



ORGALIME

Position Paper

Brussels, 10 May 2012

Concrete suggestions for more efficient border controls and better cooperation with industry stakeholders

1. INTRODUCTION

As stated in the Manifesto of the European machinery industry¹, “*the earlier the products are checked in the supply chain, the less damage they cause on the market if they are not compliant*”. However, the overwhelming majority of non-food-or-feed products (less than 0.02% are checked according to the Dutch authorities) are not checked at the EU borders.

This situation is worrying for lawful market operators established in the EU who suffer from unfair competition from non-compliant imports. It is equally worrying for the EU’s ability to meet its policy goals for the protection of consumers, workers, the environment and the climate, and to secure growth and jobs in European companies, especially SMEs.

This is why Orgalime calls for a fast track implementation of the New Legislative Framework (Articles 27 to 29 of Regulation 765/2008/EC), which places obligations on Member States to put in place effective, efficient and deterrent non-tariff checks at the external borders of the EU single market. **We are pleased to see that progress was made to improve coordination** on product safety and compliance issues between Customs authorities and their colleagues from Market Surveillance, namely via the DG TAXUD Guidelines of June 2011.

However we regret that Orgalime and other relevant European stakeholders were not more closely consulted on EU strategy and on practical steps to fulfil the goal of an effective enforcement of EU product legislation, such as drafting the information sheets for the 26 initial product groups. As you know, a number of them are of interest to Orgalime (e.g. household lamps, R&TTED equipment, chain saws, LED tubes, household pressure cookers, adaptors, food mixers...), but we have not had the opportunity to comment on them.

Hence, we would like to provide you with concrete suggestions for the future:

2. CONCRETE SUGGESTIONS FOR THE WAY FORWARD

I. The European Commission should contribute more actively to cooperation between customs and market surveillance authorities with the support of trade federations

- 1. The risk management approach of customs controls should be streamlined** with the NLF objectives and the risk assessment tools of market surveillance authorities (MSAs) based on Regulation 765/2008/EC, the GPSD, the New Horizontal Regulation (NHR) on Market Surveillance and the Multi Annual Action Plan, MAAP (end 2012). In doing so, special attention should be given to the following:

¹ Manifesto “[The 10 Key Actions for an Effective Market Surveillance](#)”, 24/11/2011

Orgalime, the European Engineering Industries Association, speaks for 34 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 9.7 million people in the EU and in 2010 accounted for some €1,510 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

- **Customs controls should not limit their checks for high-risk products to health and safety objectives only**, as emphasised in the DG TAXUD guidelines. This is in contradiction to Article 27 paragraph 3a of Regulation 765/2008/EC which refers to “*serious risk to (...) the environment or any other public interest*”. Orgalime members are very concerned about the release of imported products on the Union market, which are deemed not hazardous for people but which may fail to comply with environmental legislation, if they were checked against it. Such common practice constitutes a regrettable incentive to rogue traders (why pay costly compliance tests for REACH, WEEE, RoHS, etc... if these are not checked at all by Customs and MSAs?). Privileging health and safety over other policy objectives would further contribute to conditions of unfair competition for lawful market operators and would call into question the fair/equal treatment of market operators under the law.
 - **Correspondingly, IT tools used by Customs authorities should be streamlined with those of MSAs** (RAPEX, RIF, ICSMS). We support the initiative to create a joint Customs/MSAs sub group of Customs 2013 on data collection strategy development.
2. **The European Commission should provide means for a regular dialogue with relevant EU business stakeholders** (importers and in particular manufacturers) about risk assessment methods and priority settings for import controls.
- As is current practice in the various Administrative Committees and Working Parties of Directives on product safety and environmental protection, we suggest that DG TAXUD considers opening part of such meetings with member states authorities to relevant European stakeholders (for who else but the designer and producer of a product can provide the technical data needed by the authorities to perform their market surveillance work?), in order to establish a dialogue on risk assessment methods and priority settings for “import controls on product safety”.
 - Establishing a regular dialogue with relevant European stakeholders – and not just one – would enable the Commission and Member States to collect expertise, views on areas of concern (implementation at national level), concrete suggestions for the elaboration of new product checklists, and feedback on guidance and facilitation tools for authorised economic operators and other bona fide importers.
 - In concrete terms, Orgalime and other relevant stakeholders could be invited to an open part-session of the next “*strategic workshop on product safety and compliance control on imported products*”, which follows a similar one held last November in Villach (Austria).

