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**Master's Thesis**

**TECHNICAL REGULATIONS IN THE EURASIAN  
ECONOMIC UNION: MECHANISMS AND FUTURE  
CHALLENGES FOR RULE HARMONIZATION**

유라시아 경제연합(EAEU)의 기술규정: 규제조화  
제도와 발전과제 연구

**August, 2018**

**Graduate School of International Studies  
Seoul National University  
International Commerce Major**

**Yussupova Gulmira  
Master's Thesis**

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ECONOMIC UNION: MECHANISMS AND FUTURE  
CHALLENGES FOR RULE HARMONIZATION**

**by**

**Yussupova Gulmira**

A thesis submitted in fulfillment of the requirements for the degree  
of Master of International Studies in the subject of International  
Commerce

**August 2018**

**Graduate School of International Studies  
Seoul National University  
Seoul, Republic of Korea**

# 유라시아 경제연합(EAEU)의 기술규정: 규제조화 제도와 발전과제 연구

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이 논문을 국제학 석사 학위논문으로 제출함

2018 년 8 월

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RULE HARMONIZATION**

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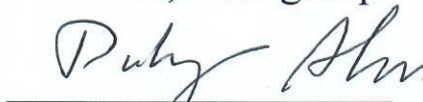
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## **ABSTRACT**

The Eurasian Economic Union (EAEU) consisting of Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia is the first successful regional economic integration in post-Soviet territory and a newcomer among global regional integration organizations. The EAEU began as a customs union in 2012, and has developed since into a union in 2015. The EAEU aims to improve the overall efficiency of the Union by removing non-tariff barriers as they significantly undermine the operation of the common market.

This thesis examines how the EAEU and its Member-States develop and implement technical regulations by looking at fundamental principles and provisions of the WTO TBT Agreement and comparing it with EAEU TBT chapter. Furthermore, the author aims to describe the concrete steps that Member-States of the EAEU have taken in order to harmonize technical regulations across the Union. Lastly, by looking closely at a case of technical regulation amendments on the “Safety of Toys”, this paper aims to identify obstacles and problems that EAEU and its Member-States’ currently encounter in the creation of common technical regulations within the Union.

Results reveal that majority of EAEU TBT chapter provisions are consistent with WTO TBT provisions, yet EAEU provisions set additional

objectives for further integration and harmonization of domestic markets. However, the language of the provisions is sometimes broad and includes ambiguous terms which poses a great challenge when it comes to understanding them. By observing a case study on toy safety regulation amendments, it is clear that the EAEU is creating some positive outcomes in pursuing WTO TBT Agreement objectives. Nevertheless, due to the lack of commitment and consent? among EAEU Members-States and technical regulation approaches those desirable objectives are not being fully achieved.

**Key words:** Technical Barriers to Trade, Regional Economic Integration, Eurasian Economic Union, Customs Union, World Trade Organization, Technical Regulations.

**Student ID:** 2016-22673

## Table of Contents

<b>ABSTRACT .....</b>	<b>i</b>
<b>TABLE OF CONTENTS .....</b>	<b>iii</b>
<b>LIST OF TABLES AND GRAPHS.....</b>	<b>v</b>
<b>LIST OF ABBREVIATIONS .....</b>	<b>vi</b>
 <b>I. INTRODUCTION .....</b>	 <b>1</b>
1.1 Research Question .....	7
1.2 Methodology .....	8
1.3 Purpose and Significance.....	9
 <b>II. TECHNICAL BARRIERS IN THE EURASIAN ECONOMIC UNION</b> .....	 <b>12</b>
2.1 Background of the Eurasian Economic Union .....	12
2.2 Institutional structure of the Union .....	18
2.3 NTBs and TBTs in the Union .....	24
 <b>III. EAEU MECHANISM FOR TECHNICAL REGULATIONS .....</b>	 <b>27</b>
3.1 Technical Regulations.....	27
3.1.1 Process and production methods (PPMs) .....	27
3.1.2 Energy efficiency objectives.....	31
3.1.3 Property objectives .....	33
3.2 Accreditation System.....	34
3.2.1 International harmonization.....	34
3.2.2 Single register of accreditation bodies.....	37



3.3 Supervision .....	38
3.3.1 Delegation of power: Member States versus Eurasian Commission .....	38
<b>IV. IMPLEMENTATION ISSUE: A CASE STUDY .....</b>	<b>41</b>
4.1 Current situation in toy market in the EAEU .....	41
4.2 Technical regulation “On safety of Toys” .....	46
4.2.1 Domestic regulations on toy safety in Kazakhstan.....	46
4.2.2 Proposal of amendments to the EAEU .....	47
4.3 Legal issues in WTO TBT Committee .....	56
4.3.1 Discrimination .....	59
4.3.2 Scientific base .....	62
4.3.3 Conformity assessment procedures .....	67
4.3.4 Subsequent development of regulation amendment .....	69
<b>V. CONCLUSION .....</b>	<b>78</b>
5.1 Implication from the case analysis .....	78
5.2 Future directions for the TR mechanism .....	80
<b>REFERENCES.....</b>	<b>82</b>
<b>국문 초록 (Abstract in Korean).....</b>	<b>88</b>

## LIST OF TABLES AND GRAPHS

### Tables

Table 1: Overview of EAEU Member-States Current Growth Indicators.....	4
Table 2: Physical RTAs in force, participation by region .....	6
Table 3: Decision making bodies of the Union .....	21
Table 4: Accredited laboratories included in “Single Register” .....	38
Table 5: Toy import share in the EAEU Member-States.....	43

### Graphs

Graph 1: WTO TBT Notifications .....	2
Graph 2: Effect of reducing NTBs on GDP and welfare among SES countries .....	25
Graph 3: Conformity assessment form in the EAEU.....	36
Graph 4: Foreign Trade Indicator of the EAEU, Major Trade Countries.....	71

## **ACRONYMS AND ABBREVIATIONS**

<b>CIS</b>	Commonwealth of Independent States
<b>CU</b>	Customs Union
<b>CES</b>	Common Economic Space
<b>EAEC</b>	Eurasian Economic Community
<b>EAEU</b>	Eurasian Economic Union
<b>EEC</b>	Eurasian Economic Commission
<b>EU</b>	European Union
<b>US</b>	United States
<b>FTA</b>	Free Trade Agreement
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>ISO</b>	International Organization for Standardization
<b>NTB</b>	Non-Tariff Barriers
<b>PPM</b>	Process and Production Methods
<b>RTA</b>	Regional Trade Agreement
<b>STC</b>	Specific Trade Concerns
<b>TBT</b>	Technical Barriers to Trade
<b>WTO</b>	World Trade Organization

## **I. INTRODUCTION**

Regional trade agreements (RTAs) have increased in number and geographical reach over the years, including a notable increase in large plurilateral agreements. The average World Trade Organization (WTO) member now has agreements with more than 15 countries.<sup>1</sup> TBT provisions that are covered in RTAs are subject for heated debates. In particular, whether those provisions comply with WTO TBT Agreement, and if they do, whether they entail broader commitments. TBT provisions in RTAs have not been extensively studied yet. Existing literature has focused on a relatively small number of RTAs and concluded that the majority of TBT provisions reflect the multilateral trading system principles.<sup>2</sup> The interest in TBTs in RTA's is reflected in a rise in the number of Specific Trade Concerns (STCs) raised in the WTO TBT Committee since 2005 which rose from 128 to 453 in 2014<sup>3</sup>, along with the gradual inclusion of TBT provisions in regional trade agreements.

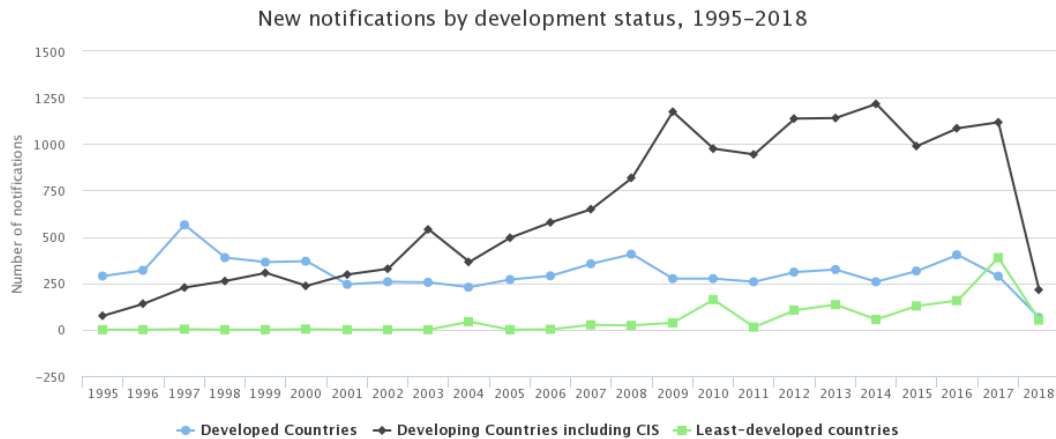
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<sup>1</sup> See Freund and Ornelas (2010)

<sup>2</sup> See Piermartini and Budetta (2009)

<sup>3</sup> See Molina and Khoroshavina (2015)

**Graph 1. WTO TBT Notifications<sup>4</sup>**



RTAs not only create larger markets, but also enable regional economies to stimulate economies of scale and increase competitiveness and attract investments. Furthermore, it is believed that regional integrations have ability of raising bargaining power at the level of international trade negotiations promoting regional stability.<sup>5</sup> In addition to this, RTAs create opportunities for controlling technical barriers to trade.

After successful reduction of trade tariffs in the Tokyo Round, countries began to seek new ways to protect their own markets. That is how technical regulations, standards and conformity assessment procedures have become a

<sup>4</sup> Technical Barriers to Trade Information Management System  
(<http://tbtims.wto.org/en/PredefinedReports/NotificationReport>)

<sup>5</sup> See Meyer N. et al. (2010)

potential threat to international trade in the form of non-tariff barriers. As regulatory measures or policies of government, NTBs aim to achieve legitimate public policy objectives, such as public health, safety and environmental protection. However, it is being acknowledged that this kind of measures can also discriminate against foreign imports unnecessarily restricting trade. Furthermore, differences in regulations, standards and conformity assessment procedures across markets raise compliance costs for companies operating in multiple markets which also creates barriers to international trade.<sup>6</sup>

To briefly mention, the WTO Agreement on Technical Barriers to Trade (TBT Agreement), came into force with the establishment of the World Trade Organization on 1 January 1995. It aims to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles to trade, ensuring legitimate right of governments to protect the health and life of people, animals and plants.

Central Asian countries have been evolving in different RTA's and custom unions since receiving their independence from the Soviet Union. Thus, just right after Soviet Union collapse in early 1990's, former Soviet Union

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<sup>6</sup> See Lesser (2007)

countries or so-called Commonwealth of Independent Countries (CIS) began to liberalize their economies. In order to become part of the global trading system and regional integration they have taken the following actions. Various types of regional trade agreement and free trade agreements were signed. However, many agreements remained on paper. Furthermore, all CIS countries, except for Turkmenistan and Tajikistan, have applied for WTO membership. The first successful regional trade agreement in post-Soviet territory is the Eurasian Economic Union. The leaders of Belarus, Kazakhstan and the Russian Federation signed the Customs Union Agreement in 2012, to which the Kyrgyz Republic and the Republic of Armenia became signatories later in 2015. Thus, it has been operating as a customs union since 2012, and has developed into economic union since 2015.

