

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

**A COMMON
REGULATORY LANGUAGE
FOR TRADE
AND
DEVELOPMENT**



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Note

The publication examines changes in the regulatory landscape in the member States of the United Nations Economic Commission for Europe (UNECE), including the recent trend towards “better regulation”, i.e. regulations with a greater focus on desired outcomes and more flexibility. This approach can help remove barriers to trade created by differences in national standards and technical regulations, as can good regulatory practice such as set out in the UNECE “International Model for Technical Harmonization”.

The current volume brings together contributions and research papers prepared by some of the speakers and participants of the International Forum on “Common Regulatory Language for Global Trade”, held in June 2006, as well as by the UNECE secretariat. These contributions, which were written after the event and since updated, reflect the thinking that the Forum helped generate, which is of continued policy relevance.

The UNECE secretariat prepared the present guide, with substantial contributions from Ms. Eleanor Loukass.

The views expressed herein are those of the authors and do not necessarily reflect the views of the United Nations. Mention of company names or commercial products does not imply endorsement by the United Nations.

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The purpose of this series of trade and investment guides is to assist economies in transition, as well as economic actors in other countries, in becoming familiar with best practices in the areas of trade and investment and related legal and commercial practices and, thus, to contribute to the elimination of legal, administrative and technical barriers to trade and investment. The guides are developed under the aegis of the United Nations Economic Commission for Europe (UNECE) Committee on Trade and its subsidiary bodies.

This is the tenth guide in the series. The preceding titles were:

1. *Trade Finance in Transition Economies: Practical Ways to Support Exports and Importers*
2. *Standards and Regulations in International Trade*
3. *Investment Promotion in Central and Eastern Europe and the CIS*
4. *The Polish Experience of Transition: Accomplishments and Problems*
5. *Eliminating Obstacles to Efficient Trade Finance in Transition Economies: Practical Aspects*
6. *Services in Transition Economies*
7. *Trade Finance for Small and Medium-sized Enterprises in CIS Countries*
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9. *Building Trade Partnerships in Eastern Europe, the Caucasus, and Central Asia*

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Foreword

Dialogue is based first and foremost on a common language. Within the United Nations system, dialogue among stakeholders involved in standardization matters not only promotes international transfer of knowledge and technology but also contributes to enhancing safety, reducing obstacles to trade and preserving the environment.

This booklet presents in a simple and straightforward way some fundamental terms, tools and concepts for trade and development, such as regulatory cooperation, regulatory impact assessment and good regulatory practice.

Contributions from international experts present how these ideas have been put into practice in different regions and by different stakeholders. These experts are among the many that, since 1970, come together at the meetings of the Working Party on Regulatory Cooperation and Standardization Policies (WP.6) of the United Nations Economic Commission for Europe.

The Working Party (and its predecessor bodies) have been a forum for exchanging information on developments and experiences, and have developed recommendations and good practices in a number of areas related to standardization and regulatory cooperation.

At the Working Party, regulatory cooperation is seen as a key instrument for avoiding unnecessary barriers to trade because of different norms and standards and ways of applying them. While each country has unique needs and circumstances, one norm or standard could never be valid for the whole world. Yet the underlying objectives for safety and protection are widely shared and could be the basis for better and convergent regulations that bring a minimum of disruption to traders and producers.

We hope this publication can assist Governments and business as they cooperate to build a regulatory environment that contributes to sustained growth.



Christer Arvius
Chairperson
UNECE Working Party on Regulatory
Cooperation and Standardization Policies



Ján Kubiš
Executive Secretary
United Nations
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Abbreviations

AFNOR	French Association for Standardization
APEC	Asia-Pacific Economic Cooperation
ARSO	African Organization for Standardization
ASF	African Standardization Forum
ASTD	ARSO Strategy Document
AU	African Union
AUC	Commission of the African Union
BSI	British Standards Institution
CDSG	APEC Chemical Dialogue Steering Group
CEN	European Committee for Standardization
CENELEC	European Committee for Electrotechnical Standardization
CIS	Commonwealth of Independent States
CISPR	International Special Committee on Radio Interference
CRO	Common regulatory objective
DCAS	ARSO “Different-But-Complementary-Approach” Standardization Model
DIN	German Institute for Standardization
EASC	EuroAsian Interstate Council for Standardization, Metrology and Certification
EC	European Commission
ETSI	European Telecommunications Standards Institute
EU	European Union
FL3C&R	Frog Leap, Collaboration, Cooperation, Coordination and Mutual Recognition (principles adopted in ARSO strategy)
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GRP	Good regulatory practice
GSM	Global System for Mobile communications Electrical Equipment
ICT	Information and communication technology

Abbreviations (continued)

IEC	International Electrotechnical Commission
IECEE	IEC System for Conformity Testing and Certification of Electrical Equipment
ISO	International Organization for Standardization
IT	Information technology
ITU	International Telecommunication Union
MFN	Most Favoured Nation
MRA	Mutual recognition agreement
NEPAD	New Partnership for Africa
NT	National Treatment
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-operation and Development
PTB	Physikalisch-Technische Bundesanstalt (Germany's national metrology institute)
RIA	Regulatory impact assessment
SAM	African Standardization Activities Model
SCSC	APEC Sub-Committee on Standards and Conformance
SDoC	Supplier's declaration of conformity
SPS	Sanitary and Phytosanitary Measures
START	WP.6 Team of Specialists on Standardization And Regulatory Techniques
TBT	Technical Barriers to Trade (WTO agreement)
TFTF	APEC Trade Facilitation Task Force
UN/CEFACT	United Nations Centre for Trade Facilitation and Electronic Business
UNECA	United Nations Economic Commission for Africa
UNECE	United Nations Economic Commission for Europe
UNFC	United Nations Framework Classification
VAP	Voluntary Action Plan
WP.6	UNECE Working Party on Regulatory Cooperation and Standardization Policies
WTO	World Trade Organization

Chapter 1

Standards and Norms

Ms. Lorenza Jachia¹ and Ms. Eleanor Loukass, UNECE secretariat

Introduction

When and how should Governments regulate? What can be done to eliminate technical barriers to trade? How can standards and regulations improve a country's competitiveness? The choices a country makes in these domains will fundamentally shape its integration in the world economy, as well as the protection it affords to workers and consumers from the threat of non-compliant, dangerous and counterfeit goods.

Overregulation stifles business. But when regulations are insufficient, or not sufficiently enforced, non-compliant and often dangerous goods may proliferate on the market. Good regulatory practices - and in particular "objective-based" regulations, supported by voluntary rather than mandatory measures, and developed on the basis of dialogue with stakeholders - result in an optimal mix, that ensures the achievement of regulatory objectives and at the same time reinforces competitiveness.

The regulatory environment also has important effects on international trade, as goods produced and certified in one country may have to be retested and recertified in every country to which they are exported, often to different standards and or regulatory requirements. As tariff barriers decline worldwide, technical barriers to trade have emerged as one of the major obstacles to an efficient and transparent trading system, despite the fact that the underlying objectives for safety and protection of the individual are the same or similar in each country.

¹ Secretary of the United Nations Economic Commission for Europe Working Party on Regulatory Cooperation and Standardization Policies.

The Working Party on Regulatory Cooperation and Standardization Policies strives to promote a better understanding of these issues that need to be recognized not as technical matters, but as a highly relevant area of policy.

I. Purpose

This chapter presents a short glossary of the terms that form the backbone of the regulatory environment. As such, it is useful pre-reading to the articles that appear in this publication, which illustrate how regulatory cooperation has worked in practice, across regions as well as at a global level.

Our purpose through this booklet is to assist countries in making the most appropriate regulatory choices, bearing in mind that no single approach can respond to all the needs of a country. The booklet also reviews a number of examples of effective regulatory cooperation, at a regional and at an international level, which can be regarded as best practice in this field.

