these respiratory problems? And then is the drywall

1477 corroding electrical wires and so we are looking at that and  
1478 they probably--I can get you a summary of what the complaints  
1479 were or what the information is.

1480 Mr. {Scalise.} Sure, I appreciate that.

1481 And thank you, Mr. Chairman, for your latitude.

1482 Mr. {Rush.} The Chair would like to announce that there  
1483 are votes occurring on the floor and I am not sure exactly  
1484 how much time is left but it is the Chairman's intention to  
1485 go vote and allow members to go and vote and then to return  
1486 for the continuance of this hearing. So we will be coming  
1487 back but the Chair wants to recognize the gentlelady from  
1488 Florida for her 2 minutes prior to us going to vote.

1489 Ms. {Castor.} Thank you, Mr. Chairman.

1490 I will stick on Chinese drywall and I appreciate the  
1491 seriousness with which the Consumer Product Safety Commission  
1492 has undertaken the investigation and as you know, importation  
1493 of Chinese drywall spiked dramatically a few years ago. In  
1494 2005, we imported \$3.6 billion worth. In 2006, that spiked  
1495 to over \$32 billion worth before dropping back down to \$6  
1496 billion. When that kind of massive spike occurs in trade for  
1497 product that could potentially cause problems, does that  
1498 raise a red flag for the CPSC that maybe we should take a  
1499 closer look? And during your investigation have you  
1500 considered an interim ban on Chinese drywall? And finally,

1501 there have been a number of proposals in the Congress and I  
1502 would ask you to please review those and get back to us on  
1503 what you recommend. Will you wait for the results of the  
1504 investigation and tell me again what the timeframe is for  
1505 that?

1506 Ms. {Tenenbaum.} Okay, thank you for those questions  
1507 and we understand from Florida that you are getting many  
1508 constituent letters and that you are very concerned about the  
1509 quality of life for the people who live in your district and  
1510 we are too. We want you to know that.

1511 There are 6.9 million piece of drywall imported from  
1512 China in 2006, there were--so 6.9 million pieces coming from  
1513 all over the country. We have not been--from different  
1514 sources with different manufacturers and which poses a  
1515 different issue for the CPSC. It is not like you find one  
1516 product that doesn't comply and can ban all products. There  
1517 were some pieces of drywall from China that did comply and  
1518 didn't have this problem and other pieces did. The report  
1519 that we will give you in late October will be studies of in-  
1520 home, the chamber test as well as we take the drywall out of  
1521 the home and take it to a chamber so we can test the  
1522 emissions from that drywall. There will be in-air quality  
1523 tests, in-home air quality tests and there will be elemental  
1524 tests where the EPA is breaking down the elements to tell us

1525 what is in there that is causing the corrosion and the  
1526 respiratory problems. So we hope that this yields more  
1527 information on the drywall. Practically speaking about a ban  
1528 on drywall is very--the market has taken care of that because  
1529 very few people want Chinese drywall and therefore we see  
1530 very little coming into the country at this point. And so  
1531 that is where but the overwhelming amount of drywall had been  
1532 coming from China and now we get notification from the ports  
1533 if drywall is sent to the port but very little is coming in  
1534 at this time. We have met with our counterpart, the Chinese  
1535 counterpart, AQSIQ. China has sent experts in to visit  
1536 homes. They sent two of their drywall experts to look at--to  
1537 go into these homes that were contaminated. As I said, we  
1538 sent a team to China. Senator Bill Nelson from Florida went  
1539 and met with the AQSIQ several weeks ago. He told them that  
1540 President Obama was going to, he hoped, mention that when he  
1541 met with President Hu in China. And so it is--we are really  
1542 putting a great deal of our resources and attention on this,  
1543 probably more than any other issue we are working on at this  
1544 time is focusing on drywall so that we can find an answer to  
1545 it, and so after we find an answer to on into rulemaking so  
1546 that we can not have this situation happen again.

1547 Mr. {Rush.} The committee stands in recess and there  
1548 are approximately four votes on the floor which are the final

1549 votes for the week but we will reconvene 15 minutes after the  
1550 last vote and the Chair really wants to thank Chairman  
1551 Tenenbaum for her contribution to this. Thank you.

