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Technical Background Paper on
Deep and Comprehensive Free Trade Agreement with Georgia:
Analytical Papers and Training Materials

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I. INTRODUCTION: CONCEPT OF DCFTA AND ITS IMPLICATIONS FOR GEORGIA

1. Preparation for Negotiations by the Government of Georgia

Preparation for the negotiations on Deep and Comprehensive Free trade Agreement (DCFTA) with the EU is an essential element of the current agenda of the EU-Georgia relations. European Commission’s (EC) assessment of Georgia’s preparedness for a DCFTA with the EU was presented to the Georgian Government (GoG) on March 26, 2009. It outlined key priorities for this preparation. The first priority was to strengthen the administrative capacity of the institutions to be involved in DCFTA negotiations, in particular capacities of a task force responsible for the preparation. This task force was created by the GoG resolution No 78 issued on April 14, 2009 in a form of a special working group (WG). There was a demand for GEPLAC to assist this task force and different government agencies in addressing key priorities outlined in the EC assessment.

Other key priorities include the following:

- technical regulations (adopt and start implementing a governmental program of adoption of technical regulations in line with the EU acquis in the priority industrial sectors and achieve progress in the establishment of a domestic institutional system (tech. regulations, standardization, accreditation, metrology, conformity assessment and market surveillance);
- sanitary and phytosanitary measures (start implementation of the suspended food safety legislation and prepare a comprehensive strategy of establishment of a solid food safety system);
- competition policy (preparation of a comprehensive strategy in line with the EU standards, adoption of a general competition law and start of its implementation through capacity building);
- intellectual property rights protection (significant improvement of implementation and enforcement of existing IPR legislation through in particular launching a study on piracy and counterfeiting and a dialogue with right holders) and
- information of the envisaged treatment for Abkhazia and South Ossetia in this context.

Progress on DCFTA issues was discussed in the EU-Georgia sub-committee on trade, economic and related matters held on May 27-28, 2009. During it the European Commission made clear that a separate DCFTA agreement is no longer considered feasible. DCFTA might become a part of the possible Association Agreement (AA) between Georgia and the EU. Depending on the progress with regard to key priorities, the mandate for AA might either contain provisions on DCFTA or just a reference to the perspective of a DCFTA in the future.

In order to facilitate the reforms in certain priority areas set as a precondition by the Commission to start negotiations on DCFTA, in May 2009 the Governmental Commission on European Integration established two specialized Task Forces on technical regulation system reform and of food safety issues. The results of their work are described in the relevant sectoral sections below.

With due regard to the importance of strengthening administrative capacity of the institutions to be involved in DCFTA negotiations, GEPLAC designed the capacity building programme for the WG responsible for the DCFTA preparatory work. The programme addressed all the key issues outlined in the Commission’s assessment and targeted the capacities of the WG and its supporting staff. In April-July 2009 general introductory seminars on DCFTA and EU Trade Policy and Tariffs and sectoral seminars on EU Technical Regulation System, EU Food Safety Regulation, Intellectual Property Rights Enforcement and on EU Competition Policy were delivered.

The idea behind this paper was to modestly contribute to the preparations for negotiations on DCFTA by providing a quick reference guide to the WG, its supporting staff and all other persons involved or interested in this matter. It consists of written briefs and presentation delivered during capacity building programme in four key areas (technical regulations, food safety, IPRs protection and
competition) and additional papers developed for the areas related to DCFTA (customs, financial services, public procurement) and possible association agreement (road transport and taxation). Selection of additional areas was determined by the availability of expertise. The scope of the paper might be enlarged in the future on request. The paper was inspired and informed by a similar paper prepared by the EU funded UEPLAC project in Ukraine.

The written briefs and presentations contain short summaries of the existing Georgian situation in the policy area, descriptions of the requirements arising from the EU legislation, (where appropriate) existing Georgian commitments in the EU-Georgia European Neighbourhood Action Plan as well as (where known) the estimates of impact of approximation to the EU norms. Most of this information is the summary from already existing sources and studies.

This collection is also a result of fruitful cooperation with other EU funded technical assistance projects in Georgia. It contains contributions from the colleagues from two EU technical assistance projects on food safety and quality infrastructure, namely Dick G. Groothuis, Brunonas Sickus and Vladimir Ludvik.

2. Concept of DCFTA and Its Implications for Georgia

The concept of the DCFTA has the following origins:

- *Global Europe Strategy* (2006), in which the European Commission set out its views about how to shift EU’s trade policy agenda in order to contribute to the European Union’s Growth and Jobs Strategy and
- European Commission’s Communications on the European Neighbourhood Policy (and its most recent Communication on Eastern Partnership)

2.1 Deep free trade as a constituent part of the European Union global trade strategy

In the *Global Europe Strategy*, the European Commission:

- underscored the need for EU to pursue an ambitious, balanced and just multilateral agreement to liberalise international trade further
- stated that through trade policies, [the European Union] seeks to contribute to a range of the Union’s external goals, in particular development and neighbourhood policies
- maintained that the openness is no longer simply about the tariffs, but especially about a) non-tariff barriers, b) access to resources (“Europe needs to import to export”), especially energy, c) new areas of growth (intellectual property rights (IPR), services, investment, public procurement and competition).

In addition to the multilateral framework for trade, the Commission suggested development of the new type of Free Trade Agreements (FTA), which

- if approached with care, can build on WTO and other international rules by going further and faster in promoting openness and integration, by taking issues (especially investment, public procurement, competition other regulatory issues and IPR enforcement) which are not ready for multilateral discussion
- be driven by a primary role of economic factors in the choice of future FTAs
- be based on four criteria, when searching for new FTA partners, namely, a) market potential (economic size and growth), b) the level of protection against the EU export interests (tariffs and non-tariff barriers), c) potential partner’s negotiations with EU competitors (and the likely impact of this on EU markets and economies), and d) the risk that preferential access currently enjoyed by neighbouring and developing partners may be eroded

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1 Authors express a particular gratitude to UEPLAC and its key expert Darius Zeruolis. Reference to this UEPLAC work is provided in the relevant part of this paper.
In terms of the content, new competitiveness driven FTAs should:

- be comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalization including far-reaching liberalization of services and investment
- eliminate quantitative import restrictions and all forms of duties, taxes and restrictions on exports
- tackle non-tariff barriers through regulatory convergence wherever possible and contain strong trade facilitation provisions
- include stronger provisions on IPR and competition
- include provisions of good governance in financial, tax and judicial areas where appropriate
- simplify the rules of origin and make them more modern to reflect realities of globalization
- contain internal mechanism to monitor implementation and results of new FTAs
- be an integral part of the overall relations with the country or region concerned (wider institutional architecture to be established on the case by case basis).

2.2 Status quo on DCFTAs with ENP partner countries

- Negotiations on DCFTA with Ukraine launched in February 2008
- Negotiations for further liberalization of trade in agricultural, processed agricultural, fish and fishery products concluded with Israel and Egypt in 2008 (negotiations with Morocco and Tunisia ongoing)
- Feasibility studies with Georgia and Armenia concluded in May 2008
- Fact-finding mission in Georgia took place in October 2008
- Fact-finding mission in Armenia took place in February 2009
- Feasibility study for Moldova launched in December 2008
- Negotiations on liberalization of services and the right of establishment launched with Egypt, Israel, Morocco and Tunisia
- Negotiations on FTA launched with Libya in November 2008
- AA with Syria was initialed.

2.3 Origins of the DCFTA in the EU’s external policy towards new neighbours

The need for upgrading of European Union’s contractual relationship, including trade, with Eastern neighbours was recognized already in 2003 (for example, in the European Commission’s Communication on Wider Europe – Neighbourhood: a New Framework for Relations with our Eastern and Southern Neighbours, COM (2003) 104 Final). European Commission came up with proposals about “deep and comprehensive free trade agreements” in its 2006 Communication on Strengthening the European Neighbourhood Policy in which it stated that “(...) over time, the implementation of the ENP action plans, particularly in regulatory areas, will prepare the ground for the conclusion of a new generation of “deep and comprehensive free trade agreements (FTAs)” with all the ENP partners, like one which the EU intends to negotiate with Ukraine”.

This concept was further expanded in the follow up Commission’s Non Paper on ENP- a Path Towards Further Economic Integration. This non paper outlines the approach towards deep FTAs and possible structural elements (see below). Importantly, the non paper also outlines a possibility of creating a Neighbourhood Economic Community (NEC) as a long term objective, which would be a network of bilateral deep FTA agreements between the European Union and partner countries. This was formally incorporated in the recent European Commission’s Communication on Eastern Partnership (2008) and endorsed by the Prague Declaration on Eastern Partnership adopted in May 7, 2009.

3. Scope of the DCFTA

DCFTA will most likely be part of the association agreement (AA). Its scope is likely to be as follows:

- Free movement of goods
- Trade in goods (industrial goods, agricultural products, processed agricultural products and fishery products)
- Rules of origin
- Trade facilitation and customs, including anti-fraud measures
- Technical regulations for industrial products, standards and conformity assessment procedures
- Sanitary and phytosanitary (SPS) measures

• Services and investment
  - Trade in services, freedom of establishment and investment
  - Capital movement and payments
  - Co-operation in trade of services
  - Recognition of diplomas

• Horizontal issues:
  - Competition and state aid
  - Intellectual, industrial and commercial property
  - Public procurement
  - Trade and sustainable development
  - Transparency of regulations
  - General exceptions
  - Safeguards
  - Anti-dumping and countervailing measures

• Institutional provisions:
  - Dispute settlement mechanism
  - Institutional provisions and implementation

Novelty of EU-Ukraine Association Agreement, which could serve as a proxy of a possible Georgia-EU AA, is expected to be in the linkages between trade opening and regulatory convergence. Implementation of the trade and trade related *acquis communautaire* are expected to be binding. The parties are also negotiating concrete lists of the EU legislation for legal approximation in the policy areas falling under the sectoral co-operation, such as, for example, transport, energy, environment and other with specific deadlines related to its transposition and implementation.

4. Flanking Agreements

This agreement in parallel or in the future (which ever comes first) would be ‘flanked’ by sector specific agreements (implying legal harmonization), for example:

• Agreement on Conformity Assessment and Acceptance of Industrial Goods (ACAA) (in the context of Georgia ACAA is mentioned as a long-term perspective (see EC Progress Report on Georgia 2008));
• Agreement on the membership in the European Energy Community (Georgia currently is an observer);
• Common Aviation Area Agreement (in February 2009 the European Commission received a mandate to negotiate the Common Aviation Area agreement with Georgia);
• and possibly some other agreements of such type, such as Agreement on European Transport Community currently proposed to the Western Balkan countries.

Visa facilitation and readmission agreement might be concluded with Georgia at the end of 2009.

5. Preparation and Negotiations on DCFTA

5.1 Steps followed by the European Union before entering into Free Trade Area negotiations

• WTO accession of the partner country is prerequisite
• EU autonomous preferential regime for the partner country (in general EU GSP/GSP+) (not in all cases)
• Independent feasibility study on scoping of the possible FTA (CASE, 2008 for Georgia) (CEPS, 2006, for Ukraine)
• Consultations with the partner country in order to understand the level of ambition as regards a possible future FTA (report by the EC presented to Georgia in March 2009 and referred above)
• Mandates for negotiation for the Commission and for the government of the partner country
• Launch of FTA negotiations (it was launched with Ukraine on March 5, 2008)

5.2 Structural elements of deep FTA

• Trade in goods (industrial goods, agricultural products, processed agricultural products and fishery products)
• Rules of origin
• Technical regulations for industrial products, standards and conformity assessment procedures
• Sanitary and phytosanitary (SPS) measures
• Trade in services, freedom of establishment and investment
• Capital movement and payments
• Public procurement
• Competition and state aid
• Intellectual, industrial and commercial property
• Trade facilitation and customs, including anti-fraud measures
• Trade and sustainable development
• Transparency of regulations
• General exceptions
• Safeguards
• Anti-dumping and countervailing measures
• Dispute settlement mechanism

5.3 Impact of the DCFTA for Georgia

Feasibility study (CASE/Global insight, 2008) concluded that:

• Since following the liberalization of 2006 Georgia has unilaterally eliminated most of its tariffs and already enjoys largely tariff-free access to the EU market, an EU-Georgia Simple FTA/Simple FTA BIS would bring very small additional welfare effects to Georgia.
• Further gains from an FTA+ could lock-in Georgia's reforms leading to a boost in investors' confidence and a lowering of the risk to invest in Georgia.
• possibility of economic gains from a Deep FTA+ could reach as much as 6.5% of GDP.

Sector or regulation specific impact assessment studies in the context of European integration are still very scarce in Georgia. They would be very useful not only in establishing the overall balance of costs and benefits, but would help to plan and sequence legal approximation. Five pilot RIA studies were undertaken in 2008-2009 by GEPLAC (Food Safety, Technical Standards in Building industry, Wine sector competitiveness, Competition and Statistics). Further studies are necessary in order to move from general and often extrapolated assessments to assessments based on Georgian empirical content and data.

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II. MACROECONOMIC CONTEXT OF DCFTA

1. Introduction

The Government of Georgia has just recently officially confirmed its readiness to launch negotiations on the Deep and Comprehensive Free Trade Agreement (herein after DCFTA) with the EU. The effectiveness of the abovementioned negotiations largely depends upon the degree of understanding by the Georgian side of the expected impact of the DCFTA on the achievement of the long-term macroeconomic objectives faced by the country.

The macroeconomic effectiveness of the DCFTA should be evaluated with due consideration of the reality having emerged in the Georgian economy after the August war (2008) along with the deepening of the world financial crisis. It is characterised by a sharp reduction of the GDP growth rate (down from 12.4 percent in 2007 to a projected -1.5 percent in 2009), mass unemployment and a significant increase in the fiscal deficit. Against this background, the objectives listed below are amongst those strategic goals the achievement of which may be used as the criteria for a macroeconomic assessment of the DCFTA:

- The recovery of a high GDP growth rate,
- the improvement of the structure of total output by means of the sectors wherein the country has comparative advantages,
- the diversification of trade in goods and services and a notable improvement of its balance and
- the recovery and stabilisation of private capital inflows.

The most recent\(^2\) DCFTA feasibility study (Case/Global Insight, 2008), which was completed in April 2008, was based on the pre-crisis economic growth pattern although it envisaged the prospect of a cyclical slowdown in the GDP growth rate. This study provides a rather fundamental analysis of the Georgian economy especially as concerns its external sector. Moreover, it provides a quantitative assessment by applying a CGE standard model with the expected results of five different formats of FTA which allow to compare their macroeconomic effectiveness.

The aim of this paper is to explore the possible impact of the DCFTA within the context of the abovementioned macroeconomic objectives. The paper is based on the results of the model simulation given in the Appendix to the study conducted by the Case/Global Insight. This data which were not fully utilised in the narrative part of the mentioned study contain interesting information on the macroeconomic aspects of the DCFTA.

2. Economic Growth

The format of the DCFTA is not limited to tariff liberalisation alone (i.e., zero-rating or minimisation). It also supposes a sharp reduction in non-tariff barriers and the implementation of deep reforms in trade-related areas\(^3\) which is, naturally, a rather significant source of economic growth and the improvement of general welfare (Vincentz, 2008, pp. 57-58).

A full liberalisation of tariffs, which is envisaged by a simple FTA concept, will not sufficiently contribute to the recovery of the economic growth rate in Georgia. As an earlier study revealed, the impact of zero-rated tariffs on the real GDP growth rate over three years (2008-2010) would be negative and achieve a positive position only in the fifth year (2012) which will be rather insignificant (0.03 percent) (UNDP, 2007, p. 74).

\(^2\) The first study, commissioned by the NDP, was conducted earlier, in April-June 2007. See: UNDP (2007), Assessment of the Impact of Potential Free Trade Agreement between EU and Georgia.

\(^3\) These areas include standards and technical regulations, sanitary and phytosanitary measures, competition policy, intellectual property rights, trade in services, foreign investments, public procurements, etc.
The Case/Global Insight’s study has shown almost similar results, suggesting that the real GDP might increase by an additional (without the effect of tariff liberalisation which took place in Georgia in 2006) 0.045 percent over the next five years\(^4\) in case of a so-called Simple FTA BIS\(^5\) (Case/Global Insight, 2008, p. 208).

Despite the differences in the methodologies, the comparison of the abovementioned studies shows that a complete zero-rating of tariffs will not bring any serious gains in terms of economic growth. A deep and comprehensive free trade agreement, however, may have a starkly different result in this respect.

A Deep FTA+ format, which has been used for modelling by Case and Global Insight, closely resembles the DCFTA concept. Along with the scrapping of most of the tariff barriers, it envisages a deep convergence of the regulatory framework with that of the EU which, in turn, would lead to the removal of non-tariff barriers and a large scale liberalisation of the trade in services. Moreover, this format implies the implementation of such radical reforms (including within the spheres of competition and investment policies) and flanking measures, which would sharply increase the attractiveness of Georgia for investors and reduce the risk premium on investments.

The results obtained by modelling the abovementioned scheme are quite impressive. After the DCFTA, Georgia’s GDP may increase by an additional (without the effect of tariff liberalisation which took place in Georgia in 2006) 6.5 percent over the next five years (Case/Global Insight, p. 208) which means an additional annual 1.3 percent growth of the GDP, on the average.

Comparing this result with an expected outcome of the Simple FTA, which is obtained within the same study, the DCFTA shows an effect which is 145 times higher in terms of the GDP growth. It means that the elimination of non-tariff barriers on the basis of regulatory convergence and a rebranding of Georgia as a favourable investment location give far more results than the full tariff liberalisation. This does not come as a surprise, since Georgia zero-rated about 90 percent of its tariffs in 2006 with the EU’s granting of the GSP+ scheme to Georgia which implies a maximum liberalisation of tariffs as concerns 7,200 commodities.

One should always bear in mind a large margin of error as being normally characteristic for a quantitative assessment of the impact of the removal of non-tariff barriers (Vincentz, 2008, p. 57). The abovementioned comparison, therefore, may be less contrasting. This is partially proved by the Case/Global Insight study which, along with the FTA format as discussed above, provides the analysis of a more moderate scheme (Deep FTA).\(^6\) Under this scheme, the real GDP might increase by an additional 1.8 percent over the next five years; that is, almost 40 times higher as a result of a complete tariff liberalisation.

3. Output Structure

The possible impact of the DCFTA on economic growth largely depends on whether or not it contributes to the increase in the output of the sectors with potential or already revealed comparative advantages. A study, conducted recently by the World Bank Group, outlined a number of such sectors in the real economy; namely: fruits and vegetables, wine, construction materials, wearing apparel, pharmaceuticals and medical devices production (World Bank Group, 2009).

\(^4\) The models applied for a qualitative assessment of the FTA effect show a cumulative outcome which fully materialises after three to five years (Vincentz, 2008, p. 57).
\(^5\) This model of Simple FTA envisages the simplification of some non-tariff barriers along with the elimination of tariff barriers. Additionally, unlike the model employed in the UNDP study, it also considers the effect of the economy of scale although some experts do not regard this factor as necessary in relation to Georgia (Vincentz, 2008, p. 57). We think that the economy of scale should be taken into account as there are several large industrial enterprises amongst leading exporters in Georgia.
\(^6\) This scheme assumes a 100 percent cut of tariffs for industrial goods and a 50 percent cut for agricultural and food products as well as a halving of the costs related to barriers in the trade in service in 2004 and non-tariff barriers.
Of these sectors, it is textile production (including manufacturing of the wearing apparel) which might be affected the most notably by the DCFTA, as suggested by the Case/Global Insight study (Case/Global Insight, 2008, p. 210), with an increase by an additional 55 percent over the five year period after signing the agreement.\(^7\) It should be noted that this commodity category already falls under the GSP + scheme but the poor availability of raw material, the low technical basis of the production and the existing non-tariff barriers result in a negligible production and export of this commodity which may serve as a partial explanation of the predicted high output growth. It should be assumed that the DCFTA will create favourable conditions for the attraction of investments and the enhancement of exports within this sector.

The effect of the DCFTA on the agricultural and food industries, wherein Georgia has unrealised comparative advantages, is especially interesting. As a model simulation revealed, the DCFTA with the EU may increase the country’s grain, fruit and vegetable production by an insignificant four percent and the production of food products and beverages by three percent over the next five years. It seems that the quality improvement and elimination of non-tariff barriers would not bring significant benefits to the agro-food sector. Such results can be explained by the small market surpluses and low productivity of Georgian agriculture, the problem of rural financing, losing of the traditional export markets and strong competition on the EU and other markets.

Georgia has a sufficient competitive potential in the production of construction materials. According to the model simulation, mining and quarrying, out of the sectors producing these kinds of commodities, might be positively affected by the DCFTA, increasing it by an additional 21 percent over the next five years. This sector however, also produces other goods including those for export, such as copper ore and concentrates, which means that the influence of the DCFTA on the output of construction material is not clear. As regards other construction materials—those within the category of mineral products and including cement—this figure might increase by a mere four percent. In this case, the impact of the DCFTA on the production of the construction materials is more obvious.

A notable gain can be achieved in the production of chemical, rubber and plastic goods which includes pharmaceuticals as well. The output of this sector over the next five years might increase by an additional 19 percent although it is hard to assess the potential contribution of pharmaceuticals to this increase as this sector also produces such traditional export goods as nitrogen fertilisers.

Judging by the results of the model simulation, the DCFTA will have an apparent positive impact on the production of one of the six leading sectors wherein, according to the World Bank Group study, Georgia has higher comparative advantages although its impact on three is not significant. As concerns the remaining two sectors, it is not as apparent most likely because of the incomparable statistical classification used in the World Bank Group and Case/Global Insight studies.

Metallurgy is another of the sectors which will benefit from the DCFTA with its output expected to increase by an additional 30 percent. This will likely happen thanks to ferroalloy which, disregarding the temporary impact of the global recession enjoys a rather stable external demand, including on the part of the EU.

The DCFTA can also positively affect wood production which may increase by an additional 21 percent over the next five years. This commodity group is also covered by the GSP+ scheme but without any result. The technologically well-equipped production capacities of this sector are underutilised because of the existing tariff barriers as well as the poor availability of raw material owing to the country’s mountainous terrain.

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\(^7\) The data provided here and below reflect a possible net DCFTA effect without the effect of the tariff liberalisation carried out in 2006.
4. Prices and Wages

The implementation of the DCFTA, according to the model simulation results (Case/Global Insight, 2008, p. 211), will have no serious effect on the price dynamics. The tariff liberalisation of 2006 has already affected the prices towards a general decrease. An additional effect as concerns leading commodity groups, which may be observed over the next five years, might be translated into a maximum decrease of two percent.

From amongst the abovementioned commodity groups, those with high shares in the consumer basket are a matter of special interest. Food prices, for example, may decrease within the range of an additional one percent whereas those on fuel may fall by only 0.5 percent. It can be concluded, therefore, that the impact of the DCFTA on the consumer price inflation would be quite insignificant.

The model simulation suggested that wages in Georgia would increase after the DCFTA. Moreover, the wages of unskilled workers would grow faster (by 6.4 percent) than those of skilled workers (5.5 percent) since a larger potential for growth was revealed in those sectors which are highly labour intensive (textile and metallurgy, for example, amongst others).

5. Trade Balance of Goods

Exports

Judging by the results of the model simulation (Case/Global Insight, 2008, p. 209), the implementation of the DCFTA with the EU might result in the increase of the total Georgian exports by an additional 13.3 percent over the next five years which would presumably be achieved due to the removal of non-tariff barriers and increased foreign direct investments to the export sector.

The growth of exports under the DCFTA would be influenced by the enhancement of trade in the established export categories as well as the utilisation of an unused export potential (Case/Global Insight, 2008, p. 212).

Amongst the traditional export categories, the model simulation revealed the highest growth potential in the chemical and rubber commodity group which also includes nitrogen fertilisers. The exports in this commodity group might increase by an additional 38 percent over the five years after the DCFTA which is unlikely to happen only due to the increase in fertiliser exports alone. The growth of pharmaceutical exports, therefore, which comprise the 15th export commodity group by volume, may also contribute to the forecast increase.

The DCFTA will also affect the metal commodity category with an additional high growth rate of 34 percent. This does not come as a surprise given that three of the top ten export commodities (ferroalloy, black metal scrap and unwrought and semi-manufactured gold) belong to this category.

The model simulation also revealed a significant export potential in the wood products category which might increase by an additional 34 percent. It is noteworthy that this category is amongst the top 20 export commodities. By its competitive capacities, the World Bank Group ranked it ninth in its study.

The implementation of the DCFTA may bring an additional 31 percent increase in the export of food products and beverages with alcoholic drinks and natural wines amongst the particular commodities. A notable increase (28 percent) may also be expected in the non-metal mineral commodity group which includes cement and other construction materials.

The model simulation showed a rather moderate prospect of growth (up to 23 percent) for the agricultural produce category — in particular, the grain, fruit and vegetable commodity group —which also includes hazelnuts as one of the leading export products. It seems that the competitive potential of fruits and vegetables will be very difficult to materialise even under the removal of non-tariff barriers.
Less impressive might also be the impact of the DCFTA on the export of mining products which is expected to increase by 22 percent. Given that this commodity category includes copper ore and concentrates (the third largest export commodity) this increase does not seem significant. It is indicative that the potential of the growth of crude oil exports was assessed separately which, in the case that the DCFTA is signed, may reach a 21 percent increase over the next five years. It is noteworthy that raw oil extraction, according to the same study, may increase by 23 percent which means that the increase in exports, in this case, would be associated with the growth in production.

The DCFTA, then, may have a rather significant positive impact upon the already established export categories which will contribute to a further strengthening of the existing export base.

Amongst those commodity groups in which Georgia has comparative advantages although has not realised them, textile production is of particular note. Its export, after signing the DCFTA, might increase by 158 percent over the next five years; that is, at a much faster pace than the production of this commodity will be able to expand. A higher growth rate of export as compared to the output must be explained by a rather low base indicator of this commodity exports, therefore, even a moderate increase in export volumes may give quite an impressive picture in percentage terms.  

The same reason could be used to explain a very high growth rate (140 percent) of the so-called commodities not included in other groups of manufacturing products (Manufactures nec), with none of the commodities within it being identified as an important Georgian export category. In terms of prospects, the most promising in this group appears to be furniture, jewellery, sports equipment and toys as well as recycled secondary metal raw material.

A comparison of the results of the model simulation with the existing main Georgian export commodity structure, therefore, revealed that the DCFTA might somewhat affect the diversification of Georgian exports although its possible positive impact is more apparent as concerns the growth of the already established exports.

**Imports**

Following the results of the model simulation (Case/Global Insight, 2008, p. 209), the total Georgian imports might increase by 7.4 percent over the five years after the signing of the DCFTA. It is noteworthy that following the tariff liberalisation in 2006, imports should be increased by an additional 5.6 percent according to the same study. With the DCFTA, the further growth rate of imports, therefore, would only be moderate.

It is interesting that the DCFTA would, in fact, have no impact upon oil and oil product imports. As regards motorcar imports, being the second largest after fuel, this group may grow by six percent over the five years following the DCFTA which is a rather modest indicator overall. The results would be almost similar in regards to natural gas, pharmaceuticals, TV and radio equipment, carbon steel rods and computers (Case/Global Insight, 2008, p. 213).

A rather high growth rate can be expected in the grain, fruit and vegetable and food product imports (18 and 12 percent, respectively). The first includes grain whilst the second wheat both of which are amongst the top ten import commodity categories. Bearing this in mind, the DCFTA is unlikely to cause a wide-scale substitution of local agricultural and food products with imported ones.

Quite a significant increase can be expected in the import of mining products (20 percent) which is likely to be associated with the import of raw materials needed for the production of ferroalloy and construction materials. The import of mineral products from the manufacturing industry might also

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8 A similar picture was revealed by the model simulation in other commodity groups (grain, fruits and vegetables, food products and beverages and etc.).
show a notable increase (14 percent) which again may be explained by the import of raw materials for the production of construction materials.

It should be noted that the results of the Case/Global Insight study do not suggest any significant impact of the DCFTA upon the import of capital goods: the growth in the imports of machinery and electrical equipment may comprise seven percent. Given that the same study predicts a rather sharp increase in FDI under the DCFTA, this indicator is rather low.

The comparison of the results of the model simulation with the existing main import commodity structure, therefore, revealed that seven out of the top ten import categories will not show any significant increase after the DCFTA whereas the remaining three commodity categories might increase moderately. Moreover, the mass substitution of the local production with imports is less likely.

**Trade Deficit**

Bearing in mind that the share of exports in goods in trade turnover is far less than that of imports (in 2004, the base year for the model, the import was higher by 1.8 times than the exports according to the balance of payments data), an additional faster pace of growth of exports, as compared to imports, will contribute to the improvement of the trade balance but will not cause any fundamental shifts.

**6. Service Balance**

In the service sector, judging by the results of the model simulation, the DCFTA would have the most significant impact on the financial intermediary. The exports of banking and insurance services might increase by 55 percent over the five years following the DCFTA whereas the increase in imports might reach only 26 percent. An upwards export dynamics in these sectors can be largely explained by the low base indicators which would probably sharply improve under the DCFTA.

According to the same results, a significant export increase could be expected in the sphere of “Other business services” (Business services nec); namely, legal, accounting, administrative and other services. Their export may grow by a further 25 percent whereas the reduction of imports might be 12 percent. The growth in the export of these services can also be explained by low base indicators which may be positively affected towards the increase by the regulatory convergence with the EU and the enhancement of trade and economic ties in general.

Unlike the above listed services, a possible impact of the DCFTA on the leading sector of this sphere seems less beneficial. The export of transportation and storage services might decrease whereas the import is expected to grow notably (26 percent). These results seem to be ambiguous. They might correspond to the conclusion of the same study according to which “any FTA between the EU and Georgia would not seem likely to have any direct impact on investment in the pipeline transportation”(Case/Global Insight, 2008, p. 99). Even in such case, the DCFTA based on regulatory convergence with the EU would create favourable conditions for the investments in other sectors of the transport services. An almost similar picture of a decrease of the export is expected within the communications sector although the growth rate of imports may be much lower (seven percent).

The model simulation did not reflect one of the largest service sectors; that is, tourism and so the disregard of its prospect makes it difficult to assess the impact of the DCFTA on the service balance. Nevertheless, according to the same study, there is no doubt that the export of this service would reveal a positive tendency under the DCFTA which would encourage FDI in the tourist infrastructure. Furthermore, an agreement on a common airspace with the EU will also contribute to this goal which would probably be signed before the implementation of the DCFTA.

Overall, based on the results of the study, one can say that the impact of the DCFTA on the service balance — without high development rates of the tourism sector — might not be positive given that
the transportation and storage services traditionally have a very high share in the export of services. The shares of those sectors which are expected to be positively affected by the DCFTA, then, are rather insignificant.

7. Foreign Direct Investments

The DCFTA's impact as a factor of economic growth in Georgia depends a great deal on the extent it would succeed in attracting investments which, in its turn, is largely associated with a positive perception of ongoing reforms by investors. It is, therefore, no wonder that the Transition Progress Index (TPI), developed by the EBRD, is a crucial variable of the model employed in the assessment of the DCFTA's investment effectiveness. Case/Global Insight has calculated that in the case of a five, ten and 15 percent increase of the abovementioned index, the FDI inflows to Georgia might grow by 21, 45 and 72 percent, respectively, which would result in a four-fivefold increase of FDI stock by 2020 as compared to the 2005 level9 (Case/Global Insight 208, pp. 105-108).

Assumed degrees of TPI change seem too optimistic today since in 2008, as compared to 2005, this index grew by a mere 1.3 percent and remained unchanged as compared to 2007 (EBRD, 2009). It is noteworthy that the three lowest indicators from the eight which are used in the calculation of the index reflect the situation in the enterprise management and restructuring, the competition policy and the development of financial (including securities) market spheres. The DCFTA format includes the regulatory convergence in all of these spheres which could be a prerequisite for corresponding positive changes.

An attractive investment climate, including political stability, is a necessary but not the only condition for motivating investors which, as acknowledged, are influenced by two factors: the availability of resources and the market. In terms of resource seeking, Georgia is famous for its relatively cheap labour force although this incentive may notably lose its attractiveness against a fast increase in the average nominal monthly wages in the private sector over the past years (by almost three times as compared to 2005) and a real appreciation of the national currency, especially considering that the qualification of the labour force in the country is mostly quite low. Irrespective of an ultra-liberal (from the investor's standpoint) labour law, therefore, the cost of labour may not be a decisive factor of investments to Georgia.

The level of salary is still very low in the agricultural sector which can produce competitive goods provided that the scale of production expands and the technological level upgrades. Certain prospects for the export of fruits, vegetables and wine are outlined by the World Bank Group. Therefore, this sector, in the case of Georgia, has the potential to represent the best combination of resource and market seeking incentives of the FDI.

It should be noted that under the DCFTA, the market seeking as an investment incentive, especially in the production of tradable goods, implies the availability of the EU market — rather than the Georgian one — as Georgian access to the EU market could be favourable for investors. In this regard, the World Bank Group study suggested that not only the agricultural and related processing industry may have quite serious competitive positions but also such sectors as the production of wearing apparel and pharmaceuticals and medical devices (World Bank Group, 2009).

According to the Case/Global Insight study, market seeking in investors' behaviour will be revealed mostly in non-tradable sectors, primarily, in the service sector and, more specifically, in tourism and business services (Case/Global Insight, 2008, p. 109). The hydro-energy sector remains attractive for investors as well. The same study suggests, however, that neither electricity nor business service output can be expected to show any impressive growth. While in the tourism sector, growth is likely to be significant.

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9 According to an assumption in the model, the progress in the process of the reforms affects only the FDI inflows and not other variables such as GDP or GDP per capita, the change in which, naturally, affects the investment flow.
The DCFTA, therefore, can strongly spur FDI inflows in Georgia both in tradable and non-tradable sectors. Investment flows in the tradable sector would be oriented on an optimal combination of the resources seeking (relatively cheap manpower, high quality agricultural raw materials, etc.) and the market seeking.

8. Conclusions

Despite the differences in the methodologies, the comparison of the results of various studies shows that even a complete bilateral zero-rating of tariffs (Simple FTA with the EU) will bring no serious gains to Georgia in terms of economic growth. GDP growth under the DCFTA might be 145 times higher annually, on the average.

Judging by the results of the model simulation, the DCFTA will have an apparent positive impact on the production of one of the six leading sectors wherein, according to the World Bank Group study, Georgia has higher comparative advantages although its impact on three is not significant. As concerns the remaining two sectors, it is not as apparent most likely because of the incomparable statistical classification used in the World Bank Group and Case/Global Insight studies.