II. Basic definitions

A regulatory environment consists of two types of law: public or “hard” law, including legislation developed and applicable at the national or regional and local levels, as well as technical and sectoral regulations. These specifications may be grounded in the country’s rights and obligations derived from international treaties and conventions. Private or “soft” law – in contrast – is based on standards and obligations initiated by and applicable to producers or traders of goods and services.

Standards: documents, established by consensus and approved by a recognized body, that provide, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context. A more general way of characterizing a standard is to say that it is a statement of “how to....”.

Technical regulations set criteria for the design, content, operation, and disposal of products to protect health and safety and/or minimize environmental damage. Technical regulations must be complied with, whereas compliance with standards is voluntary. Different types of regulations can overlap, e.g. health and safety rules and environmental rules in the case of pesticide use, which leave residues in food and drinking water. When economic agents move away from their domestic markets, their success or failure often hinges on how

familiar they are with regulations and standards in their export markets. Essentially, the purpose of standards is to protect the health of consumers; to keep research, information and negotiation costs low for both producers and consumers; and to safeguard honest practice.

The benefits of common standards are manifold. Standards facilitate trade because all the parties involved in the transaction speak a common language. It is the existence of standards that allows long-distance trade, because the buyer can then buy based on the description of the goods. Standards also help increase the productivity and efficiency of manufacturing as well as its quality, by providing accepted and explicit specifications for production, and by bringing the knowledge of the experts that have developed them to the production floor. The products' consistent quality also helps improve user and customer confidence.

However, standardization is a long process, spanning from the development stage to documenting, implementing and enforcing the standards and involves tangible and intangible costs. New legislative, administrative and institutional mechanisms may also be required for implementation. Using standards necessarily restricts designers' and manufacturers' freedom of choice, at the risk of stifling innovation.

International standards may not take into sufficient account variations in national situations and preferences. For this reason, it is important that countries at different levels of development participate in international standards setting, so that a balance among different sets of interests can be found.

III. Standard setting

Some of the organizations that produce international standards are well known, such as the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU). IEC covers electro-technology and related conformity assessment, ITU covers telecommunications and ISO covers nearly all other technical fields, a number of service sectors, management systems and conformity assessment.

But there are many other standards-setting bodies. For example, Codex Alimentarius develops standards in the area of food and food products, while

the UNECE develops global technical regulations regarding the safety and efficiency of motor vehicles.

In the UNECE region, some standardization organizations have a geographical focus, while others concentrate on setting sector-specific standards. The first category includes the EuroAsian Interstate Council for Standardization, Metrology and Certification (EASC) of the Commonwealth of Independent States (CIS) and the European Committee for Standardization (CEN). Sector-specific organizations include the European Telecommunications Standards Institute (ETSI).

Finally, most countries have their own standards-setting body, such as the French Organization for Standardization (AFNOR), the German Institute for Standardization (DIN), the Russian Federation's Federal Agency for Technical Regulation and Metrology, and the British Standards Institution (BSI Group).

IV. Different kind of standards

Different kinds of standards and norms may be developed not only by standards-setting institutions but also by industry, non-profit organizations, trade associations, and others. They may be developed in the self-interest of the working group and may also form the basis of contracts that are defined by large buyers, such as a supermarket chain or a large producer of consumer goods.

Governmental authorities – such as market surveillance bodies and inspection bodies – often participate in standards-setting activities so as to ensure that their objectives are met in the negotiations process. When voluntary standards are referenced in government or administrative regulations, they may become de facto mandatory.

Mandatory standards

These “mandatory standards” can relate to products, manufacturing practices, testing, packaging, transportation, and operators' qualifications. In addition to how a product must conform, a mandatory standard or technical regulation usually prescribes who must implement the required specifications, to what products they apply and under what conditions, and when conformity is required. It may also prescribe how conformity is to be established.

Business or marketing standards

Business or marketing standards define the levels of performance, quality and durability that buyers expect from a product. These expectations are often supported by commercial and consumer protection law: if the consumers comply with these standards of use, they can expect to avoid harm or damage. Recognizing which attributes a customer expects is an essential task of sales strategists. It is in a company's best interest to provide the product features anticipated by customers; manufacturers therefore tend to automatically adopt business or marketing standards.

Voluntary sustainability standards

A different kind of voluntary standards are so-called "voluntary sustainability standards (VSS)". These often combine "green" and "blue" requirements which call on the firm to respect a code of good practice as regards the protection of the environment and address both the end product and the production process; for example, guaranteeing a minimum use of pesticides and dangerous chemicals, sustainable production methods, and a code of conduct with all those employed on the premises of the firm and of its suppliers. Although their complexity and stringency can push compliance costs up to 50-80 percent of total costs, VSS nonetheless have the potential to yield general developmental benefits, including a more efficient use of resources, less pollution and higher occupational and public safety. VSS can also yield important commercial gains, at local, national, and international levels: although currently they represent only 2-3 per cent of conventional food markets, their market share is growing steadily, up to 10-15 per cent annually.

V. Assessing conformity

An important part of the regulatory environment is the conformity assessment procedure. These procedures confirm that products fulfil the requirements of standards and technical regulations. Conformity assessment consists of several activities, carried out in a predefined order, following which a decision is taken on whether or not the products conform to the standards and norms.

Conformity assessment procedures can be carried out by:

1. *The seller or producer: referred to as “first party”, usually producing a supplier’s declaration of conformity.*

The supplier’s declaration of conformity (SDoC) is a written statement produced by an equipment manufacturer or supplier that a product meets or conforms to a set of requirements. SDoC is currently the only requirement for placing on the market of the European Union (EU) a number of low-risk products (for example low-voltage electrical equipment, consumer electronics products and radio equipment).

Under this system, market access is simplified, as no third party involvement is necessary. However, the system requires a well-established system of norms and standards that the firms must have fully integrated in their production lines. In the context of international trade, recognition of SDoC by trading partners can significantly facilitate market access, especially when set against a system of mandatory conformity assessment and certification.

2. *The buyer: referred to as “second party”: for example a retailer that conducts routine checks of products on its shelves.*

Second party assessment of conformity is very common. A number of transnational corporations and large retailers routinely inspect the premises of their suppliers to ensure that the production processes respect the terms agreed in the contract. This provides the buyer with the opportunity to build trust in the supplier and to pass on knowledge and technical expertise. At the same time, this involves costs that are warranted for large and/or repeated orders.

3. *An independent body or testing service, referred to as “third party”, meaning that it is neither the seller nor the buyer,*

Finally, conformity assessment may also be carried out by a third party, a specialized body that is independent of the two parties involved in the transaction and that will base its standardized report on a set of agreed tests and procedures. In this case, conformity assessment takes the form of “certification”. Clearly, for certificates to have a value for the industry, the bodies that deliver them must be worthy of confidence, in particular in their ability to test certain standards and in their impartiality of judgement.

VI. Assessment of conformity assessment bodies

Conformity assessment bodies (CABs), therefore, also need to be assessed. The ISO Committee on Conformity Assessment (ISO/CASCO) has developed a toolbox of standards and guides on the different aspects of these assessments, which establishes confidence in the assessment body's technological equipment, personnel's competencies and independence.

There are two ways of conducting the assessments: through peer assessment and through accreditation.

VI.1 Peer assessment

Under this system, a conformity assessment body is assessed by its "peers", i.e. comparable conformity assessment bodies capable of carrying out similar tests.

A particular kind of peer assessment is the one conducted in the context of international certification schemes, such as the IEC System for Certification to Standards relating to Equipment for use in Explosive Atmospheres (IECEx System), which provides single International Certificate of Conformity that will guarantee market access with no further testing or approval in all the countries that participate in the scheme.

