



SADC GHS POLICY

United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS)

Aim: One chemical, one label – worldwide

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EXECUTIVE SUMMARY

Chemicals are beneficially used in many spheres of life. Alongside their benefits however, chemicals have the potential to adversely affect people, animals, plants and the environment if they are not handled properly during transportation, use and disposal.

In this document a harmonised approach to the classification and labelling of chemicals within the region is proposed. It is suggested that the most beneficial way to implement this classification and labelling system in SADC is to adopt and apply the international methodology developed by the United Nations for the classification and labelling of chemicals: the Global Harmonised System for the Classification and Labelling of Chemicals (GHS). It is suggested that the GHS is a solution to some of the challenges currently affecting the region in terms of the trade of chemical products and in terms of ensuring occupational health and safety in regional work environments.

The paper envisages that the implementation of GHS based regulations in the SADC region be in two phases: first the draft regional GHS policy proposal should be finalised and presented to SADC Ministers or Council for approval. If granted, this should then be followed by a technical implementation phase where GHS elements are incorporated into national legislations on chemicals in a harmonised way across the region. In this regard, the national representatives in the SADC Technical Regulations Liaison Committee (SADCTRLC) will have a strong role to play in liaison with all national stakeholders involved with chemicals.

The roll out of the proposed GHS based technical regulations would support the aims of the Technical Barriers to Trade (TBT) Annex to the SADC Protocol on Trade which calls for the harmonisation of standards and technical regulations in the region to support trade.

The successful implementation of GHS based technical regulations regionally will serve as an important test case for broader regional cooperation in the area of technical regulations in SADC; an important activity with respect to reduction of barriers to trade.

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DEFINITIONS

GHS	Globally Harmonized System for the Classification and Labelling of Chemicals
GRP	Good Regulatory Practice
ILO	International Labour Organization
IOMC	Inter-organization Programme for the Sound Management of Chemicals
OECD	Organization for Economic Cooperation and Development
RIA	Regulatory Impact Assessment
SADC	Southern African Development Community
SADCSTAN	SADC Cooperation in Standardization Committee
SADCTRLC	SADC Technical Regulations Liaison Committee
SDS	Safety Data Sheet
SQAM	Standardization, Quality assurance, Accreditation and Metrology
SQAMEG	SQAM Expert Group
TBT	Technical Barriers to Trade
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNECE	United Nations Economic Commission for Europe
UNSCEGHS	United Nations Economic and Social Council's Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals
UNSCETDG	United Nations Economic and Social Council's Sub-Committee of Experts on the Transport of Dangerous Goods
WSSD	World Summit for Sustainable Development
WTO	World Trade Organization
SIDA	Swedish International Development Agency

CIDA	Canadian International Development Agency
UNEP	United Nations Environment Programme
TIFI	Directorate of Trade, Industry, Finance and Investment
SHDSP	Directorate of Social and Human Development and Special Programmes
FANR	Directorate of Food, Agriculture and Natural Resources
I&S	Directorate of Infrastructure and Services
GEF	Global Environment Fund
USAID	United States Agency for International Development
GIZ	Die Deutsche Gesellschaft für Internationale Zusammenarbeit
PTB	Physikalisch-Technische Bundesanstalt

1 BACKGROUND AND INTRODUCTION

To minimise unintended effects of chemicals on life and the environment, many countries and organisations have over the years developed standards and/or regulations giving guidance on the correct handling of chemical products. In many cases, differences among these national standards have caused confusion for companies that market chemical products globally. It has been noted that whilst regulations for chemicals may be similar in some respects; different countries do at times produce different regulations for the same chemicals. As a result, a chemical may be considered as carcinogenic or flammable in one country but not so in another country. Decisions on when or how to communicate hazards on a product label or safety data sheet thus vary around the world and companies wishing to be involved in international trade must invest substantially in tracking the changes in these laws and regulations in various countries and prepare different labels and safety data sheets accordingly. In addition, many countries have no system at all.

The chemical sector is a large industry that operates in nearly every country in the world. It produces products that are used in everyday life and can be found in clothes, food, houses, transport, agriculture, medical and communication products. It employs over 10 million people globally and generates US\$ 1.7 trillion worth of global annual production. It is projected that world chemical production will increase by 63% in real terms between 1996 and 2010; with a shift in production and use of the chemicals to non-OECD developing countries.

SADC, through its Directorate for Infrastructure and Services at the Secretariat is already working with its experts and tripartite partners (COMESA and EAC) in the development of transportation of dangerous goods regulations based on the UN approach (Orange Book). A *SADC Code of Practice on the Safe Use of Chemicals at the Work Place* was developed and is being implemented in some Member States. Additionally, most SADC Member States have some form of regulatory systems covering the area of chemicals but the approaches are not harmonised across the region thus presenting significant challenges for trade. Based on the harmonization principles outlined in the TBT Annex to the SADC Protocol on Trade, adoption of the GHS will allow a harmonised labelling and classification system to be applied across the entire value chain of chemicals in the region resulting in enhanced regional performance in the use of chemicals.

Purpose of this document – This GHS draft policy paper has been developed to assist the SADCTRLC GHS Extended Working Group (EWG) to finalise a SADC GHS Policy Paper which will be submitted to SADC Council of Ministers for their consideration. It is envisaged that once adopted by the Ministers, the SADC GHS policy will guide legislative processes in SADC Member States in the development and implementation of common GHS technical regulations based on the United

Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS). The policy will ensure that all member states implement the GHS on a harmonised basis throughout the life-cycle of chemicals encompassing all the sectors contemplated by the GHS, i.e. the agricultural, industrial chemical production, transport and consumer sectors. A SADC GHS Technical Standard which will be referenced in all relevant member states' regulatory instruments has already been developed by the SADC Cooperation in Standardization Committee, SADCSTAN based on the South African Standard SANS 10234:2008 Edition 1.1.

