Recommendation V 2.0 – an updated draft/Guide on integrated risk management at the border (ITC-UNECE)

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**Risk-based regulatory systems in support of SDGs**

- Setting regulatory objectives
- Management of assets
- Risk identification
- Risk evaluation
- Choosing risk treatment strategy, including regulation
- Implementing risk treatment strategy
- Crisis management

**Market surveillance**

- Product non-compliance risk
- How dangerous is a non-compliant product?
- Probability to find a non-compliant product?
- Import compliance as part of market surveillance

Proportionate regulations as risk mitigation tools, no zero risk

Conformity assessment (pre-market) ↔ Market surveillance (post-market)

Regulatory requirements

Crisis management
Recommendation S

Achieving absolute safety cannot be the goal of a regulatory system

Excessively stringent controls can create unnecessary barriers to trade

Planning the activities of market surveillance/compliance authorities at the "before an accident"/"before the non-compliance reported" stage

Authorities plan surveillance activities on the basis of the evaluation of the non-compliance risk of products/businesses.

- How dangerous a certain product/business entity is when it is non-compliant to standards,
- What is the probability that a non-compliant product of this type is present on the market.
Risk management and regulator’s liability

Scenario 1: hover board tested, accident with electric fence – regulator not liable

Scenario 2: electric fence tested, accident with a hover board – regulator liable
Risk-based regulation, international trade and sustainable development: recommendation T
Some analytical reports and surveys

**UNECE – Studies on Non-Tariff Barriers to Trade**
- Strengthening and improving risk management systems and techniques at the border
- A coordinated approach to risk management at the border
- Establishing a link between the individual agencies’ risk management system and that of the customs

**OECD – Trade Facilitation and the Global Economy**
- On balance, risk management efforts seem to have stalled at the single-agency (customs) stage and have yet to achieve their full potential
- Making risk management more comprehensive and integrating [...] input from all border agencies

**World Bank – Border Management Modernization**
- Customs is only one of the agencies involved in border processing, and evidence suggests it is often responsible for no more than a third of regulatory delays
- Traders are much more satisfied with the performance of customs than with that of other border management agencies
Setting the context: risk of product non-compliance in international trade
Main challenges

Individual risk management capacity of regulatory agencies: processes, methodologies, IT systems, competence

- Evaluations of incoming shipments are biased
- Evaluations are incomplete (e.g., do not take into account the probability of non-compliance and focus only on its impact),
- No risk criteria based on regulatory objectives is established

A chain is as strong as its weakest link: integration

- Overall border compliance time - at least as high as that of the longest inspection
- Differences in approaches to risk evaluation
Import compliance within an integrated system

- Methodological integration
- IT integration
- Shared HR resources in risk management
- Integrated border management

Import inspections are prioritized according to the level of non-compliance risk

- Profiling and targeting techniques applied for evaluating incoming shipments on the basis of non-compliance risk
- Inspections and sampling plans proportionate to risks of incoming shipments

Regulatory systems support SDGs and are risk-based: risk management on a regulatory system level

- Proportionate to risks they were set out to address
- Balanced among themselves

Formal risk management applied within regulatory agencies

- Objectives and principles of risk management understood by personnel
- The basic risk management process established and applied
- Risk management tools are used for choosing risk treatment strategies
Economic Commission for Europe
Steering Committee on Trade Capacity and Standards

Working Party on Regulatory Cooperation and Standardization Policies (WP.6)

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Discussion on draft Recommendation V on “Addressing product non-compliance risk in international trade”

Draft Recommendation V on “Addressing product non-compliance risk in international trade”

Submitted by the secretariat

Summary

This document contains a draft proposal for a new recommendation. It is hereby submitted for discussion by the Working Party. This first discussion will seek the opinion of delegates on the direction taken and the overall approach being designed. If their opinion is favourable, a final proposal will be submitted for the Working Party 6 annual meeting in 2020.

Proposed decision:

Member States expressed overall support for the draft Recommendation V on “Addressing product non-compliance risk in international trade”. They mandate the secretariat to further refine the text of the recommendation in order to present it for adoption it on the thirtieth session in 2020.

Recommendation V 2.1

Addressing risks of product non-compliance in international trade

The Working Party on Regulatory Cooperation and Standardization Policies,

1. Taking into account the wide range of risks present within an international trade system,

2. Noting that efficient and effective measures to prevent and control product non-compliance risk in shipments is a prerequisite for sustaining a functioning market and for avoiding unnecessary trade barriers,

3. Stressing the importance of taking into account the three pillars of risk management and enforcement frameworks, including providing safety of consumers, ensuring safety and maintaining market competition,

4. Noting that import control systems should ensure the compliance with technical regulations and standardization on trade facilitation,

5. Highlighting that market surveillance measures for setting priorities in removing dangerous and misleading, Recommendation S,

6. Reminding that market surveillance measures are relevant to the SGDS and in Recommendation T,

Executive summary

1.1 Why do border control agencies need integrated risk management?

Risk management is one of the key trade facilitation measures and its efficient application is a prerequisite for reducing non-tariff trade costs. As a tool that allows regulatory authorities concentrating on high-risk shipments and expediting the release of low-risk shipments, risk management helps eliminating redundant or sequential border controls that cause delays and impose unnecessary costs on traders. Good risk management at the border results in more efficient use of limited resources of various regulatory agencies involved in border control, reduces border compliance time and costs while ensuring that non-compliant and dangerous products are not placed on the market. It also serves as a basis for improving cooperation among regulators in ensuring compliance within export, transit and import procedures.