VI.2 Accreditation

Under this system, a body receives an attestation that it is competent to carry out specific conformity assessment tasks, and that it is independent and impartial in its evaluations. The attestation is granted by special organizations, accreditors, which have received the authority, usually from government, to assess conformity assessment bodies.

Accreditors themselves use the peer assessment method to establish confidence in each other.

VII. Regulatory cooperation: a variety of tools

Because national standards and norms reflect the preferences and the values of societies at different stages of development and of different cultures, no single set of norms could be valid worldwide.

In international trade, however, it is important that neither the standards and technical regulations, nor the procedures set into place to assess conformity with these norms should become de facto barriers to trade. For this purpose, a number of international organizations and UNECE are engaged in “regulatory cooperation”.

Regulatory cooperation is not an attempt at harmonizing regulations, or at creating new common regulatory institutions. Rather, cooperation may mean an orderly exchange of information about new developments, or the participation of both business and institutions of partner countries as stakeholders in the development of new regulatory tools.

Striving to make regulations compatible is another important area: for example, by avoiding duplication of testing procedures.

Different kinds and degrees of regulatory cooperation can and have been established, with the goal of facilitating trade, while at the same time keeping a certain level of confidence on the marketplace. Regulatory cooperation does not set out to make regulations or standards identical, but rather to reconcile methods for developing and administering standards using approaches such as pre-market harmonization, mutual recognition, equivalency, supplier’s declaration of conformity and the development of reference standards.

VII.1 Pre-market coordination

Before a product is placed on the market, its conformity to relevant norms has to be proven. Countries may set in place a number of mechanisms to coordinate the policies for the certification or registration of products before they reach the market. As one example, the rules on CE marking, that “symbolises conformity to all obligations incumbent on manufacturers for the product,” are common to all EU Member States.

VII.2 Mutual recognition

With mutual recognition, each party retains the full liberty to set its own product and production standards. However, each party is entrusted with testing products intended for export in its own territory and prior to shipment against the regulations in place in the country of destination. The importing country will accept the products from the partner without any additional testing or administrative procedures.

This broadly implies a high level of trust in the administrative, institutional and technical capacity of the partner country's conformity assessment bodies. Mutual recognition does not seek to harmonize standards but rather to ensure the free flow of goods across borders. One example of a full mutual recognition agreement is the one between Australia and New Zealand.

VII.3 Equivalency

If the partner country's standard has equivalent effects to those of a national standard, the importing country may allow goods to enter its market based on either standard. Equivalency can also refer to conformity assessment mechanisms, when a country recognizes that procedures different from its own offer the same degree of assurance.

When both partner countries in an agreement adopt as national standards norms that have been developed by international standards-setting institutions, with no substantial changes, standards are de facto equivalent, but unless this equivalency is formally recognized this does not necessarily mean that the product will not need testing or certification if it is to be marketed in the partner country.

VIII.4 Full harmonization

Full harmonization of norms and standards among trading partners is costly and may take a long time to complete. In some sectors, where products have a very short life-cycle, it may not be the optimal solution, because harmonization may take so long that the rules that result from international negotiations could well become outdated before they even enter into force. It should also be understood that harmonization of standards alone will not guarantee the free circulation of goods across borders. Even if the technical regulations that govern a particular sector are the same in two partner countries, it is still possible for each one of them to demand to verify conformity according to its own procedures and in its own testing bodies. So while harmonization will make it easier to export the same product to different markets, it will not solve all the problems that a trader may encounter.

This is why the UNECE Working Party on Regulatory Cooperation and Standardization Policies (WP.6) has introduced a novel approach to regulatory cooperation, based on the "International Model" presented in Chapter 2.

VIII. Conclusion

The public is becoming increasingly aware of the threat of the proliferation of non-compliant and dangerous products in the market and in the workplace. The number and technical complexity of products that are marketed every year is such that no country can exercise effective control by its own means exclusively. There is therefore an acute need for increased financial and human resources earmarked for effective cooperation among standardization and regulatory policymakers at an international level.

These issues are, however, still regarded as technical matters, preventing the allocation of substantial funds. Nonetheless, standards and regulations are key tools for attaining the very goals of the United Nations system: preserving the environment, safeguarding the safety of workers and consumers; promoting the transfer of knowledge and technology to developing countries; protecting the rights of intellectual property owners; reducing obstacles to the free trade of goods and services and enhancing the role of small and medium enterprises.

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Chapter 2

Regulatory Cooperation: The Case of the UNECE “International Model”

Mr. Christer Arovius, Chairperson of the Working Party on Regulatory Cooperation and Standardization Policies, United Nations Economic Commission for Europe

I. Introduction

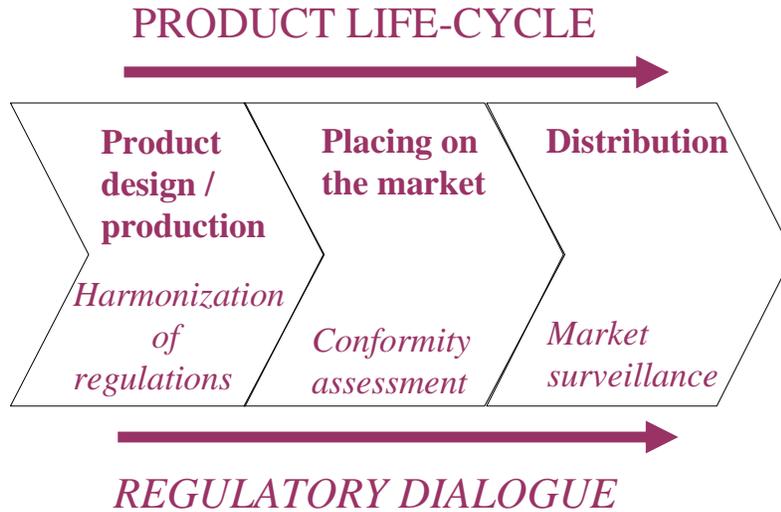
Exporting a product to more than one country can be like navigating a complex maze, because different and sometimes conflicting regulations apply. Even in sectors where regulations are similar, importing authorities may require their own tests to admit the product to their market.

Of course, regulations are also the expression of the different needs and circumstances of the countries where they apply. No one set of regulations could therefore be valid for the whole world. At the same time, it is clear that when the technical regulations that define the requirements a product must fulfil to be placed on the market are profoundly different, producers may have to invest considerable resources in becoming familiar with the requirements of the different markets and also may need to tailor their manufactures accordingly. This effectively segments markets, stifles competition and does not allow for fully exploiting economies of scale. In addition to the considerable waste of resources, this does not always deliver an optimal level of protection to the end-user.

Another important problem is that even in sectors where technical regulations are similar a certificate of conformity can still be required to enter each market. Obtaining a certificate of conformity from specific competent bodies is costly, especially for countries not equipped with internationally recognized test laboratories or certification bodies.

The activities of the UNECE Working Party on Regulatory Cooperation and Standardization Policies

To overcome these problems, the Working Party on Regulatory Cooperation and Standardization Policies (WP.6) encourages regulatory cooperation at all the stages of a product life-cycle.



When engineers design a product, they can refer to international standards and relevant norms set by public authorities. Through dialogue, we can encourage rule makers to base their regulations on international standards. This provides a common denominator to the norms that apply on different markets and reduces the need to customize each product.

In the production phase, producers and competent bodies cooperate to check that all the products that leave the factory are in conformity with relevant norms. These checks are important: but they should not need to be repeated in each country to which a product is exported. By establishing confidence among testing laboratories and certification bodies internationally, the WP.6 works to ensure that conformity assessment does not become a de facto barrier to trade.

Finally, when the product is on the market, national authorities monitor its reliability to guarantee both workers and consumers against non-compliant and hazardous products. However, the technical complexity and variety of manufactures, makes it impossible for any single country to effectively monitor its own market. The activities of the Working Party aim at strengthening cooperation among market surveillance authorities, so as to establish best practice as regards sampling and product recall.