The DCFTA, as per the results of the same model simulation, will not have a significant effect on prices as the tariff liberalisation carried out in 2006 has already affected the prices towards a decrease.

A comparison of the results of the model simulation with the existing main Georgian export commodity structure, revealed that the DCFTA might somewhat affect the diversification of Georgian exports although its possible positive impact is more apparent as concerns the growth of the already established exports.

The comparison of the results of the model simulation with the existing main import commodity structure, therefore, proved that seven out of the top ten import categories will not show any significant increase after the DCFTA whereas the remaining three commodity categories might increase moderately. Moreover, the mass substitution of the local production with imports is less likely.

Given that the share of exports in goods in the trade turnover is much lower than that of imports, an additional higher rate of exports growth, as compared to imports, will, certainly, contribute to the improvement of the trade balance but will not cause any fundamental shifts.

Based on the results of the model simulation, which do not reflect the tourist industry, the DCFTA would not have a positive impact on the largest segment of the service sector; that is, the transportation and Storage services. Nevertheless, tourism and energy related services, according to the same study, might sufficiently benefit from the DCFTA and improve the total service balance.

The DCFTA may strongly spur the FDI inflows in Georgia both in non-tradable (the service sector) and tradable sectors. The investment inflows in the tradable sector will be oriented on an optimal combination of the resource seeking (relatively cheap manpower, high quality agriculture raw materials, etc.) and the market seeking.
References:


III. TRADE: PRESENTATIONS ON THE EU TRADE POLICY AND TARIFFS

European Union trade policy and tariffs

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The outline:
- International trade and regionalism:
  - Some theoretical insights on international trade;
  - WTO and its principles;
  - Regional trade agreements: causes, forms and effects;
- External trade policy of the EU:
  - Key features and instruments;
  - The use of trade agreements;
  - The political economy of trade liberalization;
- Tariffs and non-tariff barriers in the EU trade policy:
  - Declining importance of tariffs;
  - Regulatory norms and international trade;
- Tariffs and transitional arrangements in the EU's FTAs with third countries:
  - The principles of EU's FTAs;
  - DCFTA, its place in the system of EU's FTAs.

International trade and regionalism: some theoretical insights

- The law of comparative advantage:
  - Absolute advantage (A. Smith) - where one country is more productive in certain products than other countries (produce more outputs with the same amount of inputs);
  - Comparative advantage (D. Ricardo) - ability to produce a good most efficiently given all other products that could be produced;
  - That all countries benefit from international trade because it allows them to export their best advantage;
  - While the concept of comparative advantage is straightforward, it does not always translate into economic growth or welfare improvement.
- The political economy of International trade:
  - The political economy of International trade involves the interaction between political and economic factors;
  - The political economy of International trade involves the interaction between political and economic factors;
  - The political economy of International trade involves the interaction between political and economic factors;
- International trade and regionalism: multilateral liberalization:
  - World trade organization (WTO, GATT from 1947 until 1995) - multilateral organization comprising most world countries (from 23 to over 150 now) accounting for over 90 percent of trade aimed at gradual removal of barriers to international trade.
  - The key principles of WTO:
    - Non-discrimination based on the most-favored nation and national treatment rules;
    - Reciprocity;
    - Tarification of trade barriers;
    - Binding commitments with the dispute settlement rules.

International trade and regionalism: first and second best options

- Liberalizing international trade is considered the first best option for the welfare of all countries;
- However, due to the resistance of protection seeking lobbies, liberalization is complicated;
- Party because of this, some countries opted to go for the second best option - liberalizing trade in groups (regionalism, or preferential trade arrangements);
- Regionalism under the WTO rules:
  - Article XXIV (FTAs and customs unions in goods), enabling clauses applied for developing countries and article V of GATS (trade in services).

International trade and regionalism: the spread of regionalism

- Regionalism can take several forms:
  - Free trade agreements;
  - Customs unions;
  - Common markets;
  - Economic and monetary unions;
- More than 420 regional agreements have been notified to the WTO by 2009 (while 109 have been notified to GATT from 1947 till 1994);
- Most preferential trade arrangements are either FTAs (around 90 percent) or customs unions (less than 10 percent).
External trade policy of the EU:

- Article 3 of the Treaty provides that Community in accordance with the time table shall include:
  - The prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of any other measures having equivalent effect.
  - A common commercial policy.
  - An internal market characterized by the abolition of all customs duties on imports and exports and of all charges having equivalent effect, and the adoption of common tariff in members.

  The customs union has been established by mid 1958 and the Single market by the end of 1992.

External trade policy of the EU:

- Article 131 (art 110) provides for "common commercial policy shall be based on uniform principles, and shall be the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies".

EU common trade policy (EC 2006)

- Trade policy is the most ancient common policy and it remains today the most advanced branch of EU external policy:
  - full membership (unlike eurozone and schengen)
  - strict membership (with national customs acting as EU agents)
  - EU competences are mainly exclusive, with only a few shared competences.
  - dominant role of the Commission.
  - final say with the Council (Foreign Affairs Ministers).
  - mainly through qualified majority voting.

International trade and regionalism:
the causes and effects of regionalism

- The causes of regionalism:
  - Common market (R. Krugman);
  - "Common" effect (R. Baldwin);
  - Increase in credibility of rules and norms and growth in investments (A. Winters);
  - Diplomatic tool to stabilize neighborhood and strengthen regional relations.

- Tension between multilateralism and regionalism:
  - RTAs and third countries (trade creation vs. trade diversion);
  - RTAs - steeling blocks or building blocks?
EU's external trade policy:

Objectives of EU's trade preferences (P. Lamy 2002)

- To provide closer and more stable economic relations with immediately neighboring countries;
- To underpin and lock-in political reform;
- As an instrument of development, in particularly using non-reciprocal trade preferences;
- Increasing security.

EU's pyramid of trade preferences:

- European economic area (common market) (Iceland, Norway, Liechtenstein);
- Customs union (Turkey, Andorra, San Marino);
- Stabilization and Association Agreements with Balkan countries;
- Free trade agreements (Switzerland, Israel, Chile, South Africa) and Euro-Med Association (Algeria, Morocco, etc.);
- Deep and comprehensive trade agreements with ENP countries (Ukraine and, in the future, Georgia and others);
- Partnership and Cooperation Agreements with Generalized system of preferences;
- Economic Partnership Agreements with ACP countries;
- MFN treatment (USA, Canada, Japan, Australia, New Zealand, Taiwan, Hong Kong, Singapore, S. Korea);
- Less than MFN treatment (non market economies).

EU's external trade policy:

- Since its creation, the EU's external trade policy has been locked in the tension between multilateralism (non discrimination and regionalism) and disciplines (preferential treatment).
- EU has been actively using its commercial trade policy instruments in protecting its producers (differentiated liberalization), use of commercial policy instruments, and in pursuing foreign policy objectives (maintaining relations with historically or geographically close countries, assisting in economic reforms, etc.)
- The differentiation on the basis of countries and product groups has been the key feature of EU's external trade policy.
- The EU favors the model of 'deep integration' when market access is parallelized by the approximation of rules.
- Although the EU is seen as generally open trading bloc, the most criticism has been directed towards the high peaks of protectionism for agricultural imports and use of anti-dumping duties, with the estimate of the cost of protectionism reaching 7 percent of EU’s GDP in 2000 (national income of Spain) (P. Moeddelmuller 2001).

EU's objectives at the WTO Doha Round:

- Further liberalization of the market access for goods and, in particular, services;
- Offer to reduce the overall trade distorting subsidies to agriculture by up to 20 percent and eliminate export subsidies by 2013, cut its final bound tariffs by 50 and 70 percent;
- To strengthen the coverage of WTO rules in the areas of investment, competition, government procurement, intellectual property, environment, animal welfare and food safety, multilateral round for geographical indications to extend beyond wine and spirits;
- Assist the developing countries in integrating them into the global economy.

EU's external trade policy:

limited effects of preferential agreements

- Despite the fact that only nine countries enjoy the MFN status in trade with the EU, around 27 percent of EU's trade is based only on MFN status (WTO 2009).
- No single EU preferential trade agreement grants preferences to all product groups (in particular agricultural products are usually excluded or subject to duty-free quotas);
- All preferential agreements contain the rules of origin with preferences applied only to the products originating from parties to the agreement;
- Most EU preferential agreements contain tariff-quota for certain products beyond which the MFN tariffs apply (A. Sepeti).

EU's external trade policy:

experience of liberalizing trade with Central and Eastern European countries

- The demand for the FTAs and association agreements was to a large extent linked to the EU accession and acted as one of the stages of integration;
- The EU's trade policy towards CEECs has been based on asymmetric, differentiated and gradual liberalization;
- The benefits of trade liberalization included not only growth of competition and supply, and market access, but also stabilization of reforms and facilitation of capital inflows;
- However, the benefits of trade liberalization have been limited until the accession because of the product based differentiation and "hub and spoke" approach with FTA's signed bilaterally (although CEFTA and BFTA somewhat reduced trade diversion).
Tariffs and non-tariff barriers in the EU trade policy: tariffs (WTO 2009)

- The 2006 tariff nomenclature, known as the Combined Nomenclature (CN 2006), was in use and contains 9,292 lines at the eight-digit level.
- EU uses ad valorem and non-ad valorem rates (the latter mostly applied to agricultural products) and comprise about 10 percent of all tariff lines.
- The average applied MFN tariff rate has been 6.7 percent in 2009, with huge variation of rates ranging from 0 percent to 654 percent (ad valorem equivalent of rate on isoglosse).
- Some 81.9 percent of all lines have rates ranging from zero to 10 percent (included). The zero tariff rate applies to 23.3 percent of all lines (18.5 percent of WTO agricultural tariff lines and 27.7 percent of non-agricultural tariff lines), including wood, pulp, paper, and furniture (57.4 percent of total tariff lines from the product group), metals (53.9 percent), and mineral products, precious stones, and precious metals (41.1 percent).

Tariffs and non-tariff barriers in the EU trade policy: non-tariff restrictions (WTO 2009)

- Non-tariff barriers include quantitative restrictions, price controls, and regulatory barriers.
- Specific examples include import quotas, voluntary export restraints, anti-dumping duties, or prohibitions for health and safety reasons.
- Quantitative restrictions on imports are as a rule not allowed under WTO rules, but some non-agricultural products, including some textile products, have been subject to quantitative restrictions applied by the EU.
- The EC maintains tariff quotas on 4.8 percent of tariff lines, mostly agricultural products.

Tariffs and non-tariff barriers in the EU trade policy: non-tariff restrictions (WTO 2009)

- Tariff and non-tariff barriers are maintained, inter alia, on security, technical, sanitary, phytosanitary, and environmental grounds and under treaties and international conventions.
- Import licences are required where products are subject to quantitative restrictions, tariff quotas, safeguard measures, or for import monitoring and surveillance purposes.
- The EU has been one of the most active users in the WTO of commercial protection instruments (in particular anti-dumping duties), in 2007, some 0.73% of EC imports were subject to contingency trade remedies.

Contingency measures notified by the EC, 2006-2008

<table>
<thead>
<tr>
<th>Measure</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
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<td>Anti-dumping</td>
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<td>Initiations of investigations</td>
<td>14</td>
<td>11</td>
<td>12</td>
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<td>Positive actions</td>
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<td>Counter-requirements</td>
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<tr>
<td>Initiations of investigations</td>
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<td>2</td>
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<tr>
<td>Definitive measures</td>
<td>0</td>
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<td>Safeguards</td>
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<td>Definitive measures</td>
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1. The table refers to the period of 2006-2008, but looks at the basis of 2009. The figures show notification of measures taken under containment agreements in the framework of the Agreement on Trade-Related Aspects of Intellectual Property Rights. The figures are based on the notification system of the World Trade Organization.
Tariffs and non-tariff barriers in the EU trade policy: regulatory barriers
- Technical regulations are mandatory rules foreseen by the EU or its member states;
- Standards are voluntary rules approved by a recognized body as an assurance of the quality for the consumers;
- Compliance to the regulations (product characteristics, production methods, packaging, labeling, etc.) is established by the conformity procedures;
- In using the regulatory norms, EU must comply with the relevant WTO provisions (Agreement on technical barriers to trade, Agreement on application of sanitary and phytosanitary measures) and use international norms unless it is shown that they are inappropriate.

Tariffs and non-tariff barriers in the EU trade policy: export restrictions (WTO 2009)
- An export authorization or licence is required to export cultural goods and certain agricultural products, and for the control of exports of dual-use items and technology;
- The EC still subsidizes exports of a number of agricultural products. Assistance and subsidies programmes (at Community level and by Member States) notified to the WTO can be grouped in four major categories:
  - the Structural Actions;
  - the Common Agriculture Policy (CAP);
  - Industrial Programmes; and
  - other programmes including assistance to SMEs in joint-ventures, and to fisheries and aquaculture.

Tariffs and transitional arrangements in the EU's FTAs with third countries
- In the cases of FTAs and other "shallow integration" arrangements, EU removes tariffs selectively (agriculture not included), even though often in an asymmetric manner (with transition periods allowed for partner countries);
- In the cases of "deep integration" arrangements (EA, EEA), the removal of barriers to trade is also gradual, but it extends beyond the tariffs and includes regulatory harmonization measures;
- In the case of EEA, there is a political conditionality, elaborate the dispute settlement and enforcement procedures (compliance with EU rules, but no voice in the EU decision making), the multilateral framework does not include some policies (external policies, budget, agriculture and fisheries, EMU, JHA).

Deep and comprehensive free trade agreements (FTA+) / EEA-?
- The agreements to be signed with NNP countries have their finalisation and the promise of "voice at the EU table" unclear (Neighborhood Economic Community);
- It seems that the ambition for the regulatory harmonization does not extend to the integration of these countries into the EU's common market;
- DCFTA aim at extensive regulatory harmonization and improved access to the market of goods and services, extending beyond removal of tariff barriers to trade in goods and services, but not entirely to the movement of capital and only to a limited extent to the movement of people.

Deep and comprehensive free trade agreements
- Removal of customs duties;
  - Positive sum game with benefits for all countries involved;
  - The time frame for the implementation should be as short as possible (transition period usually is result of political decisions to protect domestic producers);
- Harmonizing regulatory norms;
  - The partner country of the EU has to adjust to the EU norms (SPS standards, intellectual property rights, competition norms, company law, public procurement, financial services, etc.);
  - Regulatory adjustment costs involved in order to get market access;
  - Transition periods could extend the adjustment costs over time (transition period should be based on assessment of costs and benefits of regulatory adjustment);

Deep and comprehensive free trade agreements: key issues
- Can all tariff barriers to trade be removed before the regulatory harmonization takes place (in particular in the agriculture);
- How can bilateral trade agreements transformed into a broad regional DCFTA?
- What should be the time schedules for regulatory approximation and their sequencing?
IV. KEY REGULATORY TRADE-RELATED ISSUES IN THE GEORGIAN CONTEXT

A. TECHNICAL BARRIER TO TRADE

i. Background Paper¹⁰

1. General Legislative Framework of EU on Product Safety

In order to safeguard consumers' health the EU has gradually introduced strict common safety standards applied to the products and services circulating within the EU internal market. The EU has laid down general safety rules applicable to services, foodstuffs and non-food products, to be observed by producers and suppliers. These rules relate to monitoring and warning instruments designed to analyse and prevent risks, and to remedy dangerous situations. Specific provisions have also been drawn up for certain products whose composition, manufacture or use may pose a risk to consumers.

The general safety requirements applicable to products as well as general principles of liability for damage caused by these products are laid down in EU Directive 2001/95/EC on General Product Safety and EU Directives 85/347/EEC Liability for Defective Products and its amending Directive 1999/34/EC. The summaries of these framework legal instruments are given below.

1.1 General product safety

The Directive 2001/95/EC is to be applied if there are no specific provisions among the Community regulations governing the safety of products concerned or if sectoral legislation is insufficient.

The Directive imposes a general safety requirement on any product put on the market for consumers or likely to be used by them, including all products that provide a service and excluding second-hand products that have antique value or that need to be repaired.

Directive defines the safe product as one which poses no threat or only a reduced threat in accordance with the nature of its use and which is acceptable in view of maintaining a high level of protection for the health and safety of persons. A product is deemed safe once it conforms to the specific Community provisions governing its safety. In the absence of such provisions, the product must comply with the specific national regulations of the Member State in which it is being marketed or sold, or with the voluntary national standards which transpose the European standards. In the absence of these, the product's compliance is determined according to the following:

- the voluntary national standards which transpose other relevant European standards and the Commission recommendations which set out guidelines on the assessment of product safety;
- the standards of the Member State in which the product is being marketed or sold;
- the codes of good practice as regards health and safety;
- the current state of the art;
- the consumers' safety expectations.

Directive sets manufacturer and distributor obligations. The manufacturers must put on the market products which comply with the general safety requirement. In addition, they must provide consumers with the necessary information in order to assess a product's inherent threat, particularly when this is not directly obvious, and take the necessary measures to avoid such threats (e.g. withdraw products from the market, inform consumers, recall products which have already been supplied to consumers, etc.).

¹⁰ The present training material represents the compilation undertaken by GEPLAC in cooperation with the EU project “Support to Implementation of Art. 51 of the PCA using information and materials obtained from European Commission’s website and other relevant sources (for sources see the Annex I).
Distributors are also obliged to supply products that comply with the general safety requirement, to monitor the safety of products on the market and to provide the necessary documents ensuring that the products can be traced.

If the manufacturers or the distributors discover that a product is dangerous, they must notify the competent authorities and, if necessary, cooperate with them.

Directive puts in place rapid intervention system where products pose a serious risk. If a product poses a serious threat calling for quick action, the Member State involved immediately informs the European Commission via RAPEX, a system for the rapid exchange of information between the Member States and the Commission to which applicant countries can also have access.

1.2 Liability for defective products

The Directive 85/347/EEC applies to movables which have been industrially produced, whether or not incorporated into another movable or into an immovable. With the amendments introduced by the Directive 1999/34/EC the scope of the Directive 85/347/EEC was extended to cover primary agricultural products (such as meat, cereals, fruit and vegetables) and game products.

The Directive establishes the principle of objective liability or liability without fault of the producer in cases of damage caused by a defective product. If more than one person is liable for the same damage, it is joint liability.

The injured person must prove the actual damage, the defect in the product, the causal relationship between damage and defect. As the Directive provides for liability without fault, it is not necessary to prove the negligence or fault of the producer or importer.

For the purposes of the Directive, "damage" means - damage caused by death or by personal injuries; damage to an item of property intended for private use or consumption other than the defective product, which should not be less than 500 Euros.

The Directive does not in any way restrict compensation for non-material damage under national legislation. The Directive does not apply to injury or damage arising from nuclear accidents covered by international conventions ratified by the Member States.

The Directive sets the relevant time limits. The injured person has three years within which to seek compensation. This period starts from the date on which the plaintiff became aware of the damage, the defect and the identity of the producer. The producer's liability expires at the end of a period of ten years from the date on which the producer put the product into circulation. No contractual clause may allow the producer to limit his liability in relation to the injured person.

The Directive allows each Member State to set a limit for a producer's total liability for damage resulting from death or personal injury caused by identical items with the same defect. This limit may not be lower than 70 million Euros.

2. EU Technical Harmonisation - New Approach and Global Approach

2.1 General framework

The harmonization of the existing technical standards in the Member States is essential to eliminate a large number of obstacles to Community trade in goods. In the past, each Member State imposed different technical specifications for all industrial products. However, differences between national technical regulations inevitably impede the free movement of goods within the single market.
Technical harmonization at European level therefore guarantees both genuine free movement of industrial products and a high level of safety for consumers and users of these products.

This harmonization was at first rather slow for two reasons. First, the legislation became highly technical, as it had the objective of meeting the individual requirements of each product category. Second, the adoption of technical harmonization directives was based on unanimity.

The creation of single market by December 1992 could not have been achieved without a new regulatory technique that set down only the general essential requirements, reduced the control of public authorities prior to product being placed on the market and integrated quality assurance and other modern conformity assessment techniques.

A new regulatory technique and strategy was laid down by the Council Resolution of 1985 on the New Approach of technical harmonisation and standardisation, which established the following principles:

- Legislative harmonisation is limited to essential requirements that products placed at the Community market must meet, if they are to benefit from free movement within the Community.
- The technical specification of products meeting the essential requirements set out in the directive are laid down in harmonised standards.
- Application of harmonised or other standards remains voluntary, and the manufacturer may always apply other technical specifications to meet the requirements.
- Products manufactured in compliance with harmonised standards benefit from a presumption of conformity with the corresponding essential requirements.

Since the New Approach calls for essential requirements to be harmonised and made mandatory by directives, this approach is appropriate only where it is genuinely possible to distinguish between essential requirements and technical specifications. Further a wide range of products has to be sufficiently homogenous, or a horizontal hazard identifiable, to allow common essential requirements.

New Approach in technical harmonisation was followed by elaboration of the Community’s policy on conformity assessment aimed at building of confidence through competence and transparency. The principles of this policy were embodied in Council Resolution of 1989 on the Global Approach to certification and testing. The Global Approach was completed by Council decision 90/683, which was replaced and brought up to date by Decision 93/456/EEC. These decisions lay down general guidelines and detailed procedures for conformity assessment that are to be used in New Approach directives.

Since 1987 some 29 Directives based on New Approach and Global Approach have progressively entered into force (see the full list of Directives in Annex I). The following sectors have been harmonised in line with the new approach so far: toys, machines, pressure equipment, medical devices, electrical and electronic equipment and gas appliances, information and telecommunication, air traffic, rail traffic, maritime safety, boats, metrology, explosives and pyrotechnic articles, materials used outdoors.

New Approach has not been applied in sectors where Community legislation was well advanced prior to 1985. The directives (and sometimes regulations) adopted prior to introduction of New and Global Approaches are known as Old Approach directives. They define detailed technical specifications and testing requirements applying to specific products. Those directives are amended regularly to be adapted to the technical progress. Old approach directives and regulations (around 800 pieces of legislation) cover mainly the following product sectors: pharmaceuticals, cosmetics, chemicals, fertilizers, automotive industry, labeling of certain industrial products or foodstuffs to prevent deceptive practices.
2.2 Standard elements of New Approach directives and their interrelationship with standards

The scope of the directive defines the range of products covered by the directive, or the nature of hazards the directive is intended to avert. It usually covers hazards related to a product or to a phenomenon. Accordingly, several directives may apply to the same product.

Essential requirements are set out in the annexes to the directive. Essential requirements define the results to be attained, or the hazard to be dealt with, but do not specify or predict the technical solutions for doing so. This flexibility allows manufacturer to choose the way to meet the requirements. Products may be placed on the market and put into service only if they are in compliance with the essential requirements.

The directive makes reference to harmonized standard to be adopted by European standards organizations (CEN, CENELEC, and ESTI). Harmonized standards are elaborated by European standardization organizations on the bases of the mandate issued by the European Commission. Upon adoption of standards, for each directive references (such as titles, identification numbers) of harmonized standards are published in the Official Journal. Then harmonized standards are to be transposed as national standards and Member States is obliged to publish their references.

Application of national standards transposing the harmonized standards confers a presumption of conformity with the essential requirements of the applicable New Approach directive. However, application of national standards remains voluntary. If manufacturer chooses not to follow a harmonized standard, he has the obligation to prove that his products are in conformity with the essential requirements by the use of other means of his choice (for example by means of any existing technical specifications).

Before placing a product on the market the manufacturer must subject the product to a conformity assessment procedures provided for in the applicable directive. Conformity assessment is subdivided into modules, which comprise a limited number of different procedures applicable to the widest range of products. There are eight basic modules of conformity assessment (e.g. internal control of production, EC type-examination, product verification etc.). Conformity assessment according to the modules is either based on the intervention of a first party (manufacturer) or a third party (notified body) and relates to the design phase of products, to their production phase or both.

Products in compliance with all provisions of the applicable directives providing for the CE marking must bear this marking. Thus, the CE marking is, in particular, an indication that the products comply with the essential requirements of applicable directives and that the product have been subjected to a conformity assessment procedures provided for in the directive. EC marking is affixed by the manufacturer. It shall be followed by the identification number of the notified body if the letter was involved in the conformity assessment at the production phase.

2.3 Market surveillance

Enforcement of Community legislation is an obligation of the Member States. Market surveillance is an essential tool for enforcing New Approach directives, in particular by taking measures to check that products meet requirements of the applicable directives, that action is taken to bring non-compliant products into compliance, and that sanctions are applied when necessary.

Member States must nominate or establish authorities to be responsible for market surveillance. The function is performed by public authorise. These authorities need to have the necessary resources and powers for their surveillance activities, ensure technical competence and professional integrity of their personnel, and act in an independent and non-discriminatory way. The notified bodies should, basically, be excluded from the responsibility of market surveillance.
New Approach Directives do not contain special provisions on how market surveillance should be organised and carried out in Member States (exception is Directive relating to toys). The Directive on General Product Safety has a more detailed description of the obligations of Member States to organise market surveillance and to adopt appropriate surveillance tools. Although, this Directive does not apply to products subjected to specific rules of Community law, it can be used as a reference for market surveillance carried out in the filed of New Approach directives.

3. Georgian System of Technical Regulation and Steps towards further Regulatory Convergence with the EU

3.1 Status quo

The Soviet type of quality infrastructure had been operational in Georgia up to 2005. The system as it was in Soviet times was based on the mandatory application of state standards (GOSTs). In the course of the preparation for the WTO accession there was an attempt to shift from this outdated and trade-restrictive system to the model of voluntary standardisation (the new Law on Standardisation of 1999). However, the transition to the voluntary standardisation eventually happened only in 2005 when the substantial regulatory as well as institutional reform of national quality infrastructure took place. As a result, all the basic laws of the QI – the Law on Standardisation, the Law on Certification of Products and Services and the Law on Uniformity of Measurements – were completely revised.

On the institutional side of the reform the existing body, SAKSTANDARTI, responsible for all the major components of QI (standards, technical regulations, accreditation certification) was reorganised into two independent authorities: National Agency for Standards Technical Regulation and Metrology (GEOSTM) and Accreditation Centre. The functions of public and private bodies have been separated and the conformity assessment activities were completely subjected to private entities.

General legal framework of the national system of technical regulation was laid down in the Law on Certification of Products and Services. The basic principles of the Law have been brought in line with WTO as well as EU requirements. The definition and the criteria for introduction of technical regulations (TR) have been transposed form WTO TBT agreement. The Law defined the rules on general product safety reflecting the principles of EU Directive on General Product Safety. The framework provisions on conformity assessment and market surveillance have been aligned with the principles of EU law.

The Law has introduced the principle of recognition of TRs of foreign countries, which could be deemed as the major novelty of the new regulatory framework. The implementing mechanism is provided for by the Governmental Decree N45 on Recognition of TRs of other Countries and Rules of their Application (February 2006). Along with the national TRs the Decree permits the application on the territory of Georgia:

- New Approach and Global Approach Directives;
- TRs of OECD countries;
- TRs of EU Member States;
- TRs of major trading partners;
- TRs adopted within the framework of CIS cooperation (GOSTs, SNIPs, etc)

The principle of recognition equally applies to the imported products and locally manufactured ones, meaning that local manufacturers are free to choose not only the production standards but also the applicable TRs, being it the national one or that of any third country listed in the Decree. Due to the almost no experience of application of this mechanism in practice it is difficult to evaluate the effectiveness of this system. What really raises doubts is the capacity of local conformity assessment bodies as well as market surveillance authorities to carry out relevant procedures and activities in accordance with great variety of different TRs applicable in relevant third countries.
Though the initial stage of the reform was rather promising, later on the process was stalled. In particular, the adoption on new legislative framework was not followed by the substantial reform of the national technical regulation system. Although the Government was instructed to adopt the plan of technical regulations as yearly as September 2005 no such plan has been endorsed so far. The Law on Certification of Products and Services also prescribed the adoption of national TRs in line with the relevant EU Directive, however, it is not clear weather this approach is firmly followed.

Since 2000 Georgia adopted national TRs in a limited number of areas. Currently, national TRs exist in the fields of road transport, liquid gas service stations, gas supply facility, fire safety, railway safety, attractions, agrochemicals and pesticides, wine. Except for the road transport sector, it is not clear whether the existing TRs correspond to the EU or other international standards. In all other areas the old soviet standards are still applied.

3.2 Steps to be taken for further convergence of Georgian TR regulatory and institutional framework with that of EU


GoG shall endorse the Programme on adoption of technical regulations in line with EU acquis in the priority industrial sectors. The first step has already been taken with the establishment of the Task Force by the Governmental Commission of European Integration in the course of preparatory work for DCFTA with the EU.

It is advisable to prioritize TRs on the basis of well defined criteria and on relevant assessments and studies. The criteria based on which the sequence of introduction of TRs could be:

- Consumer interests and perception of risk in different areas
- Current structure of GDP, structure of export and export potential

Consultations with market players and consumer organizations will be necessary to strike a balance of the two.

With regard to the second criteria the study on Comparative Advantages of Georgian Economy being undertaken by IFC is of particular importance. The study will reveal the sectors of economy with greater export potential and might serve as a tool for prioritization among TRs.

In the course of the elaboration of the Programme the different modes as well as practical problems of transposition of EU Old and New Approach directives should be adequately addressed. The issue should be treated with due caution in order not to cause the major disruption to the business sector of the country. Currently, the industries reveal the different levels of preparedness for the new types of regulations, e.g. the oil and gas industry is already operating according to international standards while others will require substantial re-equipment and restructuring. Therefore, it is very important to set the reasonable transitional period for the implementation of each TR in order to give the producers the possibility to adapt to new rules. In this regard the application of such policy making instruments as regulatory impact assessment studies is highly recommended.

11 According to transitional position of the law on Certification of Products and Services of 25.06.05) the plan had to be endorsed within two months upon the adoption of the Law
Along with the elaboration of national TRs the system of conformity assessment and market surveillance shall be streamlined. The appropriate system can not be established overnight. It requires substantial and costly reforms.

Once the appropriate quality infrastructure system is established in priority industrial areas Georgia shall start the conclusion of Mutual recognition agreements (MRAs) with the EU and other trading partners.
Annex I Sources of Useful Information

European Union web portal (Summaries of Legislation, Internal Market, Single Market for Goods)

European Commission DG Enterprise and Industry web portal
http://ec.europa.eu/enterprise/tbt/

European Commission DG Enlargement web portal
http://ec.europa.eu/enlargement/index_en.htm

European Commission DG Trade web portal
http://ec.europa.eu/trade/issues/sectoral/tbt/peca.htm
http://ec.europa.eu/trade/issues/sectoral/tbt/acaa.htm

Guide to the implementation of directives based on the New Approach and the Global Approach


Table 1: Directives based on the principles of the New Approach which provide for CE marking

<table>
<thead>
<tr>
<th>Number of directive amendment</th>
<th>Reference in OJEC (corrigendum) amendment</th>
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<tbody>
<tr>
<td>I Directives based on the principles of the New Approach which provide for CE marking</td>
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<tr>
<td></td>
<td>laws of the Member States relating to non-automatic weighing instruments</td>
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<td></td>
<td>laws of the Member States relating to active implantable medical devices</td>
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<tr>
<td></td>
<td>laws of the Member States relating to appliances burning gaseous fuels</td>
</tr>
<tr>
<td></td>
<td>new hot-water boilers fired with liquid or gaseous fuels</td>
</tr>
<tr>
<td>11</td>
<td>Council Directive 93/15/EEC of 5 April 1993 on the harmonization of the</td>
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<td></td>
<td>provisions relating to the placing on the market and supervision of</td>
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<td></td>
<td>explosives for civil uses</td>
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<td></td>
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<tr>
<td>13</td>
<td>Directive 94/9/EC of the European Parliament and the Council of 23 March</td>
</tr>
<tr>
<td></td>
<td>1994 on the approximation of the laws of the Member States concerning</td>
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<tr>
<td></td>
<td>equipment and protective systems intended for use in potentially</td>
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<td></td>
<td>explosive atmospheres</td>
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<td></td>
<td>June 1994 on the approximation of the laws, regulations and administrative</td>
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<td></td>
<td>provisions of the Member States relating to recreational craft</td>
</tr>
<tr>
<td></td>
<td>the approximation of the laws of the Member States relating to lifts</td>
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<td></td>
<td>May 1997 on the approximation of the laws of the Member States concerning</td>
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<td></td>
<td>pressure equipment</td>
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<td></td>
<td>June 1998 on the approximation of the laws of the Member States relating</td>
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<tr>
<td></td>
<td>to machinery</td>
</tr>
<tr>
<td></td>
<td>October 1998 on in vitro diagnostic medical devices</td>
</tr>
</tbody>
</table>

Table 2: Directives based on the principles of the New Approach or the Global Approach, but which do not provide for CE marking

<table>
<thead>
<tr>
<th>II</th>
<th>Directives based on the principles of the New Approach or the Global Approach, but which do not provide for CE marking</th>
<th>Number of directive amendment</th>
<th>Reference in OJEC (corrigendum) amendment</th>
</tr>
</thead>
</table>

Table 3: Directives based on the principles of the New Approach and the Global Approach

<table>
<thead>
<tr>
<th>III</th>
<th>Directives and proposals based on the principles of the Global Approach</th>
<th>Number of directive amendment</th>
<th>Reference in OJEC (corrigendum) amendment</th>
</tr>
</thead>
</table>
ii. Training Materials

Technical Regulations, TBTs and EU Internal Market
Klaudijus Maniokas, Team Leader, GEPLAC

Content

- What are the technical regulations (TRs) all about?
- TRs and trade: the concept of technical barriers to trade (TBTs),
- TRs and the creation of the Internal Market of the EU,
- How and why TRs are adopted: rationale and criteria,
- Issues regarding introduction of some EU technical regulations in Georgia: criteria and impact,
- Experience of other countries, MRA, their scope and rationale,
- Conclusions.

What are the technical regulations (TRs) all about?
- It is about different products and services standards/specifications which are of mandatory nature and serve public interest in general and protection of consumers health and safety and environment in particular.
- They have the features of the externalities as they impact trade.

Technical regulations and trade
- Technical regulations and product standards may vary from country to country. Harmonization between regulations and standards makes life easy for producers and consumers.
- TRs are not necessarily to be used for protection. WTO Agreement on Technical Barriers to Trade (TBT) aims to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles.
- The WTO system of notification of technical regulations and standards of countries has been established by this agreement.
- A similar procedure exists at the level of the EU: the EEC and the EC have a system through which the Community communicates its regulations to the rest of the world. The European Parliament can ask the Commission to adopt abinding resolution in case of disagreement with an EC decision.
- Technical regulations, such as those covering health and safety, are not subject to the draft technical regulations concerning products and Information Society services before they are adopted in national law. Used regularly in non-demonized areas.
- LEV can be subject to governments apply international standards, and the WTO TBT agreement encourages them to do so. In any case, whatever regulations they use should be made known.

