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MARKET SURVEILLANCE

Report on the Activities of the Advisory Group on Market Surveillance (“MARS” Group)

Note by the secretariat

At its thirteenth session, the Working Party established an Advisory Group on Market Surveillance. (“MARS” Group) and mandated it to report on its activities.

This document contains a report of the “MARS” Group on its fourth session held in Bratislava on 25 and 26 September 2006 and is submitted to the Working Party for approval.

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I. INTRODUCTION

1. The fourth “MARS” Group meeting was held in Bratislava on 25 and 26 September 2006 at the invitation of the Slovak Office of Standards, Metrology and Testing.

2. The representatives of the following countries took part in the meeting: Azerbaijan, Belarus, Brazil, Bulgaria, Czech Republic, Hungary, Indonesia, Kyrgyzstan, Romania, Slovakia, Spain, Sweden and Turkey. The European Community also participated.

II. OPENING OF THE MEETING

3. The meeting was opened by the Chairperson of the United Nations Economic Commission for Europe (UNECE) Working Party on Regulatory Cooperation and Standardization Policies (WP.6), Mr. C. Arvius (Sweden), who provided an overview of WP.6 activities and the place of the market surveillance in it. He outlined the new vision, mission, strategic directions and work plan for the coming years as agreed at the sixteenth session held on 19-21 June 2006. For WP.6, the “International Model for Technical Harmonization” constitutes an important achievement. For the building blocks in the model (e.g. product requirements, applicable international standards, conformity assessment procedures) to be applied correctly and effectively, well-developed market surveillance systems and adequate product liability laws are most important. Hence, the work of the “MARS” Group maintains/holds a high priority in the strategy and activities of WP.6.

4. The Meeting was chaired by Ms. K. Steinlova of the Slovak Office of Standards, Metrology and Testing, who was elected the chairperson of the "MARS" Group. The President of the Slovak Office of Standards, Metrology and Testing, Mr. A. Gonda, welcomed participants and highlighted the main achievements of the "MARS" Group.

III. DRAFT UNECE RECOMMENDATION "M" ON THE "USE OF MARKET SURVEILLANCE INFRASTRUCTURE AS A COMPLEMENTARY MEANS TO PROTECT CONSUMERS AND USERS AGAINST COUNTERFEIT GOODS"

Documentation: ECE/TRADE/C/WP.6/2006/11 - Draft UNECE Recommendation "M"

5. The Secretary to WP.6 presented the draft UNECE Recommendation "M", recalling that this project resulted from the debate at the UNECE Second International Forum on "Market Surveillance and Consumer Protection", held in Geneva in October 2005.

6. The delegate of the Commonwealth of Independent States (CIS) reported on the forthcoming CIS meeting on market surveillance to be held in Moldova at the beginning of October 2006 (one of agenda item will be comments on UNECE recommendation "M"). The results and decisions taken at the current "MARS" meeting will be reported at that CIS event.

7. A number of comments were made to the text of the Recommendation, which are incorporated in a new version elaborated during the meeting (draft document ECE/TRADE/C/WP.6/2006/11/Rev.1). Any further comments will be sent to the secretariat by 2 February 2007.

8. Participants recalled that it is expected that the final version of the Recommendation would be submitted for the WP.6 adoption at its next session in autumn 2007.

IV. MARKET SURVEILLANCE IN THE EUROPEAN UNION AND ITS PROPOSED REFORM

9. An expert of the European Commission (EC) reported on the ongoing dialogue on the market surveillance system of the European Union (EU) and the directions of these activities at the Community, EC and EU Member States levels.

10. Participants noted that at present there are no common rules for the monitoring of products in the EU the market. This could result in the uneven protection of public interests (e.g. health, safety, environment, etc.) and thus unfair competition, and finally might lead to a loss of user confidence in the system. These are the general principles on which the elaboration of an EU market surveillance (MS) system is founded, with a view of harmonizing requirements to market controls.

11. A representative of Sweden presented an overview of the requirements set by the EU General Product Safety Directive (GPP).

12. With regard to an exchange of information on dangerous goods at EU, the delegate of the CIS Bureau on Standards reported on the CIS work on the creation of an information exchange system on dangerous goods. He noted that the CIS inter-State Council on Standardization, Certification and Metrology sent a letter in 2005 to the EC requesting assistance in making a new CIS information system compatible with the EU Rapid Alert System for Non-Food Consumer Products (RAPEX). No answer had been received, and the delegate of EC agreed to look into this matter.

