



Kommerskollegium

National Board of Trade

The contribution of trade to a new EU growth strategy

Ideas for a more open European economy

Part 3

Measures for enhanced co-operation in the area of technical rules

By

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The year 2010 is approaching and the Lisbon strategy will have to be replaced by a new strategy. The Swedish Foreign Ministry has asked the Swedish National Board of Trade to discuss ideas for external commercial policies to support the reforms carried out domestically to increase growth. This can be called an “external dimension” of a new strategy. For this purpose we have written eight reports, covering a range of areas, and a summary. You can find it all at www.kommers.se/trade&growth

This paper is aimed at contributing to the base for discussion on the Lisbon external dimension, on what can be done in the EU in order to facilitate trade in goods and especially remove unnecessary technical barriers to trade (TBTs). To promote discussion we propose the following:

Promote increased notification according to the TBT Agreement

There is no “case law” on how to interpret the TBT Agreement. In order to increase the coherence between the EU Member States a *guide* could be elaborated on how the Commission and the Member States shall *interpret the TBT Agreement’s notification obligation and justification of technical rules.*

Early information on new regulations to the TBT Committee

In order to increase the awareness of trading partners the EU – and its Member States– could *inform the TBT Committee* about planned measures *at an earlier stage* than drafts within the notification procedure.

Identify new sectors for EU harmonisation

***New EU harmonisation projects* should be considered in areas with a high amount of TBTs, e.g. in areas with new different national technical regulations.**

Regulatory reform within the harmonised area

In order to facilitate trade in goods within the single market and internationally, the EU could initiate a screening project in the harmonised area in order to *identify previously harmonised legislation to be transformed to legislation according to the “New Approach” regulatory technique.*

Encourage the effort to increase the identity between European and international standards

In order to increase the level of identity between European standards and ISO and IEC standards

- i) *an evaluation and a possible review for increased efficiency of the Vienna Agreement* could be suggested**
- ii) CEN and CENELEC could be entrusted with making a *screening of their existing European standards* with the view to increase the identity between European standards and ISO and IEC standards.**

Unilateral recognition of CABs from third countries

As a complement to existing mutual recognition agreements (MRAs), the EU should further explore the possibility to *unilaterally recognise competent conformity assessment bodies (CABs) from third countries.*

New initiatives for plurilateral arrangements for full market access

The “International Model” should be used for initiating plurilateral arrangements between the EU/its Member States and trading partners in all existing “New Approach” areas in order to achieve free circulation/full market access.

Technical assistance to developing countries

Many developing countries encounter problems with the implementation of their obligations according to the TBT Agreement. Furthermore, the potentially adverse effect on trade from developing countries caused by technical harmonisation and new technical rules in developed countries calls for special treatment.

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1. Introduction

Trade and economic integration increases productivity. Liberalisation and facilitation of trade should therefore be the top priority for countries who want to increase productivity. The Single Market Programme in the EU is a good example of economic integration increasing productivity and competitiveness. The macroeconomic effects of the single market programme in 2006 have been calculated to increase EU GDP by 2.2 percent and total employment by 1.4 percent, or 2.75 million new jobs.¹

Despite the positive productivity effects emanating from economic integration, the EU is lagging behind in competitiveness compared to the US. The *European Competitiveness Report (2007)*² shows that for more than a decade, the competitiveness gap between the EU and US has widened. Expressed in terms of GDP per hour worked, the productivity in the US was 26 percent higher than in the EU in 2005. The last competitiveness report, however, shows a decrease of the competitiveness gap in 2006 and in the first half of 2007. Nevertheless the remaining size of the gap calls for further actions to increase productivity in the EU.

A number of initiatives have been taken to increase the EU productivity. The renewed *Lisbon strategy* in 2005 set out steps that have to be taken in the Member States to increase productivity and to deliver economic growth and jobs. But it is also important to facilitate external trade. The 2006 *Global Europe*³ paper emphasises the contribution of trade in stimulating growth and creating jobs, and the *External Dimension of the Single Market Review*⁴ also points out that the single market is a unique asset for the EU in meeting the challenges of globalisation.

This paper is aimed at contributing to and stimulating the discussion on how further openness can contribute to the improvement of European productivity in the area of technical rules on goods. In the following text the first part briefly discusses the relationship between openness and productivity and the importance of borders as obstacles to trade. In the second part, which is the core of the paper, some proposals are presented relating to how the EU can facilitate trade in the area of technical regulations on the goods market.

1.1 Openness and productivity

According to economic theory, market integration policies increase productivity through different channels. Imports, especially imports of capital goods with high content of technological knowledge, contribute to domestic productivity through knowledge or research and development (R&D) spillovers from one trading partner to the other. Exports enable exploitation of comparative advantages through specialization. Expanding exports can further increase productivity through exploitation of economies of scale. Furthermore, market integration may enhance productivity gains due to an increase in the degree of competition. Foreign direct investment (FDI) is also considered as a major contributor to productivity growth as being a conduit for technological transfer.⁵ Stan-

¹ Ilzkovitz et al. (2007)

² SEC (2007) 1444

³ COM (2006) 567

⁴ SEC (2007) 1519

⁵ See e.g. Glass and Saggi (1998, 1999)

standardization is another factor regarded as important for productivity growth. Standards are carriers of information, making contracting easier and thus facilitating trade, and they contribute to the public stock of knowledge which has been shown to affect the pace of innovation positively.⁶

Knowledge spillovers are particularly important as technological change is the major force of output growth. Theoretically, the endogenous growth model⁷ suggests that innovation depends on cumulative R&D experiences while at the same time it contributes to the stock of R&D. One important characteristic of technology is that technological investments not only benefit the investor but also contribute to the knowledge base publicly available. This externality is the *technology spillovers*.⁸

Numerous studies provide empirical evidence on the relation between openness and productivity. Notaro (2002) analyses the effects of the single market programme and confirms both an effect on productivity through specialisation, exploitation of comparative advantages and scale economies and an effect from increased competition. This study also finds that the estimated effect is quantitatively important, as the single market programme productivity increased by 2 percent between 1992 and 1993. Other studies confirming positive effects on productivity of the single market programme include studies on UK⁹ and Italy¹⁰. An analysis of structural reforms in 20 OECD countries – including substantial reductions in tariff rates and non-tariff barriers (NTBs), privatisation of public enterprises, deregulation and liberalisation of product markets, and efforts to make labour markets more flexible – shows that in the long run, the reforms implemented from 1985 to 1995 potentially increase productivity growth by 0.2 to 0.3 percentage points.¹¹

A related question is how important R&D spillovers are to the productivity in a country. The more integrated economies are, the more their productivity growth is dependent on both domestic and foreign R&D through interaction with foreign economies. Keller (2004) points out that the major sources of productivity growth which originated from technological change in OECD countries are not domestic, instead they come from abroad. The importance of R&D spillovers has also been investigated by Zhu and Jeon (2007). They study 21 OECD countries plus Israel for the period 1981-1998. The findings suggest that technology spillovers are very important for increased productivity. The results show that technology spillovers from foreign countries contribute more to growth of productivity than domestic R&D. Interestingly this result also holds for countries with the largest R&D stocks, i.e. countries that can be viewed as innovation leaders.¹²

Zhu and Jeon (2007) also investigate different channels for R&D spillovers. The three channels are: trade, FDI and information technology. The findings show that all three channels are positively related with R&D spillovers but differ in importance. Bilateral trade remains an important

⁶ E.g. Jungmittag et al. (1999), Blind (2004) and Temple (2005).

