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PROPOSALS ON ENHANCING PRODUCT SAFETY IN ONLINE SHOPPING ENVIRONMENT, AND TRANSPARENCY

NINTH TRIENNIAL REVIEW

Submission from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following submission, dated 27 May 2021, is being circulated at the request of the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

1 ENHANCING PRODUCT SAFETY IN ONLINE SHOPPING ENVIRONMENT

1.1 Background

1.1. As COVID-19 pandemic proliferated worldwide, it brought about sudden and wide-ranging changes on lifestyles and consumer behaviors. Border closures, lockdowns and social distancing measures have led to the rapid growth of online shopping activities. As online shopping may become part of the "new normal," with the growing consumer demand and increased supply of online shopping products, it is assumed that the number of unsafe product cases will also increase. A recent OECD report "Protecting online consumers during the COVID-19 crisis" concurred with this expectation¹. The growth in unsafe product cases, for instance, indicates the need to adjust current regulatory regime and re-direct regulatory resources to address this new priority.

1.2. The following features unique to online shopping businesses cause difficulties in clarifying and tracing the attribution of legal liability for consumer and government.

- a. The shopping platform operator has multiple roles, being either simple intermediary or the direct seller, or in some cases a mixture of both. It is particularly confusing when shopping takes place over a social media platform instead of a shopping website.
- b. Many individual online sellers are not familiar with products standards and technical regulations. They just resell commodities they purchased from somewhere.
- c. The borderless nature of the internet suggests that the physical location of the intermediary platform or the seller cannot be easily identified simply by reviewing the language or the currency used in the transaction. In some cases, the platform, online sellers and the actual manufacturing/delivery of the products are all located in different territories. Cross-border online shopping usually takes place without prior knowledge of the consumer. Online shopping's multi-stakeholder environment renders it a challenge for consumers to determine the appropriate way to seek assistance and recourse to authorities in a product incident.

¹ "Protecting online consumers during the COVID-19 crisis", OECD Policy Responses to Coronavirus (COVID-19), 28 April 2020, <http://www.oecd.org/coronavirus/policy-responses/protecting-online-consumers-during-the-covid-19-crisis-2ce7353c/>

1.3. There are regulatory challenges as well. The challenge is amplified when products purchased online are delivered from a foreign origin.

- a. In Chinese Taipei's experience, it is common to discover online-purchased imported products failing to follow conformity assessment procedures as required. Yet as the products often arrive in small packages at the border, implementation of border inspection on the proper safety marking, labelling and other compliances is increasingly difficult.
- b. The recipient of the imported product is usually the final consumers, who are not, under many regulatory regimes, the bearer of legal obligation to file for a border inspection and pre-market approval. Consumers normally will not report incidents on non-compliance of pre-approval marking or other labeling issues so long if the products function well and there are no safety concerns. Even if there are safety concerns, non-reporting is still common for consumers who are aware of the unapproved status of the imported products.
- c. The safety of cross-border online shopping products relies mainly on post-market surveillance of the importing Member and the multi-stakeholder environment of online shopping makes the identification of legal obligators for product safety new task for regulators.

1.4. The OECD Recommendation on Consumer Product Safety Policy Frameworks² stated that manufacturers, platform operators, sellers and consumers all play important roles in ensuring the safety of online shopping products. Areas of attention include consumers' awareness of the safety of online shopping products; identify legal compliance of online shopping products, product risk assessment, recall and corrective measures for unsafe products.

1.2 Recommendations

1.5. Chinese Taipei proposes a thematic session that would share experiences and best practices in enhancing online shopping product safety to protect online consumers' health and safety. Topics could include:

- a. Regulatory experience in product safety of the online shopping environment.
- b. Approaches to enhancing post-market surveillance mechanism in an online shopping environment.
- c. Experiences and measures in cooperation with all kinds of stakeholders, such as domestic competent authorities, online business (platforms and sellers), consumers and foreign governments.