V. NATIONAL MARKET SURVEILLANCE APPROACHES AND EXPERIENCES

13. The representative of Indonesia provided information on the country's standardization and technical regulation system and on its organization of market surveillance. About 70 per cent of national standards (of a total number of about 6,000) are linked to technical regulations.

14. A presentation by the representative of Belarus covered the general framework to control of safety goods and services and of different ministries involved in this process. In this context, particular attention was devoted to the role of the State Committee for standardization and its departments, including recent activities regarding construction regulations and the efficient use of energy. In the area of market surveillance during the eight months of 2006, some 3,488 examinations of the subjects of entrepreneurial activity were carried out.

15. The Head of the Slovak Inspection highlighted the basic provisions of the new consumer Law recently adopted in the country. She also addressed the problem of "disappearing companies" raised at previous "MARS" meetings (for more details on this subject see the presentation on "Different measures for improving market protection"). The importance of market surveillance was highlighted noting that 60 per cent goods found dangerous were labelled with Conformité européenne (CE) marking.

16. The Chairperson of this "MARS" Group provided information on the EU-China workshop on market surveillance held in Brussels on 20 September 2006. In this context, examples of joint actions between the Slovak MS authorities and their colleagues in Hungary and the Czech Republic (based on problems identified through RAPEX) were also noted.

17. A separate presentation outlined the experiences of Slovak authorities on labour protection.

18. The delegate of Brazil provided information on products subject to mandatory conformity assessment procedures and the practical experiences in meeting these requirements of the 27 regulatory authorities in Brazil, many have conformity assessment and market controls systems. Market surveillance consists of two types of controls inspection (by specially trained policy officers) and conformity verification (in-depth analysis of products by INMETRO). A new approach, namely to involve sectoral industry associations, is under implementation.

19. A presentation was made on the organization of market surveillance in Sweden. In view of significant number of State agencies involved in such controls (15), the experience of coordination and cooperation on a national level was stressed and presented. The Swedish Board for Accreditation and Conformity Assessment (SWEDAC) acts as a coordination and contact body as well as a sectoral MS authority, and is responsible for legal metrology and precious metals.

20. The meeting noted the increasing role of the Market Surveillance Council, which is responsible for horizontal cooperation. The Council, whose members are sectoral authorities, customs and National Board of trade and invited industry, has been recently restructured, and meets four to five times a year (its secretariat is at SWEDAC). The new ordinance on MS has been in force since January 2006.

21. The delegate of the Czech Republic spoke about labour protection, in particular the activities of work inspection bodies in his country.

22. An overview of market surveillance in Bulgaria was provided with statistics on areas and sectors where market surveillance is carried out, and a focus on the experience of cooperation of market surveillance authorities with other national bodies (e.g. Commission on Consumer Protection; Directorate for Nations Construction Control and Customs).

23. The representative of Romania reported on the work of one specialized market surveillance body, in particular on the specifics of its surveillance work concerning one industrial sector (boilers and pressure equipment). The speaker stressed the importance of interagency cooperation of several MS bodies on a national level.

Identification of common problems for future work and preparation of conclusions

24. Participants exchanged experiences on practical issues relating to MS, and on areas where future work of the "MARS" Group could be of interest to national authorities.

25. The issue raised was that of market surveillance bodies paying for inspection samples. Responses showed a variety of approaches.

26. Some MS bodies pay for samples from their budgets (e.g. Bulgaria, Romania, Indonesia, Turkey). In the Czech Republic, an MS body can take a sample without paying for it, but in case that the verification shows that the product is compliant, the cost is reimbursed.

27. In other countries, the manufacturer pays for verification of a sample (e.g. Azerbaijan and Belarus).

28. In Brazil, the MS authority has agreed with the major manufacturers and importers that samples taken for testing should be replaced by the manufacturer for shop owners.

29. The cost of testing is usually paid by the manufacturer if the product fails to comply (in reality, it is paid by MS and then the manufacturer is liable to reimburse the costs occurred for testing) and by MS (from its budget) in the case that the product turns out to be safe and compliant.

30. Some participants raised concerns regarding procedures for payments for testing in laboratories, namely that in some countries the MS body has to organize a tender before giving a product to a laboratory. During the debate, it was noted that in most countries the rules of public procurement required such procedures, but usually the cost of testing is below the required limit to apply public procurement rules and so the MS body does not have problems. In most countries, the choice of laboratories (where testing is done) is subject to selection procedures by relevant ministries (for example, a laboratory must be accredited) and the final set usually comprises a number of laboratories (in various sectors) from which the MS body can choose.

31. The delegation of Brazil proposed a consideration on future activities on benchmarking, especially of systems existing in other countries to control product disposal.