2 SITUATION ANALYSIS

2.1 Global Context

2.1.1 Background to GHS System

"Globally Harmonized System of Classification and Labelling of Chemicals (GHS)" is a system created by the United Nations (UN) to address the classification of chemicals by types of hazard and to harmonize hazard communication elements, including labels and safety data sheets. Under GHS, it is anticipated that all chemicals will be uniformly classified, with a single system of hazard warning signs and statements used for Safety Data Sheets (SDS), product and shipping labels. This way information on physical hazards and toxicity from chemicals will be readily available in order to enhance the protection of human health and the environment during handling, transport and use of the chemicals. GHS also aims at providing a basis for harmonization of rules and regulations on chemicals at national, regional and worldwide level, an important factor for trade facilitation.

As an international agreement, GHS is non-legally binding in the member countries of United Nations but many countries and regions have published their own regulations or standards to implement GHS. For example, the GHS criteria were introduced into Europe via the Regulation (EC) No 1272/2008 on the Classification, Labelling and Packaging of substances and mixtures also known as the CLP Regulation. The CLP Regulation was published in the European Union's official journal on 31 December 2008 and entered into legal effect on 20 January 2009 subject to a lengthy transitional period extending up to 1 June 2015 when its provisions will be gradually phased in. This is intended to help suppliers and users of chemicals to change from the old EU classification and labelling system to the new GHS based system. The new GHS Regulation replaces the Dangerous Substances Directive (67/548/EEC) and the Dangerous Preparations Directive (1999/45/EC).

2.1.2 Historical development of the GHS

Harmonization of classification and labelling of substances has been used by the transport sector for physical hazards and acute toxicity for many years but the requirements were often not harmonized with those of other sectors e.g. workplace and consumer sectors in many countries. In 1992, an international mandate to develop a globally harmonised system for hazard classification and labelling was adopted at the UN Conference on Environment and Development (UNCED) as reflected in Agenda 21, paragraph 19.27:

"A globally harmonised hazard classification and compatible labelling system, including material safety data sheets and easily understandable symbols, should be available, if feasible, by year 2000".

The work was coordinated and managed under the auspices of the Inter-organization Programme for the Sound Management of Chemicals (IOMC) Coordinating group for the Harmonization of Chemical Classification Systems (CG/HCCS). The technical focal points for completing the work were the International Labour Organization (ILO); the Organization for Economic Cooperation and Development (OECD); and the United Nations Economic and Social Council's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCETDG).

After 2001, the work was transmitted by the IOMC to the new United Nations Economic and Social Council's Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS). The UNSCEGHS is responsible for maintaining the GHS and promoting its implementation. The secretariat services are provided by the Transport Division of the United Nations Economic Commission for Europe (UNECE).

At its meeting in Johannesburg in September 2002 the World Summit on Sustainable Development (WSSD) encouraged countries to implement the GHS as quickly as possible with a view to having the system fully operational by 2008. Subsequently, the United Nations Economic and Social Council invited Governments to take the necessary steps through appropriate national procedures and/or legislation to implement the GHS as recommended by the WSSD. Countries were requested to amend their respective legal instruments addressing transport safety, workplace safety, consumer protection or the protection of the environment so as to give effect to the GHS through such instruments.

The first edition of the Globally Harmonised GHS, which was intended to serve as the initial basis for the global implementation of the system, was approved by the Committee of Experts at its first session (11-13 December 2002) and was published in 2003. The first revised edition of the GHS (GHS Rev.1) was published in 2005 and included the amendments to the first edition adopted by the Committee of Experts at its second session (10 December 2004). At its third session (14 December 2006), the Committee of Experts adopted a set of amendments to the first revised edition of the GHS, which were included in the second revised edition of the GHS (published in July 2007).

At its fourth session (12 December 2008), the Committee of Experts adopted a set of amendments to the second revised edition of the GHS, which were consolidated in document ST/SG/AC.10/36/Add.3. The third revised edition of the GHS (published in July 2009) takes into account all these amendments which concern, inter alia: new provisions for the allocation of hazard statements and for the labelling of small packages; two new sub-categories for respiratory and skin sensitization; the revision of the classification criteria for long-term hazards (chronic toxicity) to the aquatic environment; and a new hazard class for substances and mixtures hazardous to the ozone layer.

A fourth edition of the GHS has now been published and it contains a set of amendments to the third edition which were consolidated in document ST/SG/AC.10/38/Add.3. The fourth revised addition of the GHS takes into account new hazard categories for chemically unstable gases and non-flammable aerosols; further rationalization of precautionary statements, and further clarification of some of the criteria to avoid differences in their interpretation.

The Committee of Experts used mainly the systems existing in Canada, the EU and the USA as the primary basis for GHS but also incorporated the best aspects of other countries' systems to develop the final harmonised approach.

2.1.3 How the GHS works

The GHS itself is really not a regulation or a standard, rather a set of criteria against which hazard characteristics of chemical substances and mixtures can be assessed. Requirements for hazard communication elements like labels and safety data sheets are also provided. The GHS Document (referred to as "The Purple Book") establishes agreed hazard classification criteria and communication requirements with explanatory information on how to apply the system. The GHS aims at ensuring that appropriate information on physicochemical, human health and environmental hazards of chemicals is available in order to enhance the protection of human health and the environment during the handling, transport and use of these chemicals. Target audiences for the GHS include the following:

- consumers;
- employers;
- workers using and handling chemicals in the workplace;
- workers in waste handling facilities;
- workers in the transport sector, and
- emergency responders.

Regulatory authorities in countries adopting the GHS will thus take the agreed criteria and provisions, and implement them through their own regulatory process and procedures rather than simply incorporating the text of the GHS into their national requirements. The GHS also contains context and guidance for regulators and those in industry who will ultimately be implementing the requirements which have been adopted.

The GHS Document provides countries with the regulatory building blocks to develop or modify existing national programs that address classification of chemicals and transmittal of information about those hazards and associated protective measures. This helps to ensure the safe handling and use of chemicals as they move through their product life cycle from "cradle to the grave."

Companies will be required to revise their product SDS's to the new global format, and to change their supply labels accordingly depending on the implementation

timelines in each country. Some products that do not currently carry hazard warnings may require labelling under GHS.

