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UNECE FORUM ON MARKET SURVEILLANCE (Geneva, 29 October 2002)

Information on the Concept of Market Surveillance and its Specific Features

This background paper has been prepared by Mr. Andrea Femrell, Special Adviser, Swedish Board for Accreditation and Conformity Assessment (SWEDAC).

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THE CONCEPT OF MARKET SURVEILLANCE AND ITS SPECIFIC FEATURES

1. Surveillance is an extensive concept, with many aspects, but could be defined as "Various measures taken to ensure that the intentions – and, ultimately, the requirements - of an item of legislation are complied with". The surveillance concept then becomes synonymous with implementation of the legislation, covering everything from the publication of regulations based on the legislation to inspection and information activities.

2. The existence and performance of surveillance are regarded as duties for the State – i.e. as applied through or by a public authority – and are directed at individual parties and the general public. If the State has chosen to regulate some particular area, it must also ensure compliance.

3. A narrower and perhaps more relevant definition of surveillance, as applicable to a product and to the subject of this seminar, is that of "actions intended to investigate whether those responsible for a particular product are complying with, or have complied with, the applicable regulations and, if not, to respond in an appropriate manner".

4. Regardless of the definition, this means that if a product is to be covered by surveillance, there must be legal requirements applicable to it, e.g. concerned with its design, manufacture, use or disposal.

5. It is important to point out that, in this presentation, it is primarily the product and the regulations associated with it that are the objects of surveillance, and not the parties involved (the manufacturer, importer etc.) as such.

6. Just what surveillance (inspection) is to involve, i.e. the object of the legislation, who is to perform the inspection, when/where it is to be performed and in what manner, can differ from one product, sector or country to another. Ultimately, this is determined by factors such as risk, functionality, proportionality, competition, economic conditions and political and legal considerations.

7. There are many different ways in which surveillance can be carried out at various stages of a product's life cycle. This can be illustrated by the time line of a product's life cycle, by giving a number of examples and by demonstrating the relationship between different forms of inspection and their mutual dependencies (see annex).

8. Four stages can be distinguished, of which the first three will be discussed in more detail:

1. Design and manufacture
2. Sales, retail sales and import
3. The in-use stage
4. Recycling, recovery, disposal.

9. The aspects to be considered by surveillance (inspection) of a product can vary, but the following are common:

Health and safety

Environmental aspects (both the external environment and the user environment)

Openness (formalities, marking)

Quality aspects

10. Competition aspects, such as respect or infringement of patents or pirate copying, can have some bearing on the product, as can marketing aspects, but are not primarily linked to the items being inspected and are not the subject of this seminar.

11. EXAMPLES OF DIFFERENT TYPES OF INSPECTION AT VARIOUS STAGES

11.1 Design and manufacture

- National type approvals, issued by national authorities or State-owned test houses. Pre-market inspection and testing are obligatory. The State has overall responsibility after the product has been released onto the market, as it approved the product prior to release.
- State inspection of product handling during the production stage (e.g. foodstuffs and medicines).
- Private third-party inspection of a product or its manufacturing system and handling. Independent private parties, whose competence for the purpose has been assessed and approved by the State, perform inspection in competition with each other. Responsibility for the product lies with the manufacturer, while the third-party inspection body is responsible to the manufacturer and to the State.
- Manufacturer's own inspection, without involvement of State or private parties. Responsibility for the condition of the product rests wholly with the manufacturer.

11.2. Sales, retail sales and import, from market access to the end user

- State inspection of products, product storage facilities (e.g. foodstuffs) and sales competence (authorisation of personnel).
- Private inspection as above, on behalf of the State. Responsibility for the work and for any actions as a result of inspection rest with the State. Manufacturer's liability and the responsibility of other parties vary, depending on the type of inspection that was decided upon for the design/manufacturing stages and on where the product is in the chain, e.g. with manufacturers who sell directly to end users, with wholesalers, retailers, importers etc.

11.3. The in-use stage

- Recurrent inspection by the State of products in use. The owner/user is responsible for the condition of the product.
- Private recurrent inspection by assessed and approved third-party inspection bodies on behalf of the State. The State is responsible for requiring and paying for the inspection services, as well as for determining and applying any responses to the results of inspection.
- Private inspection as above, by inspection bodies operating in a competitive market, with owners/users being required to have their equipment/product etc. inspected without the involvement of the State. The owners/users are responsible for the condition of the equipment/product. The State checks that the regulations are complied with by the owners/users, and that the inspection bodies possess the necessary competence.

11.4. Recycling, recovery, disposal

- State or private inspection of recycling and final storage/disposal, in respect of environmental aspects. These aspects may also be considered during the design stage, e.g. through the use of low-environmental-impact materials or the matching of products to existing recycling/recovery systems.

12. The above forms of inspection are described in only very general terms. Surveillance and the various forms of inspection can look very different, depending on whether, how and/or when they are applied, and on how the requirements for a product are specified and applied. In other words, extensive inspection at one stage in a product's life cycle can result in lack of inspection at some other stage.

13. This seminar concentrates on the surveillance and various forms of inspection that can be relevant over the period from the introduction of a product to the market until it reaches its end user (Stage 2). The product sectors to be covered are domestic electric appliances, machinery and cosmetics. In addition, there will be descriptions of cooperation and information opportunities within the framework of surveillance.

14. It is important to emphasise that reality is more complex than as described in this paper. In other words, this presentation cannot describe every aspect, but is an attempt to describe various forms of surveillance and their relationships to each other, without making any judgements.

Prepared by Mr. Andrea Femrell, Special Adviser, Swedish Board for Accreditation and Conformity Assessment.

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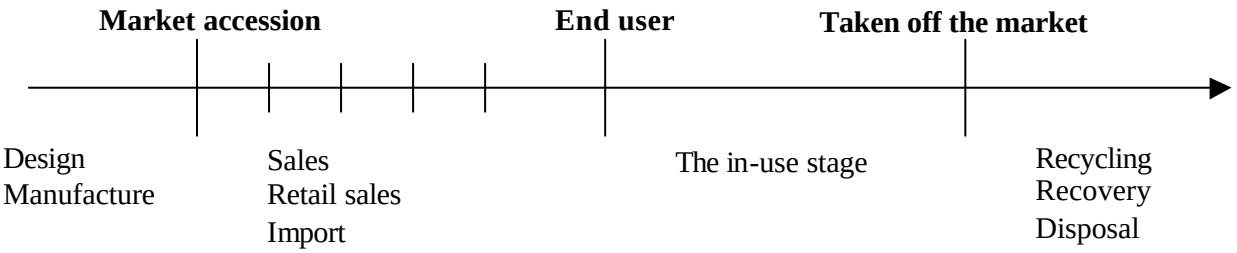
Annex

PRODUCT LIFE CYCLE



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