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Item 13 (a) of the provisional agenda

Market Surveillance:

Update from the Advisory Group on Market Surveillance

Report of the Advisory Group on Market Surveillance, its activities and its meetings

Summary

This document contains the report of the annual meeting of the Advisory Group on Market Surveillance (MARS Group), that was held in Moscow, the Russian Federation from 8 to 9 July 2019, at the premises of the Eurasian Economic Commission. It is hereby submitted for adoption by the Working Party.

Proposed decision:

“The Working Party adopts the report of the MARS Group. It requests the Working Party to adopt its plan of work as detailed in the document.

The Working Party mandates the Secretariat to continue to report on an annual basis on the activities of the MARS Group.”

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I. Introduction

1. The 17th meeting of the Advisory Group on Market Surveillance (MARS Group) was organized by UNECE WP.6 secretariat, the MARS Group Bureau, the WP.6 Bureau and was held at the premises of the Eurasian Economic Commission.
2. The meeting was attended by over 80 experts from 12 UNECE and non-UNECE UN member countries. Individual experts also attended in their own capacity.
3. The agenda, as well as presentations made at the meeting, are available at <http://www.unece.org/index.php?id=50949>
4. The Minister in charge of Technical Regulations of the Eurasian Economic Commission opened the meeting, making particular reference to the important role of market surveillance authorities in removing counterfeit and non-compliant goods from the markets. The Chair of the MARS Group referred to the role of the MARS Group in coordinating efforts at regional and global levels, and elaborate recommendations based on best practice. The Secretary of UNECE WP.6 recalled the challenges facing market surveillance authorities, including the increasing complexity of products and supply chains, limited available resources and the growth of online sales.

II. Market surveillance: developments at international and regional levels

5. The Secretary of WP.6 highlighted the importance of cooperation in the field of market surveillance at global and regional levels, and the role of the MARS Group in facilitating the exchange of best practice. She also briefly introduced the European Commission's Regulation (EU) 2019/1020 on market surveillance and compliance of products.
6. The regulation aimed curbing non-compliance of products on the EU markets, against the challenges of fragmentation of market surveillance authorities' responsibilities, limited resources, and the low deterrence of current enforcement tools. Having recently been adopted by the European Parliament and the European Council, the Regulation would enter into force in 2021. The discussion among participants focussed on cooperation between market surveillance authorities and customs administrations, and their respective roles in both documentary and physical controls. Participants also emphasized the responsibilities of producers and importers in guaranteeing the safety and compliance of products they introduced on the markets.
7. The **Deputy Director Department for Technical Regulation and Accreditation of Eurasian Economic Commission (EEC)** introduced the EEC approach to state control (surveillance) over compliance with the requirements of the Eurasian Customs Union's (ECU) technical regulations.
8. He explained that a draft agreement on "Harmonization of State Controls" was being finalized among the EEC Member States. The main elements of the agreement were:
 - common rules and procedures;
 - the prohibition of release for circulation of non-compliant goods; and
 - the implementation of a risk-based approach and the development of an alerting system for unsafe products.

He then introduced in detail a pilot project of the proposed alerting system which was being tested and would be operational in September 2019. The system will contain a section on

dangerous products allowing for joint action to remove these goods from the markets of the customs union. Answering a question from the floor, he clarified that once the pilot project is complete, and the system goes live, it will be accessible to the public.

9. The **co-Coordinator of the UNECE Group of Experts on Risk Management in Regulatory Systems (GRM)** updated the meeting participants on the ongoing activities of the GRM of relevance to the MARS Group. He shared information a new proposed recommendation that will lay out a risk-based, import-compliance framework aimed at minimizing product non-compliance while facilitating international trade.

10. The proposed recommendation builds upon Recommendation S to focus inspections on products that, simultaneously, are dangerous when non-compliant and have a high probability of non-compliance. It goes further by laying out operational, data exchange procedures and model communications with Customs administrations. Key elements of the proposed recommendations were:

- the determination of “compliance rules”: based on the characteristics of the products, on the percentage of previous compliant shipments by the same supplier/importer and on the risk assessment at the border; and
- the development of the “customs profiling system” the system issues a recommendation to the Customs administration to conduct or not an inspection on an incoming shipment.

