

**Economic and Social Council**Distr.: General
26 October 2011

Original: English

Economic Commission for Europe

Committee on Trade

**Working Party on Regulatory Cooperation
and Standardization Policies****Twenty-first session**

Geneva, 31 October - 2 November 2011

Item 10 (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 (13-15 September
2011)****Note by the secretariat* *****Summary*

The report of the meeting of the "MARS" Group, held in Bratislava from 13 to 15 September 2011, is hereby submitted for adoption by the Working Party.

The main decisions emanating from the meeting were as follows:

- the "MARS" decided to submit for approval by the Working Party at its twenty-first session a new recommendation on "Enhancing the Effectiveness of Market Surveillance Policies". It requested the secretariat to make available to the delegations, at the session, the revised version that was developed during the MARS meeting
- discussions on a possible revision of Recommendation M will continue at the session.

* 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.

The "MARS" Group welcomes the publication of *A Glossary of Market Surveillance Terms* and its launch at the twenty-first session of the Working Party.

Introduction

1. The 9th MARS-meeting was organized at the invitation of the Slovak Office of Standards, Metrology and Testing, in Bratislava, in cooperation with the UNECE secretariat.

2. The meeting was attended by more than 30 experts from the following countries: Belarus (State Surveillance and Control of Gosstandart, Centre for Standardization, Metrology and Certification – Gosstandart and Belarusian State Institute for Normalization and Certification – BelGISS), Czech Republic (Czech Trade Inspection Authority, Czech Office for Standards, Metrology and Testing – UNMZ), Kyrgyzstan, Serbia (Ministry of Agriculture, Trade, Forestry and Water Management), Slovakia (Slovak Office of Standards, Ministry of Economy, Ministry of Labour, Social Affairs and Family, Slovak Trade Inspection (STI), Industrial Property Office of the Slovak Republic Customs Directorate of the Slovak Republic, Slovak Commerce and Industry Chamber, Slovak Inspectorate of Metrology, Public Health Authority of the Slovak Republic) and Sweden (National Board of Trade and Swedish Board for Accreditation and Conformity Assessment). The European Commission – Directorate-General for Enterprise and Industry (DG ENTR). Private-sector entities were also represented.

3. The full list of participants, as well as presentations made at the meeting, is available at: <http://live.unece.org/index.php?id=25568>.

1. Opening of the meeting

4. Ms. Lucia Gocníkova, President of the the Slovak Office of Standards, Metrology and Testing SOSMT, and Mr. Christer Arvius, Chair of the Working Party on Regulatory Cooperation and Standardization Policies (WP.6), opened the meeting. They referred to the importance of market surveillance for the functioning of a market economy and the need for international cooperation in this area. Ms. Steinlova, Chair of the "MARS" Group, introduced the agenda.

5. The WP.6 Chair briefly recalled the main conclusions from the meeting of the Annual Planning Meeting of WP.6 Activities, Stockholm, 4-6 May 2011 (see ECE/TRADE/C/WP.6/2011/2). The secretary of WP.6 recalled progress made since that meeting in the different areas of activity.

2. Exchange of information on market surveillance activities in participating countries

6. The General Director of the Slovak Trade Inspection explained the goals and obligations of her organization and how it had been affected by recent developments in the EU legislation, in particular the adoption of the New Legislative Framework (NLF).

7. The organization and planning of controls is based on: complaints received from consumers and economic operators (approx. 7,000 to 8,000 per annum), announcements by other authorities including customs, experience from previous controls and appeal procedures, notifications from the RAPEX system and from the national ECHO database (gathering information on accidents caused by any non-food products). STI also conducts independent risk assessment.

8. In accordance with the EU NLF, STI checks the compliance of products of the harmonized area with relevant legislation by sampling products to verify their safety and conformity. Sampling efficiency is very high. STI notifies the entrepreneur operating in the EU of any shortcomings found, requests their remedy or imposes restrictive measures. In performing these tasks, STI cooperates closely with the customs authority (see para. 19-20 below).

9. Further, STI monitors accidents and harm to health, which may have been caused by non-food products. It is also responsible for establishing, implementing and updating general and sector-specific market surveillance programmes and for information and education programmes via the media and the Internet.