TRs and the Creation of the Internal Market of the EU
- The role of the TBTs in the creation of the EU Internal Market;
- Definition of TBTs as "measures having equivalent effect to quantitative restrictions";
- Reasons for taking technical regulations seriously: consumer interests in the European Community and concerns of industry,
- Risk management and evasion trend,
- Old Approach: definition of technical regulation at the level of the Community,
- Mutual recognition and the case law of the European Court of Justice,
- New Approach: definition of essential requirements and adoption of European standards.

Technical regulations in Georgia
- Current situation: few technical regulations, recognition of technical regulations of OECD countries, plans for new TRs (will be expanded by a separate presentation);
- Reform of technical safety system;
- Program for adoption of technical regulations in priority sectors and a WG to draft it (approved as measures to implement an ENP Action Plan in 2003).
Criteria for selection of priority sectors

- Consumer interests and perception of risk in different sectors
- Current structure of GDP, structure of export and import potential
- Possible priority sectors: agriculture, construction, mining
- List of the main Old and New Approach directives
- Consultations with market players and consumer organizations could help to define the list.

Impact of introduction of EU technical regulations

- Ex-ante and ex-post impact assessments performed in former candidate countries of CEE and some Eastern Partnership countries
- Low-voltage directive (LVD) is the best case as RIA was performed on it in Hungary, Lithuania, Croatia and Ukraine
- Conclusions are quite similar across all these countries

Winners and losers of the introduction of LVD

- Standard producers: those which are able to launch the manufacturing of their products and to reduce the cost of their products
- Non-European producers: those which produce products for the internal market and are not yet ready to launch the manufacturing of their products
- Consumers of these products: those which are affected by the new regulations

Experience of other countries: selected cases

- Mutual recognition agreements: difficulties between the EU and its member states
- Types of mutual recognition agreements
- Formal and informal groups of EU countries for the implementation of the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) and Free trade agreements
- ACARs: Agreements on Conformity Assessment and Acceptance of Industrial Products between the European and other countries
- Experience of other countries: selected cases
- Implementation of the Agreement on Conformity Assessment and Acceptance of Industrial Products between the European Union and other countries
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Benefits of MRA for a Signatory Country

- Manufacturers in the PECA/ACAA sectors will use the national transpositions of EC Directives for access to the national market
- They can (and must) "CE mark" compliant products
- This gives them immediate access to the EU Internal Market
- EC can use a 'safeguard' clause if products do not comply

Scope of PECAs: selected examples Lithuania

- Lithuanian Agreement on Mutual Recognition of Products (Lithuania)
- OEEC Agreement on Mutual Recognition of Products (Lithuania)
- CE Marking Agreement (Lithuania)
- Agreement on Mutual Recognition of Products (Lithuania)
- Agreement on Mutual Recognition of Products (Lithuania)
- Agreement on Mutual Recognition of Products (Lithuania)
- Agreement on Mutual Recognition of Products (Lithuania)
- Agreement on Mutual Recognition of Products (Lithuania)
- Agreement on Mutual Recognition of Products (Lithuania)
- Agreement on Mutual Recognition of Products (Lithuania)
Scope of PECAs: selected examples Czech Republic

- Machinery
- Lifts
- Personal Protective Equipment
- Electrical Safety
- Electromagnetic Compatibility
- Equipment and Protective Systems intended for Use in Potentially Explosive Atmospheres
- Hot Water Boilers
- Gas Appliances
- Pressure Equipment
- Good Manufacturing Practice (GMP)

MRA between EFTA and third countries

Experience of selected countries: Ukraine

- System of mandatory certification still in place;
- All functions but accreditation are concentrated in one institution;
- Many national technical regulations;
- Major reform of the system is imminent but being postponed constantly;
- ACAA with the EU is planned to be signed in 2010, but there is a resistance;
- Possible scope of the ACAA: low voltage, electromagnetic compatibility, machinery and pressure vessels.

Conclusions

- Technical safety issues through adoption of technical regulations are important for consumer protection and considerations of trade and export promotion.
- This is an element of the quality control and market surveillance system and a step towards integration into the EU internal market.
- Definition of an approach as well as priority sectors are necessary.
- Interests of consumers and export promotion are two the most important criteria for the definition of priorities.
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Tbilisi 2009, June

TECHNICAL REGULATION IN EU
NEW AND OLD APPROACH – LEGAL REQUIREMENTS AND STANDARDS
Brunonas ŠICKUS
Key expert for Standardization – TACIS project

Lithuanian Standards Board is recognized in the Republic of Lithuania as the official National Standards Body competent for all areas of standardization activities (including electrical engineering and telecommunications) and has exclusive right for standardization activities by virtue of the Law on Standardization.

International Standards Organization ISO
Member since 2004 - 2000 CHF per year

International Electrotechnical Commission IEC
Associated member since 1996 - 25160 CHF per year

European Committee for Standardization CEN
Member since 2004 - 61615 EUR per year

European Committee for Electrotechnical Standardization CENELEC
Member since 1st June 2003 - 29249 EUR per year

European Telecommunications Standards Institute ETSI
Member since 1996 - 10562 EUR per year

DCFTA - Deep and Comprehensive Free Trade Agreement between the EU and Georgia
Fact-finding mission to Georgia on 13-15 October 2008

3. Technical Barriers to Trade (TBTs):
Georgia has so far achieved only very limited progress in the implementation of the PCA and ENP Action Plan’s objectives of establishment of a legislative and institutional framework in the TBT areas compatible with the EU and international practice.
**Weaknesses in the legislative framework**

** ISSUE:**
There has not been a clear and well prioritised and consequently implemented governmental programme of adoption of technical regulations regarding industrial products’ safety (the government gives priority to the EU directives as a model for the domestic laws to be based on, but this approach is not firmly followed and the overall process is very slow).

**RECOMMENDATION:**
Adopt and start implementing a governmental programme of adoption of technical regulations in line with the EU acquis in the priority industrial sectors.

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**Weaknesses in the institutional framework**

** ISSUE:**
- Conformity assessment and market surveillance institutional systems (enforcement of products’ safety regulations) are not sufficiently developed and consequently they are not able to ensure adequate level of consumer protection in Georgia.
- Conformity assessment certificates issued by Georgia are not recognized internationally.

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**Weaknesses in the institutional framework**

**RECOMMENDATION:**
Achieve progress in the establishment of a domestic institutional system in the areas of:
- technical regulation (relevant ministries & authorities),
- standardization (GEOSTM),
- accreditation (GAC),
- metrology (GEOSTM),
- conformity assessment (state and private institutions),
- market surveillance (state institution).

Create if needed and strengthen the institutions in charge of these respective issues.

---

**Export structure by product - priority industrial sectors?**

- Ferrous Metals 31.2%
- Copper & Gold 8.8%
- Beverages, Spirits & Vinegar 7.7%
- Vehicles 7.9%
- Fertilizers 6.7%
- Textiles & Textile Machinery 6.5%
- Cement 6.2%
- Equipment & Rail Cars 3.9%
- Oil & Gas 2.5%
- Pharmaceuticals 1.3%
- Yachts & Aircraft 0.3%
- Sugar 0.3%
- Others 10.5%

*Source: Department of Statistics of Georgia, 2008*

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**Export structure by country - priority for technical regulation (harmonization)?**

- EU Countries 25.8%
- Turkey 19.5%
- Azerbaijan 14.2%
- Canada 8.7%
- Ukraine 7.6%
- USA 7.2%
- Armenia 7.2%
- Russia 1.9%
- Kazakhstan 1.3%
- United Arab Emirates 0.8%
- China 0.7%
- Others 6.1%

*Source: Department of Statistics of Georgia, 2008*
Import structure by country – priority for technical regulation (harmonization)?

- EU Countries: 28.5%
- Turkey: 14.9%
- Ukraine: 10.7%
- Azerbaijan: 10.2%
- Russia: 6.7%
- China: 5.0%
- United Arab Emirates: 4.8%
- USA: 4.1%
- Turkmenistan: 2.8%
- Armenia: 1.2%
- Kazakhstan: 1.1%
- Others: 10.0%

Source: Department of Statistics of Georgia, 2019

Technical regulation

Technical regulation is influencing free movement of goods. Georgia, being a member of WTO, should notify drafts of legal acts (technical regulations) and original standards (as potential barriers to trade) to WTO secretariat and receive possible comments from WTO members.

In the case of FTA negotiations with EU, Georgia will be obliged to notify drafts to EU also.

CONCLUSION: having in mind import/export structure and FTA negotiations, to implement existing technical regulation system of EU which is well known worldwide.

Technical Barriers to Trade

are caused by:

- different product requirements
- different conformity assessment procedures

in the countries which the exporters/importers are confronted with.

Elimination of barriers to trade in Europe

is achieved through

- Harmonization of product requirements (New Approach, Global Approach)
- Mutual acceptance of non-harmonised product requirements (Articles 28-30 - prohibition of illegitimate quantitative import and export restrictions)
- Mutual recognition of results of conformity assessment (Global Approach)

Legal documents of the EU

- Directives
  - general legal documents, i.e. they are addressed to the general public
  - have to be transposed into national law
- Regulations
  - general legal documents, i.e. they are addressed to the general public
  - directly applicable in Member States
- Decisions - addressed to individuals (one member state or other entities like companies or institutions)
- Resolutions - non-binding character
- Recommendations - non-binding character.
**Directive**

COUNCIL DIRECTIVE of 3 May 1988
on the approximation of the laws of the Member States concerning the safety of toys (88/378/EEC)

**Article 1**
1. This Directive shall apply to toys. A 'toy' shall mean any product or material designed or clearly intended for use in play by children of less than 14 years of age.

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**Regulation**

laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/94/EC
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION HAVE ADOPTED THIS REGULATION
CHAPTER I
SUBJECT MATTER AND SCOPE

---

**Decision**

on mutual recognition
Council Decision 93/465/EEC
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION HAVE DECIDED AS FOLLOWS:

**Article 1**
General principles
1. Products placed on the Community market shall comply with all applicable legislation.
2. When placing products on the Community market, economic operators shall, in relation to their respective roles in the supply chain, be responsible for the compliance of their products with all applicable legislation.

---

**Resolutions**

COUNCIL RESOLUTION of 28 October 1999
on mutual recognition
(2000/C 141/02)
CALLS UPON the Member States to continue to develop appropriate measures, including the following, in order to provide economic operators and citizens with an effective framework for mutual recognition:
(a) review and simplify the relevant national legislation and its application procedures, for example, by inserting appropriate mutual recognition clauses in relevant legislative proposals and improving national procedures for applying efficiently those clauses;

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**Recommendations**

Commission Recommendation 76/223/EEC to the Member States concerning units of measurement referred to in patent conventions


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**Application of EU technical legislation by non-member states**

- EU technical legislation is also applied by the EEA countries (Iceland, Liechtenstein, Norway).
- Switzerland applies EU technical legislation on a non-commitment basis.
- Applicant countries harmonize their legislation as a preparation for membership (Europe Agreements, Accession Partnerships AP, National Programmes for the Adoption of the Acquis NPAA).
- GNP countries can harmonize their legislation according PCA and ENP.
OLD APPROACH (sectorial approach)

From 1970 to 1985 the European Community followed the so-called "old approach" in its policy to combat technical barriers to trade. Harmonization was achieved by introducing specific instruments in order to meet the individual requirements of each product category. This meant that the directives were highly technical and detailed which led to an enormous bulk of EC technical regulations. The area of motor vehicles can be given as an example for Directives under the "old approach". As the consultation procedure of Article 94 (former Article 100) - which was the basis for these Directives - requires unanimity decisions-making in these very specific matters became more difficult and caused delays.

EU technical regulations concerning different issues and groups of products - 13.30 Internal market: approximation of laws

- 13.30.10 Motor vehicles (number of legal acts: 208)
- 13.30.11 Agricultural and forestry equipment (number of legal acts: 38)
- 13.30.12 Metrology (number of legal acts: 16)
- 13.30.13 Electrical material (number of legal acts: 10)
- 13.30.14 Foodstuffs (number of legal acts: 177)
- 13.30.15 Proprietary medicinal products (number of legal acts: 29)
- 13.30.16 Cosmetics (number of legal acts: 13)
- 13.30.17 Textiles (number of legal acts: 5)
- 13.30.18 Dangerous substances (number of legal acts: 38)
- 13.30.19 Fertilizers (number of legal acts: 8)

http://eur-lex.europa.eu

Foodstuffs - 13.30.14.10

Colouring matters


13.30.16 Cosmetics


Cosmetics


13.30.17 Textiles


EN 84-CISI - Quality of provenance of textiles and put and put-in textile fibre mixtures

Textile Fibres - Qualitative analysis of textile fibre mixtures

Textile Fibres - Determination of the qualitative analysis of textile fibre mixtures

Textile Fibres - Determination of the qualitative analysis of textile fibre mixtures

13.30.19 Fertilisers

Man-made textile

- EN 13392:2001 Textiles - Monofilaments - Determination of linear density
- EN 13844:2002 Textiles - Monofilaments - Determination of thermal shrinkage

Fertilizers (more than 100)

- EN 15475:2009 Fertilizers - Determination of ammoniacal nitrogen
- EN 15476:2009 Fertilizers - Determination of nitric and ammoniacal nitrogen according to Devard
- EN 15477:2009 Fertilizers - Determination of the water-soluble potassium content

NEW APPROACH

Therefore, on 2 May 1985 the Council of the EC adopted a resolution on a New Approach for technical harmonisation and standards (85/1366/EEC). This resolution gave way to a new European policy which uses standardisation as a means of support to legislation and constitutes a systematic approach for the drafting of technical legislation. The Directives only contain the "essential requirements". Harmonized standards, developed by competent European standardisation bodies, define the technical specifications which comply with these essential requirements.

Also the legislative procedure of Article 95, which was introduced in the framework of the Single European Act, helped to speed up the output of technical legislation.
**New Approach - fundamental principles**

- Directives limited to the harmonization of essential requirements
- Reference to standards harmonized standards
- Conformity assessment policy
- CE-marking

**Coverage of EU production 1998 (estimates)**
- New Approach Directives: 20%
- Sectorial Directives: 30%
- National regulations: 25%
- No regulations: 25%

**Coverage of EU production 2004 (estimates)**
- New Approach Directives: 40%
- Sectorial Directives: 30%
- National regulations: 20%
- No regulations: 10%

**Coverage of EU production 2010 (estimates)**
- New Approach Directives: 55%
- Sectorial Directives: 22%
- National regulations: 15%
- No regulations: 8%

**General outline of a New Approach Directive (1)**

- **Scope**
  - Range of products covered by the Directive

- **General clause for placing on the market**
  - Safety of persons, domestic animals or goods must not be endangered by the product put on the market
General outline of a New Approach Directive (2)

- Essential safety requirements
  - care of the New Approach Directive
  - protection of the public interest is safeguarded
  - possibility of compliance with Directives on the basis of essential requirements only (in case harmonized standards are not applied)

- Free movement clause
  - free movement of goods complying with the Directive

General outline of a New Approach Directive (3)

- Proof of conformity
  - conformity to harmonized standards
  - CEN, CENELEC and IEC-competent bodies for the development of harmonized standards
  - non-conformity to harmonized standards
  - absence of harmonized standards

- Management of the lists of standards
  - procedure applied if Commission or member state is not "satisfied" with the harmonized standard

General outline of a New Approach Directive (4)

- Safeguard clause
  - conditions under which a member state can take measures to protect vital interests

- Means of attestation of conformity
  - modes of conformity assessment

- Standing Committee
  - "manages" the New Approach Directive in question

- Definitions of the tasks and operation of the Standing Committee

Directives based on the principles of the New Approach which provide for CE marking

1. In the framework of the trans-European Union relating to certain equipment designed to provide services
2. In the framework of the trans-European Union relating to certain equipment designed to provide services
3. In the framework of the trans-European Union relating to certain equipment designed to provide services
4. In the framework of the trans-European Union relating to certain equipment designed to provide services

Directives based on the principles of the New Approach or the Global Approach, but which do not provide for CE marking

1. On packaging and packaging waste
2. On the interoperability of the trans-European high-speed rail system
3. On marine equipment
4. On the interoperability of the trans-European conventional rail system
Directives based on the principles of the New Approach and the Global Approach

- On energy efficiency requirements for household electric refrigerators, freezers and combinations thereof
- On transportable pressure equipment
- On the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors
- On energy efficiency requirements for ballasts for fluorescent lighting

Other standards-receptive directives

1. Airborne noise emitted by household appliances
2. General product safety
3. Community postal services
4. Restrictions on marketing and use of certain dangerous substances and preparations
5. Energy labelling of household appliances
6. Waste electrical and electronic equipment (WEEE)

Links to the legal texts and additional information

- http://ec.europa.eu/enterprise/ibt/

Example of the list of harmonized standards

- Harmonized European standards are voluntary, they are recommendations for products to comply with existing requirements of directives.

STANDARDS

GEOSTM is a member of ISO and CEN, all European standards from CEN and ISO are available at GEOSTM

THE NEXT STEP:
GEOSTM should become a member of IEC and CENELEC to have access to the European and international standards in the field of electricity

The New Approach and the Global Approach

New Approach concerns technical harmonisation.

Global Approach concerns conformity assessment.
**New Approach and the Global Approach**

are based on three fundamental pillars

1. **Council Resolution of 07.05.1985**, where a ‘New Approach’ to technical harmonisation and standards is set as an essential condition for improving the competitiveness of European industry.


3. The **Global Approach** was completed by **Council Decision 93/465/EEC**. This Decision lay down general guidelines and detailed procedures for conformity assessment that are to be used in New Approach directives.

If Member State takes a restrictive measure to the free movement of goods, it must notify it to the Commission under the provisions of **Regulation 4859/88**.

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**New Legislative Framework for marketing of products**

The New Legislative Framework, the modernisation of the New Approach for marketing of products, was adopted in Council on 23rd June 2008 and finally published in the Official Journal on 13 August 2008. This broad package of measures which has the objective of removing the remaining obstacles to free circulation of products represents a major boost for trade in goods between EU Member States.

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**New Legislative Framework (1)**

The package of measures will have an impact on a large number of industrial sectors, representing a market volume of around €1 trillion a year:


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**New Legislative Framework (2)**

The objective of the package is to facilitate the functioning of the internal market for goods and to strengthen and modernise the conditions for placing a wide range of industrial products on the EU market. The package builds upon existing systems to introduce clearer Community policies which will strengthen the application and enforcement of internal market legislation. It:

- **Introduces** better rules on market surveillance to protect both consumers and professionals from unsafe products, including imports from third countries. This particularly applies to procedures for products which can be a hazard for health or the environment (for instance, to which a car will be withdrawn from the market).

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**New Legislative Framework (3)**

- Enhance the confidence in and quality of conformity assessments of products through reinforced and clearer rules on the requirements for notification of conformity assessment bodies (testing, certification and inspection laboratories) including the increased use of accreditation; a reinforced system to ensure that these bodies provide the high quality services that manufacturers, consumers and public authorities need;

- Enhance the credibility and clarify the meaning of CE marking. In addition the CE marking will be protected as a community collective trade mark, which will give authorities and competitors additional means to take legal action against manufacturers who abuse it;

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**New Legislative Framework (4)**

- Establishes a common legal framework for industrial products in the form of a toolbox of measures for use in future legislation. This includes provisions to support market surveillance and application of CE marking, amongst other things and it sets out simple common definitions (of terms which are sometimes used differently) and procedures which will allow future sectoral legislation to become more consistent and easier to implement. The provisions are split for legal reasons, but must be considered in parallel, as they are fully complementary and together form the basis of consistent legal framework for the marketing of products. The provisions of the Decision will be fed into existing Directives as and when they are revised – in effect, it is a basis for future regulation.
New Legislative Framework (5)

- In intra-EU trade in goods, mutual recognition is the principle that a product lawfully marketed in one Member State and not subject to Community harmonisation should be allowed to be marketed in any other Member State, even when the product does not fully comply with the technical rules of the Member State of destination.
- There is one exception to this principle: the Member State of destination may refuse the marketing of a product in its current form only where it can show that this is strictly necessary for the protection of, for example, public safety, health or environment. In that case, the Member State of destination must also demonstrate that its measure is the least trade-restrictive measure.

New Legislative Framework (6)

- Regulation (EC) No 764/2008 defines the rights and obligations of, on the one hand, national authorities and, on the other, enterprises wishing to sell in a Member State products lawfully marketed in another Member State, where the competent authorities intend to take restrictive measures about the product in accordance with national technical rules. In particular, the Regulation concentrates on the burden of proof by setting out the procedural requirements for denying mutual recognition.
- Moreover, the Regulation will reduce the risk for enterprises that their products will not get access to the market of the Member State of destination by establishing one or several "Product Contact Points" in each Member State.
- Article 12(4) of the Regulation specifies that the "Commission shall draw up, publish and regularly update an indicative and non-exhaustive list of products which are not subject to Community harmonisation legislation". It shall make this list accessible through its website and other means. This website must be accessible to economic operators and the "Product Contact Points". Look the content of Vietnam.

New Legislative Framework (7)

The package also strengthens the internal market of a wide range of other products, which are not subject to EU harmonisation, such as various types of foodstuffs (for example bread and pastas), furniture, bicycles, saddles and precious metals, etc. Together they represent more than 15% of intra-EU trade in goods. The new mutual recognition Regulation covers such products. For more information on the mutual recognition Regulation please click here:

The Regulation No 764/2008 applies from 13 May 2009.

General Product Safety Directive 2001/95/EC

The General Product Safety Directive 2001/95/EC supports two objectives laid out in the EC Treaty:

- Article 106a for creating a single European market in goods and services with the objective of providing producers and consumers with the benefits of economies of scale that this offers; and
- Article 129a for ensuring consumer protection.

Principles could be applied for each country to protect consumers.

85/374/EEC and 1999/34/EC

Liability for defective products

Applies to any product marketed in the European Economic area and is of direct concern for both citizens and producers in that area, assures citizens of the safety of those products and the possibility to claim compensation in case of damages caused by defective products.

Principles could be applied for each country to protect consumers.

STEPS OF THE PROCESS (1)

1 step – if the prioritized Directives aren’t translated into Georgian language, organize translation to have translated texts in one style (uniform terminology).

2 step – adopt Georgian Law harmonized with European Directives (if it isn’t done):
- General Product Safety 2001/95/EC
- Product Liability 1999/34/EC and Liability for Defective Products 85/374/EEC

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3 step - assign to the Ministries in charge the adoption of Georgian legal acts harmonized with the New and Old Approach directives (attached Lithuanian example - institutions in charge - of adoption of EU acquis in the area of free movement of goods and services).

4 step - appoint the Ministry for coordination of this adoption (in the case of Lithuania - Ministry of European Integration).

5 step - in parallel with adoption process provide technical assistance, financed by GEPLAC or other project, for each Directive explaining the Directive stipulations and implementation possibilities.

6 step - report to the EU Commission about excellent results achieved and send an application for the FPA/ACAA negotiations.

Thank you for your attention!
Georgian Legal and Institutional Framework of Technical Regulation

Nino Chokheli
June, 2009
GEPLAC

Safety Regulation before the reform of 2005

- Soviet system of product safety – GOSTs
- Cooperation within CIS since 1995 – prolongation of GOSTs application
- Law on Standardization of 1999
- Accession to WTO

Reform of National Quality Infrastructure of 2005

- Reform of the regulatory framework (amended Laws on Standardization; Certification of Products and Services, Uniformity of Measurements);
- Reform of the Institutional Setup:
  - National Agency for Standards, Technical Regulation and Metrology (GEOSTM)
  - Accreditation Centre

Reform of National Quality Infrastructure of 2005

Aims:
- Liberalization of trade and economy
- Facilitation of introduction of new technologies in production and service sector

Major Novelties:
- Voluntary standardization
- General product safety requirements;
- Separation of functions between public and private sectors in the quality assurance
- Recognition of technical regulations of foreign countries

Law on Certification of Products and Services

Aims of the law:
- define mechanisms of adoption of technical regulations (TRs)
- ensure safety of products placed at the market
- define principles of conformity assessment
- eliminate TBT through introduction of internationally accepted principles

Law on Certification of Products and Services

Definition of Technical Regulation in line with WTO TBT agreement – document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with the requirements towards terminology, symbols, packaging, marking, labelling, processes related to product or production method.
Law on Certification of Products and Services

Principles of TR adoption in line with WTO TBT agreement:

- legitimate objective
- trade-restrictiveness
- adjustment to changed circumstances
- equivalence

Law on Certification of Products and Services

Adoption, recognition and acceptance as equivalent:

- National TR can be endorsed by state bodies or independent regulatory bodies according to the Law on Normative Acts
- TRs of foreign countries can be recognized through the international agreements, legislative acts and governmental decisions
- Acceptance as equivalent of foreign TRs by governmental decision or other normative act

Governmental Decree on Recognition of TRs of other Countries (2006)

- New Approach and Global Approach Directives
- TRs of OECD countries
- TRs of EU Member States
- TRs of major trading partners
- TRs adopted within CIS cooperation (GOSTs, SNIPs, etc)
- Elaboration of national TRs

Law on Certification of Products and Services - General Product Safety

Definition of Safe Product is in line with EU Directive 2001/95/EC - product or service which, under normal or reasonably foreseeable conditions of use, does not present any risk or only the minimum risks considered to be acceptable and consistent with a high level of protection for the safety and health of persons. The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be dangerous.

Law on Certification of Products and Services - General Product Safety

- applies mainly to those products which are not subjected to TRs
- sets requirements towards manufacturer
- sets requirements towards distributor

Law on Certification of Products and Services - Conformity Assessment Procedures

- Conformity assessment procedures applies to products subject to TR
- TR shall determine the applicable forms and procedures of conformity assessment
- Modules of conformity assessment:
  - Declaration of conformity
  - Certification by accredited body
  - Affixing the national conformity mark
Law on Certification of Products and Services – Principles of Market Surveillance

- Law defines the main duties of market surveillance bodies
- Existing market surveillance bodies
  - Technical Supervision Inspection
  - Architectural-Construction inspection
  - Municipal bodies
  - National Food Safety Service

Responsibilities of GEOSTSM with regard to TR

- Maintenance of the registry of TRs
- Notification of relevant international organizations regarding the TRs being in the process of elaboration in Georgia
- Assistance to governmental bodies in elaboration of national TRs

Adopted National TRs

- Road transport
- Liquid gas service stations
- Gas supply facility
- Fire safety
- Railway safety
- Attraction

- Agrochemicals and pesticides
- Wine

Further Steps

- Further harmonization of general regulatory framework with EU Directives 2001/95/EC, 95/34/EC and 1999/34/EC
- Elaboration of the Programme on adoption of technical regulations in line with EU directives in the priority industrial sectors
- Further reform of conformity assessment and market surveillance systems
- Conclusion of MRAs with EU and other trading partners
B. SANITARY AND PHYTOSANITARY MEASURES

i. Background Paper

1. Summary of EU Acquis

The Objective of the European Union’s food safety policy is to protect consumer health and interests while guaranteeing the smooth operation of the single market. In order to achieve this objective, the EU ensures that control standards are established and adhered to as regards food and food product hygiene, animal health and welfare, plant health and preventing the risk of contamination from external substances. This policy underwent reform in the early 2000s, in line with the approach “From Farm to Fork,” thereby guaranteeing a high level of safety for food marketed within the EU, at all stages of the production and distribution chains. This approach involves both food products produced within the European Union and those imported from third countries.

The White Paper on Food Safety\(^\text{12}\) was the first official document to emphasize the need for a policy underpinned by a sound scientific basis and up-to-date legislation. The general overhaul of EU legislation is designed to restore consumer confidence in the wake of recent food-related crises, with all interested parties having a part to play: the general public, non-governmental organizations, professional associations, trading partners and international trade organizations.

With a view of adopting a comprehensive, integrated "farm to table" approach, legislation covers all aspects of the food production chain: primary production, processing, transportation, distribution through to the sale or supply of food and feed. At all stages of this chain, the legal responsibility for ensuring the safety of food and feed rests with the operator.

*General Food Law*\(^\text{13}\) which was fully enforced by 1 January 2007 covers all stages of the food production chain. The objectives pursued by means of food law are:

- protection of human life and health, and protection of consumers’ 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 or planned international standards.

Food law is based mainly on risk analysis drawing on the available scientific evidence. Under the precautionary principle, the Member States and the Commission may take appropriate provisional risk-management measures when an assessment points to the likelihood of harmful health effects and there is a lack of scientific certainty.

There is a requirement for transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law. When a food or feed product is deemed to constitute a risk, the authorities must inform the general public of the nature of the risk to human or animal health.

1.1 General requirements of the Food Law

At all stages of the food production chain, business operators must ensure that food and feed satisfies the requirements of food law and that those requirements are being adhered to. The Member States enforce the law, ensuring that operators comply with it and laying down appropriate measures and penalties for infringements.

\(^\text{12}\) Dated 12 January 2000.
The traceability of food, feed, food-producing animals and all substances incorporated into foods must be established at all stages of production, processing and distribution. To this end, business operators are required to apply appropriate systems and procedures.

If an operator considers that a food or feed product which has been imported, produced, processed, manufactured or distributed is harmful to human or animal health, steps must be taken immediately to withdraw the product from the market and to inform the competent authorities accordingly. In cases where a product may have reached consumers, the operator must inform them and recall the products already supplied.

1.2 European Food Safety Authority (EFSA)

A European Food Safety Authority (EFSA) provides scientific advice and scientific and technical support in all areas impacting on food safety. Its main task is to provide assistance and independent scientific advice, and to create a network geared to close cooperation with similar bodies in the Member States. It assesses risks relating to the food chain and informs the general public accordingly.

The tasks of the European Food Safety Authority are as follows:

- To provide the European institutions and the Member States with the best possible scientific advice on its own initiative or at the request of the Commission, the European Parliament or a Member State;
- To promote and coordinate the development of uniform risk assessment methods;
- To provide scientific and technical support to the Commission;
- To search for, collect, collate, analyse and summarise scientific and technical data in areas relating to food safety (exposure of individuals to risks arising from consumption of foods, biological risks, contaminants and residues);
- To identify and characterise emerging risks;
- To build up European networks of organisations operating in the field of food safety;
- To participate in the rapid alert system linking the Commission and the Member States. It will encourage the exchange of information, knowledge and good practice, the coordination of action and the implementation of joint projects;
- To provide scientific and technical support aimed at improving cooperation between the Commission, the candidate countries, international organisations and third countries;
- To ensure that the general public and other interested parties receive reliable, objective and comprehensible information.

1.3 Food hygiene

Food hygiene is an important part of the food safety system. As part of the revision of legislation on the hygiene of foods (“hygiene package”), the Hygiene Regulation focuses on defining the food safety objectives to be achieved, leaving the food operators responsible for adopting the safety measures to be implemented in order to guarantee food safety.

This Regulation seeks to ensure the hygiene of food at all stages of the production process, from primary production up to and including sale to the final consumer. It does not cover issues relating to nutrition or to the composition or quality of food.

This Regulation applies to food businesses but not to the primary production of food for private domestic use or the domestic preparation of food for private consumption. According to the hygiene regulation:

- All food business operators shall ensure that all stages for which they are responsible, from primary production to the final consumer, are carried out in a hygienic way in accordance with this Regulation.

• Food business operators carrying out primary production and certain associated activities shall comply with the general hygiene provisions. Derogations may be granted for small businesses, provided that they do not compromise achievement of the Regulation's objectives.

In addition, food business operators carrying out activities other than primary production shall comply with the general hygiene requirements for: food premises, including outside areas and sites; transport conditions; equipment; food waste; water supply; personal hygiene of persons in contact with food; food; wrapping and packaging; heat treatment, which may be used to process certain food; training of food workers.

The regulation leaves flexibility regarding the adapting these requirements to accommodate the needs of food businesses situated in regions suffering from special geographical constraints or affected by supply difficulties which are serving the local market, or to take account of traditional methods of production and the size of farms. The objectives of food hygiene shall not however be compromised.

In addition, all food business operators shall comply with the provisions of Regulation (EC) No 853/2004 on specific hygiene rules for food of animal origin and, where appropriate, certain specific rules concerning microbiological criteria for food, temperature control and compliance with the cold chain, sampling and analysis.

1.4 The HACCP system

Food business operators (other than at the level of primary production) shall apply the principles of the system of hazard analysis and critical control points (HACCP) introduced by the Codex Alimentarius (code of international food standards drawn up by the United Nations Food and Agriculture Organization).

These principles prescribe a certain number of requirements to be met throughout the cycle of production, processing and distribution in order to permit, via hazard analysis, identification of the critical points which need to be kept under control in order to guarantee food safety:

• identify any hazards that must be prevented, eliminated or reduced to acceptable levels;
• identify the critical control points at the step or steps at which control is essential;
• establish critical limits beyond which intervention is necessary;
• establish and implement effective monitoring procedures at critical control points;
• establish corrective actions when monitoring indicates that a critical control point is not under control;
• implement own-check procedures to verify whether the measures adopted are working effectively;
• keep records to demonstrate the effective application of these measures and to facilitate official controls by the competent authority.

The application of HACCP principles by food business operators shall not replace the official controls carried out by the competent authority. Operators are required to collaborate with the competent authorities in accordance with Community legislation or, where none exists, national legislation.

1.5 Registration or approval of food businesses

Food businesses operators shall cooperate with the competent authorities and in particular ensure that all establishments under their control are registered with the appropriate authority and keep this authority informed of any changes (e.g. closure of the establishment).

Where required by national or Community legislation, businesses in the food sector must be approved by the competent authority and shall not operate without such approval.
1.6 Traceability and withdrawal of food products

In accordance with Regulation (EC) No 178/2002, food business operators shall set up traceability systems and procedures for ingredients, food and, where appropriate, animals used for food production. Similarly, where a food business operator identifies that a foodstuff presents a serious risk to health it shall immediately withdraw that foodstuff from the market and inform users and the competent authority.

1.7 External dimension

Food imported into the Community shall comply with the Community hygiene standards or with equivalent standards.

Food of animal origin exported out of the Community shall at least comply with the requirements that would apply if they were marketed within the Community, as well as to any requirements that may be imposed by the importing country.

