



**Economic and Social
Council**

Distr.
GENERAL

TRADE/WP.6/2005/10
5 August 2005

ENGLISH ONLY

ECONOMIC COMMISSION FOR EUROPE

**COMMITTEE FOR TRADE, INDUSTRY AND
ENTERPRISE DEVELOPMENT**

Working Party on Regulatory Cooperation and
Standardization Policies

Fifteenth session, 24-26 October 2005

Items 4 and 9 of the provisional agenda

UNECE MARKET SURVEILLANCE ACTIVITIES

This paper summarizes the discussions held at the third meeting of the UNECE Advisory Group on Market Surveillance (“MARS” Group), held at the High Tatras – Štrbské Pleso, Slovakia, on 5 April 2005. It was prepared by the organizer of the Workshop, the Slovak Office of Standards, Metrology and Testing, and is provided for information to delegations.

1. The meeting of the Advisory Group on Market Surveillance (“MARS” Group) was organized by the Slovak Office of Standards, Metrology and Testing and the secretariat of the United Nations Economic Commission for Europe and held at the High Tatras, Štrbské Pleso, Slovakia, on 5 April 2005. It was attended by more than 30 delegates, representing the following countries: Belarus, Bulgaria, Croatia, Czech Republic, Hungary, Republic of Moldova, Romania, Slovakia, Spain, Sweden and Ukraine. The former Yugoslav Republic of Macedonia and Serbia and Montenegro provided written contributions to the meeting.
2. The meeting was organized back-to-back with the CEFTA (Central European Free Trade Agreement) meeting on conformity assessment and market surveillance, so as to allow for joint discussions and contributions from national experts from various subregions.
3. Mr. D. Podhorsky, Chairman of the “MARS” Group and President of the Slovak Office of Standards, Metrology and Testing, opened the meeting.
4. The first part of the meeting was devoted to information exchange on the current situation of market surveillance in various countries, particularly in those which had already acceded to the European Union (Czech Republic and Slovakia) and in candidate countries (Bulgaria, Croatia and Romania).
5. Presentations from CIS States (Belarus, Republic of Moldova, Ukraine) highlighted typical problems and constraints faced by their market surveillance authorities.
6. Discussions during the first session focused not only on legal, institutional and other developments but also on day-to-day practical problems faced by trade inspectors.
7. Many presentations stressed the importance of cooperation at national level between different market surveillance authorities. Among the examples of good cooperation were (a) the current practice in Bulgaria whereby agencies involved in or linked to market surveillance operations signed cooperation agreements; and (b) in Romania and Croatia the setting up of inter-agency or ministerial groups of experts. Delegations expressed the need for further exchange of experience on this subject.
8. The representative of the Republic of Moldova spoke on the methodology for conducting controls and that country’s experience in working with consumers and entrepreneurs. The representative of Ukraine provided information on developments in his country and on educating and informing consumers. Many participants stressed the importance of the educational aspect of the activities.
9. A number of delegations pointed to the practical difficulties of coordinating activities when several agencies are responsible for certain sectors or aspects of market surveillance and consumer protection. One obvious solution would be to merge such bodies and their functions, which had been done in Ukraine. There, a single committee deals with regulations, market surveillance and consumer protection. In Croatia, a similar solution but of an even more centralized nature had been found. The market surveillance body also incorporates services such as those dealing with labour safety and company registration.
10. The second session was devoted to the follow-up to the UNECE Workshop on “Market Surveillance – A Common Strategy of the UNECE – EU under the Regulatory Convergence” held on 5 and 6 April 2004 in Slovakia. In view of the interest in further exploring some of the problems highlighted by participants in that event, an “institute of facilitators” was established to coordinate further work in the areas set out below.

Terminology and definitions

11. The representative of the Republic of Moldova pointed out the importance of initiating work on definitions, and this was supported by other delegations. Initially the "MARS" Group had decided to rely on the work on definitions being done by ISO/CASCO. However, the latest ISO/CASCO guide/standard 17000 did not include definitions on market surveillance. Work on definitions had started in the European Union but it was currently impossible to foresee when the results of this work might become available.