10. The main challenge for STI comes from the high percentage of risky products from third countries or that are of unknown origin; these products take a long time to examine. To meet this challenge, it is important to strengthen cooperation internationally not just among market surveillance authorities but also among customs, and with economic operators.

11. The Chief of the Belarus Department of Governmental Surveillance and Inspection updated participants about recent changes in the organization of market surveillance. In particular, a new directive had been approved in December 2010.

12. The directive prescribes that inspections by authorities should be mainly preventive, and should only occur every 5 years if the business pays taxes and does not appear to be in breach of the law. It also encourages authorities to further the use of supplier declaration of conformity—in place of mandatory certification—and to recognize certificates issued in member States of the Customs Union and countries parties to relevant international agreements.

13. In Belarus, sanctions for non-conformity include the suspension of activity, but this can only be in special cases prescribed by law and by decision of the court. Each control body should now have a website registering typical violations that it has ascertained during the inspections for the benefit of both suppliers and consumers. Recent regulatory changes had brought down the number of inspections but the number of violations discovered had increased. Inspections had become more effective. Cooperation with customs is important especially to prevent typical violations such as the misuse of certificates, fraud and counterfeit.

14. In Serbia, a number of laws and by-laws had been approved in the last biennium to harmonize Serbian legislation with EU new legislative framework. Legislation in the area of general product safety had been adopted, as well as the Market Surveillance Strategy for the period 2010-2014.

15. The transposition of all relevant directives is going to be completed by 2013. A rapid exchange system providing information on dangerous products similar to RAPEX, “NEPRO”, had been established. The system could also be used to show the number of non-conformities found, by type of product and by types of risk.

16. The main challenges for the Serbian authorities were to reinforce cooperation with the customs administration, while the cooperation with the Ministry of Regional Development was very good. Initiatives are under way to improve information infrastructure and cooperation between the competent market surveillance bodies and Customs Administration, judicial bodies and bodies that have infrastructure and databases available for making the work of market surveillance more effective.

3. Cooperation between market surveillance authorities and other stakeholders

17. The President of the Industrial Property Office of the Slovak Republic explained that in March 2011 the Government had established an Inter-departmental Commission for coordinating the fight against falsification and author piracy. The Commission aims at enhancing the IPR protection and enforcement by promoting cooperation between public authorities and social and economic interest organisations. The organization's most important tasks are:

- acting as the national focal point for the European Observatory on Counterfeiting and Piracy
- elaborating national anti-counterfeiting strategy and action plan
- initiating awareness-raising and explanatory programmes and campaigns
- training for the staff of enforcement and judicial agencies
- developing proposals for legislative and regulatory activity
- supporting the Info IPR Portal <http://www.dusevnevlastnictvo.gov.sk>.

18. These activities showed how Slovakia had applied Recommendation M of UNECE WP.6 on the use of market surveillance to combat fraud and counterfeit. They were also in keeping with the Comprehensive European anti-counterfeiting and anti-piracy plan, adopted by the European Council in September 2008.

19. Measures to enhance cooperation between the market surveillance authorities and the Customs Administration had also been recently enacted. A representative of the Slovak Customs Authorities explained that they are obliged to suspend the release of a product for free circulation on the Community market when any of the following findings are made in the course of the checks:

- the product displays characteristics which give cause to believe that the product, when properly installed, maintained and used, presents a serious risk to health, safety, the environment or any other public interest
- the product is not accompanied by the written or electronic documentation required by the relevant Community harmonisation legislation or is not marked in accordance with that legislation
- the CE marking has been affixed to the product in a false or misleading manner. Customs authorities cooperation with MSA Steering managing body main mission of CA customs administration in protection of national and EU interest for goods entering the customs union territory.

20. Customs officers can refer to "risk profiles" for a number of common products. These help the officers identify non-conforming and unsafe products. When customs officers have a suspicion that a product is not safe or that it does not conform to regulatory requirements, they can send a written notification to the market surveillance authority, which has then to reply within 3 days. If the authority needs additional time, it may request that this deadline be extended to 30 days. Alternatively, in the case of a suspicious product, customs officers can also send an informal electronic notice to the market surveillance authority. This time, the authority only has one hour for feedback, and if no feedback is received within the hour, the product is released. Each notification is recorded, and the market surveillance authority can run further checks after the product is on the market. When customs officers suspect instead that a product is counterfeit, they can access data on trademarks and instructions given by the victims of counterfeit. For example, some counterfeit goods could be used for humanitarian purposes (e.g. t-shirts).