Given the complexity of the food safety its regulatory package also covers the issues related to animal health (BSE, Foot and mouth disease, Swine fevers, Avian influence), animal nutrition (Official controls, Additives, Genetically modified feed, Animal waste and pathogenic agents), animal welfare (Livestock farming, Transportation, Slaughter), contamination and environmental factors (Chemical products, Substances with a hormonal effect, Contact with food, GMOs, Radioactive contamination), international dimension and enlargement (International cooperation, Enlargement), plant health (Phytopharmaceutical products, Pesticide residues, Harmful organisms), specific themes (GMOs, BSE, Foot and mouth disease), and veterinary checks, animal health rules, food hygiene (The hygiene package, Intra-community trade, Production and placing on the market).

Below is a brief overview of these thematic areas:

Animal Health. In order to prevent and to combat diseases afflicting animals, the European Union has devised measures to limit the risks of outbreaks and the spread of these diseases and to eradicate them once they have been detected. This legislation complements the rules on veterinary checks and food hygiene, and includes general provisions on the surveillance, notification and treatment of infectious diseases and their vectors, and specific provisions for certain diseases such as bovine spongiform encephalopathy (BSE), foot and mouth disease or bird flu. Rules applicable to animal medicines are also established.

Animal Nutrition. Good quality animal nutrition is essential, as it affects animal health and consequently food safety. Legislation on labeling and the circulation of animal feed has been supplemented so as to shift the emphasis more towards the protection of human and animal health. In addition to the rules on hygiene and the monitoring of animal feed, the EU thus regulates certain substances and products in order to limit or even prohibit their presence in animal feed.

The most important piece of legislation in this area is the Requirements for Feed Hygiene, supplementing the general rules on the safety and hygiene of food and feed. This regulation is designed to extend these rules to the entire animal feed chain, including primary production, by imposing a system of liability and obligations on feed business operators. This system mainly includes requirements governing the registration or approval of establishments and the production of animal feed.

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Contamination and Environmental Factors. The European Union takes care to prevent and limit any contamination of food by certain undesirable substances or as a result of human activities. The EU thus regulates the use of certain specific chemical substances, such as those used in farming or in certain production or food processing techniques. Measures are also taken to limit contamination from the pollution of water or air, or from exposure to radioactivity. The risks of contamination by genetically modified organisms and by food packaging are also monitored.

Two pieces of legislation of utmost importance are: the regulation of the contaminants in food\(^{17}\) which aims at reducing presence of contaminants to the extend possible to prevent risks to public health, stating that no food containing an unacceptable amount of residual substances may be marketed and the regulation on maximum levels for certain contaminants\(^{18}\), laying down the maximum quantities for certain contaminants (nitrates, mycotoxines, heavy metals, dioxins, etc). Food with level of contaminants exceeding the specified levels cannot be placed on the market.

Plant Health. In order to prevent any risk to human food and animal feed and to guarantee healthy and good quality crops, the EU places great emphasis on plant and crop protection. There are therefore checks on the movement of plants within the EU or from third countries in order to combat the emergence and spread of harmful organisms. The EU also ensures that plant health products are not harmful to health or the environment, specifically through an authorisation system and maximum residue limits in plants.

Thematic Strategy on the sustainable use of pesticides\(^{19}\) suggests measures to reduce the impact of pesticides. Maximum pesticide limits for food products for human consumption and animal feed are also established by the legislation\(^ {20}\).

Veterinary Checks, Animal Health Rules, Food Hygiene. In line with the integrated approach, food is monitored at all susceptible stages of the production chain, in order to make sure that strict hygiene rules are adhered to. The EU also regulates on the trade in animals and animal products between Member States and with third countries. The EU and its Member States have a number of instruments at their disposal to ensure that these checks are carried out properly, such as the European Food Safety Authority or the TRACES system (Trade Control and Expert System).

Regulation on Official Food and Feed Controls\(^ {21}\) is designed to fill in the loopholes in the existing legislation concerning the official control of food and feed. The purpose of this regulation is:

- to prevent or eliminate risks which may arise, either directly or via the environment, for human beings and animals, or reduce these risks to an acceptable level;
- to guarantee fair practices as regards trade in food and feed and the protection of consumers' interests, including labelling of food and feed and any other form of information intended for consumers.

Official controls are defined as "any form of control performed by the competent authority or by the Community for the verification of compliance with feed and food law, as well as animal health and animal welfare rules".

This Regulation does not apply to official controls for the verification of compliance with the rules on common market organisations agricultural products.

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\(^{18}\) Commission Regulation (EC) NO 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in food.
\(^{19}\) Communication from the Commission of 12 July 2006 “A thematic strategy on the sustainable use of pesticides” [COM (2006) 372]
\(^{20}\) Regulation (EC) NO 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin.
\(^{21}\) Regulation (EC) NO 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.
1.8 Obligations relating to official controls

The basic principles related to responsibilities of the Member States' authorities are already laid down in the Regulation (EC) No 178/2002. The Regulation on Official Food and Feed Controls describes in more detail how these principles must be interpreted and implemented.

The official controls carried out by the Member States must enable them to verify and ensure compliance with national and Community rules on feed and food. To this end, official controls must in principle be carried out at any stage of production, processing and distribution of feed and food. These controls are defined as a function of the identified risks, the experience and knowledge gained from previous controls, the reliability of the controls already carried out by the business operators concerned, and a suspicion of possible non-compliance.

**Competent Authorities.** The Member States designate the competent authorities responsible for performing the official controls. These authorities must satisfy the operational criteria ensuring their effectiveness and their impartiality. They must also have the necessary equipment and suitably qualified staff and have contingency plans. Internal or external audits may be carried out to ensure that the competent authorities are achieving the objectives of the Regulation. When some of the controls are delegated to regional or local authorities, it is necessary to ensure effective cooperation between the central authority and these authorities. The competent authority may delegate certain control tasks to non-governmental bodies provided these bodies meet the strictly defined conditions set out in this Regulation. Hence a procedure is therefore provided to define the tasks that can (or cannot) be delegated to such bodies. The adoption of coercive measures may not be delegated. The competent authority may proceed to audit or inspect the bodies to which the tasks have been delegated.

**Transparency and Confidentiality.** The competent authorities must ensure that relevant information is made available to the public, notably when there are reasonable grounds to suspect that food or feed may present a risk for human or animal health.

The staff of the competent authorities is required not to disclose information acquired when carrying out their control duties which by its nature is covered by professional secrecy.

**Controls on products from Non-EU Member Countries.** This regulation supplements the provisions set out in Directive 97/78/EC which only concerns controls applicable to feed and food of animal origin. Thus it introduces the following principles for feed and food of non-animal origin:

- regular official controls by the Member States of feed and food of non-animal origin imported into the European Union (EU). These controls can take place at any point of the distribution of the goods: before release for free circulation or afterwards, e.g. at the importer's premises, during processing or at the point of retail sale. There shall in any way be a close co-operation between the customs services and the competent authority;
- at Community level, a list of at-risk feed and food must be established and updated. Such feed and food must be presented at specially designated and equipped inspection posts for the carrying out of the necessary checks. These controls must be carried out at the point of entry in the EU before the goods are released for free circulation.
- the possibility of carrying out official controls on feed and food originating in Non-EU Member Countries which enter into free zones and free warehouses or is placed in transit, customs warehousing, inward processing, processing under customs control or temporary admission.

The abovementioned controls include at least a documentary control, an identity control and, where relevant, a physical control.

In the case that non-compliance with the legislation is ascertained, the products may be seized or confiscated, and shall be destroyed, submitted to a special treatment, or re-dispatched outside the
Community; the operator responsible for the consignment in question shall be liable for the costs incurred.

Specific pre-export checks performed by a Non-EU Member Country may be approved provided they satisfy the requirements of the Community or requirements which are at least equivalent. If such an approval is granted, the frequency of the controls carried out by the Member States may be adapted.

**Financing of Official Controls.** Member States ensure that adequate financial resources are made available for official controls. Inspection fees are imposed on feed and food business operators, common principles are observed for setting the level of such fees and the methods and data used for the calculation of the fees must be published or otherwise made available to the public. When official controls reveal non-compliance with feed and food law, the extra costs that result from more intensive controls are borne by the feed and food business operator concerned.

**Reference Laboratories.** A number of Community Reference Laboratories (CRLs) have been established under Community legislation in force. They may be entitled to EU financial support and are responsible for:

- providing national reference laboratories with details of analytical methods;
- organizing comparative testing, coordinating within their area of competence the practical and scientific activities necessary for developing new analytical methods;
- conducting training courses;
- providing scientific and technical assistance to the Commission.

For each CRL, Member States must ensure that one or more national reference laboratories are designated. These function as the point of communication between the CRL and all the official laboratories in the Member States.

### 2. Progress of Approximation of Georgian Food Safety Legislation with that of the EU

#### 2.1 General legislative and institutional framework

The Law of Georgia on Food Safety and Quality was adopted in December 2005. Considering the peculiarities of the food industry and the role of agriculture in ensuring food security, it was decided to exclude from the scope of food safety supervision the primary production and small and artisan food processing. The Law establishes a legal framework consistent with WTO requirements and the EU *acquis*, creates a single inspection body (the National Service for Food Safety, Veterinary and Plant Protection) for the enforcement of technical food regulations, and introduces risk analysis function. The law also establishes the broad principles, objectives, and responsibilities for food safety, to include those of food business operators, moves the focus of the control system to the production process rather than the certifications of the end food products, defines the role of laboratories in providing defined testing services to an accredited standard, and provides information to and allows stakeholders a say in how the system is run. The time schedule for implementation of the law (seven year transitory period for gradual enforcement of its provisions) was meant to ensure that expenditures and resources were utilized effectively and efficiently, and both the Government and food businesses were adequately prepared for meeting set conditions.

In terms of the institutional reform, Georgia demonstrated an exceptional political will in consolidating an extremely fragmented controlling and supervisory system. The National Service for Food Safety,

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22 To some extent, this can be regarded as a flaw of the law since it broke the value-chain principle which is of utmost importance in the sphere of food safety. An argument for compromise, however, was that a primary control of food safety would be incorporated within veterinary and phytosanitary measures.
Veterinary and Plant Protection took the exclusive responsibility for the supervision and control of food safety inside the country\textsuperscript{23}.

At the level of principles and main approaches, the Georgian Law on Food Safety and Quality is fully aligned with the EU \textit{Aquis}. However, the specificities of the Georgian food market, as well as the level of food business development, availability of knowledge and resources, and other factors forced the Government to loosen some of the requirements. Therefore, at the level of enforcement and requirements, it is not as strict as that of EU. Besides, the whole set of products of so called artisan production has been left out of this law, which to a certain extend compromises the integrated approach from farm to fork.

Georgia has started the process of harmonizing its legislation with the EU Food Law and development of the secondary legislation to ensure its enforcement and smooth operation. However, termination of certain articles of the food law has largely slowed down the legislative streamlining process.

Government of Georgia (GoG) is committed to enactment of the law on Food Safety and Quality starting from 1 January 2010. The enactment plan is currently been discussed. Special Task Force created at the decision of the GoG Eurointegration Committee on 19 May 2009 is to develop a strategy of progressive implementation of the Law, including the principles and approaches of the implementation strategy. Options related to risk-, product- and destination market-based approaches are being reviewed. This approach is being viewed against the risk that the immediate full-scale enactment of the Law and introduction of the stringent food safety requirements to most of the small-scale and subsistence entities may negatively affect the food businesses and agricultural sector in general.

Therefore, at this stage it is rather early to assess the legislative framework and the Food Law vis-à-vis its compatibility of the EU \textit{Aquis}. The question to ask is what would be the base principle for law enforcement and how would that safeguard consumer protection and uninterrupted functioning of the food market.

Here naturally comes the need for adoption of a comprehensive strategy for the food safety which will guide the Government and private sector activities in the short and long term. This would include institutional development as well as legislative streamlining/harmonization plan.

2.2 Latest developments

Some work is currently being done on the regulatory base development and legislative streamlining.

The regulation on the List of the Products Allowed for Utilization in the Process of Production of Organic Products was adopted in July 2008 (Order N2-13 of the Minister of Agriculture of Georgia dated 14.07.08). It was the second missing regulation under the Law on Biological Agricultural Production after the endorsement of the Standard on Organic Production in 2007. All these pieces of legislation are broadly compatible with the regulations EEC 2092/91\textsuperscript{24} and EC 834/2007\textsuperscript{25}. The internationally accredited certification body CavcasCert has been established which eases access of Georgian organic products to the EC and other markets. However, the major deficiency of the regulatory framework on organic production and its negative implications still remain unaddressed. Namely, those producers who before enactment of Law (October 1, 2007) had been using the sign of biological product on the label were permitted to continue its use without complying with the Law

\textsuperscript{23} The Revenue Service of the Ministry of Finance was charged to undertake sanitary, veterinary and phytosanitary controls at the border for the three probationary years.

\textsuperscript{24} Council Regulation (EC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and food.

\textsuperscript{25} Council Regulation (EC) No 834/2007 on organic production and labelling organic products and repealing regulation (EEC) No 2092/91 (so far this regulation is not applying, a transition period before 1 January 2009 is set after expiration of which it will fully replace and abolish EEC 2092/91 Regulation).
throughout the transitory period until the end of 2012, which naturally creates unfair conditions in the market, often misleading the consumers.

The Working Group created within the Ministry of Agriculture in November 2008\(^{26}\) is in the process of drafting the primary and secondary legislation on phytosanitary, food hygiene, and veterinary. The Working Group is tasked with development of more than 15 pieces of legislation by the end of 2009 to enable enforcement of the Law of Food Safety and Quality. The Working Group, though, is planning to have its work accomplished by September 2009.

The drafts of three normative acts are ready – General Rules on Food Hygiene, Hygienic Certification of the Food Establishment, and Rules for Labelling of Food Products. They were circulated to the respective GoG agencies for the comments. Upon the completion of the work of legislative development/streamlining, the SPS legislation is expected to be aligned with the EU horizontal rules on food hygiene\(^{27}\) and other international standards.

The drafts in their current form are aligned with the Georgian Law on Food Safety and Quality and in broad terms compatible with the EC Hygiene Regulation requirements. Full harmonization with the EC acquis is not an objective at this stage, since as it was said above, requirements of the Georgian Food Law are far modest compared to those of the EU. The drafts are being scrutinized and some changes are anticipated to before approval of the final texts.

The above group is also tasked to elaborate the new Veterinary Law; no specific work has been started yet, though. Ordinance of the Minister of Agriculture on Approval if Rules for State Registration, Re-Registration, Abolishment of Registration and Quality/Safety Control of veterinary preparation produced in Georgia or imported was approved on 17 November 2008\(^{28}\). This is a comprehensive piece of legislation, which is based on the EU requirements.

According to this regulation, the National Service for Food Safety, Veterinary and Plant Protection is authorized to grant state registration of veterinary preparations in Georgia. The regulation is based on EU legislation. The National Service is responsible for administrative and technical expertise within 14 and 45 days respectively. All technical tests shall be undertaken by the accredited laboratories. All veterinary preparations having registration from the EU member states and the countries of the Economic Cooperation are automatically granted registration in Georgia. However, as said above, entire veterinary legislation needs revision and lacks an overarching framework.

\(^{26}\) Order of the Minister of Agriculture N2-169 (28.11.08)


\(^{28}\) Ordinance No 2-158.
ii. Training Materials

Food Safety and Consumer Protection

Dick Grootius Senior Veterinary Public Health Officer

History

Survival is a natural attitude of living creatures

Protection from HAZARDS is sought for survival

Consumer Protection

Safety
- Absence of Hazards
- Guarantee of absence or Hazards
- No Hazards

HAZARDS

Drives to protect from Hazards:
- For individual survival
- Protection from perceived hazards
- Economic gains
- Community survival and thereby individual survival

Hazards

Community interest
Protection of a group of people after they formed a community and organized themselves from:
- Starvation
- Wild animals
- Neighbours

Hazards

Community interest
- Cities organized food quality
- Baker street, butcher street, butter street, corn market
- Gold coins (intrinsic value)
- Standardisation of measurements (weight, length)
- And close control over most vulnerable food...

- MEAT
Development of enforcement
- In ancient times sale of meat was controlled by the local government or religious rules.
- In The Netherlands around 1300 it was allowed to slaughter animals in the cities by everyone everywhere.
- By the end of the 19th century slaughtering was left to the businesses.
- Increasing economy demanded market control and as a result quality standards.
- The local governments left responsible for safe meat.

Disability Adjusted Life Years
- Years lived with the disability. (time)
- Disability is weighed according to severity (grading)
- Death is included (endpoint)

Hazards in Georgia 2008

<table>
<thead>
<tr>
<th>Hazard</th>
<th>Number of cases</th>
<th>Prevalence</th>
<th>DALY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food Borne</td>
<td>2,897</td>
<td>150</td>
<td>98</td>
</tr>
<tr>
<td>Anthrax</td>
<td>62</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brucellosis</td>
<td>160</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salmonella</td>
<td>160</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Figures from Georgian www.ncdc.ge

Hazard ranking

<table>
<thead>
<tr>
<th>Hazard</th>
<th>Number of death</th>
<th>DALY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smoking</td>
<td>20,000</td>
<td>440,000</td>
</tr>
<tr>
<td>Overweight</td>
<td>8,500</td>
<td>170,000</td>
</tr>
<tr>
<td>Alcohol</td>
<td>2,200</td>
<td>195,000</td>
</tr>
<tr>
<td>Cars</td>
<td>1,000</td>
<td>85,000</td>
</tr>
<tr>
<td>Lightning</td>
<td>1</td>
<td>95</td>
</tr>
<tr>
<td>Legionella</td>
<td>90</td>
<td>550</td>
</tr>
<tr>
<td>Campylobacter</td>
<td></td>
<td>1,400</td>
</tr>
<tr>
<td>Retributus in food (excludes wine, medicines, pesticides, preservatives, colour agents)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Figures from The Netherlands

Cons Protection: Food

From community (city) to Europe

- Extension from history to a larger scale
- However, same objectives:
  - Availability
  - Safe
  - Fair (value for money)
  - Market regulation
Europe

... and Europe created ....
General Food Law

Cons Protection: Food

Considerations. (selection from GFL)
High level of health protection!
- Free movement of safe and wholesome food
- Same safety requirements in Europe for free movement
- Water is excluded from these regulations as it is already in other ones
- Feed will be included
- Food production chain, from feed up to the sale and supply to the consumer

Cons Protection: Food Ctdn

Considerations. (selection from GFL)
Laboratories and Risk
- Laboratory network
- Measures based on risk analysis (EFSA)
- Risk analysis: independent, objective and transparent

Cons Protection: Food Ctdn

Considerations. (selection from GFL)
Imports from third countries
- Same standards to be applied
- EU entered in international trade (WTO)
- International standards (CODEX)
- General principles for trade

Cons Protection: Food Ctdn

Considerations. (selection from GFL)
Traceability
- In all stages

Cons Protection: Food Ctdn

Considerations. (selection from GFL)
Information between Member States and the Commission
- Rapid Alert System for Food and Feed
- To allow appropriate action to be taken
Legislation

General Food Law

- Hygiene of Foodstuffs
- Animal Feed
- Hygiene of Foodstuffs
- Food byproducts
- GMO

Food and Feed Control

Related legislation

- 1881/2006 max levels of contaminants
- 1906/2005 MRLs pesticides
- 2000/13 labelling
- 1934/2006 health claims
- 2073/2005 microbiological criteria

- AND
- Product orientated legislation

Legislation Overview

To whom are the regulations addressed?

- Gen Food Law (GFL): Everybody
  - General principles of food safety
- (H1): food business operators
- (H2): food business operators handling products of animal origin
  - (H2): organisation of official controls to the CA
    - What the CA has to do (obligation)
  - Off controls (OC): Competent authority
    - How the controls should be executed, performance of OC
General Food Law (GFL)

Chapter I  Scope and definitions
Chapter II  General Food Law
Chapter III European Food Safety Authority
Chapter IV  Rapid Alert System, Crisis

GFL scope

Scope
- High level of protection
- Common principles and responsibilities
- It applies in all stages of production, processing and distribution

GFL definitions

Definitions
- Food: any product intended or reasonably expected to be ingested by humans
- Excluded:
  - Primary production (animal & plant)
  - Medicinal products
  - Cosmetics
  - Tobacco

Definitions continued (selection)

Food business:
any undertaking carrying out activities related to food

General Food Law

General principles
- High level of protection, free movement, international standards
- Risk based (analysis, assessment, management)
- Precautionary principle
- Transparency

General requirements

Safety
Unsafe: a) injurious to health; b) unfit
Injurious (art 14, para 4)
 immediate - long term - offspring
 cumulative
 particular group of consumers
Unfit (art 14, para 2 and para 3)
 Contamination, putrefaction, deterioration or decay
General Food Law

General requirements

- Presentation of food
- Responsibilities
- Traceability

EFSA

European Food safety authority provides:

- Scientific advice;
- Technical support;
- Independent information and
- Communicates on risks.

Rapid Alert System

Information system to inform Member States, Commission and EFSA

- Confidential
- Reporting (direct or indirect risk)
- Any measure taken by the CA
- Voluntary measures by food business operator
- Rejection at import at the border of the EU

Food Hygiene

The food business operator shall ensure that, all processes under their control satisfy the relevant hygiene requirements as laid down in this regulation
Food Hygiene

Scope
All stages of production, processing and distribution

NOT
Private domestic use
Domestic preparation
Direct supply producer to consumer/local retail

Food Hygiene

General:
Ensure hygiene requirements

Specific:
- Primary production, Annex I
- Processing etc, Annex II
  - Microbiological criteria (Regulation 2073/2005)
  - Procedures
  - Temperature control
  - Maintenance of the cold chain
  - Sampling and analysis

Food Hygiene (H1)

HACCP
Hazard Analysis and Critical Control Points
Applicable after primary production.

Guides of Good Practice
- National guides
- Community guides

Food Hygiene Annex I

Primary production
- Primary production and associated transport
- Avoid contamination
- Proper use of medicines and plant protection products
- Clean and tidy
- Record keeping
- Use guides of good hygiene practice

Food Hygiene Annex II

General Hygiene requirements
- Construction and lay out of the establishment
- Adequate equipment
- Transport (internal - external)
- Waste removal
- Water supply
- Staff hygiene
- Incoming materials/products
- Packaging and wrapping
- Heat treatment
- Training of staff

Hygiene Animal origin (H2)

Scope
- Food of animal origin processed and unprocessed: supplement to H1

NOT:
- Plant origin and processed animal origin
- Primary production
- Domestic preparation
- Direct local supply consumer/retail
- Hunters
- Retail
- Activities to be regulated in national law.
Hygiene Animal Origin

Registration and approval
- Registration for all (H1)
- Approval animal origin only, but not:
  - Primary production
  - Transport
  - Storage not temperature controlled
  - Retail

Hygiene Animal Annexes
1. Definitions
2. Requirements products Animal Origin
3. Meat domestic
4. Wild game meat
5. Minced meat, meat preparations, MRM.
6. Meat products
7. Live brake muttons
8. Fishery products
9. Raw milk and dairy products
10. Eggs and egg products
11. Frog legs and unsure
12. Rendered animal fats and greaves
13. Treated stomach, bladders and intestines
14. Gelatine
15. Collagen

Hygiene Animal Origin

Food business operators
- shall comply with the relevant provisions;
- have applied a health mark on the products;
- shall ensure certificates or accompanying documents of products or animals.

Hygiene Official controls

Directed to the Competent authority (CA), but
- Keep in mind for actions of the CA
- And duties of the establishments
- What the CA has to do
- Professional qualifications
WTO
World Trade Organisation

Dick Grootius Senior Veterinary Public Health Officer

Free Trade

Free Trade?

- No limitations
- No regulations
- No taxes
- No trade barriers

Free for All!

Free Trade?

Drawbacks:
- No guarantees
- Payments uncertain
- You see what you get when you have got it
- Deliveries when?

Do we want that?
Fears?

- Yes! Europe and USA
- What do we fear?
  - Job losses in the USA and Europe
  - Modern slavery in production countries

Fears? TV sets against jobs!

Protests!

Negotiations

Talks are:
- Acrimonious
- Gridlocked
- Stagnant

In the meanwhile ......

Free Trade

Free trade is:
- Thriving
- Surging
- Booming
Basis for Trade

Three conditions:
- Trust
- Trust and
- Trust

Basis for Trade

How to build Trust?
- International trade agreements
- Produce according to standards;
- Reliable financial system and;
- Assurance.

Trade Assurance

Tell what you are doing and
Do what you are telling.

Independent Third party
Assessment is needed.

Trade Standards

For Food and animal health:
- Codex Alimentarius
- OIE
- EU legislation

Trade International

Commitment:
- By countries
- Obey the agreements

WTO

WTO

Mission:
The World Trade Organization — the WTO — is the international organization whose primary purpose is to open trade for the benefit of all.
Georgian Legal & Institutional Framework for Food Safety: Main Issues and Challenges
Sophie Kekhadze
Seminar on Food Safety Regulation in the EU Tbilisi, 29 June 2009

Outline:
- Why food safety
- Major developments – 2004-2009
- Description of the existing legislative framework
- Arguments and counter-arguments on Food Safety Law endorsement
- Recent [positive] developments
- Way ahead and challenges

What is Food Safety
- protection of humans' life and health from food-born hazards
- !To remember: no product is absolutely safe

Why Food Safety?
- Public Health Concerns
- Ensure efficient and transparent functioning of a food market
- Expansion of agricultural export potential
- Compliance with/approximation to WTO and EU requirements

Food Safety vs Food Quality
- Food Safety
  protection of human's life and health from food-born hazards
- Food Quality
  set of characteristics of the safe food which are related to the economic interests of consumers e.g. colour, taste, flavour, weight and nutrition value.

Food Safety vs Food Security
- Food Safety
  protection of human's life and health from food-born hazards
- Food Security
  availability and accessibility of safe food
Issues of Concern

- Poor socio-economic conditions
- Weak, underdeveloped and fragmented food production
- Incomplete regulatory framework for food safety
- Limited capacity of the government and food businesses to meet increasing demand for food safety
- Outdated infrastructure
- Lack of public and private sector resources to improve the equipment and procedures to certify conformity
- Poor communication of the information on food safety to the public
- Risk of corruption in food safety compliance processes
- Low confidence in the fairness and impartiality of the system

First Stage of the Food Safety System Reform

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005, December</td>
<td>Law on Food Safety and Quality adopted</td>
</tr>
<tr>
<td>2006, April</td>
<td>National Service for Food Safety, Veterinary and Plant Protection created</td>
</tr>
<tr>
<td>2006, December</td>
<td>Major articles of the Law on Food Safety and Quality terminated</td>
</tr>
<tr>
<td>2007, June</td>
<td>Termination of the Law to be reinforced</td>
</tr>
</tbody>
</table>

Law on Food Safety and Quality: main objective

The Law on Food Safety aims to protect consumers' health, life and economic interests in the context of food intended for human consumption, with the view of diversity of food supply and ensuring efficient functioning of domestic market.

Step Forward in Approximation to the EU Regulatory Framework

- EC Regulation 178/2002 on General Principles and requirements of the Food Law
- EC Directive 89/397 on Official Control
- EC Directive 93/99 on Additional Measures

However

What is the right balance for the government to protect life and health of its citizens from food-born hazards and at the same time ensure diversity of food market and facilitating expansion and development of the food industry?
New Approaches

- Process control instead of certification of the end product
- Integrated approach “From Farm to Fork”
- Establishing responsibilities through the entire chain of production and distribution
- Introduction of a concept of risk analysis
- Decision-making based only on scientific justification
- New approach for laboratory organization
- Single responsible agency for policy development and implementation

Food Safety Law Defines

- General principles of the food law, recognizing scientifically justified, transparent and objective approaches
- Responsibilities of food business operators with regard to food and feed safety at all stages of food production and transportation:
  - General requirements for safety of food and feed
  - General requirements of food presentation and labeling
  - Official Control System to ensure compliance with established requirements
  - Institutional organization of food safety system

Organisational Framework of the Food Safety System

- Ministry of Agriculture – responsible for policy-making in the field of Food Safety
- Food Safety, Veterinary and Plant Protection Service – exclusively responsible for food safety supervision and control
- Ministry of Labor, Health, and Social Protection – setting food safety parameters and norms, baby food, contribution to cross management
- Ministry of Finance, Revenues Service – border control

Law on Food Safety

- Recognition of internationally acceptable principles and approaches
- Determining a sole responsible body for food safety in the country
- Introduction of the unbiased, scientifically justified risk assessment, risk management, unified approach and risk communication
- Introduction of the priority determination mechanism within the food safety sphere
- Implementation of recognized principles of official control
- Centralization of laboratory system
- Improved cooperation of food safety system
- Increased efficiency of resource distribution
-Elimination of multiple inspection

Progress since adoption of the Law

- Setting up of the National Service
- Mobilization of donor support
- Regulatory base being developed and harmonized
- Capacities being developed
- Laboratory testing capacities being developed
- Awareness among producers and consumers raised

Yet...

- The Law terminated for 3 years until 2010
- National Service left virtually without function
- Number of food inspectors reduced drastically
- Still fragmented legislation
- No clear procedures for cooperation between MoA/MoF/MoLHSA
- Donor support weakened
Arguments in Support of Termination of the Food Law

- Possible negative impact of the stringent hygiene and safety requirements on agriculture and food industry
- Insufficient capacity of the food inspectors to conduct an objective and competent supervision and control
- High risk of corruption during the inspection process

Issues for consideration

- Responsibility of State
- Food Market Efficiency, Transparency and Healthy Competition
- Risk of Corruption
- Enhancement of the Export Potential
- Enhancement of the Public Awareness

The main principles of good regulations

- Proportionality – regulations should only exist where necessary. Regulations should be appropriate in the risk posed and should be identified and monitored.
- Accountability – regulations must be subject to regular evaluation and the negligence should be subject to public scrutiny.
- Consistency – rules must be consistent and unambiguous for clarity.
- Transparency – regulations should be open and easily accessible to the public and usersfriendly.
- Targeting – regulations should be focused on the problem and minimize side effects.

Basic Principles of the Food Safety Regulation

- Risk Analysis
- Precaution
- Transparency
- Proportionality
- Integrated Approach
- Consumer Protection

On the Positive Side

- GoG committed to enactment of the Food Safety Law from 2010
- Special Task Force created to develop a strategy of progressive implementation of the Law
- The principles and approach of the implementation strategy have yet to be developed (risk, products and destination market based approaches)
- Mapping of the agri-food processing sector in progress to serve as a baseline in selecting the strategic and operational alternatives for Law enforcement plan.

On the Positive Side – financially supported plans for 2009

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funding (GEL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setting up of sanitary slaughter houses</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Plant health and phytosanitary activities</td>
<td>800,000</td>
</tr>
<tr>
<td>Food safety and consumer protection development of the integrated risk-based food safety system</td>
<td>1,000,000</td>
</tr>
</tbody>
</table>
On the positive side –
Legislative and Regulatory Base Development

- Working Group created within the MoA to draft the primary and secondary legislation on phytosanitary, food hygiene, and veterinary.
- General Rules on Food Hygiene, Hygienic Certification of the Food Establishment, and Rules for Labeling of Food Products
- New Veterinary Law

Next Steps

- Develop an appropriate, effective, risk-based national food safety system based on the recently adopted Law on Food Safety and Quality
- Develop an implementation plan of the Food Safety Law
- Develop a National Food Safety Strategy
- Develop a comprehensive regulatory framework
- Strengthen / reorganize the National Service
- Institutionalize and build capacities of the risk analysis function
- Create a registry of food establishment

Namus meunobis samnisistros ZinTadi funqciebi:

- Set up a National Focal Point of the Codex Alimentarius
- Facilitate development of independent third party certification systems as a supportive tool for insuring a higher level of food safety compliance
- Establish an accredited National Reference Food Laboratory
- Provide support to the agro-food sector in meeting the evolving food safety requirements
- Build public awareness in food safety

Namus acvis samnisistros ZinTadi funqciebi:

-...
C. COMPETITION

i. Background Paper

1. Summary of EU Acquis

European competition policy is based on a Community legislative framework essentially provided by the EC Treaty (Articles 81-89). Competition law, regulates the exercise of market power by large companies, governments or other economic entities and includes:

- Cartels, or control of collusion and other anti-competitive practices which has an effect on the EU (or, since 1994, the European Economic Area) covered by Articles 81 of the Treaty of the European Community (TEC).
- Monopolies, or preventing the abuse of dominant market positions governed by Article 82 TEC.
- Mergers, control of proposed mergers, acquisitions and joint ventures involving companies which meet the defined criteria governed by the article 82 TEC and Council Regulation 139/2004 EC (the Merger Regulation)29.
- State aid, control of direct and indirect aid given by EU Member States to companies covered by Article 87 EC.

Primary competence for applying EU competition law rests with European Commission and its Directorate General for Competition, although state aids in some sectors, such as transport, are handled by other Directorates General. On 1 May 2004 a decentralized regime for antitrust (established by the Council Regulation No 1/2003) came into force which is intended to increase the application of EU competition law by national competition authorities and national courts.

1.1 Anti-trust regulation

European Community Competition Legislation is contained in articles 81 and 82 of the Treaty of Amsterdam (the articles 85 and 86 of the treaty of Rome), together with a number of implementing regulations. The European rules apply in cases where there is in effect on trade between member states. Undertakings who infringe these rules can be subjected to fines by the European Commission or national competition authorities. Some countries within the European Union have laws that impose criminal sanctions, including prison, for participation in anti-competitive agreements or practices.

The Article 81 EC deals with cartels and restrictive vertical agreements and prohibits: "(1) ...all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market..." and gives examples of "hard core" restrictive practices such as (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 81(2) EC confirms that any such agreement is automatically void unless granted exemptions by the Commission. Under Article 81(3) EC the exemption is granted if the collusion is for distributional or technological innovation, gives consumers a "fair share" of the benefit and does not

include unreasonable restraints (or disproportionate, in ECJ terminology) that risk eliminating competition anywhere. Exemptions to Article 81 behavior fall into three categories: firstly, Article 81(3) which creates an exemption where the practice is beneficial to consumers e.g. by facilitating technological advances (efficiencies), but without restricting all competition in the area. Secondly, the Commission has agreed to exclude from the scope of Article 81 'agreements of minor importance' (except those fixing sale prices). This exemption applies to small companies, together holding no more than 10% of the relevant market in the case of horizontal agreements and 15% in the case of vertical agreements (the de minimis condition). In this situation as with Article 82 (see below), market definition is a crucial, but often highly difficult, matter to resolve. Thirdly, the Commission has also introduced a collection of block exemptions for different types of contract and in particular in the case of vertical agreements.