**Table 1. Overview of EAEU Member-States Current Growth Indicators**

<b>EAEU country member</b>	<b>Date of joining</b>	<b>GDP per capita (\$)</b>	<b>Population</b>	<b>WTO membership</b>	<b>WTO entry</b>
Armenia	January 2 <sup>nd</sup> , 2015	3 600	3.0 million	Yes	2003
Belarus	January 1 <sup>st</sup> , 2015	5 000	9.5 million	No	Non-member
Kazakhstan	January 1 <sup>st</sup> , 2015	7 700	17.4 million	Yes	2015
Kyrgyzstan	August 6 <sup>th</sup> , 2015	1 000	5.9 million	Yes	1998
Russia	January 1 <sup>st</sup> , 2015	8 700	146.3 million	Yes	2012

The Eurasian Economic Union (EAEU) is a new integration among global regional integration organizations. It was established with the aim to help its member states benefit from intraregional economic ties, modernize their national economies, and forge an environment conducive to improve their global competitiveness.<sup>7</sup> Key principles that lie at the heart of the Eurasian integration process are a single market for goods, services, capital, and labor. The EAEU has been reinforced with supplementary integration infrastructure such as the EAEU Court, the Eurasian Development Bank, and the Eurasian Fund for Stabilization and Development.

Table 2 shows that the CIS region is actively engaging in different RTA's and is home to 44 RTAs. CIS region governments are making progress in getting involved in the economic integration process. It is important to mention that regional integration of post-Soviet area was a priority goal of states' leaders ever since receiving independence in early 1990's. However, one should agree that the number of agreements do not define the quality of its operation. There is no use in hiding the fact that existing RTAs still face various challenges including TBT issues.

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<sup>7</sup> See Vinokurov (2017), 54.



**Table 2. Physical RTAs in force, participation by region<sup>8</sup>**

<b>Region</b>	<b>Notifications of RTAs in force</b>
Caribbean	9
West Asia	22
Oceania	24
Middle East	28
Africa	33
Central America	38
North America	42
<b>Commonwealth of Independent States (CIS)</b>	<b>44</b>
South America	57
East Asia	82
Europe	97

It was found that the greatest number of NTBs in the EAEU Customs Union (CU) and CES (Common Economic Space) are for technical barriers along with other measures as sanitary and phytosanitary measures, price control measures and measures affecting competition.<sup>9</sup>

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<sup>8</sup> WTO, Regional Trade Agreements Information System  
(<https://rtais.wto.org/UI/Charts.aspx>)

<sup>9</sup> Eurasian Development Bank, Assessing the Impact of Non-Tariff Barriers in the EEU: Results of Enterprise Surveys, (2015), 7.

### **1.1. Research question**

One of the most important matters on the EAEU agenda in the immediate future is the gradual unification and elimination of non-tariff barriers in mutual trade for goods and services. Non-tariff barriers place a significant burden on mutual flows of goods and services between EAEU countries thus reducing the overall efficiency of the common market.<sup>10</sup>

According to the study of the Center for Integrated Studies of the Eurasian Bank, today the EAEU is losing at least 15-30% of the total export of goods and services due to the unsettled nature of various regulatory issues including TBT. This means there are some drawbacks in the EAEU TBT mechanisms either in its implementation or in TBT related Treaty provisions. Applying core principles and provisions of the WTO Agreement on TBT as a cornerstone for analysis, this thesis attempts to examine whether and how the EAEU addresses TBT issues. Furthermore, this thesis aims to describe specific steps that parties of the EAEU have taken to reduce technical barriers within the Union. Lastly, by examining closely at the specific case of technical regulation amendments on “Safety of Toys”, this thesis aims to identify the EAEU and its Member-States’ approaches in implementing WTO objectives within regional

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<sup>10</sup> See Vinokurov (2017), 60.

TBT provisions by assuming that the Union's commitments are one-step forward than those stated in WTO.

## **1.2. Methodology**

This thesis is composed of three layers of analysis. The first part gives an overall overview of the historical development of the Union, its current state and institutional structure. The second part examines the EAEU's mechanisms of developing and implementing technical regulations. This will be achieved by conducting a legal comparative analysis of EAEU Treaty TBT Chapter provisions on the basis of the WTO TBT Agreement. In the third part, a case study on technical regulation "On Safety of Toys" will be presented. The given case study is examined as it is currently being discussed under WTO TBT Committee as of June 2018. In addition, the toy sector tends to be dominated by small and medium enterprises that are vulnerable to foreign competition and has always been a target for industrial policies of governments. This can be explained by the fact that there is always a demand for children's goods including toys even during an economic recession. In other words, the toy sector represents one of those sectors which goods are always actual among consumers. The increasing birth rate in the Eurasian Economic Member countries in recent years creates strong incentives for governments to build its own production capacity in the respective sectors. This cannot be achieved without import substitution policies

that lead to some protectionist practices. This is important as implementation of the technical regulation on “Safety of Toys” can be benchmarked in the implementation of potential technical regulations in other sectors.

The documents that will be studied in this thesis mainly include the policies and procedures of the WTO TBT Committee, Eurasian Economic Commission, annual reports of OECD on trade, reports of Eurasian Development Bank and the Member-States’ national legislations. The reliability of these information sources is very high as the documents presented are Member-States’ and Union’s legal documents.

For the purpose of full analysis, the world and national trade indicators should be reviewed. This will be achieved by working with databases of organizations such as the WTO, UN International Trade Statistics Database and national databases of EAEU Member-States, along with databases of the EAEU institutions. The reliability of this data can be classified as high as it corresponds to government decision-making.

### **1.3. Purpose and significance of thesis**

Currently the Eurasian Economic Union is undergoing its first wave of conflicts and challenges. In this regard, this thesis finds it crucial to determine problems, especially those related to TBT measures that are hindering further

integration of the Union. Many scholars are questioning the successful future of the regional agreement in CIS territory. Countries in this territory represent a specific case as they are former non-market economies that currently trying to get enter the multilateral trade system thus liberalizing their markets.

There are various scenarios on the further development of the Union. According to those who advocate for the EAEU's bright future in the global regional integration arena, many emphasize several crucial conditions for development. Those conditions include the member countries' desire to achieve progress on further integration of market liberalization, trade facilitation and free movement of labor. Particularly, they have highlighted the need in the reduction of the substantial non-tariff barriers.<sup>11</sup> Because real economic benefits of the Union such as the EAEU are derived not from tariff changes but, above all, from removal of non-tariff barriers. Thus, according to Knobel (2017), given the current state of the EAEU obligations, the Union is not fully utilizing its opportunities to create additional resources by improving efficiency, which means there is room for more profound studies. Thus, the potential benefits of the EAEU depends on eliminating of non-tariff barriers and the modernization of

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<sup>11</sup> See Knobel (2017)

domestic institutions and policies. This thesis assumes that the existing literature on the EAEU is not abundant. Existing papers tend to express skepticism toward Eurasian integration. In this regard, this paper aims to focus on the achievements of the Union and its future implications according to the lessons received from its former experiences.

## **II. TECHNICAL BARRIERS IN THE EURASIAN ECONOMIC UNION**

### **2.1. Background of the Eurasian Economic Union**

After the collapse of the Soviet Union there were constant talks about regional integration among the former Soviet countries. Many scholars (Vinokurov 2017, Korkotashvili 2013, Roberts 2016) point out that the speech of President Nursultan Nazarbayev of Kazakhstan given in 1994 in Lomonosov Moscow State University provided strong momentum in accelerating the integration process between the Eurasian states. Thus, in the following years leaders of CIS countries started addressing the regional integration agenda. The consequence of such discussions was the establishment of the Eurasian Economic Community (EurAsEC) in 2000 by the presidents of Belarus, Kazakhstan, Russia and later Kyrgyz Republic and Tajikistan. Uzbekistan joined the Customs Union in 2006. The EurAsEC was an international economic organization with the goal of regional integration by promoting the process of a customs union and a single economic space formation within the territory of its member states.

There are other factors that have contributed to the promotion of the integration idea in post-Soviet territory. The desire of such integration can be explained by the fact that there was a need to restore and maintain economic ties among the former Soviet republics that were partly lost in the 1990's after the

dissolution of the USSR. The economy of the Soviet Union was based on centralized planning meaning each autonomous state would specialize in its own comparative advantage sector and export it to the center where redistribution of goods took place. According to experts, without cooperation with other CIS countries, even Russia, the most self-sufficient country among former Soviet republics, they would only be able to produce 65% of the potential output. Kazakhstan without relations with Russia could only produce 10% of the range of industrial products, while Kyrgyzstan and Tajikistan could produce less than 5%. Thus, such high technological interdependence is one of the significant incentives for post-Soviet integration.<sup>12</sup> The other stimulus for the development of Eurasian economic integration was the desire of ordinary citizens to return to USSR. Hence, the leaders of the newly independent states believed that bringing back the agenda of re-integration would mitigate some social tensions. This concludes that creation of the EurAsEC, the first significant integration within Eurasian territory, was the reaction to internal problems of CIS, as well as the need to respond to a new world economic order.

In parallel with Eurasian Economic Community integration, there beginnings of separate regional integration among smaller number of countries.

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<sup>12</sup> What is Eurasian Economic Community? ([http://www.russia-rostechnadzor.ru/ts/cto\\_takoe\\_evrazes.php](http://www.russia-rostechnadzor.ru/ts/cto_takoe_evrazes.php))



These countries included the Republic of Belarus, Kazakhstan, Russia and Ukraine. The main goal of these four states was the formation of a single economic space with the implementation of an agreed economic policy and further harmonization of legislation and the creation of a single intergovernmental independent commission on tariffs and trade.<sup>13</sup> Such decision was reasonable as a creation of a customs union among a smaller number of countries with the same economic level was more feasible to achieve. The first attempt to establish a Customs Union was made in 2003. However, it did not succeed as Ukraine did not ratify the agreement. Six years later in 2009, Belarus, Kazakhstan and Russia, this time without Ukraine, returned to the customs union negotiations.

The result of these negotiations was the establishment of the Customs Union among the three countries in November 2009. The Customs Union started functioning on 1 of January 2010 within the EurAsEC. According to EBRD economists, the Customs Union of Belarus, Kazakhstan and Russia was the first successful example of regional economic integration between countries of the former Soviet Union.<sup>14</sup> The EAEU Member-States already had tariff-free access

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<sup>13</sup> See Ultanbayev (2006)

<sup>14</sup> See European Bank for Reconstruction and Development, *Integration Across Borders* (2012)

to one of the other's markets through various bilateral and plurilateral free trade agreements. The key change that was applied with the formation of the Eurasian Customs Union was that member countries agreed to apply the Union's tariff schedule as their common external tariff for third party countries. In July 2010, member countries ratified customs code and other documents which formed the regulatory basis for the operation of the current Union, including harmonization not only of tariffs but also procedures and non-tariff regulations. Border controls across the Union have been removed.<sup>15</sup>

The Customs Union established a supranational body called the Customs Union Commission. This is the key difference with its predecessor, the EurAsEC institution structure, which did not have any supranational institution. The parties agreed that the common import tariff would be adjusted over time to reflect Russia's WTO Agreements. Many aspects of Russian trade regime were transferred to the legal framework of the Customs Union. This is explained by the fact that Russian accession to the WTO coincided with an already operating Customs Union in 2012. Thus, formation of the Customs Union did affect the directions of Russia's WTO accession negotiations. The cornerstone of the

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<sup>15</sup> See Isakova (2011)

accession was the issue of The Common External Tariff (CET).<sup>16</sup>

In this regard, Russia, along with other Customs Union member countries had a dilemma in terms of disparities between CET and tariff concessions required by WTO accession procedures. These countries agreed to give a priority to the WTO. On the agreement that was signed in 2011 by the leaders of all three countries, WTO concessions were identified in the Customs Union Treaty as functioning in the framework of the Multilateral Trading System. In relation to the mentioned agreement, if any of the three countries joins the WTO before the others, arrangements related to the Customs Union will be modified to comply with the agreed accession terms. WTO provisions regulating the Customs Union become a part of its legal system. WTO commitments of the country were envisaged to prevail over its commitments under the framework of the Customs Union. The same principal is applied for the newly established EAEU which inherited its legal basis from the former Customs Union Treaty.