4. Recent regulatory developments

21. A representative of the European Commission updated participants on the implementation of the New Legislative Framework (NLF). She explained that 10 major directives were being brought into line with NLF.

22. An important aspect of NLF was its emphasis on tools for exchanging information. NLF had extended the Community Rapid Information System (RAPEX) RAPEX, and in fact since 2009 there had been a +13% increase in notifications, and the quality had also improved. This information exchange also had an international dimension:

- the MED-RAS project—started in 2009—aimed at establishing a rapid alert system similar to RAPEX in the Mediterranean region. It will become operative in 2012
- the RAPEX-China system—started in 2006—informs China on RAPEX notified products of Chinese origin and reports on enforcement actions carried out
- United States, Japan, the International Consumer Product Safety Caucus (ICPSC), the Organisation for Economic Co-operation and Development (OECD) to strengthen exchange of information.

23. A recent development was the development of general guidelines to explain in more detail the new obligations of customs authorities under NLF.

24. The Chair of the MARS Group complemented this information by introducing the new EU framework for standardization. It is based on two documents: “A strategic vision for European standards: Moving forward to enhance and accelerate the sustainable growth of the European economy by 2020” and a “Proposal for a Regulation on European Standardisation”.

25. The Deputy Director on technical regulation and standardization of the Belarusian State Institute of Standardization and Certification (BelGISS) updated participants on the development of technical regulations and standards in the Customs Union (CU) of Belarus, Kazakhstan and the Russian Federation.

26. The aim of the CU in the field of technical regulations is to establish and apply common regulatory requirements for products, common ways of establishing conformity to these requirements and a single procedure for products imported from third countries.

27. The countries are progressing toward these ambitious goals. Actions so far completed, and in course of completion, include:

- a list of products that should be subject to common mandatory requirements
- a set of common technical regulations
- a unified list of products that should be subject to mandatory conformity assessment
- an agreed way of establishing conformity and mutual recognition of accreditation bodies and testing laboratories
- the creation of an information system in the field of technical regulation, sanitary, veterinary and phyto-sanitary measures
- agreed emergency measures to prevent the release into circulation of dangerous products within the Customs Union
- standardized forms of conformity assessment documents, including a graphic representation of the “single mark” ascertaining conformity.

28. One important aspect of the common technical regulations developed under the Customs Union is that they combine all safety requirements for the regulated products that

were previously dispersed in a number of laws, by-laws and implementing acts of different legislative departments. The representative of BelGISS then introduced the example of two key recent common technical regulations—on toys and on safety of low voltage equipment.

5. Development of Recommendation N

29. A proposal for a new Recommendation on “Enhancing the effectiveness of Market Surveillance Policies” had been put forward by the Swedish Board of Trade. The initial proposal had been refined through a process of consultation through e-mails and webinars.

30. The experts revised the proposal and the revised version is annexed to this report. The MARS Group requested the secretariat to make available to the annual session a revised version in English and Russian.

31. The experts agreed that the aim should be to have the Recommendation adopted by the Working Party at the session.

6. Revision of Recommendation M

32. Delegations discussed the revision of Recommendation M. They agreed it was important to take into account comments already provided at the last meeting of the MARS Group by the delegation of Belarus, and the discussion that had taken place at that time (see: ECE/TRADE/C/WP.6/2010/14 paras 22-25). Discussions on the revision of Recommendation M would continue at the session.

7. Development of the General Product Safety Model initiative

33. The Coordinator of the General Product Safety Model initiative presented a new document on sampling procedure. In the EU, like in other systems, there is a legislative requirement that “market surveillance authorities shall perform appropriate checks on the characteristics of products on an adequate scale”. However, exactly what “adequate scale” means is not clear. The expert had conducted a study on this issue, and concluded that it was possible to assist market surveillance authorities with statistical tools that would allow them to control the number of samples they needed to take in order to ensure a definite number of maximum tolerated non-conformities. The maximum number of tolerated non-conformities should then be defined.

8. Common definitions and terminology in market surveillance

34. The secretariat informed the delegations that copies of the publication *A Glossary of Market Surveillance Terms* would be available at the session.
