

TECHNICAL PRODUCT STANDARDS AND REGULATIONS IN THE EU AND EAEU – COMPARISONS AND SCOPE FOR CONVERGENCE

**Challenges and Opportunities of Economic Integration
within a Wider European and Eurasian Space**



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The project builds on the intense research going on in many countries, including Member States of both the EU and the EAEU, the United States, China, Japan, Turkey and Ukraine, and on the outcomes of seven international workshops held at IIASA from June 2013 to April 2016, as well as several high-level conferences organized by IIASA in 2017. These multiple evidence-based meetings convened in the framework of the project were attended by renowned scientists, experts, business representatives and high-level policymakers, including representatives from the European Commission (EC) and the Eurasian Economic Commission (EEC) and resulted in a number of reports and publications.

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Challenges and Opportunities of Economic Integration within a Wider European and Eurasian Space

Technical Product Standards and Regulations in the EU and EAEU – Comparisons and Scope for Convergence

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Acronyms

ACAA – Agreement on Conformity Analysis and Assessment for Industrial Products

CEN – European Committee for Standardisation

CENELEC – European Committee for Electrotechnical Standardization

DCFTA – Deep and Comprehensive Free Trade Area

EAEU – Eurasian Economic Union

ETSI – European Telecommunications Standards Institute

EU – European Union

IEC – International Electrotechnical Commission

ISO – International Standards Organization

ITU – International Telecommunications Union

MRA – Mutual Recognition Agreement

SPS – Sanitary and Phytosanitary (regulation)

TBT – Technical Barriers to Trade

WTO – World Trade Organization

UNECE – United Nations Economic Commission for Europe

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Abstract

If the idea of Lisbon to Vladivostok is to mean a common economic space, its first operational content should consist of the reduction and ending of tariffs and of key non-tariff barriers, the latter requiring the harmonization of technical regulations and standards for industrial and agri-food products. The issue of tariffs is of high political and economic significance, but still a conceptually simple matter. By contrast, the removal of non-tariff barriers is immensely complex, involving dozens or hundreds of regulations and thousands of product standards. This study therefore examines the non-tariff issue in some detail, with the aim of being able to “see the wood for the trees.” Surprising as it may seem, the harmonization of product standards is actually already progressing as a result of the unilateral policy of the Eurasian Economic Union (EAEU) and its member states adopting increasingly international and European standards. Concretely, around 30 sector-specific framework regulations have been adopted by the EAEU, which are “based on” EU directives, backed up by a listing of 5,821 product-specific standards which are harmonized with those also used by the European Union (to a large degree, EU and international standards are identical). However, this convergence is much less the case for agri-food products which are subject to sanitary and phytosanitary regulations. There is therefore, at least for industrial products, a promising basis to build on in the event of conceivable negotiations over a free trade agreement between the EU and EAEU. There would be two important steps in carrying these issues forward in an agreement. The first concerns the distinction made in practice between “identical” harmonization of standards versus harmonization “with modifications.” There are still many examples, particularly on the part of Russian agencies, where “modified” standards are adopted at the national level alongside the harmonized standards, and the former in principle should be phased out. The second step would concern an agreement with the EU on “mutual recognition of conformity assessment” (MRA), meaning that each party’s accredited agencies would be empowered to certify conformity of their exporters’ products with the standards required by the importing state, without further testing or certification. This would further reduce the costs of non-tariff barriers to a very useful degree.

Overall, therefore, the domain of technical regulations and standards for industrial products is in principle rather well prepared for constructive progress, and would best be complemented by an agreement to also reduce and then eliminate tariffs (no doubt with considerable transition periods on the side of the EAEU). This scenario is still, of course, a long way ahead, and of course, various political considerations will also come into play over the timing of such an initiative. However, the main point is that there is a concrete concept available for these key elements of a hypothetical agreement.

Executive Summary

This paper explores how non-tariff barriers might be handled in a hypothetical free trade agreement (FTA) between the European Union (EU) and Eurasian Economic Union (EAEU). The existing systems of both the EU and EAEU are documented in some detail.

The political context under which such an agreement might happen lies beyond the scope of this paper, which deals only with technical and economic policy questions.

The tariff-free trade prior question. A prior issue is whether such an agreement would be an FTA, including the abolition of tariffs, or just a “non-preferential” agreement, under which tariff protection would remain. This would affect the level of ambition of an agreement to reduce non-tariff barriers.

The EU for its part generally favors making FTAs in its global trade policy. Whether the EAEU would also be in favor of doing this with the EU would need to be clarified, noting that while the EAEU has made an FTA with Vietnam, it only aims at a non-preferential agreement in its current negotiations with China. A conceivable compromise formula could be an “asymmetric FTA,” with the EU scrapping tariffs immediately, while the EAEU would see substantial transition periods for the reduction and ultimate elimination of tariffs (as, for example, in the EU-Ukraine DCFTA).

Options for non-tariff barriers. Given this undetermined wider context, the paper explores a range of possible options for non-tariff barriers from the minimalist to maximalist, both for industrial goods (called Technical Barriers to Trade or “TBT” in WTO texts) and agri-food products (called Sanitary and Phyto-Sanitary or “SPS” regulations in WTO texts).

The non-tariff barrier content of trade agreements is generally recognized these days as being of exceptional complexity and importance, more so than the relatively simple matter of tariffs, which are in any case much reduced between WTO members.

This would be the case in any agreement between the EU and the EAEU. However, actual trends in the policy of the EAEU add a specific factor of the highest relevance, namely, their autonomous use of many EU directives as a basis for reforming and modernizing its former GOST regulations and standards. In addition, the EAEU is adopting many standards of the international standards organizations (ISO, IEC, ITU), which work very closely in partnership with the European standards organizations (CEN, CENELEC, ETSI), such that international and European standards are to a large degree identical. This means that the legal and technical infrastructure for non-tariff barriers of both parties is already converging very substantially. This makes non-tariff barriers a potentially fertile field for cooperation between the EU and EAEU, for which several scenarios are considered in a minimalist to maximalist range.

The minimalist scenario. Realistically, there are practical problems to be overcome in all cases, even in a minimalist scenario. In many free trade agreements, the minimalist formula merely confirms the principles of existing WTO agreements for both TBT and SPS, and otherwise adds only soft provisions for cooperation and exchanges of experience by technical staff. The main issue arising in practice is whether the WTO principles of non-discriminatory, scientifically based and de-politicized implementation are respected. On this point the EU and neighboring states have problems with some Russian practices that they consider to be non-compliant with WTO principles.

Mutual recognition. A well-established mechanism for going further to reduce the costs of non-tariff barriers is the Mutual Recognition Agreement (MRA), such as the EU has with the USA, Canada, and

other OECD countries. The usual situation is that the substantive standards may differ between the parties, but accredited bodies in the exporting country may certify conformity with the standards required by the importing country without requiring further conformity assessment in the importing country. This is based on the “mutual recognition” of the competence of each others’ conformity assessment bodies. This valuable mechanism requires a high level of mutual trust in the professional competence of the technical agencies and their freedom from political orientations in their decision making. Starting from present day conditions, this would still be a serious challenge between the EU and the EAEU and its member states.

The maximalist formula. This is where the two parties adopt identical substantive regulations and standards, such that the non-tariff barriers can be not just reduced but eliminated. The EU has established a template formula for eliminating non-tariff barriers, which is an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA), and which is beginning to be used in relations with neighboring countries (for example, Israel, and potentially Ukraine under its DCFTA). This requires full conformity with EU regulations, standards, and practice, on the basis of which trade between the parties can function as freely as between EU member states (i.e., conformity established in one party for its own internal market means that no further checks are required to enter the market of the other party). It is already most positive that the EAEU is, to a large extent, adopting international and European standards identically, although some EAEU member states (especially Russia) adopt “modified” versions, which would need to be phased out for this maximalist scenario.

Conditions for progress. These options therefore already exist “on the table.” In general, it can be anticipated that pre-conditions for any ambitious arrangements would include establishment of basic trust over the professionalism and de-politicization of the work of accredited technical agencies. In addition, the strategic economic policy priorities of the EAEU member states would have to be committed to international openness and competition. These conditions remain to be assured.

Introduction

This paper looks at the subject of non-tariff barriers within the broad idea of some kind of common economic space to include both the EU and EAEU, sometimes called “Lisbon–to–Vladivostok” (L2V). This idea is not currently the subject of official discussions, and the present paper is not the place to go into the current political impediments to this.

Non-tariff barriers to trade are recognized to be of increasing relative importance, given the proliferation of tariff-free trade agreements and the generally quite low tariff levels between WTO member states. In the language and law of trade agreements there are two basic categories: one for industrial products (Technical Barriers to Trade, TBT), and another for food and agricultural products (Sanitary and Phyto-Sanitary regulations, SPS). In practice, both are highly complex matters, involving thousands of technical regulations and standards.