The next stage of the integration was the formation of the Common Economic Space (CES) in January 2012. While customs union is a free trade area with a common external tariff, a common economic space is a broader term that

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<sup>16</sup> Russia's accession to the WTO: major commitments, possible implications (<http://www.intracen.org/uploadedFiles/Russia%20WTO%20Accession%20English.pdf>)

implies integration form that includes a common market of goods, services, capital and labor, common economic policy and harmonized legislation.<sup>17</sup> Therefore, established CES Member-States aimed to stimulate creation of a common market based on four freedoms: the free flow of goods, services, capital and labor within the member countries territory.<sup>18</sup>

The further process of increasing integration lead to establishment of Eurasian Economic Union in May 2014 by Belarus, Kazakhstan and Russia which began its operation on January 1, 2015. The EAEU legal basis has inherited its legal framework from its predecessor, the EurAsEC and the Customs Union Code. The EurAsEC was dissolved with the enactment of the EAEU.

The main objectives of the Union include creation of conditions for sustainable economic development of national (Member-State) economies which leads to the improvement of living standards of the population; formation of the single market for goods, services, capital and labor resources within the Union, comprehensive modernization, cooperation and competitiveness of national economies within the global economy.<sup>19</sup>

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<sup>17</sup> See Shadikhodjaev (2013)

<sup>18</sup> Common Economic Space: another step towards integration focused on Russia (<https://www.osw.waw.pl/en/publikacje/analyses/2010-12-15/common-economic-space-another-step-towards-integration-focused-russia>)

<sup>19</sup> See Article 4 of the EAEU Treaty

## **2.2. Institutional Structure of the Union**

The Supreme Eurasian Economic Council (SEEC) is the Union's supreme authority that is formed by the Heads of each of the Member-States. It addresses critical matters affecting the Union and approves its strategy, key operating areas, and development prospects.<sup>20</sup>

The Eurasian Intergovernmental Council is the Union's body that consist of the Heads of the Member-States Governments. The Eurasian Intergovernmental Council exercises its powers in 10 areas, including enforcement and oversight of the EAEU Treaty, and the approval of the EAEU draft budget.

The Eurasian Economic Commission is a permanent supranational regulating body of the Union. It ensures the Union's functioning and development and prepares the policies and proposals in regards with economic integration within the Union. In the competence of the Commission to adopt decisions with regulatory and binding effect for the Member States, organizational and administrative orders and non-binding recommendations. The Commission decisions form part of the Union law and are directly applicable on

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<sup>20</sup> See Vinokurov (2017), 57.

the territories of the member states<sup>21</sup>.

The Court of the Eurasian Economic Union is a judicial authority that ensures the evened application of the EAEU Treaty and other Union treaties by the Union Member-States and bodies<sup>22</sup>.

Thus, the Union is an international organization among regional economic integrations which has international legal capacity. Earlier, the Customs Union and the Common Economic Space functioned within the framework of the institutional structure of the Eurasian Economic Community. Thus, with the launch of the EAEU it has become an important element within global economic integration<sup>23</sup>.

The EAEU Treaty is a successor of the EurAsEC, CU and CES legal frameworks. Provisions of the Treaty were adjusted in a way to bring them into compliance with WTO rules and regulations. The Treaty of the EAEU consists of four parts, 28 chapters, 118 articles and 33 appendixes. The Treaty can be divided into two parts as institutional and functional (economical). The first part

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<sup>21</sup> Eurasian Economic Union in brief. 40 frequently asked questions. MFA of Republic of Belarus <http://mfa.gov.by/>

<sup>22</sup> See Eurasian Economic Union (<http://www.eaeunion.org/?lang=en#about-administration>)

<sup>23</sup> Eurasian Integration: Numbers and Facts ([http://www.eurasiancommission.org/ru/Documents/Брошюра%20Цифры%20и%20факты%20ит%20\(Англ\).pdf](http://www.eurasiancommission.org/ru/Documents/Брошюра%20Цифры%20и%20факты%20ит%20(Англ).pdf))

of the Treaty constitutes its objectives, goals, values, main principle structures of its institutions and is described as an international organization. Thus, the EAEU is open to cooperation with any other states, organizations and unions. The second part of the Treaty describes the mechanisms of economic interaction and regulations. Part Two of the Treaty is dedicated to the “Customs Union” and touches upon the following sectors: information exchange and statistics, regulation on the circulation of medicines and medical products, foreign trade policy, technical regulations, sanitary, veterinary-sanitary and phytosanitary quarantine measures. Part Three is entitled as “Common Economic Space” and includes the following sectors: macroeconomic policy, monetary policy, trade in services, incorporation, activities and investments, regulation of financial markets, taxes and taxation, general principles and rules of competition, natural monopolies, energy industry, transport, state procurement, intellectual property, manufacturing industry, agricultural sector and labor migration. Priority areas of Eurasian integration are the formation of the common financial market, the common market for services, common markets of labor, medicines and energy resources.

Until 2015, a transitional period for 21 service sectors was fixed with the indication of a concrete date of transition to the status of a single market for each sector. The list of sectors in which the rules for a single service market

should be provided is subject to a phased and coordinated expansion. In the service sectors where the single service market does not function, the national treatment and the most-favored nation treatment are provided to suppliers and recipients of services, and quantitative and investment restrictions are not applied.<sup>24</sup>

**Table 3. Decision making bodies of the Union<sup>25</sup>**

<b>Body</b>	<b>Member state representation</b>	<b>Decision-making mode</b>	<b>Frequency of meeting per treaty</b>
Supreme Council	Heads of State	Consensus	Once a year
Intergovernmental Council	Heads of government	Consensus	Twice a year
Eurasian Economic Commission Council	Deputy heads of government	Consensus	Once a quarter
Eurasian Economic Commission Collegium	Professionals (4-year term)	Qualified majority or consensus	Permanent body

Organization of the decision-making process of the Eurasian Economic Commission involves close and coordinated interaction with Parties. In order to

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<sup>24</sup> The Treaty on the Eurasian Economic Union is effective  
(<http://www.eurasiancommission.org/en/nae/news/Pages/01-01-2015-1.aspx>)

<sup>25</sup> See Dragneva and Wolchuk (2017)



make rationale and deliberate decisions specialized ministries and agencies of the current Member-States are involved. It is believed that this provides agreed and qualitatively-developed decisions that take into account the interests and requirements of each the parties, as well as the best international practices.

The process of decision making in the Union varies according to the posed agenda. Thus, there are different approaches for preparation and formalization of international acts and for preparation and formalization of decisions and recommendations of the Commission, instructions and decisions of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, and the Council of the Commission. Yet both procedures follow a bottom-up approach in decision making.

According to Kotova (2016), the Eurasian Economic Commission and the Eurasian Economic Court are not authorized with effective powers to control the monitoring process of EAEU Member States compliance with the agreement. Thus, for instance, in case of non-fulfillment of the decisions determined by the EEC decision, the disputable issue according to the current regulation is submitted to the Eurasian Economic Court for consideration, whose decisions in turn, are of an advisory nature. Thus, a factually disputed issue can be resolved essentially only at the level of the Heads of State.

Scholars tend to doubt the purpose and prospect of the Eurasian integration. Many scholars especially within the Western academia, consider the union as a geopolitical project of Russia. Dragneva and Wolczuk (2017) stipulate that Russia's primary interest in Eurasian integration is to strengthen its own global influence. Furthermore, they emphasize that none of the other? Member-states are interested in pursuing deep economic integration.

Acknowledging shortcomings that the EAEU is currently undergoing, Vinokurov (2017) argues that the role of South Africa in the South African Customs Union is even greater, and the United States also has dominance within NAFTA. Comparison of the EAEU with the EU is also misleading. When compared to the European Union as the regional integration benchmark, expectations are set too high. However, comparing the EAEU with other regional integration entities with other different level of integrations like NAFTA, ASEAN or MERCOSUR, survival of the Union remains feasible. Moreover, the complex structure of the Union's institutions show that the EAEU has serious goals. The EAEU's importance as an international economic integration can also be seen from the waiting list of countries, such as Israel, Egypt, Iran and Serbia, which seek to follow Vietnam by finalizing a free trade agreement with the EAEU.

### **2.3. NTBs and TBTs in the Eurasian Economic Union**

The issue of complete elimination of trade barriers was the priority agenda for further integration in the Union. An analysis of the reasons for the emergence of barriers in the Union shows that often Member-States give priority to the interests of protecting national markets. Eurasian Development Bank study on NTBs of the Eurasian Economic Commission (EEC) found that the greatest number of NTBs in the CU and CES are for technical barriers, sanitary and phytosanitary measures, price control measures and measures affecting competition. The results of the survey that was conducted under above mentioned study on export enterprises operating in EAEU territory showed that the main barriers creating restrictions on trade within the CES are technical ones. Among these, the most important technical barriers are the need for testing and certification of products, as well as compliance with industry standards. Majority of the respondents believe that the MRAs for conformity assessment procedures on products that are not covered by CU technical regulations, and the use of international standards and harmonization of rules and regulations in marking, packaging and labelling will reduce existing restrictions.

**Graph 2. Effect of reducing NTBs on GDP and welfare among SES countries<sup>26</sup>**

	Scenario 1: aggregate	Scenario 2: NTB-T reduced	Scenario 3: NTB-P reduced
Impact on welfare:			
Russia	0.5	0.2	0.3
Belarus	7.3	2.7	4.2
Kazakhstan	1.3	0.8	0.5
Impact on GDP:			
Russia	0.2	0.1	0.1
Belarus	2.8	0.9	1.6
Kazakhstan	0.7	0.5	0.3

Estimation on the effects of NTB reduction in EAEU countries shows that by doing so, countries will only benefit from it. Although impact of reducing NTBs are distributed unevenly among member countries, with Belarus receiving the highest increase in welfare and Russia the least, one needs to keep in mind that by reducing NTBs, governments are activating many more sectors. In this term, reducing NTBs will bring double benefits to the EAEU countries. First, removing technical barriers will help them to achieve their far-reaching task ensuring the freedom of movement of goods and services which consequently brings activation of other sectors in the long-run. Moreover, small economies like

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<sup>26</sup> Eurasian Development Bank, Estimating the Economic Effects of Reducing Non-Tariff Barriers in the EEU, (2015)

Belarus will be able to see benefits from the Union, enforcing its incentives to stay in the Union.