Article 82 of the Treaty\(^\text{30}\) prohibits the abuse of dominant position and is aimed at preventing undertakings that hold a dominant position in a market from abusing that position to the detriment of consumers. It provides that, “any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States”. The next Para of this article provides list of practices and conducts which might be considered as abuse of dominant position. Namely, it stipulates that abusive conduct in particular consist in: (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Price exploitation limiting production, price discrimination, tying, and predatory pricing are typical examples of abusive conduct.

1.2 Procedural rules

The principal procedural rules governing the enforcement of Community Competition Law are contained in Council Regulation (EC) No 1/2003\(^\text{31}\) of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

The regulation provides for more decentralized enforcement of article 81 and 82 of the EC Treaty and consequently requires increased cooperation between the Commission and Member State’s authorities. It grants national authorities and national courts the competence for direct application of the provisions of the EU legislation. According to the rules National authorities apply articles 81 and 82 of EC Treaty along with the provision of national legislation in cases related to violation of the national rules of competition in the internal market. The European Commission was deprived of the monopoly for granting exemptions from the prohibition of concluding competition restricting agreements. In addition, at present, undertakings examine independently and at their own risk whether their actions infringe the rules of European antimonopoly law. So, under the new regulation agreements that fulfill the conditions of article 81/3 are legally valid and enforceable without the intervention of an administrative decision.

In order to ensure effective cooperation European Competition Network (ECN) has been created. The leading role of the ECN is played by European Commission, which receives all information concerning the application of the EU competition Law by the antimonopoly offices of all Member States. Some of the most important tasks of the Commission in the ECN are: coordination of the

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\(^\text{30}\) Treaty establishing the European Community (Consolidated version)
actions of the competition offices to ensure compliance with the EU Legislation, monitoring of the application of articles 81 and 82 of the EC Treaty by the national antimonopoly offices of the EU countries, Interventions and taking over of cases in situations when the commission decides that it is the appropriate entity for a case whose scope covers the Community market”.

Pursuant to Regulation No 1/2003 cooperation between Commission and competition protection offices of Member States consists, among others, of the following procedures: the competition authorities of the other Member States when acting under article 81 and or 82 of the EC Treaty; a) shell inform the commission without delay after commencing the first investigative measure, this information may also be available to the competition authorities of the other Member States; b) before adoption of decision, they shall provide the commission with a summary of the case; c) on the request of the Commission the national office shall make available materials necessary for assessing case; d) may exchange information necessary for the assessment of the cases regarding violation article 81 and 82 of the EC Treaty and consult with the commission on every case related to application of the community law; the Commission is obliged to transmit the authorities of the member states the copies of the most important documents related to application of the article 81 and 82 and other materials required for the assessment of the case.

More decentralized and more effective enforcement and direct application is a central feature of the Council Regulation No 1/2003. To be ready to take increased responsibility Member States were obliged (article 35 of the Regulation) to set up competition authorities and equip them with the necessary power. Regulation No 1/2003 also applies fully to the competition authorities of the future member states. Regulation opens the way for greater involvement of the national authorities in application of Articles 81 and 82 and also introduces enhanced means for these authorities to cooperate with each other and with the Commission.

1.3 Merger regulation

Council Regulation (EC) No 139/2004 - contains the main rules for the assessment of concentrations, whereas the Implementing Regulation concerns procedural issues (notification, deadlines, right to be heard etc.). The official forms for standard merger notifications (Form CO), simplified merger notifications (Short Form CO) and referral requests (Form RS) are attached to the implementing Regulation. Under EC law, a concentration exists when a...“change of control on a lasting basis results from (a) the merger of two or more previously independent undertakings... (b) the acquisition... if direct or indirect control of the whole or parts of one or more other undertakings.”

Competition law requires that firms proposing to merge gain authorization from the relevant government authority, or simply go ahead but face the prospect of demerger if it lessens competition. The present Regulation is applicable to all “concentrations” with a “Community dimension”. This is defined as those mergers where the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 billion and where the aggregate turnover in the EU of each of at least two of the undertakings concerned is more than EUR 250 million, unless each of the undertakings concerned generates more than two thirds of its aggregate EU-wide turnover within a single Member State. If the above-mentioned thresholds are not reached, a concentration nevertheless has a Community dimension if: the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2.5 billion; in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million; in each of at least three Member States, the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million, unless each of the undertakings

32 Cooperation between the competition authorities in the EU: new challenges for central and eastern European Countries, 2004 Law in Transition, EBRD.
concerned generates more than two thirds of its aggregate EU-wide turnover in one and the same Member State.

To provide better guidance on jurisdictional questions in merger control, the Commission adopted the Commission consolidated jurisdictional notice under the merger regulation (the "jurisdictional notice" or the "notice"). With the exception of referrals, the new notice therefore covers, in one document, all issues of jurisdiction which are relevant for establishing the Commission's competence under the merger regulation.

1.4 Liberalisation and state monopolies

The EU liberalization programme entails a broadening of sector regulation, and extending Competition law to previously state monopolized industries, such as railways, electricity or gas. Articles 86 and 87 EC regulate the state's role in the market. Article 86(3) of the EU Treaty entrusts the Commission with a specific surveillance duty "in the case of public undertakings and undertakings to which Member States grant special or exclusive rights". The Commission must "where necessary, address appropriate directives or decisions to Member States. The Commission may adopt directives or individual decisions under Article 86(3)." Article 86(2) of the Treaty introduces an exception to the application of the rules of the Treaty when the latter would obstruct the provision of "services of general economic interest". However, even where this exception applies, special rights must not go beyond what is necessary for the performance of that service. Article 86(2) EC states clearly that nothing in the rules can be used to obstruct a member state's right to deliver public services, but that otherwise public enterprises must play by the same rules on collusion and abuse of dominance as everyone else.

1.5 State aid

Article 87 of the Treaty lays down a general rule of state aid. The EC Treaty prohibits any aid that distorts or threatens to distort competition in the common market (Article 87(1)). State aid may lead to distortion of competition by favouring certain firms or the production of certain goods. Controlling state aid therefore guarantees a level playing field for all firms operating within the internal market. At the same time the Treaty allows some exceptions where the proposed aid may have a beneficial impact in overall Union terms and can sometimes be effective tools for achieving objectives of common interest (services of general economic interest, social and regional cohesion, employment, research and development, sustainable development, promotion of cultural diversity, etc.) and for correcting "market failures". For various reasons (externalities, market power, coordination problems between market operators), market sometimes do not function efficiently from an economic point of view. Member States may then intervene by granting state aid.

State aid may therefore be compatible with the Treaty provided that it fulfils clearly defined objectives of common interest and does not distort competition to an extent contrary to the common interest. Complex rules on state aid and enlargement of the European Union of 2004 have underscored a need to streamline state aid policy and clarify its fundamental principles. The EC State Aid Action Plan is considered as a roadmap for the reform of state aid policy that covers a five-year period (2005-2009). The aim of the reform is to encourage Member States to help achieve the Lisbon Strategy objectives. The new policy on state aid will thus help them to target state aid towards improving the competitiveness of European industry and creating sustainable jobs. The reform will also rationalize and simplify procedures to guarantee Member States a clear and predictable framework in the area of state aid.

2. Progress of Approximation of Georgian Competition Legislation with that of the EU

The Georgian competition legislative and institutional framework underwent the substantial reform in June 2005. This new Law on Free Trade and Competition derogated all previous laws, regulations and decrees adopted in more than one decade with extensive international support. The scope of the Law has been limited mainly to state aids and deregulation of monopolies, thus leaving aside the main areas of competition law:

- restrictive agreements;
- concerted practices;
- abuses of dominant positions;
- mergers; and
- publicly owned enterprises and, to a large extent, monopolies.

The new Agency for Free Trade and Competition was granted the authority to issue recommendations; however, the governmental and local authorities setting up the state aid scheme were entitled to choose whether to comply with the recommendation, or not. The Agency has been given very limited investigative powers. For the time being, it could be concluded that the Agency exists only nominally as a structural unit of the Ministry of Economic Development with a staff of only 5 persons. Due to deteriorated institutional capacities this authority is practically inactive.

Since the reform of 2005 no legislative or administrative initiatives have been implemented, except for the introduction of rather strict provisions to the laws of sectoral regulation aimed at restriction of the rights of the Competition Agency and fragmentation of the competition policy according to sectoral principle (without any kind of efficient coordination mechanisms for ensuring the cooperation between and joint activities of sectoral regulators and the Competition Agency). As a result the competition policy is being fragmented according to sectoral principle being in contradiction with the logical development of these two key regimes of economic regulation. Such an approach may jeopardise the integrity of the competition policy to the extent of country economy and generate the risks of such uncompetitive actions, as cartels, anticompetitive mergers, abuse of position, etc.

Under this legislative and institutional framework and practice, the rationale of harmonisation with the EU pursuant to Art. 43 and 44 PCA has been neglected, as a result:

- companies will seek dominant positions on the market and, under a loose legal framework, inevitably abuse them for profit reasons, which would result in less variety of products (services) and higher (economically unjustifiable) prices;
- in the provision of public services (e.g. modernisation of road infrastructure), economic rents for certain players will emerge, unless there is a clear legislative regulation; the absence of such regulation will nourish rent seeking on the side of companies and corruption on the side of the state.

Summarizing, we may say that the competition legislation of Georgia needs significant changes and amendments. In our opinion it would be better to elaborate a new competition law reflecting the universal competition principles and rules laid down by the relevant provisions of EC Treaty and Council Regulations.
ii. Training Materials

Preliminary Remark
Situation described relates to the situation prior to the enactment of Regulation 1/2003 (entered into force on 1 May 2003).

The modernisation package:
- Notifications were abolished AND
- Competition law was decentralised

The Regulatory Framework

(Article 85 of the Treaty of Rome (see Art. 85 EU Treaty):
1. The following shall be prohibited as incompatible with the common market: agreements between undertakings, associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- directly or indirectly fix purchase or selling prices or any other trading conditions,
- limit or control production, markets, technical development or investment,
- share markets or sources of supply,
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
- make the conclusion of contracts subject to agreements by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts,

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.)
The Regulatory Framework

Art 86 Treaty of Rome (art. 82 EU Treaty):
Any agreement by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market so far as it may affect trade between Member States.

The Regulatory Framework

Art 87 EU Treaty 2 (art. 90 EU Treaty):
1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, so far as it affects trade between Member States, be incompatible with the common market.

The Regulatory Framework

Art 90 Treaty of Rome:
1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, so far as it affects trade between Member States, be incompatible with the common market.

2. The aid shall be compatible with the common market:
(a) if having a social character, granted in accordance with Community rules or with the consent of the European Parliament and of the Council, provided that such aid is granted without discrimination to the origin of the products concerned.
(b) in order to make goods or services on the market even at a higher level of quality than those of the Community, in accordance with the procedures laid down in Community law.
(c) in order to make goods or services on the market even at a higher level of quality than those of the Community, in accordance with the procedures laid down in Community law.

The Regulatory Framework

The aid shall be compatible with the common market:
(a) if having a social character, granted in accordance with Community rules or with the consent of the European Parliament and of the Council, provided that such aid is granted without discrimination to the origin of the products concerned.
(b) in order to make goods or services on the market even at a higher level of quality than those of the Community, in accordance with the procedures laid down in Community law.
(c) in order to make goods or services on the market even at a higher level of quality than those of the Community, in accordance with the procedures laid down in Community law.
The Regulatory Framework

1. The following may be considered to be compatible with the common market and to promote the economic development of Member States, the adoption of common policies, and the progressive elimination of social and economic disparities:
   a. If they do not constitute a significant obstacle to competition in the areas concerned;
   b. If they do not affect the public interests of the Community or the Member States, as far as the measures taken by the Community to remedy such effects are concerned.

2. If the following do not constitute an obstacle to competition, they shall be considered to be compatible with the common market:
   a. If they do not constitute a significant obstacle to competition in the areas concerned;
   b. If they do not affect the public interests of the Community or the Member States, as far as the measures taken by the Community to remedy such effects are concerned.

EU Competition Law I

- Essential for the completion of the internal market.
- Likely to allow firms to compete on a level playing field in all Member States (Art. 81, EU Treaty).

EU Competition Law II

- Main pillars and areas of regulation:
  - Restrictive agreements and concerted practices (Art. 81, EU Treaty)
  - Abuse of a dominant position (Art. 82, EU Treaty)
  - Mergers (Regulation 4064/89)
  - State aids (Art. 88 & 89, EU Treaty)

EU Competition Law III

- Rules applying to undertakings:
  - Restrictive agreements and concerted practices are prohibited when they:
    - Affect trade between Member States, and
    - Have as their object or effect the:
      - Prevention, restriction, or distortion of competition within the Common Market.

EU Competition Law IV

- Restrictive agreements:
  - Definition of restrictive agreement:
    - An agreement between undertakings whose object is to limit or distort competition between them, in order to increase the prices and profits of the undertakings concerned without producing any objective countervailing advantages.
  - Included:
    - Decisions of associations of undertakings
EU Competition Law V
Restrictive agreements

Some examples of restrictive agreements:
- Price-fixing agreements;
- Market-sharing agreements;
- Production quotas;
- Etc.

Common denominator: such agreements damage the consumer and society as a whole.

EU Competition Law VI
Concerted practices

A step below the restrictive agreement.

There is no formal agreement, but the "meeting of the minds" materializes in parallel conduct.

EU Competition Law VII
Types of agreements

- Horizontal agreements: Agreements or concerted practices between actual competitors.
- Vertical agreements: Agreements or concerted practices which affect the conditions under which the parties can buy, sell, re-sell certain goods or services.

EU Competition Law VIII
De minimis rule

- Agreements between SMEs with 50 or fewer employees, annual turnover of 10 M EUR and annual balance sheet < 27 M EUR.
- Threshold of the market share: 5% for agreements between competitors and 15% for agreements between non-competing.
- Threshold of the market share: 2% for agreements having a considerable anticompetitive effect.
- De minimis rules does not apply to:
  - Production agreements;
  - Agreements concerning the supply of inputs;
  - Other.

EU Competition Law IX
Block exemptions

The EU Treaty provides for exemptions to the prohibition contained in art. 101(1).

The Commission or the Council may adopt such block exemptions.

Examples:
- Motor vehicle distribution agreements;
- Specialisation agreements;
- Know-how licensing agreements;
- Etc.

EU Competition Law X
Individual exemptions

An agreement or concerted practices that do not qualify for an exemption under a block exemption, may be exempted by an individual exemption, if its restrictive effect on competition is counterbalanced by the contribution it makes to the general welfare.
EU Competition Law XI
Abuse of a dominant position

Art. 82 EU Treaty:
Any abuse by one or more undertakings of a dominant position within the Common
Market or in a substantial part of it shall be
prohibited as incompatible with the Common
Market in so far as it may affect trade between
Member States.

EU Competition Law XII
Abuse of a dominant position

Examples:
- Directly or indirectly imposing unfair prices or oth
  er unfair trading conditions;
- Limiting production, markets and technical
devolution to the detriment of consumers;
- Applying dissimilar conditions to equivalent
transactions with other trading partners;
- Other.

EU Competition Law XIII
Abuse of a dominant position

NO EXEMPTION FOR ABUSES OF A
DOMINANT POSITION

EU Competition Law XIV
Merger

Regulation 4064/99 (now Reg. 139/2004):
A concentration with a Community dimension
which creates or strengthens a dominant
position as result of which effective
competition in the common market or a
substantial part of it is significantlyimpeded is
to be declared incompatible with the Common
Market.

EU Competition Law XV
Merger

Definition of "merger" or "concentration":
Where a firm acquires exclusive control of
another firm, or of a firm it previously
controlled jointly with another firm, or where
everal firms take control of a firm or create a
new one.

EU Competition Law XVI
Merger

Definition no. 1 of "Community dimension":
- Where the combined aggregate worldwide
turnover of all companies is more than 3,000 MEUR, and
- Where the aggregate Community-wide, turnover of
each of at least two of the companies is more than
250 MEUR, unless each of the companies achieves
more than 2/3 of its aggregate Community-wide
turnover within one and the same Member State.
EU Competition Law XVII
Merger

Definition no. 2 of “Community dimension”:
- Where the combined aggregate turnover of all companies is more than 2.5 billion ECU.
- Where each of at least 3 Member States, the combined aggregate turnover of all companies is more than 100 million ECU.
- Where each of at least 2 Member States, the aggregate turnover of each of at least 2 of the companies is more than 250 million ECU.
- Where the aggregate Community-wide turnover of each of at least 2 companies is more than 2% of the Community-wide turnover within one and the same Member State.

EU Competition Law XVIII
Relevant market

The term is used for all 3 areas.

The relevant market combines the product market and the geographic market. These must be assessed together with an assessment on how the firms operate (for instance, an analysis of the conditions for market access).

EU Competition Law XIX
Relevant market

Definition of relevant product market:
- It comprises all those products and/or services which are regarded as necessarily or substantially the same.
- It consists of the products’ characteristics, their price and flow-related features.

Definition of relevant geographic market:
- It comprises the areas in which the firms concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently formative.

EU Competition Law XX
Relevant Market

Criteria for substitutability test:
- Assessment of the demand side:
  - Whether customers for the product can switch readily to a similar product in response to a small but permanent price increase (5-10%).
- Assessment of the supply side:
  - Whether other suppliers can readily switch production to the relevant products and sell them on the relevant market.

EU Competition Law XXI
Relevant Market

Once the relevant markets have been identified, the next step consists in calculating the market size and the market share of each supplier with reference to their sales of the relevant product in the relevant geographic market.
EU Competition Law XXII
State aids

Definition of State aid (art. 87 EU Treaty):
Any advantage granted by the State or through State resources where:
- It confers an economic advantage to the recipient;
- It is granted selectively to certain firms or to the production of certain goods;
- It could distort competition; and
- It affects trade between Member States.

EU Competition Law XXIII
State aids

The term State aids:
- Applies to any advantage granted "in any form whatsoever";
- Applies to advantages granted by the Central Administration and any other public body, including private companies or public-owned enterprises;
- Includes direct and indirect aid schemes.

EU Competition Law XXIV
State aids

Aids compatible with the Internal Market:
- State aids having a social character, granted to individual consumers, provided that it is granted without any discrimination related to the origin of the products concerned;
- State aids to make good the damage caused by natural disasters or exceptional circumstances;
- State aid granted to states of Germany affected by the division of the country.

EU Competition Law XXV
State aids

The Commissioner may declare compatible with the Internal Market:
- State aids to promote the development of certain activities or regions;
- State aids to promote the execution of an important project of common European interest, or to remedy a serious disturbance in the economy of a Member State;
- State aids to promote culture and heritage conservation;
- Other categories specified by the Council.

EU Competition Law XXVI
State aids

In addition, enterprises entrusted with the operation of services of general economic interest are subject to the rules of competition, "not only as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them".

EU Competition Law XXVII
State aids

How are these prohibitions applied?

The procedural Regulation specifies that all State aids must be notified to the European Commission before being implemented.

Block exceptions:
- For training;
- For social aid;
- For employment aid;
- For SMEs.
In the case of "services of general economic interest", the Commission developed the concept of separating:

- Infrastructure
- from
- Commercial activities.
**Georgian Legal and Institutional Framework of Competition**

*main issues and challenges*

By Ketevan Lepachi
29.07.2009

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**Georgia’s International Commitments**

- Georgia is pressing towards integration into the EU
- Georgia is a member of the World Trade Organisation
- Georgia enjoys the status of a full member of the Organisation and participates in the activities of many bilateral, regional or multilateral agreements and international organisations.
- Consequently, Georgia has certain obligations in the light of the agreements and international principles and best practice.

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**International obligations**

- Observance of these commitments obliges the countries:
- To adopt, improve and efficiently enforce the respective legal acts;
- To base legislation on the principles of suppression and efficient regulation of practices, restricting competition;
- To ensure the non-discriminatory approach to every enterprise;
- To improve the enforcement measures
- etc.

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**main elements**

- The foregoing puts forward the necessity of improvement of competition policy in Georgia and respectively, the care for the provision of such elements, as the existence of:
- clear and predictable rules of competition
- efficient state supervision over their observance
- reliable and transparent enforcement practice

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**international obligations**

- The internationally acknowledged principles of competition, amongst them the rules of state control over business restricting practices (WTO, EU, OECD, UNCTAD) obligate states to:
- Adopt
- Improve
- And efficiently implement the respective legal acts.
- Base their legislation on the principles of efficient regulation and prevention of competition restricting practices
- Ensure the non-discriminatory attitude to every enterprise
- Improve the enforcement measures

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- Georgia is a member of the World Trade Organisation and heads for the membership of the European and Atlantic institutions. Commensurate with the agreement made with the European Union and its member states, Georgia has committed itself to the approximation and harmonisation of its legislation with that of the European Union.
PCA Agreement, article 44

- The Partnership and Cooperation Agreement made between Georgia and the European Union in 1995 included key elements of legal text which may draw a particular attention in the context of harmonization of domestic competition law with that of the European Union, amongst them:
  - agreements and associations between undertakings and concerted practices which have the effect of preventing, reducing or distorting competition;
  - abuse of a dominant position in the market;
  - state aids which have the effect of distorting competition;
  - state monopolies or state-owned enterprises;
  - both undertakings and associations with special or exclusive rights;
  - refusal and restraints of the application of competition laws and means of ensuring compliance with them.

Arguments for

- The best international practice treats competition as an important factor of economic growth and public welfare.
- Strengthening of the competition policy is regarded as a crucial direction of reforms in every country.
- The foregoing is proved both by the activities of international organizations in this respect and the competition regimes of more than 100 foreign countries and the steps made towards their competition policy.

Opposite opinions

There are some different opinions as well: that:

- The regulation of competition is an excessive and purposeless bureaucratic burden; that it is not necessary these days;
- The legislation is meaningless, without efficient enforcement and it will be better to revoke it;
- The regulation is an obstructing factor to the entry to any market, innovations and the growth of local companies;

- Currently the role of competition policy is totally neglected in Georgia (the foregoing is also proved by the fact that the concept of the Economic Development of the Country does not mention even the word competition).

- Unlike similar laws of the other countries (e.g., the laws of the WTO, OECD and EU member countries, as well as other countries), the Law on Free Trade and Competition does not apply to such practices as restrictions of business activities, mergers and acquisitions.

Free Trade Agency

- Georgian antimonopoly authority exists only nominally as a subordinate entity of the Ministry of Economic Development with its personnel consisting of only 5 persons.
- Due to deteriorated institutional capabilities this authority is practically inactive.

- The current competition law of Georgia regulates only the anticompetitive actions of the governmental authorities with respect to state aid, amongst them, prohibits the discrimination of economic agents in the course of issuance of state aids.

- However, the Law is so inconsistent in this respect as well, that it excludes the efficient practical implementation of these provisions.
Possible Future scenarios

- Everything remains unchanged;
- The vision of our competition policy is shaped in the nearest future and the main challenges for sectoral competition policies of the European Union are the implementation of new laws and regulations. The competition policy and the enforcement policy underpinning are constantly improved and the efficiency is raised;
- The competition policy is shaped together with the new wave of sectoral reforms, such as those in the area of telecommunications and the removal of a number of regulations from regulations and other changes. However, this ongoing process has to deal with problems of the status of the regulatory authorities, their duties and functions, which are already established by the market;
- Furthermore:
  - The powers of the Competition Agency should be extended to cover any anti-competitive practice undertaken by any sector;
  - The mechanisms of cooperation with the bodies of sectoral regulation should be improved commensurate with the needs of market development;
  - A separate agency should be created for the formulation of competition policy in order to integrate the single economic policy of the Union;</p>

main priority

- the main priority in short term run is the incorporation of basic provisions of the EU competition law (Articles 81 and 82) into the Georgian legislation and
- thorough revision of the current provisions on state aids, to elaborate special procedural rules and other secondary acts.

Furthermore:

- The regulatory commissions and the Competition Agency should accord particular attention to the perfection of the mechanisms of enforcement of the rules related to dominance and bringing the statutory requirements into line with the reality and to the development of guidelines and implementation of various measures for raising awareness of business to the end of ensuring the prevention of violations and reduction of regulatory costs;
- It is necessary to intensively train both the people employed in regulatory bodies and judges in the provisions of competition law and well-proven mechanisms of their enforcement;
- The types of activities subject to regulation should be minimised and should be removed from permanent sectoral regulation;
- The types of activities subject to regulation should be minimised and should be removed from permanent sectoral regulation.
**The enforcement regime should be apparent, predictable and transparent in order to assure the investors, that they will be safeguarded against any anticompetitive practices of companies, established on the market and that their activities will be adequately assessed; also to assure the population, that they will be protected against the abuse of dominant position by monopolist enterprises and the dictatorship on their part.**

**international obligations**

- The internationally acknowledged principles of competition, amongst them the rules of state control over business-restricting practice (WTO, EU, OECD, UNCTAD) oblige states to:
  - Adopt
  - Improve
  - And efficiently implement the respective legal acts.
  - Base their legislation on the principles of efficient regulation and prevention of competition-restricting practices.
  - Ensure the non-discriminatory attitude to every enterprise.
  - Improve the enforcement measures

**Georgia is a member of the World Trade Organisation and heads for the membership of the European and Atlantic institutions. Commensurate with the agreement made with the European Union and its member states Georgia has committed itself to the approximation and harmonisation of its legislation with that of the European Union. Despite foregoing, currently the role of competition policy is totally neglected in Georgia (the foregoing is also proved by the fact, that the Concept of the Economic Development of the Country does not mention even the word competition). Georgian legislation in competition and consumer protection field:**

- Does not take account of competition and consumer protection related problems in Georgia and the mechanisms of their solution within the competition legislation.
- Is not compatible with the commitments undertaken by virtue of international agreements of the country and internationally acknowledged rules and principles of state control over the business restricting practices.

**Such a situation impedes the development of competition on consumer market, promotes anticompetitive practices of forces, which are already established on the market, amongst them of the abuse of dominant position and has a negative impact both on the status of the consumers (particularly within limited competition) and the investment image of the country and public welfare.**

**Challenges?**

- We consider it necessary:
  - To thoroughly review the competition legislation of Georgia, with due consideration of the basic competition principles and legal norms of the EU;
  - At the same time, the provision, which are related to pricing consoles within infrastructural section, should be developed interpreted and implemented, along with the principle of油耗 the companies and in the same time to assure the protection of their counterparts and consumers against the abuse of position by them.
  - To create a single state authority, which will be responsible for common state policy of protection of competition and consumer rights and monitoring the observance of this policy with due consideration of the best international practices and intensive support of the EU new member countries and the recent experience of the countries historically supporting us on our way to the integration into the European institutions.
In relation with the institutional changes particularly pressing is the design, independence and adequate institutional potential of the respective entity.

Of particular importance is the qualification and experience of the employees of the entity concerned, what is the necessary precondition for the efficient enforcement on conditions of structural independence and transparency of processes.

To efficiently coordinate the performance of the body responsible for general competition policy and sectoral regulators.

Development of the Institutional Framework

**Stage 1:**
- In 1992 the administration for antimonopoly regulation, consumer protection and promoting the entrepreneurial spirit was created within the Ministry of Economy of Georgia with 11-member staff.

**Stage 2:**
- In 1993 the Antimonopoly Administration of the Ministry of Economy of Georgia was delegated with the duty of controlling the antimonopoly activities, envisaged by the Ordinance of the President of Georgia No 11 of 1995 on the Protection of Consumers against Misleading Advertisement, 10 established posts were added thereto and the Administration was transformed into the Main Administration for Antimonopoly Policy.

**Stage 3:**
- In December 1996, in the course of reorganisation of the Ministry of Economy, the Main Administration for Antimonopoly Policy was transformed into the Antimonopoly Service of the Ministry of Economy.

- Commensurate with the Ordinance N137 of the President of Georgia of 14 March 1993 on Monopoly Activities and Competition the Subordinated to the Ministry of Economy State Antimonopoly Service was created on the basis of the Antimonopoly Service of the Ministry of Economy. The same Ordinance provided for the number of the members of the personnel (151 persons, amongst men 68 for central office and 83 – for regional offices) and the structure of the Service, which included 17 regional offices, the completion of which offices was finished in 1998.

**Stage 4:**
- In 2001 the Service (which earlier was a public law legal entity) was transformed into a subordinated entity, and its regional offices (the formation of which, except for Adjara, was completed in 1998) into circuit ones with the reduction of their total amount.

- Tbilisi Antimonopoly Service was abolished

- At the expense of freed established posts the number of the personnel of the central office was increased from 65 to 110 members

- The regional services were again re-established with the new names – Bureaus.

In 2000-2002 three reorganisations and many other justified or unjustified perturbations were undertaken.

The Head of the Service was changed four times within a year. At the same time three of four heads of functional administrations and some other employees of the Service, who were trained in training and administrative establishments of Europe and US, left the Service.
The Main Stages of Development of Antimonopoly Policy in Georgia

Legal Framework

- The First Stage – Beginning
  - Resolution N335 of the Cabinet of Ministers of
  17 March 1992 on Certain Measures Aiming at
  the Demonomopolisation of the Economic Activities
  in the Republic of Georgia
- Resolution N870 of the Cabinet of Ministers
- Law of Georgia on the Principles of
  Entrepreneurial Activities

  - September 1992 – Decree of the State Council
    on the Restriction of Monopolistic Activities and
    the Promotion of Competition in the Republic of
    Georgia
  - Ordinance of the President of Georgia N60 of
    1995 on the Protection of Consumers against
    Misleading Advertisement
  - Ordinance of the President of Georgia N160 of
    1995

  - Law of Georgia on Monopolistic Activities and Competition – 1996
  - Law on Advertisement – 1995
  - Up to 45 members were appointed on the basis thereof
  - The amendments and additions made to the Code of
    Administrative Offences of Georgia, the Criminal Code of Georgia,
    the Law of Georgia on Monopoly Acts, the Law of Georgia on the
    Protection of Consumer Rights and the Structure of the Executive Power
    and the other legal acts for the purpose of improvement of the
    performance of the service

- NOTE: Despite the fact that during that period the
  Antimonopoly Service met all the requirements set forth
  by the Law of Georgia on the Procedure of Operation
  and Structure of the Executive Power (as amended in
  2004) for an independent governmental entity, (See
  Article “The Concept and Types of Governmental
  Entities” and its independence was strengthened by more
  than one international experts (including Dr. William
  Kováts, currently the Chairman of the US Federal Trade
  Commission, Dr. Ben Day – Director of the UNDP
  Bratislava Office) it deemed impossible to develop it into
  an independent authority and to improve its status.

the stage or permanent reorganisations

- The Fourth Stage – 2000-2004 –
  Permanent reorganisations
- Fluctuation of Personnel
- Fragmentation of antimonopoly policy
  according to sectoral principle and gradual
  limitation of the powers of the
  Antimonopoly Service

- The Fifth Stage – Post-Revolution Stage

  - In 2004, the law on Free Trade and Competition was
    adopted
  - The scope of application of the Law was limited only to
    the monitoring of state aids.
  - The principle of common state supervision over the
    observance of the legislation on consumer protection. As
    of to date, no agency is charging the state supervision
    over the protection of the consumers apart from the
    consumer protection offices (?), operating within and
    funded by the regulatory commissions
A common problem in Georgia, as well as in many countries, is that the relationship between the regulation authority and sector specific regulators is often unclear. It is clear that there are overlaps between industry specific regulators governing access to the networks, and economy-wide regulators governing the prices of market power. The amendments made in the Law on Monopolistic Activity and Competition (Article 5) were intended to make it clear that the first generation of the industry regulatory agencies is a separate case of the second generation of institutionalized consumer policies. That is, sector specific regulators are responsible for creating and applying competition criteria, under their own statutes rather than under competition law.

In 2005, the law on Independent Regulatory Bodies was amended to create one single regulatory body in the transport area, instead of four regulatory departments under the Ministry of Economic Development. Surprisingly, the Ministry of Transport and some other government departments were merged with the Ministry of Economic Development. The same ministry also has the responsibility of privatisation and economic reforms. It has proposed legal amendments to create one multi-sectoral regulator for all regulated sectors. Further proposing that the existing regulatory regime will be liberalised/simplified to make it cost effective.

For example, the Law 'On Monopolistic Activity and Competition' (Article 5) was amended in the following manner: "The National Independent Regulatory Commission, as well as the Georgian Regulatory State Agency of Gas and Oil Reserves, are the only authorised bodies to provide the regulation and control within the framework of the competence determined in the appropriate law".

Taking into consideration all that mentioned above, the interaction between the competition and public utilities regulatory regimes should be defined clearly, there should be a single, economy-wide framework of sound competition policy principles that is applied equally everywhere; independent regulators should not be able to establish sector-specific competition and consumer policies.

Overlap between the competition authority and the regulatory agencies

It is necessary to have clear demarcation of the functions, duties and powers of the competition and regulatory authorities, so that they do not overlap. The regulatory authorities (including the Georgian Regulatory State Agency of Gas and Oil Reserves) are supposed to enforce the same law, in order to ensure a level playing field for competition. However, it is often the case that the functions of the regulatory authorities are not clearly defined, which is a source of confusion and uncertainty.
Concluding Observations and Future Scenario

- The competition legislation of Georgia requires significant changes by strengthening its provisions on all types of anticompetitive behaviour.
- It also needs to reflect universal competition principles and rules included in the appropriate provisions of the EU Treaty and the UNTAC’s Set on Multilaterally Agreed Set of Equitable Principles and Rules for the control of restrictive business practices.
- Also, what has happened recently is exactly the reverse.

- In February, 2004, the Government adopted a new law: “Concerning the Structure, Power and Activity Rules of the Georgian Government”. This law required restructuring of the state apparatus. The Ministry of Economic Development was made into a sector ministry handling many portfolios. Changes were also made in the State Antimonopoly Service of Georgia. This involved two major changes. Firstly, the head of the authority to be nominated by the Minister for Economic Development and to be appointed by the Prime Minister, whereas earlier it was a Presidential appointment. Secondly, the staff was whittled down, from 130 to 12, however the functions, powers and responsibilities were not changed.

Major enforcement problems

- In June, 2005 a new competition law was adopted: “On Competition and Free Trading”. The old competition law of 1996 was repealed. Not only that but also an absolute disaster. The SAS was wound up to be replaced by the Free Trade Agency under the Ministry of Economic Development, with much reduced scope of only covering anticompetitive practices by the government. Prohibitions on anticompetitive practices by the business, abuse of dominance and combinations were removed. Further, the number of staff was reduced to just 12.
- In the current phase of economic reforms, actually, Georgia has neither a competition law nor a competition authority.