II. Improve the communication and awareness-raising of economic operators

It appears to us of paramount importance to raise the awareness of importers on their duty to import only products that have been designed and intended for the European market. In this respect, we believe that a European information portal for importers that could be linked with the national websites of customs authorities could be most helpful.

3. **The European Commission should make sure that customs authorities provide information on product safety and compliance to importers on their web sites.** Hence, we suggest in practice to:

- include warnings, awareness-raising notices and general information on the need for all imported products to comply with EU legislation. There is a good example of such an initiative from the Dutch authority with the recently launched Traderouteasia.com.
- **add a paragraph on the obligations of importers** with regard to compliance with EU legislation in the “Guidelines on entry and summary declarations in the context of Regulation (EC) No 648/2005” (29/10/2010)
- **ask importers to provide in customs clearance procedures either the web link or the email address of the manufacturer**, from whom authorities could request the Declaration of Conformity for placing harmonised products on the Union market. This could be practically accommodated in Box 44 of the Single Administrative Document: “*Additional information, documents produced / certificates and authorizations*”;

- **include traceability criteria in the procedure to accredit Authorised Economic Operators (AEOs)** in relation to their ability to demonstrate that all imported products are intended for the EU market and to facilitate communication between authorities and the original manufacturer on risk assessment and compliance issues.
- 4. **The European Commission should call on member states to issue warnings about the sanctions and fines that they have put in place against unlawful imports:** Orgalime believes such information should have a deterrent effect and could include information on procedures that link up Customs authorities with MSAs (e.g. summary of the “*Guidelines for import controls in the area of product safety and compliance*” (2011)).

III. Investigate how to improve the financing of import controls

In 2009, **ANEC and Orgalime² called on member states and the European Commission to allocate significant resources to market surveillance.** We also called on “*the Council and the European Parliament to open up the possibility of financial support, within the framework of the European Structural funds, in order to assist Member States whose geographic or economic conditions place them in weaker position to fight against illegal trade and unlawful imports from abroad. This is especially true for countries with maritime ports, where 90% of the freight of goods imported into the EU transit every day*”.

- Therefore, **we very much welcome**, as a first step, **DG Entreprise’s “roadmap for enhancing the Market Surveillance enforcement for goods – A multi-annual plan”³** which foresees the involvement of EU financial support for the “convergence of the different national systems”, and also hopefully for border controls.
- **We equally welcome DG TAXUD’s “roadmap for the period 2012 – 2014”** which foresees a European coordinating and cooperation-facilitating body for both Customs controls and market surveillance on non-food products. We invite the Commission to consider ways to financially support such a body.
- Furthermore, **Orgalime strongly urges the European Commission to investigate to what extent the EC could contribute to setting up a European harmonised system for the compensation of import control costs** on manufactured products, which would be similar to the system in place for feed and food products in Regulation 882/2004 and Regulation 669/2009.

3. CONCLUSIONS

- Orgalime welcomes the Commission’s moves to help the resolution of the issues we face in the area of market surveillance on the regulatory front through the introduction of the New Legislative Framework. Regulation however is only part of the solution.
- Now therefore we hope to see the Commission working much more closely with industry than in the past to resolve the issues on the ground. This is essential if market surveillance authorities are to be able to perform their work effectively and efficiently at least cost.
- Therefore, we call on the Commission to follow-up on Member states obligations in the actual application of Regulation 765/2008/EC, including where necessary via infringement procedures against inactive Member States.
- To conclude, we hope that the European Commission will focus much more on ensuring a stable and operational framework on the ground for market surveillance and border controls, which is more important and should be far more effective than continuously modifying the regulatory framework.

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² [“Call for an effective pan-European market surveillance system”](#), 22/04/2009

³ [CERTIF 2011-02 - Draft Roadmap](#), 09/03/2011