2.2 Regional Context

2.2.1 SADC Situation Analysis

The Declaration and Treaty establishing the Southern African Development Community (SADC) has as a central objective *“the achievement of development and economic growth and enhancement of the standard and quality of life of the people of Southern Africa”*. The Treaty provides for the negotiation and conclusion of Protocols spelling out the objectives and scope of, and institutional mechanisms for cooperation and integration. One such Protocol is the SADC Protocol on Trade which seeks to facilitate liberalisation of intra-regional trade in goods and services and the establishment of a Free Trade Area in SADC as a means to achieve enhanced regional socio-economic development. The Technical Barriers to Trade (TBT) Annex to the SADC Protocol on Trade establishes a framework for the removal of technical impediments to the movement of goods and services in the region through harmonization of standards and technical regulations.

Technical regulations are legitimately passed by governments for the protection of plant, animal and human life or health, and for the protection of the environment; but they can become serious obstacles to trade if not harmonised. The TBT Annex to the SADC Protocol on Trade and the WTO TBT Agreement suggest that technical regulations be based on international standards as a means to minimising the likelihood of their becoming barriers to trade.

SADC has a robust Chemicals industry (see Table 1) and chemicals are important trade products in their own right. Governments in SADC however, would want to ensure that chemicals production, transportation, use and their disposal are done safely. Although most member countries have some form of regulatory requirement for the safe use of chemicals, the approaches are not harmonised across the region thus presenting significant challenges for trade. These challenges are exacerbated by the high volumes of cross border transport of chemicals by road.

Adoption of the GHS in SADC will allow a harmonised system to be adopted for the region and as result will enhance regional trade in chemicals. Implementation of the GHS should be in accordance with the harmonization principles outlined in the SADC TBT Annex to the SADC Protocol on Trade.

In line with the promotion of international standards as the preferred basis for technical regulation, as set out in the TBT Annex to the SADC Protocol on Trade and the WTO TBT Agreement, SADCSTAN undertook the task of developing harmonised text for the GHS requirements based on the South African standard detailing the requirements of the GHS (SANS 10234:2008 Edition 1.1). The harmonised text is now available for publication as a national standard by all member states. South

Africa has commenced a process to revise the harmonised text to include the amendments of the GHS up to Edition 4. These amendments will be presented to SADCSTAN for consideration and adoption at regional level.

2.2.2 GHS Status in SADC Member States

GHS has been received with enthusiasm globally and more than 65 countries are either implementing the system or actively developing or revising legislation for its implementation. This includes 7 countries in Africa with 4 of these (Madagascar, Mauritius, South Africa and Zambia) being SADC Member States. According to the UN however, Mauritius and South Africa are implementing their national systems based on the first edition of the GHS. Madagascar and Zambia are still in the legislation development phase.

2.2.3 Moves towards Regional Implementation of the GHS in SADC

A Sub-Regional Workshop on Chemical Hazard Communication and Globally Harmonised System of Classification and Labelling of Chemicals (GHS) Implementation for Countries of the Southern African Development Community (SADC) Region was held in Livingstone, Zambia, from 1 to 4 September 2003, to stimulate the co-ordinated implementation of the GHS in the SADC region. Supported by the United Nations Institute for Training and research, UNITAR; the event brought together over forty representatives from SADC governments, industry and labour organisations, international organisations and GHS resource persons. The workshop concluded that implementation of the GHS at the regional level and in SADC member countries would be of significant benefit for the region, both from an economic as well as an environmental and health protection perspective. One of the key outcomes of the workshop was a commitment to initiate the development of a SADC regional strategy with the goal to ensure SADC-wide harmonization of GHS implementation by 2007. Following its formation in March 2009, the SADC Technical Regulations Liaison Committee (SADCTRLC) has set the development of GHS based regional technical regulations as one of its priority tasks.

The SADCTRLC Expert Working Group working this task has noted the diversely cross cutting nature of GHS. The following sectors of the economy and society can be directly affected by GHS regulations: health, environment, agriculture, trade, industry/manufacturing, mining, transport and consumers. It is the intention of the committee to ensure that there is effective collaboration and coordination between all stakeholders involved.

2.3 Benefits of Implementing GHS

The basic goal of hazard communication is to ensure that employers, employees and the public are provided with adequate, practical, reliable and comprehensible information on the hazards of chemicals, so that they can take effective preventive and protective measures for their health and safety. Thus, implementation of

effective hazard communication provides benefits for governments, companies, workers, and members of the public.

From a global perspective it is known that the application of the GHS will:

- enhance the protection of human health and environment by providing an internationally comprehensible system;
- provide a recognised framework to develop regulations for those countries without existing systems;
- provide one set of criteria for classification to be used for legislation and downstream users;
- facilitate international trade in chemicals whose hazards have been identified on an international basis; and
- reduce the need for testing and evaluation against classification systems.

Tangible benefits to governments are:

- fewer chemical accidents in incidents resulting in lower health costs;
- improved protection of workers and the public from chemical hazards;
- reduced costs and easier coordination of legislation implementation and monitoring;
- improved support for inter-ministerial and inter-agency coordination and cooperation;
- avoiding duplication of effort in creating national systems;
- reduction in the costs of enforcement; and
- improved communication on chemical issues, both domestically and internationally.

Companies can benefit in the following ways:

- a safer work environment and transport of chemicals and improved relations with employees;
- an increase in efficiency and reduced costs from compliance with hazard communication regulators;
- application of expert systems resulting in maximizing expert resources and minimizing labour and costs;
- facilitation of electronic transmission systems with international scope;
- expanded use of training programs on health and safety;
- reduced costs due to fewer accidents and illnesses; and
- improved corporate image and credibility.

Benefits to workers and members of the public include:

- improved safety for workers, consumers and others through consistent and simplified communications on chemical hazards and practices to follow for safe handling and use; and

- greater awareness of hazards resulting in safer use of chemicals in the workplace and in the home.