11. In the discussion following the presentations, the Minister in charge of Technical Regulations of the EEC remarked that the past performance of suppliers and importers was not always a good indicator of future adherence. He added that goods could be compliant but counterfeit, making the task of the Customs authorities more delicate. The representative of the MSA of the Serbian MSA informed participants that her authority had updated its procedures based on Recommendation S and commended the GRM Group on their work. She added that the main challenge for her authority in cooperating with customs was having to complete checks within a three-day deadline on goods in transit, which was often too short for the inspection authorities.

III. Market surveillance: experiences at national levels

12. The representative of the Ministry of Science Industry and Technology of Turkey explained that the Ministry is planning the establishment of a new market surveillance unit and will soon introduce legislation to authorise inspectors to purchase products for sampling and testing purposes without the need to disclose their identities. The Ministry of Trade is also working with online marketplaces to help identify the economic operators, which are responsible for the non-compliant products. This was a topical issue, considering that the share of e-commerce in total retail sales was at 11.1 % with an average growth of 8% per annum.

13. The questions and answers session focussed on the importance of increasing awareness among consumers and e-commerce firms on the importance of safety and conformity and fighting the common perception that e-commerce is an unregulated area. A representative of the EEC commented that the EEC was in the early stages of establishing a system in the area of e-commerce. In order to establish traceability, cooperation with customs is important, especially because the length of the control system is much shorter in the case of online sales.

14. The Chair of the MARS Group introduced the market surveillance system of the Republic of Serbia. She focussed in particular on the market surveillance law and on the market surveillance plans and planning methodology, which, she explained, were based on

a risk assessment methodology. This allowed aligning the frequency of performing surveillance based on risk. Further, she presented some case of dangerous products removed from the market and procedures on how to handle the dangerous product and how to handle dangerous waste

15. The speaker emphasized the importance of cooperation with the private sector and with consumers especially as regards product recalls. She also introduced the national NEPRO system of Rapid Exchange of Information on Dangerous Products which enables notification on dangerous products. Information exchange with regional partners was also very important through the network of MSAs in the region in the Western Balkans. The network had been actively sharing information test reports as regards for example in the sectors of LVD, oil and gas, textile among others.

16. The representative of the Czech Office for Standards, Metrology and Testing offered a presentation of a new proposed internet application to coordinate the planning of controls among all Czech MSAs and inspection authorities. The advantages of the proposed system were that the scheduling of controls would be improved, with a minimum of 2 months in between controls and a maximum of 5 controls per year for each firm. This would reduce the pressure on entrepreneurs and economic operators, ensure a better preparation of controls with more efficiencies, and allow for information sharing among MSAs. However, the coordination would be costly and constraining for MSAs. The speaker added that he would inform at a further occasion about the developments and the eventual approval of the proposed system.

IV. The Glossary of Market Surveillance Terms

17. The Convener of the General Market Surveillance Model initiative reminded participants that, at its 16th meeting, the MARS Group had decided to revise the Market Surveillance Glossary, as the current version dated back to 2011 and there was a need to reflect current developments on the markets and in market surveillance approaches.

18. He introduced some of the most important proposed changes to the current document, including both new definitions and definitions that would need to be updated. The Convenor agreed to provide a draft new version by September 2019, that would be discussed in an online meeting. Representatives of the Czech Republic and of the EEC secretariat agreed to participate in the online meeting. The UNECE secretariat would facilitate the process.

V. Other developments

19. The President of China Jiliang University made a presentation on how standardization contributes to eliminate market failures from the perspective of economy theory, making reference to the well-known 1970 paper by economist George Akerlof: "The Market for Lemons". He then made reference to China Compulsory Certification (CCC) mark as well as other voluntary marks and introduced recent empirical studies showing how certification was effective in eliminating asymmetric information on product quality. The results prove that standards play very important role in market surveillance, but their effectiveness could further be strengthened by: a) reducing the number of certification marks by consolidating the current certification marks b) strengthening public awareness about standards through education, so consumers are more aware about the meaning of the different marks, c) enhancing the quality of standards and developing standards from the perspective of consumer benefits.