### **III. EAEU MECHANISMS FOR TECHNICAL REGULATIONS**

#### **3.1. Technical Regulations**

##### **3.1.1. Process and production methods (PPM)**

One of the main tasks of the Union is to ensure operations of domestic markets without any barriers, as the presence of such obstacles does not allow full implementation of one of the basic principles of the Union as stated in the Treaty – the freedom of movement of goods and services. The Customs Union and Common Economic Space countries are harmonizing national legislations pertaining to standardization, accreditation, measurement and state control of technical regulation. All of this is estimated to reduce technical barriers and simplify supply of goods and services to the single market.<sup>27</sup>

The “Agreement on common principles and rules of technical regulation” was the first agreement among seventeen international treaties that make up the basic legal framework for the operation of the Customs Union and Common Economic Space. The legal framework of the technical regulation of the Union is described in Chapter X of the EAEU Treaty. The EAEU TBT chapter consists of five articles and three annexes: the rules and procedures of technical regulation are described in Annex 9 and the agreed policy for ensuring uniformity of

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<sup>27</sup> See Eurasian Development Bank, *Assessing the Impact of Non-Tariff Barriers in the EEU: Results of Enterprise Surveys*, (2015), 13.

measurements within the Union is described in Annex 10. Annex 11 is dedicated to recognition of Results of Accreditation of Conformity Assessment Authorities. The main purpose of technical regulation within the framework of the Union is to protect the life and/or health of people, property, environment, life and/or health of animals and plants, to prevent actions misleading consumers and to ensure energy efficiency and resource conservation in the Union.<sup>28</sup>

Technical regulations are developed and applied to only for products included in the “Common List” of products for which mandatory requirements are established within the Customs Union. This list was developed and ratified on 23 November 2012. The common list consists of 25 categories and 66 products (70% of circulated products). Thus, technical regulation are applied for products of the following categories: low-voltage equipment, radio electronic equipment, lighting devices, electronic appliances on solid, liquid and gaseous fuel, computer hardware, goods used in the road sector, agricultural machinery, light industry products, products and toys designed for children, tobacco products, watches, small crafts, furniture, glass containers, packaging materials, crockery for adults, crockery for children, animal and fish feed, personal protective

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<sup>28</sup> See Article 52 of the EAEU Treaty

equipment, petroleum products, detergents, sanitary-engineering goods, prepared food, cosmetic products, spare parts of motor vehicles, and matches.

The development of technical regulations is handled by the Member-States and the Commission. Besides this, the Commission coordinates the development of regulations and introduces adjustments as well. As the decisions on technical regulations tend to affect the conditions of doing business, their further development is based on the results of the assessment of their regulatory impact. Thus, draft decisions on regulations are open to public discussion. The comments and other related feedback is taken into account by the EEC and considered by respective developers of the regulation.

*Annex 1.1 of WTO TBT Agreement* in interpreting definition of technical regulation states following:

Technical regulation – 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 terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.



It was the Uruguay Round Table that set specific regulations on process and production methods (PPM) within the TBT scope. PPM measures can be adopted when some countries regulate international trade in goods and services on the basis of the inputs and process technologies utilized in their production. Such objectives are justified by the desire of WTO Members to regulate trade-related issues, such as goods relating to health and safety or environmental issues.<sup>29</sup> There are still ongoing debates on the extent to which PPMs are covered under TBT and SPS Agreements. PPM is closely connected with the term of “like product” which is currently lacking in the EAEU Treaty.

*Annex 9 of the EAEU TBT Chapter* gives definition of technical regulation as following:

“technical regulation” means legal regulation of relations in the field of determining, application and enforcement of mandatory requirements to products or products and design (including research), manufacturing, construction, installation, commissioning, operation, storage, transportation,

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<sup>29</sup> Read  
(<http://www.oas.org/dsd/toolkit/Documentos/ModuleIIIIdoc/Read%20Article%20on%20PPMs.pdf>)

sale and disposal processes related to product requirements, as well as legal regulation of relations in the field of conformity assessment.<sup>30</sup>

Unlike the WTO TBT Agreement, the EAEU TBT chapter does not contain any reference to PPMs. On the other hand, the EAEU provision encompasses more complex processes as it considers additional legal regulations of relations in the field of conformity assessment.

### **3.1.2. “Energy efficiency” objectives**

#### *Article 51.1. EAEU Treaty Chapter X “Technical regulations”*

Technical regulations of the Union shall be adopted in order to protect life and/or health of people, property, environment, life and/or health of animals and plants, prevent consumer misleading actions and *ensure energy efficiency and resource conservation in the Union*.

In contrast to EAEU provision, the WTO TBT Agreement states:

#### *Article 2.2. WTO TBT Agreement*

...For this purpose, technical regulations shall not be

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<sup>30</sup> See EAEU Treaty

more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.

It is insightful that the EAEU emphasized on “energy efficiency and resource conservation” separately from environmental concerns. This might be explained by the fact that in the commodity composition of exports of the EAEU Member States to third countries, mineral products (60.7% of the total exports of countries of the Union Member States to third countries) dominate. The main share of exports of the Member States (85.9%) falls on intermediate goods including energy products with 59.1%, and other intermediate goods with 26.8%. This explains the concerns of Member-States to preserve resources to avoid overtrading with third party countries. This objective is reflected in the technical regulations of the Eurasian Economic Union “On the requirements for energy efficiency for energy-consuming devices” which is currently being prepared.

This objective reflects the nature of PPM as its broader interpretation includes one of the most debatable concerns. These concerns include health and safety aspects of new technologies, renewable and non-renewable resource

depletion, environmental pollution and the use of child or slave labor. Thus, we can conclude that EAEU provision does have some subtle reflection of PPM objectives in its provisions.

### **3.1.3. Property objectives**

In addition to energy efficiency and resource conservation objectives discussed above, there is one more aspect to consider within Article 51.1 of the EAEU Treaty. This provision introduces the interesting term “property”. Within the context, it is read as the following: “Technical regulations of the Union shall be adopted in order to protect life and/or health of people, *property*, environment, life and/or health of animals and plants...”. In contrast, the WTO TBT Agreement does not contain any “property” related issues. From the context, it is ambiguous what kind of property the treaty is talking about. Does the scope of “property” include public property, private property or both? It seems that by reference to “property”, the EAEU means any kind of property, both private and public property that falls under the subject of technical regulation.

## **3.2. Accreditation System**

### **3.2.1. International Harmonization**

The EAEU Treaty has implemented accreditation as the main approach of assessing member countries' domestic technical regulations and standards. The WTO recognizes four more approaches as useful at facilitating the acceptance of foreign conformity assessment. These four approaches are the unilateral recognition of results of foreign conformity assessment as equivalent, Mutual Recognition Agreements (MRAs) for conformity assessment between governments, voluntary arrangements between domestic and foreign conformity assessment bodies, and the use of Supplier's Declaration of Conformity.<sup>31</sup>

It is strongly emphasized that accreditation should be carried out in accordance with various principles among which harmonization of rules and approaches in the field of accreditation with international standards. From the wording, one can observe the strong desire of the union to implement international standards. This might be explained by the member countries' aim

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<sup>31</sup> Detailed Presentation of the Harmonization Principle in the TBT Agreement ([https://ecampus.wto.org/admin/files/Course\\_385/Module\\_1600/ModuleDocuments/TBT\\_Harm-L2-R1-E.pdf](https://ecampus.wto.org/admin/files/Course_385/Module_1600/ModuleDocuments/TBT_Harm-L2-R1-E.pdf))

to leave their common GOST standards which go back to the Soviet Union period.

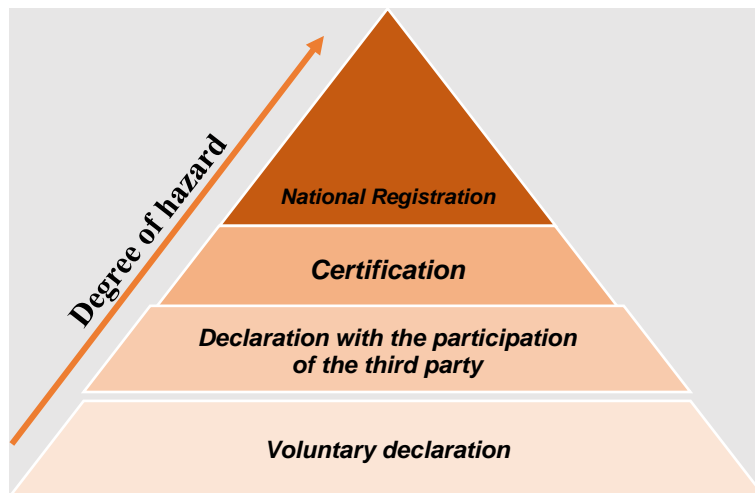
Harmonization of rules and approaches in the field of accreditation in EAEU is conducted with the accordance of international standards, particularly ISO/IEC 17000. ISO/IEC 17000 specifies general terms and definitions of conformity assessment, such as accreditation of conformity assessment bodies, and the use of conformity assessment to facilitate trade.

The list of technical regulation objects subject to confirmation of compliance with the requirements of the technical regulation in the form of certification. Other products that are not included in “Common List” are subject to declaration of conformity. The choice of forms and schemes of conformity assessment should be carried out, taking into account the total risk from inaccurate assessment of compliance and harm from the product usage that has passed the conformity assessment. When choosing forms and schemes, the following main factors should be considered:

- degree of potential hazard of products (see Figure 1)
- sensitivity of specified indicators to changes in production and (or) operational factors;
- the status of the applicant (the manufacturer, the person authorized by the manufacturer, the seller, the supplier);

- adequacy of the degree of evidence of compliance and costs for assessing compliance with the objectives of technical regulations.

**Graph 3. Conformity assessment form in the EAEU<sup>32</sup>**



National registration of products is a procedure that replaced sanitary and epidemiological expertise from July 1, 2010. From this moment on, the territory of the Member-States of the Customs Union, certificates of state registration were issued for goods that are subject to the state registration instead of sanitary certificates.

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<sup>32</sup> See Shakkaliyev. "Prospects for the development of the technical regulation system in the Eurasian Economic Union". Presentation. Eurasian Economic Commission.

### **EAC mark indicating conformity with technical regulations of the Union**



The mark of the EAC which stands for “Eurasian Conformity” marks products that are subject to mandatory certification or declaration of compliance according to the requirements of the Customs Union technical regulations. The EAC marking informs consumers that product has received a certificate or declaration of the Customs Union which ensures its safety. The application of the EAC sign to the packaging is a mandatory requirement of the current technical regulations of the Customs Union.

#### **3.2.2. Single Register of accreditation bodies**

The single register of certification bodies and testing laboratories is a systematized database that was created to ensure the unity of principles and rules of technical regulation in the EAEU countries. The main purpose of keeping the register is the systematization and control of the issuance of compliance documents (certificate and declaration) to the current technical regulations of the Customs Union. The single register is formed in electronic form and is



maintained by the authorized bodies of the EAEU Member-States providing online access.

**Table 4. Accredited laboratories included in “Single Register”<sup>33</sup>**

<b>Member-State</b>	<b>Certification organs</b>	<b>Laboratories</b>
Armenia	18	30
Belarus	57	445
Kazakhstan	89	385
Kyrgyz Republic	15	38
Russian Federation	1120	1996

### **3.3. Supervision**

#### **3.3.1. Delegation of power: Member States versus Eurasian Commission**

Although the Eurasian Economic Commission is acknowledged as a supranational regulatory body, we may observe that when it comes to specific cases, including supervision of technical regulation, it falls within the competency of Member-States. Talking about development, enforcement and monitoring of technical regulation, the institution power varies depending on the stage of implementation of technical regulation. Some functions in the sphere of

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<sup>33</sup> The number of certification bodies and testing laboratories as at May 11, 2018.

technical regulation are referred to the authority of Member-States. These functions include:

- Registration (national registration) of technical regulations
- Conformation of procedures of state control
- Monitoring of compliance of technical regulations of the Union based on the harmonization of legislations of the Member-States.