⁷ E.g. Romer (1990), Grossman and Helpman (1991), Aghion and Howitt (1992) and Howitt (2000)

⁸ Romer (1990)

⁹ Griffith (2001) and Aghion et al. (2007)

¹⁰ Bottasso and Sembenelli (2001)

¹¹ Salgado (2002)

¹² In this study US, UK, France, Germany, and Japan.

conduit for R&D spillovers and on productivity growth. Bilateral FDI is positively related to R&D spillovers, but its impact on productivity growth is limited. Furthermore the importance of information technology is found to be rapidly increasing over the period. The conclusion from the Zhu and Jeon (2007) study is that further liberalization of trade, and development of IT, should be the top priority for countries who want to benefit from the foreign R&D spillovers and thus enhance their productivity.

1.2 Borders matter

A large literature shows that national borders diminish trade volumes.¹³ McCallum (1995) found that trade between Canadian provinces was 22 times larger than trade between US states and Canadian provinces. More recent results confirm the border effect, however the magnitude is questioned. Anderson and van Wincoop (2003) find that national borders reduce trade between industrialized countries by 20-50 percent. Border effects are also found in studies by e.g. Evans (2003) and Fontagné et al. (2005) where policy-related barriers to trade also is found to be part of the explanation to the border effect. As an illustration OECD (1999) refers to claims that as much as 80 percent of all trade is affected by standards or associated technical rules. Business surveys also draw attention to NTBs, which are increasingly important and might even dominate the effect of tariffs.¹⁴ National regulations and technical measures are often reported as a major problem,¹⁵ especially for small and medium sized enterprises¹⁶. The negative effect from qualitative NTBs such as health, safety and technical standards are also found in econometric analyses¹⁷ confirming the results of surveys.

Findings also show that the EU has successfully reduced the border effect among the Member States. E.g. Evans (2003) and Fontagné et al. (2005) found that trade between the EU members is easier than trade between any other two countries. On the other hand Fontagné et al. (2005) also find that a substantial level of fragmentation remains within the EU. Conclusions that can be drawn are, first, that the successful economic integration in the EU can serve as a good example and methods used here can probably be useful elsewhere. Second, the single market in the EU is not completed. Further deepening European economic integration would increase productivity, thereby contributing to growth.

To conclude this first part, according to economic theory, and confirmed by empirical findings, a country's openness, and trade in particular, is important for productivity growth. Thus, in order to enhance its competitiveness the EU should focus on deeper economic integration within the EU as well as increased trade with the rest of the world.

The rest of this paper will discuss and present some proposals to contribute to the removal and avoidance of upcoming technical barriers to trade (TBTs).

¹³ E.g. McCallum (1995), Wei (1996) and Anderson and Smith (1999a, b).

¹⁴ Referred to in OECD (2005) and Fleiss and Busquets (2006).

¹⁵ E.g. Berglöf (2001) and OECD (2005)

¹⁶ Fleiss and Buquets (2006)

¹⁷ E.g. Fontagné et al. (2005)

2. Technical Rules – Definition, Purpose and Rationale

Technical rules – such as requirements on how a product shall be produced, or which substances may be used when producing a certain product, or product labelling – receive increased attention in discussions on trade policy matters. This is not only because the quantity of such rules increase but also probably because the relative significance of technical rules increases as tariffs and quotas decline in importance.¹⁸

The issue of technical rules as technical barriers to trade is however much more complicated than traditional obstacles in form of tariffs and quotas. The negative impact on trade of the latter could largely be removed by reducing or removing the tariff or the quota. Technical rules however, although they obviously represent potentially important TBTs,¹⁹ also provide benefits for consumers as well as for domestic and foreign suppliers and can thus facilitate trade.

The primary consumer benefit is the safety aspect, but suppliers benefit e.g. as standards contribute to improved efficiency in production.²⁰ Especially foreign suppliers benefit if the rules serve as a common language. Rules certifying that a product is safe and compatible with complementary inputs may raise consumer demand for such imports.²¹ Foreign firms can possibly increase profits despite higher costs of compliance to such technical rules.²²

Technical rules however potentially affect different types of producers differently. As referred to in the introduction, surveys suggest that the cost of adapting goods to comply with technical rules is more burdensome to small and medium sized enterprises. Furthermore, empirical findings suggest that standards in developed countries reduce trade from developing countries.²³ Firms that are impacted by lengthy inspection and testing procedures by the importing country have a 9 percent smaller export share, and if the company is domestically owned (not a foreign subsidiary) the export share is 16 percent smaller. Moreover, developing country firms affected by technical regulations are 7 percent less likely to export to more than three markets.

With the purpose of promoting the free movement of goods by avoiding unnecessary TBTs, the Agreement on Technical Barriers of Trade (the TBT Agreement) was renegotiated during the Uruguay Round within GATT in 1994²⁴. All members of the WTO are parties of the TBT Agreement. The TBT Agreement contains provisions that must be observed when a WTO-member prepares, adopts and applies technical rules. In the TBT Agreement three main elements of technical rules are identified:

- a) *Technical regulations*, which are mandatory requirements given by central or local governmental bodies, and non-governmental bodies.

¹⁸ Baldwin (2000) and Ganslandt and Markusen (2001a)

¹⁹ E.g. OECD (2005)

²⁰ E.g. Swann (2000)

²¹ Akerlof (1970)

²² E.g. Jones and Hudson (1996). Empirical support seems to be provided by Moenius (2004) as discussed (based on the 1999 draft) by Ganslandt and Markusen (2001a).

²³ Chen et al. (2006)

²⁴ The original TBT Agreement came into being as a result of the Tokyo Round and entered into force in 1980.

They are designed to fulfil the objectives of only placing safe products on the domestic market. These objectives aim to ensure the health and safety of the citizens, animals or plants.

- b) *Standards* (including packaging, marketing and labelling requirements) given by central or local government standardizing bodies and non-governmental or regional standardizing bodies. Standards are voluntary documents, developed for common use. Their objective could include those of technical regulations, but they also have a wider aim, for example uniformity of products in order to facilitate trade. Further, the TBT Agreement recommends the use of international standards whenever possible which facilitates import and export (*i.e.* trade).
- c) *Procedures for conformity assessment* with technical regulations and standards given by central or local governmental bodies, and non-governmental bodies. Such procedure are used to ensure that technical regulations or standards are met, and thus that the safety of humans, animal or plants is protected.

The TBT Agreement endorses the principles of national and most favoured nation (MFN) treatment. In addition it contains provisions on transparency, proportionality and equivalence. Disputes under the Agreement can be solved within the WTO dispute settlement (DS) system. However, the DS system has only been used once to settle a dispute directly related to the TBT Agreement.²⁵

²⁵ European Communities, Measures affecting Asbestos and Asbestos-Containing Products, WT/DS/135/AB/R, 12 March 2001

3. Tool-box of instruments for regulatory co-operation/elimination of TBTs

The economic approach to regulation favours rules that are transparent, predictable and non-discriminatory both in objectives and in application.²⁶ Different national technical rules may result in barriers to trade. When countries do not align or recognise each others' technical rules, they imply costly and time-consuming processes for companies operating in the markets of those countries.

