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**ОБЪЕДИНЕННЫЕ НАЦИИ
ЕВРОПЕЙСКАЯ
ЭКОНОМИЧЕСКАЯ КОМИССИЯ**

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

Idea Paper

**UNECE Advisory Group on Market
Surveillance ("MARS" Group)
(Slovakia, Strebsko Pleso, 5 April 2005)**

This note is prepared by UNECE secretariat and it contains some proposals/issues for an exchange of experiences between national delegations and for discussion at the "MARS" meeting.

These groups of issues include:

- (a) Role of market surveillance in the protection of intellectual property rights (annex 1)
- (b) Role of market surveillance in fight against false and misleading labelling (annex 2)
- (c) Work on definitions/terms in market surveillance area (annex 3).

If further information from countries on these issues is available sufficiently in advance of the meeting, please send it either to Slovak organizers to: cizova@normoff.gov.sk or steinlova@normoff.gov.sk or to UNECE secretariat: serguei.kouzmine@unece.org

Annex 1

“MARS” project “Use of Market Controls against Counterfeit Goods”

It is recalled that, in view of the importance devoted by delegations to intellectual property rights (IPR) protection, the WP.6 has been looking into possibilities of using certification and market surveillance controls as additional tools to stop counterfeit and fake goods being placed on the market.

The experience of Belarus in the use of certification procedures to this end was presented and considered by WP.6 at its tenth session (document: TRADE/WP6/2000/10).

At the latest “MARS” Group meeting in Slovakia in April 2004 (see document TRADE/WP6/2004/14), the experience of Ukraine in using market controls for that purpose was highlighted. Delegates agreed that market surveillance might contribute to intellectual property rights protection.

The current note contains a first draft recommendation to governments on the protection of IPR in connection with market surveillance. Should the “MARS” Group agree on its usefulness, it would be submitted to the Second International Forum on Market Surveillance (Geneva, 24 and 25 October 2005) and, eventually, for consideration and approval by the Working Party at its fifteenth session (Geneva, 24-26 October 2005).

Draft WP.6 Recommendation on the protection of IPR in market controls

Participants to the “MARS” meeting,

Stressing the importance of the intellectual property rights protection for civilized development of an international economy and for the economic development of national economies,

Noting existing problems and deficiencies in the copy right protection in many countries, in particular in developing and transition economies,

Recognizing the treats to the health and safety of consumers/users which pose counterfeit and fake goods,

Reiterating that these problem can be solved through establishing a wide network and closer cooperation of all core stakeholders, namely State authorities (customs, police, copyright agencies, etc.), industry and consumers,

Decide to recommend to the interested governments to explore a possibility, wherever feasible and where the existing legal framework permits, to make additional efforts in the fight against counterfeit and pirate goods through market surveillance authorities/trade:

- In tracing counterfeit goods (in cooperation with other relevant state authorities on a national level) during their market surveillance inspections on safety of goods;
- By requesting, that after having examined safety, health and other requirements as called upon by the national legislation, to check also if products are genuine, namely if produced legally and if the use of trade mark/logo has been authorized by its owner or legal representative;
- By involving in such verification, whenever feasible and depending on legal/institutional national framework, also other interested state authorities and/or representatives of manufacturers and consumers.

Expressed their trust that the implementation of this or similar schemes/approaches will be beneficial to consumers and conducive to establishing “rule of the law” principles in the society and to fair competition and business development, without implying excessive resources constraints for market surveillance authorities/trade inspectorates and they should not replace/duplicate existing intellectual property rights enforcement tools.

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Annex 2

Role of market surveillance in fighting against misleading and false labelling

One of the problems faced by consumers is that, in some cases, labelling on products can be confusing and/or misleading. This matter has been looked into by the FAO CODEX with a view to seeing how it can be addressed in CODEX standards. CODEX noted, in this context, that labelling can be: (a) truthful and not misleading; (b) false; (c) truthful but misleading.

Thus, CODEX identified the following types (and examples) of misleading information/labelling:

1. Omission of material fact:
Example: “fresh fruit” made from concentrate
2. Confusion based misleading:
Examples:
 - (a) illustrations on the product that implies that the product contains something it does not (photos of grapes on a juice containing 98% apple juice);
 - (b) “organic” claims; “contains no cholesterol” labelling, etc.
3. Same-attribute misleading
Example:
 - (a) “banana/mango flavoured” labelling for products which do not contain these products;
 - (b) “low fat” labelling on products which normally have low fat content.
4. Different-attribute misleading
Example: labelling on a product in different languages.
5. Source-based misleading
Example: unauthorized pesticide in an “organic” product.

In view of the discussions of the responsibilities of market surveillance authorities in different countries it is suggested that during the “MARS” Group meeting in Slovakia, delegates present practice of their countries in dealing with false and misleading labelling problems.

Such exchange of information can provide examples of good market surveillance practices in this area.

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Annex 3

“MARS” Group Work on Definitions

Note from the group “Facilitator on definitions”

At the time when the proposal on the work on definitions in the area of market surveillance was made (in 2003) it was expected that some of them would be addressed in the ISO CASCO vocabulary on conformity assessment which was under preparation at that moment.

Unfortunately, the new ISO/IEC 17000 standard “Conformity Assessment –Vocabulary and General Principles” released in November 2004 contains no terms and definitions specifically relevant to market surveillance. Definitions of surveillance (see standard, point 6.1), sampling (4.1), testing (4.2) and of inspection (4.3) are provided in a general form/context without reference to market controls.

Hence, it is proposed to invite delegates/experts to indicate those terms, concepts and definitions which are mostly commonly used in their countries and where differences in meanings or understanding relating to particular field of application may cause problems.

It is expected that after consideration of proposals from delegates, the MARS Group will decide on a list of commonly used terms in the area of market surveillance so that work can start on definitions for such terms and concepts.

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