The paper seeks first to summarize the respective TBT and SPS systems of the EU and EAEU, with a view to understanding their similarities and differences, and how they affect international trade between the parties.

The EU systems for both TBT and SPS are fully developed and mature, albeit constantly adapting to new technologies and political orientations. They are based on a combination of international and European standards and regulations.

The EAEU systems have been based on the GOST regulations and standards of the former Soviet Union, but with substantial changes over subsequent years, including during the 2010–2014 period of the customs union of the Eurasian Economic Community. Since 2015 the EAEU has taken on the competences of both the TBT and SPS and works on the modernization of both systems with increasing use of international and European standards.

The paper therefore examines how far the EU and EAEU systems are becoming mutually compatible. Finally, there is the policy question on what steps might be taken to reduce non-tariff barriers between the two parties, drawing on the wide spectrum of examples (from the minimalist to maximalist) coming from various international trade agreements.

TBT Systems

EU and wider European systems

Basic system of the EU

While the system for setting technical standards in the EU is highly complex and has been changing over time, its basic, two-level system can be summarized as follows:

- First level: EU harmonization laws, of which a few “horizontal” regulations or decisions cover the general methodology and institutional framework, and around 30 directives cover broad “sectoral” product groups such as “machinery,” etc. For the product groups the directives outline the “essential” health and safety requirements that have to be met before the products can be placed on the EU market.
- Second level: around 5,000 product-specific “harmonized standards” that provide the technical means to assure the *presumption* of compliance with the essential health and safety requirements defined in the sectoral product directives. These standards are produced at the request of the European Commission by the three technical organizations (CENELEC for electrical products, ETSI for telecommunications equipment, and CEN for the largest number of other products)¹ However these organizations produce on their own initiative a far larger number of around 25,000 voluntary standards, often in collaboration with the International Standards Organization (ISO), International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU), on which more below.

When the Commission is satisfied with the standards developed by the CEN, CENELEC or ETSI it publishes them in the Official Journal of the European Union, so they then have official status as “harmonized,” and are presumed to meet the “essential requirements” of the relevant directive. An overview of the harmonized standards, grouped by the existing sectoral product directives, can be found on the European Commission’s website.²

The qualitative difference between directives and standards is that directives are binding laws, whereas the harmonized standards, while having official recognition, are voluntary for manufacturers who may choose to use them or to apply their own specifications. However, in the latter case the manufacturer still has to prove “conformity” with the directive; there is no longer the presumption of compliance.

When placing a product on the EU market covered by the EU’s harmonization legislation, the manufacturer has to draw up and sign an “EU Declaration of Conformity,” in which he/she declares and ensures that the products concerned satisfy the “essential requirements” of the relevant product directive and that the relevant conformity assessment procedures have been fulfilled. By signing the EU Declaration of Conformity, manufacturers assume responsibility for the compliance of the product.

¹European Committee for Standardization (CEN), European Committee for Electrotechnical Standardization (CENELEC), European Telecommunications Standards Institute (ETSI).

² European Commission, “Harmonized Standards,” http://ec.europa.eu/growth/single-market/european-standards/harmonized-standards_en. For example, for the important category of “machinery,” the directive that defines the health and safety requirements is supported by several hundred harmonized standards for specific products or components.

Only then can a manufacturer affix the “CE” mark to the product. Products bearing the CE marking are presumed to comply with the applicable EU legislation and benefit from free circulation in the European single market.

Box 1. Sectoral product legislation of the EU

Cableways	Measuring equipment
Construction products	Medical devices
Diagnostic medical devices equipment	Packaging
Electromagnetic compatibility	Personal protective equipment
Equipment for explosive atmospheres	Pressure equipment
Explosives for civil use	Radio & telecomm terminals
Gaseous fuels, High-speed railways	Recreational crafts
Hot-water boilers, Implantable medical devices	Refrigerators, freezers
Labelling of energy consumption	Simple pressure vessels
Lifts	Toys
Machinery	Transportable pressure equipment
Marine equipment	Weighing machines

The European standards organizations (CEN, CENELEC, ETSI). These are pan-European organizations, open to cooperation with non-EU states, with three categories of membership and relationships:

- *Full members.* CEN’s members consist of all EU member states, plus Norway, Macedonia, Serbia, Switzerland, and Turkey.
- *Affiliates.* These include other Balkan states that are potential member states and intend full integration into the European standards system: Albania, Bosnia and Montenegro. The three EU-DCFTA states (Georgia, Moldova, and Ukraine) are now joining the list of affiliates.
- *Companions.* These include countries that work closely with CEN to achieve technical harmonization and contribute to the removal of technical barriers to trade with Europe. Most EAEU member states (Armenia, Belarus, and Kazakhstan) are “companions,” but not Russia. Other companions include neighboring states (Morocco, Tunisia, Israel), and some states on other continents (Canada, Australia, New Zealand).

Of special importance for the purpose of the present paper is the close relationship between the European (EU-based) and international (Geneva-based) standards organizations, namely CEN, CENELEC in Brussels, and ETSI in Sophia Antipolis in France, and the ISO, IEC and ITU in Geneva. These international organizations have around 150 member states worldwide, including all EU and EAEU member states.

In particular CEN and ISO have shared since 1991 a cooperation agreement (“Vienna Agreement”), which defines important rules for how the two can work together, including for the adoption by both organizations of identical standards in many cases.³ CEN and ISO effectively have a division of labor

³Vienna Agreement, Guidelines for the Implementation of the Agreement on Technical Cooperation between ISO and CEN, https://boss.cen.eu/ref/VA_Guidelines_implementation.pdf

agreement. When demands for some new standard appear they have a procedure for deciding which of the two should be the “lead” organization for drafting the standard, and then later for deciding whether both agree to it, or not. If there is agreement, the standards become a “common standard” with identical texts published by both. Where the “lead” is given to the European organization, there has still to be a majority of non-European members of the ISO (e.g. including Russia) who agree to this. Similarly for electrical equipment, CENELEC have a cooperation agreement with the International Electrotechnical Commission (IEC), initially the Dresden Agreement of 1996, update with the Frankfurt Agreement in 2016. About 80% of CENELEC standards are identical to or based on IEC publications.

The number of “common standards” published identically by CEN and CENELEC with the ISO and IEC is very substantial (around 6,300).

Similarly, the ETSI collaborates with the ITU.

UNECE “type approval” agreement (1958 Geneva Agreement). There are also some common standards set by the UN Economic Commission for Europe (UNECE), notably for the automobile sector. This very important sector for trade between the EU and EAEU in cars and other “wheeled vehicles” is subject to a long-standing activity of the UNECE, which has adopted product standards for “wheeled vehicles” under the 1958 Geneva Agreement. All EU and EAEU member states are members of the UNECE and have acceded to the 1958 agreement. The system has extended recently to include Japan, Korea, Thailand, Australia and some other non-European countries, with the notable exceptions however of the US and Canada.

The 1958 Agreement has been revised more than once (see the reference to its 1995 version).⁴ The Agreement is supported by around 140 specific regulations as *Addenda*.⁵ The system provides for national competent authorities to certify “type approval” of products conforming to uniform requirements of specific regulations. When the competent authority of an exporting member state has given its “type approval” the importing member state does not require certification by its competent authorities: i.e. in principle there is *mutual recognition* of the certification of conformity with the common standards.

Russia is involved in this UNECE activity, and is currently co-chair of its working group on motor vehicles. Russia is largely compliant with the UNECE standards, but not without some provisions where it sets its own requirements.

The European Commission and Russian Ministry of Industry and Trade share a “Dialogue” process over implementation of the UNECE standards. This dialogue is currently suspended, but there are continuing informal consultations that take place at the technical level.

⁴“Agreement - Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts, which can be fitted on or be used by Wheeled Vehicles, and the Conditions for Reciprocal Recognition of Approvals granted on the basis of these prescriptions,” E/ECE/324, E/ECE/Trans/505, Rev. 2, 5 October 1995. <http://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2009/505ep29.pdf>

⁵UNECE - Transport Division - Vehicle Regulations - Addenda to the 1958 Agreement... <http://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2009/505ep29.pdf>.

For an up-to-date statement on the system, see “Status of the Agreement, of the annexed UN Regulations and of amendments thereto Revision 25,” Note by the secretariat, <http://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2017/ECE-TRANS-WP.29-343-Rev.25.pdf>

Overall these European organizations amount to an institutional set-up that is well placed to facilitate convergence between EU and EAEU systems of technical standards for industrial goods. The blend of European and international governance features should in principle make it relatively easy for EAEU and its member states to find common ground with the EU.

System for imports into the EU from third countries

Three basic regime types can be identified in the practice of the EU to restrain, reduce, or even eliminate the effective non-tariff barriers represented by technical product regulations and standards:

- Minimalist, through reliance on WTO principles,
- Medium openness with mutual recognition agreements for conformity assessment (MRAs), such as in the EU-US MRA (see Annex B), or the EU-Canada CETA (see Annex C),
- Maximalist, where non-EU countries adopt European standards, as in the case of the new DCFTAs with Georgia, Moldova and Ukraine (see Annex H).