The EAEU technical regulations are developed either by a Member-State or the EEC, along with other Member States including their government, business communities, industries, scientific and public organizations, stakeholders that participate in the development of technical regulations at the stages of public discussion, internal harmonization and adoption. After the Customs Union technical regulations comes into force, the previous national state supervision in this area ceases to operate. The new supervisory authorities should be determined by each government's decision. The subjects of state supervision are products, services, technical documentation and technological processes. EAEU Member-States believe that such supervision will harmonize the rules of state control over the safety of products within the Union. Conformity assessment can also be conducted in the form of state supervision.

<b>Activities</b>	<b>Eurasian Commission</b>	<b>Member-States</b>
Technical Regulation development	+	+
Supervision of technical regulations		+
Conformity Assessment procedures		+
Single Register of Certification	+	

This allows the conclusion that while the WTO's general obligation is to reduce TBT barriers and encourage rule harmonization, the EAEU aims to not only reduce barriers among the members, but also further integrate different technical regulations and related conformity assessment procedures to achieve a single market.

#### **IV. IMPLEMENTATION ISSUE: A CASE STUDY**

##### **4.1. Current situation in toy market of the Eurasian Economic Union**

In November 2016, Canada, the European Union, Ukraine and the United States raised Specific Trade Concerns (STCs) in the WTO TBT Committee toward Kazakhstan's TBT notification on "The amendments No.2 to the Technical Regulation of the Customs Union of Eurasian Economic Union on Safety of Toys 008/2011". The so-called "Amendments No.2 to the technical regulation" were envisaged to enhance safety of children's toys by introducing mandatory psychological and pedagogical expertise. Canada, the European Union, Ukraine and the United States claimed that such requirements have no scientific evidence and would create unnecessary barriers to trade.

Russia and Kazakhstan are the largest economies in the Union and it was these two states that supported enforcement of amendments to the technical regulation "008/2011 On the safety of toys" in the Customs Union. This chapter analyzes the toy industry and its import flow in terms of the Russian and Kazakhstan toy market due to two main reasons. The first reason is the lack of statistical data on the toy industry on other EAEU Member-States like Armenia, Belarus and the Kyrgyz Republic. Secondly, since Kazakhstan and Russia are the major contributors of foreign trade in terms of volume, it is believed that the toy

market situation in these countries adequately reflects the overall situation in other EAEU Member-States.

Kazakhstan's toy market composition is 98% imported goods.<sup>34</sup> According to the National Health Committee Statistics, the majority of imported toys come from China (65%), and an unsubstantial share is imported from Russia, Belarus, Uzbekistan, Kyrgyzstan and Ukraine (23%).<sup>35</sup> Kazakhstan's State Sanitary Epidemiological Supervision Committee reports that the share of toys that do not meet the indicated technical regulation requirements is 33%. Mostly these toys are either unmarked or do not meet the safety requirements. Besides, most of the toys consist of harmful substances such as formaldehydes, do not meet certain physical and chemical properties, have cracks, which can harm a child under certain circumstances. According to the Committee's research, out of 3,500 children's toys 1,100 did not comply with the technical regulations. While in the food and light industry sector the share of such goods is gradually decreasing, in the toy market it is being held at a level of 33%. The Committee claims that most of the harmful toys are from China. Although relevant domestic bodies are trying to solve this issue through meetings with respective government

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<sup>34</sup> The toy market in Kazakhstan is the most counterfeited  
(<https://www.zakon.kz/4619460-rynok-igrushek-v-kazakhstane-samyjj.html>)

<sup>35</sup> Kazakhstan tightens control over imports of toys  
(<https://kapital.kz/economic/65677/kazakhstan-uzhestochaet-kontrol-za-vvozom-igrushek.html>)

bodies of China, there has not been any considerable improvement as China claims that it is not responsible for products that do not have required safety markings, nor the owners.

**Table 5. Toy import share in the EAEU Member-States<sup>36</sup>**

Year	Trade Flow	Reporter	Partner	Trade Value (US\$)
2015	Import	Armenia	World	8670140
2015	Import	Armenia	China	5052069
2015	Import	Belarus	World	82845900
2015	Import	Belarus	China	40579900
2015	Import	Kazakhstan	World	142559354
2015	Import	Kazakhstan	China	69918709
2015	Import	Kyrgyzstan	World	16915333
2015	Import	Kyrgyzstan	China	6455685
2015	Import	Russian Federation	World	1457011932
2015	Import	Russian Federation	China	1047861066

According to the Ministry of Industry and Trade production of Russia, starting from 2012, the market share of children's good has been increasing annually on an average of 10%.<sup>37</sup> Similar trends can be observed in Kazakhstan's

<sup>36</sup> UN COMTRADE Database. Trade value reflects HS Codes (HS9503-HS9508) of toys that were subject to the technical regulation "On Safety of Toys"

<sup>37</sup> The industry of childhood: the Russian production of children's goods annually increases by 10% (<https://russian.rt.com/russia/article/433067-import-detskie-tovary-rossiya>)

children goods sector. Despite the economic recession and the decline in the purchasing power of citizens, demand for children's products is not falling. In 2013, the Russian government approved the "Strategy for the development of the children's goods industry until 2020", which aims to provide the domestic market with quality and affordable domestic children's products, increase their exports, create and promote national brands. However, prices for domestic products are often higher than their foreign counterparts. Still it was observed that the share of children's goods of domestic production in the Russian market in 2016 grew to 25%. It is estimated that the cost of domestically produced goods will decrease when there are more manufacturers, and the competition between them will increase. As reported by the Ministry of Industry and Trade of Russian Federation, today the share of foreign products in the Russian market estimates as 75%. The bulk of children goods as in most other countries of the Union are imported from China. China is the leader in production of toy industry - 60% of the world's toy market is made by products made in China.<sup>38</sup> Russians alone produce only 10% of children's toys supplied to their domestic market.<sup>39</sup> The Russian market differs from the world market primarily in terms of its structure.

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<sup>38</sup> The industry of childhood: the production of Russian children's goods annually increases by 10% (<https://russian.rt.com/russia/article/433067-import-detskie-tovary-rossiya>)

<sup>39</sup> Review of children's goods imports (<http://import-v-rossiu.ru/view/obzor-importa-detskih-tovarov>)

In Russia, clothes are ranked first in the sales of children goods and accounts for 31%, the share of games and toys is 23%, in contrast to 40% of the world whole market.<sup>40</sup> Putting the toy market puzzle of the Eurasian Economic Union together we are able to draw following conclusions:

Counterfeit has been a major problem not only for the EAEU market, but already well balanced and functioning markets like the EU. Even the EU market is still struggling over the counterfeit issue, especially in the toy industry. Over €2.3 billion per year are lost in the EU as a result of fake toys and games which usually originate from China and Hong Kong, according to a report by the Office for Harmonization in the Internal Market (OHIM). The direct impact for the toy industry is significant, at a cost of €1.4 billion, and an estimated loss of 6,150 jobs. Although counterfeited toys have no significant impact on the EAEU countries' toy industry's labor market as there is no domestic production of toys unlike EU, it does affect overall turnover of the Union.

The toy market in the EAEU still remains under strong influence from foreign imports. The combination of such factors including counterfeit goods and the lack of domestic toy producers creates the condition of prevailed foreign toy import. As mentioned earlier, both Kazakhstan and Russia's toy sector is

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<sup>40</sup> "Unaffordable doll." Rossijskaya gazeta (<https://rg.ru/2015/06/30/igrushki.html>)



occupied by foreign import by which over 80% is overwhelmed with Chinese toys (over 60%).

## **4.2. Technical regulation “On Safety of Toys”**

### **4.2.1. Domestic regulations on toy safety in Kazakhstan**

There are two legislations that regulate toy safety requirements entering into Kazakhstan’s market. They are the technical regulation of the Customs Union “008/2011 On the safety of toys” and the national law on safety of toys. All toys that pass these requirements have certificates of conformity and single marking which proves the quality of toys. Kazakhstan’s national law №306 “On Safety of Toys” was ratified in 2007. The rules of psychological and pedagogical examination of toys was developed later in 2008 to achieve the objective of the toy safety law from 2007. The transitional period for the technical regulation “On Safety of Toys” was due on 15 of February 2014. Since then, all national regulation on toy safety in EAEU Member-States were abolished in favor of EAC’s technical regulation.

#### **4.2.2. Proposal of amendments to the EAEU**

The Customs Union technical regulation “008/2011 On the safety of toys” was ratified on 23 September 2011. According to technical regulation development procedures of the EAEU Commission, the state which was in charge of development of relevant regulation was the Republic of Belarus. The Republic of Kazakhstan appeared as a co-developer of the regulation. This technical regulation of the Customs Union establishes requirements for toys in order to protect the lives and health of children and people looking after them, as well as preventing actions that mislead toy consumers regarding their purpose and safety.<sup>41</sup> The current technical regulations of the Customs Union consist of requirements for toys on their toxicological, hygienic and microbiological indicators, radiation safety, physical and mechanical, chemical and electrical properties.

Bodies responsible for the implementation of state control (supervision) were the State Inspection of Market Supervision of the Ministry of Economy of the Republic of Armenia, State Committee for Standardization of the Republic of Belarus, Ministry of Health of the Republic of Belarus, Ministry of National

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<sup>41</sup> Customs Union TR 008/2011 Article 1.3

Economy of the Republic of Kazakhstan, Department of Disease Prevention and State Sanitary and Epidemiological Supervision of the Ministry of Health of the Kyrgyz Republic and the Federal Service for Supervision of Consumer Rights Protection and Human Welfare.

After enforcement of the regulation from 1 July 2012, two additional amendments were further proposed. The first amendment entitled “The amendments No.1 to the Technical Regulation of the Customs Union of Eurasian Economic Union on Safety of Toys 008/2011” was proposed by the Republic of Belarus in 2015. The amendment touched upon safety requirements for magnetic toys with super powered non-fixed magnets and small-sized magnetic elements. The magnetic flux indicator was harmonized with European requirements. The decision for an amendment was justified by the fact that accidental swallowing of such magnets by a child could seriously threaten their health and/or life. The document was adopted on 17 March 2017. Its enforcement was expected to be one year after its publication on 30 March 2018.

The next amendment to the regulation entitled as “The amendments No.2 to the Technical Regulation of the Customs Union of Eurasian Economic Union on Safety of Toys 008/2011” was proposed by the Republic of Kazakhstan in 2016. The institution that was in charge of the amendment was the Committee for the Protection of Consumer Rights of the Ministry of National Economy of

Republic of Kazakhstan. The purpose of the amendment was the establishment of the requirements for psychological and pedagogical safety of toys to protect children from the possible negative impact of children's toys that are harmful to their mental development and health causing aggression, fear and anxiety. According to the technical regulation amendment developers, given the fact that children's goods are an educational tool, the formation of physical and psychological health of children, the conformity of goods for children with the requirements of psychological and pedagogical safety would ensure a high-quality and safe market for children's goods. Thus, the aim of these amendments was to protect children from products containing obscene images that promote violence, abuse and anti-social behavior.

