



**Economic and Social
Council**

Distr.
GENERAL

ECE/TRADE/C/WP.6/2007/10
22 June 2007

ENGLISH
Original: ENGLISH, FRENCH
AND RUSSIAN

ECONOMIC COMMISSION FOR EUROPE

COMMITTEE ON TRADE

Working Party on Regulatory Cooperation and
Standardization Policies

Seventeenth session
Geneva, 5-7 November 2007
Item 8 (b) of the provisional agenda

MARKET SURVEILLANCE*

Draft recommendation on market surveillance and counterfeiting

New consolidated version of UNECE Recommendation “M”:
“Use of Market Surveillance Infrastructure as a Complementary Means
to Protect Consumers and Users Against Counterfeit Goods”

Draft proposal submitted by the “MARS” Group

This document contains changes made at the fourth meeting of the Advisory Group on Market Surveillance (“MARS” Group) held in Bratislava on 25 and 26 September 2006. This document is submitted to the Working Party for adoption.

* The previous version was circulated under symbol ECE/TRADE/C/WP.6/2006/11.

**DRAFT PROPOSAL FOR A RECOMMENDATION
ON THE USE OF MARKET SURVEILLANCE INFRASTRUCTURE AS A
COMPLEMENTARY MEANS TO ENSURE FAIR COMPETITION AND TO PROTECT
CONSUMERS/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 the fight against counterfeit goods - in a complementary way to existing national legal mechanisms - by implementing the following procedures:*

(a) To provide mechanism for cooperation and coordination of market surveillance activities on the national level between market surveillance, customs and other authorities concerned,

(b) To give the possibility to right holders to inform (with documented proof) the market surveillance and other relevant state authorities on counterfeit goods,

(c) To enable market surveillance authorities to identify suspected counterfeit goods made available on the domestic market (in cooperation with other relevant authorities) during market surveillance activities, including, where appropriate, resorting to laboratories to test the goods,

(d) After having examined the compliance with all applicable requirements of the national legislation, also to enable market surveillance authorities to check if the goods might infringe intellectual property rights, and, whenever feasible and without prejudice to the national legislation on confidentiality, to involve other relevant authorities and intellectual property right holders,

3. *Trusts* that implementation of these procedures should neither create financial burdens for market surveillance authorities nor replace or duplicate existing intellectual property rights enforcement tools. It would be rather beneficial to consumers/users, and conducive to establishing “rule of the law” principles in society and to fair competition and business development.

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