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Modalities for the implementation of the recommendation on preventing the cross-border distribution of known unsafe consumer products

Note by the UNCTAD secretariat

Summary

All consumers should have the right to have access to non-hazardous products. The protection of consumers from hazards to their health and safety is a priority for UNCTAD member States. The recommendation on preventing the cross-border distribution of known unsafe consumer products, adopted in October 2020 by the Eighth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, is the globally relevant instrument calling for action on this threat to consumer safety. In this note, the context in which the recommendation was adopted is provided, the experiences of member States in preventing the distribution of unsafe products within national borders and abroad are presented and ways to raise awareness among consumers and businesses are discussed. Furthermore, the current limitations in Governments' capacities to act on this issue are outlined, the need for improved international cooperation is highlighted and avenues for cooperation and implementation are proposed.



I. Introduction

1. The United Nations guidelines for consumer protection, first adopted by the General Assembly in 1985 and last revised in 2015,¹ recognize that consumers should have the right to have access to non-hazardous products and uphold the protection of consumers from hazards to their health and safety as one of their legitimate needs. The guidelines also encourage the adoption of policy measures regarding the protection of the physical safety of consumers, as well as standards for the safety and quality of consumer goods and services.

2. The Eighth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, held from 19 to 23 October 2020, emphasized the importance of strengthening consumer product safety frameworks at the national, regional and international levels to protect consumers from hazards to their health and safety and adopted the recommendation on preventing the cross-border distribution of known unsafe consumer products.² The recommendation is the first globally relevant instrument calling for action on this threat to consumer safety.

3. At its fifth session, the UNCTAD Intergovernmental Group of Experts on Consumer Protection Law and Policy recognized that effective policies that prevent the cross-border distribution of known unsafe consumer products and unfair or misleading commercial practices can improve consumer confidence and provide more favourable conditions for sustainable economic development. Member States requested that, in accordance with guideline 97 (b), the UNCTAD secretariat prepare reports and studies as background documentation for the sixth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy on the topic of the modalities for the implementation of the recommendation on preventing the cross-border distribution of known unsafe consumer products.³

4. The informal working group on consumer product safety, convened by the Intergovernmental Group of Experts on Consumer Protection Law and Policy, is mandated⁴ to continue work on strengthening regional and national frameworks on consumer product safety and improving international cooperation to protect consumers from hazards to their health and safety and to propose modalities for the implementation of the recommendation on preventing the cross-border distribution of known unsafe consumer products. In this regard, the secretariat circulated a questionnaire and received inputs from 23 UNCTAD member States and international organizations.⁵ Working group participants also provided substantive inputs in the drafting of the present note.

5. In this note, the context in which the recommendation was adopted is provided. The experiences of member States in preventing the distribution of unsafe products within national borders and abroad are then described. Ways to raise awareness among consumers and businesses are discussed, followed by a discussion on limitations in Governments' capacities to act and the need for improved international cooperation. The discussion concludes with the avenues for cooperation and implementation, and questions are proposed for discussion at the sixth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy.

¹ A/RES/39/248 and A/RES/70/186.

² [TD/RBP/CONF.9/9](#), chapter I, section C.

³ TD/B/C.I/CPLP/26.

⁴ [TD/B/C.I/CPLP/15](#) and TD/B/C.I/CPLP/26.

⁵ Algeria, Azerbaijan, Brazil, Bosnia and Herzegovina, Bulgaria, Czechia, Colombia, Denmark, Egypt, Iraq, Ireland, Japan, Republic of Korea, Mexico, Peru, Philippines, Poland, Slovakia, Sweden, United States of America, Zambia, State of Palestine and the European Commission.

II. Context

6. Consumer product safety policies are particularly important to help improve the health and safety of consumers and to contribute to inclusive and sustainable development for countries. Data shows that even with a mature product safety framework in place, the harm associated with unsafe consumer products can be immense. For example, the United States of America reports 43,000 deaths and 40 million injuries per year associated with consumer products.⁶ Furthermore, deaths and injuries associated with consumer products account for over \$1 trillion annually (\$3,000 per capita) in societal costs.⁷ The European Commission estimates that the detriment suffered by consumers and society within its jurisdiction due to preventable product-related accidents amounts to \$12.8 billion per year. In addition, consumers suffer financial costs arising from the fact they had purchased unsafe products, estimated to amount to \$21.6 billion per year.⁸

7. To help protect consumer 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.⁹ An earlier UNCTAD note on consumer product safety (TD/B/C.I/CPLP/12) showed that general safety requirements and liability regimes embedded in laws, along with standards, are the cornerstone for setting up consumer product safety frameworks anywhere in the world.

