

Senate Commerce, Science and Transportation Committee
Subcommittee on Consumer Affairs, Insurance, and Automotive Safety
May 9, 2007

Re: All-Terrain Vehicle Safety Legislation

Statement of
David P. Murray
Willkie Farr & Gallagher LLP
1875 K St. N.W.
Washington, D.C. 20006
Counsel for Yamaha Motor Corporation, U.S.A.

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Counsel for Yamaha Motor Corporation, U.S.A.

Good afternoon Mr. Chairman and Members of the Subcommittee. My name is David Murray. I am a member of Willkie Farr & Gallagher LLP and outside counsel to Yamaha Motor Corporation, U.S.A. I have been involved in ATV matters for over 20 years, including the 1987 settlement of the Federal Government's lawsuit that resulted in 10 year consent decrees ending the sale of new three-wheel ATVs and governing the marketing and sale of four-wheel ATVs. My wife and I also have three boys, ages 9 to 14, who are here today. We enjoy riding ATVs as a family.

On behalf of the major ATV companies,¹ I want to thank the Subcommittee for its ongoing interest in ATV safety. I also want to thank the Subcommittee for bringing the Consumer Federation of America, the American Academy of Pediatrics, and the Companies together to discuss this important issue. To my knowledge, it is the first time that representatives of the three groups have sat down at the same table. We found many areas of common ground. And while we "agreed to disagree" on some topics, all of the discussions were in good faith and very constructive. Based on these efforts, we hope to continue to work with CFA, the Academy, and other interested parties to increase consumer awareness of the potential risks associated with ATV use, especially by children.

The draft bill that the parties have been discussing with the Subcommittee staff would be a critical step forward in promoting ATV safety. Millions of Americans,

¹ The major ATV Companies include American Honda Motor Co., Inc., American Suzuki Motor Corporation, Arctic Cat Inc., Bombardier Recreational Products, Inc., Kawasaki Motors Corp., U.S.A., Polaris Industries Inc., and Yamaha Motor Corporation, U.S.A.

including my family, safely operate and enjoy ATVs for a wide range of recreational and utility purposes. There are more than 7.6 million ATVs in use around the country, and the number is growing. In 2006 alone, new vehicle sales topped 1.15 million.

Last June, this Subcommittee held an initial hearing on compliance with ATV safety standards. A representative of the U.S. Consumer Product Safety Commission testified that, while the major ATV Companies comply with the industry safety standards, a significant number of new entrants -- primarily from China and Taiwan -- are selling ATVs that fail these standards.² The majority of these non-complying units are targeted to American children and are being sold over the Internet and delivered directly to homes, or in “big box” retail stores and other non-traditional outlets.³ The industry’s trade association, the Specialty Vehicle Institute of America, likewise submitted an engineering study of new entrant ATVs conducted by two former CPSC officials with more than 55 years’ combined experience at the agency. The engineers examined four ATVs that were manufactured in China and marketed for use by children under 16. All four Chinese ATVs failed to comply with critical provisions of the industry standards. And three of the four ATVs had such serious flaws that the engineers recommended an immediate recall under the Consumer Product Safety Act.⁴ Just last week, the CPSC

² Annexed as Exhibit 1 are relevant excerpts of the testimony of Elizabeth Leland, Project Manager, ATV Safety Review Team, U.S. Consumer Product Safety Commission (June 6, 2006).

³ See “Sales of Non-Traditional Brand ATVs Continue Rapid Growth in 2006,” by Power Products Marketing (May 2007) (annexed as Exhibit 2).

⁴ A copy of the Marchica & Deppa Engineering Report is annexed as Exhibit 3.

announced a recall of one of these units for inadequate stop engine switches, tire pressure gauges, tire labeling, and a failure to meet other basic safety requirements.⁵

The Subcommittee also heard testimony on the ATV Action Plans that the major companies negotiated with CPSC in 1998. These Action Plans continue the major regulatory components of the federal consent decrees. Under the plans, each company has agreed:

- to offer free hands-on training to all new ATV purchasers and qualifying family members, plus cash or other incentives for taking the course;
- to restrict the marketing and sale of ATVs to children under 16 to models of 90cc engine displacement or less;
- to conduct annual undercover investigations of their dealers for compliance with the youth ATV sales restrictions; and
- to sponsor comprehensive safety information programs, both at point-of-purchase, through SVIA, and in public schools through the Weekly Reader organization and other media.⁶

American companies, such as Arctic Cat and John Deere, and a Canadian company, BRP, signed on to the same ATV Action Plans when they subsequently entered the U.S. market. But as CPSC testified last year, virtually none of the new entrant companies from China or Taiwan have agreed to do so, despite repeated requests from

⁵ A copy of the May 3, 2007 Recall Alert issued by the U.S. Consumer Product Safety Commission is annexed as Exhibit 4.