The WTO TBT Agreement is of key importance in all cases. Its Article 2.2 states:

Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products.

The essential point in this long quotation is that while WTO member states are entitled to define their own technical regulations and standards, they are obliged to apply these in a non-discriminatory manner, and to base decisions on scientific and technical information. This means that discriminatory political orientations for the work of technical agencies is to be excluded.

The EU-US, and EU-Canada agreements are examples of mutual recognition of conformity assessment that accommodate different regulations and standards between the two parties, but crucially allow the accredited conformity assessment bodies in the exporting country to certify conformity with the regulations and standards of the importing country. This greatly reduces the burden of non-tariff barriers.

The DCFTA model sees the progressive adoption by the partner states of the entire “corpus” of European standards. At the end of this process the DCFTA agreements envisage the making, of “Agreements on Conformity Assessment and Acceptance of Industrial Products (ACAA)”. ACAAs are a type of mutual recognition agreement originally envisaged by the EU for any country of the eastern or southern neighboring states as well as non-EU member Balkan states.⁶ By concluding an ACAA, the parties agree that industrial products fulfilling the requirements for being lawfully placed on the

⁶ <https://www.google.co.uk/search?q=EU+ACCA&oq=EU+ACCA&aqs=chrome..69i57j0l5.6276j0j4&sourceid=chrome&ie=UTF-8#q=EU+ACAA>

market of one party may be placed on the market of the other party, without additional testing and conformity assessment procedures.

However, before concluding an ACAA, the partner state has first to fully implement all obligations related to EU directives, including the harmonized standards, and the role of accreditation and conformity assessment institutions. An ACAA would consist of a framework agreement, providing for the recognition of equivalence of the conformity assessment, verification and accreditation procedures, for market surveillance, and one or more annexes setting out the products covered. ACAAs are made on a sectoral basis. For example, a first ACAA has been concluded between the EU and Israel for pharmaceutical products (Annex I). Ukraine envisages that its first ACAAs with the EU will be for simple pressure vessels, low voltage equipment, electromagnetic compatibility and machinery. More sectors can be added later.

Since European technical standards are voluntary, this means that European exporting enterprises are free to produce according to the standards demanded by third countries. Thus, enterprises of the three states having made DCFTA agreements with the EU, which sees them introducing EU standards and repealing conflicting GOST standards for the home market, remain entirely free to manufacture for export to third-country markets, such as Russia and other EAEU states, according to EAEU technical standards.

On the import side, the question how the DCFTA states are to treat imports from third countries has been a sensitive matter, as exemplified by the difficult “trilateral” dialogue between Ukraine, the EU and Russia on the implications of the DCFTA for Russia. The concern on the Russian side was that Ukraine’s adoption of European standards would create new non-tariff barriers for Russian exports to Ukraine. However, this concern seems now to be much alleviated by the fact that the EAEU is itself adopting international and European standards (that are largely identical in any case) – see sections below.

TBT system of the EAEU

EU-Russia cooperation on technical standards, 2010-2016

The TBT system of the EAEU, as it develops today, has its origins earlier in the present decade, in particular through the “Partnership for Modernisation” between Russia and the EU, endorsed at their summit in Rostov-on-Don on June 1, 2010, and which built upon the earlier Russia-EU initiative of the “Common Economic Spaces”. One of the key directions for cooperation in this context was the promotion of “alignment of technical regulations and standards”. As a result, a project was launched entitled “*Approximation of EU and RF technical regulation and standardisation systems,*” and this continued until December 2016. Its website www.eu-rf.org details what was done. The project involved cooperation with the Russian Ministry of Industry and Trade (and its relevant agencies), alongside the work of the Customs Union of the Eurasian Economic Community, which passed important legal acts for the development of technical product regulations, which were later passed on to the EAEU. The project’s key reference was the EU’s regulatory framework, and its experience of integrating the economies of member states within a single market. The project was entrusted to private sector consultants, who were not mandated to enter into negotiations over any agreement

between the EU and Russia. Its role was to make the EU's experience known to Russian partners at a time when they were engaged autonomously in modernization work.

As another example of activity at that time, the EU-Russia Industrialists' Round Table established a task force on technical regulations, with many sector-specific working groups. This resulted in a book producing detailed recommendations.⁷

In September 2013 CEN, CENELEC, and Rosstandart (the [Federal Agency for Technical Regulation and Metrology of the Russian Federation](#)) signed a [Cooperation Agreement](#) providing a framework to facilitate sharing of information, transfer of technical knowledge, and exchange of best practices between Europe and Russia. This cooperation has now moved on in 2017 to the signing by CEN and CENELEC of a memorandum of understanding with the Eurasian Economic Commission (on which more below).

In practice, this earlier work saw a major reorientation of Russian policy for technical product regulations away from the former Soviet GOST standards toward international and European practice.

Basic system of the EAEU

The legal framework of the EAEU for TBT issues has been undergoing reform since 1 January 2015, as part of the EAEU's work to assure the economic integration of Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia. However, the EAEU has taken over much of the legislation of the earlier Customs Union project of the Eurasian Economic Community, which was initiated in 2010 by Belarus, Kazakhstan, and Russia (hence, many legal texts referred to below bear the "CU" code and pre-date the EAEU).

The EAEU member states have agreed to harmonize their policies and regulatory systems in the area of technical regulations. While the process is not yet complete, the goal of this harmonization is to ensure uniform requirements for the circulation of goods within the territories of the EAEU member states through common technical regulations. Legally, these technical regulations are to be applied directly in the territory of the member states, without complementary national legislation.

The relevant provisions of the EAEU Treaty and other EAEU legal instruments are based on the WTO Agreement on Technical Barriers to Trade (TBT), as it is stated that technical regulations would be adopted in the EAEU for the purposes of protecting human life and/or health, property, environment, animal and plant life and/or health, and preventing actions that might mislead consumers, as well as for ensuring energy efficiency and saving resources.

The legal basis for the common policy is Section X "Technical Regulation" and Annexes Nos. 9–11 of the EAEU Treaty.⁸ These provisions replaced former texts of the Customs Union of Belarus, Kazakhstan, and Russia of 2009 and 2010. Of special importance for the present paper is the article in Section X that provides for the "*use on international standards as a basis for elaboration of technical regulations,*" in order to replace the largely obsolete GOST standards inherited from the Soviet Union.

⁷EU-Russia Industrialists' Round Table, "Recommendations of Task Force 8, on approximation of regulatory systems in the sphere of technical regulations between the customs union and the European Union."

⁸ Text of the EAEU Treaty is electronically available at <http://www.eurasiancommission.org/>.

Annex No. 9 of the EAEU Treaty provides for the development of a **Unified List** of goods, subject to mandatory conformity assessment. This is based on the unified list established earlier by the Customs Union of the Eurasian Economic Community in 2010 to 2013 (Decisions Nos. 620 and 526).⁹ Products included in the Unified List under Decision No. 620 can move freely within the entire EAEU territory if they have undergone conformity assessment procedures in any EAEU member state. Products not included in this Unified List are subject to mandatory conformity assessment according to the national legislation of the member states.

Once the technical regulations of the EAEU come into force, relevant national requirements, established by laws of the EAEU member states, can no longer be applied. Corresponding national technical regulations must be repealed. In practice, this process may take time and there remain some inconsistencies (e.g., simultaneous listing of common harmonized standards and differing or modified national standards).

Annex 11 of the EAEU Treaty stipulates the principles for a common system **of mutual recognition** of accreditation, the responsibilities of the accreditation bodies of the EAEU member States, and general principles of accreditation, pending gradual replacement of this mutual recognition system by adoption and application of common technical regulations.

As to the institutional framework, the EAEU Treaty (Section X and Annexes Nos. 9-11 provide for a substantial transfer of competences in the field of technical regulation from the national level to the EAEU level. Member States may not establish additional mandatory requirements¹⁰ at the national level beyond those established in the technical regulations of the EAEU. However, the development and application of standards, conformity assessment, state control and supervision, metrological control, and liability issues in the EAEU Member States continue to be administered at the national level.

The EAEU competences in the field of technical regulation are divided between the Council of the Eurasian Economic Commission, responsible for overall regulation of the integration processes, and the EEC Board, the executive body that makes proposals for further integration.

The process of preparation of drafts technical regulations goes as following. The “developer” of the draft technical regulation, which is usually either the CIS-based standards organization in Minsk, or an EAEU member state institution, prepares the first draft, which is considered by a working group including representatives of standardization bodies, industry and business. As a next stage, the Eurasian Economic Commission sets in motion committee work, publication of the draft on its official websites, and public consultations. The text, as revised through these processes, is submitted by the Board to the Council for decision.

