

OECD ROUNDTABLE ON INTERNATIONAL CONSUMER PRODUCT SAFETY

23 OCTOBER 2008

SESSION I: THE INTERNATIONAL CONSUMER PRODUCT SAFETY AND ENFORCEMENT ENVIRONMENT: ISSUES AND CHALLENGES

WHAT IS THE MAGNITUDE AND SCOPE OF THE PROBLEM? SUMMARY OF THE ANALYTICAL REPORT ON CONSUMER PRODUCT SAFETY

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In this session I will outline the broad themes that we will discuss at today's Roundtable and provide an overview of the contents of the Analytical Report, which was provided to participants last week.

Let me begin by outlining the objectives of this Roundtable. When Australia proposed the Roundtable at the 75th Committee on Consumer Policy (CCP) Meeting in November 2007 we saw this as an opportunity to achieve three objectives:

- The first objective was to clarify understanding of existing domestic and international product safety policy and enforcement arrangements, so as to improve the sharing of product safety information and to enhance dialogue between governments about product safety.
- The second objective was to obtain the views of OECD member and non-member countries on the current and future challenges posed by product safety risks and discuss the effectiveness of policy responses.
- And, the third objective was to discuss the effectiveness of existing international information sharing and enforcement cooperation networks so as to inform the development of more effective and more wide-reaching networks.

The policy basis for product safety policy

In considering these issues, we also wanted to explore the justifications for product safety regulation, which are based in both social policy and economic concerns. And, this is covered in some detail in **Section I** of the Analytical Report.

It is generally accepted that the fundamental objective of consumer product safety is to prevent consumers from suffering harm as a consequence of using products that present an unreasonable risk of injury.

In doing this, governments intervene in the market to ensure consumers are protected from harm and to minimise the social costs associated with product safety failure.

Conventional economic analysis is based on the assumption that markets work best when consumers can act rationally in their best interest, based on symmetric information and competitive markets. This would mean that consumer demand will determine which products succeed or fail.

However - for this to be true - consumers would need to know about any potential harmful consequences resulting from using products that present an unreasonable risk.

But, we all know that consumers have difficulties in assessing the relative safety of products - due to a range of information asymmetries. This means that they often cannot 'rationally' work out whether a product is actually safe. Instead, they have to trust that they are safe.

So the role of consumer product safety regulation is to address actual and potential market failures.

This market failure justifies the need for some form of intervention by governments.

But excess intervention – in the form of over regulation - can distort market processes – which reduces competition, stifles innovation and limits consumer choice.

On the other hand, insufficient regulation – either by not providing enough control or guidance to market players, or none at all – can lead to a lack of compliance, increased risk and reduced consumer confidence.

With this in mind, product safety policy must balance the need to let markets operate efficiently with the need to maintain consumer safety.

A key consideration in balancing these concerns lies in providing consumers with the tools to identify product safety risks - such as information provision - while taking steps to reduce or eliminate these risks through various pre- and post-market interventions.

The Analytical Report

To facilitate today's discussion, the Australian delegation has worked with the CCP Secretariat to prepare the background paper for this Roundtable. The Analytical Report covers the broad themes of the Roundtable, drawing on the Questionnaire responses from countries and previously published work.

The issues covered in the Analytical Report are:

- The scope, objectives and nature of consumer product safety regulation.
- Current international consumer product safety policy and enforcement challenges.
- Current approaches to consumer product safety policy and enforcement at both domestic and international levels; and
- Future actions that could be taken to strengthen consumer product safety policy at the international level, including work that could be done through the OECD.

The Report draws on the valuable contributions made by the 20 countries, plus the European Commission, which responded to the Questionnaire which was circulated in June 2008.

- The responses to the Questionnaire have been collated into a series of tables in an Addendum to the report, to facilitate easier comparison of the responses.

Findings of the Analytical Report

The Analytical Report sets out a series of reflections based on the information provided in the Questionnaire responses. They are not intended to be conclusive, but rather to inform our discussions.

These reflections can be grouped into three broad themes:

- Firstly, issues and challenges surrounding domestic product safety regimes;
- Secondly, the issues and challenges surrounding international product safety; and
- Finally, addressing cross-border product safety problems more effectively.

With regard to the first theme - domestic product safety regimes - the Analytical Report draws out a series of broad concepts which carry across specific national regulatory regimes.

- There are two main ways of approaching the definitional question of what is or is not a safe product. Some countries such as members of the EU have in place what can be described as an *ex-ante* requirement to ensure product safety through a General Safety Provision which requires that only safe products may be placed on the market. Other countries – like Australia and Canada - use an *ex-post* approach – which restricts suppliers from selling goods that have or are likely to cause injury.
- The structure of a country's product safety institutional framework can have an important effect on the way that product safety policy is developed, implemented and enforced.
 - For example, Chile, Denmark and Canada combine the enforcement and policy functions within the one agency, while Australia, Belgium, Mexico and New Zealand separate these functions.
 - Some countries have in place structures where enforcement bodies play an important role in policy, such as the US's Consumer Product Safety Commission, which has some say in the development of policy, but is largely an enforcement body.
 - Finally some countries have regionally focussed product safety regimes, for example in the UK and Germany where local authorities have an important role in product safety issues.