8. Economic operators responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as “manufacturers” or “distributors,” following guideline 17), hold the primary responsibility for ensuring that goods under their care are safe. Should they become aware of 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, modify or substitute it for another product. 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.

9. The guidelines also recommend that Member States work to ensure that the quality of products and the information relating to such products do not vary from country to country in a way that would have detrimental effects on consumer safety.

10. Currently, consumer products that have been withdrawn or recalled from one market, due to non-compliance with consumer product safety requirements, can be distributed to other jurisdictions where that non-compliance has not been assessed or acted upon. This practice can directly disregard consumer rights to access safe products and to be protected from significant harm, as recognized in paragraph 5 (c) of the guidelines. There may be, however, situations where risk can be assessed differently across jurisdictions. It is the responsibility of each jurisdiction to determine the risks, and associated levels, that are acceptable.

11. The distribution of consumer products known to be unsafe can harm consumer confidence in destination markets, especially when consumers do not have easy access to education resources about hazards linked to consumer products and how to respond to safety incidents. The recommendation recognizes that consumer confidence may be

⁶ See [https://www.cpsc.gov/Newsroom/News-Releases/2022/CPSC-Celebrates-50-Years-of-Making-Consumer-Safety-our-Mission#:~:text=Every%20year%20consumer%20products%20are,2020\)%20associated%20with%20consumer%20products.](https://www.cpsc.gov/Newsroom/News-Releases/2022/CPSC-Celebrates-50-Years-of-Making-Consumer-Safety-our-Mission#:~:text=Every%20year%20consumer%20products%20are,2020)%20associated%20with%20consumer%20products.)

⁷ See <https://www.cpsc.gov/About-CPSC>.

⁸ European Commission, impact assessment accompanying the document “Proposal for a Regulation of the European Parliament and of the Council on general product safety, amending Regulation (EU) No. 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council” (COM(2021) 346 final – SEC (2021) 280 final – SWD(2021) 169 final).

⁹ See A/RES/70/186, annex, in particular guidelines 16 to 19 and 70 to 82.

improved when Governments implement appropriate policies that prevent sales of unsafe consumer products. Such policies would have the potential of creating a more favourable environment for sustainable economic development, as enhancing consumer product safety directly contributes to the achievement of Sustainable Development Goal 3 (good health and well-being) under the 2030 Agenda for Sustainable Development (A/RES/70/1) and indirectly to that of several others.

12. Lastly, cross-border distribution of known unsafe consumer products can impact the health and safety of consumers worldwide. In line with the guidelines, the recommendation recognizes that consumers everywhere would benefit from a reduced number of unsafe and hazardous products being both traded and manufactured. The recommendation recognizes, furthermore, that Member States should work towards a high level of safety for consumer products globally as well as make safety information related to unsafe products readily available for consumers.

13. The toll on human health and lives from unsafe consumer products is not universally appreciated and addressed with effective policies. Increasing understanding of the problem is a first step towards an effective product safety policy framework that can include preventing cross-border distribution of consumer products known to be unsafe. In the next chapters, the experiences of member States in preventing the distribution of unsafe products within their jurisdictions and abroad are presented.

III. Preventing the distribution of unsafe products within national borders

14. The recently revised Recommendation of Council on Consumer Product Safety of the Organisation for Economic Co-operation and Development (OECD)¹⁰ calls for adherents to establish and maintain government bodies that have the authority and power to investigate and take action to protect consumers from unsafe products, including requiring businesses to withdraw, recall or adopt any other appropriate corrective measures against unsafe products, and to issue market withdrawal and recall notices. Such government bodies should have the resources and technical expertise to exercise their power appropriately and effectively. In addition, policy frameworks should be reviewed, when needed, to ensure they remain effective. Many UNCTAD member States have enacted laws and policies and established interinstitutional mechanisms to identify and prevent the importation of unsafe consumer products within national borders.