The COVID-19 crisis further highlighted the crucial role of risk management in border control. Implementing risk management to allow low-risk critical supplies to quickly clear customs controls is one of the key trade responses to the current crisis. Countries are calling to streamline regulatory and border procedures to facilitate access to COVID-19 related medical goods and essential food products. This requires regulatory authorities to correctly evaluate the non-compliance risk of products, so that they could 1) remove the need for applications, permits, and licenses for products that pose minimal risk to human health, environmental safety or consumer protection and to 2) streamline the procedures for other products, taking into the account their level of non-compliance risk. Border control procedures, in turn, also need to be proportionate to the level of non-compliance risk of each incoming shipment, so that in case the probability that a shipment contains a non-compliant product is low or if the consequences associated with verification of the imported product to the market - even if it is non-compliant - can be tolerated, release of such shipment can be expedited.

In 2019, 79 countries reported to have already implemented risk management - partially or fully - in border control procedures. At the same time, raising efficiency of risk management application remains a challenge for many countries. One of the findings of data analysis described in this publication (see Chapter 3) is that most countries that had fully implemented risk management systems haven’t shown any reduction in time and costs of border compliance procedures years after the system started functioning.

There are two main sets of challenges that explain why implementation of risk management has not yet led to significant improvement in border compliance procedures. The first group of challenges include those that are associated with individual risk management capacity of regulatory agencies involved in border control, e.g., with processes, methodologies, IT systems and competences that aim at ensuring efficient and effective application of risk management in import compliance. In case evaluations of incoming shipments are biased (which is often the case when they are based on individual perceptions of inspectors) or incomplete (e.g., do not take into account the probability of non-compliance and focus only on its impact), or if no risk criteria based on regulatory objectives is established, application of risk management will result in risk mitigation measures that are not proportionate to risks they were set out to address. It would only increase delays.
Intro: many risks at the border, all should be managed

• *Taking into account* the wide range of risks present within an international trade system,

• *Noting* that efficient and proportionate management of customs risks as well as risks of product non-compliance with technical regulations and standards associated with incoming shipments is a prerequisite to optimizing border compliance time and costs for importers and for avoiding unnecessary trade disruptions,
Import compliance is a key part of a bigger regulatory framework - SDGs

• **Stressing** the importance of import compliance as a key component of market surveillance and enforcement framework, and its higher efficiency compared to post-market control in providing safety of consumers, society and environment, as well as for achieving fair market competition,

• **Noting** that import compliance inspections performed by regulators responsible for compliance with technical regulations and standards have a strong impact and often hamper trade facilitation,

• **Reminding** that market surveillance is a necessary component of any regulatory system and that building risk-based regulatory systems that would be proportionate to risks that are relevant to the SGDs and targets is essential for sustainable development, as described in Recommendation T,
The concept of non-compliance risk

- **Highlighting** that management of product non-compliance risk is of particular importance for setting priorities in market surveillance and import compliance with the purpose of removing dangerous and non-compliant products from the market, as described in Recommendation S,
Tools to support WTO and WCO agreements

• *With the objective* of further assisting regulatory authorities in achieving the objectives of WTO TFA, TBT and SPS Agreements, as well as in implementing the integration principles described in the WCO Risk Management Compendium,

• *Underlining* the central role of the Customs authorities in borer management and generally high level of data processing infrastructure available at the Customs,
Key challenges in applying risk management at the border

• Noting that the efficiency of risk management application at the border depends on:
  • Individual risk management capacity of each regulatory agency involved in border control in management of non-compliance risks, ensuring correct evaluation of consequences and of the probability of non-compliance associated with each incoming shipment,
  • Integration of risk management systems of border control agencies, essential for ensuring involvement of all regulatory agencies in risk management in a cost-effective way,
The key role of the Customs but different approaches

*Keeping in mind that:*

- Customs regulations cover every incoming shipment, whereas most regulatory authorities are responsible for a limited number of products,
- Customs authorities work according to an international data model;
- Customs authorities often have advanced information system;
- Customs authorities in more than 90 countries are using the UN developed IT system ASYCUDA, which contains a module for management of risks,

*Noting* that management of risk of product non-compliance with technical regulations requires different approaches than those for management of customs risks,
Finding the right balance