II. The International Model in practice

One of the most important achievements of WP.6 is the “International Model”, i.e. a set of principles and procedures that countries can implement to approximate their technical regulations in a single sector; a product area or across the board. At the core of the Model is the concept of common regulatory objectives (CROs). The countries jointly define common regulatory objectives related to public health, safety or protection of the environment, preferably by making recourse to applicable international standards. They also specify how conformity should be determined (assurance by supplier’s declaration of conformity or by recognized conformity assessment bodies) and define other flanking issues (compliance clause and market surveillance provisions)

These arrangements are then transposed into national technical regulations by participating countries. The products that comply with those regulations could then use the conformity assessment already obtained (e.g. testing or certification), with no further assessment requirements in the importing country.

On the basis of the International Model, two initiatives have been undertaken on Telecom products and on Earth-Moving Machinery. In particular, common regulatory objectives were endorsed by the Working Party in 2003 for the following telecom equipment: personal computers (PCs); PC peripherals, legacy Public Switched Telephone Network (PSTN) terminals; Bluetooth; Wireless Local Area Network (WLAN); Global Standard for Mobile Telecommunication (GSM); and International Mobile Telecommunications (IMT-2000). For Earth-Moving Machinery, common regulatory objectives were endorsed in 2004. Currently, two initiatives are under way on Equipment for Explosive Environments and Pipeline Safety.

In practice, when countries wish to harmonize their technical regulations in a specific sector according to the International Model, they announce their intention through a call for participation and invite all United Nations Member

States to join their initiative. The process typically starts with a survey of existing regulations in the relevant sector in the different jurisdictions. It aims to identify possible building blocks for the common regulatory objectives.

WP.6 works closely with member States in this process, but also with standards-setting organizations, with business, civil society and international organizations. It is important that all stakeholders can share their knowledge and their concerns. In particular as regards the initiative on Equipment for explosive environments, WP.6 works with the International Electrotechnical Commission Scheme for Certification to Standards relating to equipment for use in explosive atmospheres (IECEX).

These arrangements in the end are beneficial to everybody: Governments benefit because they can find optimal tools to achieve their regulatory objectives. Industries have lower transaction costs and can compete on a fairer basis in larger markets. Finally, consumers, workers and the environment are protected more effectively from non-compliant products and the costs of trading internationally are effectively lowered.

The activities of the Working Party contribute in a concrete way to achieving the core objectives of the United Nations. In particular, in terms of reinforced protection for workers, consumers and the environment, and a regulatory environment that sustains business and lowers the costs of trade.

Chapter 3

OECD Work on Regulatory Reform and Market Openness: Reducing Trade Barriers through Good Regulatory Practice for Standards and Technical Requirements

Mr. Anthony Kleitz, Head, Trade Liberalization and Review Division, Trade Directorate, Organisation for Economic Co-operation and Development (OECD)

I. Introduction

When standards hinder trade, solutions can come from the supply side or the demand side. On the supply side, technical assistance or capacity-building may help exporters meet standards and participate in future standards-setting activities. Demand-side solutions include governments' good regulatory practice (GRP), which strengthens confidence and predictability.

Regulation responds primarily to domestic concerns. Good regulatory practice does not provide a "one size fits all" answer, but rather a basis for developing certain orientations and principles.

In well-functioning democratic market economies, governments aim to create a regulatory framework that meets policy objectives without imposing unnecessary burdens. The work of the Organisation for Economic Co-operation and Development (OECD) on trade-related regulatory reform recognizes the importance of national good regulatory practice in an open market system. Indeed, good regulatory practice may open markets to

international trade and investment. The OECD is currently overseeing country peer reviews of regulatory reform to help refine the understanding of GRP.²

The OECD has also been cooperating with the Asia-Pacific Economic Cooperation (APEC) for the past several years through a series of discussions focusing on country experiences. In 2005, APEC and the OECD jointly developed an Integrated Checklist for GRP self-assessment. That Checklist has been the basis for self-assessments presented by several APEC countries at jointly attended meetings. The Checklist is also reflected in the development of the OECD Guiding Principles for Regulatory Quality and Performance, which were endorsed by the OECD Council in 2005.

The analysis of national experiences with regulatory reform has helped develop a conceptual framework for assessing good regulatory practice. This framework seeks to improve the understanding of how countries can achieve their domestically set regulatory goals consistently with other policy goals. The framework is based on six principles for assessing the effect of regulations on market openness. These principles underpin the smooth functioning of the World Trade Organization (WTO), especially the Technical Barriers to Trade/Sanitary and Phytosanitary Measures (TBT/SPS) Agreements and the General Agreement on Trade in Services (GATS):

- Transparency
- Non-discrimination
- Avoidance of unnecessary trade restrictiveness
- Use of internationally harmonized measures
- Streamlining of conformity assessment procedures
- Integration of competition principles

² Full reviews have been conducted for 22 OECD countries (Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Mexico, Netherlands, Norway, Poland, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States) as well as two non-OECD countries (China and the Russian Federation). Others are under way.

II. Four Accepted Principles of Good Regulatory Practice

Good regulatory practice is based on four widely accepted principles.

II.1. Priority to *Objectives* Rather than *Methods*

This entails the use of voluntary, rather than mandatory, measures.

Voluntary measures:

- Are simpler to define and implement
- Encourage innovation, efficiency, flexibility in production and sourcing (and these are decisive factors in competitiveness)
- Are business- and trade-friendly in a global economy
- Can be defined by the private sector in situations involving low health or safety risks

However, high health or safety risks call for *mandatory government measures*.

Performance-based standards are preferred over product or production requirements.

II.2. Transparency in the Development and Application of Standards and Conformity Assessment

Several measures can be taken to provide for transparency in developing and applying standards and conformity assessment mechanisms:

II.2.1. Making information publicly available through the regular publication of standards, enquiry points and the Internet

Traders need to know what the rules are and where to find them. This is especially true for those who are new to the market, as they may be confronted not only with different regulatory content, but also with a different regulatory culture and administrative framework.

Therefore, existing rules must be made available through widely accessible channels, at minimum cost. The country reviews of OECD highlight best practice through the systematic publication of detailed information using both

online and traditional print media. Consolidated information about existing rules is increasingly available online, often complemented by the websites of individual ministries.

The availability of prospective new rules is less consistent, and approaches vary more between countries. Some countries communicate new proposals in a printed government register or bulletin, backed up by an online version with search facilities.

Consolidated databases for existing and prospective rules at sub-central levels of government remain rare.

Efficient enquiry points also greatly enhance transparency. The best ones feature skilled and knowledgeable personnel, fast turnaround times and optimal use of technology such as e-mail auto-responders.

One-stop electronic portals and gateways, allowing access to a wide variety of information from a single starting point, are increasingly widespread. Putting information on the Web allows for online administrative transactions and online consultation processes that enable more stakeholders to be involved.

II.2.2. Using clear definitions in rule-making procedures and consistently applying the rules helps ensure predictability

Domestic and foreign stakeholder participation in rule-making depends on clear and predictable processes. It is considered best practice to codify these processes.

Additionally, GRP includes the systematic review of existing legislation and the rigorous verification of new draft rules.

II.2.3. Holding public consultations open to all stakeholders (industry, consumers, and regulators) can help fend off regulatory capture, provide accountability and transparency, and enhance credibility and compliance

Some countries have practiced public consultation for a long time, including “notice and comment” procedures that can start well before a rule is drafted. But even where the concept is embedded in principle, the quality of the process can vary, from fully transparent, well organized, highly accessible, well timed,

and with clear lines of accountability, to wide discretion over the process. Clear guidance can help regulators improve their approach.