12. The work on definitions would continue in consultation and cooperation with interested organizations and agencies (e.g. ISO/CASCO). First, a joint list of definitions would be prepared on the basis of submissions from countries (terms and definitions as used in national legislation) and Bulgaria would coordinate this work.

13. The representative of Belarus provided information on the CIS meeting of market surveillance bodies due to be held from 30 May to 1 June 2005 in Brest, Belarus (in the framework of the CIS Interstate Council on Standardization, Certification and Metrology). The "MARS" Group requested Mr. Koreshkov (chairman of "Belstandart"), as a vice-chairman of WP.6, to inform the CIS meeting of the discussions held at the current "MARS" meeting. It was suggested that CIS countries submit their proposals on definitions (as requested by the "MARS" Group) following discussions at that meeting.

Protection of consumers against fraud and counterfeit goods

14. A representative of the Slovak Trade Inspection agency gave a presentation on the problems caused by products placed on the market by companies that are not properly registered or by fake companies. Many of these products pose a danger to the public and in 24 per cent of the cases, the origin of the products is unknown.

15. The representative stressed the importance of ensuring cooperation between all the major stakeholders, including customs, tax authorities and industry, and made the following proposals to facilitate the work of inspectors:

1. To give the control body the right to seize any goods, whether dangerous or not, if their origin was unknown.
2. To define the placement of goods on the market without supporting documentation (including information on the importer) as a serious infringement of national legislation, allowing suspension or revocation of the trade licence of the company responsible.

16. The following proposal was made during the ensuing discussions: if there is no legal importer or there are no papers on a product then the product shall be considered "illegal" and thus can immediately be taken off the market without the need to meet additional legal requirements (such as obtaining court orders).

17. Referring to the issue of how to fight against counterfeit and pirate goods, experts recalled discussions and presentations made on this subject at the April 2004 workshop. Delegations agreed that market surveillance could contribute to this work (see in paragraph 19 below a recommendation addressed to UNECE Governments and suggesting means by which intellectual property rights could be protected during surveillance checks, without prejudice to the obligation of the market surveillance bodies whose Governments are signatories to the WTO IPR agreement).

18. Working with large companies, Belarus had set up a database of counterfeit goods. The database contained confidential information on how to distinguish counterfeit goods, as well as information from other national agencies on counterfeit goods.

Recommendation to Governments on the use of market surveillance against counterfeit goods

19. As a result of a debate on the practices of national bodies to combat counterfeit goods and misleading information, delegations agreed (with some minor changes) on the draft recommendation on the use of market surveillance against counterfeit goods and decided to submit it for consideration and approval to the Second UNECE International Forum on Market Surveillance and Consumer Protection, to be held in October 2005. The text, as revised by the "MARS" Group, is reproduced as an addendum to this document (TRADE/WP.6/2005/10/Add.1).

Marking and labelling

20. The Republic of Moldova highlighted the following problems that trade inspectors were experiencing:

- insufficient information, sometimes with the most basic information missing; or only coded information that is unintelligible to the average consumer;
- information found on a batch of goods rather than on each individual product;
- information provided only in accompanying documentation (not on the product);
- location of information on a product, with the most visible information being that of the advertising variety; with legally required information being more difficult to identify;
- excessive advertising related information (What should be the proportion of advertising to marking/labelling information?).

21. The participants held a debate on the legal framework and on the responsibilities of the surveillance agencies for marking and labelling and on the control of counterfeit goods. In all countries these agencies deal with marking and labelling matters, but only as part of their inspections (not specifically checking labelling information and its accuracy), unless required by European Union legislation.

22. In Bulgaria, the State Agency for Metrology and Technical Surveillance (SAMTS) checks safety related aspects (e.g. labelling and instructions) of the products under its competence. Counterfeit goods are the responsibility of another special State agency (Directorate General "Market Surveillance") but SAMTS also has experience in tracing counterfeit goods when it is especially requested to do so.

23. Croatia has a council on consumer protection, including representatives of market surveillance and consumer protection organizations. The market surveillance agency has the right to look for counterfeits.