TBTs may also occur due to "bad regulatory practice" such as when the technical rules are not well-targeted to the specific objective they aim to fulfil, are implemented arbitrarily or are enforced through testing and certification requirements that are unclear, not well-publicised or difficult or expensive for foreign manufacturers or producers to access. Findings by the OECD show that the cost of testing and compliance certification could constitute between 2 and 10 percent of overall production costs.²⁷

In short, technical rules may become TBTs, reducing trade and hampering productivity growth and eventually welfare. To avoid unnecessary conflicts between national rules, trading partners increasingly co-operate. The TBT Agreement is an example of this, and the single market programme in the EU another. The examples also point to the variety of depth and degree of ambition in the co-operation. In a number of areas the EU has completely harmonised all necessary aspects of technical regulations, standards and conformity assessment structures. In the non-harmonised area a general principle of mutual recognition of goods prevails. The TBT Agreement on the other hand is only focused on exchange of information and good (national) regulatory practice. The levels in between contains e.g. different types of mutual recognition agreements (MRAs) and free trade agreements (FTAs) which are examples of trans-national co-operation.

3.1 The ladder of ambition in regulatory co-operation

In Table 1 different levels of regulatory co-operation are sketched. The degree of ambition in regulatory co-operation varies from information exchange procedures/awareness building (at the bottom of the ladder) to fully harmonised technical regulations (at the top). The steps in between relate to good national regulatory practice and the following steps include a gradual deepening of the trans-national co-operation. This goes from agreements on common procedures for testing, recognition of test results and certificates, to recognition of product specifications. Each step includes a variety of possible actions that include unilateral, bilateral and plurilateral arrangements.²⁸

The first level of co-operation is provision of *information exchange* in order to provide transparency. Examples include the *notification proce-*

²⁶ As a result of an examination of market openness in the OECD Regulatory Reform Country Reviews the OECD put up six "efficient regulation principles": transparency; openness of decision-making and appeal procedures; ensuring non-discrimination; avoidance of unnecessary trade restrictiveness; use of internationally harmonised measures; recognition of the equivalence of other countries' regulatory measures; and application of competition policy from an international perspective (OECD, 2000).

²⁷ Lesser (2007) with reference to an OECD study from 1996

²⁸ Arvíus (2003)

dures and *enquiry point functions* in the TBT Agreement and within the EU (Directive 98/34/EC).

The second level contains ***observance of principal trade policy provisions***. Such principles are laid down in the TBT Agreement.

The TBT Agreement is thus focused on the first two levels of the “ladder”. In order to avoid unnecessary TBTs, the TBT Agreement prescribes a number of key policy provisions to be observed when members prepare, adopt and apply technical regulations, conformity assessment procedures etc. Hence the TBT Agreement is primarily to be seen as a “discipline on national practices”.

Table 1: The ladder of ambition in regulatory co-operation

Nature of action	Different degrees of regulatory co-operation	Example of agreement
Trans-national arrangements (“Regulatory co-operation”)	6. Recognition of - fully harmonised technical regulations	EU – harmonised area
	5. Recognition of - product specifications (essential requirements and standards linked to those requirements) - marking specifications, marks etc.	ACAA ²⁹ PECA ³⁰ UNECE “International Model”
	4. Recognition of results of conformity assessment procedures - certificates of conformity - inspections - test results	MRA
	3. Recognition of - common procedures (testing procedures, test report forms) - accreditation systems	MLA ³¹
National practices (“good regulatory practice”)	2. Observance of principal trade policy provisions - non-discrimination, proportionality, performance based regulations, use of international standards etc.	TBT Agreement
	1. Information exchange procedures/transparency measures	TBT Agreement Directive 98/34/EC

Source: Arvíus (2003)

The third level of co-operation includes ***recognition of conformity assessment procedures***. Examples of such are recognition of the use of common testing procedures or test report forms, as well as recognition of accreditation systems (including procedures for assessment and criteria

²⁹ Agreements on Conformity Assessment and Acceptance of Industrial Products

³⁰ Protocol to the European Agreements on Conformity Assessment and Acceptance of Industrial Products

³¹ Multilateral recognition agreements between accreditors

for acceptance of conformity assessment bodies). Examples of the latter include the MLAs (multilateral recognition agreements) between accreditors within the IAF (International Accreditation Forum) and the EA (European co-operation for Accreditation).

Further deepening the degree of co-operation includes, at the fourth level, ***recognition of results of conformity assessment procedures***. The ambition varies from a first stage including *recognition of test results*, to a further stage, *recognition of certificates* of conformity, or of inspection, or of marks of conformity. Examples are the bilateral MRAs between EU and Australia, New Zealand, Canada, the US and Japan. Other examples include MRAs concluded between countries within APEC³².

The fifth level includes ***recognition of functionally equivalent technical regulation***. This level includes, in addition to conformity assessment procedures, recognition of product specifications and marking specifications. Examples of such co-operation include the previous agreements between the EU and acceding countries (PECA) and agreements under discussion between the EU and some neighbouring countries (ACAA), where these countries recognised and adopted sectors of the EU legislation. A method that can be used as a platform for plurilateral agreements in specific sectors with third countries is the *International Model for Technical Harmonisation* developed within the UNECE³³.

The most ambitious level of technical co-operation is the establishment of ***fully harmonised technical regulations***. The obvious example here is the harmonised technical regulations within the EU.

Regulatory co-operation arrangements up to the fourth level in the ladder, only give *partial elimination of TBTs* covering specific aspects (e.g. MRAs to avoid the need for products to be re-tested or re-certified in the importing country). *Full market access* on the other hand requires regulatory convergence/harmonisation of regulations (levels five and six). Depending on the situation two possibilities are present. *Full technical harmonisation* (sixth level) requires “legislative identity” to agree in detail, e.g. on the basis of EC law in the EU, and in the EFTA³⁴/EEA³⁵ countries. When it comes to agreements between states without “legislative identity” the UNECE “International Model” offers the possibility to cooperate on the basis of *regulatory convergence* (fifth level).

The structure of the rest of this paper is as follows. Section 4 deals with transparency measures, section 5 with technical regulation, conformity assessment and standards. The UNECE international model for technical harmonisation is discussed in section 6. Section 7 briefly deals with technical assistance to developing countries, and section 8 concludes the study.

³² Asia-Pacific Economic Cooperation

³³ United Nations Economic Commission for Europe

³⁴ European Free Trade Area

³⁵ European Economic Area

4. Transparency measures

4.1 Within the EU

In order to prevent TBTs prior to adopting a technical rule, the EU has created a system of *transparency* through the Directive 98/34/EC³⁶. All the EU Member States are obliged to notify their draft national technical regulations and standards on goods and rules on information society services, which are mandatory *de jure* or *de facto*. The Commission and other Member States shall have the opportunity to comment these drafts, during which time the draft may not be adopted (*stand-still* period). If a draft national technical regulation is not notified, it is inapplicable³⁷. If a draft national technical regulation is adopted although the Commission finds it contrary to EC-law, an infringement proceeding may be initiated at the European Court of Justice (ECJ).