1552 Ms. {Tenenbaum.} Thank you.

1553 [Recess.]

1554 Mr. {Rush.} Committee will again come to order. I will  
1555 once again repeat to you, Madam Chair, for your graciousness  
1556 and for the time that you are spending with us this  
1557 afternoon. I don't see any other members here so I am going  
1558 to recognize myself for one additional question and I think  
1559 the ranking member has one additional question and then we  
1560 will-if there are no other members we will just adjourn and  
1561 go that way.

1562 Every year for many years we have seen numerous bills  
1563 that have addressed specific product safety issues. These  
1564 bills have continued to be introduced even after the passage  
1565 of last year's product safety reform. Just this year there  
1566 are bills in Congress to permit sales to children to stop the  
1567 sale of dangerous toy cigarette lighters and even to address  
1568 additional national health threats, such as the beforehand  
1569 reported upon Chinese drywall. The question is why are we  
1570 seeing these bills? Why is the Commission not addressing  
1571 these issues as they arise under its own authority and on its  
1572 own initiative? And the second question is, do you agree

1573 that the consistent introduction of these bills is evidence  
1574 that the Commission is not fully and properly carrying out  
1575 its mission and how do you see us moving forward? Is the  
1576 introduction of these bills, are they any kind of indication  
1577 of a need or specific focus of the Commission or are they  
1578 just members introducing bills?

1579 Ms. {Tenenbaum.} Thank you, Mr. Chairman, and what you  
1580 are asking me is how can the CPSC be proactive in spotting  
1581 hazards so that Congress does not have to introduce bills,  
1582 and do we have the administrative and regulatory structure  
1583 where we can handle them without legislation. I appreciate  
1584 this question because it is a good one.

1585 First of all, as I have looked back in the history of  
1586 the CPSC the leadership makes a tremendous difference  
1587 because, you know, this Commission relies on voluntary  
1588 standards, and it is a questions of when you see a voluntary  
1589 standard not working to protect the health and safety of  
1590 individuals whether you move right in and go ahead and  
1591 promulgate a mandatory rule. One of the things that I have  
1592 observed as the Chairman for less than 3 months is that we  
1593 need to review our existing emerging hazards and early  
1594 warning identification system and we really need to bolster  
1595 this system with technology and resources, and our new  
1596 technology database will give us more information then ever

1597 before so that we can spot these issues earlier. We need to  
1598 initiate more investigations and increase our investigations  
1599 and be much more proactive about them.

1600         There are also scientific research organizations where  
1601 if we had the resources, we could engage them or even they  
1602 could use private resources to do analysis and testing if we  
1603 asked them to. We have a deference toward voluntary  
1604 standards. In fact, the law was passed in 1981 requiring  
1605 deference to voluntary standards unless they are proved  
1606 ineffective in addressing the hazards. I have already  
1607 noticed in my short tenure that there is one particular  
1608 product that I have seen that there are no standards for yet  
1609 we have already determined 60 people have been killed by this  
1610 product and we are going ahead and announced proposed  
1611 rulemaking, ANPR, so that we will begin working on a standard  
1612 and not just wait until the industry comes up with a  
1613 voluntary standard.

1614         So all of these are ways that the CSPC will be more  
1615 proactive and we also want to harness the new media  
1616 opportunities that we have. Our new brand is CPSC 2.0 with  
1617 the blog, the Facebook, the YouTube, Twitter, Recall Widget  
1618 so consumers have up-to-date information. It is really going  
1619 to be interesting with the new--we have the tracking labels  
1620 which we went back to the statute and wrote a tracking label

1621 guidance but industry is looking at a futuristic tracking  
1622 label so you could look at this bar code that would be  
1623 universal throughout the world and pull it up on say your  
1624 Blackberry or iPhone and find out everything about this  
1625 product right there in the store or, you know, when you by  
1626 looking at the bar code, and so very few people are using it.  
1627 It is very futuristic but that is the kind of technology that  
1628 will enable us to more proactive.