Where there is no embedded commitment to formalized systems, informal consultations usually exist. Although these are only partially effective in ensuring that stakeholders' voices are heard, they may serve as a stepping-stone toward more rigorous systems, and may also provide needed flexibility in reform efforts, as well as rapid responses, especially in small countries.

II.3. Effective Regulatory Impact Assessments

An effective Regulatory Impact Assessment (RIA) must first consider whether regulation is needed and identify alternative solutions. It should then analyse the costs and benefits of regulations in terms of economic performance and cost-effectiveness. Risk management must be used effectively. Risk assessment should include effects on trade, investment, and international competition, as well as enforcement mechanisms. Finally, the quality of the evaluation process must be monitored.

II.4. National and International Cooperation among Regulatory Authorities

GRP principles must be adaptable to different national contexts. Problems arising from differences in regulations (between and within countries) can be reduced through cooperation among regulatory authorities (whether nationally or internationally). Regulatory cooperation also enhances policy coherence and regulatory efficiency.

In addition, it helps regulatory authorities better align their approaches by sharing experiences and efforts. This can simplify and clarify procedures for traders, thus enhancing their efficiency and competitiveness.

Various bodies are involved in setting and implementing regulations:

- Governmental bodies: ministries, semi-independent and independent agencies.
- Private bodies: these are generally open to all interested stakeholders.
- Multilateral, plurilateral, and regional bodies.

- In the current WTO process: discussions in the TBT and SPS Committees, and as part of the Doha Development Agenda.
- Substance: proposals on GRP for “minimum consultation standards”, “common regulatory objectives” and sectors.

III. Additional Priority Areas for Strengthening Good Regulatory Practice

III.1. Demonstrating Compliance with National Regulations

Accepting foreign measures as functionally equivalent to domestic measures having the same regulatory objectives (as provided for in the WTO/ TBT and SPS Agreements) can be done through:

- Unilateral acceptance: this requires a clear definition of the criteria for acceptance.
- Mutual recognition agreements (MRAs) between Governments, between a Government and a private entity, or between private entities.
- Development of domestic capacity in conformity assessment: facilities, training, and accreditation.
- Supplier’s declaration of conformity (SDoC): this is a recurrent item of discussion in the TBT context. SDoC relies on firms’ integrity, mutual trust between regulators and firms, and effective systems of product liability and market surveillance in the supplying country. Practice shows that it is not easy to replace third-party conformity assessment with a supplier’s declaration of conformity. Progress in this area has been slow.

III.2. Necessity

In the WTO, a key issue for standards and conformity assessment procedures is to ensure they are *no more trade-restrictive than necessary*. This is specified in the TBT and SPS Agreements, but the exact nature of this obligation is vague.

III.3. Non-discrimination

In most countries, specific commitments to the principle of non-discrimination are based on Most Favoured Nation (MFN) treatment and National Treatment (NT) and flow from WTO membership. Responsibility for ensuring implementation of WTO agreements, including non-discrimination, typically lies with a country's economics or trade ministry, sometimes complemented by intergovernmental mechanisms. Countries are generally vigilant about the implementation of WTO agreements as non-compliance can be, and often is, sanctioned by the WTO dispute settlement system. Exceptions to the principle of non-discrimination (MFN exemptions and exceptions to NT) tend to be narrowly defined. MFN exemptions are subject to removal by a certain date, and NT exceptions are subject to a progressive liberalisation under the GATS. Overt discrimination is therefore at least disciplined by transparency, via notification.

Overt discrimination may be rare, but there are often perceptions of de facto discrimination or rules that may have a discriminatory effect on foreigners. This can be the case in public procurement and self-regulation by industrial associations. De facto discrimination may also simply result from an inadequate analysis of regulatory proposals and a lack of awareness of the need to develop trade-friendly regulation.

In addition, while regional and multilateral trade liberalization are basically complementary, this complementarity depends on how they are put into effect. Best practices for "open regionalism" include:

- A high level of political commitment.
- A willingness to make multilateral at least some of the preferences granted in the regional context.
- Active participation in multilateral trade liberalization initiatives.
- Transparent management of regional agreements.
- The availability of avenues for pursuing complaints.

With respect to foreign direct investment and foreign ownership, developments have been generally positive. Most OECD countries maintain some nationality-based restrictions on foreign investment, typically in key sectors such as

telecommunications. Some countries also regulate investment through the use of notification and review provisions. However, the overall mood has changed from heavy scrutiny to more liberal policies seeking to attract investment in an era marked by the relative scarcity of global investment resources, and even competition to attract investment based on various incentives.

III.4. Avoidance of Unnecessary Trade Restrictiveness

Key issues picked up under market openness include the effective use of Regulatory Impact Assessments (RIAs)³ and the reduction of administrative burdens on business.

Many OECD countries rely on RIAs to avoid unnecessary trade restrictiveness. RIAs can help policymakers find, among the array of equally efficient regulatory alternatives available for attaining a particular regulatory objective, a solution that causes the least distortions to trade. Administrative simplification is crucial for market openness: the administrative burden can be heavier for international players, even if in principle they must meet the same requirements as domestic players. Indeed, firms that operate in a variety of markets find it more difficult and costly to collect information, and understand and comply with administrative requirements that differ from country to country.

The simplification and harmonization of international trade procedures is another important tool to help Governments minimize unnecessary trade restrictiveness. Procedures relating to customs clearance can often impose significant delays and costs on traders. Regulatory reform in this area seeks to reconcile the efficient pursuit of different social and economic objectives (such as revenue collection, health and safety protection, and the prevention of illegal practices) with a simpler way of doing business, streamlining documentary requirements and accelerating product clearance.

Senior levels of Government and the political leadership need to encourage better communication between trade and regulatory officials. Trade policy bodies are more likely to weigh in during policy development than in the day-to-day business of rule-making. More proactive involvement at all stages,

³ Considerable work has been undertaken at OECD on RIAs, including an exercise in 2006-2007 that examined more closely national experiences in developed and developing countries with assessing trade and investment effects.

especially through RIAs, could make a positive difference in ensuring that the trade perspective is taken into account. Working-level relationships between trade and regulatory authorities (including competition authorities and sub-central levels of Government) could also be strengthened.

III.5. Use of Internationally Harmonized Measures

Internationally harmonized standards can be used in two ways: they can be relied upon as the basis for domestic regulations; or they can merely be accepted as equivalent to domestic measures, even where these may differ, as long as they meet the country's underlying regulatory objective. Both approaches are enshrined in WTO rules yet their practical application is inconclusive.

III.6. Streamlining Conformity Assessment Procedures

Approaches to streamlining conformity assessment to avoid unnecessary duplication of requirements vary considerably across the OECD. This area is highly country- and situation-specific.

The mutual recognition of the results of conformity assessment procedures has been growing rapidly and is the subject of considerable negotiations. A web of mutual recognition agreements is currently under negotiation or at the implementation phase. Such schemes can work well where there is a basic complementarity in regulatory approaches. This is a necessary ingredient of success. Success also depends heavily on successful implementation, which requires a long phase of confidence-building and information exchange.

Some see the use of suppliers' declarations of conformity as a particularly promising approach, offering greater flexibility in meeting conformity assessment requirements. This approach relies heavily on a mix of professional integrity, mutual trust, and a willingness by the firm to accept full risk if problems arise.

III.7. Application of Competition Principles

Anticompetitive practices by private firms can hinder the efficient functioning of international markets. Some such practices include hard-core cartel conduct, abuses of dominant position, or attempts to monopolize a given market. These activities can restrict market access by seriously undermining the efforts of

firms to enter new markets. For this reason, a commitment to sound competition principles is crucial in providing the appropriate conditions for genuine market openness.

The application of competition principles has been tested in the country reviews against two criteria: overall commitment to the vigorous application of competition principles from an international perspective (and, in particular, through the existence of open, effective complaint procedures) and (as an outcome of the former) effective access to domestic economic activities.