All notifications are publicised at the Commission website and thereby also available for interested parties in third countries, however they are not parties of the system and thereby not entitled e.g. to make comments on draft notifications from EU Member States. Turkey, the signatory EFTA-countries of the Agreement on the EEA³⁸ and Switzerland also participate in this notification procedure.

Table 2: Amount of new or revised technical regulations notified to the Commission according to Directive 98/34/EC per sector

Sectors	Total			Share of total	
	1995-2006	1995-2002	2002-2006	2002	2006
Food and agricultural products	1 467	902	565	19%	19%
Transportation	1 159	751	408	16%	14%
Construction	1 003	611	392	13%	13%
Telecommunication	1 224	837	387	17%	13%
Mechanics	795	561	234	12%	8%
Energy, minerals, wood	336	137	199	3%	7%
Environment, packaging	473	292	181	6%	6%
Miscellaneous products	323	153	170	3%	6%
Information society services	205	76	129	2%	4%
Chemical products	344	235	109	5%	4%
Pharmaceuticals	244	150	94	3%	3%
Domestic and leisure equipment	142	69	73	1%	2%
Health, medical equipment	64	33	31	1%	1%
Total	7 779	4 807	2 972	100%	100%

Source: National Board of Trade (2008), based on the TRIS³⁹ data base.

Table 2 gives an overview of the distribution of notifications of technical regulations according to the EU system. During the last twelve years the above-mentioned states have notified on average 650 technical regulations per year. From 1995 until 2006 an amount of 7 779 national technical regulations has been notified to the Commission. These figures indi-

³⁶ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, OJ L 204, 21.07.1998 p. 37.

³⁷ Cf Judgement of the ECJ in *CIA Security International*, C-194/94

³⁸ Iceland, Liechtenstein and Norway

³⁹ Technical Regulations Information System

cate that the amount of national regulations within the non-harmonised area is constantly growing. Diversity of rules makes it more difficult for producers from other Member States or third countries to sell their products or get market access. Economic operators from third countries experience difficulties when exporting their products to individual Member States because knowledge is required of the technical rules in the relevant Member States.

4.2 Within the WTO

In order to avoid the preparation and adoption of technical rules that might create unnecessary barriers to trade, the TBT Agreement also sets forth a procedure of notification of draft technical regulations or conformity assessment procedures, which deviate from existing international standards and “may have a significant effect on trade of other Members”⁴⁰, *i.e.* an impact on international trade. The EU notifies its draft harmonised technical rules and each of the EU Member States notify its draft national technical rules (*i.e.* in the “non-harmonised area” of the EU). However, there is no clear interpretation of when a rule might have “a significant effect on international trade”, which means that the frequency of notification varies largely among the EU Member States (and other WTO members).

A certain time limit⁴¹ between the notification of the draft and the adoption thereof must be given in order to enable other members to submit comments on the notified draft. Comments received ought to be discussed with the member having submitted them and also be accounted for when finally adopting the draft. However, unlike the EU legal system, there is no “case law” that has interpreted the TBT Agreement’s requirements on notification and on the legitimate objectives of a claimed TBT. Hence, comments made can easily be disregarded by the notifying state.

Table 3: Notifications according to the TBT Agreement 2004-2007

	Total	EU Member States	EU	Other countries
2004	638	61	30	547
2005	771	75	22	674
2006	875	69	40	766
2007	1 030	106	35	889

Source: WTO (2005, 2006, 2007, and 2008)

Table 3 gives an overview of the number of notifications according to the TBT Agreement. In 2007 the EU Member States made a total of 106 notifications of technical regulations, distributed as follows: Romania 25, Sweden 14, France 13, Slovenia 12, Denmark 11, the Netherlands and the Czech Republic 7, Finland 5, Austria, Lithuania, the Slovak Republic 2, Belgium, Estonia, Germany, Hungary, Spain and the United Kingdom 1.

During the last four years the EU Member States have notified on average 77 national technical regulations according to the TBT Agreement. In comparison, during the same period the EU Member States have notified

⁴⁰ Article 2.9 and 5.6 of the TBT Agreement

⁴¹ 60-90 days are recommended by the TBT Committee, page 17 in the “Decisions and Recommendations adopted by the Committee since 1 January 1995”, repeated in para 57 in the Fourth Triennial Review dated 14 November 2006.

on average 668 national technical regulations according to Directive 98/34/EC.

Thus, only 11 percent of the number of national technical regulations, which are notified according to Directive 98/34/EC are also notified according to the TBT Agreement. In addition, some of the large EU Member States notify very few of their draft technical regulations.

There exist differences in the notification criteria of Directive 98/34/EC and of the TBT Agreement. However, these differences can hardly justify the low amount of TBT notifications. Under directive 98/34/EC any technical regulation on products, within the limits of Article 10 of the Directive, must be notified, irrespective of its impact on intra-Community trade. The Directive even considers measures that comply with the relevant international standards as likely to create obstacles to trade if they are made compulsory. According to Article 10, the only provisions that do not have to be notified are those by which Member States fulfil the obligations arising out of international agreements which result in the adoption of common technical specifications in the Community. The TBT Agreement on the other hand, requires notification of a technical regulation or a conformity assessment procedure only if there does not exist any relevant international standard nor relevant guides or recommendations issued by international standardising bodies, or the technical content of a proposed technical regulation is not in accordance with the above mentioned standards or guides. Furthermore, the technical regulation or conformity assessment procedure must have “a significant effect” on international trade. However, no further guidance is given on when a national technical regulation can be considered to have “a significant effect” on trade between WTO members.

Table 4: Notifications made by the Commission and the EU Member States in accordance with the TBT-Agreement which have been discussed in TBT-Committee meetings since 2002.

Sectors	EU	EU Member States
Chemical products	4	1 (SE)
Construction	1	
Energy, minerals, wood		1 (NL)
Environment	2	1 (BE)
Food and agricultural products	5	3 (BE, NL, GR)
Health, medical equipment	2	
Mechanics	2	
Miscellaneous products	2	1 (SL)
Transportation	1	

Source: National Board of Trade

Most of the notifications that receive complaints within the TBT-Committee concern draft EU-legislation, see Table 4. Only seven notifications of national rules from the EU Member States have been brought up in the Committee since 2002 (the relative low level of notifications by EU Member States have to be borne in mind). The notifications that regard EC-legislation are generally complained about by more countries and are often brought up at several subsequent meetings. The reason for this might be that they affect a larger market and that they often consti-

tute a framework that affect more products than notified national regulations that usually only affect specific products on a smaller market.

Within the *food and agricultural sector* eight notifications from the EU caused trade concerns by third countries and have been discussed in the Committee. The most frequently discussed proposals within the sector regarded two EC-regulations on labelling of wine. The two regulations received complaints from seven countries and the issues were brought up on thirteen Committee meetings. A notification of an EC-regulation on genetically modified organisms (GMOs) was discussed in five meetings and five countries had complaints on this matter in the Committee. Belgium and the Netherlands notified regulations regarding bans of products made from seals. Two countries have complained about these notifications and they have been discussed at seven meetings.

