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Economic Commission for Europe**Committee on Trade****Working Party on Regulatory Cooperation
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Item 8 (a) of the provisional agenda

**Market surveillance: updates from
regional groupings and the Advisory Group
on Market Surveillance ("MARS" Group)****Report of the Advisory Group on Market Surveillance on its
activities and its meeting in Bratislava (6-8 October 2010)****Note by the secretariat* *****Summary*

The report of the meeting of the "MARS" Group, held in Bratislava from 6 to 8 October 2010, is submitted for information.

The main decisions emanating from the meeting were as follows:

- The "MARS" Group requested the secretariat to continue to improve the database by using broad sectors and aiming at developing a simple, broad system of information, in both English and Russian. A proposal was made to draw up a new WP.6 Recommendation encouraging networking among market surveillance professionals to support the usage and development of the database.
- Discussions on a possible revision of Recommendation M will continue at the session. The "MARS" Group requested the secretariat to circulate the proposal received from Belarus. It was agreed that the session should also consider inserting an additional clause to "encourage market surveillance authorities – in sectors in

* At its thirteenth session, the Working Party established an Advisory Group on Market Surveillance ("MARS" Group) and mandated it to report on its activities (see TRADE/WP.6/2003/16, para.116).

** The present document has been submitted late by the secretariat due to the timing of the meeting of the Advisory Group, held after the official documentation deadline.

which these are available – to use tools for traceability available in third party certification schemes”.

- The “MARS” Group asked the secretariat to make the document on sampling procedures available as a conference room paper for the 2010 annual session of the Working Party and encouraged the secretariat and members of the Group to continue to explore possibilities of finding suitable data for checking the procedure.

Introduction

1. The 8th MARS-meeting was organized at the invitation of the Slovak Office of Standards, Metrology and Testing, Bratislava, Slovak Republic in cooperation with UNECE secretariat in Geneva.

2. The meeting was attended by more than 25 experts from the following countries: Belarus (Centre for Standardization, Metrology and Certification – Gosstandart and Belarusian State Institute for Normalization and Certification – BelGISS), Czech Republic (Czech Office for Standards, Metrology and Testing – UNMZ), Kyrgyzstan, Slovakia (Ministry of Economy and Construction, Ministry of Labour, Social Affairs and Family, Slovak Trade Inspection, National Labour Inspectorate, Slovak Trade and Industry Chamber) and Sweden (National Board of Trade and Swedish Board for Accreditation and Conformity Assessment). The European Commission – DG ENTR, the International Organization of Legal Metrology – OIML) and the private-sector entities were also represented at the meeting.

3. The full list of participants is available at:
http://www.unece.org/trade/wp6/SectoralInitiatives/MARS/Slovakia_Oct10/MARS_Oct10.html

1. Opening of the meeting

4. Mr. Jozef Mihok, President of SOSMT, opened the meeting. He said that the proliferation of low-quality, and counterfeit goods was a challenge that required collaboration among stakeholders both nationally and internationally, to improve the safety of consumers and ensure fair competition.

5. Mr. Christer Arvius, Chair of the Working Party, referred to progress made over the course of the years within the EU members, in the development of market surveillance policies and best practice. He went on to thank Slovakia, and the SOSMT, for their work coordinating and sustaining the work of the MARS Group. Ms. Steinlova, Chair of the “MARS” Group, introduced the various items on the agenda.

6. The Chair briefly recalled the main conclusions from the meeting of the Meeting of WP.6 Bureau, Rapporteurs and Coordinators, “START” Team and “MARS” Group (Stockholm, 7-11 June 2010) see ECE/TRADE/C/WP.6/2010/9. The secretary of WP.6 recalled the main achievements of the “MARS” Group and the challenges ahead.

2. Exchange of information about market surveillance activities

7. An officer from the Swedish Board of Accreditation and Market Surveillance explained how Sweden organizes cooperation among the different market surveillance stakeholders. It has a market surveillance council, which meets four times a year and gathers not only market surveillance authorities, but also consumers and industry associations, as well as Customs and the National Board of Trade. A cooperative model

(flow chart) has been developed between the market surveillance authorities and the Customs, which is in compliance with articles 27-29 of Regulation 765/2008. The Swedish market surveillance council does not have the role of coordinating activities of sectoral authorities. For example, if a product is monitored by two sectoral authorities these are responsible for coordinating among themselves. The market surveillance council only serves as a cooperation hub. It is currently building a national website for the public and for business, with general information about market surveillance. The website will serve as a one-stop shop model.

