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| <p style="text-align: center;"><b>Minutes of 7<sup>th</sup> Meeting</b><br/><b>Working Group on Consumer Product Safety, February 13, 2020</b></p> |
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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,<sup>1</sup> the WGCPSC adopted its work plan for 2019-2020 on 9 October 2019. It held its seventh teleconference call on 13 February 2020 (at 8.30 a.m. and 5 p.m. Geneva time). The objective of the meeting was to discuss the proposed recommendation entitled "*A Model Practice to Reduce Occurrences of Dangerous Consumer Products Being "Dumped" in Foreign Jurisdictions*" (text in Annex 1). These were the issues discussed:

1. The USCPSC presented the rationale for the proposed recommendation (Annex 1), in particular:
  - a. 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.
  - b. 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.
2. The Secretariat presented the comments to the proposed recommendation (Annex 2). It also shared the positive opinion from the UNCTAD services on non-tariff measures and customs and from the WTO experts who agreed that the proposed recommendation is in line with standing trade and customs rules.
3. Participants intervened to share their interests and positions regarding the proposed recommendation in particular:
  - a. The recommendation should be principled and high-level allowing for member States to accommodate solutions to their social, economic and political needs.
  - b. The use of "dumping" may be misleading, especially as the recommendation relates to international trade.
  - c. It would be useful to provide some examples and data of what the problem is in practice and how it has been dealt by in jurisdictions with experience on the issue.
  - d. Coordination with customs authorities is key to ensuring a successful implementation of the recommendation.

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<sup>1</sup> [TD/B/C.I/CPLP/20](#)



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- e. The recommendation can support legislative reform in member States.
  - f. The recommendation should be directed at consumer protection authorities and not exporters.
  - g. A report from Consumers International on consumer product safety is to be released shortly showing growing call of consumers for legislative harmonization and improved international and cross-border cooperation.
4. The USCPSC expressed its intention to circulate a revised draft of the proposed recommendation after 21 February 2020 for further consultations.
5. The Secretariat presented the next steps and procedural aspects.
- a. The **Ad Hoc Expert Group Meeting on Consumer Protection (3 April 2020 in Geneva, Switzerland)** will be devoted to the discussion of the text of this proposed recommendation (and also another proposed recommendation on cross-border enforcement cooperation discussed at the UNCTAD Working Group on consumer protection in e-commerce).  
<https://unctad.org/en/pages/MeetingDetails.aspx?meetingid=2375>  
It is important that working group participants engage their permanent missions in Geneva to ensure coordination.
  - b. Should consensus arise on the timeliness of this proposed recommendation during the Ad Hoc Expert Group Meeting, more rounds of consultations could be organized through teleconferences in preparation for the consideration of the:
  - c. **Eighth United Nations Conference on Competition and Consumer Protection (6-10 July 2020 in Geneva, Switzerland)**  
<https://unctad.org/en/pages/MeetingDetails.aspx?meetingid=2364>
  - d. The Conference could adopt it as part of its resolution (10 July 2020) and could invite the United Nations General Assembly to adopt it as well, should member States so decide.
6. Other issues
- a. The time currently allocated for the discussion at the Eighth United Nations Conference on Competition and Consumer Protection of the proposed recommendation and the roundtable on Improving consumer product safety around the world: Good data for good policy is 1.5 hours. Should there be need, a room could be made available for further informal consultations regarding the proposed recommendation before adoption of the Conference resolution on 10 July 2020.
  - b. Should member States wish to receive official invitations for Ministers or other officials, please contact Arnau Izaguerri (arnau.izaguerri@un.org)

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The next meeting of the WGCPS is called for **Tuesday 10 March 2020** at 8.30 a.m. and 5 p.m. Geneva time (dial-in details in accompanying e-mail).



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| <b>Working Group on Consumer Product Safety</b>                        |  |                   |
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| <b>7<sup>th</sup> Meeting – List of Participants</b>                   |  |                   |
| <b>Name</b>  | <b>Organization</b>                                  | <b>Country</b>    |
| Alexandre Carneiro Pereira,<br>Leonardo Marques,<br>Jacqueline Raffoul | National Secretariat for Consumers                   | Brazil            |
| Pedro Brown  | Immetro  | Brazil            |
| Natalia  | Superintendence of Industry and<br>Commerce          | Colombia          |
|  | Eurasian Economic Commission                         |                   |
| Iman Elhandy   | Consumer Protection Agency                           | Egypt             |
| Eva Sinkovic & Borbala Szij  | European Commission                                  |                   |
| Jihong Cheon   | Korea Consumer Agency                                | Republic of Korea |
| Rafael Regla   | Office of the Federal Prosecutor for the<br>Consumer | Mexico            |
| Wendy Ledesma  | Indecopi   | Peru              |
| Thezi Mabuza   | National Consumer Commission                         | South Africa      |
| Richard O'Brien & Tilven<br>Salazar                                    | Consumer Product Safety Commission                   | United States     |
| Faith Mwamba   | Competition and Consumer Protection<br>Commission    | Zambia            |
| Antonino Serra   | Consumers International                              |                   |



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

The text was open for comments, ideas, suggestions and reactions from members of the WGCPs. A revised version of the text is expected to be circulated after 21 February 2020.