Institutional Framework

- The Free Trade and Competition Agency was created, which is subordinated to the Ministry of Economic Development and currently has only five established posts. The Agency is responsible for the enforcement of the Law on Free Trade and Competition, but it is difficult to speak about the efficient performance of the Agency due to functional restrictions and imperfection of the legal framework.
Compatibility of the Law of Georgia on Free Trade and Competition (came into force in 2004) with the respective Articles of the Treaty Establishing the EC

- Article 81 - Georgian Law does not provide for respective provisions not compatible.
- Article 82 - Georgian Law does not provide for respective provisions not compatible.
- Furthermore, it should be mentioned that similar provisions are contained in the Law on Electric Communications Not compatible. However, where the existence of the provision, which is operable only within a single field, cannot be regarded as a level of compatibility.
- Article 86 Does not provide for respective provisions Not compatible.

Recommendations for further approximation to Georgian Competition Legislation with that of EU

- Legal and Institutional Changes: the Georgian competition legislation requires major revision and rectification with due consideration of the provisions of the EU competition law and of the recent experience in new Member States. Summarizing, we may say that the competition legislation of Georgia needs significant changes and amendments. In our opinion:
- It would be better to elaborate a new competition law reflecting the essential competition principles and rules included in the relevant provisions of the EU Treaty.
- In the nearest future the basic competition principles of the European Union (Article 81 and 82) should be incorporated into the general law of Georgia on Free Trade and Competition. Besides, it is necessary to make appropriate amendments in corresponding laws.

- The powers of the Competition Agency should be extended to cover any anticompetitive practice undertaken in any field;
- The mechanisms of cooperation with the bodies of sectoral regulation should be improved commensurate with the model law
- The recommended measures should be implemented in combination with the other legislative and institutional changes and the perfection of enforcement mechanisms. The following includes the amendment of the regulation mechanisms as well
- It is necessary to intensively train both the persons employed in regulatory bodies and judges in the provisions of competition law and well-known mechanisms of their enforcement;

- Article 89 The Law provides for the provisions on state aid; however, they do not contain key requirements. Also the Law does not provide for the remedies for their protection. Actually, they are blocked due to under-development of the institutional potential and respective remedies. Partially compatible, requires thorough revision and development and effectuation of the secondary legislation within shortest period practicable.

- the secondary legislation and special guidelines (for example, on investigations of mergers, on investigations of anti-competitive practices, etc.) should be developed, the competition policy and the enforcement policy amongst are considerably improved and the efficiency is raised.
- A separate Act should be prepared on the governmental level which includes the concept of enforcement of the competition policy as an integral part of the single economic policy of the country. And the powers of the document should be adopted at the level of the head of the country for it to be recognized by the other member states of the EU. Therefore, the creation of the independent competition authority should be considered in this act.

- It is critically important to develop a clear, predictable and transparent process of competition law enforcement in order for investors to be confident that they will be protected from anti-competitive actions of incumbent enterprises and for the public to be assured that monopoly behavior will not be the outcome of the transition to the market economy.
• It is vital to develop a broader societal understanding of the legal aspects of competition, including both the obligations and the rights of market participants. In order to accomplish this, it is necessary to increase the awareness of stakeholders on the part of the enforcement processes. Therefore, it is necessary, in addition to making and publishing laws, guidelines, and regulations, to publish other materials concerning the enforcement activity of the Competition Service, such as annual reports and press releases. Antitrust agencies in developed market economies do this as a matter of routine. In this regard, it is important to publish (or encourage others to publish) commentaries, on the law, and to organize workshops which will educate economic agents and consumers on the law and regulations and their impacts on market participants.

• Competition authority has to improve cooperation with the legislative and executive bodies of Georgia, as well as with international organizations, in order to achieve the best solutions of legal, technical, and financial problems related to antitrust regulation and consumers' rights protection.

• To create a single state authority, which will be responsible for common state policy of protection of competition and consumers' rights and monitoring the observance of this policy with due consideration of the best international practices and intensive support of the EU new member countries.

• In relation with the institutional changes, particularly pressing is the design, independence, and adequate institutional potential of the respective entity (in our opinion, the currently existing five-member Free Trade and Competition Agency, which is existing just nominally due to reasons beyond its control, cannot be used as a starting point).

• Of particular importance is the qualification and experience of the employees of the entity concerned, which is the necessary precondition for the efficient enforcement on condition of structural independence and transparency of processes.

• To efficiently coordinate the performance of the body responsible for general competition policy and sectoral regulators.

• Of great importance is to provide the agency for the protection of competition with highly qualified personnel, amongst them, the employment of economists, competition lawyers, and experts in the field of economics. Among them, the participation in work for the assurance of donor and international organizations (OECD, TACIS, IPEA, USAID, etc.) through study trips and short-term work experience, to foreign training and administrative establishments and developed into the personal with western orientation (their mirrors are successfully existing in public and private sectors of the economy) in the first of antitrust regulation, competition and consumer protection.

• We are of the opinion, that if there is a special unit, the implementation of the institutional reform will make it possible to improve the competition climate in the commodity markets of the country and gradually and consistently approach the labor market competition policy with the EU principles in order the country to be able for filling the so-called "Copenhagen criteria" for candidate and potential candidate countries in the future.
D. IPR PROTECTION

i. Training Materials

Intellectual Property Crime: Strategic Action Planning for Effective Enforcement

Peter Ashley
Head of Public Protection
Warrington Borough Council

A National Strategic Approach in UK

Key elements of UK National IPC Strategy
- NCIS Threat Assessment: "Law enforcement in UK is generally at a local level and requires greater co-ordination. An intelligence-led approach is essential.
- UK IPO Intelligence Hub (IPID).
- Strategic Control Group.
- Produce National Enforcement Report.
- Set up IP Crime Groups which follow National Intelligence Model (NIM) focussing on, Intelligence, Prevention and Enforcement.
- Commissioning research.

IPC: Scale, Nature & Trends in the UK

Luxury goods
- Markets are changing - fashionable and other public goods.
- Organised markets.
- Internet market survey identified that 90% of counterfeit products imported for sale on the internet are for luxury goods. 90% of UK sales of counterfeit goods are purchased via the internet.
- Quality of copies of counterfeit authentication technologies improving.
- North west of England centre of final production & importation chains in UK.

Introduction

- Intelligence first priority: understanding the scale, nature & trends of IPC in UK & EU.
- How markets operate.
- Understanding purchasing patterns and behaviour.
- Putting it all together - an ‘intelligence-led’ approach to IPC challenges.
- UK national & regional IPC strategies.
- ‘Meeting the challenges’ - current IPC interventions in the UK.

Creative media
- Significant increase in DVD piracy (down by 15% in 2004).
- College students in UK buying DVD’s, counterfeits produced overseas.
- Organisational misconduct increasingly linked to DVD piracy (links to people trafficking in UK).
- Significant growth in internet DVD piracy.
- F2P copying due to increased broadband take-up and weak enforcement / civil cases.

IPC: Scale, Nature & Trends in the UK

Goods which affect public health:
- Tobacco
  - high tax on a low margin.
  - 40% of smokers不住.
  - Number of smokers increasing in poorer areas.
  - Manufactured cheaply in Asia.
- Alcohol
  - 15% of adults are regular drinkers.
  - Importers smuggle goods and infringe on trademarks.
  - Significant growth in illegal alcohol.
  - 10% of alcohol volume is smuggled.
  - 1,000 deaths per annum alcohol related.
**IPC: Scale, Nature & Trends in the UK**

- Goods which affect public health:
  - Pharmaceuticals
  - Food
  - Tobacco
  - Other

**IPC: Scale, Nature & Trends in the EU**

- Continental increase in numbers of cases but reduction in volume of seizures:
  - 43,702 counterfeit cases in 17 countries (2000)
  - Increase in numbers of goods, crime and related crime, reduced enforcement

**Purchasing Patterns & Behaviour**

- Motivations and justifications:
  - Cost is a key driver for the purchase of fakes
  - Purchases are not solely based around economic decisions
  - Fake goods often meet expectations

- Risk and consequences:
  - Public aware that IP theft impacts on the public purse
  - Public have a good appreciation of the consequences that IP theft piracy has on legitimate business
  - There is a degree of ambivalence about the dangers of some fake goods
Putting It All Together!

• UK approach focuses on:
  - Improving inclusive intelligence base (essential)
  - Developing prevention techniques
  - Robust targeted enforcement.

• ‘Inclusive’ intelligence base informs the National IPC Strategic Assessment (but this requires delivery!).

• UK structure and delivery:
  - National IPC crime strategy (level 1)
  - Regional collaboration (level 2)
  - Local implementation (level 3)

National IPC Strategy

• IP crime groups.

• Multi-agency team approach to:
  - Enable higher level enforcement
  - Task focused
  - Enable ‘expert’ guidance and assistance to enforcers
  - Enable further development of education and awareness strategies.
  - Influence national policies and strategies (? golden thread up and down)
  - Help deliver effective enforcement.

Regional IPC Strategy

• Multi-agency team approach (level 2 crime):
  - ‘Award’ winning group brings together enforcers from across North West of England to implement National Strategies and co-ordinate regional activities.
  - Group meets every 3 months and invites Brand Protection Managers to give input on developments.
  - Key activities include
    - Assessment of regional intelligence to identify major targets
    - Planning of joint operations to maximise impact
    - Current focus on outdoor markets and illicit tobacco

Meeting the Challenges

• Objective 1 - intelligence:
  - Developing better assessment tools and national intelligence database (PID)
  - All enforcers will input IPC intelligence. UK IPO will produce ‘problem profiles’ and ‘tactical assessments’ for enforcers to act upon thus enabling better informed, prioritised and targeted enforcement.
  - Trading Standards have appointed a network of Regional Intelligence Officers (RIOs) who collate intelligence & develop intelligence ‘products’ and act as ‘links’.

• Objective 2 - media strategy:
  - Proactively working with key media contacts to develop campaigns and ensure IPC high on public agenda.
  - To be effective media messages have to be joined up!

• Objective 3 - enforcer training:
  - Bring together enforcement agencies & rights holders to improve knowledge and skills.
  - Focus on developing technologies, e.g. ‘bit torrent’ and enforcement via the Internet etc.
Meeting the Challenges

- Objective 4 - consumer education:
  - Developing web-based educational techniques for 7-11 year olds (to be expanded)

- Objective 5 - illicit tobacco:
  - Extra focus due to significant health risks and loss of revenue
  - NB this is also an issue which may impact on public perception

Heineken
North of England Tackling Illicit Tobacco for Better Health

Meeting the Challenges

- Objective 6 - changing markets:
  - Developing strategic and coordinated approaches to occasional markets (moving away from unchallenged areas of the market, especially where critical mass is present)
  - Targeting sales in the workplace and other public places
  - Internet seizure and partnership with social media networks and making impact of increased access to broadband

- Objective 7 - proceeds of crime
  - Ensure Proceeds of Crime Act is in place where more than £5000 assets

IPC – ‘the way forward’

- National, regional, local
  - About supply & demand
  - Intelligence 
  - Intelligence sharing
  - Effective resourcing
  - Skills & knowledge base
  - Consistency
  - Rights holders and key enforcement partners linked to planning and delivery
  - Border control effectively linked to market surveillance
  - Community-based approaches

Effective Enforcement Checklist

- Ten point checklist:
  1) Do you have intelligence gathering, handling and sharing capacity across all relevant enforcement agencies (and have Strategy in place dealing with prevention and education)?
  2) Are there strong working relationships with right-holders?
  3) Do you provide basic awareness training for all law enforcers and keep up to date with developments?
  4) Is there regular communication and co-ordination across enforcement agencies?

Effective Enforcement Checklist (cont.):

- Ten point checklist (cont.):
  5) Are you taking action against low-level ‘signal’ crime alongside other bigger issues?
  6) Do enforcers have the protection to seize where they merely have suspicion (ex-officio)?
  7) Are cases being brought before the courts in a timely manner (<6 months)?
  8) Is relevant legislation simple and puts burden of proof on the defendant?

Effective Enforcement Checklist (cont.):

- Ten point checklist (cont.):
  9) Do court rules allow trial by sample and can enforcement officers act as experts in their own right (thus increasing enforcement activity levels)?
  10) Are you taking the assets away from criminals as well as imposing effective criminal sanctions?

- Is the answer to all these questions: YES?

Then IPC Protection System is ‘fit for purpose’!
(NB haven’t mentioned adequate levels of resourcing and don’t forget Prevention Strategies)
Issues for Georgia?

- Coordination of enforcement agencies, right-holders and policy makers
- Legislative gap analysis:
  - Ex-officio action
  - Asset recovery
- Threat assessment
- Awareness raising and training
- Coordinated enforcement (border control & market surveillance)
- Prevention strategy
- £ $ € GEL???

And finally ...........

- Thanks for listening!
- Questions?

Further contact:
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Investigating & Prosecuting IPC: Experience of the UK Trading Standards Service

Peter Astley
Head of Public Protection
Warrington Borough Council

Introduction
- Background to scale of IPC, legislation and enforcement bodies in UK
- Current IPC issues & UK developments.
- Trading Standards enforcement in UK
- Best practice and alternative enforcement methods
- IPC Case studies.
- Prosecuting IP cases.

Scale of the IPC Problem in the UK
- IPC costs UK economy over £9 billion p.a.
- Large scale production overseas - production in UK mainly 'cottage industry'.
- Fake goods are available through a variety of locations and networks.
- Strong links between IPC and organised crime.
- Expanding international markets potential expanding problems (EU expansion).
- Perception issues.

Background to IPC Laws
- Civil and criminal sanctions contained within:
  - Trade Marks Act.
  - Copyright Designs and Patents Act
  - Consumer Protection Regulations.
- Powers (criminal):
  - Entry
  - Seizure
  - Forfeiture
- Penalties.

IPC Bodies in the UK
- Trading Standards are lead IPR enforcement agency (municipal government function; many public protection functions & priorities):
  - IPC market surveillance role (level 1 criminality).
  - Local co-ordination role bringing together other enforcers to develop multi-agency solutions.
- Police:
  - Limited IPC role but are doing more!
- Customs (UK Border Agency & HMRC).
- Others:
  - Brands and Rights Holders
  - Assets Recovery Agency (ARA)
  - Serious Organised Crime Agency (SOCA)

Current IPC Issues in the UK
- Creative media:
  - Significant increase in CD/DVD IP theft
  - Cottage industries in UK infringing product is 'commercially produced overseas'.
- Luxury goods:
  - Improving quality of product and security feature copying
  - Assembly of the final product often in UK
Current IPC Issues in the UK

- Public health issues:
  - Tobacco
  - Alcohol
  - Prescription and lifestyle drugs
  - Other 'safety-critical' products
- Organised crime operates at all levels:
  - Local, regional, national

Trading Standards Enforcement

- 'Intelligence-led' approach:
  - Limited inspection mainly act on intelligence.
  - Prioritise targets through 'tasking and co-ordination' approach
  - Liasce with brands and other law enforcers
  - Execute warrants, seize offending product, records, computers etc, institute criminal proceedings in court, obtain forfeiture of goods and assets
  - Take alternative forms of action: - 'Disruption' - NB not all offenders end up in court

But We Are Fighting Back!

DVD PIRATE SENT TO JAIL

Case Study 1: Small Scale Market

- Market occurs every Sunday on private land
- 100 traders selling mainly second-hand goods
- Around 15 stalls selling large volumes of counterfeit goods (mainly DVD's, CD's and clothing)
- Traders professionally organised

Trading Standards Enforcement

- Question:
  - Are we successful at removing counterfeit products from the UK marketplace?
  - Yes?
  - No?
  - Maybe?
Case Study 1: Approaches

- **Actions:**
  - Surveillance (including test purchasing)
  - Raid: involving police and brand reps. Focusing on individuals controlling sales (informal criminal action against retailers - but always confiscate).
  - Work with retailer market to ensure they 'self-police' the market.
  - Further surveillance.
  - Focus on 'culpability' of market operators (money laundering) and take formal criminal action against retailers.
  - Market closure if necessary!

Case Study 2: DVD Producer

- **Actions:**
  - Suburban house in quiet area
  - Tip-off from informant that copying DVDs
  - Checks revealed could not support lifestyle from income alone
  - Raid revealed 30,000 blank discs (but only 10 copies), multi-tower burners, new car and £12,000 cash

Case Study 2: Approaches

- **Actions:**
  - Surveillance and background checks revealed could not support lifestyle from income alone.
  - Executed warrant found large volume of blank discs and computer system, treated as a crime-scene.
  - Conducted forensic examination of mobile phone and computer system (continually).
  - Identified assets: new car and £12,000 cash.
  - Conducted forensic examination of other assets.
  - Successful outcome in court and reinvested 'proceeds of crime!'

Prosecuting IP Offences

- **Trading Standards cases:**
  - NB not all cases end up in court - use formal caution and alternative sanction!
  - Cases are investigated and reported 'in-house'.
  - Use fast-tracking process where possible - most cases result in guilty pleas.
  - Case bundle 'minimalist' for most cases - trial by sample.
  - High-level criminals - cases include financial assessment for Proceeds of Crime action.
  - Both forfeiture and courts may impose conditions.

Other Enforcement Approaches/Issues

- **Use of alternative and novel approaches:**
  - Crime & Disorder legislation (ejunctive process).
  - Novel enforcement approaches (market disruption).
  - Proceeds of Crime (POCA).
  - Telephone hotlines and use informants.
  - Developing procedures with IPR holders to ensure easy access to product identification information.
  - Forensic support and financial analysis.

Conclusions

- **Strengths of UK enforcement framework:**
  - Laws are pragmatic - alternative sanction works & no 'administrative burden'.
  - No 'mens rea' element: burden of proof on defendant.
  - Forfeiture powers - no need for separate action.
  - Inference by sample & use of officers as 'experts'.
  - Proceeds of crime (£12M in 2008) - c.f. Penalties!

- **But:**
  - Need to make sure properly resourced!
Conclusions

- Strengths of UK enforcement framework:
  - Novel and alternative approaches can work!
  - Effective partnerships in place!
- National strategy:
  - Vital in helping all enforcement agencies, rights-holders and government sit up and work together to develop intelligence-led policies and strategies to tackle all levels of IPC.
  - However, not sure we effectively resource IPC enforcement and effectively deal with organised crime!

And finally.............

- Thanks for listening!
- Wish to know more?
- Any questions?
- Contact:
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Fight against Counterfeiting in Georgia: Main Problems and Perspective

George Taktakishvili
GEPLAC
9 July 2009

Main Problems and Needs

- Absence of accurate data on circulation of counterfeited goods
- Low concentration of the Government on IPR protection
- Absence of clear understanding of wide range of problems related to violation of IPR by the Government

Main Problems and Needs

- Lack of the proper vision of the problem – IPR violations is not only problem of right holders but for state and general public pari passu
- Low level of awareness of general public of IPR violations and related matters
- Insufficient awareness rising activities among different groups of general public

Institutional Weaknesses - Law Enforcement Agencies

- Absence of authority to act ex officio
- Lack of experience and trainings

Institutional Weaknesses - Courts

- Need for training of judges
- Need for availability of European case study and analyses of IPR cases for judges

Institutional Weaknesses – Right Holders

- Low level of activity of right holders
Steps to be taken

Georgia is a small market mainly concentrated in a capital - Tbilisi and thus problems with IPR violations may be solved promptly in case of having well organized strategic plan.

Steps to be taken

Conducting fundamental study on IPR violations providing:
(a) the information on most problematic fields based on exact data and figures concerning the losses of right holders and the state budget
(b) the information on the most dangerous fields for public health

Steps to be taken

• Identification of primary targets based on the study
• Drafting strategic plan of activity of law enforcement agencies

Steps to be taken

• Drafting structure of coordinating agency of law enforcement bodies
• Ensuring participation of high level officials in work of coordinating agency

Steps to be taken

• At the beginning joint activity may be limited to Tbilisi and Batumi (as a main tourist destinations)
• From the very beginning the scales of circulation of counterfeited goods to other cities and destinations in Georgia should be analyzed.
V. NON-KEY TRADE-RELATED ISSUES

A. BACKGROUND PAPER ON CUSTOMS

1. Summary of EU Acquis

Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code adopted by the council of the European communities is the primary legislative act regulating EU customs procedures. Provisions provided by EU customs code are mandatory for all member countries to be implemented. Customs code defines main principles and approaches; it also provides essential rules for customs administration and defines customs policy.

Commission Regulation (EEC) No 2454/93 (including all subsequent amendments) laying down provisions for the implementation of Council Regulation is a secondary legislative document adopted in 1993. Commission regulation provides step by step detailed procedures for implementation of customs code. This document is developed taking into consideration various international treaties and conventions which regulate customs activities. Commission regulation is mandatory for implementation by member states as well as customs code. Sharp difference between Georgian and EU legislation is that EU has adopted only one implementing act due to customs code which covers all customs related procedures available in EU but Georgian legislation consists from several secondary legislative acts based on Georgian customs code, mainly orders of Minister of Finance and Decrees of Government of Georgia.

Despite these main customs legislative documents which are common for all community members, EU legislation provides wide discretion for member countries over further extension of legislation and taking effective measures (making alternative decisions) for customs administration taking into consideration local specifications of member countries. As a result wide range of customs procedures defers in member countries and is regulated by national legislations but in line with EU legislation. Apart from legislative acts some member countries have adopted “public notices” which are explanatory documents and have legal force in case if customs authorities or any interested person (customs traders; customs representatives; freight-forwarders) uses them. Hereby brief revision of EU customs legislation is provided.

Customs Representative. According to EU Customs Code any person performing customs formalities laid down by EU legislation can have direct contact or use customs representative in his dealings with customs authorities. Such representation may be direct or indirect. Direct representative acts in the name of and on behalf of customs trader and isn’t responsible before customs for the formalities he performs. In this case all responsibility is on the customs trader and he/she controls the activities of his/her representative. Indirect representative acts in his own name but on behalf of customs trader and shares responsibility jointly with customs trader for operations performed by him. Based on Customs authorities request customs representative should provide evidence enabling him to act as a representative.

Provision of Information. According to EU Customs Code any person may request information concerning the application of customs legislation from the customs authorities. Such request can’t be refused if information relates to import or export procedures but customs may charge relevant fee if any costs are incurred by customs authorities in particular as a result of analyses or expert reports on goods. Generally information is provided in writing and it is mandatory for any customs official or relevant person to act according the decision. Such information can be guidance for customs trader in planning and implementing his future operations.

37 Chapter 2, Title 1 of EU Customs Code (Council Regulation No2913/92)
38 Section 3 of Chapter 2, Title 1 of EU Customs Code (Council Regulation No2913/92)
**Origin of Goods.** Section 1, Chapter 2 of Title 2\(^{39}\) defines rules for origination of goods imported to the EU. There are preferential and non-preferential origination rules. Preferential rules are generally used for proper implementation of free trade agreements and unilateral preferential programs such as GSP. Detailed criteria and conditions of using preferential origination rules are developed in those international treaties which provide preferential tariff treatment. Non-preferential rules apply to any other product imported in EU.

**Customs Valuation.** Valuation methods of goods imported to the EU are also defined in the EU Customs Code and Implementing Regulations\(^{40}\). It should be underlined that EU uses standard rules of customs valuation approved by international treaty on implementation of article 7 of GATT which provides 6 method of valuation. Though member countries use their own explanatory notes and guidance for further interpretation of generally accepted principles and these notes may defer by little.

**Temporary Storage of Goods.** Another important issue regulated by Customs Code\(^{41}\) is a temporary storage of goods and pre-clearance operations. Before goods are cleared and they leave customs control zone they must be temporarily stored in places approved by customs for such purposes. According to common practice temporary storage places are at frontier (port) and inland clearance depot. Temporarily stored goods can be subject to usual handling operations which are designed to ensure their preservation in an unaltered state without modifying their appearance or technical characteristics.

**Customs Approved Treatment or Use.** EU Customs Code\(^{42}\) defines available customs procedures which are: Release for free circulation; External transit; Customs warehouses; Inward processing relief; Processing under customs control; Temporary importation; Outward processing relief and Export.

Other types of customs approved treatment or use are: Free zones and free warehouses; Re-exportation; destruction of goods and abandonment of goods.

**Security to Cover Customs Debt.** EU Customs Code\(^{43}\) enables customs authorities to require security to be provided in order to ensure payment of customs debt, such security shall be provided by the person who is liable or who may become liable for that debt. Security may be provided by a person other than the person from whom it is required and customs authorities may allow a comprehensive security that may cover two or more operations in respect of which customs debt is incurred or may be incurred. Amount of security must be defined for each case individually and must be relevant to possible customs debt.

**Appeals.** EU Customs Code\(^{44}\) provides for two main principles in appeals system. First - any person has the right to appeal against customs decision any time and second – appeal and subsequent customs dispute solution procedures mustn’t stop implementation of disputed activities unless it is dangerous for public and economic safety of the country. Person can appeal before the customs authorities designated for that purpose or before an independent body, which may be a judicial authority or an equivalent specialized body, according to the provisions in force in the Member States.

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\(^{39}\) EU Customs Code (Council Regulation No2913/92)

\(^{40}\) Articles 28-36 of EU Customs Code (Council Regulation No2913/92); Articles 141 to 181 and annexes 23 to 29 of Implementing provisions of EU customs Code (Council Regulation No2465/93)

\(^{41}\) Chapter 5, Title 3 of EU Customs Code (Council Regulation No2913/92)

\(^{42}\) Chapter 1, Title 4 of EU Customs Code (Council Regulation No2913/92)

\(^{43}\) Chapter 1, Title 7 of EU Customs Code (Council Regulation No2913/92)

\(^{44}\) Title 8 of EU Customs Code (Council Regulation No2913/92)
2. Progress of Approximation of Georgian Customs Legislation with that of EU

2.1 Legal and institutional framework

Georgia Customs Code is to the large extent compliant with EU Customs Code. The initiatives implemented over the last year brought Georgian legislation even closer to the EU standards though it still defers from EU regulations in some areas.

It should be underlined that according to the Georgian legislation Ministry of Finance develops explanatory notes to customs legislation but these documents serve only internal purposes and are not public. As a result private sector lacks guidance or any plain language explanatory notes.

In conformity with the EU customs legislation\(^{45}\) the Georgian Customs Code provides for two types of customs representation. However, both direct and indirect representative take the same responsibility against customs. So the existence of two different types of representatives doesn't make any sense.

Regarding to customs warehouses there is a significant difference between the EU\(^{46}\) and Georgian practices as in Georgia temporary storage is allowed only in customs warehouses and other places defined by legislation while customs warehouses in the EU are generally used for the warehousing procedure. It should be also underlined that usual forms of handling are not allowed in Georgia while goods are temporarily stored.

Concerning to customs approved treatment or use of goods Georgian legislation enables all major procedures foreseen by EU customs legislation\(^{47}\). However, there is a difference in definition of processing under customs control and inward processing regime.

There is also a difference between Georgian and EU legislation\(^{48}\) regarding financial security covering customs operations. Georgian legislation requires fixed amount of security for some operations such as: interested person must provide security covering minimum 200,000 EUR to receive a permit to operate customs warehouse; customs representative is required to provide security covering 50,000 EUR. This approach totally differs from EU approach where amount of security provided by customs trader must be adequate to customs debt incurred or which can be incurred from operation performed by that trader.

2.2 Latest Developments

**Customs Risk Management.** The new procedures using risk-based cargo selectivity, being in line with the principles of EU Customs Code\(^{49}\), had been implemented throughout the whole of Georgia by July, 2008. The implementation process started on February 1, 2008, and was systematically expanded to cover all customs clearance offices. According to the risk management system, about 85 percent of shipments are subject to only documentary review (“yellow channel”), representing a decrease in time for clearance for most shipments by several days. The remaining 15 percent are referred for physical inspection (“red channel”) based on a combination of risk criteria programmed into the ASYCUDA customs processing software and random selection. This approach replaces the 100 percent physical inspection of all cargoes with a risk-based approach to customs clearance. Automated selection of shipments for physical inspection focuses Customs resources where the risk is greatest, makes the process more objective, and provides fewer opportunities for corruption. In the first quarter of 2009, automated cargo selectivity was implemented for exports and

\(^{45}\) Chapter 2, Title 1 of EU Customs Code (Council Regulation No2913/92)

\(^{46}\) Chapter 5, Title 3 of EU Customs Code (Council Regulation No2913/92)

\(^{47}\) Chapter 1, Title 4 of EU Customs Code (Council Regulation No2913/92)

\(^{48}\) Chapter 1, Title 7 of EU Customs Code (Council Regulation No2913/92)

\(^{49}\) According to Article 13.2 of EU Customs Code (Council Regulation No2913/92); Article 4 of Implementing provisions of EU customs Code (Council Regulation No2465/93) “customs controls, other than spot-checks, shall be based on risk analysis using automated data processing techniques, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national, Community and, where available, international level.”
customs warehouses as well. Further, Revenue Service looks forward to introducing the “green channel” and “blue channel”, available currently only to Gold List participants and which requires no physical or documentary checks, by the end of the year in line with the roll-out of post-clearance control.

In order to implement risk management changes to the Customs Code and new regulation (Decree of the Minister of Finance of Georgia N989) on risk management have been adopted December 31, 2008. Also, special Risk Analysis Department and Risk Management Committee had been created within the Revenue Service. These two entities are responsible for developing and approving risk profiles, monitoring their performance and conducting analysis. The profiles are imputed into the customs information system - ASYCUDA and are updated based on reports received from field customs offices.

**Authorized Economic Operators (Gold List) Programme.** EU Customs legislation lays down procedures for application, authorization, granting a status, implementing measures and types of simplified procedures for authorized economic operators. To large extent Georgian customs legislation regarding authorized economic operators corresponds to the major provisions envisaged by the EU Customs Code and Implementing provisions of EU Customs Code. The changes to the Customs Code and regulation on so called “Gold List Program” (Decree of the Minister of Finance of Georgia No 990) had been adopted December 31, 2008. Gold List program is a program with simplified procedures for high-value/high-volume traders (10 000 million GEL of import value) with a demonstrated history of compliance. Simplified procedures include an immediate release of goods, which circumvents the cumbersome formalities at the Inland Clearance Terminals; b) post payment of customs duties for up to 30 days; c) electronic submission of declaration with no attached documents required; d) advance declaration. Companies approved are required to submit customs guarantee (bank guarantee, insurance policy, deposit) in the amount of minimum 100 000 EURO. In early May 2009 two companies have been approved to participate in the Gold List Program and switched on to the system. Other companies might join the program after simplified procedures are utilized by the pioneer companies in practice.

**Post-clearance Audit.** In order to further approximate the Georgian customs legislation with the EU Customs Code changes to the Customs Code that came into effect from January 2009, introduced, the right of customs authorities to conduct desk or field audit of related to customs operations after the release of goods. Post clearance controls are necessary to offset the potential increase in non-compliance that could result from significantly reduced physical examinations and have the added benefit of promoting voluntary compliance, if properly administered. In the beginning of the year post-clearance audit unit with 7 staff members was established. The post-clearance audit team has been going through various trainings to get equipped with the knowledge and skills required for the post-clearance audit. It is expected to start actual audits not later than by the end of the year.

**Customs Valuation.** Steps have been taken to improve the customs valuation rules and practices. Despite the adoption of new Customs Code in 2007, which incorporated relevant GAAT norms, during several years Georgian customs violated valuation rules. From April, 2008 Georgian customs administration gradually began proper implementation of customs valuation methods and its alignment with EU Customs valuation rules. Now absolute majority of goods are cleared according to first method except for those shipments with high risk on valuation. Generally risk areas for imported goods are defined according to exporting country and type of imported goods. Besides this, Customs Code was amended in section VI (customs valuation) and new addition of valuation

50 Article 5A of EU Customs Code (Council Regulation No2913/92); Article 14 of Implementing provisions of EU customs Code (Council Regulation No2465/93)
51 Article 78 of EU Customs Code (Council Regulation No2913/92); Implementing provisions of EU customs Code (Council Regulation No2465/93)
52 Articles 28-36 of EU Customs Code (Council Regulation No2913/92); Articles 141 to 181 and annexes 23 to 29 of Implementing provisions of EU customs Code (Council Regulation No2465/93)
methods is more in line with international best practices as it was entirely drafted on basis of GATT and EU customs legislation, except for some minor deviations.

**Voluntary Disclosure.** Voluntary disclosure concept has been partially introduced. This concept increases compliance of companies involved in export-import operations. According to EU practice\(^\text{53}\) companies have possibility to amend customs declarations and correct any procedural mistakes without getting penalized, after the goods are cleared (released) and before these mistakes are revealed by customs audit or before customs makes decision about auditing the company. Amendments to the Customs Code of December 2008 enable company to amend customs declaration by correcting data in it after the release of goods without being penalized only in cases where corrections are due to changes in commercial terms which affect customs value of goods or corrections concerning country of origin of cleared goods.

**Binding Advisory Opinions.** Another innovation introduced by recent changes (of December 2008) to the Customs Code of Georgia is a possibility to receive binding information about classification and country of origin of goods. According to the Customs Code any interested person can apply to the Revenue Service (RS) and ask for the decision predetermining commodity classification and country of origin of goods he/she is going to import or export. Interested person has to provide Revenue Service with all necessary information (technical or commercial information, processing of goods, etc.) about goods in order to receive such decision in advance before the clearance. Commodity classification and country of origin rulings must be in writing and are mandatory for any customs clearance officer to implement. This means that customs trader has possibility to avoid misinterpretation and further disputes with customs by receiving information in advance. New provisions of the Customs Code are in compliance with EU customs legislation\(^\text{54}\). However, in addition EU legislation\(^\text{55}\) allows customs to issue advance decisions regarding any customs matter requested by the trader.

**Customs Penalties.** According to EU practice and confirmed by new EU Customs Code\(^\text{56}\): “Each Member State shall provide for penalties for failure to comply with Community customs legislation. Such penalties shall be effective, proportionate and dissuasive.” From January 1, 2009 new provisions on customs penalties entered into force. According to the changes majority of provisions became clearer and penalties became more proportionate to violations.

**Temporary Importation.** As a result of December, 2008 changes to the Customs Code, some of the procedures regulating customs regimes were streamlined and adjusted to modern requirements of business. These procedures were brought in conformity with EU practices\(^\text{57}\). For example: new provisions in customs legislation provide more flexible rules for temporary importation of goods in Georgia in three ways. First, duty exemption for entirely exempted goods is available even if the importer prolongs the declared period of temporary importation. Second, an importer of a partially exempted good can pay the duty for the whole period of temporary importation in advance. Prior to the change, payment and associated documentation were required every month. Third, an importer can now classify their goods as “temporary importation” even if they were previously classified in a different regime without providing customs with documentary evidence that the goods must be returned to the supplier after the temporary importation period. In sum, these provisions will facilitate ordinary and financial lease development, since in most cases the temporary importation regime is used for leased goods from abroad.