15. Conformity with consumer product safety regulations is usually a requirement for the importation of goods, as reported by UNCTAD member States and international organizations in questionnaires for a 2021 survey conducted by UNCTAD. Algeria, Egypt and the Philippines publish lists of goods which are prohibited from being imported or that have special oversight conditions due to their hazardous nature, such as chemicals, explosives and weapons. In the Philippines, importers must hold a valid licence, which can also depend on compliance with product safety regulations. For some consumer products, customs authorities require certification or notification of compliance, whose validity can be verified by a customs authority by means of the testing of representative samples and/or non-automatic licensing, such as in Argentina, Azerbaijan and Brazil, or through the completion of forms, as in Algeria and Colombia. Argentina, Algeria, Colombia, Egypt and Zambia include consumer product safety regulations in their “single import windows” for importers to access and comply with pertinent regulations. Controls on products entering the European Union market are harmonized. The legislation on market surveillance and product compliance requires that customs authorities flag specifically dangerous or non-compliant products in their information technology systems and, where appropriate, mark documentation with the wording “dangerous product” or “product not in conformity”. In addition, the European Commission publishes an integrated European Union prohibitions

¹⁰ Organisation for Economic Co-operation and Development (OECD), 2020, Recommendation of the Council on Consumer Product Safety, OECD/LEGAL/0459, OECD Legal Instruments.

and restrictions list,¹¹ which compiles all European Union legal instruments containing prohibitions and restrictions relevant to goods entering its market. The list serves as a practical instrument for authorities and interested stakeholders. Bosnia and Herzegovina uses information from the European Union to monitor the safety of non-food consumer products in its internal market. The Republic of Korea established a system that automatically collects information, through web-based collectors, on recalled products provided by overseas organizations and, furthermore, checks whether products recalled overseas are being distributed nationally by online platforms. The State of Palestine reports relying solely on the market surveillance of its consumer product safety authorities at the Ministry of National Economy, as it does not have control over its borders.

16. Cooperation among consumer product safety and customs authorities is key in this endeavour. Such cooperation can be statutory or comprise formal or informal agreements among government authorities, which in turn take various forms. In Azerbaijan, Bulgaria, Czechia, Denmark, Iraq, Ireland, Peru, Poland and Sweden, cooperation is bilateral between consumer product safety and customs authorities. Cooperation can also involve additional national authorities, including those for metrology and standards (e.g. Brazil and Zambia), tax (e.g. Mexico and Slovakia) and even telecommunications (e.g. Brazil) and the environment (e.g. Republic of Korea). Other ways of cooperating include co-locating consumer product safety investigators side-by-side at ports of entry with customs staff and at a customs authority's analysis centre, such as in Algeria, the United States and Zambia. In Finland, France and Latvia, customs authorities have the status of market surveillance authorities, which enables them to perform product safety checks at the border and related product testing. Some jurisdictions, such as the European Union and the United States, also conduct risk analysis based on the profile of an importer.

17. Manufacturers and distributors should notify the relevant authorities and, as appropriate, the public without delay when they become aware of hazards after products are placed on the market. As recommended by the United Nations guidelines for consumer protection, manufacturers and distributors are usually compelled to take appropriate corrective measures, such as recalling a product from the market. Otherwise, government authorities can also enforce corrective measures, such as product recalls, to be taken by manufacturers and distributors. Government authorities can assess such non-compliance with product safety regulations following their own investigation, consumer complaints, consumer injury reports and based on a risk assessment. Countries with mature product safety systems maintain alert systems which make information about corrective measures (including recalls) public. This information can also be actively shared regionally and/or internationally as is the case of product alerts of the Association of Southeast Asian Nations,¹² the rapid alert system (Safety Gate) of the European Union,¹³ the Consumer Safety and Health Network of the Organization of American States¹⁴ and the OECD portal on product recalls.¹⁵ This information is relevant for comparing and assessing the risks of products found in national markets. It also enables participating jurisdictions to better target their market surveillance efforts. In box 1, the current requirements for import approval in the European Union are detailed.

¹¹ See https://ec.europa.eu/taxation_customs/system/files/2018-08/prohibition_restriction_list_customs_en.pdf.

¹² See Association of Southeast Asian Nations Committee on Consumer Protection, Product alerts, available at <https://aseanconsumer.org/product-alert> (accessed 26 April 2022).

¹³ See European Union, Safety Gate: the [European Union] rapid alert system for dangerous non-food products, available at <https://ec.europa.eu/safety-gate-alerts/screen/webReport> (accessed 26 April 2022).

¹⁴ See <https://www.oas.org/ext/en/development/chsn>.