The *chemical products sector* is also a sector where the EU has received many complaints in the TBT-committee since 2002. The EU has received complaints regarding four EU-notifications and one notification from a member state concerning chemical regulations. The notification of REACH⁴² has been discussed on the last fifteen meetings of the TBT-Committee, and in total 12 countries have stated that they consider that the REACH legislation will cause obstacles to trade. The other three notified proposals for new chemical regulations from the EU that have been discussed within the Committee concern the RoHS-directive⁴³, classification of hazardous substances and the use of phthalates in toys. The national proposal that was brought up in the committee was a ban of the flame retardant deca-BDE in Sweden. The ban was criticised by four countries at seven Committee meetings.

Proposal – Promote increased notification according to the TBT Agreement

There is no “case law” on how to interpret the TBT Agreement. In order to increase the coherence between the EU Member States a *guide* could be elaborated on how the Commission and the Member States shall *interpret the TBT Agreement’s notification obligation and justification of technical rules*.

This would increase the transparency of national technical rules in the EU Member States (i.e. within the EU non-harmonised area) and increase the opportunity for third countries to react to more notifications which could induce potential obstacles to trade to those countries.

4.3 Bilateral measures of transparency

In the EU regional trade agreements, provisions of early warning systems are preferred tools in order to create an earlier awareness of the other party’s planned technical rules. These systems function in parallel with the notification procedures in the TBT Agreement, but unlike the TBT Agreement these systems are directed only to the parties of the FTA, *i.e.* the EU and the states concerned, since there in general is no requirement

⁴² Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals

⁴³ Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment

for publishing these early plans. Such a requirement would go a little bit further than the obligations in the TBT Agreement's notification provisions. To some extent such early warning systems thereby add to the administrative burden of the parties of the agreement.

The FTAs also set up contact points, which shall be the receiver of the dialogue within the early warning system⁴⁴. However, for the EU there will be only one contact point (the European Commission), thus excluding all national technical rules of the non-harmonised area of the EU Member States to be a part of the early warning system.

Proposal – *Early information on new regulations to the TBT Committee*

In order to increase the awareness of trading partners the EU – and its Member States - could *inform the TBT Committee* about planned measures in *at an earlier stage* than drafts within the notification procedures.

This could preferably be made in sectors where the EU and its Member States see a need for protection of the health and safety of humans, animals, plants or the environment, *e.g.* the sectors of chemicals, food stuff and animal protection, (where new TBTs may emerge). Early information and dialogue in the TBT Committee on planned measures would serve to identify trade concerns at an early stage and thereby to prevent unnecessary TBTs.

⁴⁴ For example in the draft agreements with South Korea, Andean Community, and China as well in the agreement with Cariforum.

5. Technical regulations, conformity assessment procedures and standards in the EU, and arrangements with third countries

5.1 Harmonised and non-harmonised area in the EU

The EC Treaty contains rules on how to enhance the free movements on goods among the parties of the agreement either by *harmonisation* measures (Article 95 of the Treaty) or by making recourse to the *mutual recognition principle* (based upon the Articles 28 and 30 of the Treaty and evolved by the case law of the ECJ⁴⁵).

These two policy principles are the reason for the relatively small amount (in light of the volume of trade) of TBTs on the EU Internal Market compared to the global markets. Harmonisation is a regulatory practice technique, while the principle of mutual recognition is used in the non-harmonised area when applying national technical rules of the EU Member States. The harmonised regulations and the principle of mutual recognition apply to *all products legally marketed* on the internal market. Thus, also third countries' products benefit from these EU techniques and principles for goods as they give access to a larger integrated market.

The positive effect of harmonisation and the mutual recognition principle on trade volumes between the Member States of the EU is straightforward. So is the, in general, positive effect on exports from third countries, emanating from gaining access to a large integrated market instead of 27 fragmented markets. Regarding the non-harmonised area, the introduction of the mutual recognition principle in the EU constitutes an improvement also for third countries. Instead of entering 27 national markets with different technical rules at different levels, the principle implies that entering the market of a member state having the least strict technical rules gives access to the rest of the national markets in the EU.⁴⁶

The effects of harmonisation on exports from third countries however differ with the cost of compliance. When the EU harmonises the legislation the tendency is towards the high range of initial regulations,⁴⁷ i.e. harmonisation makes the legislation stricter for the products concerned. This implies that exports from third countries with less strict legislation would decrease as the possibility to export to some Member States with initially less strict legislation is removed. To generalise, harmonised rules in the EU would imply increased exports from developed countries while exports from developing countries would decrease.⁴⁸

To conclude so far, *deep integration* in the EU benefits both the Member States and third countries. It is *rather trade creating than trade diverting*. One exemption however is the potential negative effect of harmonisation on developing countries, which suggests that *technical assistance to de-*

⁴⁵ Especially the *Cassis de Dijon* case, (*Rewe-Zentral AG mot Bundesmonopolverwaltung für Branntwein*, case 120/78), but also *Dassonville* (case 8/74) and the cases *Keck and Mithouard* (C-267 and C-268/91).

⁴⁶ However note the possibility of Member States to deny recognition of a product with respect of the protection of health and safety of humans, animals or plants.

⁴⁷ E.g. Vogel (1995) as discussed in Chen and Maggoo (2004)

⁴⁸ This line of reasoning is built on Chen and Maggoo (2004) which in turn build on Baldwin (2000) and Ganslandt and Markusen (2001b). Also empirical findings by Chen and Maggoo (2004) support this theory.

veloping countries might be called for to avoid negative effects of European harmonisation on exports from such countries. For more on this, see section seven of this paper.

TBTs however, still exist on the Internal Market. Particularly problems in the non-harmonised area have been reported to the European Commission,⁴⁹ suggesting that the mutual recognition principle is not as effective in practice as in theory. Recently, the so called “Goods Package”⁵⁰ has been created in order to furnish the Internal Market with adjusted and complementary rules on the application of the so called “New Approach” legislation in the harmonised area and the mutual recognition principle in the non-harmonised area. This new package is expected to further reduce TBTs on the Internal Market.

However, despite improvements achieved through the “goods package” harmonisation implies less TBTs than mutual recognition and therefore *new harmonisation projects* should constantly be searched for and concluded whenever the cost of producing new legislation is lower than the cost incurred by the TBTs.

The notification procedure according to Directive 98/34/EC gives indications of areas with a high number of new national technical regulations. The figures in Table 2 show that food and agricultural products, construction, transportation, telecommunications, mechanics, environment and packaging⁵¹ are sectors with a high number of new national technical regulations. However, an in-depth analysis is needed in order to identify specific harmonisation projects within the sectors mentioned.

Proposal – Identify new sectors for EU harmonisation

New EU-harmonisation projects should be considered in areas with a high amount of TBTs, e.g. in areas with new different national technical regulations in the Member States.

The legislative technique within the “old style” harmonised area potentially affects trade as too much detail in the legislation may exclude some innovative solutions and hamper technical development. The “*New Approach*” legislative technique allows both the public interest (i.e. protecting public health and safety, consumer and environmental protection) and the interest of private business to produce standards according to the relevant “state of the art”, to be merged in an adequate way. It allows for more flexible and less stringent forms of legislation in areas where, otherwise every detail would have been determined by the legislative act itself.⁵² The New Approach has shown itself to be an example of *good regulatory practice* and should thus be used more extensively within the harmonised area.