Use of international and European regulations and standards. A document of the Eurasian Economic Commission lists 31 technical regulations that came into force between 2012 to 2015 that were developed “on the basis of” EU framework Directives and Regulations, which seem to cover virtually

⁹ The electronic version of Decision N° 620 is available at <http://customsunioncertificate.com/wp-content/uploads/2014/06/TR-CU-Product-List.pdf>.

¹⁰ Euro-Asian Council for Standardization, Metrology and Certification, operating under the auspices of the Commonwealth of Independent States (CIS).

the whole range of principal EU sectorial framework regulations (as identified at the beginning of the section “Basic system of the EU” above).¹¹

The number of EAEU listed standards harmonized on international and European standards so far adopted by the EAEU is 5,821. Of these the majority are “identical” to the international or European standards, while a minority are “modified” versions. For example, for the important sector of low voltage equipment (e.g. household appliances and hand tools), the EAEU framework Regulations is practically the same as the EU Directive. The subordinate detailed product-specific standards number 978, of which 841 are identical to IEC/CENELEC standards, while 137 are modified.

Many of the “modified” standards are adopted by a single EAEU member state, especially Russia, and the lists of standards are thus a mixed collection of identically harmonized standards common to the EAEU as a whole and “modified” national standards. The objective is to phase out these national standards, but how far or fast that will happen is not clear. However, it is understood that the existence of parallel modified national standards does not prevent the harmonized standards from being acceptable in all EAEU states. The national standards are only binding where no harmonized standard exists, or in a small minority of other cases.

Recently in June 2017 CEN and CENELEC signed a Memorandum of Understanding with the Eurasian Economic Commission¹² (see Annex A for the full text). This MoU provides for cooperation including the exchange of information. Its most significant phrase is in Article 2:

“The Parties promote further harmonization of interstate and national standards of the Eurasian Economic Union Member States with international standards and in the absence of those international standards with European standards”.

GOST standards – current confusion in public communications

Anybody with business experience in the states of the former Soviet Union will have learned that the term GOST refers to the body of technical product regulations inherited by the post-Soviet states. This regulatory legacy has been subject to progressive changes in all states over the last decades. However, since 2010 with the Customs Union of Belarus, Kazakhstan and Russia, and now even more clearly with the EAEU since 2015, these revisions have amounted to a category change, as international/European standards have increasingly been adopted. Currently the EAEU is introducing harmonized lists of international/European standards, which are called “International and regional standards adopted as interstate GOST standards”. In practice these are largely ISO and IEC standards, which are mostly identical to European standards of CEN and CENELEC. The continued use of the GOST branding causes confusion, where the standards in question are in reality international/European standards, and no longer based on the former Soviet GOST standards. The term GOST is used as a generic label for technical regulations, and therefore can embrace international/European standards, but not everybody and especially foreigners appreciate this.

¹¹Eurasian Economic Commission, “Development of the Technical Regulation System in the Eurasian Economic Union”

¹²<ftp://ftp.cenelec.eu/EN/IntCooperation/AgreementsAndMoUs/MemorandaofUnderstanding/EEC.pdf>

System for imports into the EAEU from third countries

On 1 January 2018 the new EAEU Customs Code came into force.¹³

The EAEU Customs Code counts over 1,000 pages, and it is designed to systematize and codify over 20 international treaties of the EAEU in the sphere of international trade, including on customs valuation, rules of origin, customs clearance of goods delivered via international mail, etc. The EAEU Customs Code is aimed at making customs operations more transparent and reducing paperwork etc. The new code will require many implementing regulations of the EAEU and national authorities.

At present, for the customs clearance of a wide range of products (the “unified list” of products subject to mandatory certification), the importer of goods to the EAEU is required to prove that those goods conform to the valid norms and standards of the EAEU. The scope of products covered will be amplified, as more regulations will be entering into force.¹⁴

National authorities are responsible for certification, for example, in Russia the Federal Agency for Technical Regulation and Metrology (“Rosstandart”),¹⁵ and in Kazakhstan the Committee of Technical Regulation and Metrology of the Ministry of Industry and New Technologies.¹⁶

Currently the conformity of goods produced by foreign manufacturers located outside the EAEU territory can be demonstrated either through the use of a declaration of conformity on the EAEU common form, or that which exists in the national legislation of the EAEU member state.

The Regulation on Procedures for Importation of Goods (CU Commission Decision No. 319) stipulates the procedures under which customs authorities require documents confirming compliance of products (goods) with mandatory requirements, according to their category (products for domestic consumption, temporary importation, free customs zone, free warehouse, re-import). Moreover, the Regulation specifies categories of products (goods), for which submission of compliance is not required (used goods, and goods imported in limited quantities for personal use or for scientific research purposes).

¹³http://www.eurasiancommission.org/en/nae/news/Pages/14_11_17.aspx

¹⁴As of now, the Technical Regulations have entered into force for pyrotechnical products, personal protective equipment, packaging, toys, cosmetic and perfume products, products for children and adolescents, automotive and aviation gasoline, diesel and marine fuel, jet fuel, heating oil and light industry products.

¹⁵<http://www.rosstandart.org/>

¹⁶<http://www.memst.kz/ru/index.php>

SPS Systems

SPS system of the EU

Basic system of the EU

The EU's corpus of SPS law consists of about 300 regulations.¹⁷ These are grouped into the following categories:

- General rules, 10 regulations
- Veterinary, 78 regulations
- Placing on the market of food, feed and animal by-products, 28 regulations
- Food safety rules, 51 regulations
- Specific rules for feed, 10 regulations
- Phytosanitary rules, 48 regulations
- Genetically modified organisms, 10 regulations
- Veterinary medical products, 6 regulations

The key general regulation is entitled "*Laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety*" (Regulation EC/178/2002). This regulation (otherwise known as the "Food Law") is a central umbrella legal act of the EU in the area of food safety, covering all stages of the food production chain (Article 3.1).

The objectives of Regulation 178/2002 are:

- Protection of human life and health, and protection of consumer's interests, with due regard for the protection of animal health and welfare, plant health and the environment;
- EU-wide free movement of human food and animal feed;
- Consideration of existing and planned international standards.

The core principles of the EU food law are the following:

- Unsafe food should not be placed on the market;
- Food is deemed to be unsafe¹⁸ if it is considered to be injurious to health¹⁹ or unfit for human consumption;²⁰

¹⁷As conveniently listed in the SPS Strategy of Moldova in "*Decision No 1/2016 of the EU-Republic of Moldova Sanitary and Phytosanitary Sub-Committee of 1 June 2016*," Official Journal of the EU, L 178/28.

¹⁸Determination of safety of food should be "under the normal conditions of use of the food by the consumer at each stage of production, processing and distribution and the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods" (Article 14(3) of EC Regulation 178/2002).

¹⁹Determination of whether any food is injurious to health should take into account "not only to the probable immediate and/or short-term and/or long-term effects of that food on the health of a person consuming it, but also on subsequent generations; to the probable cumulative toxic effects; to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers" (Article 14(4) of EC Regulation 178/2002).

²⁰In determining whether any food is unfit for human consumption, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by

- Food and feed traceability;
- Food business operator primary responsibility for safety of food produced.

European Food Safety Law is a relatively new branch of law and it took several years to be established. There are two important considerations that underline this EU legislation. First, European consumers demand high levels of food safety and quality, so the EU policy is demand-driven. Secondly, the EU “Farm-to-Fork Strategy” follows a comprehensive approach and integrates various stages from primary production, processing, through to placing food on the market. The legislation relevant to food safety includes:

- general principles and requirements of the EU food law;
- food hygiene;
- animal health and welfare;
- certain requirements applicable to live animals and plants, and;
- certain requirements on food producing establishments such as processors and packers, as well as on food items themselves.

Another key Commission Implementing Regulation is that *“On traceability requirements set by Regulation EC/178/2002 for food of animal origin,” (EC/931/2011).*

Food and feed produced in the EU, or imported with a view of being placed on the EU market, or re-exported to a third country, must comply with the relevant requirements of EU food law. EU food law regulates Maximum Residue Levels (MRL’s) for agrochemicals and contaminants, regulating control of foodstuffs, sampling, conformity with marketing standards, food hygiene, packaging, labelling and organic production, as well as biotechnology and novel food.

In order to achieve the general objective of a high level of protection of human health and life, EU food law is based on risk analysis (except where this is not appropriate). Risk analysis comprises three interrelated components: risk assessment, risk management and risk communication. Risk assessment must be based on the available scientific evidence and undertaken in an independent, objective and transparent manner. The Regulation establishes two principles applicable to risk analysis: the precautionary principle (Article 7) and principle of transparency (Articles 9-10).