3. EXISTING REGIONAL LEGAL AND INSTITUTIONAL MECHANISMS

3.1 SADC Regional Indicative Strategic Development Plan

The Regional Indicative Strategic Development Plan (RISDP) has been developed in order to provide strategic direction to the SADC and to operationalize the SADC Common Agenda. The Plan was developed with the involvement of all stakeholders and takes into account relevant sectoral policies, strategies and programmes, including a broad continental framework such as NEPAD. It prioritises intervention areas into two categories, i.e. those of a cross-sectoral nature and those related to specific areas of cooperation and integration. Both categories have programs relevant to GHS. Under the cross sectoral issues, there is an environment intervention which seeks among others:

- Areas of focus;
- The creation of the requisite harmonized policy environment, as well as legal and regulatory frameworks to promote regional cooperation on all issues relating to environment and natural resources management including trans-boundary ecosystems; and
- The finalization and implementation of the Strategy and Programme for Brown Environmental Management in Southern Africa by 2005.

The strategy also seeks to implement at least 50% of the trans-boundary natural resources management programmes and projects in line with NEPAD by 2008. Other relevant focus areas include science and information technology and communication, which are all directly relevant to the GHS.

3.2 Legal Mechanisms relevant to Chemical Classification and Hazard Communication

SADC Treaty: All the SADC Member States are bound by this Treaty, which establishes SADC and its organs/structure. The Treaty is a legally binding agreement on all Member States, and includes all other legal instruments (e.g. Protocols and Codes of Practice) established under the Treaty.

Protocols and Codes of Practice: The SADC at present has more than twenty Protocols. However, only one Protocol, the Protocol on Transport Communication and Meteorology is directly relevant to the implementation of the GHS. However, implementation of the Protocol on Trade would be facilitated by the harmonisation of classification and labelling of chemicals. Other protocols on the agriculture, industry and consumer sectors will be developed in the future by the respective Directorates. A general feature of the Protocols is the aim to harmonise legal and implementation modalities across sectors. A *SADC Code of Practice on The Safe Use of Chemicals* has been adopted.

Protocol on Transport, Communications and Meteorology: This Protocol *inter alia* requires Member States to implement a harmonised classification system or to adopt common safety rules and regulations governing the transportation of hazardous

materials. It further calls for Member States to harmonise legislation which can be used to prosecute offenders. Member States have agreed to develop compatible incident management systems with a view to reducing safety hazards and restoring road usage as soon as possible after an incident occurs by minimizing the time that dangerous obstructions remain on roads. This will partly be achieved by developing harmonised strategies which include the rapid detection and reporting of incidents such as vehicle accidents and hazardous or chemical spills. Implementation and maintenance of the GHS would facilitate the achievement of these goals.

Protocol on Trade: Like all other general agreements on free trade, the region will witness free movement of goods including chemicals. This will require the capacity of regulating bodies across borders to be strengthened or built, in order to be able enforce any agreement(s) on the implementation of the GHS.

3.3 Institutional Mechanisms - Regional

Tribunal: A Tribunal ensures adherence to and the proper interpretation of the provisions of the SADC Treaty and subsidiary instruments (e.g. Protocols and Codes of Practice) and adjudicates disputes referred to it. *[The Tribunal is currently dissolved but discussions are underway to reformulate it].*

Secretariat: The four Directorates (SHDSP, TIFI, I&S, and FANR) fall under the Office of the Executive Secretary. They are responsible for developing and coordinating the implementation of relevant protocols under their jurisdiction. Currently, in terms of protocols of direct relevance to the GHS, only the Code of Practice on the Safe use of Chemicals (under SHDSP) and Protocol on Transport (under I&S) have been developed. Protocols relevant to the environment or agriculture will fall under the FANR.

SADC Policy and Strategy for Environment and Sustainable Development: The document assesses the general environment in the SADC region and makes far reaching recommendations on tackling the environmental problems in the region linking the SADC priority areas to the Agenda 21. An institutional framework for addressing chemicals and other toxic wastes is recommended and this could have relevance for the future implementation of the GHS.

3.4 Institutional Mechanisms - National:

The implementation of GHS in each SADC Member State will of necessity include several players. National Standards Bodies or contact points will be expected to play an important role in the adoption of the harmonised standard and its dissemination in their territories. They are also well placed to carry out the awareness creation functions that would enable stakeholders to familiarise with the technical document.

Business or professional associations whose membership includes the players in the chemical industry would be expected to assist in ensuring that their constituents are made aware of the GHS regulation and what steps they would need to take in their own specific area to comply with the regulation.

Government would have to establish the most cost effective way to actually enforce the regulation. In some countries it may be possible to extend the responsibilities of an existing regulator to also take care of GHS; in others there may be the need to establish a completely new regulator or regulators. Whatever the approach chosen, there will be need for close cooperation at the SADCTRLC level to ensure a harmonised approach so that trade is not negatively affected.

3.5 *Implementation framework*

In SADC regional agreements can only take effect at national level once incorporated into domestic legislation. Implementation of agreed technical regulations is thus done in two stages: first agreement at regional level must be reached and this has been done. At their meeting held on 25 April 2009 in Gaborone, the SADCTRLC agreed to prioritise the development of a SADC technical regulation on the classification and labelling of chemicals and resolved to request SADCSTAN to start work on the harmonization of standards in the area of classification and labelling of chemicals. This has been done and the regionally harmonised text is available for publication as a national standard by all member states.

The next step is to develop a regulatory regime which will use the technical standards as the basis of the regulatory requirements. SADCTRLC established a working group, SADC GHS Expert Working Group, to develop a draft GHS policy proposal and a framework for a model regulation. The first policy draft was produced in January 2010 following which the committee decided to contract out further development of the policy document to a service provider. The policy framework proposed below is the product of that process.

4 GHS IMPLEMENTATION ARRANGEMENTS

4.1 Rationale

The chemicals industry in SADC, like many others, is a robust industry that is growing, generating employment, and contributing to socio-economic development and poverty reduction within the region. Chemical products are also being traded between countries in SADC and this trade is expected to grow. It is however universally recognised that the chemicals industry has the potential to negatively impact, people, animals and the environment. Although the principle of regulation of chemicals is already well established in SADC, lack of harmonisation inhibits the effective management of chemicals and at the same time presents a barrier to trade.