⁶ A copy of Yamaha's approved ATV Action Plan is annexed as Exhibit 5. It is representative of the Action Plans that other major ATV Companies negotiated with the U.S. Consumer Product Safety Commission.

the agency.⁷ Many of the ATVs being sold by these new entrants are not only poorly manufactured, but they come with no offer of training and little or no safety information or product support. We have also supplied the Subcommittee, CFA, and the Academy with recent advertisements from these new entrants, which are promoting:

- ATVs as large as 250cc, with top speeds of 65 mph, for children as young as 12; and
- ATVs as large as 110cc, with top speeds of 45 mph, for children as young as 7.⁸

Over the past five years, we have given CPSC copies of similar ads, engineering studies, and other information about new entrant ATVs. As CPSC testified last June, because the current industry safety standards and Action Plans are voluntary, it is difficult and time-consuming for the agency to take enforcement action against new entrants under the CPSA.⁹ Indeed, it took CPSC nearly a year to recall only one of the four new entrant ATV models examined at the June hearing, despite the engineering study and evidence of defects provided by SVIA.

During the same five years, new entrant ATV sales in the U.S. have grown dramatically, from a few percent of the market in 2002 to nearly 35% of the market in 2006. In fact, it turns out that the sales chart that SVIA provided to the Subcommittee last June seriously underestimated new entrant ATV sales for 2006. Power Products Marketing, a Minneapolis-based research and business consulting firm, has tracked new

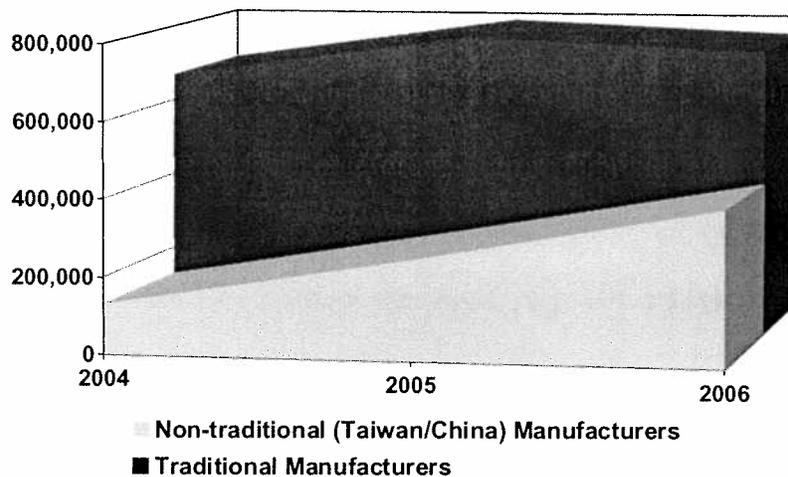
⁷ See testimony of Ms. Elizabeth Leland (annexed as Exhibit 1).

⁸ Representative examples of new entrant ATV advertising targeting children under 16 are annexed as Exhibit 6.

⁹ See testimony of Ms. Elizabeth Leland (annexed as Exhibit 1).

entrant sales for nearly 10 years. The firm issued a report this week showing that new entrant ATV sales *doubled* in the last year, growing from approximately 260,000 units in 2005 to nearly 400,000 units in 2006 -- or one-third of the market. Estimated 2007 sales will likely top one-half million units. The following sales chart depicts this rapid growth:¹⁰

U.S. ATV Sales 2004 - 2006



In other words, since the last time we met, new entrants have continued to flood the U.S. market with hundreds of thousands of substandard ATVs. Despite good intentions, the CPSC has been unable to take any significant enforcement action against this rising tide. These substandard ATVs pose unnecessary risks to U.S. consumers and undermine the longstanding safety efforts of CPSC, consumer advocates, and the major

¹⁰ The chart is based on the market sales report annexed as Exhibit 2.

companies. The major ATV Companies believe that appropriate legislation is urgently needed to address this situation.

The draft “All-Terrain Vehicles Standards and Compliance Act” would require all ATV companies, whether domestic or foreign, to adhere to the same basic industry standards and to provide adequate training, safety information, and product support under CPSC-approved Action Plans. The Act would also preserve the CPSC’s ability to adopt other mandatory safety standards for ATVs pursuant to its existing regulatory authority. Most importantly, the Act would give CPSC the tools to enforce these standards, including (1) the ability to impose fines on companies that violate them and (2) the authority to work with Customs to keep non-compliant products from entering the stream of commerce. The Act is fair, balanced, and should be enacted as soon as possible.

The major ATV companies have also supported revisions to the draft legislation, in response to issues raised by CFA and the Academy. Some of these are reflected in the current draft and others are outlined in the position statements filed with the Subcommittee.¹¹ In other cases, we agree with the goals of CFA and the Academy, but we are concerned that their legislative suggestions may fall outside of this Subcommittee’s jurisdiction, be infeasible or unworkable, or delay enactment of the bill, which is so urgently needed. Finally, even where we have “agreed to disagree” on some legislative suggestions, the major ATV companies have benefited from this process and look forward to continuing to work with CFA, the Academy, and other interested parties on areas of common ground.

¹¹ Copies of the written submissions are annexed as Exhibit 7.

On behalf of the companies, I want to thank the Subcommittee again for its interest in this draft legislation and its sponsorship of our meetings with CFA and the Academy. I look forward to your questions.