This regulation had drawn the attention not only from domestic toy manufacturer community, but also from the international community as well. Such conclusion can be drawn by the fact that the public discussion was expected to end by 31 of August 2016 but was extended due to requests from toy industry community representatives as well as from third party countries. The hearing was appointed during the summer vacation when all relevant specialists in this area such as psychologists and pedagogues were not available to participate in the discussions. Thus, public discussion was prolonged till 30 November 2016.

Technical regulation “008/2011 On the safety of toys” of Customs Union consists of eight articles and three appendixes. Thus, amendments that were proposed by Kazakhstan touched upon three articles, particularly, Article 2 (Definition of Terms), Article 3 (Circulation on Market) and Article 4 (Requirements for the Safety). More specifically, Article 2 was complemented with following definition of psychological and pedagogical expertise:

“Psychological and pedagogical expertise is the establishment of the conformity of children's goods with the criteria of psychological and pedagogical safety for ensuring the moral and emotional well-being of children.”

Article 3 of circulation of products on market to be complemented with following provision:

“4. Toys are issued in circulation on the market, if they meet the criteria of psychological and pedagogical safety, according to the results of psychological and pedagogical expertise conducted in accordance with the national legislation of the parties to the Customs Union.”

The first provision of Article 4 shall be complemented with following paragraph:

“the absence of risk affecting the moral and emotional well-being of children, in part:

- provoking a child for aggressive actions
- evoking in the child a manifestation of cruelty towards the characters of the game, in the role of which are acting partners (peers, adults) or the story toy itself
- provoking of game plots connected with immorality and violence causing unhealthy interest in sexual problems that go beyond the age competence of the child
- provoking the child to neglect or negative attitude to the racial characteristics and physical defects of other people
- evoking the development of interest in gambling adults, contributing to the development of gambling (pathological gambling)”

The domestic toy industry enterprises’ response to the new amendments were immediate. Their main claims were that the criteria, procedure and period of the selection of toys falling under the provisions on mandatory psycho-pedagogical expertise are not defined; there are no requirements for expert organizations (experts) whose competence area will be the issue of conducting

mandatory psychological and pedagogical expertise; the procedure and the period of conducting psychological and pedagogical expertise are not defined, the procedure for the delivery of the results of the examination to concerned people is not disclosed, the procedure for appealing is not prescribed; the question of who will bear the expenses connected with the conduct of compulsory psychological and pedagogical expertise is also not resolved.

A large number of Russian toy industry enterprises expressed their concerns regarding the new technical regulation amendments and officially sent their comments to the Eurasian Economic Commission Technical Regulation department. As stated in their official documents addressed to the EEC, “new amendments relate to a high degree of regulatory impact - the draft amendment contains provisions that are not previously stipulated by the legislation of the Russian Federation and supranational legislation of the EAEC or other regulatory legal acts”. In this regard, they required an assessment to conduct special studies on the impact of the new amendments on the toy industry sector. The result of such studies by the Russian Association of Children's Goods Industry Enterprises revealed significant negative consequences for toy businesses.

For example, if the proposed amendments took place in the Union, it would only increase the cost of production. Specifically, there would be an increase of 20% due to the introduction of expertise of goods, another 30%

increase in costs due to the fact that the examination will need to take place for certain period of time. Because of such costs, up to 40% of products will go from the low-price segment to high, and in general, children's goods will become less affordable. To consider that the expertise is carried out for a period of two to three months or more, the need for simultaneous examination of the entire assortment list can lead to unjustified delays in the activities of the enterprise. All these actions, undoubtedly, will affect the financial stability of the enterprise. Vast majority of the toys on which developers of the amendments have claims are imported toys. Thus, toys that cannot enter the Union's market on the border still can arrive from other sources. Parents trying to please their child will find other ways to buy those toys, either ordering online or buying abroad. The worse consequence is the inability to satisfy demand in domestic markets will greenlight black markets and counterfeit toys. Therefore, the EEC may witness the reversed effect of the regulation. The unfeasibility of introducing clear criteria for psychological and pedagogical expertise will create prerequisites for corruption and provide a possibility to use non-economic methods in competition in the toy industry. Introduction of additional expertise which creates additional cost will make small enterprises that tend to be vulnerable in bearing huge expenses leave the toy market.



Finally, Russian toy enterprises stated that bearing in mind of the fact that nowadays the sector of children's toys and games does not exist separately but develops along with the TV animation and Internet games industry, introduction of the new amendment will create mess for both producers and consumers. In other words, if there is a demand for specific hero from trending animation or video game, and there is no supply due to technical regulation, this may lead to the negative consequences.

There were no comments from both Armenia and Kyrgyzstan's institutional bodies' business communities. There was only one comment from the Belarus side which was addressed by the Ministry of Health of Republic of Belarus. Belarus emphasized the discriminatory nature of proposed amendments, particularly, amendment in Article 3 with further addition of paragraph 4 with the following content:

Toys are allowed in circulation on the market, if they meet the criteria of psychological and pedagogical safety, according to the results of psychological and pedagogical expertise conducted *in accordance with the national legislation of the parties* to the Customs Union.

Belarus claims that this contradicts to the legislation of the EAEC, which has binding nature for all parties and cannot be implemented partially by

taking into account the national legislations of only one party. It is worth noting that Belarus has already passed through the unsuccessful experience of introducing psycho-pedagogical expertise.<sup>42</sup> In Belarus, introduction of psycho-pedagogical expertise was reversed as they could not develop the criteria for evaluating toy products from the point of view of psychological and moral security. Some experts believe that banning “bad” toys in the era of developing online commerce is almost impossible. The Ministry of Industry and Trade of Russian Federation also had supported Kazakhstan’s proposal on the technical regulation amendments until its domestic business community strongly opposed it.

Protecting the psychological health and well-being of children is an extremely important task, but the amendment project did not have a clear description of the mechanism for conducting psychological and pedagogical expertise. It was unclear according to which method expertise would be conducted, which executive body would be in charge of supervision, as well as who and how would they issue a confirming document on the relevant regulation. But most importantly, there was no list of experts who would have right authority

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<sup>42</sup> In Russia, “Barbie” and other “immoral toys” will not be banned (<https://rg.ru/2016/12/15/v-rf-ne-zapretiat-kuklu-barbie-i-drugie-beznravstvennye-igrushki.html>)

in all EAEU markets. Hence there was the risk of a subjective approach when assessing the dangers of toys for children and the potential for the emergence of unfair competition in the market of children's toys.

#### **4.3. Legal issues in WTO TBT Committee**

According to Article 2.9.2 of WTO TBT Agreement, the Republic of Kazakhstan sent notification to the WTO Secretariat regarding amendments in the Customs Union technical regulation «008/2011 On Safety of Toys». In this regard, Specific Trade concerns (STC) were raised by Canada, the European Union, Ukraine and the United States of America. Issues raised by appellants include discrimination, rationale, legitimacy, unnecessary barrier to trade as well as concern regarding conformity assessment procedures.

Thus, Ukraine believed that there were plenty of inconsistencies between the Union's TR texts and the TBT Agreement. Ukraine believed that the conformity assessment procedure foreseen in the Technical Regulations "On safety of toys" (TR CU 008/2011) differed significantly from the international practice on declaration of conformity and created unjustified barriers to international trade. Regulation required stricter conformity assessment procedures for all toys. Moreover, certification bodies were required to register

only in the territory of the Customs Union. Ukraine representatives considered that Kazakhstan and Russian should justify such strict requirements for conformity assessment procedures with a scientific clarification and encouraged them to adjust the regulation in accordance with international practice and avoid creating unnecessary technical barriers to trade.

The delegation of the European Union agreed with the concerns of Ukraine on the proposed amendments that require stricter conditions for the elimination of toys' negative impact on the development and health of children. The EU positively supported the objective pursued by the EAEU on raising the safety of toys. However, the EU believed that the new requirements had no scientific basis, has no relation to toy safety, nor was there any global precedent on the matter. The EU interpreted the proposed amendment requiring an evaluation of each toy by a council of experts in order to be placed on the EAEU market could result in arbitrary decisions based on very subjective assessments relying on moral criteria than bear no relation with toy safety. Moreover, the EU emphasized that there was still a lack of objective criteria to perform the proposed evaluation. The EU asked for further clarification as to which products were the main sources of concerns as well as requesting more details on the evaluation process which was envisaged to be translated into a certification of compliance. The EU's representative urged Kazakhstan and the Russian Federation to

withdraw this amendment and to consider alternative ways to ensure suitability of toys for different age groups, such as age grading. The EU recalled that ISO/TR 8124 (Part 8):2016 on age determination guidelines provided technical guidance of the appropriateness of toys by age.<sup>43</sup> The EU delegation expressed willingness to engage in future dialogue with the competent authorities of the EAEU and to share the EU's experience on the implementation of the EU toy safety legislation.

The delegation of the United States fully supported the legitimate objective of the Eurasian Economic Commission (EEC) to protect the emotional well-being of children, at the same time proposing to find a more appropriate solution that did not unnecessarily restrict trade. The United States delegation wondered whether Armenia, Belarus, and the Kyrgyz Republic also intended to adopt new amendments in technical regulations. The US requested from Russia and Kazakhstan to provide clarification on criteria that would determine if toys were likely to result in the Article 4 risks to children, whether these criteria would be made public and how long it would take to make this decision. They posed a question as to whether domestic toys were subject to the same evaluation. The US interpreted that the basis for introduction of new requirement was increased

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<sup>43</sup> See TBT Committee Minutes of the Meeting of 29-30 March 2017 (<https://docs.wto.org>)

imports of fantasy dolls and asked Russia and Kazakhstan to clarify whether the evaluations would apply to all or subcategories of toys and the age grading of toys subject to this measure as well. The US emphasized that targeting specific product lines rather than application of the criteria to all toys raised concerns on the legitimacy of the process.

The representative of the Russian Federation supported substance of the statement made by Kazakhstan in TBT STC discussion. Furthermore, he reaffirmed that all WTO Members' concerns would be taken into account in developing the regulation as provided by Article 2.9.4 of the TBT Agreement. Ministry of Industry and Trade of Russian Federation also supported Kazakhstan's proposal until the business community strongly opposed it.

Thus, countries that raised STC in WTO TBT Committee were concerned primarily in issues including discrimination, lack of scientific evidence, ambiguous conformity assessment procedures leading to unnecessary trade barriers.

#### **4.3.1. Discrimination issue**

Targeting specific product lines rather than application of the criteria to all toys raises concerns on the legitimacy of the process and demonstrates discrimination motives as over 80% of toys falling under mandatory

psychological pedagogical expertise are imported goods (refer to Table 5). Besides, Belarus claimed that this contradicts to the legislation of the EAEC, which has binding nature for all parties and cannot be implemented partially by taking into account national legislations of only one party which is discrimination toward other parties of the EAEU.

In addition, the fact that new amendments to the regulation had uncertain messages in the way that it was ambiguous as to whether amendments were targeting only foreign toy producers. In this regard, the United States has requested clarification on whether domestic toys would also be subjected to the regulation. According to the TBT chapter of the EAEU Treaty (Appendix 9.3)

*Technical regulations of the Union shall be developed based on the relevant international standards (regulations, directives, guidelines and other documents adopted by international standardisation organisations), except in cases where respective documents are unavailable or non-consistent with the purposes of technical regulations of the Union, including due to climatic and geographical factors or process-related and other specific features. In the absence of the required documents, regional documents (regulations, directives, decisions, standards, rules and other documents), national (state) standards, national technical regulations or draft rules shall be used.*

*WTO TBT Agreement (Article 2.4) states similar condition:*

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

No other market anywhere in the world has such a regulation nor requirement for any product. This requires comprehensive research on market impact by a country imposing technical regulation which was not done in the case of Kazakhstan.