¹⁵ See OECD, Global portal on product recalls, available at <https://globalrecalls.oecd.org/> (accessed 27 April 2022).

Box 1

Import approval requirements in the European Union

Regulation (EU) 2019/1020 on market surveillance and compliance of products^a includes a comprehensive control framework on products entering the European Union market, based on risk management, statistics and reporting, as well as cooperation and exchange of information.

Customs authorities are required to carry out adequate controls on a risk assessment basis and to suspend the release of products entering the European Union that they suspect to be non-compliant or to present a serious risk. Market surveillance authorities have four working days to confirm the compliance of products. An electronic interface is being set up to facilitate the transmission of information between customs and market surveillance authorities.

Customs authorities receive, from market surveillance authorities, necessary information concerning categories of products or economic operators that pose a higher risk of non-compliance. In turn, customs authorities inform the market surveillance authorities of the results of controls and the release of products for free circulation.

Each year, European Union member States must submit to the European Commission detailed statistical data covering controls with respect to products subject to European Union law during the previous year. The Commission draws up a yearly report that contains the information provided by member States and an analysis of the data submitted.

Source: European Commission.

^a Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No. 305/2011 (available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R1020>).

IV. Preventing the distribution of unsafe products abroad

18. Consumer product safety authorities are commonly mandated to protect the health and safety of consumers within their jurisdictions. However, the recommendation on preventing the cross-border distribution of known unsafe consumer products also calls on United Nations Member States to pursue policies aimed at preventing consumer products known to be unsafe in their own jurisdictions from being distributed abroad.

19. One common way for Governments to address this issue is to exchange and share information on corrective measures, including recalls, with foreign counterparts. The above-mentioned networks for Europe, the Americas, South-East Asia and OECD countries and adherents benefit national and foreign consumers. The European Union legislation enables the competent authorities in European member States to destroy, or otherwise render inoperable, products that pose a risk to health and safety, where deemed necessary and proportionate. The costs are borne by the economic operator that declared the product. Specific procedures are also in place in member States. For example, Czechia requires its consumer product safety authority to give an opinion if there is a risk of export of an unsafe product. The consumer product safety authority of Ireland may request an importer to destroy a product or re-export it to origin, which can prevent further cross-border distribution to third countries. Sweden can prohibit the export of products that may pose serious risks of injury.

20. In the United States, cross-border distribution of products known to be unsafe is highly controlled. In some cases, it is not permitted. In other cases, it may be possible to obtain permission, as described in box 2.

Box 2

Summary of the legal authority to restrict cross-border distribution of known unsafe consumer products of the Consumer Product Safety Commission of the United States

1. It is unlawful for any person to export to a foreign country any product which is not in conformity with an applicable consumer product safety regulation in effect under the country's Consumer Product Safety Act, unless the person notifies the Consumer Product Safety Commission of the United States of the pending export, not less than 30 days in advance, by means of filing a statement with the Commission, specifying the following:

- (a) Anticipated date of shipment of such product
- (b) Country and port of destination of such product
- (c) Quantity of such product that will be exported
- (d) Such other information as the Commission may by regulation require.

Upon receipt of such statement, the Consumer Product Safety Commission shall promptly notify the Government of the destination country about the proposed export and describe the nonconformity.

2. The Consumer Product Safety Commission may:

- (a) Prohibit a person from exporting from the United States, for the purpose of sale, any consumer product that is not in conformity with an applicable consumer product safety rule under the Consumer Product Safety Act, unless the destination country has notified the Commission that it accepts the importation of such consumer product;
- (b) Take appropriate action within its authority regarding the disposition of the product if the destination country has not notified the Consumer Product Safety Commission of acceptance of the product within 30 days after the Commission provided notice to the destination country of the impending shipment.

3. It is unlawful for any person to export from the United States, for the purpose of sale, any consumer product or substance under the Consumer Product Safety Commission's jurisdiction that is subject to a corrective action, such as a recall, taken in consultation with the Consumer Product Safety Commission and about which the Commission has notified the public.

4. The Consumer Product Safety Act shall not apply to any consumer product if:

- (a) It can be shown that such product is manufactured, sold or held for sale for export from the United States (or that such product was imported for export), unless (i) such consumer product is, in fact, distributed in commerce for use in the United States or (ii) the Consumer Product Safety Commission determines that exportation of such product presents an unreasonable risk of injury to consumers within the United States;
- (b) Such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export.