\(^{53}\) Article 78.1 of EU Customs Code (Council Regulation No2913/92)

\(^{54}\) Articles 11-12 of EU Customs Code (Council Regulation No2913/92)

\(^{55}\) Articles 6-10 of EU Customs Code (Council Regulation No2913/92)


\(^{57}\) Articles 137-144 of EU Customs Code (Council Regulation No2913/92); Articles 553-584 of Implementing provisions of EU customs Code (Council Regulation No2465/93)
B. BACKGROUND PAPER ON FINANCIAL SERVICES

1. Summary of EU Acquis

The aim of EC co-ordination within the financial sector has been to establish a single market of financial services. At that time when the European Commission started its co-ordination all Member States already had well developed and properly functioning financial sector. Therefore the main purpose of co-ordination was not to build up and develop financial sector, but more to set up the minimum requirements for the different types of institutions in order to create uniform minimum standards. Taking into consideration the specific character of financial services – where at the stake is the customers’ money and failure of financial institution could lead to substantial losses for its customers – it was obvious that much stricter regulations were needed for financial institutions than to other service providers in general.

It should be stressed that the order in which the EC directives within the financial sector have been adopted and the different elements they have co-ordinated do not always reflect the most logical order for a country which has to build up a financial sector from scratch. The different directives include elements and principles for which co-ordination was needed at the time of adoption. Before then national discretion was sufficient.

The EC co-ordination in financial sector was carried out in the following main directions: (a) harmonisation of the authorisation conditions and the prudential standards, (b) home country control and (c) mutual recognition of the national supervisory standards.

Below is given the brief overview of the main pieces of EU acquis within each sector of financial services – banking, insurance and securities. This summary does not pretend to be exhaustive, it mainly focuses on those directives which are most relevant to be transposed to the national legislation of third countries seeking the deeper integration to EU internal market, and more specifically to the EU market of financial services.

1.1 Banking

European policy objectives in the area of banking are twofold. The first is to complete the creation of an integrated market for banks and financial conglomerates, on the basis in particular of mutual recognition and the “European passport”. The second is to ensure that the market operates properly so that European citizens have all the security guarantees they need when using banking services. These issues are especially important in view both of increasing cross border activity and the massive growth in services based on new technologies.

One of the key pieces of EU banking legislation is Directive 2006/48/EC\textsuperscript{58}, which lays down the rules on the taking-up and pursuit of the business of credit institutions and on the prudential supervision of such institutions. It constitutes an important instrument for achieving the single market from the point of view of both the freedom of establishment and the freedom to provide services in the field of credit institutions.

The Directive sets the essential requirements for authorisation to take up and pursue the business of credit institutions (e.g. existence of separate own funds, initial capital of at least 5 million Euros, presence of at least two persons who effectively direct the business of the credit institution etc.). The Directive establishes detailed criteria for the prudential assessment of shareholders and management in the event of a planned acquisition and also a clear procedure for applying them.

The Directive lays down the principles of prudential supervision which, in principle, is carried out by the home Member State with close cooperation with competent authorities of the host Member States. As regards the technical instruments of prudential supervision, the Directive introduces the prudential regulatory framework adopted by Basel Committee on Banking Supervision (Basel II) in June 2004. It specifies the requirements towards own funds, solvency ratio, large exposures and supervision on a consolidated basis of credit institutions.

The aim of Directive 2001/24/EC is to ensure that, where a credit institution with branches in other Member States fails, a single winding-up procedure is applied to all creditors and investors. The bankruptcy proceeding will be initiated in the home Member State and will thus be governed by a single bankruptcy law. This approach is consistent with the home country control principle that is the basis for the banking directives.

The Directive lays down the detailed rules for protection of creditors. It provides that reorganisation and winding-up measures are fully effective in all the Member States and as against third parties in particular. Administrators are required to publish an extract from the decision in the Official Journal of the European Communities and in two national newspapers in each host Member State. Known creditors established in other Member States must be similarly informed (equal rank and treatment). They must be informed rapidly and individually in the official language or one of the official languages of the home Member State. The heading of the form used must be in all the official languages of the European Union and creditors may submit claims in the official language or one of the official languages of "their" Member State. In addition, the liquidators must keep creditors regularly informed on the progress of the winding-up.

The Directive prescribes the administrative and judicial authorities of the home and host Member States involved to closely cooperate; defines the law applicable to winding up proceedings; provides for the withdrawal of authorization of credit institutions and bounds all administrative authorities involved with the duty of professional secrecy.

Directive 94/14/EC on deposit protection forms an essential counterpart to the prudential supervision of credit institutions because of the solidarity it creates between all the institutions operating in the same financial market in the event of failure of one of them. Harmonisation is confined to the main elements of deposit-guarantee schemes and ensures, within a very short period, payments under a guarantee calculated on the basis of a harmonised minimum level.

The Directive requires every credit institution to join a deposit-guarantee scheme and prescribes each Member State to ensure that within its territory one or more deposit-guarantee schemes are introduced and officially recognised. The Directive provides that deposit-guarantee schemes must normally cover the aggregate deposits of each depositor up to Euro 20 000 in the event of deposits being unavailable. This amount is periodically reviewed. Higher or more comprehensive cover is permitted in certain cases, e.g. on social considerations. Duly verified claims must be paid within three months of the date on which the competent authorities establish that deposits are unavailable.

Directive 2002/87/EC introduces specific prudential legislation for financial conglomerates so as to amplify the sectoral prudential legislation for credit institutions, insurance companies and investment firms. The Directive ensures minimum alignment of the prudential legislation applicable to homogeneous financial groups active in a single sector (banking, insurance, investment) on that applicable to financial conglomerates, both in order to protect consumers, depositors and investors and in order to boost the dynamism of the European financial market.

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Directive 2006/49/EC\(^{62}\) aims to ensure the consistent application of the new international guidelines for capital requirements known as Basel II. It envisages three separate approaches to capital adequacy: a standard approach, an intermediate approach and an advanced approach. Financial institutions may choose the approach that suits them best.

1.2 Insurance

European policy in the field of insurance seeks to put in place a common framework enabling insurers to operate, establish themselves and provide services freely within the European Union. It also aims to protect insured parties, particularly individuals, for whom it is often crucial that insurers deliver on their commitments. Specific provisions apply to different sectors of activity, such as life and travel insurance.

Directive 2002/83/EC\(^{63}\) governs the taking-up and pursuit of the self-employed activity of direct insurance by undertakings which are established, or wish to become established, in a Member State. It particularly concerns life assurance based on a contract and certain savings operations based on a contract.

The taking-up and pursuit of direct insurance is subject to prior authorisation. In order to apply for and obtain authorisation, an insurance company must meet certain criteria: it must adopt the required legal form, possess the minimum guarantee fund, and provide the information required by the monitoring authorities. The Directive lays down precise criteria for the prudential valuation of shareholders and management in connection with a planned acquisition, together with clear rules for their application.

The Directive establishes technical provisions and investment diversification requirements towards the insurers, specifies solvency margins and guarantee fund, which must amount to a minimum of Euro 3 million.

The provision of non-life insurance services is regulated by a number of directives. The first Council Directive 73/239/EEC\(^{64}\) establishes the appropriate legal framework for exercising freedom of establishment in the Community in respect of direct non-life insurance. The arrangements necessary to guarantee the effective exercise of freedom to provide non-life insurance service are laid down in second Council Directive 88/357/EEC\(^{65}\). This Directive covers all non-life insurance, including compulsory insurance. And finally, a third co-ordinating Directive 92/49/EEC\(^{66}\) on direct non-life insurance covers the co-ordination of national rules governing the investment, spread and localisation of the assets used to cover technical provisions, the law applicable to insurance supervision, the terms of insurance and the physical inspection of policies and contract documents, access to and pursuit of insurance activities, and supervision according to the principle of home country control.

Due to the fact that the existing solvency rules set by several life and non-life directives are outdated and do not take into account the risks and vary from one Member State to the next, on July 10, 2008 the European Parliament and the Council came up with a proposal of adoption of new Directive on the taking-up and pursuit of the business of Insurance and Reinsurance — Solvency II. The new Solvency II regime takes into account recent developments in prudential supervision, actuarial


\(^{65}\) Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC.

science and risk management. This proposal includes the recasting of fourteen Directives and the insertion of new provisions. It applies to life and non-life insurers as well as to reinsurers. However, some insurance companies, such as small insurance companies and pension funds, are not included.

**Directive 2001/17/EC** seeks to ensure, where an insurance undertaking with branches in other Member States fails, that a single winding-up procedure is applied to insured persons, policyholders, beneficiaries and creditors. The Directive reinforces the principle of home country control, it provides for the principles of unity and universality, meaning that only the competent authorities of the home Member State are empowered to take decisions on winding-up proceedings and all the assets and liabilities of the insurance undertaking should as a general rule be taken into consideration in such proceedings. The Directive lays down the rules on coordination between national authorities, publication of winding-up decision, protection of consumers and equal treatment, professional secrecy etc.

**Directive 2002/92/EC** govern insurance intermediaries which are considered to be the vital links in the selling of insurance products in the European Union. The aim of this text is to make it easier for insurance intermediaries to avail themselves of the right to freedom of establishment and freedom to provide services and to guarantee a high level of protection for their customers. It also helps to increase the supply of insurance products to consumers as liberalisation of this sector has chiefly benefited the wholesale market (large industrial and commercial risks) to the detriment of the retail market (insurance for private individuals).

**Directive 2003/41/EC** regulates the activities and supervision of institutions for occupational retirement provision (IORPs). By clearly setting out how IORPs should function, the Directive ensures a high level of protection for members and beneficiaries of pension funds. A specific legal framework for IORPs allows them to offer a maximum degree of security and efficiency.

Alongside these major Directives designed to safeguard both the right of establishment and freedom to provide services, the Community has legislated in the following areas: motor vehicle liability insurance, annual accounts and consolidated accounts of insurance undertakings, legal expenses insurance, credit and suretyship insurance and reinsurance. It has also set up an Insurance Committee to assist the Commission in its task of co-operating with national supervisory authorities in this field.

1.3 Securities market

In the EU securities are an essential source of finance for many companies. To ensure that such investments are effective and transactions secure, the EU imposes common operating conditions on investment bodies. European legislation thus aims to create a single market for investment, in particular by harmonising and improving procedures relating to investment funds. There are also measures relating to the transparency of operations and mechanisms for addressing the risk of abuse or protecting shareholders in the event of investment bodies defaulting.

**Directive 2001/34/EC** (Listing Particulars Directive) lays down the conditions for admission of securities to official stock-exchange listing and the financial information that listed companies must make available to investors. In order to protect investors, information on the financial circumstances of the issuer and details of the securities must be disclosed. More specifically, in the case of securities for which admission to official listing is requested, the information required is published in a prospectus. The coordination of requirements for the drawing-up, approval and distribution of this

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prospectus, a sort of "single passport" for issuers, is ensured by its mutual recognition. The information provided to investors must be minimal, sufficient, regular, adequate and international.

*Directive 2003/71/EC*⁷¹ (Prospectus Directive) is designed to improve the quality of information provided to investors by companies wishing to raise capital in the European Union. To this end, the harmonisation of rules governing the drafting and content of prospectuses is stepped up. A single authorisation system for prospectuses which may be used in all EU Member States ("single passport" for issuers) is also introduced.

*Directive 2004/109/EC*⁷² (Transparency Directive) guarantees a high level of investor protection and efficient markets for securities admitted to trading on a regulated market. This Directive boosts transparency by imposing precise and regular disclosure requirements on issuers of securities. The directive provides for the disclosure of periodic information (annual and semi-annual reports) and ongoing information (whenever events change the breakdown of major holdings that affect the allocation of voting rights).

*Directive 2004/39/EC*⁷³ (MIFID) requires the Member States to harmonise the rules governing investment services and activities. To that end, the Member States must set up an authorisation system enabling investment firms to operate throughout the EU. The Directive harmonises the assessment rules of procedure and criteria for the acquisition of a qualifying holdings. The Directive creates an obligation to safeguard market integrity, to report transactions and to keep records. It includes a set of protective measures for "internalisers" when they are obliged to quote, so that they can provide this essential service to clients without running undesirable risks. These measures include the possibility of updating and withdrawing quotes.

The Directive also establishes a fair market for retail investors. It prevents financial institutions from discriminating between such investors, e.g. by offering some of them improvements to publicly quoted prices.

*Directive 85/611/EEC*⁷⁴ (UCITS) regulates the specific category of investment funds of an open ended kind, with strict limitations as regards the permitted activities. The UCITS Directive ensures competition whilst enhancing the protection of investors. The latter is achieved by strict application of the principle of risk spreading through diversification and an obligation of the issuer to redeem investments at the request of the holders. The directive also covers the authorisation, supervision, structure, investment policy and activities of UCITS funds. It is noted that the European Commission currently considers possibilities to simplify the regime applying to UCITS.

*Directive 2003/6/EC*⁷⁵ aims at combating market abuse. It provides for two types of market abuse: insider dealing and market manipulation and lays down the relevant definition. The Directive requires each Member State to designate a single regulatory and supervisory authority with a common minimum set of responsibilities. These authorities use convergent methods to combat market abuse and should be able to assist each other in taking action against infringements, particularly in cross-border cases.

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Directive 97/9/EC\(^76\) on investor compensation schemes is an essential part of the acquis communautaire\(^76\) in the field of securities. The Directive is safeguarding the confidence in the financial system by providing a guaranteed minimum level of protection of small investors. The system is mandatory for investment firms and provides for a guaranteed repayment within short delays of at least 90% of investments up to Euro 20,000.

2. Progress of Approximation of Georgian Financial Services Legislation with that of the EU

2.1 Legal and institutional framework

The basic laws regulating the financial services in Georgia are the Law on Activities of Commercial Banks, Law on Insurance and the Law on Securities Market of Georgia. The laws are complemented by secondary legislation dealing with different aspects of licensing, supervision and prudential regulation of financial institutions. The level of approximation of the Georgian financial services legislation with that of EU varies from sector to sector. The banking regulatory framework reveals the highest degree of compliance with EU acquis, while the insurance legislation is still missing a number of basic rules and principles embodied in EU acquis as well as other international standards. As regards securities legislation, it shows a considerable degree of compatibility with EU capital markets legislation. However, there are still some inconsistencies and legislative gaps.

Starting from 2007 supervisory authorities of the sector have been reorganised several times. By the amendments to the Law on Securities Market and Law on Insurance of 11.07.2007 State National Securities Commission and Insurance State Supervision Service of Georgia were dismissed and their functions were delegated to the Financial Monitoring Service of Georgia, agency responsible for facilitating the fight against and prevention of money laundering and terrorism financing through financial and other institutions.

The reform has further continued with the adoption of the legislative package on Global Financial Competitiveness (March 2008). As a result the banking supervisory function has been detached from the National Bank of Georgia and transferred to the newly created single supervisory body - Financial Supervisory Agency which consolidated the supervision over the activities of banks, insurance companies and securities brokers.

2.2 Latest developments

Since its establishment in April 2008 the Agency started the process of revision of secondary legislation related to supervisory standards and prudential regulations of financial institutions.

Changes introduced to the banking regulatory framework are mainly of the technical character. The new rules on economic ratios and limits\(^77\) and requirements towards the capital adequacy\(^78\) of commercial banks are almost identical to the previous ones. Therefore, the principles and technical instruments for prudential regulation of banks remain in line with standards set by Basel.

Revised rules on creation of commercial banks’ reserves\(^79\) entitled the banks to place the reserves in EURO, in addition to previously available options to place them in GEL or USD. This measure grants the commercial banks with a greater flexibility to allocate the reserves in the same currency as they were attracted in and as a result to mitigate the foreign exchange risk. By the same rules the

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\(^77\) Decree N8 of the Head of Financial Supervisory Agency of 26.09.2008 on approval of “Rules of Supervision and Regulation of Activities of Commercial Banks”.
\(^78\) Decree N9 of the Head of Financial Supervisory Agency of 30.09.2008 on approval of “Requirements towards Capital Adequacy of Commercial Banks”.
\(^79\) Decree N138 of the President of the National Bank of Georgia of 2.06.2008 on approval of “Rules of Calculation and Maintenance of Minimum Reserves by the Commercial Banks”.
monetary policy of the country has been significantly eased through decreasing the threshold of the minimum reserves from 13% to 5%.

The changes were introduced to the secondary legislation of securities market too. The Decree N22 of the Head of Financial Supervisory Agency of 25.05.2009\(^\text{80}\) consolidated the five separate pieces of legislation regulating the periodic reporting requirements, exemption from reporting obligations, recognition as confidential of the information to be submitted by reporting company and compulsory assignment of securities registrar.

The periodic reporting requirements of the reporting companies suffered the most from the mentioned revision. The new Regulation rather than regulating in detail the framework provisions set forth in the law virtually duplicates the relevant article of the Law on Securities Market. Unlike the old version of the regulation the new rule does not specify the scope and content of the information to be submitted and related procedures. In addition, it abolished the standard outline (forms) of the reports which were annexed to the old version of the regulation and used to guarantee the uniformity of reports submitted by different issuers. Due to such an abridgement of reporting regulatory framework several EU compatible rules and principles applicable prior to revision have become omitted.

In line with the requirements of the EC Directives 2004/109/EC (Transparency Directive)\(^\text{81}\) the regulation provides for the submission of three types of reports: annual, semi-annual and ongoing reports. Transparency Directive requires the annual report to include audited financial statements, management report and statement by the directors that all information is true and fair to the best of their knowledge. The regulation fully meets the requirement towards the first component of the report, namely, it requires the financial report to be drawn up and audited in accordance with the International Accounting Standards and International Financial Reporting Standards. The Regulation only partially meets the provisions of the Directive concerning the second component of the report – management report. It lays down the definition of management report being rather limited in scope and containing very general and ambiguous indications on the content of the information (e.g. it refers to the information on members of management board without specifying what particular information should be provided). The old regulation as well as the EU law is much more detailed and precise regarding the content of the management report. And finally, the third component on annual financial report, the statement by the directors, is completely missing. The letter, although partially, but still was reflected in the old version of the Regulation.

The same goes with half-yearly reporting requirements which have been significantly narrowed down in the scope as well. The semi-annual report of the designated company is now limited to the financial reports only. The requirement of producing interim management report reflecting the important events of the relevant 6 month period as well as the requirement of statement by directors has been abolished, thus drifting apart rather than approximating with EU acquis.

On a positive side it should be noted that the new Regulation prescribes the reports to be submitted in both hardcopy and electronic form and FSA is responsible for the placement of the reports on the website. This measure, aimed at facilitating the access of the investors to the corporate information, perfectly fits to the principles and objectives of Transparency Directive.

Changes to the secondary insurance legislation covered the issues of technical provisions of insurance companies, rules of investment of insurance reserves, capital adequacy and reporting requirements of insurance undertakings.

\(^{80}\) The Decree N22 of the Head of Financial Supervisory Agency of 25.05.09 on approval of “Rules Periodic Reporting Requirements of the Reporting Companies, Exemption from Reporting Requirements, Confidentiality of the Information of Reporting Companies and Assignment of Securities Registrar to Issuer”.

The new Regulation on Creation of Technical Provisions\textsuperscript{82} consolidated two separate pieces of legislation on creation of reserves for non-life insurance classes and for classes of life and pension insurance. The regulation provides for three types of reserves:

- for non-life and life insurance (except for cumulative and repayable classes):
  - technical provisions for unearned premiums,
  - technical provisions for reported but not settled losses,
  - technical provisions for incurred but not reported losses;
- technical provisions for cumulative and repayable classes of life insurance;
- technical provisions for pension insurance.

In order to establish the compliance of the new rules on technical provisions with EU \textit{acquis} further expertise is required.

The new Regulation on Investment of Technical Provisions\textsuperscript{83} has significantly improved the investment possibilities and diversification of assets covering technical provisions of insurance companies. The legislation has been further approximated to the requirements of the EU \textit{acquis} with regard to both categories of authorized assists as well as investment diversification.\textsuperscript{84} The scope of the regulation has been extended to assets covering life assurance technical provisions which had never been regulated before. In line with the requirements of EU Directive the new Regulation introduced the fixed percentage limits for single investment object which in the majority of cases is as low as 1-3\% as well as lowered the thresholds of investments in the same category of assets. With regard to investment in assets located in foreign countries the regulation limited this possibility only to OECD member states and developed countries (e.g. securities issued by the central and local governments of those countries; securities issued by the companies registered in those countries etc.). However, the requirement to invest not less than 80\% of reserves in Georgia have been further maintained, thus creating an obstacle to increase of investment portfolio diversification.

Improvements have been made to reporting requirements of insurance companies through their alignment with international standards. According to the new rule\textsuperscript{85} the insurance companies are required to submit the financial reports on a quarterly basis. The forms of the reports being attached to the new rule have been drawn up in accordance with International Financial Reporting Standards.

\textsuperscript{82} Decree N11 of the Head of Financial Supervisory Agency of 24.12.2008 on approval of “Rules of Creation of Insurance Reserves”.
\textsuperscript{83} Decree N14 of the Head of Financial Supervisory Agency of 20.01.2009 on approval of “Rules of Placements and Investment of Insurance Reserves”.
\textsuperscript{85} Decree N7 of the Head of Financial Supervisory Agency of 19.09.2008 on approval of “Forms of Financial Report of Insurers and Terms of their Submission to the Financial Supervisory Agency of Georgia”.

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C. BACKGROUND PAPER ON PUBLIC PROCUREMENT

1. Summary of EU Acquis

EU considers the public procurement sector as very important since it is necessary for development of the market economy in specific transition country by creating jobs and sustainable growth and by providing tax-payers and users of public services with best value for money.

The acquis on public procurement includes general principles of transparency, equal treatment, free competition and non-discrimination. In addition, specific EU rules apply to the coordination of the award of public contracts for works, services and supplies, for traditional contracting entities and for special sectors. The acquis also specifies rules on review procedures and the availability of remedies. Specialised implementing bodies are required.

Public procurement is subject to Community and international rules although not all public procurement is subject to these obligations. Under these rules public sector procurement must follow transparent open procedures ensuring fair conditions of competition for suppliers. Some purchases can be exempted from Community rules under certain conditions (ex: arms, munitions and war material, if this is necessary for the protection of the essential interests of security) and purchases below thresholds must respect the principles of the Rome Treaty only. General public procurement rules – fair, competitive, transparent and non-discriminatory bidding, come from the Rome Treaty. Several Directives have completed these rules, with respect to procedural requirements (89/665/EEC, 92/13/EEC, 93/36/EEC, 93/37/EEC). Further, the legislative package of public procurement Directives\(^{86}\), approved in 2004 by the European Parliament and the EU's Council of Ministers, are devoted to simplify and modernise procurement procedures, for example by facilitating electronic procurement in the public sector. The Directives of 2004, as well as the previous sectoral directives laying down common rules with respect to public procurements, need implementation at national level and their purpose is to coordinate the procedures to be followed in Member States whenever a contract is to be awarded the value of which exceeds given thresholds (large scale contracts). For contracts below the thresholds, the Directive does not bind national rules, though the general principles of the Treaty (although clarified or not in the Directive) still apply. Actually, below thresholds, national rules are not uniform, so that each member state has its own public procurement rules, which must only respect the general principles laid down in the Treaty – particularly, a fair and competitive legislation with non-discrimination in respect of goods and services.

1.1 Aims of primary legislation

Central aims of the EU public procurement acquis and policy are:

- Non-discriminatory award of public contracts through fair competition;
- Rational distribution of public funds through the choice of the best offer;
- Bidders’ access to single market with effective business opportunities and
- The reinforcement of competition among European enterprises.

Countries, therefore, have to establish transparent procurement systems based on the principles of open and fair competition, aimed at economically efficient procurement system, promotion of international trade and attracting investments. All these elements support economic development of specific transition country.

EC Treaty does not specifically mention public procurement. It lays down basic principles applicable to public procurement systems, which contracting authorities have to observe when awarding all contracts, including those whose value falls below the thresholds for application of specific rules. Precisely, for practical reasons, the scope of EU Directives is limited to “large” procurement transactions that are differentiated from smaller transactions by cost thresholds.

The Treaty principle governing all public supply contracts is the free movement of goods and the ban on quantitative restrictions on import-export and all measures having equivalent effect. This is applying both to goods originating in the EU and to goods from non-member countries that are put into free circulation in the Member States. However, the Treaty allows Member States to keep or to introduce prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property, provided that the prohibitions or restrictions do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

1.2 Secondary legislation

The Treaty placed a general ban on discriminatory measures and unfair treatment, but it was not sufficient to establish a single market in the specific area of public procurement. Differences between national rules followed with the lack of any obligation to open up contracts to EU-wide competition kept national markets without foreign suppliers. Furthermore, the policy of “buy national” contributed to a great extent to low level of competition in public procurement sector within Community. Directives were needed, for that reason, to ensure that public contracts throughout the EU were open to firms from all Member States on equal terms. The other aim was to create procurement procedures more transparent in order to have effective compliance with the principles laid down in the Treaty. The Council, Parliament and the Commission created EU acquis covering works, supply of goods and service contracts awarded both by traditional contracting authorities (central government or regional and local authorities) and by public, semi-public and private entities operating in the water, energy, transport and telecommunications sectors. Commission and the Court of Justice are doing monitoring of the application of directives, as well as national courts that have developed significant case-law system for supplementing the legislative framework. The role of directives is to harmonize Member States’ national rules on awarding of contracts by requiring proper advertising and transparency, establishing an order of preference between award procedures, common rules on technical specifications and fixing criteria for selection of candidates and awarding contracts. Directives also contain remedies available to companies in case of breach of acquis on public procurement. EU acquis includes three main fields: 1) procurement by public contracting authorities (central government and regional or local authorities); 2) procurement by contracting entities operating in the water, energy, transport and telecommunications sectors and 3) remedies or review procedures, which must be available in the event of a breach of the acquis.

Main EC Directives on public procurement were: 93/36EEC (supplies), 93/37/EEC (works), 97/52/EC (amendments to 93/36/EEC, 93/37/EEC and 92/50/EEC), 92/50/EEC (services), 93/38/EEC (supplies, works and services within the utilities sectors: water, energy, transport and telecommunications), 98/4/EC (amendments to 93/38/EEC – utilities) and Directives on remedies: 89/665/EEC and 92/13/EEC. The European Union’s Council of Ministers and the European Parliament adopted the Public Sector and Utilities Consolidated Procurement Directives on 3 February 2004, which replaced the above stated sectoral directives. They came into force on 30 April 2004, the day they were published in the Official Journal of the European Union.

1.3 Public sector

The Public Sector Consolidated Procurement Directive is a single Directive, which replaces three EC directives covering the procurement of works, supplies and services. It aims to clarify, modernise and
simplify the provisions of the existing directives and specifically, it consolidates the three directives, relating to the award of public works, supplies and services contracts respectively, into a single text.

Directive aligned the rules on public supply contracts, so that EC firms could use a clear, transparent text and exercise the specific rights which they enjoy. Public supply contracts are contracts for pecuniary interest in writing form between a supplier and a contracting authority, involving the purchase, lease, rental or hire purchase, with or without option to buy, of products between a supplier and a contracting authority. The delivery of such products may, in addition, include siting and installation operations. The criteria for selecting suppliers have to do with their good reputation and technical capability (product conformity certificates, major deliveries for the past three years, etc.). The criteria for awarding contracts must be either the lowest price or the most economically profitable tender (in terms of price, delivery date, cost-effectiveness, etc.).

Public supply contracts and public works contracts are to be differentiated according to the subject of the contract, i.e. whether the purpose is to make goods available to the contracting authority or to provide it with the construction or civil engineering works. Directive defines that it applies to contracts which have as their object either the execution, or both the execution and design, of works involving certain professional activities (building, civil engineering, installation or building completion work).

Directive defines contracting authorities as the State, regional or local authorities, bodies governed by public law, or associations formed by one or more such authorities or bodies governed by public law.

Rules on public service contracts distinguish its scope by taking the value of the different components of a contract as its reference criterion (depending on whether the value of the products or the services is greater).

In order to improve transparency of the public contracts’ awarding procedures, the Commission has, in close collaboration with the Member States, launched the SIMAP public-procurement information system, aimed at making optimum use of new information technology. In addition, the Commission enables potential suppliers to consult the TED (Tenders Electronic Daily) data base on many tender invitations by contracting entities. Transparency principle means that the procurement process shall be characterized by predictability and openness, i.e. the announcements shall be made of procurement over the threshold values, the evaluation criteria are to be given in the documentation and if possible, ranked in order of importance.

Proportionality principle assumes that qualification requirements and requirements in the specification of supplies/services/works must be in reasonable proportion to the supplies/services/works which are being procured. Briefly written, public procurement contracts are to be awarded in accordance with a number of Directives’ rules in relation to publication of tender notices, long enough deadlines for the submission of applications and tenders, the use of European standards for defining technical requirements, the procedure that ensures the widest possible competition for contracts and the criteria for selection of candidates and awarding contracts.

1.4 Utilities

The majority of categories of entities and activities are covered in the new Utilities Directive as before. The key changes are that the telecommunications sector has been removed following introduction of effective competition within this sector while the postal services sector, previously covered by the public sector rules, has been included, although Member States had to effect this change until 1 January 2009.

Procurement in the area of utilities, by contracting entities operating in the water, energy, transport and telecommunications sectors is the second important field of the EU acquis, which is also very important economically. However, the EC rules in this field are more flexible comparing to those applicable to contracting authorities at central, regional or local government level, due to the fact that
some of entities operating in utilities sectors come under public law and others under private law. Procurement in this area includes supply, works and service contracts awarded in connection with the activities involved in: 1) providing or operating networks for the production, transport or distribution of drinking water, electricity, gas or heat; 2) exploring or extracting oil, gas or coal or providing carriers with airport or maritime or inland port facilities; 3) operating rail, tram or bus transport networks and 4) operating public telecommunications networks or providing public telecommunications services.

1.5 Outlines of the new directives

Many of the basic provisions remain the same as in the previous sectoral directives. There are some refinements, however, in terms of: a) simplified EU thresholds expressed in Euros; b) encouragement to use performance specifications and more emphasis on “equivalence”; c) requirement to publish contract award criteria; d) addressing of sustainability issues; and e) greater emphasis placed on electronic means of communication. There are also a number of significant additions to the existing public sector Directives as follows:

Framework Agreements. Under the existing public sector directives, the legality of framework agreements was unclear. The new Directive gave legal certainty to the use of framework agreements under EC rules. This is the first time that a provision on framework agreements has been explicitly included in a public sector directive.

E-Procurement. The Directives put electronic means of communication and information exchange on a par with more traditional means. They marked a change from the public procurement directives that allow electronic means only to be used to submit tenders under certain conditions. To promote the use of e-procurement, the new Directives provided for shorter time scales where electronic means of communication and information exchange are employed. They also introduce and regulate the use of electronic auctions and dynamic purchasing systems.

E-Auctions. The Directives provide Member States with the explicit option of allowing contracting authorities to use reverse electronic auctions and provide that the award of a public contract can be preceded by an e-auction when the contract specifications can be established with precision. They lay out what information about the e-auction needs to be included in the contract notice and specifications.

Dynamic Purchasing Systems. The new Directives state that Member States ‘may provide’ that contracting authorities use dynamic purchasing systems. A dynamic purchasing system is defined as a completely electronic process for making commonly used purchases. Dynamic purchasing systems are limited in duration to four years, except in exceptional cases, and are essentially a completely electronic version of a framework agreement. Unlike a framework agreement, however, dynamic purchasing systems are open throughout their period of operation to any economic operator that satisfies the selection criteria and has submits an indicative tender compliant with the specification.

Competitive Dialogue. The Directives introduce a new procedure, the competitive dialogue. Similar to the negotiated procedure, it specifically permits dialogue between the contracting authority and contractors during the stages of the procurement process. This new procedure is aimed at large, complex contracts such as PFIs (Private Finance Initiative) and PPPs (Public Private Partnership). It enables contracting authorities to develop specifications with the input of contractors, and to assist contractors in developing tenders that are responsive to the specifications.

Social and Environmental Issues. There is also greater clarity in the new Directives on the extent to which social and environmental issues can be given consideration during the procurement process.

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87 The EC Public Sector Directive (2004/18/EC) defines a framework agreement as “an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.” The Directive (Article 32) further specifies that a framework agreement should not have duration of more than four years.
e.g. by using “green” specifications, production process standards and variants and by taking account of relevant quality and whole life cost issues at the award stage.

1.6 Remedies

Review procedures in case of a breach of the EC legislation are the third integral segment of the EU acquis on public procurement. Remedies must be available to bidders in the event of an infringement of the EC law. The review procedures or remedies are to be effective and quick to ensure greater transparency and non-discrimination in the award of public contracts. The essence of remedies is to deal with any infringements as a matter of urgency to enable unlawful decisions to be annulled and damages to be awarded to companies, which have been harmed as a result of the violation. In all member States, such remedies must include the possibility of taking interim measures (such as suspension of the award procedure in question), the setting aside of unlawful decisions and discriminatory technical, economic and financial specifications in the invitation to tender, and the compensation of injured parties.

A special procedure has been introduced whereby the Commission, when it finds that a clear infringement of the EC acquis has been committed, may notify its reasons to the Member State and the contracting authority concerned requesting that the infringement be corrected. The Member State is then obliged to reply within 21 days. If the Commission is not satisfied with the reply, it may initiate the infringement procedure and apply to the Court of Justice to take interim measures where appropriate. Whether supplies, works or services are concerned, EC Directives on remedies will ensure that companies enjoy the same level of legal safeguards in all Member States.

Directive 92/13/EEC regulates the existence of effective and fast review procedures in the awarding of public contracts for water, energy, transport and telecommunications sectors (so-called “excluded” sectors). The aim of this Directive is to introduce an attestation system which contracting authorities may use as well as to set up a conciliation procedure at Community level. The attestation system enables independent persons to examine compatibility of the procurement procedures with EC acquis. A conciliation procedure provides for disputes between an interested party and a contracting entity to be settled amicably by a conciliator designated by the Commission and two conciliators appointed one each by the two sides. The Directive also provides for the possible award of damages to injured parties. Member States have two option related to review procedures: either to intervene directly in contract-award procedures (by suspending the procedure or setting aside certain decisions) or to exert an indirect influence on contracting entities (by imposing financial penalties for infringement).