8. The ensuing discussion focused on the exchange of data among authorities. Participants saw this as a complex subject on account of proprietary information that cannot be publicly disclosed. Databases, therefore, would need to be designed, with different rights of access. And inspection activities would need to be well coordinated to avoid causing an excessive burden on business.

9. New EU regulations involved a greater need for cooperation among market surveillance authorities and with Customs. For example, under the previous EU Toys Directive, supervision was only required from the consumers authority. Now, with the revised Directive, rules also involved the chemicals agency, the civil contingencies agency and electrical safety board. So there is a need for all of them to coordinate their activities properly. Each agency involved should then have the basic skills to evaluate when the intervention of another authority is required.

10. The Chief of the Department of Governmental Surveillance and Inspection made a presentation on how market surveillance was organized in Belarus. An ordinance of the President of the Republic, approved in 2009, detailed the functions and competencies of bodies that conducted surveillance activities, listed matters subject to control, and laid out criteria for the definition and inspection requirements of products and installations belonging to different risk groups. In particular:

- (a) High-risk products were subject to a planned inspection every year;
- (b) Medium-risk products were subject to a planned inspection every three years;
- (c) Low-risk products were subject to a planned inspection every five years.

11. Unplanned inspections were also carried out whenever there was a justification for this. The ordinance also detailed which authorities could carry out the controls, and how long the controls could last.

12. A representative of the Slovak National Labour Inspectorate explained that the scope of labour inspections in the enforcement of market surveillance was related to designated products put into operation, which employees use at work (those covered by the New Approach directives and intended for professional use). The Inspectorate Authority conducted both proactive and reactive checks. The number of inspections carried out had increased dramatically, as well as the number of shortcomings documented. The Inspectorate had to conduct both documentary checks and safety tests, but resources for the latter were scarce. Participants discussed a scenario in which a device was safe if used within statutory working procedures, but could expose workers to a serious risk otherwise.

13. Participants agreed on the necessity to distinguish between the responsibility (liability) of employers for safe working conditions and the responsibility of the manufacturers for the safety of the machine. If modifications to the equipment had been requested by the employer, and in the case of machines composed by the assembly of linked parts, the manufacturer's responsibility was limited to providing instructions for safe installation and use. The employer was responsible for abiding by these instructions.

3. Database on market surveillance authorities

14. The UNECE secretariat informed the Group about the activities it had undertaken as follow-up to the mandate received by the Working Party at its last session. These included gathering the contact details of market surveillance authorities, developing a compendium and posting it on the website (see ECE/TRADE/C/WP.6/2009/19, para.52, and ECE/TRADE/C/WP.6/2010/16).

15. Information on market surveillance authorities was available for about 30 countries, in different formats and at different levels of detail. The European Commission had gathered data on market surveillance authorities of its Member States and made it available on their website:

- http://ec.europa.eu/enterprise/sectors/mechanical/documents/contacts/atex-competent-authorities/index_en.htm
- http://ec.europa.eu/enterprise/policies/single-market-goods/regulatory-policies-common-rules-for-products/index_en.htm

16. The UNECE secretariat also received data through the EASC Secretariat and directly about five EECCA countries (Armenia, Belarus, Republic of Moldova, Russian Federation, Ukraine) in Russian; from Switzerland, in French; and from Brazil, in English. Overall, the data collected so far are fragmentary and not at all homogeneous. The secretariat also gave a demonstration of a sample database, searchable by country, sector and legislative reference. It invited comments from participants on how to make progress on this initiative.

17. Participants referred to several other initiatives to gather data that could be complementary to the proposed UNECE database, including:

(a) The Technical Regulations Information System (TRIS) is a database developed by the European Union to implement the 98/34/EC Directive and more generally to further the objective of the Single Market http://ec.europa.eu/enterprise/tris/about/index_en.htm;

(b) Ongoing efforts to facilitate implementation of the “New Framework” (see http://ec.europa.eu/enterprise/policies/single-market-goods/regulatory-policies-common-rules-for-products/index_en.htm), complemented by a recent initiative of DG Taxud to align data received from Customs with data available to market surveillance authorities);

(c) The Export Helpdesk, an online service, provided by the European Commission, to facilitate market access for developing countries to the European Union http://exporthelp.europa.eu/index_en.html

(d) International initiatives to exchange data on dangerous products (United States and Canada)

(e) The proposed extension of the RAPEX and ICSMS systems to international partners.