Proposal – Regulatory reform within the harmonised area

In order to facilitate trade in goods within the single market and internationally, the EU could initiate a screening project in the harmonised area in order to *identify previously harmonised legislation to be transformed to legislation according to the “New Approach” regulatory technique.*

⁴⁹ E.g. Official Journal (2003)

⁵⁰ Approved by the European Parliament on 21 February 2008 and is expected to be approved by the Council during the summer 2008.

⁵¹ These areas correspond to the product codes used in the notification procedure according to Directive 98/34/EC.

⁵² For the merits of the New Approach see e.g. COM (2004) 674

5.2 Standards

International standards

International standards, and their use in technical regulations on products, production methods, and services, play an important role in facilitating trade through the promotion of safety, quality and technical compatibility. Thus, international standards can be thought of as providing a common language for traders. The benefits that are derived are significant.⁵³ Studies suggest that international standards improve efficiency of production and facilitate international trade. Furthermore standardization contributes to the basic infrastructure that underpins society including health and environment while promoting sustainability and good regulatory practice. In addition, standards, as carriers of information, contribute to the public base of knowledge, and thus promote the rate of innovation.⁵⁴ In turn innovation is the key driver in productivity growth. The general view that international standards promote trade finds empirical support.⁵⁵ Studies of the effect of national standards on trade however report mixed results.⁵⁶ While some studies find that national standards hamper trade, it is also suggested that the effect on trade (imports) is dependent on the type of good standardised. The findings suggest that national standards on non-manufactured goods in fact hamper trade while the effect on manufactured goods in general is positive.⁵⁷

An explanation suggested is that standards reduce information costs, which allows for easier contracting.⁵⁸ National standards increase adaptation costs which may hamper trade. But if the product needs to be adapted to the foreign market anyway (as a consequence of local preferences and the variation of technology among countries) the national standard may reduce the search cost of information. In non-manufacturing industries, such as agriculture, information requirements are generally low and adaptation costs are likely to dominate the information costs. In manufacturing industries on the other hand information requirements are high. This suggests that the standard, although national, reduces the cost of gathering information, thus promoting trade.

With reference back to the introduction on technical rules in this paper, standards do not only affect trade in different products differently, the effect on producers also differs. In general, small producers and producers in developing countries experience it to be more difficult to adapt to different standards in different national markets than larger producers in developed countries. Hence, the conclusion that strives to avoid unnecessary obstacles to trade should include avoidance of unnecessary differences in standards.

⁵³ For an overview of the literature see e.g. SOU 2007:83 or Swann (2000)

⁵⁴ E.g. Jungmittag et al. (1999), Swann (2000), Blind (2004) and Temple (2005)

⁵⁵ Swann et al. 1996, Blind (2001) and Moenius (2004).

⁵⁶ For a discussion see Moenius (2004)

⁵⁷ Moenius (2004)

⁵⁸ This paragraph is based on Moenius (2004)

The TBT Agreement recognizes the importance of international standards and is encouraging the use and development of international standards and conformity assessment systems. Furthermore, it stipulates that WTO members use international standards, guidelines or recommendations given by international standardisation bodies in their technical regulations and procedures for assessment of conformity.

International standardisation and European standardisation

The European standardization system consists of three bodies, CEN⁵⁹, CENELEC⁶⁰ and ETSI⁶¹. Their international counterparts are ISO⁶², IEC⁶³ and ITU⁶⁴. CENELEC develops European standards in the electro-technical area, ETSI develops globally-applicable standards for Information and Communications Technologies, including fixed, mobile, radio, converged, broadcast and internet technologies, and CEN develops European standards in virtually any field not covered by CENELEC or ETSI.

One aim of developing international standards is to facilitate the harmonisation of regional and national standards in order to eliminate technical barriers to trade.

The European standardisation system has recognised the primacy of international standardisation by concluding cooperative agreements between the European standardisation body CEN and its corresponding international body ISO (*Vienna Agreement*) and between CENELEC and IEC (*Dresden Agreement*). These two agreements set out procedures for cooperation of European and international standardisation bodies which are aimed at developing identical standards whenever possible. Table 5 shows the identity of CENELEC and IEC and of CEN and ISO standards.

Table 5: Identity between European and international standards

Period	CEN Identical to ISO		CENELEC Identical to IEC	
2006	275	26%	321	80%
2007	352	25%	265	68%
Since <i>Vienna Agreement</i> (1992-2007)	4 101	28%		
Since <i>Dresden Agreement</i> (1996-2007)			3 704	70%

Source: CENELEC (2006 and 2008) and non-published CEN-documents

Since the signature of the Dresden Agreement in 1996, in overall terms, 70 percent of CENELEC standards are identical to IEC standards (for the standards produced in 2007 the level of identity was 68 percent). The amount of identical CEN and ISO standards according to the Vienna agreement signed in 1991 has not led to such a high amount of identical standards. For the period 1992 to 2007, in overall terms, 28 percent of CEN standards are identical to the international ISO standards. Out of the standards produced in 2006 and 2007 the level of identity to ISO standards was about 25 percent. Thus we have no indications that the level of identity is increasing.

The figures clearly show that CENELEC has been more successful in producing standards identical to the international IEC standards than is

⁵⁹ European Committee for Standardization

⁶⁰ European Committee for Electrotechnical Standardization

⁶¹ European Telecommunication Standards Institute

⁶² International Organization for Standardization

⁶³ International Electrotechnical Commission

⁶⁴ International Telecommunication Union

the case with CEN and ISO. The discrepancy can probably be explained by differences in the scope and nature of the activities in CEN. However, with reference to the above discussions on the benefits of international standards over national or regional standards, the difference in performance between CEN and CENELEC suggest that further efforts to increase the level of identity between European CEN standards and international ISO standards is called for.

The importance of standards as reference documents in the EU harmonised legislation when the “New Approach” legislative technique is used further calls for increased identity between European and international standards. Increased identity between European and international standards reduces the cost of compliance to the European technical regulations of foreign producers, and thus promotes international trade.

Proposal – *Encourage the effort to increase the identity between European and international standards*

In order to increase the level of identity between European standards and ISO and IEC standards

- i) *an evaluation and a possible review for increased efficiency of the Vienna Agreement* could be suggested
- ii) CEN and CENELEC could be entrusted with making *a screening of their existing European standards* with the view to increase the identity between European standards and ISO and IEC standards.

5.3 Conformity Assessment Procedures

Conformity assessment is the demonstration that specific requirements relating to a product, process, system, person or body are fulfilled.⁶⁵ While conformity assessment provides benefits for manufacturers, consumers, regulators and trade in general, it can also constitute a TBT.

Conformity assessment procedures in the EU

Within the European Union’s legislation based on the “New Approach” conformity assessment procedures are harmonised and subdivided into modules, which provide a number of different procedures see Figure 1. These procedures are either based on the intervention of a first party, the manufacturer, or a third party, a notified body, and relates to the design phase of products, to their production phase or both. The modules could be seen as a tool-box which gives the legislator, in relation to the type of products and hazards, the means to set up the appropriate procedures for manufacturers to demonstrate product conformity against the provisions in different directives.