In accordance with the precautionary principle, provisional risk management measures, necessary to ensure the EU high level of health protection, may be adopted where the possibility of harmful effects on health is identified, but scientific uncertainty persists and requires further scientific information for a more comprehensive risk assessment. Measures adopted under the precautionary principle must be proportionate and no more restrictive of trade than necessary. In addition, the measure must be reviewed within a reasonable period of time, depending on the nature of the risk to life or health identified and the type of scientific information needed to clarify the scientific uncertainty.

The principle of transparency applies to public consultations and public information. Public consultations should be organized directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it. Public

extraneous matter or otherwise, or through putrefaction, deterioration or decay (Article 14(5) of EC Regulation 178/2002).

authorities must inform the general public of the nature of the risk to human or animal health and the measures, which are or will be taken to prevent, reduce or eliminate the risk.

System for imports into the EU from third countries

The overriding technical principle of the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement") is that any measures to regulate imports must be based on potential risks of harm to humans, animals or plants in order not to be considered as trade barriers. Somewhat more generally:

Members [of WTO] shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility [Article 5.6 of SPS Agreement].

The EU maintains a comprehensive system for the regulation of imports of agri-food products from third countries world-wide to assure their compliance with its SPS requirements, notably under Regulation EC/854/2004 on rules for the organization of controls of products of animal origin. This Regulation first sets the rules for the approval within the EU itself of "establishments" (i.e. slaughterhouses, or food processing factories), and requires that officially designated "competent authorities" carry out or organize controls to verify compliance with SPS requirements.

However, the Regulation goes on to establish comparable rules for approving establishments in third countries for the purpose of exporting to the EU market. Third country enterprises are therefore able to seek approval of the European Commission, which publishes the complete lists of certified establishments.²¹ These lists show that three CIS states make significant use of this facility: Belarus (51 dairy plants), Ukraine (16 dairies, 7 poultry producers), and Russia (10 dairies and 13 poultry producers). On the other hand, Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan and Moldova make very little or no use of it. The enterprises in question have to comply with all relevant SPS regulations of the EU, but without the whole of the agri-food sector of the exporting country having to do so. In this way, progressive export-oriented enterprises have freedom to develop.

SPS System of the EAEU

Basic system of the EAEU

In relation to SPS issues, similar to the TBT, there is a clear trend toward completing transfer of rule-making powers to the EAEU for the establishment of the following uniform instruments:

- Lists of commodities, subject to SPS measures and technical regulation;
- Mandatory requirements for commodities that are subject to SPS measures and technical regulation;
- Compliance assessment procedures;
- Compliance documents forms;
- Control procedures applicable to the entry of commodities at the EAEU customs border and their movement from one EAEU member state to another one;

²¹ European Commission, *Third Country Establishments, Lists per Country*, https://webgate.ec.europa.eu/sanco/traces/output/non_eu_listsPerCountry_en.htm#

- Interaction rules for the authorities of EAEU member states.

The Sanitary and Phytosanitary (SPS) regime in the EAEU Members is established by the Treaty of the EAEU in Articles 56 to 59, and Annex No. 12.²²

National legislation remains in force to the extent that it does not contradict the EAEU Treaty, CU Commission Decisions and EEC Council and Board Decisions. Any issues that are not specified by the above-mentioned Treaty and Decisions are dealt with by the national legislation of the EAEU Member States. For example, the Technical Regulation on Food Safety²³ stipulates requirements for food products, while national laws cover issues of state control, supervision, withdrawal of food products, etc. In principle, there is no duplication or overlapping in terms of substance of the provisions of the Eurasian regulations and national laws. But there is a degree of confusion about which legal acts have to be consulted for the importation of certain goods. This issue requires further efforts of harmonization.

The process of development of the Technical Regulations is broadly similar to that of the EU. In practice the system operates not without problems of conflict, which prove difficult to resolve. For example, currently Belarus dairy products are excluded from the Russian market, contested on technical SPS grounds. There has been also a protracted dispute over Kazakhstan blocking access of Kyrgyz potatoes to its market on SPS grounds.

System for imports into the EAEU from third countries

The member states of the EAEU apply common sanitary, epidemiological and hygienic requirements to a wide range of goods if they are considered to be potentially dangerous to human health, or to be imported into the EAEU.

Goods subject to the mandatory state registration will only be permitted for import into the EAEU with a proof of registration. All imported consignments of animals and products of animal origin must be accompanied by a Veterinary Health Certificate for Live Animals (or Animal Products) issued in the country of origin. The importation of goods subject to veterinary control requires a Veterinary Import Permit issued by national authorities, as for example, in Russia by the Federal Service for Veterinary

²² - CU Commission Decision No. 625 "On Ensuring of Harmonization of Legal Acts of the Customs Union in the Sphere of Sanitary, Veterinary and Phytosanitary Measures with International Standards" of 7 April 2011;²²

- CU Commission Decision No. 721 "On Application of International Standards, Recommendations and Guidelines" of 22 June 2011;

- EEC Board Decision No. 212 "On Regulation on the Uniform Procedure of Carrying out Examination of Legal Acts in the Sphere of Implementation of Sanitary, Veterinary and Phytosanitary Measures" of 6 November 2012;

- CU Commission Decision No. 835 "On Equivalence of Sanitary, Veterinary and Phytosanitary Measures and Carrying out Risk Assessment" of 18 October 2011;²²

- EEC Board Decision No. 161 "On Consultative Committee on Technical Regulation, Application of Sanitary, Veterinary and Phytosanitary Measures" of 18 September 2012 (as last amended by EEC Board Decision No. 141 of 19 August 2014); and,

- EEC Board Decision No. 31 "On Ensuring Transparency in the Process of Adoption of Acts of the Eurasian Economic Commission in the Sphere of Application of Sanitary, Quarantine Phytosanitary and Veterinary-Sanitary Measures" of 5 March 2013 (as amended by EEC Collegium Decision No. 161 of 13 August 2013).

²³ TR TC 021/2011, in force from 1/02/2014, text of the TR in Russian is available at <http://www.eurasiancommission.org/ru/act/texnreg/deptexreg/tr/Documents/TR%20TS%20PishevayaProd.pdf>.

and Phytosanitary Supervision. This agency has introduced a system (“Argus”) enabling registered importers to apply for the Veterinary Import Permit electronically.

The Russian²⁴ and Kazakh²⁵ authorities also accept veterinary health certificates not only of other EAEU member states, but also of the EU member states if all relevant information is provided.

To summarize, Russian, Kazakh and Belarus legislation requires for imports of live animals and products of animal origin the following:

- Country approval (inclusion in the list of countries eligible to import particular products).
- Approval or accreditation of the exporter establishment.
- Verification of conformity of a product.
- Veterinary certificate from the country of origin.

SPS regulations on antibiotics in foods—the case of tetracycline

The common international basis to SPS systems is the Codex Alimentarius of the FAO, of which all EU and EAEU member states are members, as well as the EU itself institutionally. EU and EAEU SPS regulations are in general consistent with the Codex’s substantive standards, but are often more stringent.

For example, there is the case of antibiotics in food products. The public health concern is that ingestion of antibiotics in food can weaken the effectiveness of antibiotics prescribed for medicinal purposes. Codex Alimentarius restricts the tetracycline content of meat to 0.1 mg/kg. The EU follows this norm, but the EAEU/Russia has a ten times more stringent limit of 0.01 mg/kg.

Policy issues and conclusions

This paper has reviewed the systems of the European Union (EU) and Eurasian Economic Union (EAEU) for dealing with technical regulations and standards for industrial products (TBT) and food products (SPS), with a view to considering possible ways for the two parties to reduce or eliminate these non-tariff barriers to their mutual trade.

Matters of strategic economic policy choice. A prior question would be to define the “name of the game” in terms of the economic policy choice of the EAEU and its member states, between, on the one hand, policies of liberalization and competition, versus, on the other hand, protectionism and import substitution. This leads into the concrete and basic choice as to whether the EU and EAEU would aim at a free trade area (FTA) eliminating tariffs, or only a “non-preferential” agreement for economic cooperation with tariffs still remaining at their WTO m.f.n. levels. As regards choices over how to handle non-tariff barriers, one would expect consistency with the policy over tariffs. With an FTA, the logical objective can be to reduce greatly or eliminate non-tariff barriers as well as tariffs. But with a non-preferential agreement, one would expect a less ambitious approach over reducing non-tariff barriers.

In practice the EAEU is currently negotiating a non-preferential agreement with China. The EU for its part prefers mainly to make FTAs around the world. Whether the EAEU would want hypothetically to

²⁴ For more information consult the official web site of the Russian Federal Service for Veterinary and Phytosanitary Surveillance, <http://www.mcx.ru/index.html>. Lists can be checked—they are open to the public.