18. Discussions then focused on the following issues:

- The classifications that could be used for the economic sectors: main available alternatives were the ISO classification, the TRIS classification and international trade classifications (i.e. the Harmonized System).
- The target audience: was the database intended for market surveillance authorities, who already possess several sources of information, or for economic operators?
- Would an in-depth analysis be preferable, a pilot project, for a few sectors of special interest, for example, toys? Or rather a simple system with broad categories?

19. Participants also agreed that data should not only be provided once but updated regularly, which would require a national point of contact for the database. And data should be available in Russian.

20. In conclusion, it was decided that the secretariat should continue to develop the database by using broad sectors and aiming at developing a simple, broad system of information, in both English and Russian.

21. Additionally, a proposal was made to develop a new WP.6 Recommendation encouraging networking among market surveillance professionals to support the usage and development of the database. This proposal would be in line with Article 25.2 and Article 26 of Regulation N° 764/2008, which encourage the exchange of experience, information and best practice among member States and the development of cooperation with competent authorities of third countries.

4. Revision of Recommendation M

22. A proposal for the revision of Recommendation M had been received by the delegation of Belarus (annex I). In revising the recommendation, the following should be taken into account:

- Regulation 765/2008/EC on the enforcement of intellectual property rights
- Work undertaken by the European Observatory on Counterfeiting and Piracy
- Possible synergies with tools for traceability that are available within third party certification schemes (or accreditation bodies).

23. The participants discussed the possibility of cooperating with UN/CEFACT so as to explore the use of the United Nations coding system for tracing counterfeiting goods as well as the OECD initiatives dealing with the same issues.

24. In revising the recommendation, the “MARS” Group agreed to insert an additional clause, to “encourage MSAs – in sectors in which these are available – to use tools for traceability available in third party certification schemes”.

25. The Group requested the secretariat to make available to the WP.6 session the proposal from Belarus in Russian and English.

5. Presentation of the Internet-based Information and Communication System for Market Surveillance and its development

26. A representative of the European Commission introduced the EU Internet-based Information and Communication System for Market Surveillance (ICSMS). The system was developed to ensure exchange of information and facilitate cooperation among market surveillance authorities. It provided information on: products presenting a risk, results of testing carried out, restrictive measures taken, justification of actions or inaction, and contacts with economic operators, and statistics on accidents and injuries.

28. ICSMS also hosted a forum for discussion on best practices, and a secure forum for discussions on decisions to be taken. It is a practical tool that gives market surveillance authorities a means to interrogate the database, collate and present data in an easy-to-understand format (graphs, etc.). It assists market surveillance authorities in taking decisions on their proactive activities and in the enforcement of their obligations under 765/2008. In addition to this confidential section, the system also has a public section that provides information on safety alerts, voluntary recalls and details of authorities.

29. ICSMS is used by 11 EU Member States and Switzerland. It is a not-for-profit organization funded by market surveillance authorities and fully owned by them. The Commission plans in the near future to conclude a service agreement contract with its administrator.

6. Development of the General Product Safety Model initiative

30. The Coordinator of the General Product Safety Model initiative recalled the decision by the WP.6 Bureau in Stockholm to ask ICSMS for data for checking the sampling procedure. However, no response had been received to date. However, in September PROSAFE suggested that UNECE cooperate with the PROSAFE “lighters” project to check the sampling procedure. The issue now was one of funding this initiative.

31. It was agreed that one of the participants would relay this discussion to ICSMS at a subsequent meeting

32. Participants discussed other initiatives in which UNECE and PROSAFE could cooperate. One area was risk assessment, a common concern of PROSAFE and UNECE.

33. The “MARS” Group requested the secretariat to make the document on sampling procedure available as a conference room document for the WP.6 November session and encouraged the secretariat and members of the Group to continue exploring possibilities for finding suitable data for checking the procedure.

7. Common definitions and terminology in market surveillance

34. The Coordinator of the Initiative on Market Surveillance Definition commented on the proposals for amendments received from the delegation of Belarus (see annex II) and from the Coordinator of the General Product Safety Model initiative. The discussion focuses on the following terms: authorized representative, safe product, definition of safe and adulterated products and risk management.

35. At the next session, the Coordinator would make a presentation but would not make a new version available because the comments had been received too close to the date of the meeting.

36. The “MARS” meeting asked the secretariat to make the comments from Belarus available to the UNECE annual session as a conference room paper.

8. CE Marking under the New Legislative Framework and recent EU legal texts

37. Before the entry into force of the New Legislative Framework, CE marking could be affixed by economic operators. This was usually done by manufacturers or on their behalf, provided they had an internal system of quality, and that goods were in compliance with community harmonized standards in the whole range of risks a product may pose. The harmonized standards presented a pattern solution for the essential health and safety requirements stipulated by New Approach directives.