⁶⁵ Conformity assessment – vocabulary and general principles (ISO/IEC 17000:2004).

Figure 1: Basic Modules

A Internal control of production	Covers internal design and production control. This module does not require a notified body to take action.
B EC type-examination	Covers the design phase, and must be followed up by a module providing for assessment in the production phase. The EC type-examination certificate is issued by a notified body.
C Conformity to type	Covers the production phase and follows module B. Provides for conformity with the type as described in the EC type-examination certificate issued according to module B. This module does not require a notified body to take action.
D Production quality assurance	Covers the production phase and follows module B. Derives from quality assurance standard EN ISO 9002, with the intervention of a notified body responsible for approving and controlling the quality system for production, final product inspection and testing set up by the manufacturer.
E Product quality assurance	Covers the production phase and follows module B. Derives from quality assurance standard EN ISO 9003, with the intervention of a notified body responsible for approving and controlling the quality system for final product inspection and testing set up by the manufacturer.
F Product verification	Covers the production phase and follows module B. A notified body controls conformity to the type as described in the EC type-examination certificate issued according to module B, and issues a certificate of conformity.
G Unit verification	Covers the design and production phases. Each individual product is examined by a notified body, which issues a certificate of conformity.
H Full quality assurance	Covers the design and production phases. Derives from quality assurance standard EN ISO 9001, with the intervention of a notified body responsible for approving and controlling the quality system for design, manufacture, final product inspection and testing set up by the manufacturer.

Source: Guide to the implementation of directives based on the New Approach and the Global Approach, p 32.⁶⁶

The EU and third country Mutual Recognition Agreements (on conformity assessment)

The European Union has concluded Mutual Recognition Agreements (MRAs) in the area of conformity assessment with a number of third countries.⁶⁷ These agreements have the objective of promoting trade in goods in specified sectors between the European Union and third countries. They are bilateral agreements, and aim to benefit industry by providing easier access to conformity assessment procedures. These MRAs lay down the conditions under which the EU and the third country concerned will accept certificates of conformity issued by competent conformity assessment bodies (CABs) in the exporting party country, in conformity with the legislation of the importing country. The designation of Conformity Assessment Bodies (CABs) represents a core function of the operation of the MRA. The EU Member States are enabled to designate CABs that will assess and certify products, in specified sectors, which are exported to the third country signatory of an MRA. Similarly, third country signatories can designate CABs that in practice will operate as “Notified Bodies” in the context of the EU internal market, in the sectors covered by an MRA.

However, MRAs are costly in terms of negotiation, confidence building, implementation and maintenance. In addition such agreements also solve just one obstacle to trade, the need for re-certification in the importing country (i.e. only one market access problem). Therefore, it is only worth negotiating MRAs when: the certification systems are not too different, trade between the signatory parties is sufficient, the resources for negotiation and implementation by responsible regulatory authorities are sufficient, there is an interest in the industry to use them (rather than going directly to the other party’s CABs) etc. An EU study of the economic

⁶⁶ http://ec.europa.eu/enterprise/newapproach/legislation/guide/document/1999_1282_en.pdf.

⁶⁷ Australia, Canada, Israel, Japan, New Zealand, United States. The EU has also concluded an MRA with Switzerland.

impact of MRAs negotiated with Australia and New Zealand revealed no quality and quantity net benefits of those agreements.⁶⁸ As a consequence the EU is not planning to negotiate any new MRAs of this kind. One possible alternative to new “traditional” MRAs might be to consider unilateral recognition of CABs from third countries. That would reduce the cost of conformity assessment for third country suppliers, thus facilitating imports to the EU.

Proposal – *Unilateral recognition of CABs from third countries*

As a complement to existing mutual recognition agreements (MRAs), the EU should further explore the possibility to *unilaterally recognise competent CABs from third countries*.

Other alternative strategies when MRAs are not feasible include that the Commission and the Member States play an active role in international technical rule making bodies such as Codex Alimentarius, IMO⁶⁹, ILO⁷⁰ and UNECE in order to develop, implement, promote and use the results (international standards/reference documents/trans-national arrangements) of the work in such bodies, in order to increase approximation between the EU’s and third countries’ regulatory systems. To find more effective strategies for market access recourse should be made to mechanisms such as the “International Model”, which is explained in the following section.

⁶⁸ Hogan & Hartson LLP (2003)

⁶⁹ International Maritime Organization

⁷⁰ International Labour Organization

6. International model for technical harmonisation

To establish ambitious agreements aiming at providing *full market access* certain mechanisms need to be observed by countries interested in such co-operation. *Enhanced market access requires technical harmonisation* to the extent that the technical regulations of the co-operating countries provide the same results with regard to health, safety and other legitimate concerns, i.e. at least the regulatory objectives must be the same. Countries aiming at full market access for products at their respective markets could thus opt for provisions, to be implemented at sectoral level, which include *common regulatory objectives, relevant international standards and conformity assessment procedures*.

The “International Model for Technical Harmonisation” is a regulatory technique which provides a platform for use by countries that would like to develop their regulatory co-operation with a high level of ambition. It is similar to the “New Approach” used within the EU. The basic principle of the model is that the contents of the technical regulations to be set by public interest should be drafted in terms of broad objectives with reference to applicable international standards for the more detailed requirements needed. This will allow companies that are manufacturing regulated products according to the international standards to obtain conformity to the technical regulations and thus contribute to establishing a playing field for the benefit for all market players (industry, trade, consumers, etc.)⁷¹

The Model has been developed by UNECE Working Party on Regulatory Cooperation and Standardization Policies (WP.6)⁷² and may be used by all UN member countries to develop harmonized rules for eliminating obstacles to trade and facilitate market access.

The Model can be used by governments as the basis for *bilateral or plurilateral agreements in sectors* where they see the need for regulatory dialogue and convergence. The model also serves as an instrument of good regulatory techniques for countries engaged in *regional integration* which include objectives of harmonizing technical legislation.

Experience shows that existing international technical regulations tend to be cumbersome and burdened with details. They have also proven to be difficult to prepare. As a consequence such regulations, once in place, can be difficult to amend. Detailed agreements between a large number of regulatory authorities are frequently difficult to obtain and such regulations tend not to achieve full consensus. A regulatory technique, like the “International Model” however, comprising *broad common regulatory objectives* might be easier to achieve and thus more easily find consensus.

The “International Model” builds on broad *Common Regulatory Objectives* addressing legitimate concerns, for instance related to public health, safety or protection of the environment. The concept of *Common Regulatory Objectives* is similar to the concept of essential safety requirements used within the framework of the “New Approach”. However, where the

⁷¹ Arvius (2003)

⁷² In 2001 UNECE WP.6 elaborated *Recommendation “L”, the “International Model for Technical Harmonization”*
http://www.unece.org/trade/ctied/wp6/documents/wp6_02/wp6-02-07e.pdf.

“New Approach” makes recourse to European standards the “International Model” makes recourse to applicable international standards. The following principal elements should be included in the *Common Regulatory Objectives*:

Scope statement

A scope statement is a statement of the products or product areas for which legitimate regulatory objectives have been agreed.