Source: United States, Consumer Product Safety Commission.

Note: The United States wishes to inform that the text in the box is a summary of the United States Consumer Product Safety Commission's legal authority to restrict cross-border distribution of known unsafe products as described in Title 15 United States Code paras. 2067–2068. More information is available at <https://www.law.cornell.edu/uscode/text/15/2067> and at <https://www.law.cornell.edu/uscode/text/15/2068>. This summary is not a complete description of the United States legislation, and parties seeking legal certainty are advised to refer to the statutes referenced.

21. Enforcement and market surveillance actions to prevent the distribution of unsafe consumer products nationally and internationally also require the active participation of the two most important market actors: consumers and businesses. UNCTAD member States have undertaken decisive awareness raising activities, as described below.

V. Raising awareness among consumers

22. The recommendation calls on United Nations Member States to raise consumer awareness of the risks to physical safety posed by unsafe consumer products, related to cross-border, direct-to-consumer online transactions. Consumers can be unaware that health or safety requirements vary from country to country and can assume that all products for sale online are safe. Moreover, consumers are often unaware when shopping on an online platform that they might be buying a product directly from a foreign supplier, who has no fear of legal action as they have no presence in the consumer's own jurisdiction. Many countries have developed, or are developing, media messaging to inform consumers about purchasing safe products online. The Republic of Korea has dedicated profiles in some social media platforms for this purpose.¹⁶ As consumers often underestimate risk and may decide to purchase the cheapest products out of financial necessity, product safety authorities should educate consumers on the possible safety consequences of decisions based solely on price.

23. Risks to consumers are not limited to online purchases, however. Informal local marketplaces can be sources of risky products that traditional retail shops would not carry due to safety concerns. Consumers must be properly informed about which products to avoid. Even well regarded, established retailers may sell products that are later discovered to have safety defects about which the public must be alerted.

24. Without a plan for effective communications by consumer product safety authorities, consumers remain at risk. Messaging to consumers should consider, among other things, diversity of languages (multilingual populations), socio-economic factors, culture, and geography. Content should be presented in the way most relevant to the target group and should be clear about what action is being recommended, taking into consideration the special needs of vulnerable and disadvantaged consumers. For example, Peru produces information in Spanish, Quechua, Aymara and Braille.¹⁷ Ireland runs consumer awareness campaigns regarding consumer safety issues on radio, television interviews and information campaigns across social media.¹⁸

25. Consumers should also be encouraged to report issues to the product safety authority. To make this possible, free telephone numbers, website message windows and email addresses can be employed.¹⁹ Governments may consider making regular public announcements on traditional and social media platforms reminding consumers to report unsafe products.²⁰ For example, Algeria liaises with consumer associations to raise awareness among consumers on unsafe products across borders.

26. Several jurisdictions have also set up online databases or portals to alert the public to dangerous products. In the European Union, summaries of notifications submitted to the rapid alert system for dangerous non-food products are publicly available on the Safety Gate portal, managed by the European Commission. Bosnia and Herzegovina directly displays information from the European Union's Safety Gate portal for its consumers. The OECD portal on product recalls brings together information on product recalls being issued around the world, on a regular basis.

¹⁶ See <https://www.youtube.com/watch?v=978qWHGwwJc>, <https://www.ciss.go.kr/shr/infoQryIdRegInfo.do> and <https://www.consumer.go.kr/consumer/index.do>.

¹⁷ UNCTAD, 2020, *Voluntary Peer Review on Consumer Protection Law and Policy: Peru* (United Nations publication, Geneva).

¹⁸ See, for example, the following video on the destruction of dangerous phone and laptop chargers, available at <https://www.youtube.com/watch?v=Y97IzJRjOT8>.

¹⁹ For example, see <https://www.saferproducts.gov/IncidentReporting>.

²⁰ For example, see <https://www.cpsc.gov/Newsroom/News-Releases/2021/CPSC-Urges-Consumers-to-Schedule-a-Safety-Check-Up-on-Products-in-Their-Homes-2>.

VI. Raising awareness among businesses

27. The need for collaboration at the local, regional, national and international levels to leverage resources and to achieve consistency in raising awareness was highlighted during an UNCTAD panel discussion on strategies for effective outreach to consumers and business to promote product safety.²¹ For example, the Republic of Korea hosts various standing consultative bodies, comprising 60 enterprises from eight major industries. The country recently introduced a standing consultative body with five major online platforms to enhance proactive and collective measures.

