



**Economic and Social
Council**

Distr.
GENERAL

ECE/TRADE/C/WP.6/2006/11
1 May 2006

ENGLISH
Original: ENGLISH, FRENCH
AND RUSSIAN

ECONOMIC COMMISSION FOR EUROPE

COMMITTEE ON TRADE

Working Party on Regulatory Cooperation and
Standardization Policies

Sixteenth session
Geneva, 19-21 June 2006
Item 9 of the provisional agenda

MARKET SURVEILLANCE

Draft proposal for an UNECE recommendation: “Use of Market Surveillance Infrastructure as
a Complementary Means to Protect Consumers and Users Against Counterfeit Goods”

Submitted by the Advisory Group on Market Surveillance (“MARS” Group)

This document contains a proposal for a new UNECE recommendation that was discussed at the second UNECE International Forum on Market Surveillance and Consumer Protection and at the fifteenth session of the Working Party (October 2005).

This document is submitted for comments to the Working Party. It will be further considered by the Advisory Group on Market Surveillance (“MARS” Group) at its next meeting in autumn 2006 with a view of consolidating this Recommendation for final approval by the Working Party at its seventeenth session in 2007.

DRAFT PROPOSAL FOR A RECOMMENDATION
ON THE USE OF MARKET SURVEILLANCE INFRASTRUCTURE AS
A COMPLEMENTARY MEANS TO PROTECT CONSUMERS AND USERS
AGAINST COUNTERFEIT GOODS

1. The Working Party on Regulatory Cooperation and Standardization Policies:

Recognizing consumer-protection concerns of the United Nations Member States and tasks for international organizations as highlighted in the General Assembly decision 54/449 of 22 December 1999 (United Nations Guidelines for Consumer Protection),

Stressing the necessity to set up efficient domestic market surveillance system to ensure that goods placed on the market meet public legitimate objectives such as public health protection and safety and that business transactions take place in compliance with the principle of fair competition,

Stressing the importance of intellectual property rights protection for the economic and industrial development of countries, and for international trade,

Noting existing deficiencies in the protection and enforcement of intellectual property rights (trademarks, copyrights, patents, designs, geographical indications) in international trade and the threats to health and safety of consumers and users posed by counterfeit goods,

Underlining that setting up an administrative and legal framework to protect IPR, including penalties, and building a coordinated network of cooperation between all core stakeholders, namely State authorities (e.g. customs, police and intellectual property agencies/patent offices), industry, consumers and users, are key elements to solve the problems of counterfeit goods,

Taking into account the legal and technical differences which may exist between the administrative and legal framework and individual technical regulations as well as the implementation tools when looking at protecting intellectual property rights compared to ensuring market surveillance,

Considering the role of the Working Party on Regulatory Cooperation and Standardization Policies in improving the current administrative and legal framework to enable business to trade safe and reliable products and services.

2. *Recommends* that Governments explore the possibility, wherever feasible and where the national legal framework permits, to involve their market surveillance authorities in charge of protecting the consumers and users against unsafe products also in the fight against counterfeit and pirate goods - in addition and in a complementary way to existing national legal mechanisms - to ensure that the following procedures are implemented:

(a) To give the possibility to right holders and customs authorities to report to the market surveillance and other relevant state authorities on counterfeit goods which carrying risks for health and safety or misleading consumers and users on the origin of a product,

(b) To enable market surveillance authorities to assist in identifying counterfeit goods placed on the domestic market (in cooperation with other relevant state authorities on a national level) during routine market surveillance inspections, including by resorting to laboratories to check the goods,

(c) After having examined all safety, health and other requirements as called upon by the national legislation, to enable market surveillance to check at the final stage if an examined product is genuine; namely, if it is produced legally and if the use of a trademark or logo has been authorized by its owner or legal representative,

(d) To allow in such verification, whenever feasible and without prejudice to the confidentiality legislation and the legal framework, to involve also other interested State authorities and/or representatives of manufacturers, consumers and users,

(e) To allow national market surveillance authorities to inform, in due time and adequately, the intellectual property rights (IPR) holders concerned by counterfeit and fake goods that they would have detected.

3. *Trusts* that implementation of these approaches should not be a financial burden for market surveillance authorities and should not replace/duplicate existing intellectual property rights enforcement tools, neither create legal conflict between the market surveillance and intellectual property rights (IPR) process, but it would be beneficial to consumers and users, and conducive to establishing “rule of the law” principles in society and to fair competition and business development.

* * * * *