12. Governments develop and implement an integrated risk management strategy to optimize overall border clearance times and costs while maintaining regulatory requirements by the means of systematically addressing all non-compliance risks within border management procedures, including customs-related and those related to non-compliance of imported products to the requirements of technical regulations and standards.
Harmonizing risk criteria on the basis of regulatory objectives

13. Governments develop harmonized – cross-agency – criteria for the evaluation of non-compliance risk and apply overall border compliance time and costs as evaluation metrics. Risk criteria for evaluation of non-compliance risks are based on the regulatory objectives, which take into account relevant SDGs, as described in Recommendation T.
Management of non-compliance risk

14. Product regulators develop and implement procedures necessary to explicitly address the risk of product non-compliance within their scope of responsibility, including within import compliance processes at the border, as described in Recommendation S. These processes include:

- Those required for defining compliance rules and algorithms based on best available data, to allow inspectors focusing on shipments that contain products that are dangerous when non-compliant and have a high probability of non-compliance;

- Establishing processes for applying these rules and algorithms at the border upon arrival of a shipment containing products within the scope of responsibility of the product regulator.

- Product regulators may apply a reference model of a targeting system described in Annex A for building a profiling system in border control, based on principles of Recommendation S.
Reference model for a targeting system

Fundamental inputs
- Structure of a non-compliance risk
- Risk appetite
- Available resources and inspection costs

Main processes of the system
1. Developing compliance rules (risk profiles)
2. Evaluating compliance rules (simulation)
3. Assessing incoming shipments (applying compliance rules)
4. Performing risk-based inspections (risk-based sampling)

Risk assessment
- Main parameters, characterizing the system
- Risk evaluation of the incoming shipment
- Evaluation of the risk assessment

Metrics
- Number of incoming shipments
- Non-compliance rate
- Inspection rate
- Inspection units
- Number of inspected non-compliant shipments (targeted as high-risk)
- Number of released non-compliant shipments (targeted as low risk)
- Number of inspected compliant shipments (targeted as high-risk)
- Number of released compliant shipments (targeted as low risk)
- Border compliance time
Building an integrated system: integrating approaches, data and rules

Governments ensure that processes required for management of product non-compliance risks are integrated into processes aimed at addressing customs related and trade disruption risks. In particular, by:

• Developing guidance documents to facilitate and harmonize a way of how risks are identified and evaluated within an integrated risk management system, as well as how risk treatment strategies are chosen and implemented;

• Allowing the Customs to provide product regulators with data necessary to determining compliance rules or applying predictive algorithms for profiling the incoming shipments, as described in Recommendation S, as well as for developing an integrated history dataset and analyzing correlations among different non-compliance risks,

• Sharing IT resources and expertise, as well as encouraging cooperation among regulators in developing and evaluating compliance rules and risk profiles;

• Performing an integrated overview of a targeting system (simulations) and harmonizing risk tolerance levels;

• Developing integrated approaches for application of compliance rules of regulators.
Building an integrated system: integrated application of compliance rules

In developing integrated approaches for application of compliance rules, governments establish/strengthen cooperation among product regulators (whose products are involved in international trade) and customs authorities in assessment of shipment according to product non-compliance risks by allowing the evaluation of the product non-compliance risk associated with the incoming shipments, as well as shipment clearance procedures with respect to this risk, be performed upon shipment’s arrival:

• By product regulators based on the data supplied by the Customs within product regulator’s own IT infrastructure, or
• By product regulators based on the data supplied by the Customs within the IT infrastructure of the Customs, or
• By the Customs according to the compliance rules or algorithms developed by product regulators, as described in Annex B.
• By performing joint inspections on the basis of integrated evaluation of non-compliance risks.
Integrated risk management framework

Information on the incoming shipment

The integrated profiling system

Compliance rules for shipment evaluation (Regulator 1)

Compliance rules for shipment evaluation (Regulator 3)

Probability of non-compliance
Level of harm
Red light 1

Probability of non-compliance
Level of harm
Red light ...

Probability of non-compliance
Level of harm
Red light N

Compliance rules for shipment evaluation (Regulator 2)

Compliance rules for shipment evaluation (Regulator N)

Integrated inspection:
Documentary checks
Visual checks
Physical checks (sampling)
Efficient import compliance is more efficient than post market surveillance

• Governments strengthen the role of import compliance in market surveillance and ensure that import compliance processes are integrated with other elements of the respective regulatory systems, as described in Recommendation R.
Benefits of an integrated framework

• Defining risk appetite, structure of the non-compliance risk and other input parameters
  • Common language and format
  • Comprehensive view

• Building an integrated history dataset
  • Common data model
  • Analysis of correlations between the findings of different regulators

• Cooperation in development of non-compliance rules (risk profiles)
  • Sharing risk management expertise and resources, IT infrastructure

• Evaluating a targeting system: integrated overview
  • Evaluating the trade facilitation and risk parameters of the import compliance framework as a whole
  • Ensuring centralized data storage

• Applying compliance rules in an integrated system
  • One data source, one system

• Integrated inspections