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Minutes of 6th Meeting
Working Group on Consumer Product Safety, November 28, 2019

Following the renewal of its mandate by the Fourth session of the Intergovernmental group of experts on consumer protection law and policy of 8 and 9 July 2019,¹ the WGCPs adopted its work plan for 2019-2020 on 9 October 2019. It held its sixth teleconference call on 28 November 2019 (at 8.30 a.m. and 5 p.m. Geneva time). The objective of the meeting was to discuss developments in the workplan. These were the issues discussed:

1. The WGCPs will discuss language proposals and gather consensus around a Recommendation to Prevent “Dumping” of Hazardous Consumer Products for consideration of the UN Review Conference.

The United States, on behalf of several governments, submitted a text entitled: “*A Model Practice to Reduce Occurrences of Dangerous Consumer Products Being “Dumped” in Foreign Jurisdictions.*” It was circulated for consideration of the WGCPs on 28 November 2019 (a corrected copy annexed to these minutes).

The United States submitted a statement regarding this proposal (also attached to these minutes) as, technical difficulties prevented the U.S. representative from receiving the audio of the meeting.

The text is open for comments, ideas, suggestions and reactions from members of the WGCPs until **15 January 2020**. They should be sent to arnau.izaguerri@unctad.org

The secretariat will compile all inputs received until 15 January 2020 with a view to produce a revised draft to be circulated to members of the WGCPs for further consultations.

Other teleconferences may be convened as needed to pursue consultations in order to reach consensus.

Should consensus arise, the secretariat may call for an Ad Hoc Expert Meeting in Geneva (ideally back to back with OECD consumer meetings in Spring [31 March-2 April 2019]). At that stage it would be necessary to engage permanent missions in Geneva in the run-up to the UN Review Conference (6-10 July 2019).

The UN Review Conference may consider the text and decide to adopt it. It may also recommend the General Assembly to adopt it as a resolution, should member States so agree. This will be further discussed in the WGCPs once and if expert consensus in the text is reached.

¹ [TD/B/C.I/CPLP/20](#)



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2. The WGCPs will not conduct a Product Safety Regulatory Mapping Survey. Instead members of the WGCPs are encouraged to participate in UNCTAD's World Consumer Protection Map, available here: <https://unctadwcpm.org/index.html>

Members of the WGCPs are invited to check that their country is present in the "answers per country" at the World Consumer Protection Map page. Otherwise, members of the WGCPs are invited to contact the secretariat to learn how to participate in the project.

The Eurasian Economic Commission volunteered to liaise with its member States for this purpose.

Also, Consumers International is conducting a Consumer Product Safety international survey and invited members of the WGCPs to participate. The deadline for participating is now closed and Consumers International will share the results when available.

3. Organizing a round table discussion session on Improving consumer product safety around the world: Good data for good policy at the UN Review Conference, as volunteered by some WGCPs members.

The European Commission submitted a concept note to the secretariat. The secretariat is currently compiling all session's concept notes to ensure geographical and gender balance in the speakers list. Members of the WGCPs are invited to express interest in participating in the round table by contacting the secretariat.

4. The European Commission and UNCTAD will organize a workshop in the framework of the International Product Safety Week 2020 that will take place in the week 27-30 October 2020. All members of the WGCPs are invited to the entire International Product Safety Week, and especially at the mentioned joint workshop that will take place between 27 and 30 October 2020. A specific save-the-date will be circulated in early 2020.

Other issues: No other issues were raised.

The next meeting of the WGCPs is called for **Thursday 13 February 2020** at 8.30 a.m. and 5 p.m. Geneva time (dial-in details in accompanying e-mail).