Good Regulatory Practice (GRP) checks can be instituted to determine whether it is really necessary to regulate in any given situation. As in all regulation however, it is important to ensure that prescribed health and safety interventions do not choke industry's potential to thrive. Regulations are frequently accompanied by high compliance costs and burdensome administrative formalities.

Most SADC members already have some regulatory instruments in place to deal with the safe use of chemicals so the principle of regulation in this field is already accepted. The legal basis for regulating chemicals through their lifecycle can be divided into the following regulatory areas:

- Occupational Health and Safety
- Agricultural chemicals
- Transport
- Consumer protection

4.2 Guiding Principles

The following principles need to be taken into account in deciding as to whether implementing GHS based regional technical regulations is justified or not.

- The problem to be addressed by the regulation needs to be correctly defined.* We have seen in the foregoing that whilst chemicals are beneficial, there is the potential for negative health and safety impact in their use, transportation and disposal.
- Government action must be justified.* It is the responsibility of Governments to protect the environment, plant, animal and human life or health. In this case the issues at stake are too important to leave to market driven or voluntary interventions. Government driven intervention through regulation ensures compliance by stakeholders and protection of the environment and life.
- National legislation must be the legal basis for implementation of GHS regulations.*

- (d) *It is also desirable that the benefits of regulation justify the costs.* The potential damage to the environment by chemicals can cost much more than the investment of regulation; especially considering that some chemicals have the potential to inflict permanent damage on the environment, humans and animals. Governments might however want to examine if there may be disproportionate effects of cost distribution among the affected stakeholders. For example, SMEs or certain regions may need to be given special considerations.
- (e) *The regulation must be clear, consistent, comprehensible and accessible to users.* The GHS is an international guide for the classification and labelling of chemicals that is already being applied in many countries throughout the world. SADC through a committee of experts has already developed a regional standard based on the GHS. Through national standards bodies or contact points, the documentation can be readily available in every Member State.
- (f) *Management of the GHS should adopt the principle of subsidiarity.* This is where all activities are undertaken at levels where they can be best handled. This means that the involvement of institutions, authorities, and agencies outside SADC structures to initiate and implement regional programmes using their own generated resources should be promoted and encouraged. The decentralised management approach will ensure adoption of the participatory approach, promote ownership of outputs by beneficiaries and facilitate integration with other initiatives at the national, regional, continental and global levels.
- (g) *All interested parties must be given the opportunity to present their views.* Implementation of the GHS must be based on broad participation and consultation, in order to engage as many stakeholders as possible, to create ownership for the outputs, and to internalise the principles upon which it is based. This is a very important consideration. When the regional standard on GHS was developed, a team of regional experts was involved. It would be important however when the regulation is developed to ensure that wider consultation is instituted. This should be done internally within SADC and also externally in order to comply with WTO TBT Agreement requirements.
- (h) *How will compliance be achieved?* All SADC countries have government departments with a direct interest in GHS matters e.g. Occupational Health and Safety, Transport, Environment etc. Some countries already have regulatory structures dealing with these issues It should therefore not be too problematic to implement GHS at regional level.

It can be concluded therefore that the rationale for regional implementation of the GHS exists in SADC and the benefits to be accrued justify the costs of implementing the GHS strategy for the classification and labelling of chemicals.

4.3 Regulatory Impact Assessment

Many countries have introduced the obligation to carry out a Regulatory Impact Assessment (RIA) for different kinds of regulations, especially for proposed technical regulations. In part such an exercise would address some of the questions raised in

4.2, but an RIA is ostensibly instituted to assess the impact of a proposed regulation with regard to its costs, benefits and adverse effects.

The RIA is a complex exercise and can be quite costly and time consuming. It would be recommended that for countries in SADC, efforts be made to access the RIA results of countries that have already done this with respect to the GHS and use these to formulate their own local implementation plans.

4.4 Proposed GHS Implementation Policy for SADC

4.4.1 Classification

Classification of chemicals in terms of their hazard is the first step in the implementation of a risk management regime to ensure that the risks associated with the manufacture and use of hazardous chemicals are minimised.

Risk management in respect of hazardous chemicals relies on the following elements:

- Identification of hazards
- Communication of hazards to target audiences
- Measures to be taken in respect of use, handling and storage, disposal and transport
- Measures to be taken in the event of an incident involving the hazardous chemical.

4.4.2 Identification of Hazard

The hazardous nature of the chemical is an intrinsic characteristic and is thus not affected by the circumstances, under which the chemical is used, handled, stored, disposed or transported. The risks however may differ depending on the circumstances. The way in which identification of the hazard is undertaken remains the same regardless of the activity that a Government may wish to regulate.

4.4.3 Communication

Information

Communication of the hazard needs to include information on the intrinsic hazard which may be as a result of one or more of the following intrinsic hazard characteristics:

- Physicochemical
- Toxicological
- Ecological.

Communication may also include information that allows appropriate measures to be developed to minimise risk. Such information could include exposure limits, the stability and reactivity of the material, hazardous decomposition products and incompatibility with other materials.

Target audiences

Communication needs to be tailored to the target audience, which may be:

- Consumer
- Persons involved in the manufacture or use of chemicals in the workplace
- Persons involved in transport of chemicals
- Person involved in disposal of chemicals.

4.4.4 Measures to be taken in respect of Use, Handling and Storage, Disposal and Transport of chemicals

Measures that may be required under circumstances of normal use in a workplace could include the engineering measures that could be taken to minimise the risk of exposure or the personal protective equipment that is required to protect against exposure.

Precautions for safe handling of a chemical product may include suitable technical measures such as prevention of exposure of the handler to the chemical product and prevention of fire and explosion as well as suitable precautions such as local/total ventilation and prevention of aerosol and dust. Specific handling precautions for prevention of contact with incompatible substances or mixtures may also be included.