1629         Mr. {Rush.} The Chair recognizes the ranking member,  
1630 Mr. Radanovich.

1631         Mr. {Radanovich.} Thank you, Mr. Chairman. I  
1632 appreciate that.

1633         Madam Chair, I want to know what the purpose of a  
1634 testing and certification stay of enforcement is and what  
1635 happens when the stay expires in February? Do you think that  
1636 the Commission will be ready to implement the laws as  
1637 written?

1638         Ms. {Tenenbaum.} Thank you, Ranking Member Radanovich.

1639         First of all, we call that the 15-month rule and that we  
1640 were required by statute to have that month which will be  
1641 what is reasonable testing and it will have the component  
1642 part testing in that rule, and it is due to be promulgated in  
1643 November, and so under the statute we will be working trying  
1644 to get that out because I guess what I wanted to say here

1645 this morning and what we have prepared to try to leave in  
1646 your minds is that we are working hard to implement the  
1647 CPSIA. We are finding out that with every rule that we put  
1648 out like the lead determinations which probably would have  
1649 exempted the blouse that you showed us from any testing, the  
1650 component testing which will exempt so many products from the  
1651 manufacturing having to retest again on items, all of these  
1652 are helping us resolve a lot of these questions and untie a  
1653 lot of these knots. And so we will be having that rule  
1654 shortly and I think that it will help tremendously with a lot  
1655 of the complaints that you are receiving from industry.

1656 Mr. {Radanovich.} Do you think that you will be able to  
1657 implement and enforce the law as written by then in February?

1658 Ms. {Tenenbaum.} Well, we think that after the stay of  
1659 enforcement expires, we will have all the rules in place and  
1660 the stay was necessary the leadership at the Commission felt  
1661 at that time because there was so much rulemaking to do. We  
1662 had not even approved all the third-party laboratories. The  
1663 law says that manufacturers and private labelers have to have  
1664 their children's products tested by a third-party laboratory.

1665 Mr. {Radanovich.} Right, right.

1666 Ms. {Tenenbaum.} And we had to approve all these  
1667 laboratories and so to date we have approved 190 laboratories  
1668 in 27 countries. So now industry has a place to go to get

1669 their products tested. So we think that when the stay  
1670 expires, that we will have these rules in place and that we  
1671 will be able to untie a lot of these problems that industry  
1672 has. That is why I said it was premature today then for me  
1673 to.

1674 Mr. {Radanovich.} Forgive me though, I am sorry. I  
1675 just don't have enough time here.

1676 Ms. {Tenenbaum.} I know. I am taking your time.

1677 Mr. {Radanovich.} But do you think that--will you be  
1678 able to grant exemptions under CPSIA during--after that stay  
1679 or do you think that you will have to post another stay?

1680 Ms. {Tenenbaum.} We are hoping that we won't have to  
1681 post another stay.

1682 Mr. {Radanovich.} If you do, won't that be evidence of  
1683 the need for statutory change in CPSIA in order for you to  
1684 get all this done and be able to grant exemptions?

1685 Ms. {Tenenbaum.} Well, we believe that if we in good  
1686 faith implement all the regulations that CPSIA requires that  
1687 most of these issues can be resolved administratively.

1688 Mr. {Radanovich.} All right.

1689 Thank you, Mr. Chairman.

1690 Ms. {Tenenbaum.} Either through the product not  
1691 containing lead or not being a product that will ever contain  
1692 lead like cotton or paper or certain kinds of ink used in

1693 printing.

1694 Mr. {Radanovich.} Thank you, Mr. Chairman.

1695 Mr. {Rush.} Madam Chairman, we certainly appreciate  
1696 your time.

1697 We have been joined by Mr. Sarbanes from Maryland and  
1698 the Chair now recognizes Mr. Sarbanes for 2 minutes for  
1699 questioning.

1700 Mr. {Sarbanes.} Thank you very much, Mr. Chairman. I  
1701 appreciate the opportunity. Thanks for holding this hearing.  
1702 I want to welcome you, Ms. Tenenbaum, to your new role and I  
1703 am very, very close friends with a fellow named Brad Parham  
1704 from South Carolina who I think you know and I look forward  
1705 to getting to know you in your new position.