Enforcing regulation towards specific product lines as it was indicated in Article 4 “Dolls made in the form of a human body and depicting only people, parts of their body entirely, as well as objects of their use” questions legitimacy of the amendments and discriminatory nature toward people of other races and people with disorders. Particular criticisms were levied against Barbie and Monster High dolls that are produced under the famous American brand Mattel. According to some domestic psychologist and politicians, Barbie does not teach family values, but consumptionism (especially shopping), impose the standards of western beauty, and wears inappropriate clothing.

According to distributor of Mattel, the philosophy of Monster High has



a powerful positive and optimistic message. The main idea of this brand is to help the child to perceive himself as he is, to overcome complexes related to appearance, and to overcome age-related fears. Each character of Monster High has a certain flaw that does not make him an outcast in society, but makes him unique. Mattel has dolls in a wheelchair which aims to teach tolerance towards people with physical disabilities as well.

#### **4.3.2. Scientific Base**

##### *Article 2.2 WTO TBT Agreement*

...For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.

Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.

In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products.

The WTO TBT Agreement recommends indication of scientific evidence when a country enforces particular technical regulations to fulfill its

legitimate objective such as protection of human health and safety. The main claim of the technical regulation amendment developer country was that some type of toys negatively affected the mental health of children. Countries that raised STC in the WTO believed that there was a lack of scientific evidence that an individual toy can cause psychological harm to children. Moreover, they introduced opposite arguments and research stating that regardless of appearance of toys, it is only associated with the positive development of a child's mental health and socialization skills. Kazakhstan on the other hand presented evidences that were a basis for proposing mandatory psychological and pedagogical examinations. They claimed that academic works of authors like Smirnova E.O., Salmina N.G., Abdulaeva E.A. (2010); Filippova, Sheina E.G. (2008); Elkonin D.B. (1978); Vygotskii L.S. (1966); Loginova V. I., Samorukova P.G (1988).<sup>44</sup> reflect the potential harm that playing with inappropriate toys can bring. However, it seems that these research references were not enough to justify scientific basement of introducing psychological examination of toys. This can be explained by the fact that most of research was relatively outdated and might not carry as much value as it did before. In particular, considering the fact that psychological studies has differentiated its approaches in learning human

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<sup>44</sup> See Summary of Reviews on Technical Regulation "On Safety of Toys" ([http://www.eurasiancommission.org/ru/act/txnreg/deptexreg/tr/Documents/mx-5112@eecommission.org\\_20151204\\_114924.pdf](http://www.eurasiancommission.org/ru/act/txnreg/deptexreg/tr/Documents/mx-5112@eecommission.org_20151204_114924.pdf))

features and today they have introduced methods and knowledge that were undiscovered ten-twenty years ago. Separate research on the proposing topic nor its impact assessment on business by amendment developers did not take place prior to the amendment's proposal.

The Toy Industry Association (TIA) represents over 900 businesses such as toy manufacturers, importers and retailers, along with toy inventors, designers and testing labs that are involved in bringing safe and fun toys to the market. TIA accounts for almost 90% of the North American market. According to the TIA, the basis of the regulation is unmerited as there is no scientific evidence to support a determination that a toy is detrimental to a child's psychological well-being. According to them, the EAEU regulation violates the WTO TBT Agreement as it does not advance children's safety, is not based on science and does not address any actual risk of harm. They draw attention to the fact that no other market anywhere in the world has such a requirement for any product. The regulation does not provide any details on how this pre-market evaluation would operate, how a toy could pass or fail the evaluation and how such experts would be selected to make such a determination on the educational and psychological safety of a toy.

Next, they emphasized that there is a wealth of information from world-recognized psychologists regarding the positive benefits of toys and play which

would counter the need for such a regulation. To recall the UN Convention on the Rights of a Child, play is a vital component of a child's development and every child has the right to play. Play gives children the ability to both act out real world situations safely and imagine a world in which anything is possible. A child is then able to create different scenarios and conclusions in this fantasy world and explore the implications in relatively consequence-free ways. In doing so, children learn the boundaries of the world by testing them through play. Play also allows children to experience, express and regulate their emotions such as frustration, fear, anger and aggression, in a situation they can control. Similarly, they can practice empathy and understanding.<sup>45</sup>

Access to a broad range of toys help to stimulate and prolong play and open up possibilities to new fantastical scenarios. To provide an example, dolls and action figures facilitate pretend play enhancing social skills, problem solving skills, and overall self-awareness. Research has actually demonstrated that “controversial” play is beneficial to children as play is a child's way to explore complex emotions and situations in a safe manner. So, what may be seen as “concerning behavior” by adults may be a healthy exploration of self and society.

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<sup>45</sup> See Toy Industry Association Review on the TR “On Safety of Toys” (<http://www.eurasiancommission.org/ru/act/txnreg/deptexreg/tr/Documents/часть%203%20игрушки%20изм%202.pdf>)

They also referred to some studies demonstrating a causal relationship between violence in video games and violent behavior or juvenile delinquency have similarly shown no such link. Further defying the argument that there is a casual relationship between violence in video games and violence in youth, in the US as video game sales went up, juvenile crime and violence decreased. They emphasized that such regulation ignores the crucial role that parents play in ensuring that toys are played with properly and that the right toys are purchased for children based on the age, interests and emotional maturity of the child.

Toy industries of Europe (TIE) was established in 1991 with the aim to represent the interests of its members to European Union policymakers. They provide information for stakeholders, members and policymakers and provide a neutral platform for discussion and exchange.

TIE emphasized their appreciation toward EAEU's effort at increasing toy safety regulations. However, they expressed concerns in regard to the lack of scientific evidence that an individual toy can cause psychological harm to children, feasibility of developing objective criteria in absence of scientific proof, insignificance of toys' impact on children's development comparing to other socio-cultural influences such as the media and the negative consequences on the diversity of the Custom Union's market.

#### **4.3.3. Conformity Assessment Procedures**

Due to the fact that pre-market evaluation of toys can end up in arbitrary decisions based on very subjective assessments, foreign toy producers have little to no confidence that their goods will pass the expertise. This in turn is inconsistent with procedures that were foreseen in WTO conformity assessment provisions in the way that this creates unjustified barriers to international trade. Thus, *WTO TBT Agreement Article 5.2.7.* states:

whenever specifications of a product are changed subsequent to the determination of its conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine *whether adequate confidence exists that the product still meets the technical regulations or standards concerned*;

One of the key objectives of the WTO TBT agreement is that technical barriers should not be more trade-restrictive than necessary to fulfil a legitimate objective. Thus, conformity assessment procedures are on the center of this objective. Generally, exporters bear the cost of conformity assessment. Non-transparent and discriminatory conformity assessment procedures can become effective protectionist tools.

Ukraine stated that the conformity assessment procedure foreseen in the

Customs Union Technical Regulations "On safety of toys" (TR CU 008/2011) differed significantly from the international practices and created unjustified barriers to international trade. The regulation indicated that stricter conformity assessment procedures were envisaged for all toys and that certification bodies were required to register only in the territory of the Customs Union. This violates objectives of the WTO TBT Agreement, particularly, Article 6 which states:

Without prejudice to the provisions of paragraphs 3 and 4, Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures.

Introduction of new amendments to the technical regulation would require additional certification. Due to the uncertain nature of the new amendments and difficulty of assessing the moral value of a toy, there is a huge risk for the toy producers as they will never know if their products will pass expertise or not. This kind of risks will discourage toy producers from entering the EAEU market which will lead to a shrink in consumer choice and trade barriers towards domestic and foreign toy producers.

#### **4.3.4. Subsequent development of regulation amendment**

In response to the request from STC appellant countries in the WTO TBT Committee, particularly the United States who asked Russia and Kazakhstan to provide more information on criteria that would determine if toys were likely to result in the Article 4, further additional provisions to the Article 4 were added:

“Dolls made in the form of a human body and depicting only people, parts of their body entirely, as well as objects of their use should correspond to the following psychological and pedagogical criteria:

Dolls should give a true image of a person, corresponding to its different age stages. Dolls should be externally attractive and represent the image of a physically healthy person.

Toy makers are not allowed to:

- reproduce the disorders of external form of the human body, namely, the absence of some of its parts (upper and lower extremities and other disorders), or the presence (hump on the back and other disorders) that



indicate congenital or acquired abnormalities in the normal structure of the human body;

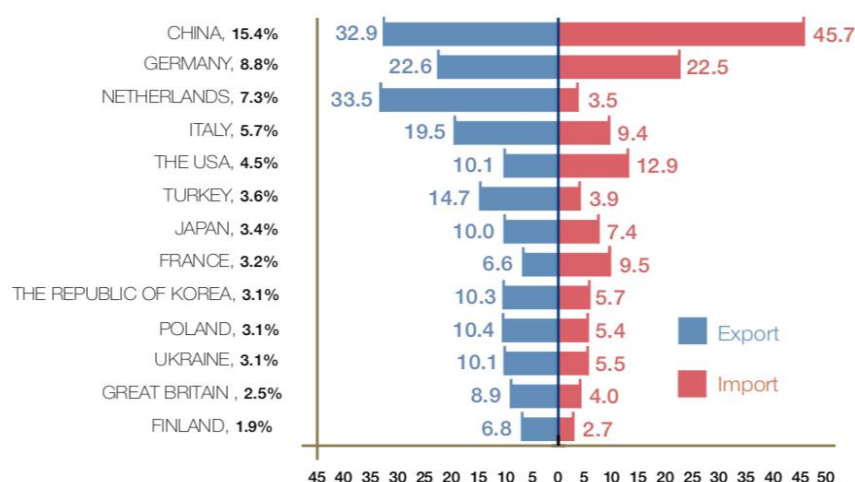
- an image of the appearance of a person showing disorders of the state of human health (skewed eyes, mouth, lack of pupils in the eyes, the presence of prosthetic hands and feet, etc.), about death (traces of wounds inflicted, sewn parts of the body, etc.);
- image of inadequate parts of the human body (the presence of more than two arms, legs, eyes, the presence of the second head, horns, ears, tail, the structure of mammalian animals, the membranes between the toes of the limbs, the tail corresponding to the structure amphibians), as well as their asymmetrical location.

Toy makers are not allowed to release dolls to the market if they have external signs listed above, as well as other disorders that can have a harmful effect on the mental and physical health of children.

If we look at the major partners of the EAEU we find that top five partners are China, Germany, Netherlands, Italy and the USA. The composition of exporting goods is dominated by mineral commodities 60, 6% followed by

metals and metal goods 10,5% and chemicals 6.7%. In terms of import, the EAEU Member-States import composition is prevailed by machinery, equipment and vehicles 43,3%, chemicals 18,5%, and food products and agricultural goods 13,2%. On this basis, we can sum up that the main share of exports of the member-States 84,7% falls on intermediate goods, including energy products with 58,9%. In regard to imports of Member-States, intermediate goods and consumption goods prevail with percentage share of 41,6% and 32,4% respectively.