²⁵ <http://www.akimvko.gov.kz/>

make a FTA with the EU is not known at this stage. However, in Russia the argument is frequently heard that an FTA with the EU would be disadvantageous for it, and too favorable for the EU. The reasoning behind this view is twofold. Most Russian and other EAEU exports to the EU are commodities that incur little or no import duties, whereas most EU exports to the EAEU are manufactured goods that incur tariffs at their WTO m.f.n. rates. In addition, the manufacturing sectors of EAEU member states are for the most part uncompetitive in world markets. This means that an FTA agreement between the EU and EAEU would inevitably be asymmetrical in its impact, putting the main burden of adjustment on the side of the EAEU and its member states. There is the counter-argument that current protectionist policies, especially in Russia, have outlived their usefulness, and that a move toward trade liberalization should be a key part of an economic modernization strategy for Russia and other EAEU member states. The EU has no say in whatever strategy would be adopted, but this overarching economic policy choice has consequences for the possible content of an agreement between the EU and EAEU.

There is, in practice a certain compromise possible. To correct for the asymmetry of impact of an FTA where both sides would scrap tariffs together, there can be asymmetry in the reduction and elimination of tariffs, for example, with the EU side eliminating tariffs on day one, whereas the EAEU might phase them out with significant transition periods (e.g. X% of tariff lines on day one, with Y% subject to 3 to 5-year transitions, and Z% subject to 10-year transitions). The EU's DCFTA with Ukraine is of this type.

At some stage, therefore, the EAEU would have to be clear what it would choose to have with the EU between these broad options. The choice would also influence the level of ambition for reduction or removal of non-tariff barriers, for which a menu of options exists in international practice. It could be expected that for the EU an agreement over non-tariff barriers with the EAEU that did not contain a FTA provision for eliminating tariffs, and at least an asymmetric one, would be of little interest.

A formal, legal pre-condition for the EU to enter into negotiations with the EAEU is that all member states must be members of the WTO, which is still not the case for Belarus. WTO law forbids FTAs with non-member states, and the EU takes WTO law seriously.

Non-tariff barriers in international trade agreements. In practice, existing international trade agreements offer a wide range of formulae for reducing or eliminating non-tariff barriers, and these are important references in considering what the EU and EAEU might want to attempt together. There are three basic categories of action.

(1) WTO+. The minimalist formula in many trade and economic cooperation agreements is to confirm commitment to the principles of the WTO, TBT, and SPS agreements, to which are often added soft provisions for cooperating over exchanges of expertise and experience (e.g., the EAEU–Vietnam FTA; see Annex E). In other cases, the texts may describe deeper arrangements for the future such as convergence on international standards, but without immediate commitments (e.g., EU-Kazakhstan and EU-Vietnam; see Annexes D and E).

Respect for WTO principles would be a first element in any agreements between the EU and the EAEU and its member states. The key point about “WTO principles” is that TBT and SPS management has to be strictly technical and scientifically objective, and not political. However, there is a problem here, not with the EAEU as such, but with the experiences of the EU and several neighboring states in which

Russian technical agencies have been taking politically driven decisions in various well-known instances. It is to be expected that the EU side would regard establishment of trust over de-politicization of decisions made by the technical agencies as a pre-requisite of any significant agreement.

More positively, the EU and Russia shared between 2010 and 2016 a technical cooperation project explaining the TBT and SPS practice of the EU to Russian agencies, which was begun in the framework of cooperation over economic modernization in the context of the “four common spaces.” In addition, the Eurasian Economic Commission has recently in 2017 signed a Memorandum of Understanding (Annex A) to enhance cooperation with the European standards organizations (CEN, CENELEC), to which we return further below.

Cooperation would also in any case have to deal with complaints about excessively burdensome or unclear procedures and criteria in technical regulations for admitting imports. This is a matter of which the business communities on both sides have experience.

(2) Mutual recognition agreement (MRA) over conformity assessment. A next big step in the possible agenda for reducing the burden of non-tariff barriers is where the parties, while retaining their own distinct technical regulations and standards, agree to mutual recognition of each other’s conformity assessment bodies to certify conformity with the importing party’s regulations or standards on the territory of the exporting party. This type of MRA relies on a high level of mutual trust in each other’s technical practices, and the EU’s MRA partners include for example, the USA (Annex B), Canada (Annex C), Japan and Switzerland.

As the EU’s exports of manufactured goods to the EAEU are important, the EU would certainly see an advantage for its exporting enterprises to obtain certification of conformity of its products by an accredited conformity assessment body accredited at home under MRAs, without further intervention of an agency in the importing country. Naturally such MRAs are symmetrical, and the EU would have to accept the assessment of conformity with its own regulations and standards of imports from the EAEU to be conducted in an EAEU member state. For this to be acceptable there has (again) to be high trust in both the technical professional skills of the accredited conformity assessment bodies and their clear independence from political orientations.

While these conditions may seem only a distant possibility at the present time, there is one example of a sector-specific MRA working in practice in the wider Europe including the EU with Russia and other EAEU member states, which is the system of approval for wheeled vehicles of the UN Economic Commission for Europe (UNICE).

(3) Common or equivalent regulations and standards. Elimination of non-tariff barriers is possible only where the parties adopt the same or equivalent regulations and standards. This is seen in the EU’s relations with its closest neighbors, which adopt EU regulations and standards, including the international standards of the ISO, IEC, and ITU that the EU adopts. For example, the three states that share Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with the EU (Georgia, Moldova, Ukraine) have committed in these legally binding treaties to adopting the whole “corpus” of EU technical regulations and standards (Annex G).

The EAEU and its member states are also making autonomous use of ISO, IEC, and ITU (which often are identical to CEN, CENELEC, and ETSI European standards), as part of their program to modernize

the former GOST system. This had already progressed under the Customs Union of Belarus, Kazakhstan and Russia preceding the EAEU with work to reform GOST standards “on the basis” of many EU directives and regulations. This work continues under the EAEU. Thus between 2012 and 2015, 31 Customs Union or EAU regulations came into force that are based on EU directives and regulations. This EU legislation consists of the main framework laws in the EU defining the essential features that specific standards have to meet, for example, “On safety of low voltage equipment” (2006/95/EC). The EAEU has further adopted large numbers (over 5,000) of ISO and IEC (largely identical to European standards) in conformity with its own framework laws based on EU directives.

This process of convergence between EAEU policy and practice with that of the EU may now be further advanced on the basis of the recently signed MoU between the Eurasian Economic Commission and the European standards organizations, CEN and CENELEC. The key language in this MoU is:

The Parties promote further harmonization of interstate and national standards of the Eurasian Economic Union Member States with international standards and in the absence of those international standards with European standards.

This wording deserves a comment on the relationship between international standards of the International and European standards organizations. ISO and CEN/CENELEC work very closely together with a practical division of labor over which organization develops new standards, and with a procedure for many standards to be adopted identically by both the ISO and CEN/CENELEC. Thus, many international standards are also European standards. Moreover, the CEN and CENELEC are pan-European (not EU) organizations. They work closely with and for the EU, but are autonomous, with full membership by several non-EU member states, and “affiliate” and “companion” relationships with various other non-EU member states. In practice Armenia, Belarus, and Kazakhstan have “companion” status within CEN and CENELEC. It would seem plausible that Russia too might at some stage join its EAEU partners there.

The common international basis to SPS systems is the Codex Alimentarius of the FAO, of which all EU and EAEU states are members, as well as the EU itself institutionally. EU and EAEU SPS regulations are in general consistent with the Codex, but are often more stringent.

The EU has further elaborated a template for the complete elimination of technical non-tariff barriers between itself and neighboring non-EU states with the **Agreement on Conformity Assessment and Acceptance of industrial products (ACAA)**. This ACAA template is only beginning to be used. The first such case is an ACAA between the EU and Israel for pharmaceuticals (see Annex H), but it is envisaged that the DCFTA states will aim for this in due course. Under an ACAA, a non-EU state, which for a given sector or sectors fully complies with EU laws and practices, is able to trade with the EU under the same conditions as within the EU between its member states (i.e., goods accepted on the market of one party are automatically accepted on the territory of the other party without further checks).

Overall conclusion. For any conceivable “Lisbon-to-Vladivostok” deal between the EU and EAEU there would inevitably be a chapter on non-tariff barriers. For consideration of the possible content of such a chapter, there already exists in various international trade and economic cooperation agreements a well-defined set of options and mechanisms, with a wide range in terms of degrees of ambition for reducing or eliminating such barriers. There is no need to re-invent the wheel.

While the minimal content of various simple free trade agreements consists of little more than confirmation of WTO principles for both TBT and SPS, the EU and EAEU could contemplate a more ambitious agenda, given the existing policy of the EAEU to make widespread and increasing use of the same international and European standards that the EU complies with. This convergence process is already under way. Even where convergence on the same regulations and standards is lacking, there is the template of the Mutual Recognition Agreement (MRA) for conformity assessment which can very usefully reduce the burden on non-tariff barriers. The Euro-Asian Council for Standardization, Metrology and Certification (EASC), is a regional standards organization operating under the auspices of the Commonwealth of Independent States (CIS). The Eurasian Commission prepares a template MRA with third countries. The EU has also devised an ACAA template, which sees the complete elimination of technical barriers, in which, for given sectors of industrial products, its neighboring partner states fully adopt EU law and practice.

