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Item 5 of the provisional agenda

Standardization and regulatory practice

Report on regulatory developments in the chemical industry and their impact on trade

Submitted by the delegation of the Russian Federation*,**

1. One of the goals of the establishment of the Working Party on Regulatory Cooperation and Standardization Policies of the ECE Committee on Trade was to facilitate the process of eliminating technical barriers to international trade on the basis of universally recognized international rules and standards.
2. Since the Working Party was established, 13 recommendations have been adopted, including 1 entitled “International Model for Technical Harmonization”. In the opinion of the Working Party’s experts, the efforts made under the WTO TBT Agreement to eliminate technical barriers to trade could be further developed by means of a general mechanism for linking internationally recognized technical regulations and international standards on the basis of best principles of technical regulatory administration. However, no assessment has been made to date of the implementation of the recommendations, that is, the extent to which they are being applied by government and civil society structures in the ECE member countries and the degree to which they have been successful.
3. In this connection, the Russian Federation wishes to propose that the Working Party make use of another mechanism at its disposal and conduct an analysis of the problems that arise at international and regional level as a result of inadequate monitoring of the application of best practices in administrative decision-making on technical regulatory

* This document was submitted after the due date owing to lack of resources.

** The Working Party invited regional organizations to provide updated information on their regulatory cooperation activities and projects. It requested the secretariat to include these reports in the documentation for the next plenary session.

issues. Often, it is not only, or not so much, the requirements of the technical regulations themselves that become insurmountable barriers to market access as the lack of cooperation between national and international technical specialists, as well as the paucity of timely and adequate methodological guidelines, which can present a serious threat to the establishment of an open, equitable, predictable and non-discriminatory system of international trade.

4. In the past four years, representatives of the Russian Federation have twice sought information on this topic from the Working Party. Thus, at the ECE International Forum on a Common Regulatory Language for Global Trade (June 2006), during the debate on good regulatory practices, the importance of identifying and promoting good regulatory practices and approaches among interested ECE member States was noted. The representatives of the Russian Federation submitted to ECE a set of questions, which was distributed to START Team participants. Informal replies were received from the European Commission experts, as well as comments from the Chairperson of ISO/TC 127 (Earth-Moving Machinery). The discussion was not pursued.

5. At the November 2007 session of WP.6, the representatives of the Russian Tube and Pipe Industry Development Fund recounted the problems encountered in implementing regulation 2006/1907/EC concerning registration, evaluation, authorization and restriction of chemicals (REACH). The Fund's experts made multilayered proposals, including for the initiation within the Working Party of monitoring and evaluation of the implementation of REACH. Regrettably, no follow-up was given to these proposals.

6. In this connection, taking into account the reports prepared by international organizations, first and foremost UNCTAD and WTO, noting the increase in the use of technical regulations as protectionist barriers, the Russian Federation wishes once again to broach the subject of good technical regulatory practices.

7. The following examples may be cited demonstrating the need to conduct such work. The Russian Federation appreciates the efforts of the European Commission in submitting to the sessions of the Working Party reports on the implementation of new chemical legislation. However, it wishes to request the Commission also to give consideration in future to the problems faced by third-country exporters on account of the new requirements for the export of chemicals to the European Union. In this connection, it invites the Commission to work with it to seek effective ways to eliminate those problems, with a view to building on that experience to develop, or review, relevant international recommendations on technical regulatory administration.

8. The Russian Federation points out that this proposal is fully consistent with one of the key tasks of the ECE Committee on Trade, namely, the establishment of a predictable, transparent and harmonized regulatory framework for trade and entrepreneurship through the creation of mechanisms to coordinate regulations and develop, introduce and apply standardization policies, international standards and advanced technical regulatory methods.

9. Technical regulation specialists bear responsibility for defining and adopting measures to minimize the adverse effects on entrepreneurs of policy in this area. Regulatory practices are thus quite an important instrument, which may have a negative impact on trade.

10. Despite the fact that the REACH regulation was prepared over several years, its entry into force raised serious concern among third-country exporters. Discussion focused on the appearance of a new intermediary — single representative — for chemical exports to the European Union, the reliability and competence of this intermediary, and the problems connected with the lack of timely, high-quality and reliable information from the authorized European Union bodies concerning the new requirements for chemical imports. In addition to these problems, there were gaps in the coordination of activities between supranational

and national authorities. One such example is the recent case of the classification of borderline metal products. As early as one and a half years ago, anticipating such a scenario, manufacturers prepared a position on this type of product and transmitted it to the European Chemical Agency (ECHA). ECHA refused to provide an official clarification on the issue and merely concurred verbally with the manufacturers. However, in early 2010, the REACH enforcement body of one European Union member country expressed its view on the issue, which differed from the position agreed previously. Such regulatory conflicts create a serious burden for third-country exporters, who, unable to adapt quickly to the differing requirements of regulatory bodies, are forced simply to redirect their shipments to other markets.

11. Another example is the classification of 140 nickel chlorides as carcinogenic without sufficient scientific grounds for so doing. In this case, the transposition of a decision taken in one European Union member country without subsequent appropriate evaluation by a supranational body led to legal action being brought by producers. This decision will also have adverse effects on trade in these substances, since it has resulted in a significant redirection of trade flows and in technological change.

12. At the June 2010 meeting of the WTO TBT Committee, representatives of the European Union announced the launching of a project to evaluate the implementation of REACH. One aspect of this work will be the gathering of data from interested parties on the problems they have encountered in fulfilling the regulation's requirements.

13. At the last session of the Working Party, the Russian side proposed that such work should be undertaken within WP.6. At this stage, there is probably no point in duplicating the European Union project. It therefore seems advisable for the Working Party, for its part, to develop methodological recommendations for a new approach to evaluating the impact on trade of technical regulatory administration.