28. The recommendation encourages United Nations 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. Member States should take appropriate steps to discourage the export of consumer products known to be unsafe, as this would be beneficial to the health and safety of consumers everywhere. Awareness raising may also include reminding businesses to ensure that products in their care do not become hazardous through improper handling or storage.

29. Communicating with businesses about the importance of effective recalls is also important. A well-managed recall is less likely to damage a company's reputation, compared with attempts to evade responsibility, and can even increase consumer trust in a brand.²² A recall is an opportunity for business to correct a failure in a mass production system. Governments may consider awards for companies that go beyond their legal obligations in the way that they implement consumer product safety into their business practices. Such awards are already successfully organized in various countries, including in Peru²³ and the European Union.²⁴

30. Denmark notes that there are many small manufacturers and distributors that may lack resources or capacities on product safety and for whom campaigns on the topic may not have the desired impact. Various countries, including Algeria, Egypt, Peru and Poland, conduct training courses for manufactures and distributors on their legal obligations, as well as the benefits of ensuring their products are safe. Japan also raises awareness among manufacturers and distributors through a recall information website as well as its system for reporting and disclosing serious product accidents.

31. Governments can also advise manufacturers and distributors about effective ways to communicate safety information, such as by developing best-practice guidelines. Businesses should be advised to use creative ways to reach owners of recalled products and motivate them to respond. Studies have shown that the most effective way to get responses from consumers is direct notification, such as email, text message, letter and telephone calls. In addition, recall notices should be required to include a clear description of the recalled product, related hazard (avoiding any terms that could minimize consumer perception of risk), remedies available to consumers and instructions on what to do, as well as a user-friendly format. Several jurisdictions have adopted a standardized template for recall notices to support businesses in effective recall communication. Recall information should be presented in a way that makes it accessible to people with disabilities. Web accessibility rules should apply when information is made available in an electronic format. A text description of pictures identifying recalled products should be provided for electronic recall notices. Moreover, videos about a recall should have subtitles to enhance access.

²¹ Organized in the framework of the UNCTAD working group on consumer product safety.

²² See European Commission, 2021, Behavioural study on strategies to improve the effectiveness of product recalls, available at https://ec.europa.eu/safety/consumers/consumers_safety_gate/effectiveRecalls/documents/Product.Recall.Main.Report.pdf; and European Commission, 2019, Survey on consumer behaviour and product recalls effectiveness. Final report, available at https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/tips/Product.Recall.pdf.

²³ See <https://www.consumidor.gob.pe/primerolosclientes>.

²⁴ See <https://ec.europa.eu/safety-gate/#/screen/pages/safetyAward>.

32. Additional useful ways for manufacturers and distributors to reach consumers with warnings, recalls or other products safety messaging might include a joint news release from the relevant product safety authority and business, a dedicated toll-free number for consumers to contact and respond to the recall notice, visual content that is massively broadcast, including through social media, among other means. In 2020, the OECD released policy guidance on maximizing product recall effectiveness that contains detailed recommendations in this regard.²⁵

33. Governments can also encourage the development of sustainable products and technology in line with Sustainable Development Goal 12. This can limit production waste and avoid goods from being discarded, by improving product durability and facilitating product repairs, including in the case of product safety issues.

VII. The capacities of Governments to act

34. The recommendation recognizes that Governments in some jurisdictions may lack the capacity to act against unsafe consumer products in any scenario. Many jurisdictions are still developing effective consumer products safety policies and measures and might not have the legislative and regulatory tools to prevent the import or aid in the identification of unsafe products in their national markets. For example, legal frameworks might not provide regulators with authority to prevent sales or implement recalls. Others may not yet have effective reporting systems, product incident databases or other tools to properly monitor the market.

35. It is also recognized that United Nations Member States may lack the authority or resources to prevent the export of consumer products known to be unsafe, even after they have been identified and blocked from domestic commerce. Historical priority given to export facilitation can also impede initiatives to prevent certain exports or to warn other jurisdictions about products known to be unsafe coming their way.

36. The recommendation recognizes that global manufacture and sale of unsafe consumer products can be reduced as Member States strengthen their individual product safety frameworks. On that basis, the recommendation calls on Member States to pursue policies, consistent with World Trade Organization rules, aimed at preventing cross-border distribution of consumer products in their jurisdictions known to be unsafe.