1706 I just wanted to pass along a concern. I have a number  
1707 of bulk vendors and there is a number of bulk vendors in  
1708 Maryland and you are, I think, aware of this provision under  
1709 CPSIA Section 103(a) regarding the tracking of products and I  
1710 guess they have expressed concern about that being  
1711 impractical with respect to some of these smaller items that  
1712 come packaged in bulk and then are distributed across the  
1713 country to vending machines and so forth. And to the  
1714 Commission's credit and to your credit and evidence of you  
1715 moving quickly in the job to try to address these areas of  
1716 concern, on July 20 there was a statement of policy issued by

1717 your office that for certain category of products, 103, by  
1718 your interpretation would not apply, and they have just  
1719 expressed some concern. I wanted to relay and get your  
1720 comment on about the fact that that doesn't necessarily  
1721 prevent action at the State level by State Attorneys General  
1722 acting with respect to the statute, nor does it necessarily  
1723 mean that future Commissions couldn't reverse its position on  
1724 that, and I just wanted to get your perspective on how this  
1725 statement of policy you see working going forward.

1726 Ms. {Tenenbaum.} Well, this is a good example of us  
1727 using commonsense to enforce the law is our definition of  
1728 tracking labels. The law requires manufacturers of  
1729 children's products to have a tracking label to the extent  
1730 practical on each product and the packaging. And so we  
1731 looked at--we told the industry it is not one size-fits-all,  
1732 that you must be able to ascertain and by ascertain we have  
1733 to look at your product to see can we find the name, location  
1734 and date of production, and can we find who manufactured it  
1735 and track it down if it needed to be recalled. Regarding--so  
1736 we got a great deal of praise from a number of industries  
1737 because we used a commonsense approach to the tracking label.  
1738 Regarding the Attorneys General, we have regular telephone  
1739 conferences with them. I will be speaking to the Attorneys  
1740 General. We want to enrich our relationships with them

1741 because we see the fact that this is such a small agency that  
1742 we don't have the resources to enforce all of the consumer  
1743 product safety laws without the assistance of our State  
1744 partners, our local Consumer Product Safety Commissions, the  
1745 Attorneys General and our local health departments. So we  
1746 don't--have not found any cases where the Attorneys General  
1747 have gotten out in front of enforcement ahead of the CPSC and  
1748 we are encouraging them to let us get our rulemaking finished  
1749 and work through a lot of these issues administratively so we  
1750 don't encourage them to bring enforcement injunctions because  
1751 under the law that is what the Attorneys General can do.  
1752 They can see injunctive relief.

1753 Mr. {Sarbanes.} So I assume that your ongoing  
1754 conversation collaboration with them is to sort of cultivate  
1755 this commonsense approach at all levels?

1756 Ms. {Tenenbaum.} We are working with them and we  
1757 certainly want everyone to have a commonsense approach. We  
1758 hope no one gets out in front of us before we get all the  
1759 rules in place which we hope will give relief to so many of  
1760 these industries you are hearing from now. That is our goal  
1761 to protect the safety of children, to keep intact the  
1762 integrity of the statute and to work out the best way we can  
1763 these issues that you are hearing from industry.

1764 Mr. {Sarbanes.} Thank you.

1765 Mr. {Rush.} The Chair now recognizes Mr. Stupak for 2  
1766 minutes for the purposes of questioning the Chairman.

1767 Mr. {Stupak.} Thank you, Mr. Chairman, and I was down  
1768 in another hearing in telecommunications so that is why I was  
1769 not here but I am very interested.

1770 Congratulations on your appointment. I look forward to  
1771 working with you especially in my role as Chairman of  
1772 Oversight and Investigations.

1773 Let me ask you about the Consumer Product Safety  
1774 Improvement Act of 2008, and in my Northern Michigan  
1775 district, ATVs and motorcycles are a way of life for many of  
1776 us and it is very important to our outdoor tourism and our  
1777 economy. In the Consumer Product Safety Improvement Act of  
1778 2008, purposefully included a provision to regulate youth  
1779 ATVs and motorcycles, however it was an unintended  
1780 consequence of the CPSIA that the equipment is also subject  
1781 to provisions regulating the amount of lead contained in  
1782 motorcycle and ATV parts. On April 3, 2009, the CPSC voted  
1783 to delay enforcement of a lead-ban on youth ATV and  
1784 motorcycles for one year. It was not the intent of Congress  
1785 to regulate lead content in youth ATV or motorcycles.