Chapter 4

International and Regional Approaches to Regulatory Cooperation: The European Commission's Better Regulation Package

Ms. Liliana Brykman, DG Enterprise, European Commission

I. Introduction

The growth of the European Union (EU) over the last half-century has produced a body of Community legislation known as the *acquis communautaire*. This legislation has replaced more than 27 sets of national rules, providing businesses with legal certainty in cross-border activities and a level playing field throughout the European community. It has been essential in establishing the single market.

Overregulation can drive up costs, hamper business, channel resources away from more efficient uses, and in some cases hinder innovation, productivity, and growth. The cost of regulation, and in particular the cumulative impact of individual pieces of legislation, is of understandable concern to EU enterprises and industries who must work their way through a complex legislative jungle.

The challenge is thus to achieve a regulatory environment that is necessary, simple and effective.

II. Criticisms of the current regulatory environment in the European Union

II.1. Too burdensome

The current Community regulatory environment is often criticized as being overly complex, bureaucratic and burdensome. Economic operators often complain that European Union rules hinder growth rather than stimulate competitiveness.

Among the Community *acquis*, there are undoubtedly some very obsolete texts, which deserve to be retired. Such texts must of course be tracked down and repealed. However, the bulk of the simplification potential lies elsewhere.

II.2. Too many inconsistencies

Any regulatory activity necessarily develops in a piecemeal fashion. As a result, texts are not always as consistent and coherent as they ideally should be. Inconsistencies can lead to divergent interpretations among Member States and a lack of clarity for operators. With time, certain areas have transformed into genuine legal labyrinths. The waste sector is a good example of how legislation can pile up over a period of 30 years. Although each act was no doubt legitimate when it was adopted, taken together, this body of legislation is not consistent, streamlined, or effective, nor does it contribute to the efficient functioning of European businesses. In such a situation, it is the Commission's duty to consolidate these rules and replace them with new, streamlined ones.

II.3. Too detailed

Similarly, Community legislation too often includes detailed technical specifications and standards. Owing to the slowness with which these can be adapted to new technical realities, they often impede or even prevent innovation. This type of problem can be avoided by making a wider use of the new regulatory framework for the marketing of goods.⁴

⁴ The European Commission's New Approach to technical harmonization and standardization is based on the following principles:

III. The Commission's Better Regulation policy

III.1. Background

The central policy priority of the Commission is improving the regulatory environment. This is a key element of the Lisbon strategy for growth and jobs: firstly, because removing unnecessary red tape will help create the economic framework that meets the needs of European citizens and businesses. Secondly, because better regulation supports the European project by ensuring that the regulatory process is of the highest quality and that subsidiarity⁵ is fully respected. In essence, better regulation is one of the key EU tools to show that Brussels is listening to its citizens.

III.2. Implementation of Better Regulation policy

Elements of the "Better Regulation" agenda have already been developed and implemented for some years now. The Commission launched its first Better Regulation Action Plan in 2002, followed by the framework of its first simplification programme in February 2003. Considerable work has also been carried out to improve the accessibility, readability, and consistency of the body of Community legislation. The Better Regulation agenda aims at delivering high-quality new initiatives and to modernize and simplify the stock of existing legislation. To that end, the European Commission has opted for an integrated approach covering the entire legislative cycle: legislation being developed, legislation up for adoption, and existing legislation.

Overall, the Better Regulation agenda has been put on a firm basis and proceeds with strong momentum. It covers a range of mutually reinforcing actions:

- (1) Legislative harmonization is limited to essential requirements that products placed on the Community market must meet in order to benefit from free movement within the single market.
- (2) The technical specifications of products meeting the requirements in the directives are set forth in the harmonized standards.
- (3) Application of harmonized or other standards remains voluntary, and the manufacturer may always use other technical specifications to meet the requirements.
- (4) Products manufactured in compliance with harmonized standards are presumed to be in conformity with the relevant essential requirements.

⁵ Under the principle of subsidiarity, matters are to be handled by the smallest (or the lowest) competent authority.

- Simplification of the existing legislation.
- Reducing administrative burdens.
- Using impact assessment to deliver new high-quality initiatives.

III.2.1. Simplification of the existing legislation

In the framework of its Better Regulation policy, the Commission adopted a new strategy for the simplification of the regulatory environment in October 2005. The Commission is implementing a vast programme to *simplify and modernise* existing EU legislation to achieve policy aims in a less burdensome way. Together with its twin programme for reducing administrative burdens, the strategy for simplifying the regulatory environment sets out an ambitious programme to update, modernize and simplify the EU regulatory framework.

What is new today is the use of this agenda as a key tool to promote the European economy's competitiveness. Simplification is no longer merely about improving legislation's accessibility or legibility, but rather a necessary modification of the regulatory approach to enhance competitiveness. Verifying the consistency and coherence of each sector's rules will help ensure that any adverse effects on competitiveness are proportionate to the policy aims.

III.2.2. Reducing administrative burdens

In March 2007 the European Council endorsed the Commission's ambitious programme to *cut 25% of administrative burdens* arising from EU legislation by 2012. The Action Programme builds on the common methodology to measure administrative costs in EU legislative proposals.

A key part of the Action Programme consists of a large-scale measurement of administrative burdens incurred by businesses in meeting legal obligations to provide information stemming from EU legislation and the national implementation thereof.

III.2.3. Using impact assessment to deliver new high-quality initiatives

Firstly, the Commission has strengthened the competitiveness element of impact assessment. Impact assessment is a powerful tool that can ensure a comprehensive analysis of a regulation's economic, social and environmental impacts, and provide key insights to the policymaking process. This process is

supported by the Commission's strict consultation standards, which guarantee a transparent process with the involvement of all stakeholders.

Impact assessments are required since January 2005 for all proposals in the priority list of the Commission's Legislative Working Programme. To date, the Commission has completed over 300 impact assessments.

The Impact Assessment will be further improved through the revision of the Impact assessment Guidelines by the early 2009.

IV. The Commission's actions to improve the existing regulatory framework

IV.1. Strategy for simplification

The new strategy on the simplification of the regulatory environment develops methodologies for modernizing the body of Community legislation. The most visible component is however the series of commitments that it contains: a rolling programme of about 144 initiatives for the period 2005-2008. About 130 initiatives have already been adopted by the Commission. Pursuing its efforts in delivering the simplification strategy, the Commission intends to present 33 initiatives for 2009.

This list of sectors for simplification is anchored in stakeholders' practical experience. It is based on the findings of an intensive consultation process that involved Member States, businesses and EU citizens themselves. The merits of each suggestion for simplification were thoroughly analysed by the Commission's experts and only realistic or balanced suggestions retained.

The simplification programme is based on the following tools:

- Repeal of EU legislation that is unnecessary, irrelevant or obsolete.
- Codification both to reduce the volume of EU legislation and to provide more readable and legally secure texts, thus facilitating transparency and enforcement.
- Recasting to simultaneously amend and codify a legal act. Priority is given to the merging of legal acts to maximize

synergies, minimize overlaps and redundancies, and increase the clarity and consistency of EU rules.

- Co-regulation to address certain policy objectives more cost-efficiently and more expediently than classical legislative tools.
- Reinforcement of the use of information technology (IT) to enable the EU legal and operational framework to better tap their simplification potential by supporting simplified and paperless procedures. Secure, integrated e-government can help reduce the administrative burden by speeding up procedures, reducing paper flows and lowering the risk of error, thus contributing to a more uniform application of the law.

IV.2. Using other institutions' regulations

It is striking that, in some instances, thousands of products are covered by only 27 pieces of legislation, while on the other hand a single product can sometimes be subject to countless rules. In an effort to simplify the EU regulatory framework, the Commission sometimes eliminates certain of its own directives, replacing them with regulations developed by other institutions. For example, the Commission made a proposal which aims at simplifying EC legislation in the domain of vehicle safety by replacing existing legislation in the area into one main Regulation. The proposal will lead to the repeal of some 50 separate Directives, which could be replaced, where appropriate, by references to UNECE regulations.