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Working Group on Consumer Product Safety		
6th Meeting – List of Participants		
Name	Organization	Country
Cecilia Lotto	Directorate for Consumer Defense	Argentina
Alexandre Carneiro Pereira	National Secretariat for Consumers	Brazil
Natalia and Daniela	Superintendence of Industry and Commerce	Colombia
Sergei Sinyakov, Lidiya Osaulenko <i>et al.</i>	Eurasian Economic Commission	
Eva Sinkovic	European Commission	
Rafael Regla	Office of the Federal Prosecutor for the Consumer	Mexico
Arif Zaman	Competition Commission of Pakistan	Pakistan
Richard O'Brien (connection problems)	Consumer Product Safety Commission	United States
Antonino Serra	Consumers International	



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Annex 1: Points submitted by the United States CPSC regarding *“A Model Practice to Reduce Occurrences of Dangerous Consumer Products Being “Dumped” in Foreign Jurisdictions”*

- The principal thrust of the instrument is to make irrelevant the exporter’s defense that “I did not know the requirements in the export destination; it is the obligation of the importer.” The instrument does this by implementing a notification to the authorities in the export destination about the information the exporter can always be expected to know: Whether the product meets the product safety requirements where it is located.
- In many and perhaps most cases, a product that is considered dangerous in one jurisdiction would also be considered dangerous in another. The challenge for the authorities in the receiving Member State is to know in advance that the shipment is intended or, at minimum (Procedure C in the text), to have the shipment arrive with a clear notice as to its dangerous properties. With critical information about the product and how it is not in conformity where it is located, steps might be taken by the destination Member State to prevent the shipment from entering its market.
- It should be noted that the phrase “where the product is located” takes into account the fact that the product might be in a Member State that is not the place where it was manufactured.
- The current draft evolved from the original to include a few options at the suggestion of one of the commenters. This was a valuable insight as it demonstrates that the instrument does not intend to take a “one size fits all” approach but rather, takes into account that the legislative and regulatory options of Member States are widely different. The concluding paragraph of the text amplifies this point by acknowledging that some Member States might need to find still other ways to help implement a prenotification practice.
- There have been some suggestions regarding the use of the word “dumping.” Some have found it perhaps too colloquial and others note, correctly, that it has a definition in the WTO lexicon related to pricing below cost. With regard to the colloquial nature of the word, we suggest that if the Member States most affected by the predatory practice of exporting dangerous products wish to retain the word in order to better highlight the harm, others might accede to their preference. With regard to the WTO definition, the footnote included with the text makes clear that the word is used to describe a practice outside of the WTO definition. As many words can have different meanings depending on context, this should not be an issue.



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Annex 2: Proposal submitted by the United States, on behalf of several governments, to be considered under item 1, entitled “A Model Practice to Reduce Occurrences of Dangerous Consumer Products Being “Dumped” in Foreign Jurisdictions”

The text is open for comments, ideas, suggestions and reactions from members of the WGCPs until **15 January 2020**. They should be sent to arnau.izaguerri@unctad.org

**A Model Practice to Reduce Occurrences of Dangerous Consumer Products
Being “Dumped” in Foreign Jurisdictions**

“The Working Group recognizes that there are occasions when a company may seek to export a dangerous consumer product to a foreign market specifically because its hazard(s) prevent it from being sold legally in the jurisdiction where the product is located. In some cases, the product may have been the subject of an intervention by the product safety authority.

The Working Group is of the view that Member States should be encouraged to prevent companies, where possible, from “dumping” dangerous products on foreign markets. To that end, the Working Group proposes to engage in the preparation of an instrument, the nature of which is to be determined, calling on Member States to take appropriate action, within their legal frameworks, to prevent such “dumping”.”

Note on this draft: The two paragraphs above are the project description under which we have been working with consensus of the Working Group. The initiative was accepted by the IGE plenary meeting in July 2019. The draft language below the perambulatory language is the result of several rounds of comments by Working Group participants and needs to be agreed upon in order to be accepted by the Secretariat in preparation for the July 2020 Review Conference. In addition to a strong agreement that the effort is relevant and badly needed, several participants advised that the draft should be kept simple and aspirational, avoiding overly specific language about implementation and enforcement. In this way, it is hoped that Member States whose government agencies do not have authority to implement the practice will, nonetheless, see the value in the practice as described and support the initiative. In addition, it was recommended in early comments that the practice should include optional procedures in order to make clear to Member States that it is the outcome rather than an exact process that matters, namely the early notification to the authorities in an export destination that someone wants to send that country consumer products that are known to be dangerous.