The Report also describes the range of pre- and post-market tools that policy makers can use to encourage compliance with and enforce product safety laws.

- Pre-market interventions can include regulations, standards, pre-market surveillance, and the provision of consumer safety information.
- Post-market interventions can include investigative actions, public warnings, bans, recalls, enforceable undertakings and civil and criminal court actions.
- Although pre-market regulation is the best means of ensuring product safety – by denying faulty or dangerous products access to markets - its success is reinforced by the effectiveness of post-market interventions to create sufficient disincentives for misconduct.

Another important issue is purely practical. Effective monitoring and enforcement is hampered by the sheer volume of goods produced and traded domestically and internationally. Also, the ability of product safety agencies to respond quickly to incidents can be hampered by a lack of networks for sharing information.

Consumers and businesses both have considerable roles to play in the development and overall success of a product safety regime.

To avoid suffering financial and reputational damage businesses have a strong incentive to ensure high levels of consumer product safety.

The Report's second theme covers international product safety issues. In this part of the Report we explore the way in which international considerations impact on product safety policy development and enforcement.

- In an increasingly globalised economy, domestic product safety is dependent on the effectiveness of international arrangements on product safety. Bilateral and multilateral agreements are a key element for maintaining high product safety internationally.
 - For example, the Memorandum of Understanding between the EU and China about improving product safety is a key bilateral agreement that helps to maintain high levels of safety. Agreements such as this should be encouraged to foster greater trust in global product markets;
- Also, many countries' commitment to reducing technical barriers to trade has led to a general harmonisation of standards, facilitating greater international trade while maintaining high levels of product safety.

The final area covered in the Report is the development of more effective cross-border product safety networks, which explores some of the ways in which we might progress improved or new mechanisms for greater cross-border policy cooperation, sharing information about product safety incidents and improving enforcement cooperation and coordination internationally.

- In their responses to the Questionnaire, countries indicated that there are a number of issues with international product safety arrangements that need to be addressed, including a lack of information about injuries; a lack of resources for enforcement activities; inferior and inconsistent product labelling; and only limited product compliance with standards internationally.
- This has raised calls for the development of a rapid international information exchange system similar to the EU's RAPEX and RAPEX-China. Such a system would likely facilitate the rapid exchange of information on product warnings and alerts, voluntary business recalls and regulatory interventions.

Challenges for consumer product safety

The existence of product safety enforcement difficulties in recent years is, in part, as a result of inconsistent product safety regimes in different countries, including:

- countries having inconsistent sanction regimes for breaches of product safety law.

- countries applying different standards, which can create difficulties if countries do not accept foreign standards of safety; and
- countries needing to account for different regulatory systems, placing pressure on the resources available to regulators;

In response to the Questionnaire, countries noted that more extensive coordination and cooperation could address a range of issues to make international cooperation more effective. This include the need for:

- more effective mechanisms to facilitate the rapid exchange of information perhaps through countries
 - using their participation in international organisations to strengthen dialogue across borders on consumer product safety issues, at both the policy and enforcement levels; and
 - working to improve policy development and enforcement co-operation mechanisms.
- The Report notes that the goal of enhanced consumer product safety could be achieved through more extensive product safety coordination and cooperation.

Future work

Today's discussions and the conclusions we reach can form the basis of the CCP's future work in the area of product safety. This was the subject of some discussion at the Committee 76th Meeting yesterday and has been covered in the CCP's 2009-2010 Program of Work and Budget.

The CCP could look to address some of the problems highlighted by responding countries. To this end, today's Roundtable offers us the opportunity to:

- discuss whether mechanisms need to be established to ensure that information on unsafe products is shared on a timely basis, worldwide, with a view towards limiting their harmful effects.
- Also providing the opportunity to discuss whether the CCP could also expand co-operation with the organisations such as the International Consumer Product Safety Caucus (ICPSC) with a view to enhance the current level of interaction between consumer product safety policy and enforcement agencies internationally Such collaboration could include:
 - the preparation of a uniform strategy on international collaboration;
 - the sharing and dissemination of injury data and information;
 - the development of a website with accesses for consumers and business organisations; and
 - the engagement in preparation of conferences on consumer product safety.

Conclusion

In conclusion, the purpose of the Analytical Report is to encourage discussion about these issues and should not be seen as a final position on specific questions.

In considering these questions, we look forward to the presentations that will be made today by representatives of international bodies, national governments and non-government organisations representing consumer and business interests along with the discussions that will follow.

We particularly welcome participants from non-OECD countries whose insights on these issues are most welcome.
