



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIR ALEXANDER D. HOEHN-SARIC

Remarks of Chair Alexander D. Hoehn-Saric

**Roundtable on Modalities for the Implementation of the Recommendation on Preventing
Cross-Border Distribution of Known Unsafe Consumer Products**
9:30am – 11:00am U.S. Eastern
3:30pm – 5:00pm Geneva

**UNCTAD Meeting of the Intergovernmental Group of Experts
on Consumer Protection Law and Policy**
18 – 19 July 2022, Geneva, Switzerland and Online

July, 18 2022

Madam Chair, excellencies, distinguished experts, ladies and gentlemen. Thank you very much for the gracious introduction. Thanks also to the UNCTAD Secretariat for the invitation to join you today and to share some thoughts on preventing cross-border distribution of known unsafe consumer products.

It is really my great pleasure to have been invited to address this meeting of the world's consumer protection leaders. I'm especially glad to also have an opportunity to be with members of the IGE's Working Group on Consumer Product Safety. Congratulations to those member states and official observers who have accomplished so much in the Working Group during just four years, and to the Secretariat for providing an effective structure and partnership for progress.

This global platform for governments to come together to share experiences and best practices in consumer product safety has never been more important. We're facing new safety challenges with products that are inherently global in the way they function. They're connected and smart, they store and consume energy in new ways, and they have the potential to be controlled from anywhere in the world. We also face a huge growth in direct-to-consumer international e-commerce sales, too often shipped in ways that circumvent long-established safeguards. The Working Group on Consumer Product Safety in UNCTAD provides a vital platform to work together on these and other pressing safety issues.

Moving now to the questions I was asked to address. The Recommendation on Preventing Cross-Border Distribution of Known Unsafe Consumer Products offers huge potential for protecting consumers in my country and in yours, if it can be implemented on a broad scale.

The aim of the Recommendation is to end the commercial practice of shipping hazardous consumer goods away from markets where they cannot be sold, to economies with limited regulatory and enforcement resources. Examples that illustrate the problem include lead paint,

pesticides, phthalates, and asbestos banned in developed countries but found in products being exported to developing countries in the Pacific, Africa, and Central Asia.

Although the problem is most acute for developing economies, it also affects consumers in developed markets when exported goods find their way back. If collectively, we could make this behavior unprofitable, far fewer unsafe products would be manufactured and fewer consumers anywhere would be exposed to harm. This is why broad implementation of the Recommendation is so important.

You might be aware that in the United States, our law generally, with only a few exceptions, prohibits companies from exporting a known unsafe consumer product unless CPSC has first informed the product safety authorities of the export destination and the foreign government accepts the export. Also, it is illegal to export for sale a consumer product subject to a voluntary corrective action completed in consultation with CPSC and which CPSC has publicly noticed. This makes sense for several reasons. By sharing such information and limiting the export of unsafe consumer products, we can limit the potential that the goods will harm consumers elsewhere AND limit the potential that the goods will find their way back into our own market.

Having legislation to implement the recommendation is ideal. But knowing, as we all do, that passing new laws can take a long time, member states may want to consider interim measures to implement the Recommendation. Of course, the right steps will depend on a country's legal framework, but here are some thoughts.

First, the knowledge that a consumer product is unsafe is the starting point for action under the Recommendation. This knowledge might come from information supplied by consumers, the media, by a responsible company, from announcements by product safety authorities in other markets, or by a government's own surveillance efforts.

Now, looking at a government's capacity to prevent cross-border distribution of a product it knows to be unsafe, it seems two things are needed: First - a process for the government to be notified of the intended export, and second, a legal authority for the government to deny permission for the export.

Regarding notification to the government of an intended export, many countries require departure documentation for all shipments and for certain listed goods a request for export licensing. So, how do goods become listed? Could the list be expanded to include any known unsafe products?

Many countries have a process for denying permission for exports that are contrary to the national interest or the country's foreign policy. Could "protecting the country's reputation as a safe source of consumer products" be adopted as a valid reason?

As I have said, possibilities will vary according to national legal frameworks. These are just examples to stimulate thinking. It seems to me that the value of the Recommendation is worth the effort of exploring all reasonable mechanisms for implementation.

Some might wonder if preventing cross-border distribution of unsafe products might be seen as contrary to the global trend toward more liberal international trade policies. That should not be a concern for us. The spirit of the UNCTAD Recommendation finds strong support in other well-established and widely-accepted international instruments. For example...

The United Nations Convention on Contracts for the International Sale of Goods -- the CISG. -- has been ratified by 95 countries. It provides governments with a model for modern, uniform

legislation covering the international sale of goods. It applies whenever contracts for the sale of goods are concluded between commercial parties, each of which have a place of business in a Member State that has ratified the CISG. The CISG may also be designated by agreement between parties in different countries, even if one or both have not ratified.

CISG article 35 makes clear that for international business-to-business sales conducted under CISG terms, the goods being traded do not qualify if they are in a state or condition – and I quote - “*not fit for the purposes for which goods of the same description would ordinarily be used.*” An exception exists where the parties have agreed that the goods are not fit for ordinary use or if the buyer was aware or would have known the goods were unfit for ordinary use.

Further, CISG article 40 notes that the rights and obligations of the parties are not met if the seller does not inform the buyer that the goods have a known lack of conformity to the contract, such as not being fit for ordinary use. Keep in mind that widely understood and customary commercial practices typically include a presumption that unsafe goods are not fit for ordinary use. Therefore, the CISG is highly relevant to cross-border distribution of unsafe consumer products and its ethical principles are fully supportive of those found in the UNCTAD Recommendation.

Turning to the WTO Agreement on Technical Barriers to Trade – the TBT. Agreement says in its Preamble that “... no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal, and plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate.”

A country considering implementation of the UNCTAD Recommendation should take encouragement from the TBT Agreement. Accepted by over 160 World Trade Organization members, the preamble language makes clear that a country may take measures to ensure the quality of its exports. Widely understood and customary practice includes the safety of goods as fundamental to their quality, thus underscoring the close alignment between the TBT Agreement and the UNCTAD Recommendation.

To conclude, I believe that the Recommendation puts consumer product safety policy on the verge of a huge step forward. A will to act on the Recommendation is the first thing needed. With that, comes the search for available tools for implementation. In our efforts to implement, we can take encouragement from the international instruments that I have mentioned and from the knowledge that by working together, we can improve product safety for all of our consumers.

Thank you again for the opportunity to share my thoughts with you today.