

Preventing Cross-Border Distribution of Known Unsafe Consumer Products

Introductory note by the UNCTAD secretariat

Context

1. The General Assembly, in its resolution [35/63 of 5 December 1980](#), adopted the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, requested the Trade and Development Board to establish an intergovernmental group of experts on restrictive business practices within the United Nations Conference on Trade and Development (UNCTAD) and decided to convene a United Nations conference to review all aspects of the Set in 1985. Since then, that conference has been convened every five years.
2. The General Assembly, in its resolution [70/186 of 22 December 2015](#), adopted the revised [United Nations Guidelines for Consumer Protection](#) and decided to establish an intergovernmental group of experts on consumer protection law and policy within UNCTAD, to provide the international institutional machinery for the Guidelines and to operate between and report to the United Nations conferences to review all aspects of the Set.
3. The Intergovernmental group of experts, in its third session, discussed the issue of consumer product safety on the basis of the UNCTAD secretariat note on the issue (see [TD/B/C.I/CPLP/12](#)). The Group requested the UNCTAD secretariat to convene a working group on consumer product safety to highlight best practices, to facilitate information exchange and consultations, and to continue the work from the third session, led and integrated by member States on a voluntary basis, without financial implications for the regular budget of the United Nations, and to report to its fourth session¹ (see [TD/B/C.I/CPLP/15](#)).
4. The Intergovernmental group of experts, in its fourth session, heard the [report by the UNCTAD secretariat on the Working Group on Consumer Product Safety](#) discussions and decided to renew the mandate of the Working Group to continue the work on strengthening consumer product safety frameworks at the national, regional and international levels to protect consumers from hazards to their health and safety [...]; and to recommend policy options for addressing challenges faced by consumer protection authorities in this area, and to report on its continued work to the Eighth United Nations Conference to Review All Aspects of the Set (see [TD/B/C.I/CPLP/20](#)).
5. The Working group, in its [fifth meeting of 9 October 2019](#), discussed and adopted its work plan for 2019-2020, aiming, among others, to discuss language proposals and gather consensus around a recommendation to prevent international trade in unsafe consumer products. It conducted four additional meetings on this matter.
6. The [Ad Hoc Expert Meeting on Consumer Protection / product safety of 24 June 2020](#) pursued consultations among member States' consumer product safety authorities and permanent missions in Geneva on a draft recommendation on preventing the international trade in unsafe consumer products. As consensus emerged, on 29 July 2020 Colombia submitted the following text for consideration of the Eighth United Nations Conference to Review All Aspects of the Set.

The importance of preventing cross-border distribution of known unsafe consumer products

7. Consumer product safety policies are particularly important to help improve the health and safety of consumers and to contribute to an inclusive and sustainable development for countries. Data shows that even with a mature product safety framework in place, the harm associated with unsafe

¹ The Working Group is informal and open to all interested member States and other relevant stakeholders. It meets regularly through virtual means.

consumer products can be immense. For example, the United States reports 43,000 deaths and 40 million injuries per year associated with consumer products. In that same country, consumer product associated deaths and injuries account for over 1 trillion USD annually (3,000.00 USD per capita) in societal costs. Enhancing consumer product safety directly contributes to the achievement of Sustainable Development Goal 3 (good health and well-being) and indirectly to that of Goals 1 (no poverty), 4 (quality education), 8 (decent work and economic growth), 9 (industry, innovation and infrastructure), 10 (reduced inequalities), 11 (sustainable cities and communities), 12 (responsible consumption and production) and 17 (partnership for the goals).

8. In order to help protect consumers' physical safety, the United Nations Guidelines for Consumer Protection call on member States to adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use. These constitute product safety requirements.²

9. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as "manufacturers" or "distributors"), hold the primary responsibility for ensuring that goods under their care are safe. Should they become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. If a product is found to be unsafe, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it. If it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated by the relevant economic actors.

10. The United Nations Guidelines also recommend that Member States work to ensure that the quality of products and the information relating to such products does not vary from country to country in a way that would have detrimental effects on consumers' safety.