IV.3. Increasing the use of horizontal rules and principles

In other cases, horizontal rules and principles (such as the principle of mutual recognition⁶ and competition rules) can suitably replace the need for detailed provisions. For instance, precious metals are not regulated at the EU level, as the free movement of jewellery can be organized on the basis of the mutual recognition of national legislation, despite different markings and diverse consumer information requirements. If necessary, the Commission has the

⁶ In this regard the Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State has recently been adopted.

option of launching infringement procedures to enforce this recognition principle.

V. Misperceptions of the European Union's regulatory role

V.1. European Union rules always hinder business

Firstly, European Union rules do not necessarily translate to costs and barriers for business. The establishment of the internal market removed internal trade barriers, stimulated competition and enabled market operators to achieve substantial economies of scale. These favourable conditions have concomitant benefits for consumers in terms of wider choice, lower prices and greater price transparency (especially within the Euro zone).

V.2. Better regulation is deregulation

Better regulation is not deregulation. The EU social and environmental standards are not up for negotiation. The Commission's competitiveness policy will never override other important policy objectives enshrined in EU legislation. Furthermore, in sectors such as food security, the administrative burden imposed on business is clearly much more than a matter of costs.

Indeed, Community harmonized requirements can bring substantial benefits for small business actors, as fixed limits for safe food or established lists of approved substances relieve them from carrying out expensive safety evaluations. The Commission therefore targets for revision legislation that is disproportionately burdensome and complex in relation to the public interests it aims to safeguard. Only where public interests can be equally well served by simpler, lighter, more proportionate means will legislation be modified or repealed. Better regulation, not deregulation, is the top priority of the Commission.

V.3. Example of a review of existing regulation

Here is a concrete example of the Commission's rolling programme in the area of trade facilitation. In the context of the Electronic Customs Initiative, the modernized Customs Code will create the legal basis for electronic data exchange between all stakeholders involved in customs operations (e.g. traders, Customs administrations, border agencies such as police or veterinary authorities). International trade will be facilitated by streamlined and simplified

Customs procedures and rules, automated and interlinked customs systems, and the close cooperation of all authorities and agencies involved in the movement of goods across Community borders.

VI. Conclusion

These endeavours need more than just the Commission's support. The common objective of promoting a better regulatory environment for EU businesses and citizens can only be met if all institutions and the Member States wholeheartedly support the strategy and assume full responsibility for their share of the effort. Indeed, while the Commission has been taking the initiative in designing proposals for better regulation, decision-making, - and hence the responsibility to deliver - lies with the European Parliament and the Member States. It is thus essential that the simplification of Commission proposals is preserved - or reinforced - throughout the Community decision-making process.

The credibility of the Commission's actions to simplify the Community rulebook depends on delivery and tangible results, not on policy statements or declarations of intent. Achieving results in the area of better regulation requires a good deal of political will to overcome the forces of inertia from the administration side, and conservatism or wariness from the business side. Indeed, business often prefers suboptimal legislation to regulatory risk. Moreover, certain vested interests sometimes live quite comfortably behind the nice barrier to entry that poor legislation provides them, and thus are not necessarily keen to see these rules improved.

A final point: reforming the way in which the Commission regulates in Europe is not a one-off event. It is a process that can only succeed with the stamina and energy to pursue it over a number of years.

Chapter 5

Regulatory and Standardization Cooperation among Asia-Pacific Economic Cooperation Member Economies

Mr. Yuki Hayashi, Ministry of Economy, Trade and Industry, Japan

I. Standards alignment work in the Asia-Pacific Economic Cooperation

I.1. Background

The Asia-Pacific Economic Cooperation (APEC) is the forum for facilitating economic growth, cooperation, trade and investment in the Asia-Pacific region. Established in 1989, its decisions are reached by consensus and are non-binding. APEC membership confers no treaty obligations.

APEC has 21 member economies: Australia; Brunei Darussalam; Canada; Chile; People's Republic of China; Hong Kong, China; Indonesia; Japan; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; Philippines; Republic of Korea; Russia; Singapore; Chinese Taipei; Thailand; United States; and Viet Nam.

APEC seeks to enhance economic growth, create prosperity and reduce trade barriers across the Asia-Pacific region.

I.2. “Bogor Goals”

In 1994, APEC members’ leaders adopted the “Bogor Goals” of achieving free and open trade and investment in the Asia-Pacific region by 2010 for industrialized economies, and by 2020 for developing economies.

1.3. Sub-Committee on standards and conformance

The APEC Sub-Committee on Standards and Conformance (SCSC) was established in 1994. Its role is to assist the APEC Committee on Trade and Investment, promote cooperation on standards and conformance, reduce the negative effects of standards on trade and encourage greater alignment with international standards.

To these ends, SCSC works primarily on aligning APEC members' standards with international standards, improving recognition of conformity assessment, and developing the APEC Mutual Recognition Arrangement. SCSC is also involved in technical infrastructure development and issues related to the WTO/TBT and SPS agreements.

1.4. Alignment with international standards: the Voluntary Action Plan

1.4.1. 2005 Voluntary Action Plan – Report on comprehensive review of APEC VAP activity

The original four priority areas of the Voluntary Action Plan (VAP) were completed in 1998. These were: electrical and electronic appliances, food labelling, rubber products and machinery.

Work in several additional priority areas was conducted thereafter and completed in 2005: electrical and electronic equipment (IEC60335s and CISPR standards⁷), safety of IT equipment (IEC60950s), and standards and guides on conformity assessment and management systems.

The results of the 2005 Comprehensive Review of APEC VAP activity are summarized in the following table:

⁷ Standards of the International Special Committee on Radio Interference.

Voluntary Action Plan Alignment, 2005

		Area	No. of economies with 100% alignment
			Total = 16
Original priority areas	}	Electrical and electronic appliances	15
		Food labelling	All
		Rubber products	14
		Machinery	15
Additional priority areas	}	E/E Equipment safety (IEC 60335s)	All
		E/E Equipment EMS (CISPRs)	All
		IT Equipment safety (IEC 60950s)	All
		Standards and guides on conformity assessment and management systems	All

Sixteen of the 21 member economies of APEC have updated and submitted their 2005 VAP reports.

1.4.2. Japan's proposal on new Voluntary Action Plan alignment work

Japan proposed a new project for voluntary alignment based on 296 electrical standards used under the IECEE CB scheme,⁸ with a target alignment date of 2010. Under Japan's initial proposal, the new target standards for the VAP were the standards that at least one economy had adopted or referred to as technical regulations in its mandatory regime.

After the discussions in SCSC, Japan modified its proposal as follows:

⁸ This is the Certification Body scheme of the International Electrotechnical Commission System for Conformity Testing and Certification of Electrotechnical Equipment and Components.

- As a first priority, only those standards referenced under regulations in two or more economies would be included in the VAP survey from 2006. This would reduce the number of standards to be reported on to 168.
- Later, the SCSC could make a decision regarding the remaining 128 standards.

This work is currently under way.

As of January 2006, nine member economies had aligned their corresponding domestic standards/technical regulations with international standards. As of January 2008, a further eight had done so.

II. Good regulatory practice

II.1. Principles and features

Since 1998, APEC has been holding seminars and expert meetings to discuss good regulatory practice (GRP). In September 2000, two basic principles of GRP and a description of the features of good regulation were agreed. Both the principles and the features are non-binding and are meant to serve as a reference for regulatory policymakers.

II.2. Principles of good regulatory practice

Under the principles of GRP agreed at APEC meetings, alternative mechanisms should be considered before implementing mandatory requirements. Such alternative mechanisms include: reliance on systems of legal recourse; liability laws and liability insurance schemes; economic instruments such as taxes, fees and charges; education programs; co-regulation; voluntary standards; self-regulation; and codes of practice.