38. The New Legislative Framework extends the CE marking to all harmonized legislation applicable to the product concerned. If the economic operators are not sure if the product falls under the Community harmonized legislation or not, they may contact the national contact point for goods to obtain information (http://ec.europa.eu/enterprise/policies/single-market-goods/free-movement-non-harmonised-sectors/mutual-recognition/index_en.htm#h2-contact).

39. Should the product fall outside of the Community Legislation, the certificate issued by accredited laboratory opens the Community markets by the application of the rule of mutual recognition.

40. Market surveillance authorities shall control the affixing and proper use of CE marking and ensure that principles for the other markings and signs are respected. Market surveillance authorities notify the European Commission:

- if they decide to restrict the free movement of a product in the case of serious risk
- if they consider that the product has been distributed outside their own territory, in case of incorrect affixation of CE marking or abuse of CE Marking.

41. The New Legislative Framework is already applicable under several directives, including the new directive on toys (2009/48/EC).

9. Development of the common technical regulations system under the Common Economic Space (CES)

42. The customs union among Belarus, the Russian Federation and Kazakhstan aims at providing for full free movement of goods among the countries. To achieve this goal, they must develop:

- a common system of technical regulation
- common mandatory requirements
- common standards on the basis of international requirements
- a single mechanism of conformity assessment against mandatory requirements
- a common mark for the circulation of products on the market
- common principles and regulations for accreditation, liability, market surveillance, control of products from third countries and
- rules on information exchange regarding dangerous products

43. When the transition is completed, it will be possible to place products directly on the market of these three countries, with no additional procedures, under two regimes:

- For all products that are subject to common technical regulations, so long as procedures for conformity assessment have been completed and a common certificate of conformity is issued in one of the countries.
- For all other products, in conformity with national regulations, under the mutual recognition principle that have obtained completion of the conformity assessment procedures to that requirements in one of the CES Member States.

44. The transition period is as follows.

(a) Up to 1 July 2010: products imported from third countries, and products exported from one member of the customs union to another (“mutual deliveries”) were required to have a national certificate delivered by national competent body. For the imported goods a (conformity) declaration of the country of destination was also required. Products intended only for the national market needed only a national certificate.

(b) From 1 July 2010 until common technical regulations come into force: products imported from third countries and mutual deliveries would be required to have the common certificate of conformity and the (conformity) declaration of country of destination, while products intended only for the national market would only need a

national certificate. The producer would have the right to accept the following declarations: national, of country of destination, and the common ones.

(c) After the common technical regulations came into force, only the common certificate would be required, for all categories of products.

45. More information on the common economic space is available at www.evrazes.com, www.tsouz.ru and www.gosstandart.gov.by

10. Any other business

46. As time did not allow for properly considering the questions regarding EU legislation raised by the delegation of Belarus and reproduced in annex III, the Group asked the secretariat to circulate them as a conference room paper at the annual session.

Annex I

Proposal from Belarus on the revision of Recommendation M: “Use of Market Surveillance Infrastructure as a Complementary Means to Protect Consumers and Users Against Counterfeit Goods”

Additional paragraph to be added after the fourth introductory paragraph:

“...Noting the importance of identification, assessment of safety hazards and risks arising when counterfeit goods are supplied as well as the importance of electronic data interchange for the administrative, commercial and transport purposes...”

Text to be added to the last (7th) introductory paragraph, after words “...legal framework...”:

“...provision of normative regulation by application of technical regulations and international standards...”

Additional paragraph to be added after paragraph M.1 (b)

“...to receive documented information of identification and traceability in the products supply chain from manufacturer to consumer from all participants of organizational supply network...”

Text to be added to paragraph M.1 d)

“to specify with regard to obligations of commercial inspectors concerning the checks of violations of intellectual property rights”.

Annex II

Comments from Belarus on the list of definitions

“authorized representative”

It is necessary to define obligations more exactly by adding the following wording “during conformity attestation and placing products on the market, as well as for assignment of responsibility for product nonconformity to mandatory requirements”.

“market surveillance”

It is necessary to make more exact with regard to “...or any other aspect of public interest protection”, since this concept is too broad and does not reflect relationship with technical regulation.

“producer”

(a) It is necessary to bring it in correspondence with the term “manufacturer” with regard to manufacturer identification (e.g. the following words are not specified in definition “manufacturer” – “other distinctive mark”).

(b) It is necessary to add the word “representative” by the word “authorized” on the analogy of the term “authorized representative”.