These ambitious (or very ambitious) options therefore are “on the table” already. It can be anticipated, however, that for the EU the pre-conditions, any ambitious arrangements along these lines would be demanding in two respects.²⁶ First, high levels of trust would have to be established over both the professionalism and de-politicization of the work of accredited technical agencies. In addition, the strategic economic policy priorities of the EAEU member states would have to be credibly committed toward international openness and competition.

²⁶In addition, there is the issue of Russia’s conflict with Ukraine, for which the EU wants to see an agreed resolution as pre-condition for negotiating with the EAEU, which lies outside the scope of this paper.

Annex A: Memorandum of Understanding

between the Eurasian Economic Commission, the European Committee for Standardization and the European Committee for Electrotechnical Standardization

The Eurasian Economic Commission (EEC), on the one hand, the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC), on the other hand, hereinafter referred to as the “Parties,”

recognizing the important role of technical regulation and standardization in economic and trade relations, in increasing the level of safety and quality of products, in promotion of international trade and environmental protection;

considering the mutual interest in cooperation between the Parties in the field of technical regulation and standardization; taking into account the international practice in the field of technical regulation and standardization; relying on principles of the mutual respect, openness and good faith;

have reached the following understanding:

1. The Parties intend to cooperate within their competence in the field of technical regulation and standardization with the view to increase competitiveness and safety of products and contribute to the reduction of technical barriers to trade.
2. The Parties promote further harmonization of interstate and national standards of the Eurasian Economic Union Member States with international standards, and in the absence of those international standards with European standards.
3. The Parties intend to cooperate within the framework of the present memorandum of Understanding by means of:
 - a) exchanging information (including scientific, technical technological and regulatory information) and experience in the field of technical regulation and standardization, that is of mutual interest;
 - b) holding consultations on issues in the field of standardization of products and services; and implementing other forms of cooperation, that are of mutual interest;
 - c) cooperating at technical level, with pilot projects in the following technical areas:
 - transportation;
 - construction;
 - medical devices;
 - toys;
 - oil and gas;
 - electrical installations;
 - energy efficiency;
 - low-voltage and high-voltage electrical equipment;
 - electromagnetic compatibility;
 - equipment for explosive environments;
 - information technologies and services (digital and smart technologies);
 - other areas that are of mutual interest.

4. Each Party will appoint a liaison Officer with the task of coordinating the cooperation between the Parties within the framework of the present Memorandum, and will inform the other Party about it.
5. The information provided by the Parties within the framework of the present Memorandum of Understanding, may be transferred to a third party only with prior written consent of the Party which has provided this information, or,
6. Implementation of the present Memorandum of Understanding is carried out within the existing financial budgets of the Parties.
7. The present Memorandum is not an international agreement and does not create any legal and financial liabilities for any of the Parties.
8. The present Memorandum comes into force on the date of signature. Each Party may terminate the present Memorandum by giving a written notice to the other Party. The effect of the Memorandum stops from the date of receipt of such notice by the other Party.
9. All Parties may agree to modify the present Memorandum by signing the relevant protocol.

Signed in the city of Edinburgh on 21 June 2017 in three copies, each in the English and Russian languages, each for the Eurasian Economic Commission, the European Committee for Standardization, and the European Committee for Electrotechnical Standardization. In case of dispute between the Parties, the English version shall prevail.

/signed/

For the Eurasian Economic European Commission

For the European Committee for Standardization

For the European Committee for Electrotechnical Standardization

Annex B: EU-US Mutual Recognition Agreement, 1999 (extract)

Article 2. Purpose of the Agreement

This Agreement specifies the conditions by which each Party will accept or recognize results of conformity assessment procedures, produced by the other Party's conformity assessment bodies or authorities, in assessing conformity to the importing Party's requirements, as specified on a sector-specific basis in the Sectoral Annexes, and to provide for other related cooperative activities.

The objective of such mutual recognition is to provide effective market access throughout the territories of the Parties with regard to conformity assessment for all products covered under this Agreement.

If any obstacles to such access arise, consultations will promptly be held. In the absence of a satisfactory outcome of such consultations, the Party alleging its market access has been denied, may, within 90 days of such consultation, invoke its right to terminate the Agreement in accordance with Article 21.

Note: this 1999 agreement has now been replaced by a new agreement entering into force on 1 November 2017. The underlying principle of non-duplication of conformity assessment remains the same. It is recognized that the old agreement did not work well, whereas the new agreement is expected to work far better.

Annex C: EU-Canada CETA (extract)

Article 4.4 Technical regulations

1. The Parties undertake to cooperate to the extent possible, to ensure that their technical regulations are compatible with one another. To this end, if a Party expresses an interest in developing a technical regulation equivalent or similar in scope to one that exists in or is being prepared by the other Party, that other Party shall, on request, provide to the Party, to the extent practicable, the relevant information, studies and data upon which it has relied in the preparation of its technical regulation, whether adopted or being developed. The Parties recognise that it may be necessary to clarify and agree on the scope of a specific request, and that confidential information may be withheld.

2. A Party that has prepared a technical regulation that it considers to be equivalent to a technical regulation of the other Party having compatible objective and product scope may request that the other Party recognise the technical regulation as equivalent. The Party shall make the request in writing and set out detailed reasons why the technical regulation should be considered equivalent, including reasons with respect to product scope. The Party that does not agree that the technical regulation is equivalent shall provide to the other Party, upon request, the reasons for its decision.

Article 4.5 Conformity assessment

The Parties shall observe the Protocol on the mutual acceptance of the results of conformity assessment, and the Protocol on the mutual recognition of the compliance and enforcement programme regarding good manufacturing practices for pharmaceutical products.

Protocol on the mutual acceptance of the results of conformity assessment (extract)

Article 3

Recognition of conformity assessment bodies

1. Canada shall recognise a conformity assessment body established in the European Union as competent to assess conformity with specific Canadian technical regulations, under conditions no less favourable than those applied for the recognition of conformity assessment bodies established in Canada, provided that the following conditions are met:

(a) the conformity assessment body is accredited, by an accreditation body recognised by Canada, as competent to assess conformity with those specific Canadian technical regulations;

or (b)

(i) the conformity assessment body established in the European Union is accredited, by an accreditation body that is recognised pursuant to Article 12 or Article 15, as competent to assess conformity with those specific Canadian technical regulations;

(ii) the conformity assessment body established in the European Union is designated by a Member State of the European Union in accordance with the procedures set out in Article 5;

2. The European Union shall recognise a third-party conformity assessment body established in Canada as competent to assess conformity with specific European Union technical regulations, under

conditions no less favourable than those applied for the recognition of third-party conformity assessment bodies established in the European Union, provided that the following conditions are met:

(i) the conformity assessment body is accredited, by an accreditation body appointed by one of the Member States of the European Union, as competent to assess conformity with those specific European Union technical regulations;

(ii) the third-party conformity assessment body established in Canada is designated by Canada in accordance with the procedures set out in Article 5;

Article 5.6 Equivalence (of SPS measures)

1. The importing Party shall accept the SPS measure of the exporting Party as equivalent to its own if the exporting Party objectively demonstrates to the importing Party that its measure achieves the importing Party's appropriate level of SPS protection.

2. Annex 5-D sets out principles and guidelines to determine, recognise, and maintain equivalence.

Annex D: EU-Kazakhstan Enhanced Partnership and Cooperation Agreement, 2015 (extract)

Chapter 3 - Technical Barriers to Trade

Article 28 - WTO Agreement on Technical Barriers to Trade

The Parties affirm that in their relations they will respect the rights and obligations of the WTO Agreement on Technical Barriers to Trade (“TBT Agreement”) which is incorporated into and made part of this Agreement, mutatis mutandis.

Article 29 - Technical regulation, standardisation, metrology, accreditation, market surveillance and conformity assessment

1. The Parties agree to:

reduce the differences which exist between them in the fields of technical regulation, standardisation, legal metrology, accreditation, market surveillance and conformity assessment, including by encouraging the use of internationally agreed instruments in those fields;

promote the use of accreditation in accordance with international rules in support of conformity assessment bodies and their activities; and

promote the participation and, where possible, the membership of the Republic of Kazakhstan and its relevant bodies in European organisations the activity of which relates to standardisation, metrology, conformity assessment and related functions.

2. The Parties aim to set up and maintain a process through which gradual alignment of their technical regulations, standards and conformity assessment procedures will be achieved.

3. For areas in which alignment has been achieved, the Parties may consider the negotiation of agreements on conformity assessment and acceptance of industrial products.