**Graph 4. Foreign Trade Indicator of the EAEU, Major Trade Countries, USD, billions<sup>46</sup>**



<sup>46</sup> Eurasian Economic Union: Facts and Figures  
[http://www.eurasiancommission.org/ru/Documents/2659\\_1\\_eng\\_Цифры%20и%20факты\\_04Итоговый%20итог.11.2017.pdf](http://www.eurasiancommission.org/ru/Documents/2659_1_eng_Цифры%20и%20факты_04Итоговый%20итог.11.2017.pdf)

When we look at Russian and Kazakhstan's foreign trade composition individually, one may find convergent list of partners with the Union. There are no significant differences in foreign trade composition either.

Having analyzed current toy market issues in EAEU countries, we can claim that Member-States still have many remaining challenges on the safety of toy regulations that need to be resolved in order to provide free and transparent flow of goods. Providing a guarantee on the safety of toys that children play with contribute towards child development and plays an essential role in growing up. Especially, taking into account the fact that the average birth rate in Member-States is predicted to grow in the coming years. This creates a big potential and an incentive for Member-States to prepare a safe environment within the domestic toy market in the future. However, enforcing proposed amendments into existing technical regulation «008/2011 On Safety of Toys» regarding the establishment of the requirements of psycho-pedagogical safety of toys in order to protect children from the possible negative impact to their mental development and health, that cause aggression, fear and anxiety cannot be justified in economic terms either.

It is very important to emphasize the role of addressing the EAEU toy safety regulation amendment issue in STCs within the WTO system. STCs are not legal disputes. Any member can bring STC simply to seek information

concerning other Members' national measures in areas covered by the TBT Agreement or on the SPS Agreement. However, as Horn (2013) suggests, STCs also very often addresses disparities of views between WTO members regarding the consistency of national measures in TBT and SPS areas with these agreements. By raising STCs, WTO member countries are not only requesting information or clarification, but they also send a strong signal that they already have reasons to believe that obligations under the agreement have been violated.

This was reflected in the case of EAEU “008/2011 On the safety of toys” technical regulation amendment proposal notification which was developed into an STC. Appellant countries not only asked for clarification of the regulation mechanism but addressed their concerns regarding WTO objectives like discrimination, rationale, legitimacy, unnecessary barrier to trade as well as conformity assessment procedures.

Results of the study of Gianluca (2015) shows that countries tend to raise STC on SPS and TBT when the underlying NTM becomes a barrier to trade. However, validity of this argument in the case of the EAEU technical regulation amendments is ambiguous. Furthermore, Ngobi (2016) argues that the WTO Members that most frequently raise STCs are also the most efficient users of the TBT Committee in upholding the TBT Agreement adherence not only for the safety of their producers and consumers of goods, but also for the protection of

their international trade participation and global market share as well. To maintain their international trade participation and global market in the production of both industrial and agricultural goods, the most active Members in the TBT Committee make sure that each STC raised aims to address the implementation of certain provisions of the TBT Agreement with regard to their comparative advantage in the production of particular goods.<sup>47</sup>

In this regard, we can come to a conclusion that even small portion of market share matters for these countries as there is always room for augmentation of the exporting country market. If we assume that these countries have done market research on toys in the EAEU market, they are aware of the fact that toy market sector is increasing and it is estimated to increase even more due to the high birth rate, whereas their own national birth rate is going down which means that their toy industry sector is decreasing too. Secondly, in order to raise a STC, a country does not have to think in terms of economic benefit, but pursue law-based trade order. By raising a STC on toy safety technical regulation Canada, the EU and the United States once again examined their role of law and order guards among WTO Members. Possibly, this can be supported by the fact that these three countries rank top three as the most frequently STC raising countries.

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<sup>47</sup> See Ngobi (2016)

EAEU legislation aims to ensure that toys meet safety requirements that are amongst the strictest in the world, especially in relation to the use of chemicals in toys. The legislation addressing toy safety in the EAEU territory is the technical regulation “008/2011 On the safety of toys”. The EAEU Member-States periodically review the technical regulations in order to ensure it is achieving the Union’s and WTO’s objectives and update when it is necessary. Recent technological developments in the toy industry have raised new issues with regard to the safety of toys in areas such as chemicals and choking hazards. As a result, the EAEU responded with enforcing stricter requirements and examination of toys containing magnetic parts.

Taking into account the fact that the EAEU Member-countries do not export a significant number of children toys to the third party countries, their concern towards the importance of technical regulation procedures in reducing non-tariff barriers is relevant. If we compare with EU toy regulations, needless to say that they are determined to have the best practices in order to guarantee safety as toy safety regulations determines the competitiveness of European producers who export outside of Europe. The main reason is the existence of local safety requirements in non-EU countries. These safety requirements often also include the need for local testing, which creates one of the major trade barriers for the EU toy industry.

The regulation on “Toy Safety” serves as an important purpose in ensuring children in the EAEU countries can play with safe toys. However, the Member-States need to understand that by implementing incompetent amendments like compulsory requirements of psychological and pedagogical safety not only violates WTO objectives, but hinders free trade flow within the Union as well as with third party countries. If we take an example from the best and safest technical regulations practices as EU we see that its toy regulation’s essential safety requirements cover: *general risks* – the health and safety of children, as well as other people such as parents or caregivers and *particular risks* – physical and mechanical, flammability, chemical, electrical, hygiene and radioactivity risks.<sup>48</sup> In this regard, we can conclude that comprehensive and safe technical regulation can consist of essential requirements and the only question arising is mechanism of implementing such regulations.

Consolidation of the regulation within the EAEU Member-States with further harmonization of EU Directives and international standards, more detailed guidance on the procedures and requirements, simplification of the certification procedures might help to increase transparency and reduce counterfeit. By avoiding testing beyond what is necessary, and reduce risks to producers in developing and introducing new toys which may facilitate

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<sup>48</sup> Toy Safety in the EU ([https://ec.europa.eu/growth/sectors/toys/safety\\_en](https://ec.europa.eu/growth/sectors/toys/safety_en))

emergence of new domestic producers and as a result growth of domestic toy production.



## **V. CONCLUSION**

### **5.1. Implications from main analysis**

An increasing role of TBT in the global trade system and its potential effects on international trade has a solid ground in recent academia. Although it is assumed that tariff-free access and free movement of goods within the Union will boost trade liberalization and increase trade facilitation in internal as well as in external terms, it was found that so-called TBT's are an even more crucial factor in determining free flow of goods. As for the EAEU it is currently undergoing challenges to decrease NTB's that include TBTs and SPSs that are hindering overall market operation of the Union.

The EAEU Member-States agreed to harmonize their systems and policies in the field of technical regulation. Although this process has not been completed yet, the goal of this harmonization is to ensure uniform requirements for the circulation of goods within the territory of EAEU member states through common technical regulations. This thesis has analyzed the structure and mechanisms of the implementation of technical regulations in the Union.

By looking closer at the TBT Chapter of the EAEU and comparing it with WTO TBT Agreement objectives, it seems that the Eurasian Economic Union has wider objectives in removing non-tariff barriers. Although this thesis

has observed strong convergence of EAEU TBT Chapter provisions with WTO TBT Agreement provisions, it was revealed that due to a broad scope of some EAEU provisions their interpretations happen to be ambiguous. This in turn leads to weak enforcement of respective objectives with further misunderstandings and conflicts among Member-States.

A case study on toy regulation amendments has showed practical enforcement and mechanisms of Union's regulations. Although Member-States of the Union do have legitimate desire and objectives to minimize gaps in technical regulation sphere, it was demonstrated that due to enforcement mechanisms, or in other words, different approaches in tackling this issue, member countries are still undergoing some problems in different levels of TBTs. In addition, there is still a lack of commitment among EAEU Member-States. The main figures in the analyzed case were Kazakhstan and Russia, with one of the Member-States, Belarus, opposing the amendments and Armenia and the Kyrgyz Republic expressing no interest as it was not touching upon their national interests. Here, it would be appropriate to recall, the Russian annexation of Crimea in 2014 when Russia responded with counter-sanctions to the Western world. Astana and Minsk did not support Russian counter-sanction and maintained trade imports with Western countries. These cases demonstrate that when it comes to national interest of each member country, they have a tendency

to overlook the Union's objectives. This allows us to consider that there is a lack of formally binding provisions in the EAEU, particularly in its institutions that creates a case to abolish the Union's regulations without any punishment.

## **5.2. Future directions for technical regulations.**

Tarr (2015) pointed out that for the Eurasian Economic Union to succeed, it is necessary that its members receive some gain from membership. As it was shown in chapter two of this paper, Eurasian Development Bank estimated that small economies like Belarus, Armenia and Kyrgyzstan will benefit the most from the removal of NTBs. Although trade is not zero-sum game, given the different level of domestic capacity of Member-States, there is a big potential for NTBs to facilitate internal trade within the Union. Since regulatory system is a cornerstone of the trade flow, its strictness seriously hinders the whole trade system.

By 2018, 46 technical regulations of the EAEU Customs Union were adopted, among which 37 entered into force. The aggregate integration effect for the economies of the EEU member states is planned to be obtained after 2025 upon the completion of all transitional provisions stipulated in the Treaty of the Union. This means that the EAEU has a long way to go in terms of exercising

harmonization mechanisms in removing technical barriers. In this regard, it is crucial to consolidate regulations within the best international practices, provide more detailed guidance on the requirements and simplification of the certification procedures, and avoid testing beyond what is necessary thus increasing incentives for domestic producers to entry markets.

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## 국문 초록

아르메니아, 벨라루스, 카자흐스탄, 키르기스스탄, 러시아로 구성된 유라시아경제 연합(EAEU)은 구소련 지역에서 최초로 성공을 거두고 있는 지역경제통합기구이다. EAEU 는 2012 년 관세동맹으로부터 시작하여 2015 년 경제연합으로 발전하였으며, 공동시장의 운영 및 지역경제통합의 전반적인 효율성을 저해하는 비관세 장벽의 철폐를 목표로 하고 있다.

본 논문은 WTO TBT 협약의 기본 원칙과 조항을 검토하고 이를 EAEU TBT 챕터와 비교하여 EAEU 와 회원국들이 어떤 방식으로 기술 규제를 개발 및 시행하는 지 검토할 것이다. 또한, 저자는 기술 규제의 조화를 위해 회원국들이 취하고 있는 구체적인 조치들을 기술하고자 한다. 마지막으로, "Safety of Toys" 관련 기술 규정 개정 사례를 자세히 살펴봄으로써 회원국들이 연합 내에서 일반 기술 규정을 제정할 때 직면한 장애물과 문제점을 확인하고자 한다.

분석 결과에 따르면 EAEU TBT 챕터의 대부분은 WTO TBT 조항과 일치하지만, EAEU 는 국내 시장의 추가적인 통합과 조화를 위한 추가 목표를 설정하고 있다는 점을 발견할 수 있다. 그러나 조항들이 광범위하고 모호한 용어를 포함하고 있어 조항을 이해하는데 어려움이 따른다는 문제점이 있다. 장난감 안전 규제 개정에 대한 사례 연구를 관찰해보면 EAEU 가 WTO TBT 협정의 목표를 추구함에 있어 긍정적인 성과를 거두고 있음이 분명하다는 것을 알 수 있다. 그럼에도 불구하고 EAEU 회원국 간의 합의 부족 및 기술 규제 접근법으로 인해 이러한 바람직한 목표는 완전히 달성되지 못하고 있다.

**주제어:** 무역기술장벽, 지역경제통합, 유라시아경제 연합, 관세동맹, 세계 무역 기구, 기술적인 규정.

**학번:** 2016-22673