32. Regarding the traceability of MS to measurement standards, a question was raised about participating countries' experience in having common measurement standards and joint accreditation laboratories, as well as about means to ensure confidence in such joint activities. Participants agreed that discussion of this matter should be continued both in the "MARS" Group and within WP.6.

33. It was recalled that at previous "MARS" meetings, the problem of improperly registered companies ("disappearing companies") was raised. In this context, the experience of the Slovak authorities was found to be useful.

34. The problem of disappearing companies was nearly solved in Slovakia through cooperation between market place administrations (issuing sale permits for particular market places) and trade offices (issuing general trade licenses for companies). These administrations (before issuing sale permits) verify documents on companies (e.g. their set-up documents, business addresses) and on the products they intend to sell (e.g. technical documentation). The MS authority must also notify the police of all cases of goods found dangerous (under the Slovak legislation, marketing dangerous goods constitutes not only administrative but also a criminal offence; the police decides in each particular case if a criminal investigation should be initiated).

35. Thus, controls to ensure that a marketed product is legal are made in two ways:

(a) Verification by the relevant authorities issuing permits for traders at wholesale market of documents on products from traders;

(b) Verification by the relevant authorities of the existence of business premises and business addresses of a given company.

36. Participants recalled that at the “MARS” Group meeting in 2003, a number of trade facilitation groups had been established to look into specific concerns identified by delegates. At the 2006 meeting, activities under some of them were reviewed and future tasks were identified (see “institute of facilitators” below).

37. The “MARS” Group reviewed its general activities at its 2006 meeting. As a part of this review, the Chairperson presented a progress report on the work of the “institute of facilitators” mandated out the 2003 “MARS” Group meeting (document ECE/TRADE/C/WP.6/2006/13).

VI. CONCLUSIONS OF THE MEETING

38. The “MARS” Group thanked the speakers and participants for their active contributions and its host (the Slovak Office of Standards, Metrology and Testing) for the excellent organization of the meeting and invited United Nations Member States to join the “MARS” Group and to contribute to its activities.

39. In conclusion, the Group agreed:

(a) To issue a new version of the draft Recommendation ”M”. (see draft document ECE/TRADE/C/WP.6/2006/11/Rev.1). Meeting participants would inform interested stakeholders from their countries about work on this recommendation and invite their comments to be received by 2 February 2007 at the latest. The final text of the Recommendation is expected to be adopted by WP.6 at its next annual session in November 2007;

(b) To intensify work on definitions and invite interested MS authorities to submit proposals on priority terms for which definitions should be elaborated (as well as information on the definitions for such terms currently in use in their countries) by 2 February 2007;

(c) To initiate work on generic guidelines, starting with the following areas, and invite MS authorities to send examples of good practices to be considered in the elaboration of such guidelines by 2 February 2007;

(d) To use the “institute of facilitators” established under the “MARS” Group, with a view to providing a platform for experts to identify and analyse good practices related to particular problems identified at the UNECE Forums and the “MARS” workshops, and to invite UNECE member States to contribute to the work of “institute of facilitators” (subgroups are open to all interested Governments/experts), in the revised areas listed below with a view to developing proposals or recommendations:

(i) Terminology in the field of market surveillance
(Facilitators: Mrs. O. Manafova (Bulgaria) and Mr. S. Kouzmine (UNECE secretariat))

(ii) Information exchange/networking/Database system, e.g. to consider the facility of transforming the current Transitional System for Rapid Exchange of Information (TRAPEX) into a regional voluntary notification system by opening it up to all countries in the UNECE region interested in sharing through such a system.
(Facilitator: to be appointed)

(iii) The possibility of adapting ISO 9000 or other quality management systems (e.g. Common Assessment Framework (CAF) to the work of market surveillance bodies/agencies).

(Facilitator: Mr. E. Tristan (Romania))

(iv) Product liability and legal framework

(Facilitators: Ms. N. Machutova (Slovak Trade Inspection) and Mrs. N.A. Bak (Belarus Committee on Standardization, Metrology and Certification))

(v) Generic guidelines for good practice in market surveillance

(Facilitators: Ms. M. Bizgu (Moldova) and Mr. L.C. Pereira (Brazil))

40. The Group further agreed that coordination of the work of facilitators shall be performed by the Chairperson of the "MARS" Group with support from the secretariat. In this regard, the secretariat was asked to place all information presented by delegations at the meeting on the WP.6 webpage. Delegations were requested to provide the secretariat with regular updates of this information to reflect developments in their countries. The Group called on the Chairperson of the "MARS" Group to report on the Group's work to WP.6.

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