1786 So my question would be does the Commission have reports  
1787 of injury or death caused by lead poisonings, I mean by the  
1788 use of youth ATVs or motorcycles?

1789 Ms. {Tenenbaum.} We have over 900 deaths per year from  
1790 ATVs so the industry has told me.

1791 Mr. {Stupak.} Correct, but I mean from lead.

1792 Ms. {Tenenbaum.} No.

1793 Mr. {Stupak.} Nothing from lead.

1794 Ms. {Tenenbaum.} I don't have any data on that.

1795 Mr. {Stupak.} Okay, is the Commission testing the youth  
1796 ATV or motorcycles to determine possible exposure to lead?

1797 Ms. {Tenenbaum.} We have just met with the ATV  
1798 industry. The leaders of the industry came over and met with  
1799 me last week and what they have reported to us is that they  
1800 could make any lead that would be exposed to a rider  
1801 inaccessible. They feel like they could make the handlebars  
1802 inaccessible from lead by putting covers on them.

1803 Mr. {Stupak.} Sure.

1804 Ms. {Tenenbaum.} And handbrakes and also the seat would  
1805 not contain lead so they have--the stay helped them come up  
1806 with this and so that would--they are getting back with us to  
1807 show us how they can do that, and then the other parts of the  
1808 ATV might be considered inaccessible depending on what  
1809 technology they can provide to make the tire stem, the brass  
1810 in it inaccessible, the battery cables inaccessible.

1811 Mr. {Stupak.} Well, I understand all this inaccessible.

1812 Ms. {Tenenbaum.} So based on inaccessibility, that

1813 really would solve the issue, we think. We are working with  
1814 them to clear that up so that they won't have to.

1815 Mr. {Stupak.} Well, I am glad you are working with them  
1816 but if we have no death or injuries from lead exposure, why  
1817 do we have to go through all these gyrations? Isn't it your  
1818 responsibility to make sure that the law is properly  
1819 implemented especially since the intent of Congress was not  
1820 to ban these vehicles?

1821 Ms. {Tenenbaum.} We have had plenty of cases of deaths  
1822 to children from lead exposure and hand-to-mouth.

1823 Mr. {Stupak.} But from ATVs and motorcycles?

1824 Ms. {Tenenbaum.} Well, a child could ingest lead and  
1825 that is what the statute  
1826 requires is any lead can't be.

1827 Mr. {Stupak.} Right, yeah, I agree but with any law  
1828 there is a practical application, correct?

1829 Ms. {Tenenbaum.} No question about it and that is why  
1830 the industry is coming back to us with practical solutions  
1831 and we think this will take care of any problem they have and  
1832 they won't have to be regulated.

1833 Mr. {Stupak.} All right, let me ask you about this one.  
1834 This is a recent GAO report, August, 2009, concluded that the  
1835 CPSC's presence at U.S. ports is limited and in order to  
1836 identify potentially unsafe products like drugs, inferior

1837 steel from China, you must work closely with U.S. Customs and  
1838 Border Patrol Protection. The report also found that CPSC's  
1839 activities at U.S. ports could be strengthened by better  
1840 targeting incoming shipments for inspection and by improving  
1841 CPSC coordination with the Customs and Border Patrol. As the  
1842 Chairman of Oversight and Investigations I have spent a lot  
1843 of years on this especially drugs coming in from other  
1844 countries, not properly marked, handled properly and we know  
1845 that FDA's efforts are lacking and place American lives at  
1846 risk but this GAO report concluded that the FDA has more  
1847 staff, has more surveillance technology, has more data on  
1848 incoming shipments in our ports than CPSC who also has the  
1849 responsibility so that was not a good news report by the GAO.  
1850 So are you developing any plan to coordinate your port  
1851 surveillance with other agencies to improve CPSC surveillance  
1852 at our ports?