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**Model Practice to Reduce Occurrences of Dangerous² Consumer Products
Being “Dumped³” in Foreign Jurisdictions**

Recalling General Assembly resolution 70/186 of 22 December 2015, entitled “Consumer Protection”, adopting the revised United Nations guidelines for consumer protection,

Recognizing that the Working Group on Consumer Product Safety of the Intergovernmental Group of Experts on Consumer Law and Policy is engaged in substantive activities aimed at improving Member States’ abilities to protect their consumers from unreasonable risk of injury or death from dangerous consumer products,

Recalling 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,

Recognizing that an effective enabling environment for consumer protection and development includes both national and international cooperation and enforcement to deal with cross-border unfair, fraudulent, and deceptive commercial practices,

Recognizing that effective policies that prevent trade in dangerous consumer products and unfair or misleading commercial practices can improve consumer confidence and provide more favourable conditions for sustainable economic development,

Recognizing that when the manufacture and international trade in dangerous consumer products can be reduced, consumers everywhere may benefit,

Recognizing that Member States’ product safety frameworks and risk assessment approaches can greatly vary,

² Dangerous means a product carries unreasonable risk of causing human injury or death during foreseeable use or misuse.

³ Dumped/Dumping as used here does not refer to anti-competitive behavior related to below-cost pricing. In this context, it refers to the sale of dangerous consumer products into those foreign markets where it is easiest to exploit gaps in the enforcement capabilities of product safety authorities.



Recognizing that many Member States are still developing effective consumer product safety policy frameworks and as a result, may have difficulty preventing the importation and distribution of dangerous consumer products,

Recognizing that some Member States, where consumer dangerous products have been identified and removed or blocked from commerce, may also be in a position to inhibit the export of those products,

Recommends to Member States for their consideration the following model practice that might be facilitated in their jurisdictions for reducing international trade in dangerous consumer products:

Before an enterprise exports any consumer product that has been the subject of a safety recall in the Member State where the product is located, or is not in conformity with the product safety requirements of that Member State, one of the procedures below, as preferred by the Member State, should be followed:

Procedure A

The enterprise should notify the facts of the intended export to the relevant central government product safety authority where the product is located. Ideally, there should be a strong incentive to make the notification.

The notification should be made in time to permit the product safety authority to inform a central government representative or product safety authority of the export destination about the intended shipment and the facts regarding the nonconformity, and to provide an opportunity for the foreign authority to reply, if it wishes, with a request that the product not be exported.

If the product safety authority where the product is located has been asked in reply to take steps to prevent or discourage the export, it should take action in accordance with the legal framework by which it is governed.

Procedure B



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The enterprise should notify the facts of the intended export to the relevant central government product safety authority in the country to which the enterprise intends to export the product. Ideally, there should be a strong incentive to make the notification.

The notification, including the facts regarding the non-conformity and the identity of the intended importer, should be made in time to provide an opportunity for the foreign authority to notify the exporter and the importer, if desired, that the product should not be shipped.

Procedure C

On the Export Packing List for the non-conforming products, the enterprise should make a conspicuous notification that the shipment contains consumer products that are not in conformity with the safety requirements of the country from which they are being shipped, to which products this statement applies, and the nature of the non-conformity(s). Ideally, there should be a strong incentive to make the notification.

It is understood that some or all the procedures of this Model Practice may not be actionable within the legal frameworks of Member States, but having been made aware of the problem, Member States are encouraged to find other opportunities within their legal frameworks to help achieve the goal of reducing intentional international trade in dangerous consumer products.

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