Conditions for safe storage (suitable storing conditions and unsuitable storing conditions) may include suitable technical measures and measures for separation from incompatible substances and mixtures. Information on packaging material (recommended material and unsuitable material) may also be included.

4.4.5 Measures to be taken in the event of an incident involving a Hazardous Chemical.

First-aid measures

The first-aid measures to be taken should be included. If necessary, actions to be avoided at all costs should be identified. The information should be readily understandable by the person adversely affected and/or the first-aider

The information should be subdivided according to the different exposure routes, i.e. inhalation, skin contact, eye contact and ingestion.

A brief description of the anticipated acute effects, anticipated delayed effects and most important symptoms/effects should be provided.

If appropriate, advice for the protection of first-aiders and/or special notes to an attending physician may be included.

Fire-fighting measures

Information on which extinguishing media are suitable and also, if appropriate, which extinguishing media are unsuitable should be provided.

Specific hazards arising from the chemical product (e.g. nature of any hazardous combustion products) may be indicated if appropriate.

Specific extinguishing methods and any special protective equipment required should be indicated under precautions for fire-fighters.

4.5 Regulatory Framework

Given the range of activities and circumstances for which provision must be made in legislation the following overall approach is recommended.

4.5.1 Identification of Hazard

Depending on the activities to be regulated it may be necessary to develop more than one piece of legislation. For example occupational health and safety and transport legislation may be managed completely differently in a country.

Whatever the situation identification of the hazard should be undertaken using the classification criteria set out in the GHS.

Any country wishing to implement the GHS should therefore require all suppliers of chemicals to classify their products against the classification criteria contained in the regionally harmonised text of the Globally Harmonised System for Classification and Labelling, before they are made available on the market.

4.5.2 Communication

As is clear from the above, classification alone, is not sufficient to achieve the necessary risk management, communication of the hazard, information on the nature of the hazard, personal protection and emergency response measures must also be provided. Clearly the information to be provided depends on the recipient that needs to use it.

It is proposed that communication elements be regulated as follows in terms of national applicable legislation.

Activity	GHS elements	Possible applicable legislation
<u>All chemicals</u>		
Use	Safety Data Sheet, label,	Occupational Health and Safety

	workplace warning notices on nature of hazard and protective clothing required	Details of requirements in harmonised GHS text
Transport	Label	Transport legislation Requires vehicle placards and transport emergency documentation UN model regulations aligned with GHS.
Consumers	Labels	Consumer protection legislation
<u>Pesticides</u>		
Use	Labels including instructions on use	Agricultural chemical legislation Details of label requirements in harmonised GHS text

Countries may implement the GHS in a phased manner and it is proposed that countries review their current legislation with a view to amending where necessary or developing new legislation to provide the basis for referencing the requirements set out in the harmonised GHS text in legal text so that implementation becomes mandatory in the areas identified for implementation.

All legal instruments will require classification as the basis of implementation, in the first instance as the applicable communication materials are based on the nature of the hazard. Legal instruments that require specific communication elements such as labels and safety data sheets should reference the harmonised GHS text in respect of the specific element.

4.6 Transitional arrangements

A transitional period for the implementation of the GHS regulation in SADC will be required. The challenges outlined above immediately suggest that transitional arrangements may be complicated as SADC countries are quite diverse in terms of technical development status. However, what is important is that all countries agree to start implementing the GHS regulation at the same time. At least then, the intention to comply is established and trade/commercial forces may actually move those countries that have a strong interest in the issue to progress towards implementation quicker. Still, a 'smart' regional objective could be to stipulate a time period based on select products (i.e. apply the regulations for agreed range of chemicals e.g. fertilizers and fuels which are very strongly traded).

External trade, i.e. export to SADC of chemicals from countries that are already implementing UN GHS may serve to accelerate implementation of the new regulations in the region.

4.7 Phased approach to Implementation

A phased approach to implementation of the GHS can be pursued, i.e. elements which can proceed faster than others should be implemented when possible, and should not be delayed by elements which may take longer to implement.

An important stage in the process would be the assimilation of the agreed policy into domestic or national legislations. This process can be driven by members of the SADCTRLC in their countries. It is expected that many awareness raising activities and stakeholder consultations at the national level will also be carried out at this stage. Training will be a key component of the overall GHS approach and should incorporate information as it is introduced into the workplace. Employees and emergency responders will need to be trained on all new program elements, from hazard statements to pictograms.

The administrative architecture of the regulation's implementation will be entirely up to each Member State. SADCTRLC should however still have oversight roles to ensure that broad implementation procedures are harmonised in all countries, especially where there may be an impact on trade.

4.8 Implementation challenges

By nature legislative processes are slow and bureaucratic. It would be very difficult to set a common implementation schedule for the GHS in SADC for all countries. In 2002 the UN indicated a desire to see full adoption of the GHS by its Members by 2008. Even the more developed economies like the United States and European Union could not achieve this and the EU for example, has given its Member States until 2015 to comply with the new GHS based chemicals classification and labelling rules. It is more likely that SADC countries will domesticate the SADC GHS at differing pace depending on their technical and financial capacity to regulate.

Full uptake of the new regulations will depend on the speed at which stakeholders understand and are able to use the new regulations. Therefore, educating employees, consumers, emergency responders on the updated chemical and product classifications and related pictograms, signal words, hazard statements and precautionary measures will present a huge training challenge.

The GHS itself does not include requirements for testing substances or mixtures. Therefore, there is no requirement under the GHS to generate test data for any hazard class. Test data already generated for the classification of chemicals under existing systems should be accepted when classifying these chemicals under the GHS, thereby avoiding duplicative testing and the unnecessary use of test animals. This is fine for countries that have always had reasonably well advanced classification systems and credible data is available.

5 FINANCING THE PROPOSAL

International organisations using their specialised mandates, competences and their wider networks and relationships can assist the development and implementation of the GHS by pulling their resources taking advantage of synergies in order to overcome the constraints faced by the SADC countries. For example, UNEP, UNITAR, ILO, FAO, WHO, UNIDO, UN SCEGHS, UN SCETDG while supporting a project or program activity can allow flexibility to include a GHS related element within their programs. This would lead to quicker use of the synergies in order to realise or develop GHS within a country or the region.