1853 Ms. {Tenenbaum.} We are and I reviewed the report and  
1854 agree with those findings and will be getting back with  
1855 Congress in October with our formal response to the report  
1856 but starting October 1 as a result of that report, CPSC will  
1857 have access to the Customs Import Safety Center which is  
1858 called Commercial Targeting and Analysis Center. We will be  
1859 able to place one full-time employee at that Center to get  
1860 information that we need in surveying the imports coming into

1861 the country.

1862           Mr. {Stupak.} Okay, currently Custom and Border Patrol  
1863 doesn't have any authority to deny shipments at a port  
1864 whether it is steel or whether it is drugs. That is, if a  
1865 substandard shipment comes into the United States they may  
1866 flag it but they can't block it entrance into the United  
1867 States. What does CPSC intend to do when it finds a  
1868 substandard or hazardous product at a port--right now we just  
1869 stack them up in warehouses. Do you have any other ideas?

1870           Ms. {Tenenbaum.} We destroy them. We destroy the  
1871 product. We have the authority to destroy it and Customs has  
1872 the authority to flag it. They stopped several products from  
1873 coming in recently so here is what if you look at our--we  
1874 have nine people in 300 ports and we also have field staff,  
1875 100 field staff but we have nine people at the ports. We--  
1876 this is a bigger area then just what the GAO reports because  
1877 the FDA--you are required to send a manifest to the FDA 30  
1878 days ahead of time.

1879           Mr. {Stupak.} Correct.

1880           Ms. {Tenenbaum.} We are only required to receive the  
1881 third-party testing results 24 hours ahead of time under the  
1882 CPSIA but this would be something that we need to have  
1883 information earlier. We need through this manifest, this  
1884 Commercial Targeting Analysis System, those are the manifests

1885 and we with the proper technology which we are submitting to  
1886 Congress in our new technology plan can look and mine this  
1887 data so we will know what is coming into the port and then if  
1888 we find products that don't conform under the statute, the  
1889 manufacturer or importer is required to take those products  
1890 and remove them from the United States. If they don't have  
1891 the funds and they have to post a bond, if they don't have  
1892 the funds, we can destroy them. A lot of times we don't have  
1893 the amount of funds it requires to destroy them and we might  
1894 need to start increasing the bond to cover the cost of  
1895 destroying the product but that is what we do with them.

1896 Mr. {Stupak.} Okay, so this is new authority underneath  
1897 the 2008 law then?

1898 Ms. {Tenenbaum.} No, we have always had the authority  
1899 to stop--well, no, this is new authority because the third-  
1900 party laboratories certificate is new under the CPSIA.

1901 Mr. {Stupak.} Thank you, Mr. Chairman.

1902 Mr. {Rush.} This concludes the questioning of the  
1903 witness and the Chair wants to recognize Mr. Radanovich who  
1904 has a unanimous consent request.

1905 Mr. {Radanovich.} Thank you, Mr. Chairman. I do have  
1906 another unanimous consent request from one other member  
1907 however I would just like to make it a blanket unanimous  
1908 consent request that if other members wish to submit

1909 statements they be allowed to do so.

1910           Mr. {Rush.} All right, well, for the record, the record  
1911 will remain open for two weeks and members may submit  
1912 questions to the witness or any other documentation that they  
1913 want to submit to the record. They have two weeks from  
1914 today's date in order to submit those questions. The record  
1915 will remain open for two weeks.

1916           Ms. {Tenenbaum.} Thank you.

1917           Mr. {Rush.} Thank you so much, Madam Chairman, and we  
1918 look forward to working closely with you as we move forward  
1919 protecting America's children and families. I want to thank  
1920 you so very much for your participation.

1921           Ms. {Tenenbaum.} Thank you. I appreciate the  
1922 opportunity to meet with all of you and I hope to in the next  
1923 few weeks meet with many of you individually for your  
1924 personal questions.

1925           Mr. {Rush.} Thank you. Thank you so very much.

1926           The committee is now adjourned.

1927           [Whereupon, at 1:00 p.m., the subcommittee was  
1928 adjourned.]