“product”

It is necessary to make the definition of product more exact with regard to technical regulation. EurAsEC Agreement on conducting coordinated policy with regard to technical standards, sanitary and phytosanitary measures specifies the following definition:

- “product” – the result of activity in a material tangible form and intended for further use for economic and other purposes.

“dangerous product”

It is appropriate to give more specific definition of the term “dangerous product”, e.g. definition drawn by WP.6 in 2006 (ECE/TRADE/C/WP.6/2006/11/Add. 1 (11 April 2006)):

- A “dangerous product” is defined as one where the safety of the product is not in conformity with legal norms or with such requirements that consumers are generally entitled to expect.

“safe product”

In definition of the term “safe product” it is necessary to consider provisions as regard to the following:

- “A product is deemed safe once it conforms to the specific legislation governing its safety. In the absence of such provisions, the product must comply with the specific national regulations of the country in which it is being marketed or sold, or with the voluntary national standards.”

This provision was set in the definition drawn by WP.6 in 2006 (ECE/TRADE/C/WP.6/2006/11/Add. 1 (11 April 2006)):

- A “safe product” is one which poses no threat or only a reduced threat in accordance with the nature of its use and which is acceptable for maintaining a legally required level of protection for the health and safety of consumers. A product is deemed safe once it conforms to the specific legislation governing its safety. In the absence of such provisions, the product must comply with the specific national regulations of the country in which it is being marketed or sold, or with the voluntary national standards.

It is appropriate to give in addition such terms and definitions as “adulterated product”, “counterfeit product”, since it is very important for Regulation M.

“risk”

It is necessary to make the definition more exact in accordance with ISO Guide 73:2009.

“risk management”

It is necessary to make the definition more exact in accordance with ISO Guide 73:2009.

“References”

ISO Guide 73:2009, Risk Management – Vocabulary, replaces ISO/IEC Guide 73:2002.

Annex III

Questions from Belarus concerning the European legislation

1. The following concepts need to be explained: “regulated” and “non-regulated” scopes

Does “regulated” scope mean only Directives and Laws, or does it also cover voluntary standards?

Is there “regulated” scope at the EU level (EU Directives), “regulated” scope at the level of member States (e.g. national laws) and “non-regulated” scope (i.e. a scope where there are no mandatory requirements)?

What particular sectors are not regulated at the EU level, but are regulated only at the national level? What does “non-regulated” scope generally refer to?

In Regulation (EC) No 764/2008 (Article 12(4)) it is specified that “the Commission shall draw up, publish and regularly update a non-exhaustive list of products which are not subject to Community harmonisation legislation. It shall make that list accessible through a website.”

Is it possible to look at this list? Where it can be found?

2. Principle of mutual recognition in accordance with the Regulation - No 764/2008

The principle of mutual recognition (Regulation No 764/2008) is in force for the scope, which is not under control at the EC level, but is regulated by the national legislation only. How does the principle of mutual recognition function?

The Member States recognize the requirements of other Member States and place its production on the internal market, putting forward no supplementary requirements. Does this not derogate the national manufactures’ rights (e.g. when the national requirements are more stringent, than those of the Member State, which supplied the products)?

Does the principle of mutual recognition cover the products from third countries (which are not EC-members)?

3. Details of introduction of an EC Directive into national legislation

Do the Member-states have a right to include any details as compared to the Directive text (e.g. stipulated by the climatic characteristics of this State) when introducing the EC Directive into the national legislation?

Do such details deal with administrative provisions only or with technical requirements as well?

4. Requirements for services

Which documents, except Directive 2006/123, specify requirements for services at the EU level?

Are the services a regulated scope at the EU level or requirements for them specified in each country separately?

Are there any Directives on the concrete types of services, such as on some of the cross-border types of services?

Is there a procedure for compulsory services conformity attestation against specified requirements (certification of services)?

5. The concepts “dangerous product” and “product that doesn’t meet specified requirements”

Is there a difference between “dangerous product” and “product that doesn’t meet specified requirements”?

At the same time, Article 3 (3) of the Directive 2001/95 states that “the conformity of a product to the general safety requirement shall be assessed by taking into account the following elements:

- (a) Voluntary national standards transposing relevant European standards;
- (b) The standards drawn up in the Member State in which the product is marketed;
- (c) Commission recommendations setting guidelines on product safety assessment;
- (d) Product safety codes of good practice in force in the sector concerned;
- (e) the state of the art and technology;
- (f) Reasonable consumer expectations concerning safety.”

Thus the product shall be considered as safe if it meets specified requirements.

Conclusion: “dangerous product” = “product that doesn’t meet specified requirements”?