2 TRANSPARENCY

2.1 Background

2.1. Under Article 2.9, 2.10, 5.6 and 5.7 of TBT Agreement, WTO Members are required to notify other Members in the event of specified changes to technical regulations, and conformity assessment procedures. The purposes of the TBT notifications are to offer Members ex-ante knowledge of technical regulations or conformity assessment procedures other Members are planning to introduce and/or amend. The objectives include reducing potential technical barriers to trade by providing a prior opportunity for other Members to assess the impact and identify possible WTO inconsistency issues and to allow manufactures and exporters to prepare their products and services for new technical requirements in advance.

2.2. One of the key elements in achieving the intended objectives of the TBT notification mechanism is the participation of and input from private stakeholders. In Chinese Taipei's experiences, however, lack of meaningful private sector participation has been a persistent challenge. Between 2016 and 2019, for instance, competence authorities received on average only single-digit comments from the

² OECD Recommendation of the Council on Consumer Product Safety, OECD/LEGAL/0459, Adopted on: 17/07/2020.

private sector regarding WTO notification documents. While it is possible that majority of notifications do not create material impact on exports, there are other factors that are depriving private sector's interest to engage in the process.

2.3. Recent assessment in Chinese Taipei concludes two impediments in this regard. The first is the issue of "information overloading", i.e. too much information is included in the notification process for the private sector to effectively comprehend. Second is the restriction on understanding the potential implications on notifications seeking private sector's inputs because important information is missing from the notifications.

2.4. Against this background, Chinese Taipei initiated a trial project in 2020 with the view of better matching the trade interest with sector(s) that are more likely to be affected by a specific notification. The main assignment of the project is to include a sorting and categorization process to allow the authority undertaking a targeted comment-seeking exercise on most relevant private stakeholders.

2.5. Experience from the trial reflects the hindering effect associated with the lack of product classification codes, especially the underutilization of the Harmonized Commodity Description and Coding System, (Harmonized System or HS code). The WTO TBT Enquiry Point Guide (2017, p. 38) reports that only 35% of notification uses HS codes, less than the 39% that uses ICS codes; 26% of notifications provides only free text or do not provide any product information at all.

2.6. The underutilization of HS code proves to be a major issue due to the fact that trade data from most sources is recorded and organized entirely on the HS code system. The omission of HS code-based information system makes trade impact assessment challenging and imprecise. Furthermore, the description of the proposed regulation is abstract in many cases and unable to pinpoint the group of products or industrial sectors that are affected.

2.2 Recommendations

2.7. In the *Eighth Triennial Review* ([G/TBT/41](#)), Members are encouraged to provide maximum specific information on the products potentially impacted by notified measures. As highlighted in Chinese Taipei's experience, HS Code plays an important role in facilitating, inter alia, the identification of commercial and trade interest pertaining to the notified measures. We thus call on all Members to give preference in providing corresponding HS codes in the "Products covered" column of a notification. Further, we also recommend Members, to the extent possible, to provide the legal implication and changes associated with the notified draft regulation, not just the title of the new regulation.

2.8. There are legitimate and justified reasons for Member not using HS Code in respective notifications as well. For instance, the proposed regulation is horizontal in nature and involves a combination of multiple products. In light of the background, Chinese Taipei proposes, as part of the Ninth Triennial Review, to organize thematic workshop on the following topics:

- a. Experiences and challenges in encouraging private sector engagement in TBT notifications.
 - b. An update on the approaches the Secretariat (specifically the Central Registry of Notifications), has employed in assigning HS/ICS Codes to notifications where both codes are absent.
 - c. Discussions on the progress of the unofficial correlation table between the HS code and ICS code systems developed by the Secretariat, and possible way of collaboration to facilitate the work.
 - d. Exchange of views on the reasons/difficulties for Members to provide maximum specific information on the products potentially impacted by notified measures, with special emphasis on the challenges of providing HS Code based information.
 - e. Discussions on approaches in addressing constraints in adopting HS Code based information while accommodating domestic regulatory objectives and limitations.
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