37. The recommendation notes the difference in legal frameworks, product safety requirements and risk assessment approaches between jurisdictions. As there is no one-size-fits-all solution, every jurisdiction is in a unique position when it comes to addressing cross-border distribution of consumer products known to be unsafe.

38. Lastly, it is recognized that in many countries, although unsafe consumer products can be identified and withdrawn or blocked from commerce, legal authority may not yet exist to prevent the export of those products. However, implementation may progress incrementally through improved communication and information sharing among Member States. This exchange of information can even discourage businesses from distributing unsafe products.

VIII. The need for improved international cooperation

39. Actions aimed at preventing the cross-border distribution of known unsafe consumer products require international cooperation. The very nature of the issue involves the transport of unsafe goods over international borders; without coordinated efforts by Governments of United Nations Member States, results are likely to be of limited value to the safety of consumers. UNCTAD research²⁶ from 2020 shows that cross-border

²⁵ OECD, 2020, Policy guidance on maximizing product recall effectiveness, DSTI/CP/CPS(2019)4/FINAL.

²⁶ Cipriano A and Izaguirre A, 2020, International cooperation in consumer protection, Research Paper No. 54, p. 43, UNCTAD.

international cooperation in consumer protection is still relatively uncommon, especially in enforcement. Except for the European Union, it is currently based on informal inter-agency cooperation, which may be insufficient to adequately address the growing number of cross-border, unfair commercial practices.

40. Furthermore, as product safety frameworks, requirements and processes can vary greatly across UNCTAD member States, a consumer product may be considered unsafe in one jurisdiction and not in another. In international trade agreements, such as the Agreement on the Application of Sanitary and Phytosanitary Measures and the Technical Barriers to Trade Agreement of the World Trade Organization, different regulations among member States are permitted, to account for different realities. The recommendation on preventing the cross-border distribution of known unsafe consumer products acknowledges that these disparities can make international cooperation more difficult, as different jurisdictions might not recognize the same risk. Such situations can reduce the capacity of a jurisdiction to take action to prevent the further sale of unsafe consumer products originating from their market in another jurisdiction.

41. The regional and international product recall networks mentioned above are a valuable source of information for all participating authorities. Although some countries participate in more than one network, there is a need to “network the networks” so that the information shared can benefit the largest number of jurisdictions.

42. The recommendation also reaffirms that United Nations Member States should develop or strengthen information sharing regarding products that have been banned, withdrawn or severely restricted, to enable importing countries to protect themselves and their consumers adequately against unsafe products. The call for information exchanges between Member States is already present in the United Nations guidelines for consumer protection and remains an essential tool to prevent cross-border distribution of known unsafe consumer products. While the need is known, it is also understood that the appropriate information is often not shared. Many jurisdictions simply do not have the mechanisms and agreements in place to allow for such information to be effectively transmitted in a timely manner.

43. Similarly, the recommendation affirms that instances of unsafe consumer products being distributed in national markets can be reduced globally as international cooperation is strengthened.

44. One concrete example of export approval requirements based on product safety considerations is that of the United States, as summarized in box 2, which can be a source of inspiration for other member States. Mexico suggests a new form of labelling by which, if a product is deemed unsafe in one jurisdiction, it could be easily identifiable by the customs authorities of other jurisdictions.

IX. Avenues for cooperation and questions for discussion

45. The recommendation requests UNCTAD to continue to assist United Nations Member States in improving national and regional consumer product safety frameworks to better protect consumers and to prevent cross-border distribution of unsafe consumer products. It also encourages the adoption of appropriate measures by Member States to improve their capacity, 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 the intended or normally foreseeable use.

46. In many jurisdictions, although unsafe consumer products can be identified and withdrawn or blocked from commerce, legal authority may not yet exist to prevent the export of those products. However, implementation may progress incrementally through improved communication and information sharing among United Nations Member States. To improve capacity, Member States should regularly exchange information related to national policies, measures on product safety, product safety recalls, and safety requirements within each Member State.

47. Questions for discussion at the sixth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy are as follows:

(a) What legal and institutional frameworks are necessary to prevent the cross-border distribution of known unsafe consumer products?

(b) How can the effectiveness of national, regional and international recall mechanisms be enhanced?

(c) How may UNCTAD best assist member States in improving national and regional consumer product safety frameworks?