11. Consumer product safety requirements are set nationally and/or regionally. Although rules may vary from country to country or regionally, consumer product safety authorities regularly exchange information on product recalls at national, regional and international levels (including, but not limited to, the [European Union Rapid Alert System \(RAPEX\)](#); the [Organization of American States Consumer Safety and Health Network](#), and the [Organisation for Economic Co-operation and Development Global Recalls](#)). This information is relevant for comparing and assessing the potential or actual risks of products found in national markets.

12. Currently, rogue distributors are able to further distribute consumer products that have been withdrawn from one market, due to non-compliance with consumer product safety requirements, to other jurisdictions where that non-compliance has not been assessed or acted upon, thus endangering the physical safety of consumers in that country. This proposed recommendation aims to address such problem.

² In particular, see [guidelines 16 to 19 and 70 to 82](#).

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[unedited]

Recalling General Assembly resolution 70/186 of 22 December 2015 on consumer protection adopting the revised United Nations guidelines for consumer protection,

Recalling also that consumers should have the right to safe products and to be protected against the negative consequences involving unsafe products,

Recognizing that appropriate policies that promote trade in safe consumer products can improve consumer confidence and provide more favourable conditions for sustainable economic development,

Recalling further that Member States should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, technical standards, risk assessment best practices, and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use,

Reaffirming that measures to ensure the health and safety of consumers should not create unnecessary obstacles to trade or be no more trade restrictive than necessary, consistent with the rules of the World Trade Organization,

Reaffirming that Member States should develop or strengthen information sharing regarding products which have been banned, withdrawn, or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products,

Reaffirming further that Member States should work toward a high level of safety for consumer products globally and similarly, the availability of safety information relating to unsafe products in order to avoid detrimental effects for consumers,

Recognizing that instances of unsafe consumer products being distributed in national markets can be reduced globally as international cooperation is strengthened,

Recognizing that consumers everywhere may benefit when the manufacture and cross-border distribution of unsafe consumer products is reduced,

Recognizing that there may be variation in Member States' product safety requirements, and risk assessment approaches,

Recognizing that many Member States are still developing effective consumer product safety policies and measures and, as a result, may have difficulty preventing unsafe consumer products from being brought to national markets,

Recognizing that many Member States where unsafe consumer products have been identified and withdrawn or blocked from commerce, may not be able to prevent the export of those products,

Considering that steps by Member States to discourage the cross-border distribution of known, unsafe consumer products would be mutually beneficial to the health and safety of consumers everywhere,

Recognizing that the Working Group on Consumer Product Safety, established at the third session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy, under the auspices of the United Nations Conference on Trade and Development,³ aims at strengthening consumer product safety frameworks at the national, regional and international levels to protect consumers from hazards to their health, and on recommending policy options for addressing challenges faced by consumer protection authorities in this area,⁴

Noting that the Working Group has focused its efforts on “consumer products,” understood to mean the category of products intended for and or likely to be used by consumers but without including food, drugs and medical devices, as these products are often subject to specific risk assessment and risk management in distinct regulatory frameworks,

Noting that the term “cross-border distribution” used in this recommendation is understood to refer to the circulation of consumer products between consumer product safety jurisdictions,

1. *Recommends* that Member States pursue policies, consistent with World Trade Organization rules, aimed at preventing cross-border distribution of consumer products known in their own jurisdictions to be unsafe.
2. *Calls* on Member States to raise awareness among businesses responsible for bringing goods to the market on the potential harms of cross-border distribution of unsafe consumer products.
3. *Calls* on Member States to raise awareness among consumers on the risks to their physical safety posed by unsafe products, especially when engaging in cross-border online transactions.
4. *Recommends* that Member States regularly exchange information on national policies and measures on product safety recalls and safety requirements.
5. *Requests* the United Nations Conference on Trade and Development to continue to assist Member States in improving national and regional consumer product safety frameworks in order to better protect consumers and to prevent cross-border distribution of unsafe consumer products.
6. *Requests* the secretariat of the United Nations Conference on Trade and Development to propose modalities for the implementation of the present recommendation following its adoption.
7. *Requests* the secretariat of the United Nations Conference on Trade and Development to exchange information on progress and experiences, review that information and report to the General Assembly on this subject on the occasion of the Ninth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

³ [TD/B/C.I/CPLP/15](#)

⁴ [TD/B/C.I/CPLP/20](#)