20. During the question and answer session, the representative of Serbia emphasized the importance of participation by MSAs in the technical committees that develop the standards

and said in her country MSAs are active in many of these, especially in the sector of textiles. Another participant remarked that, when developing compulsory marks, the state should consider the experience of the industry and the systems that the private sector had already developed. A representative of the EEC said that a dual system – mandatory and voluntary – was in some cases beneficial because mandatory certification only is not enough. The Secretary of the UNECE WP.6 remarked that different sectors were suited to different solutions. A Member of the Russian Presidium, Academy of Quality Problems, informed the meeting that since 1979 Russia has conducted systematic trainings for professionals in the area of surveillance. These training have been carried out on various topics: compliance with technical regulations and standards, security in technically hazardous facilities, metrological software products and others. There are proven curricula and training materials available on these subjects. This experience can be discussed in November 2019 at the annual WP.6 meeting.

21. A representative of the National Board of Trade Sweden presented a recent study on the Implications of IT security regulation on international trade (<https://www.kommers.se/Documents/dokumentarkiv/publikationer/2018/The-Cyber-Effect.pdf>). She explained that cyber vulnerabilities in society result in an increasing number of national regulatory initiatives which have an impact on International trade of ICT. Commercial ICT equipment are also used within critical infrastructure and workplaces and disturbances in these environments can not only disrupt economic activity but also result in major societal vulnerabilities if not protected. As a result, governments use their right to regulate this area e.g. in some cases by using national standards or conformity assessment procedures (CAPs) for cybersecurity, referring to national security (which is a legitimate regulatory objective according to WTO TBT Agreement).

22. As these provisions may result in regulatory fragmentation and technical barriers to trade, it is important to analyse regulatory initiatives and developments also from a trade policy perspective (not only national security). Although International Regulatory Cooperation (IRC) does exist it is not covering all countries. Current regulatory tools to address cybersecurity, for example in the EU, focus on cyber-certification which is not a guarantee for cybersecurity. A path recommended by experts is also to focus on building structures and requirements for IT infrastructure nationally, however making use of international standards.

23. The conclusion from the analysis is that it is important to increase understanding of cybersecurity in society. Especially policymakers and regulators should understand the effects of cyber-regulation. Some trends and issues to follow are e.g. privatisation of IT services, privatisation of regulation why it is important to follow ICT/ cyber standardisation. The question is also whether cybersecurity can in future be addressed earlier in product life cycle (built in security) as current regulatory methods clearly show weaknesses.

24. The GRM Coordinator referred to the work of the Group on a Proposal for Common Regulatory Arrangement in the field of cyber-security, based upon international standards and on the model described in Recommendation L. Participants agreed to continue the discussion at the Annual Session of the Working Party. The Chair of the MARS Group remarked that Serbia had recently introduced the new figure of the “E-inspector” and echoed the need for continued discussion on this topic.

25. The representative of PTB gave a presentation on two regional ongoing technical cooperation projects on market surveillance that were being carried out in South East Europe and in the Eastern Partnership. Unlike previous projects, which were uniquely focussed on metrology and accreditation, these projects had a more flexible approach and were open to all quality infrastructure sectors, based on countries’ demands. Further information was available at <https://see.ptb.de/see-qi-fund/> and www.eastern-partnership.ptb.de

26. She then presented the recently published PTB-World Bank Toolkit “Ensuring Quality to Gain Access to Global Markets: A Reform Toolkit”. The speaker referred in particular to the diagnostic and gap assessment tools and the advisory services offered by the two organizations. This allowed countries to undertake an evaluation of their quality infrastructure to identify critical gaps and areas of priority action. The MARS Chair expressed interest to the support that PTB offered for regional coordination and looked forward to learning more about the project.

VI. Conclusions

27. The Chair of the MARS Group summarized the conclusions of the meeting and presented the action items as follows:

- (a) To continue the exchange of information and experience among MSAs, especially as regards the planning of inspections, the “New Goods Package” and the challenges of e-commerce and cybersecurity
- (b) To revise the Market Surveillance Glossary;
- (c) To develop guidance on cooperation between MSAs and customs
- (d) To initiate the process of updating recommendations M relating to the use of market surveillance infrastructure as a counterfeit and piracy mechanism.
- (e) To update the contacts database and the document on “Network of regional networks”
- (f) To enhance cooperation with education institutions and with the UNECE WP.6 START-Ed Group, as well as with the UNECE WP.6 GRM Group;

These actions items would be carried out contingent on the availability of resources; the continued engagement and support of Member States and their availability to contribute expertise and best practice.

The WP.6 Chair thanked the group for lively and substantive discussion during the meeting and the Eurasian Economic Commission for the kind hospitality.