Chapter 4 - Sanitary and phytosanitary matters

Article 31 - Objective

The objective of this Chapter is to set out principles applicable to sanitary and phytosanitary (SPS) measures and animal welfare issues in trade between the Parties. These principles shall be applied by the Parties in a manner which further facilitates trade, while preserving each Party’s level of protection of human, animal or plant life or health.

Article 32 - Principles

1. The Parties shall ensure that SPS measures are developed and applied on the basis of the principles of proportionality, transparency, non-discrimination and scientific justification.

2. A Party shall ensure that its SPS measures do not arbitrarily or unjustifiably discriminate between its own territory and the territory of the other Party to the extent that identical or similar conditions prevail. SPS measures shall not be applied in a manner which would constitute a disguised restriction on trade.

3. The Parties shall ensure that SPS measures, procedures or controls are implemented and requests for information are addressed by the relevant authorities of each Party without undue delay, and in a manner no less favourable to imported products than to like domestic products.

Article 33 - Import Requirements

1. ... The import requirements set out in certificates are based on the principles of the Codex Alimentarius Commission ("Codex"), the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC), unless the import requirements are supported by a science-based risk assessment conducted in accordance with the applicable international rules as provided for in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures ("the SPS Agreement").

2. The requirements set out in import permits shall not contain more stringent sanitary and veterinary conditions than the conditions laid down in the certificates under paragraph 1 of this Article.

Article 34 - Equivalence

Upon request by the exporting Party and subject to a satisfactory evaluation by the importing Party, equivalence shall be recognised by the Parties, following the relevant international procedures, in relation to an individual measure and/or groups of measures and/or systems applicable in general or to a sector or part of a sector.

Annex E: EU-Vietnam Free Trade Agreement, 2016 (extract)

Chapter – Technical Barriers to Trade

Article 1: Reaffirmation of the WTO Agreement on Technical Barriers to Trade.

1. The Parties reaffirm their existing rights and obligations with respect to each other under the WTO Agreement on Technical Barriers to Trade, (hereinafter referred to as the “TBT Agreement”) which is incorporated into and made part of this Agreement.

Article 5: Standards

2. With a view to harmonizing standards on as wide a basis as possible, the Parties shall encourage their standardizing bodies, as well as the regional standardizing bodies of which they or their standardizing bodies are Members:

(a) to participate within the limits of their resources, in the preparation of international standards by relevant international standardizing bodies;

(b) to use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems;

(c) to avoid duplication of, or overlap with the work of international standardizing bodies; (d) to review national and regional standards not based on relevant international standards at regular intervals, with a view to increasing their convergence with relevant international standards;

(e) to cooperate with the relevant standardization bodies of the other Party in international standardization activities. That cooperation may be undertaken in the international standardization bodies or at regional level.

Article 6: Conformity Assessment Procedures

3. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party, including:

(a) the importing Party’s reliance on a supplier’s declaration of conformity;

(b) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;

(c) use of accreditation to qualify conformity assessment bodies located in the territory of either Party;

(d) government designation of conformity assessment bodies, including bodies located in the territory of the other Party;

(e) unilateral recognition by a Party of the results of conformity assessment procedures conducted in the other Party’s territory;

(f) voluntary arrangements between conformity assessment bodies in the territory of each Party;

(g) use of regional and international multilateral recognition agreements and arrangements of which the Parties are members.

- (f) to consider joining or, as applicable, encourage their testing, inspection and certification bodies to join any functioning international agreements or arrangements for harmonization and/or facilitation of acceptance of conformity assessment results;
- (g) to ensure that economic operators have a choice amongst conformity assessment facilities designated by the authorities to perform the tasks required by law to assure compliance;
- (h) to endeavour to use accreditation to qualify conformity assessment bodies;
- (l) to ensure that there is independence and there are no conflicts of interest between accreditation bodies and conformity assessment bodies.

Annex F: Georgia-China FTA (extract)

Chapter 6 - TBT

ARTICLE 6.4: Affirmation of the TBT Agreement [of the WTO]

The Parties affirm their rights and obligations with respect to each other under the TBT Agreement.

ARTICLE 6.5: Technical regulations

Where relevant international standards exist or their completion is imminent, each Party shall use them, or relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance, due to fundamental climatic or geographical factors or fundamental technological problems.

ARTICLE 6.6: Standards

1. For the purpose of applying this Chapter, standards issued, in particular, by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and Codex Alimentarius Commission (CAC) shall be considered relevant international standards in the sense of Article 2.4 of the TBT Agreement.

ARTICLE 6.7: Conformity assessment procedures

1. Each Party, with a view to increasing efficiency and ensuring cost effectiveness of the conformity assessments, shall seek upon request to enhance the acceptance of the results of conformity assessment procedures, conducted by the relevant accredited and/or authorized conformity assessment bodies in the territory of the other Party, through a *separate mutual recognition agreement*. [emphasis added]

Chapter 5 - SPS

ARTICLE 5.4: Affirmation of the SPS Agreement [of the WTO]

The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.

ARTICLE 5.5: Risk assessment

The Parties shall ensure that their SPS measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal, or plant life or health as provided in Article 5 of the SPS Agreement, taking into account the risk assessment techniques developed by the relevant international organizations.

ARTICLE 5.6: Harmonization

1. The Parties shall make their best endeavour to base their SPS measures on international standards, guidelines, or recommendations where they exist.
2. The Parties shall strengthen communications, cooperation, and coordination with each other, where appropriate, in the International Plant Protection Convention (IPPC), the Codex Alimentarius Commission (Codex) and the World Organisation for Animal Health (OIE).

Annex G: EU-Ukraine Deep and Comprehensive Free Trade Area (DCFTA) (extract)

Article 56: Approximation of technical regulations, standards, and conformity assessment

1. Ukraine shall take the necessary measures in order to gradually achieve conformity with EU technical regulations and EU standardisation, metrology, accreditation, conformity assessment procedures and the market surveillance system, and undertakes to follow the principles and practices laid down in relevant EU Decisions and Regulations (1).
2. With a view to reaching the objectives set out in paragraph 1, Ukraine shall, in line with the timetable in Annex III to this Agreement: (i) incorporate the relevant EU acquis into its legislation; (ii) make the administrative and institutional reforms that are necessary to implement this Agreement and the Agreement on Conformity Assessment and Acceptance of Industrial Products (hereinafter referred to as the "ACAA") referred to in Article 57 of this Agreement; and (iii) provide the effective and transparent administrative system required for the implementation of this Chapter.
3. The timetable in Annex III to this Agreement shall be agreed and maintained by the Parties.
7. Ukraine shall ensure that its relevant national bodies participate fully in the European and international organisations for standardisation, legal and fundamental metrology, and conformity assessment including accreditation in accordance with its area of activity and the membership status available to it.
8. Ukraine shall progressively transpose the corpus of European standards (EN) as national standards, including the harmonized European standards, the voluntary use of which shall be presumed to be in conformity with legislation listed in Annex III to this Agreement. Simultaneously with such transposition, Ukraine shall withdraw conflicting national standards, including its application of interstate standards (GOST/ГОСТ), developed before 1992. In addition, Ukraine shall progressively fulfil the other conditions for membership, in line with the requirements applicable to full members of the European Standardisation Organisations.

Article 57: Agreement on Conformity Assessment and Acceptance of Industrial Products

1. The Parties agree to add an ACAA as a Protocol to this Agreement, covering one or more sectors listed in Annex III to this Agreement once they have agreed that the relevant Ukrainian sectorial and horizontal legislation, institutions and standards have been fully aligned with those of the EU.
2. The ACAA will provide that trade between the Parties in goods in the sectors that it covers shall take place under the same conditions as those applying to trade in such goods between the Member States of the European Union. 29.5.2014 Official Journal of the European Union L 161/25 EN (1) In particular Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC and Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.

Annex H: EU-Israel Agreement on Conformity Assessment and Acceptance (ACAA) for pharmaceuticals, EU Council Decision 2009/0155 (extract)

The purpose of this Agreement is to facilitate the elimination by the Parties of technical barriers to trade in respect of certain industrial products, listed in the Annexes to this Agreement, which form an integral part of this Agreement.

The means to this end are:

- (a) the adoption and implementation by Israel of national technical regulations, standards and conformity assessment procedures which are equivalent to those of relevant Community law;
- (b) the implementation by Israel of a regulatory and technical infrastructure which is equivalent to that in place in the Member States of the European Union;
- (c) the mutual acceptance on their markets by both Parties of industrial products which fulfil the requirements for being lawfully placed on the market in one of the Parties, including where appropriate the mutual recognition of the results of obligatory conformity assessment of industrial products subject to relevant Community law and to the equivalent Israeli national law.
- (d) the acceptance on their markets by both Parties of industrial products which fulfil the requirements for being lawfully placed on the market in Israel and any one of the Member States of the European Union, on conditions analogous to those applying to trade in goods between the Member States of the European Union.

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