24. In Spain, marking and labelling information (namely what is mentioned on the label and the contents of a product) is checked by State inspectors but actual sampling is done by private organizations (including laboratories) to which the State outsources this activity.

25. In Slovakia, inspection has the right to implement controls against counterfeit goods.

26. In the Czech Republic, inspection also has similar rights. The country enjoys good cooperation between surveillance agencies and consumer organizations; and there is an established practice of transferring complaints to the relevant authorities (Czech Act 634/92).

27. The "MARS" Group would further welcome information on the experience of the Commonwealth of Independent States. The Group appointed Ms M. Bizgu (Republic of Moldova) as a liaison person between the "MARS" Group and the group of experts from CIS market surveillance agencies working under the CIS Interstate Council on Standardization, Certification and Metrology.

28. Delegations were requested to provide UNECE with information on the rights of their national market surveillance agencies to check or seize counterfeit goods.

Generic guidelines for good practice in market surveillance

29. Participants were informed that UNECE was currently discussing the possibility of a joint project with the Nordic Council of Ministers Group on consumer protection. This Group foresees the preparation of generic guidelines for the north-western region of Russia. During the annual WP.6 session in November 2004, it had been proposed that such guidelines be presented at the WP.6 Forum in October 2005. If found useful for the UNECE region, they could then be published as joint UNECE/Nordic Council guidelines. Delegations suggested that the secretariat maintain contact with the Nordic Council in this regard.

Product liability

30. The meeting was of the opinion that an exchange of information in this important area should be continued; in particular, on issues related to product liability regulation. Information on the minimum level of liability and its complementary character to civil law had been provided (according to the 85/374/EEC Directive). The efficiency of the present system in different EU Member States had been analysed in two separate studies (the so-called "Rosselli Analysis" and "Lovells' report", which the Slovak hosts kindly agreed to provide to interested delegations).

Quality management systems

31. Participants stressed the importance of ensuring quality governance for public bodies and of finding means of evaluating services either through quality management systems (based on ISO-9000 or common assessment framework (CAF) approaches) or other systems.

32. The Czech Trade Inspection agency informed the meeting that they had introduced the CAF system in their service six months previously and would be happy to provide information as soon as they had clear results.

33. The representative of the Republic of Moldova said that in the Commonwealth of Independent States, market surveillance bodies were convinced of the importance of continuing the discussions on the practical issues related to the use of the CAF system.

34. The United Nations Industrial Development Organization (UNIDO) would submit a report on the use of ISO:9001:2000 in public administration to the WP.6 session in October 2005.

35. Further exchange of information and experience was highly encouraged.

Reference list (self assessment)

36. It was recalled that an initial paper on this topic had been prepared by the Czech Trade Inspection agency (paper available on WP.6 web page under 14th session, "Market Surveillance").

Information exchange

37. Information was provided on the European Community's position on possible access of third countries to the RAPEX system, which will be based on individual agreements to be concluded between a country and the European Community. The possibility of extension and the general future of the TRAPEX system still remained unclear.

38. Members of the Commonwealth of Independent States had three options for information exchange with the EU: (a) they could avail themselves of EU arrangements with individual States; (b) they could join the ICSMS system, i.e. the Internet supported information and communication system for the pan-European market surveillance of technical products (a commercial system); (c) they could decide to develop their own system - in which case they should endeavour to make it compatible with RAPEX to allow for future links with the EU.

39. The meeting asked the WP.6 Vice-chairman, Mr. V. Koreshkov, also Chairman of the Belarus "Gosstandart", to report to the CIS market surveillance meeting in June 2005 on the results of the information-exchange discussions at the current meeting.

Preparations for the Second UNECE International Forum on Market Surveillance and Consumer Protection

40. There was general agreement that in view of the large number of problems in market surveillance, it would be useful to organize the discussions around a number of horizontal issues at the forthcoming Forum.

41. Delegations were requested to send their comments or proposals on the provisional programme to the UNECE secretariat. They were also requested to inform their relevant national agencies about the Forum and to invite them to participate.

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