Opportunities and synergies under different UN Conventions and through their funding mechanisms such as the GEF should be explored. Bilateral donors already active in the region, such as the USAID, GTZ, the Government of Switzerland, Swedish International Development Agency (SIDA), and the Canadian International Development Agency (CIDA) with a very strong interest in chemicals field should be approached for possible support.

6 SUMMARY

6.1 SADC, through its Technical Regulations Liaison Committee (SADCTRLC) has established the need to put in place a regionally acceptable mechanism for the classification and labelling of chemicals in the region. The Committee has identified the UN GHS framework as a suitable basis for regional regulation of chemicals in the region.

6.2 Regional regulation of chemicals has benefits to the regional chemical industry, government, workers and consumers in general. Additionally, implementation of the GHS facilitates trade by simplifying labelling symbols and safety data sheets presentation through harmonization. As the GHS is being implemented globally, chemicals exported from the region to other parts of the world will be more readily accepted when they are classified and labelled in accordance with UN GHS guidelines.

Prior to SADCTRLC resolving to implement chemicals technical regulations based on the UN GHS in the region, four SADC countries had already started work on its implementation in their jurisdictions with two of them aligning their chemicals regulations management to the first edition of the UN GHS.

6.3 To implement the GHS regionally, the SADTRLC has already worked with SADCSTAN to develop a harmonised regional GHS standard upon which the regional GHS technical regulations will be based.

6.4 This draft policy proposal will be finalised by the SADCTRLC and submitted to the SADC Council of Ministers for approval before work to implement it at national level begins. It is also recommended that the proposal be considered by SADC Secretariat legal officers who should advise on the appropriate way forward. In particular it will be important to know whether to present the proposal to Council or sectoral Ministerial Committees since the issues are cross cutting between Trade, Transport, Labour and Environmental departments. Confirmation of whether it needs to be cleared through the Ministers of Justice will also be required.

6.5 The successful implementation of the GHS technical regulation regionally will serve as an important test case for broader regional cooperation in the area of technical regulations in SADC; an important activity with respect to trade facilitation.

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ATTACHMENTS

Table 1: THE CHEMICAL INDUSTRY IN SADC

	COUNTRY	CHEMICAL INDUSTRY	COMMENTS
1	Angola	Liquid fuels and Lubricants, Consumer Formulated chemicals, Converted plastic products	A major oil producer in Africa
2	Botswana	Salt, Soda ash, Commodity Inorganic chemicals, Household cleaners and Cosmetics, Plastic products	The chemicals industry in Botswana has experienced a high rate of expansion over the last ten to fifteen years.
3	DRC	Liquid fuels and Lubricants, Commodity Organic chemicals	
4	Lesotho	Pharmaceuticals, Plastic products	
5	Madagascar		
6	Malawi	Consumer formulated Products, Plastic products, Natural rubber.	
7	Mauritius	Fertilisers, Functional and speciality products such as paints, Household cleaners and cosmetics, Plastic products, Bulk formulated products such as fertilisers	
8	Mozambique	Gas, metals, detergents, Consumer formulated Products, Plastic products, Liquid fuels and lubricants.	
9	Namibia	Pure functional and speciality formulated Products, Plastic products, Liquid fuels and lubricants.	Talk of oil and gas discoveries off shore.
10	Seychelles	Pure functional and speciality formulated products, Plastic products	
11	South Africa:	<u>Base chemicals</u> ->Oil, acrylonitrile and acrylic fibres, polypropylene, higher-value phenolics, alpha olefins, alkylamines, as well as higher-value ketones, xenon and kryptonite, ethylene, propylene, butadiene, benzene, toluene, xylenes,	(1) The chemicals industry in South Africa has a long history, having been founded in the latter part of the nineteenth century as a result of the demand for explosives and chemicals to support the mining industry. (2)South Africa's chemical

		<p>and methanol; ammonia, caustic soda, sulphuric acid, chlorine, sulphur, soda ash, bromine, fluorine and phosphoric acid; benzene and other aromatics; metals</p> <p><u>Intermediate chemicals</u> ->ammonia, waxes, solvents, phenols, tars, plastics, and rubbers.</p> <p><u>Chemical end-products</u> including processible plastics, paints, explosives, and fertilisers.</p> <p><u>Speciality chemical end-products</u> tend to be lower volume, higher added-value chemical products e.g. pharmaceuticals, agro-chemicals, bio-chemicals, food-, fuel- and plastics - additives fall into this category.</p>	<p>industry is of substantial economic significance to the country, contributing around 5% to GDP and approximately 25% of its manufacturing sales.</p> <p>(3)South Africa's chemical industry is highly complex and widely diversified, with end products often being composed of a number of chemicals which have been combined in some way to provide the required properties and characteristics. It can be divided into four broad categories: Base chemicals; Intermediate chemicals; Chemical end-products; Speciality end-products.</p>
12	Swaziland	Pure functional and speciality formulated products, Plastic products	
13	Tanzania	Consumer formulated Products, Plastic products	Talk of discovery of natural gas and oil
14	Zambia	Adhesives, cement, fertilisers, ammonium nitrate, nitric acid, ammonium sulphate, methanol, liquid carbon dioxide, blended lubricants	Zambia's chemical industry contributed 11 % of the country's total manufacturing revenue in 1992
15	Zimbabwe	Xylene, naphthas, road tars, toluene and benzene from crude benzol. Cement, fertilizers, detergents, metals, phosphates,	

[Information derived from MBENDI INFORMATION SERVICES: www.mbendi.com]

ANNEX 1.