II.3. Features of good regulation

APEC member economies agree that good regulations:

- Are transparent and non-discriminatory.
- Are performance-based.

- Reference international standards or internationally aligned standards where applicable, taking into account health, safety, technological, climate, developmental and other factors.
- Reference only those standards, or parts thereof, necessary to achieve the legitimate regulatory objective.
- Are subject to review to maintain flexibility and adaptability to modern needs.

II.4. Information notes

In 2000, SCSC also issued “Information Notes on GRP for Technical Regulations”. Since then, five seminars have been held on the subject. These seminars allowed APEC to gather case studies, which have been added to the Information Notes. APEC member economies then share this information with national policymakers.

III. The trade facilitation task force and its action plan

III.1. Trade facilitation task force

In 2005, SCSC decided to formalize its information exchange forum by creating a Trade Facilitation Task Force (TFTF). The TFTF promotes information exchange among the APEC member economies about their specific trade concerns. It consists of two major pillars: trade and technical.

III.2. Action plan in 2006

In February 2006, the TFTF held a seminar on product-related environmental regulations in the EU.

The TFTF and APEC Chemical Dialogue Steering Group are planning a joint workshop.

By the end of 2006, the TFTF will complete the capacity-building project, “e-Learning on the Practical Use of Environmental Product Standards”.

In general, the TFTF will continue to facilitate the exchange of information between APEC member economies.

Chapter 6

Standards Harmonization in Africa for the Common Good

Mr. Damian Udenna Agbanelo, Secretary General, African Organization for Standardization (ARSO)

I. Introduction

Standardization and measurement systems are an integral part of the 1991 Abuja Treaty establishing the African Economic Community. Market access and consumer protection are priorities to facilitate market integration and wealth creation programmes of the African Union (AU), as well as United Nations Millennium Development Goals (UNMDG). Chapter XI, Article 67 of the 1991 Abuja Treaty conveyed the agreement and the complementary responsibilities of AU member States to achieve standardization-led market access and consumer protection. The Lagos Plan of Action 1980 – 2000 detailed the mandate of an African Organization for Standardization (ARSO) pursuant to these development objectives.

II. ARSO re-engineered

A strategic repositioning of ARSO was initiated in the 2003-2005: “Re-engineering ARSO Process” (REAP), aimed at optimizing the dividends of standardization in order to improve intra-African and global trade.

REAP was sponsored by the Swedish International Development Cooperation Agency. Being stakeholder-driven, REAP not only improved the perception of ARSO but also informed African Union organs of its critical responsibilities in standardization coordination in Africa. Its aim is to transform the lack of common quality level standards in Africa to common quality levels through standards harmonization, an environment conducive to standardization and regulation while aligning the technical regulations to international standards.

III. Tree-growth Standardization Activities Model

Following the completion of the re-engineering process, ARSO adopted and is implementing a programme called Tree-growth Standardization Activities Model (TSAM).

As a wealth creation option, TSAM is a tool for building cost-effectiveness and consensus towards an African Standardization Roadmap and Ownership. It aims at fast-tracking common value attributes and thus will contribute to the realisation of a “one-economy” philosophy advocated by the 1991 Abuja Treaty.

The need for inclusive and evolving standards harmonization built on consensus was the objective for adopting and implementing this new model by ARSO in Africa.

IV. Call for standards harmonization in Africa

In its Resolution 79 on the African Organization for Standardization, the Rwanda 2004 Second Ordinary Session of the African Union Conference of Ministers of Trade, Customs and Immigration agreed to:

- Encourage country membership and participation in ARSO and international standardization activities;
- Urge African Union Member States to commit adequate resources to standardization, conformity assessment and related matters;
- Promote the development of a culture of quality in the respective member countries;
- Apply the principles of harmonization of standards as laid down in the WTO/TBT and SPS Agreements.

Similarly, the 17th Conference of African Union Ministers of Industry (CAMI 17), held in Egypt in 2006, noted the lack of a common quality level as the greatest hindrance to intra-African trade. CAMI 17, accordingly, adopted Resolution 45c of the Report of its Intergovernmental Committee of Experts: “We reiterate the commitment of our governments and call on our development partners to urgently strengthen the African standardization and conformity assessment infrastructure and increase the harmonization of standards in Africa.

Action is needed at the national, regional and continental levels, and should be based on UNIDO recognized experience in Africa, as exemplified by the West African Economic and Monetary Union (UEMOA) quality programme. There should be co-operation with regional and international technical agencies, such as ARSO, ISO, the International Laboratory Accreditation Council (ILAC), the International Accreditation Federation (IAT), and the International Organisation for Legal Metrology (OIML)”.

Clearly, the negative effect of standards diversity in Africa was evident from the many calls for the harmonization of standards which featured prominently in these different but complementary resolutions of AU Organs.

V. Evolution of the African Standards Harmonization Model

In response to these political calls and support for harmonization of standards, ARSO developed a mechanism for fast-tracking the conversion of standards diversity in African countries into a common quality level. This “unity-in-purpose” mechanism is the ARSO African Standards Harmonization Model (ARSO ASHAM).

ASHAM was drafted by the Standardization Expert Work Group in Egypt in 2007. The draft Model was ratified by the 16th ARSO General Assembly for implementation (Sudan, 2007).

Modelled on the WTO/TBT Code of Good Practice, ARSO ASHAM is human-centred, market-driven, sustainable, participatory, communicative, innovative, built on existing best African practices, flexible and dynamic.

Developed and ratified for standards harmonization within the subregional and regional levels, ARSO ASHAM is being recommended to the subregional economic communities for adoption and implementation. This is being pursued through a Memorandum of Understanding between the subregional economic communities and ARSO. TSAM will also facilitate this.

VI. ARSO ASHAM development objectives

Pursuant to the AU one-economy strategy through improved market access and consumer protection, ARSO ASHAM aims to:

- Promote and facilitate intra-African and global trade.
- Assist in developing awareness at the policy-making level.
- Support the harmonization of technical regulations.
- Facilitate technology transfer.
- Reinforce mechanism needed throughout the harmonization process in Africa.
- Create confidence and/or transparency among African Union member States and the international community to accept harmonised subregional economic communities standards as African Standards.
- Promote African Standardization Roadmap and Ownership.
- Encourage consultation and agreement concerning standardization undertakings in Africa for cost-effectiveness.

As put forward in the resolutions of AU organs, for the success of ARSO ASHAM, it is essential to establish greater synergies among stakeholders and their operational relationship with standardization bodies, and in particular ARSO. African Advisory Committee on Competitive Tools, chaired by African Union Department of Trade and Industry, Commission of the African Union, and comprising representative of the subregional economic communities, creates one such synergy and operational relationships with ARSO for the meeting of ARSO ASHAM defined objectives.

ARSO membership in the Industry, Trade and Market Access Cluster of the United Nations agencies in Africa (convened by UNIDO) exemplifies another synergy aimed at achieving United Nations Millennium Development Goals in Africa.

United Nations Environmental Programme and ARSO cooperation for the implementation of African Ecolabelling Mechanism was facilitated by ARSO ASHAM.

VII. What ARSO is not*ARSO is not an accreditation body*

The Organization will encourage and assist in the coordination of activities for the establishment of an African Accreditation body.

ARSO is not a certification/conformity assessment agency

The Organization harmonizes conformity assessment procedures to facilitate/encourage recognition of quality marks among African Union member States.

VIII. Conclusion

ARSO ASHAM and its implementation in Africa constitute necessary inputs for improving intra-African and global trade for the common good.

The invaluable cooperation between the UNECE Working Party on Regulatory Cooperation and Standardization Policies and ARSO is welcomed and appreciated.