**Model Practice to Reduce Occurrences of Dangerous<sup>2</sup> Consumer Products  
Being “Dumped<sup>3</sup>” 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,

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

<sup>3</sup> 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 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,

*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**

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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**Annex 2:** Comments received to the proposed recommendation of Annex 1

|                       | <b>Rationale</b>   | <b>Concepts</b>   | <b>Strong incentive</b>  | <b>Notification</b> | <b>Destruction of goods by authority</b> | <b>Implementation</b>  |
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| <b>member State 1</b> | Support. , Inmetro doesn't have the necessary statutory powers to require that all companies notify whenever exporting unsafe products. That would require legislative change that would have to pass through Congress and the President |   |  |                     |  |  |
| <b>member State 2</b> | Support. No comment  |   |  |                     |  |  |
| <b>member State 3</b> |  | concept of dangerous is used and the concept of unsafe product should be used | not understood what is meant by "strong incentive" for the complainant |                     |  | we would like to know more about the implementation in the countries |





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| <b>member State 4</b> | <p>The proposed procedures are focussed mainly on the exporting jurisdiction. Dumping issues are sometimes influenced by trade aspirations of export jurisdictions, and as much as the definition of dumping has specifically excluded dumping for trade purposes, it remains that the exporting jurisdiction may at times stand at a conflict of interest position. Export destinations, especially emerging and developing nations, may suffer more, particularly due to lack of expertise in identifying dangerous and hazardous products, and the technology to track the import of dangerous or hazardous products; essentially reliance is on information provided by big economy jurisdictions, regarding what and how products are dangerous or hazardous. Capacity of Developing economies is essential, especially where businesses in the exporting jurisdictions are delinquents, so that they adequately protect</p> |  |  |  |  |  |
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|                              | <p>against importation of those goods. Essentially the procedure should including how the export destinations may do to prevent importation of dangerous or hazardous products.</p>  |  |  |  |  |  |
| <p><b>member State 5</b></p> | <p>feedback from replying Member States show mainly scepticism and worries. According to them, the suggested procedures trigger many legal questions and may significantly increase administrative burden. While understanding that it is a model practice, they also raised the issue that the final sentence that states "it is clearly understood that some of all the procedures of this Model Practice may not be actionable with the legal frameworks of Member States..."</p> |  |  |  |  |  |



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|                              | <p>could lead to the question of a purpose of such a document. The alignment with custom procedures was also mentioned as a need. This institution should also formally consult the Member States but also other services (with customs and Trade) before any agreement</p>  |   |   |  |  |   |
| <p><b>member State 6</b></p> | <p>Would it be possible to evaluate the impact of the product recalled or dumped in a country receiving the importation? Maybe member states can consider to include as a consideration how the country and consumers will need to deal with these products in order to take them away from their territory, and the environmental impact of it.</p> | <p>use "locate recalled products or dumping" instead of dumping</p> | <p>I would suggest to eliminate this, and after the description of the procedure, strongly recommend to enterprises to make the notifications and avoid double standards.</p> |  |  | <p>1. Ideally, at least one of the procedures exposed should be taken by an enterprise intending to export a consumer product that has been the subject of a safety recall in a Member State where the product is located, or is not in conformity with the product safety requirements of that Member State.</p> |



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| <b>member State 7</b> | <p>To create a picture of what is feasible but in reality is not only creates disappointment and tensions between market surveillance authorities in developed countries and less develop countries. I think it is important that the procedures should be at least somewhat possible to fulfill in real life and not just in theory. Procedure A - No enterprise will notify by themselves without a demand from a market surveillance authority. – How many jurisdictions have the authority to order an enterprise to report their intention to export a product, even a dangerous one, to an authority? I know that our market surveillance authority have no legal ground for such a demand. Even that I could have sympathy with the idea I therefore think the wording have to be changed to be more like goal to work towards at international level than an actual demand. In Procedure B is the</p> |  |  |  |  |  |
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|            | <p>same reasoning. How many market surveillance authorities have the powers to demand an enterprise to notify a market surveillance authority in another country that the company intends to export their dangerous products to that country. The enterprise will never do such a notification without being ordered to do so. The same reasoning goes for Procedure C</p> |   |  |  |   |  |
| <p>NGO</p> |  | <p>“dumped” and “dumping” can be replaced for another, e.g. “exported and imported”</p> |  | <p>liaison or some kind of notification or information should be sent to the regional or global recall portals</p> | <p>If the authority has the option to seize and destroy the dangerous products this would be preferable and a</p> |  |



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|  |  |  |  | (such as SIAL, RAPEX and OECD | notification shouldn't be seen as an easy alternative. |  |
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