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TERMS OF REFERENCE

DEVELOPMENT OF A DRAFT POLICY PAPER FOR THE USE AND IMPLEMENTATION OF THE GLOBALLY HARMONISED SYSTEM OF CLASSIFICATION AND LABELING OF CHEMICALS (GHS) IN REGULATIONS FOR OCCUPATIONAL HEALTH AND SAFETY AND TRANSPORT IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

1. PURPOSE

To appoint a preferred service provider that will be responsible for the development of a SADC Globally Harmonised System of Classification and Labelling of chemicals (GHS) draft policy paper to assist the SADC GHS Extended Working Group

committee to finalise the SADC GHS draft policy paper which will be submitted to the SADC Trade and Industry Ministers for their consideration.

The SADC GHS policy will guide legislative processes in SADC in order to implement common GHS technical regulations based on the SADC GHS Harmonised Text 10234 that is also based on the United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS) known as the Purple Book.

The SADC GHS Policy will also allow SADC member states to start developing and implementing national regulations that will be guided by the policy paper.

2. BACKGROUND

Presently, many different countries including SADC countries have different systems for classification and labelling. In addition, several different systems can exist even within the same country. This situation has been expensive for governments to regulate and enforce. It is also costly and confusing for companies who have to comply with many different systems, and confusing for workers who need to understand the hazards of a chemical to work safely. The Globally Harmonized System Classification and Labeling of Chemicals promises to deliver several distinct benefits. Among them are; promoting regulatory efficiency, facilitating trade, easing compliance, reducing costs, providing improved, consistent hazard information, encouraging the safe transport, handling and use of chemicals promoting better emergency response to chemical incidents and reducing the need for animal testing.

The African Region identified the implementation of the GHS as a priority during their 2006 meeting in Cairo, Egypt and reconfirmed the priority at the African Core group meeting in Nairobi, Kenya in August 2009 and recommended a sub-regional approach.

The SADC Technical Barriers to Trade Stakeholders Committee (SADCTBTSC) held a meeting on 25 April 2009 in Gaborone and resolved to request SADC Standards (SADCSTAN) to start work on the harmonization of standards in the area of classification and labeling of chemicals in 2009. A resolution was also made by the above mentioned meeting that SADC Technical Regulations Liaison Committee (SADCTRLC) should develop technical regulations on the classification and labeling of chemicals. SADCTRLC agreed to prioritise the

development of a SADC technical regulation on the classification and labeling of chemicals also called the SADC GHS.

The GHS was developed as a result of the Agenda 21 and agreed in 1992 at the Rio Summit. The first edition of the GHS, which was intended to serve as the initial basis for the global implementation of the system, was approved by the United Nations Committee of Experts at its first session (11-13 December 2002) and published in 2003. The first revised edition of the GHS (GHS Rev.1) was published in 2005 and included the amendments to the first edition adopted by the United Nations Committee of Experts at its second session (10 December 2004). At its third session (14 December 2006), the United Nations Committee of Experts adopted a set of amendments to the first revised edition of the GHS, which are included in the second revised edition of the GHS (published in July 2007).

At its fourth session (12 December 2008), the United Nations Committee of Experts adopted a set of amendments to the second revised edition of the GHS, which were consolidated in document ST/SG/AC.10/36/Add.3. The third revised edition of the GHS (published in July 2009) takes into account all these amendments which concern, inter alia: new provisions for the allocation of hazard statements and for the labelling of small packagings; two new sub-categories for respiratory and skin sensitization; the revision of the classification criteria for long-term hazards (chronic toxicity) to the aquatic environment; and a new hazard class for substances and mixtures hazardous to the ozone layer.

SADCSTAN has used the work of the committee of experts to develop and finalize a SADC Harmonized Text for GHS in May 2011.

The SADC Harmonized Text for GHS covers classification criteria, labeling, packaging and safety data sheet requirement of hazardous substances and mixtures including waste.

3. SCOPE OF WORK

The preferred service provider will be required to develop a draft SADC GHS Policy Paper. A first draft has been developed by the SADCTRLC, however a more comprehensive policy proposal is required. The above-mentioned draft and other sources of information as recommended by the extended working group are specified in item 7. The preferred service provider will also be required to present the SADC GHS Policy Paper to the SADC GHS

extended working group. The SADC GHS extended working group meeting is planned for October 2011.

4. TERMS OF CONTRACT

The draft SADC GHS Policy Paper needs to be discussed for approval by the SADC GHS extended working group. A meeting of the SADC GHS extended working group to discuss the draft policy paper will be in October 2011. The work must be completed by 15 October 2011.

The preferred service provider must enter into an agreement with PTB to carry out the duties of developing the draft SADC GHS Policy. The SADCTRLC Chairperson and the Regional Coordinator, in consultation with the SADC GHS extended working group will oversee the work of the preferred service provider.

The Briefing Session will take place during the SADCTRLC working group meeting to be held in South Africa, Pretoria on 4-5 August 2011 which the preferred service provider needs to attend. The preferred service provider needs to present his approach and research methodology to the SADCTRLC Chairperson and Regional Coordinator as well as the timeline by 23 August 2011.

The policy paper needs to be in Microsoft Word format. The preferred service provider will also prepare a power-point presentation.

5. CRITICAL ELEMENTS

The policy proposal should include the following sections:

Situation analysis; Vision, Rationale; Guiding Principles; Objectives; Measures; and Implementation Framework, Institutional Arrangement, Legal Framework, Monitoring and Evaluation, Resource Mobilisation and Financing

The policy paper should also consider:

- The background and history of the GHS
- Strategy Objectives of the SADC GHS Policy

- Necessity to implement GHS
- Importance of the SADC GHS Policy
- SADC GHS Harmonized Text
- Current Status of GHS Implementation in member states
- Transitional Arrangement
- Recommendation and guidance for Implementation of SADC GHS

6. REPORTING

The preferred service provider will be required to report and forward the draft policy paper to the SADCTRLC Regional Coordinator and the SADCTRLC Chairperson for final approval.

7. SOURCE DOCUMENTS

- Draft SADC GHS Policy Proposal
 - SADC TBT Annex
 - United Nations GHS (Purple Book)
 - Strategic Approach to International Chemicals Management (SAICM)
 - SADC Harmonized Text for GHS
 - Any other relevant documents
-