2. Progress of Approximation of Georgian Public Procurement Legislation with that of EU

2.1 Legal and institutional framework

From 1998 till 2006 the main act providing the principles of public procurements in Georgia was the Law on State Procurements. Since January 2006 the new law on State Procurements and consequent implementing regulation entered into force, which improved and modernised the previous ones. For preparation of the both laws the UNCITRAL Model Law on Public Procurement of Goods, Construction and Services were used as a principal source. Presently, the Georgian legislation framework providing the principles and rules for public procurements consists of the Law of Georgia on State Procurement, Regulation of the Rules on Implementation of State Procurements, Charter of the State Procurement Agency, the Charter of the Supervisory Council at the State Procurements Agency, and the normative acts adopted in a form of the orders of the chairperson of the State Procurements Agency.

The main goals of the Law on State Procurement are the provision of rational disbursement of state resources allocated for State Procurements, development of sound competition in production, execution of works and service delivery for public needs; provision of non-discriminative approach towards participants of procurement proceedings; achievement transparency in the State procurement as well as the creation of a common system of State Procurements and building public confidence in that system.

The scope of application of the Law on State Procurement covers the procurements of any goods, services and works, done at the expense of both central State and local budgets. Prior to amendments of December 2008 the Law used to apply also to procurements of those legal entities where state participation is more that 50%, starting form the procurement of inventory up to the realisation of targeted programs, including advisory and intellectual service, scientific researches and construction works. The provisions of the Law are not applicable with regard to the supply that is related to state secrecy issues.

The Georgian law follows a decentralised system of procurement so that every body funded by the state is to procure their supply with goods, services or construction works themselves.

The institutional reform of 2006 resulted in the creation of independent government office for Public Procurement (legal person of public law – State Procurement Agency), is being continued and includes the development of subordinate legislation, as well as the improvement the efficiency of the law through new legislative amendments.

The underlying sources in preparing the Law on State Procurements, which is mainly based on UNCITRAL Model Law on Public Procurement of Goods, Construction and Services, were EC Treaty, EU directives in the field of public procurement, and other rules, models and procedures of international institutions specialized for procurements. Thus, it to some good extent satisfies modern procurement standards and reflects basic principles of the above-mentioned instruments and creates grounds for further legislative approximation.

2.2 Latest developments

Since April 2008 there were several amendments (dated as: 26.09.2008, 7.10.2008, 5.12.2008, 26.12.2008, and 27.03.2009) introduced in the law on State Procurements during the reporting period. It could be said for sure that none of these changes were adopted with the aim of approximation of Georgian public procurement regulatory framework with that of the EU. They mainly served the purpose of solving the practical problems the procuring organisations were confronted with during the implementation of the law. Those changes even hardly tackle the issues that are harmonized at the level of the EU. However, if seen from the broader perspective of compliance with the spirit and logic behind the EU public procurement acquis, a number of measures are still worthy to be mentioned and this especially refers to the changes introduced in December 5, 2008.

For example, by the abovementioned changes the enterprises the 51% of the shares of which is owned by the state or local governmental bodies, were excluded from the scope of the application of the Law. Pursuant to the same changes, the Government of Georgia and local governance bodies have become entitled to issue individual procurement rules for the enterprises being in their ownership. Such a mechanical exclusion of the public owned entities from the scope of application of the Law can not be considered as a step towards approximation. The EC public procurement policy trends to simplify procedures and make them more efficient but not at the expense of limitation of the sphere of regulation.

The Law specified the limitations with regard to persons entered into the registry of dishonest tender participants, candidates and suppliers. According to the changes the registry is kept by the Public Procurement Agency. The person entered in this registry is banned to participate in tenders of the same goods, works and services for 2 years from the moment of being entered in the registry. This
amendment may be considered as a positive step towards the improvement of implementation of the principles and therefore good for approximation process.

On appositive side, the rectification of existing shortcomings of the appeal procedure should be mentioned. It set 10 days timeframe for the purchasing organisation to publish the written decision on the complaint filed by the applicant.

Amendment of 7 October 2008 broadened the scope of application of the single source purchase has been broadened with setting the additional ground for its application. In particular, the procedure can be applied if procuring organisation in order to replace the previously purchased one or more means of motor transport or computer hardware purchases the new one or one with improved parameters providing that old transport means or hardware have to be returned to the supplier and its cost will be deducted from the price of the new commodities.

By rising the monetary thresholds for the application of single source purchases the possibilities of application of this mechanism has been further extended. Price quotation procedure can now be applied if the estimated value of the goods and services to be purchased does not exceed GEL 100 000 (GEL 50 000 earlier) and estimated value of the works to be purchased – GEL 200 000 (GEL 120 000 earlier). The threshold has also been raised for the single source purchases - from GEL 20 000 to GEL 50 000 for goods and services and from GEL 50 000 to GEL 100 000 for works.

Such broadening of the scope of application of the single source procurement cannot be considered as corresponding to the EC public procurement policy. The new public sector directive trends to limit terms of framework agreements, while amended Georgian law neglects this issue and instead broadens repeated use of single source procurements. Overuse of single source purchases in Georgia was criticised several times and this new amendment would not be helpful to improve the situation and to have a progress in legislative approximation.

As mentioned above the major part of the amendments is devoted to elimination of shortcomings revealed by the practice. They are designed to soften the burden of the law and to make the implementing bodies more autonomous and flexible in operating in shortage of time. However, in the context of legislative approximation with the EU acquis, it should be admitted that reviewed package of amendments can not be considered as a step towards approximation. E.g. while the specification of the limitations with regard to persons entered into the registry of dishonest tender participants, or the improvement of appeal procedure moves the process closer to the principles of primary EU legislation, the exclusion of state-owned enterprises (the enterprises the 51% of the shares of which is owned by the state or local governmental bodies) from the scope of the application of the Law, and broadening of the scope of application of the single source purchase though do not create principle incompliance with the EU regulations, nevertheless could be considered as not being in line with the spirit of EU public procurement acquis.
VI. OTHER RELATED AREAS

A. BACKGROUND PAPER ON TAXATION

1. Summary of EU Acquis

According to the EU Tax policy indirect taxes are harmonized since they affect free movement of goods and services. Although direct taxes are within sole responsibility of Member States, certain measures are taken by the EU to prevent tax avoidance and double taxation.

1.1 Indirect taxes

The indirect taxes (value added tax and excise duties), which affects free movement of goods and the freedom to provide services are harmonized in the EU law.

Value Added Tax (VAT) is levied at all stages in the production and distribution of goods and services and requires equal tax treatment for all domestic and import transactions. The Council Directive\(^89\) introduced the common system of VAT in the European Community (EC).

The standard rate of VAT should not be less than 15 %. Although, member states are allowed to have one or two reduced rates of not less than 5%. Also, by way of derogation from the normal rules, certain Member States are authorized to maintain reduced rates, including those lower than the minimum or zero rates, in certain areas.

EU legislation provides for VAT exemptions without the right to deduct in certain areas like medical care, certain financial services for socio-economic reasons. Another type of exemption with the right to deduct (in Georgia VAT zero rate serves the same purpose) is allowed in the areas of export or other transactions related to international trade.

Regarding excise duties EU law provides for minimum rates of duty and common rules on the holding and movement of excisable goods (including the use of tax warehouses)\(^90\).

The products subject to excise duty are mineral oils, alcohol and alcoholic beverages, and manufactured tobacco.

At the same time, each Member State determines its rules concerning the production, processing and holding of products subject to excise duty.

1.2 Direct taxes

The purpose of the Parent-Subsidiary Directive\(^91\) on cross-border dividend distribution is to eliminate double taxation of profits distributed in the form of dividends by a subsidiary in one Member State to a parent company in another Member State.

According to the Directive profits distributed by a subsidiary company to its parent company are exempt from withholding tax. At the same time, when assessing the parent company’s share of the profits of its subsidiary as they arise the State of the parent company shall either exempt those profits or authorize the parent company to deduct from the amount of tax due that fraction of the corporation tax related to the parent company’s share of profits and paid by its subsidiary.

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The Interest and Royalty Directive\textsuperscript{92} aims elimination of double taxation on interest and royalty payments made between associated companies of different Member States through elimination of withholding taxes on income received in the form of royalty and interest. Interest and royalty payments arising in a Member State will be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State.

The Savings Directive\textsuperscript{93} was adopted to insure effective taxation of income received by individuals at residence level.

According to Directive most of the states have to provide information to the residence member countries within the certain time period. The communication with residence country should be automatic at least once a year. However, limited number of named states would be allowed to operate transitional withholding tax and these member states will implement exchange of information, as soon as the conditions permit. However, states not obliged to pass the information are entitled to receive such information. Instead, exempted states should impose 15\% of the withholding tax during the first three years and 20\% for the subsequent three years and 35\% thereafter. At the same time, they have to transfer 75\% of the revenues received from withholding tax to the country of residence.

The Directive sets out its own definitions of “beneficial owner” and “paying agent” which hence different from those of Member States. Consequently, Member States apply internally established concepts while using withholding tax against residents. “Paying agent” is an economic operator (physical or legal person) paying interest to or secures the payment of interest for the immediate benefit of the beneficial owner. The beneficial owner is any physical person receiving interest for his own benefit.

As for definition of interest payment it “does in fact cover all income from debt-claims, including income from capitalization bonds and zero-coupon bonds. In such cases the sum involved is the amount of the income realized at the sale, refund of redemption of the debt-claims. All interest payments made within the EU are covered, irrespective of the place of establishment of the debtor.”

For the purpose of eliminating double taxation Member State of residence has to grant tax credit against income tax liability of the beneficial owner. In case when tax withheld exceeds the tax to be paid, Member State should compensate the difference amount to the beneficial owner.

The Merger Directive\textsuperscript{94} established common tax system for mergers, divisions, transfers of assets and exchanges of shares in which companies from two or more Member States are involved and addresses the tax problems arising from the joining of two or more companies of different Member States.

According to the Directive, capital gains received as a result of merger or similar operation is exempt from tax. Moreover, it allows carrying forward loss occurred as a result of merger of similar operation.

In order to enhance candidate countries’ administrative capacity in adopting, applying and enforcing the acquis communautaire in preparation for EU membership the Fiscal Blueprints were developed. Fiscal Blueprints are issued by European Commission's Directorate- General for Taxation and Customs Union.


\textsuperscript{94} Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States amended by Directives 2005/19/EC and 2006/98/EC
The Blueprints help to assess tax administration in the following areas:

1. Framework Structures and Basis:
   a. Overall Framework of a Tax Administration
   b. Structure and organization
   c. Tax Legislation
2. Human and Behavioral Issues
   a. Human Resource Management
3. Systems and Functioning
   a. Revenue Collection and Enforcement
   b. Tax Audit
   c. Administrative Cooperation and Mutual Assistance
   d. Fraud and Tax Avoidance
4. Taxpayer Services
   a. Taxpayer Rights and Obligations
   b. System for Taxpayers’ Management
   c. Voluntary Compliance
5. Support
   a. Information Technology
   b. Communications

The Fiscal Blueprints can serve as a tool for assessing Georgian Tax Administration regarding its compliance with modernization standards within the EU and degree of its effectiveness to implement community legislation.

2. Progress of Approximation of Georgian Tax Legislation with that of the EU

2.1 Legal and institutional framework

To the large extent VAT provisions of Georgian Tax Code are compliant with the Sixth VAT Directive95, in particular with regard to definitions (except some differences occur in the definition of taxable amount and place of rendering services); tax exemptions; tax rates (no reduced rates), etc.

Taking into account that each Member State determines its rules concerning the production, processing and holding of products subject to excise duty, Council Directive mostly regulates arrangements for monitoring the cross-border movement of excisable products96. In this regard, Georgian legislation corresponds to the EU requirements through customs rules on internal transit of goods including excise goods and duty suspension arrangements (customs warehouses). At the same time, there are some differences in calculation of excised duty, for instance cigarettes are subject to a proportional excise duty which is calculated on the basis of the maximum retail selling price, inclusive of all taxes, and for some products is calculated per unit of the product97. Georgia utilizes merely calculation per unit of the product.

The direct taxes are within sole responsibility of Member States; however, certain measures are taken by the EU to prevent tax avoidance and double taxation. Georgia has established the network of bilateral agreements between Georgia and EU Member States on avoidance of double taxation in line with the OECD Model Tax Convention. The double taxation agreements once effectively implemented will improve compliance with key EU directives on direct taxation including Parent-Subsidiary, Merger, Savings and Interest and Royalty Directives.

97 Council Directive 95/59/EC of November 27 1995 on taxes other than turnover taxes
On March 1, 2007 three revenue structures: Tax Department, Customs Department and Financial Police were combined into Revenue Service. The new agency was inspired by the Estonian model and considers functional integration of tax, customs and financial police authorities. Despite initial scepticism towards this integration, the new Revenue Service showed its effectiveness, confident steps towards modernization and voluntary compliance approaches and therefore, increased institutional and operational capacities.

2.2 Latest developments

*Value added tax (VAT)*. Changes of December, 2008 made to the Tax Code facilitates the improvement of the procedure for providing tax deduction (credit). Namely, according to the old provisions, VAT invoice, which is basis for credit, could be issued only within two days after the supply takes place and taxpayers would loose the right to credit if the invoice issued otherwise. Now the two days apply to the request from the person the goods are supplied to. This will allow taxpayer to be more flexible in issuing an invoice and getting a credit. These new requirements are in compliance with VAT Directive since it does not limit time of issuing an invoice rather than for the tax period.

However, it should be noted that VAT invoices system needs to be further improved since it is still cumbersome and contradicts Article 22 of the mentioned Directive. The current tax legislation requires taxpayer to obtain 4 copies of VAT invoice – strict accounting document from the tax authorities printed on protected paper with unique identification number. Two copies out of four shall be submitted to the tax authorities by supplier and purchaser. Then, they are matched by the tax IT system. This system creates barriers to trade and do not guarantee proper tax control.

*Double taxation*. According to ENP AP general objectives and actions (4.5.5 Other key areas) Georgia has to “Complete the network of bilateral agreements between Georgia and EU Member States on avoidance of double taxation in line with the OECD Model Tax Convention”.

The effective double taxation relief mechanism and exchange of information will ensure compliance with key EU directives on direct taxation including Parent-Subsidiary, Merger, Savings and Interest and Royalty Directives.

Georgia continues cooperation with different countries to deal with double taxation issue. For the moment, Georgia has double taxation treaties in force with 24 countries. Double taxation treaties with 5 countries are ratified but not effective and negotiations with 10 more states including Singapore, UK, Switzerland, Spain, Israel and Cyprus are underway.

However, impressive network of double taxation treaties is not sufficient in eliminating double taxation. Implementing measures (secondary legislation) shall ensure proper implementation of double taxation treaties. Current secondary legislation makes almost impossible to get double taxation treaty benefit. This fact was recognized by the Government and new draft regulation was developed.

According to the proposed instruction DTA benefits can be granted upon payment of income. Double taxation relief information forms should be submitted once a year together with annual income tax return. It is important to establish an effective procedure which will enable Georgia to provide the anticipated DTA benefits by relief at source rather than requiring foreigners to rely on obtaining refund of tax. And in fact, proposed instruction offers this option. However, practice could deliver reverse effect by holding the withholding agent liable and penalized for the incorrect information submitted to the Revenue Service (Art.2.6 and 2.7) despite there was no fault on his part. Therefore, fear of being penalized might force payer of income to withhold tax and then apply for the refund which could lead back to the same problems we have today.

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98 ENP EU-Georgia Action Plan
The draft regulation abolishes residence certificate and introduces self-certification. The self-certification of residency and beneficial ownership will be introduced for double taxation relief on any income up to 50,000 GEL and any amount of income received in the form of dividend and interest. Ideally, self-certification shall be introduced for all cases without any threshold. The self-certification replaces mandatory requirement of residency certificate from foreign authorities. The process of obtaining residency certificate is time consuming and expensive. During self-certification foreign income recipients file a request with the withholding agent self-certifying as to their entitlement to DTA benefits. The non-resident is also required to certify that if any of the situations certified to change the withholding agent will be notified.

The draft regulation abolishes the legalization\apostile requirement. Legalization or even simplified legalization through apostile is an expensive and time consuming process. Elimination of this requirement will facilitate to faster and more effective procedure for granting DTA benefits.

According to the proposed procedures the right to claim double taxation benefits can be enjoyed both by an income recipient and a paying agent, while under the current legislation the right is limited to non-residents only. If a request is submitted by a paying agent, refunded amount is transferred to his account, paying agent in his turn transfers the amount to the appropriate non-resident. If the request is presented by a nonresident income recipient, the refunded amount is transferred directly to him. This change introduces more efficient double taxation relief mechanism.

Pursuant to the draft regulation foreign country residence certificate can be submitted in any form and is valid until end of the calendar year. Requirement for foreign government certification is retained for double taxation relief on income above 50,000 GEL. Currently Georgian tax inspectorate require such certificate to be sent by foreign authorities on official letterhead, signed and stamped with official steal. These mandatory requirements causes substantial burden and obstacle to obtaining the required benefits as criteria of filling of documents differ by countries and there exist no unique rules for completion. New procedures will eliminate mandatory requirements and Georgian tax inspectorates will receive foreign country residency certificate submitted in any form. Besides, the validity of the certificate was prolonged by the end of the calendar year.

*Tax risk management.* With reference to ENP AP Priority Area 2 Georgia shall “continue the modernization, simplification and computerization of the tax administration. Ensure the smooth enforcement of the new Tax Code also by defining all necessary administrative structures and procedures, including a fiscal control strategy, audit and investigation methods, co-operation with the tax payers and tax compliance.” Also according to the tax audit fiscal blue prints, risk-based audits shall be introduced.

From April, 2009 tax authorities in Georgia began selecting taxpayers for audit based, in part, on an automated risk-based selection system. The new system automatically generated 100 high-risk companies based on 12 tax risk profiles programmed into risk management software. The Revenue Service managers then have been reviewing the list and selecting companies from that pool for audit. Based on ongoing experience, the risk profiles will be modified in order to minimize the human role in audit selection.

*E-filing of tax returns.* E-filing of tax returns falls within the same area of ENP AP\(^\text{99}\) and corresponds to Information Technology Blueprint. E-filing is one of the key MOF electronic services reducing tax compliance costs and facilitating voluntary payment of taxes. E-filing system was gradually implemented for all taxes starting with VAT in November, 2007. Introduction of electronic filing aims at increasing accuracy and efficiency, decreasing taxpayer burden, enhancing voluntary compliance and reducing Revenue Service administrative costs. Paper VAT invoices are no longer required if taxpayer submits VAT return electronically. The number of e-filers increased on average by 35% a

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\(^{99}\) ENP EU-Georgia Action Plan, Priority Area 2
month over last 12 months. For the moment over 3500 taxpayers are registered for electronic services.

Voluntary disclosure. Voluntary Compliance Blueprint and ENP AP Priority Area 2 recommends for “co-operation with the taxpayers and tax compliance”. One of the last year changes to the Tax Code enhances voluntary disclosure concept and allows taxpayer to change the declaration without being penalized (Articles 97, 124 (2.1) of Georgian Tax Code). This concept increases compliance of companies with tax legislation. According to EU practice companies have possibility to amend tax declarations and correct any procedural mistakes without getting penalized, before these mistakes are revealed by tax audit or before tax authorities make decision about auditing the company.
B. BACKGROUND PAPER ON ROAD TRANSPORT

1. Summary of EU Acquis

1.1 Carriage of goods

Safer and more competitive high-quality road transport system. Communication from the Commission to the European Parliament and Council of 21 June 2000 - Towards a safer and more competitive high-quality road transport system aims to indicate the measures necessary to deploy a coherent, global policy so as to ensure the development of a safer and more competitive high-quality road transport system. Commission has developed a global strategy for the sector. The measures proposed come under four objectives: 1) preparing legislation on the organization of working time for drivers; 2) fair conditions of employment for drivers; 3) improving road transport monitoring; 4) improving professional training for drivers.

Statistical information. Council Regulation N1172/98 as amended by subsequent Regulations organizes the collection on a comparable basis of statistical data on the carriage of goods by road with the purpose of establishment of an integrated system providing reliable, compatible and up-to-date data. The variables are organized in three general domains – vehicle-related, journey-related and goods-related data. The Regulation does not apply to carriage of goods by road by means of motor vehicles whose permitted weight or dimensions exceed the normal permitted limits and agricultural vehicles, military vehicles, and vehicles used by central governments and public services. Regulation determines minimum standards to insure accuracy of gathered data.

Charging of heavy goods vehicles for use of certain infrastructure. Directive 1999/62/EC of the European Parliament and of the Council harmonizes levy systems – vehicle taxes, tolls and charges relating to the use of road infrastructure. Document sets minimum rates to be applied and leaves room for derogation from the minima to facilitate adaptation to the required levels. Aim of the Directive is to encourage use of road-friendly and less polluting vehicles by differentiation of taxes or charges. Document lists the conditions under which tolls or charges should be maintained and/or introduced (e.g. impositions only on users of motorways, bridges, tunnels and mountain passes; principle of non-discrimination; periodical re-examination of rates; proportionality of rates to duration of use of infrastructure, etc.). Directive 2006/38/EC of 17 May 2006 amends the Directive with a view to establishing a new Community framework for charging for the use of road infrastructure. This makes it possible to improve the efficiency of the road transport system and ensure the proper functioning of the internal market. The Directive lays down rules for the application by Member States of tolls or user charges on roads, including roads on the trans-European road network and roads in mountainous regions. Member States are able to differentiate tolls according to a vehicle's emission category ("EURO" classification) and the level of damage it causes to roads, the place, the time and the amount of congestion. This makes it possible to tackle the problems of traffic congestion, including damage to the environment, on the basis of the "user pays" and "polluter pays" principles.

1.2 Carriage of passengers

Council Regulation N684/92 of March 1992 as amended by Council Regulation N11/98 of December 1997 sets standards for insuring efficient and high-quality services in transportation of passengers: greater passenger comfort, right to information on fares, contractual terms, handling of complaints, dispute resolution, etc. Document sets control procedures and penalties, identifies types of services and their subjection to authorization, as well as conditions and procedures for acquiring authorization. Control procedures and penalties are provided for in this Regulation: travel documents must be supplied to passengers, transport operators must allow inspections, authorization may be withdrawn for breaches of the Regulation, etc. Occasional services, special regular services covered by a contract between the organizer and the carrier and unladen journeys are exempt from any authorization. On the opposite regular services and special regular services not covered by a contract
between the organizer and the carrier are subject to authorization. The Regulation lays down the procedure for authorizing regular services.

1.3 Employment and working conditions

**Working and Driving Time.** EU legislation (Regulation (EC) 561/2006 and Directive 2002/15/EC) regulates issues related to organization of working time on road transport and driving time for drivers of certain types of vehicles. These documents set schemes of work and rest hours, exemptions from the rules based on type of transportation and distance driven, require from drivers use of tachographs, oblige transport undertakings to ensure compliance with these requirements and establish sanctions for non-compliance. This Regulation applies to the carriage by road of goods by vehicles with a total mass exceeding 3.5 tones and to the transport by road of passengers by vehicles which are adapted for carrying more than nine persons. Drivers and drivers' mates must be at least 18, except in certain circumstances for trainee drivers' mates for whom the minimum age is 16. Transport undertakings may not award bonuses related to distances travelled or the amount of goods carried if that payment is such as to endanger road safety. They must ensure that transport time schedules are in line with this Regulation and that data from digital tachographs are downloaded at the right time and kept for at least 12 months. Transport undertakings shall be liable for infringements committed by drivers of the undertaking, except in cases where it cannot reasonably be held responsible, such as when a driver working for more than one transport undertaking has not provided sufficient information to each of these undertakings for them to be able to take the necessary measures to comply with this Regulation. Member States shall lay down a system of effective, proportionate and non-discriminatory penalties in order to ensure compliance with the Regulation.

**Admission to occupation and recognition of diplomas.** Directive 96/26/EC consolidates existing legislation on admission to the occupation of road haulage operators and road passenger transport operators, mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators. Directive specifies the minimum criteria with which potential road transport operators must comply, namely good repute, appropriate financial standing and professional competence. Member States must accept as sufficient proof the certificates and documents issued by another Member State certifying that these conditions are satisfied.

1.4 Road safety

**Roadworthiness.** Technical requirements for conducting roadworthiness test are set by Council Directive 96/96/EEC. It covers buses, coaches, heavy goods vehicles, trailers and semi-trailers weighing more than 3.5 tones, taxis, ambulances, light commercial vehicles weighing not more than 3.5 tones (pickups and vans), private cars with not more than eight seats, excluding the driver's seat. The Member States may exempt from the Directive armed-forces, public-order and fire-fighting vehicles and certain vehicles used under exceptional conditions. The roadworthiness test carried out by the Member States, or authorized bodies focuses, in particular, on the following: braking system; steering and steering wheel; visibility; lamps, reflectors and electrical equipment; axles, wheels, tyres and suspension; chassis and chassis attachments; nuisance, including exhaust emissions; vehicle identification; various items of equipment. The frequency of the tests varies according to vehicle type. Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 sets out the legal framework for roadside roadworthiness checks on commercial vehicles that are intended to carry passengers or goods. It supplements Directive 96/96/EC. The technical roadside inspection shall comprise any or all of the following aspects: a visual check on the state of maintenance of the vehicle running on the road network; a check on the documents relating to the compliance of the vehicle with a technical roadside inspection and if the driver presents it a recent roadside technical inspection report; a check to uncover poor maintenance. The roadside checks provided for in the Directive shall be carried out in accordance with a checklist (Annex 1). A certificate setting out the results of the spot check is to be handed to the driver of the vehicle, who must be in a position to present this on request in order to simplify or avoid subsequent checks.
Carriage of dangerous goods. Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road lays down uniform safety rules for transporting dangerous goods. It does not apply to the transport of dangerous goods by vehicles belonging to the armed forces or under the control of the armed forces. The list of substances considered to be dangerous under the ADR Agreement is provided in Annex A to the Directive. Annex B sets out provisions concerning transport equipment and transport operations. Directive 94/55/EC is repealed by Directive 2008/68/EC as from 30 June 2009. Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road ensures that a representative proportion of consignments of dangerous goods transported by road is checked for compliance with the laws on the transport of dangerous goods by road. These checks must cover at least the items included in the checklist in Annex I to the Directive, be carried out at different places, at any time of the day, and cover a sufficiently extensive portion of the road network to make checkpoints difficult to avoid. Consignments found to be in infringement may be immobilized, and obliged to be brought into conformity before continuing their journey, or be subject to other appropriate measures, depending on the circumstances or the requirements of safety including, where appropriate, refusal to allow such vehicles to enter the Community.

Safety advisers. Directives 96/35/EEC and 2000/18/EC require Member States to ensure that undertakings the activities of which include the transport, or the related loading or unloading, of dangerous goods by road, rail or inland waterway each appoint one or more safety advisers for the transport of dangerous goods, responsible for helping to prevent the risks inherent in such activities with regard to persons, property and the environment. The adviser has to seek all appropriate means and promote all appropriate action to ensure that dangerous goods are transported in the safest possible way. The adviser must hold a vocational training certificate covering at least the subjects listed in the Directive, the aim being to ensure that the candidate is sufficiently aware of the risks inherent in the transport of dangerous goods, knows the laws in question and has sufficient knowledge of the duties of the adviser. In the event of an accident affecting persons, property or the environment, the adviser is required to draw up a report. Validity of the certificate is five years and it may be extended where, during the final year before its expiry, if its holder has followed refresher courses or passed an examination both of which must be approved by the competent authority.

Directive 96/35/EC will be repealed by Directive 2008/68/EC as from 30 June 2009. It establishes a common minimum framework for the examination of safety advisers and the conditions for the examination bodies in order to guarantee a certain level of quality and to facilitate the mutual recognition of EC certificates of training for safety advisers. The national authorities organize a compulsory written examination which may be supplemented by an oral examination to check whether candidates possess the necessary level of knowledge required to carry out the tasks of adviser in order to obtain the EC certificate. This examination covers general prevention and safety measures, the classification of dangerous goods, general packaging requirements, danger markings and labels etc. If Member States do not take direct charge of the organization of the examination, they must appoint the examination bodies on the basis of various criteria such as: competence of the examination body, independence of the body etc.

Driving licenses. Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licenses repeals Directive 91/439/EEC. The Directive introduces substantive changes with the aim of reducing the scope for fraud (the Directive replaces the paper driving license with a model in the form of a plastic card), ensuring the free movement of citizens (licenses will have the same period of validity and will be valid in all Member States for the same administrative period) and helping to improve road safety (Directive introduces a new category of license for mopeds and harmonizes the frequency of medical checks for professional drivers). Member States must ensure that applicants for driving licenses possess the knowledge and skills and exhibit the behaviour required for driving a motor vehicle. The tests introduced to this effect must consist of a theory test and a test of skills and behavior. The test must cover road traffic regulations, driver behaviour under the influence of alcohol and drugs, the road (e.g. safe distances), other road
users, vehicle safety equipment, etc. In addition, specific provisions lay down special tests for each individual category of vehicle. The theory, skills and behaviour tests for driving a motor vehicle are designed to check that drivers can recognize traffic dangers and assess their seriousness, that they have sufficient command of their vehicle, that they comply with road traffic regulations, that they can detect any major technical faults and that they can help ensure the safety of all road users.

**Drinking and Driving:** European Commission recommendation of January 2001 sets two-fold approach: AL of 0.5 mg/ml is generally recommended, whilst for certain categories of drivers (inexperienced, motorcyclists, large vehicle drivers, drivers carrying dangerous goods) lower level of AL 0.2 mg/ml is recommended.

**Statistics on road traffic accidents.** Council Decision 93/704/EEC of 30 November 1993 sets up a Community database on road traffic accidents. It requires from Member States to record statistics on bodily damage caused by road traffic accidents taking place on their territory (collision between users involving at least one vehicle and causing deaths or injuries), to pass on those data each year to the Statistical Office of the European Communities (Eurostat) and to ensure that the data received are disseminated (conditions to access to statistics, any publications, etc.)

### 2. Progress of Approximation of Georgian Road Transport Legislation with that of EU

#### 2.1 Legal and institutional framework

In 2008 United Transport Administration which regulates road transport through its Department of Road Transport was transferred from Ministry of Economic Development to newly created Ministry of Regional Development and Infrastructure.

Legislation regulating road transport consists of international conventions and agreements to which Georgia is a signatory, laws (e.g. Law on Road Transport, Law on State Regulation of Transport Field, Law on Road Traffic etc.) and technical regulations (e.g. Ministerial Orders, Orders of the Head of United Transport Administration, etc.). In accordance with the Law of Georgia on Certification of Products and Services, Ordinance of the Government of Georgia N45 dated Feb 24, 2006 recognizes and makes it compulsory technical regulations of EU countries in the parts and requirements related to insuring safety characteristics of products and services.

Most of the normative acts regulating various aspects of road transport were adopted or amended during the last 3-4 years. Legislative acts, both on primary and secondary levels are based on the principals laid down in corresponding EU legislation. Rules for carriage of goods and transportation of passengers either incorporate specific requirements of European regulations or make direct reference to these requirements. In accordance with the Law of Georgia on Certification of Products and Services, Ordinance of the Government of Georgia N45 dated February 24, 2006 recognizes and makes it compulsory in parallel with Georgian ones, technical regulations of EU countries (among others listed in Annex) in the parts and requirements related to insuring safety characteristics of products and services. This is an obvious indication that steps are taken to harmonize Georgian legislation with that of EU. But it should be noted that this statement applies more to technical standards for vehicles and to lesser extent to safety of passengers and requirements towards drivers engaged in passenger transportation. The area of concern lies more within regulation of domestic operations. The local municipalities are empowered to establish rules for authorization. The only requirement set by Law on Road Transport is that municipalities should ensure “publicity and transparency” of the process. In some instances, problem lies not in non-existence of specific legislation, but in enforcement of existing one. A lot to be done before Georgian legislation can be considered as fully compliant with legislation of European Union. As an example, despite the fact that there are technical regulations covering road transport as a whole, there is no single document which aims to indicate the measures necessary to deploy a coherent, global policy so as to ensure the development of a safer and more competitive high-quality road transport system. Even though legislation prescribes Government to elaborate policy document in the field of road transport this document doesn’t exist.
2.2 Latest developments

Number of significant technical regulations was adopted by United Transport Administration since April 2008. Technical regulations, described in this chapter were adopted since April 2008 and they definitely constitute a significant step made towards harmonization of Georgian legislation with respective EU legislation - they fully comply with respective EU requirements in the parts related to International transportation of goods and passengers, while domestic transportations remain "liberalized" e.g. unregulated.


Carriage of passengers. Technical regulation on rules for carriage of passengers and luggage by road was adopted by Decree N80 of the Head of United Transport Administration on June 13, 2008. This regulation reflects provisions laid down in Council Regulation (EEC) 684/92 on common rules for carriage of passengers. Document aims at protection of human life and health, environment and property in the process of carriage of passengers and luggage. Document defines requirements to be met by vehicles engaged in the transportation of passengers, types of carriage and classes of vehicles to be used for specific carriage. Various standards for enterprises providing passenger transportation services are also defined in details for different means of transport (bus, taxi) – ticketing, personal safety equipment, information identifying rout and driver, etc. Document introduces voluntary certification of compliance with standards set by this regulation. In order to cover full range of issues related with passenger transportation United Transport Administration fundamentally renewed existing regulation and rules for functioning of bus stations by the Decree N 193 on December 31, 2008. Regulation sets requirements for bus stations, technical standards for there construction and arrangements linked to type of carriage, classes of vehicles, classification of stations, etc. Depending on a class of a bus station, it is defined how many sq/m should waiting lounge, platform, ticket and medical offices should be.

Working and driving time. Two technical regulations a) on work and rest hours of drivers engaged in international voyages and b) on the rules of use of vehicle movement controlling devices was adopted by the Decree N95 of the Head on United Transport Administration on June 25, 2008. These regulations incorporate provisions laid down in Regulation (EC) 561/2006 and Directive 2002/15/EC. First document is applicable to all entities regardless of their legal form which are engaged in international transportation. Regulation defines standards to be followed with regard to driving time, rest hours, etc. Carrier is responsible for insuring that drivers employed by them follow the rules established by the mentioned regulation. Second regulation sets standards for use of vehicle movement controlling devices. It is applicable to all vehicles carrying out transportations based on permits issued under International Transport Workers’ Federation (ITF) and European Conference of Ministers of Transport (ECMT). Regulation defines general characteristics of controlling devices, procedures for its installation and control, parts to be sealed, permissible deviations, etc. Document defines responsibilities of drivers and carriers in the process of use of controlling devices.