Product requirements (legitimate regulative objectives)

These product requirements reflect the requirements of governments to protect public interests such as human health or safety, animal or plant life or health or the protection of the environment. The requirements should be limited to relevant aspects and proportionate to the risks inherent in the product or product area. Detailed provisions on how to meet these product requirements should be found in applicable international standards.

Reference to standards clause

The *Common Regulatory Objectives* should contain a list of applicable international standards which correspond to the product requirements.

Compliance clause

The *Common Regulatory Objectives* should also contain provisions on how compliance with the product requirements is demonstrated. It should be agreed on (the least trade restrictive) conformity assessment procedures (to attain the public objectives) and, when applicable, provisions for conformity assessment bodies which are recognized to attest compliance as well as competence criteria to be fulfilled by these bodies. The clause could also specify under which conditions suppliers can choose between different options of conformity assessment procedures, such as supplier’s declaration of conformity, third party certification or inspection.

Protection clause and market surveillance

Countries having agreed on *Common Regulatory Objectives* have the right/obligation to withdraw non-compliant products from the market. Therefore, the *Common Regulatory Objectives* should contain a protection clause and provisions on market surveillance.

National or Regional context

Within the work of UNECE WP.6 on the sectoral level the Model is used in initiatives on telecom products and Earth Moving Machinery as well as in the most recent initiative on Equipment for Explosive Environment. These initiatives contain proposals from industry and call for regulators to achieve regulatory convergence in these sectors on the basis of common regulatory objectives and applicable international standards.

The “International Model” is currently gaining increasing international recognition. As an example the European Council (in March 2002)⁷³ recommended the EU Member States to promote the UNECE International Model in their relations with trading partners as an example of a “standards-receptive trading model”. The “International Model” is also well

⁷³ Council conclusions of 1 march 2002, OJ C 66,1.2 2002, p. 1

received by the members of the Commonwealth of Independent States (CIS) and it was used as the basis for their draft Agreement on harmonization of technical regulations which was prepared by the 12 CIS countries in 2003. The principles of the “International Model” are also being used in the UNECE regulatory project for South East Europe.

In areas where the EU is opting for *full market access* with its trading partners - except with acceding and neighbouring countries where PECA and ACAA are applicable - the feasible way forward seem to be *initiatives according to the UNECE International Model*, especially in the “New Approach” areas.

Proposal – *New initiatives on plurilateral arrangements for technical harmonisation*

The “International Model” should be used for initiating plurilateral arrangements between the EU/its Member States and trading partners, in all existing “New Approach” areas in order to achieve full market access.

7. Technical assistance to developing countries

Developing countries find the effects of technical rules especially burdensome. Some of the suggestions in this study, e.g. on new harmonisation projects within the EU, may have an adverse effect on developing countries. This calls for technical assistance to developing countries. It can be justified as a “moral” obligation to assist the developing countries to overcome such “new” TBTs. It can also be justified on grounds of European competitiveness. Markets in developing countries are potentially important in the future, both as sources for imports in the EU and as new markets for EU exports, thus affecting European productivity and competitiveness.

Furthermore, developing countries face problems with compliance to the TBT Agreement. Problems include implementing the TBT provisions on the national level.⁷⁴ This implies a risk of the existence of unnecessary trade barriers on markets in developing countries, which in turn can have the effect that competitive products are prevented from entering those markets. On the other hand shortcomings in implementation can also translate into absence of technical regulations necessary to meet objectives such as human health and safety for the citizens in developing countries.⁷⁵ Thus, technical assistance and capacity building is especially called for in developing countries.

<p>Proposal – <i>Further technical assistance to developing countries</i></p>
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With respect to developing countries, the EU (and its Member States) could make better use of the TBT Agreement’s rules on *technical assistance* focusing on the transfer of practical knowledge of how to implement the rights and obligations of the Agreement e.g. in the form of the Mentorship program as now prepared by Sweden (to 7 Sub-Saharan African countries). This will e.g. include funding of capital based experts from developing countries to take part in the work of the TBT Committee.

Also, the EU could set up a *web-based list of all the EU Member States’ technical assistance projects* and encourage the Member States to report all their planned, ongoing and concluded technical assistance projects in order to better co-ordinate such projects and avoid duplicated efforts.

⁷⁴ E.g. Lesser (2007).

⁷⁵ National Board of Trade (2004)

8. Summary

In order to promote productivity growth and competitiveness, free trade should be prioritised. With the aim of contributing to the discussion on the external dimension of a new growth strategy, this paper presents suggestions on measures to reduce TBTs through initiatives by the EU.

With the view to increase the *transparency* of EU legislation and to avoid the emergence of new TBTs, the EU could elaborate a guide on how the Member States should interpret the TBT Agreement's notification obligation. The purpose would be

- *to use a coherent approach and increase the number of notifications according to the TBT Agreement*

This would improve the possibility of third countries to follow and to react to proposals on new technical regulations both in the EU and its Member States, thus reducing the risk of emergence of new unnecessary obstacles to trade.

Furthermore, as a parallel to the “early warning mechanisms” included in FTAs between the EU and third countries, as well as the experience from the regulatory co-operation dialogues with e.g. the US, the EU and its Member States could, in order to avoid creating unnecessary TBTs,

- *inform the TBT Committee at an earlier stage about planned technical regulations*

This would be especially interesting in sectors where the EU see a need for protection of the health and safety of humans, animals and plants, e.g. in the sectors of chemicals, foodstuff and animal protection.

The Internal Market has increased trade between the EU Member States, as well as trade with third countries. *Harmonisation* of the legislation, and common procedures together with mutual recognition have proven to be effective in reducing TBTs between the Member States. In order to further reduce TBTs within the Internal Market, projects of regulatory reform could be initiated by the Commission with the view to identifying

- *new areas of harmonisation*
- *within the harmonised area, legislation which would be beneficial to convert into the “New Approach” regulatory technique*

As the “New Approach” regulatory technique makes extensive reference to standards, the degree of conformity of the EU harmonised legislation with the rest of the world is partially determined by the standards referred to. Thus, as far as possible, harmonised European standards referred to should be *identical to international standards*. Hence,

- *the European standardisation bodies should be called upon to initiate projects with the purpose to increase the identity between European and international standards*

In order to reduce the obstacles to trade from *conformity assessment* we propose that, in cases where an MRA is not feasible,

- *the EU should further explore the possibility to recognize competent conformity assessment bodies from third countries*

This would reduce costs of proving conformity for producers in third countries, and thus enhance the possibilities to export to the EU.

Furthermore, in the area of *international technical harmonisation* we propose that the EU and the Member States use the UNECE international model for technical harmonisation to initiate

- *new initiatives for plurilateral arrangements for full market access*

In areas where the EU is opting for *full market access* with its trading partners, except with acceding and neighbouring countries where PECA and ACAA are applicable, the feasible way forward seem to be initiatives according to the UNECE International Model, especially in the “New Approach” areas.

The adaptation costs to technical rules are especially burdensome for producers in *developing countries*. In order to promote trade with developing countries we propose that the EU should continue and search for new ways to provide

- *technical assistance to developing countries in the area of technical rules*

Many developing countries encounter problems with the implementation of their obligations according to the TBT Agreement. Furthermore, the potentially adverse effect on trade from developing countries caused by technical harmonisation and new technical rules in developed countries calls for special treatment.

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