

# Nickel Classifications Challenge Plan

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## Background

### 30<sup>th</sup> ATP

- Group of nickel carbonates
- Classification based on derogation statement and properties of nickel sulphate
- TBT discussions continuing but could be adopted at any time
  - Adoption end of April?

## Background

### 31<sup>st</sup> ATP

- ~140 nickel compounds
- Grouping & read-across based only on water solubility – no verification testing
- ECB recommendation Dec 2007, but inter-service consultation not yet started

### Both

- Serious classifications: CMR, sensitiser, toxic, irritant, harmful, dangerous to environment...

## Why is this important?

- Will stigmatise entire nickel industry
- Will make nickel appear the most hazardous of all metals
- Significant downstream regulatory consequences, e.g.
  - REACH: SVHC - Authorisation
  - No Ecolabel – impact on green uses / procurement
  - Ban on consumer sales

## EC Advocacy

- Negotiations with DG Environment
  - Next meetings: 18 April (technical) and 22 April (political)
  - Non-paper and Expert Panel report
- Continue applying pressure to Legal Service, DG Trade and DG Enterprise
- Step up efforts with EC Member States

## WTO and 3<sup>rd</sup> Country Advocacy

- Unprecedented level of support at TBT Committee meeting on 20 March
  - 17 countries
  - Several developing countries
- Brussels' Ambassadors' letter to EC
- Follow up by TBT countries to EC
  - EC response not satisfactory
- Russia also very active

## Litigation Strategy

Direct route: CFI Action for Annulment

- Norilsk Nickel and Umicore – standing difficult
- CFI better suited to technical cases
- Full set of pleadings in CFI
- Pressure for 31<sup>st</sup> ATP

## Litigation Strategy

Indirect route: Judicial Review in English courts  
& ECJ reference

- Nickel Institute brings case
- Standing easier, but ECJ less suited to technical cases

Working deadline: lodge pleadings for both  
within 2 months of publication of the 30<sup>th</sup> ATP  
in Official Journal

## Next steps

- Continue negotiations with DG Environment to find a negotiated solution
- Pressure on DG Trade, DG Enterprise and Legal Service ahead of inter-service consultation
- Increase advocacy efforts with Member States ahead of TPC vote
- Follow up to TBT committee meeting and prepare for 31<sup>st</sup> ATP notification; encourage them to lobby EC
- Prepare pleadings for legal challenge to 30<sup>th</sup> ATP