

## FTA-Position on REACH 2004

### Workability of the Chemical's regulation for Importers of Articles

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#### Introduction

The European Commission has tabled the 'Regulation concerning the Registration, Evaluation, Authorisation and Restrictions of Chemicals (REACH)', which is presently discussed within the European Parliament and the European Council.

The Foreign Trade Association represents European traders. Its members source consumer goods in third countries and distribute these on the EU-market. As 'importers of articles', they fall into the scope of the planned European chemical's legislation REACH (Art. 6).

The final draft as published in October 2003 took up many suggestions made by the FTA in July 2003 (see [www.fta-eu.org](http://www.fta-eu.org) : 'opinions'). Art. 6 of the proposed regulation now obliges importers of articles to register only dangerous substances in these articles.

#### Preconditions:

- ▶ The substance meets the criteria for classification as dangerous and is intended to be released during normal and reasonably foreseeable conditions of use.

► The substance is present in quantities totalling over 1 tonne per article type and importer per year. Each article type shall be considered separately.

Further obligations:

► Is a dangerous substance in an imported article only likely to be released, the importer shall not run through the registration procedure but simply notify the agency of this substance.

Exemptions:

► Registration and notification are not necessary for substances that have already been registered for the same use by an actor up the supply chain.

► REACH shall be applicable to importers of articles 11 years after entry into force.

A provision that - at first sight - looks workable for European retailers. But many questions are still open and need to be clarified. This paper aims to analyze the efficiency of the overall concept and to propose amendments to Art. 6.

### Can REACH live up to its targets?

Within the last years, many arguments have been raised to explain why REACH is inevitable for European companies, consumers and the environment. But closely analyzed the targets have proved to be far too ambitious and unrealistic:

Target of REACH	Effect of REACH
maintain and enhance <b>competitiveness</b> of the EU chemicals industry	-production costs for chemical substances will heavily increase in the EU -competitiveness vis-à-vis other nations will decrease -production of chemicals will move outside Europe -many substances will disappear from the European market -other industry sectors, who use expensive EU-substances, will lose international competitiveness -SMEs in all sectors will be unable to shoulder expenses of registration -international competitiveness of EU retailers will decrease because of a loss of diversity of products (only 20% of the goods are imported)  <b>→ failed: Lisbon-process is endangered</b>

enhance <b>innovation</b> in chemical industry by motivating the sector to develop new substances that substitute existing critical substances that have become too expensive because of registration costs	-cost increase of production does not lead directly or indirectly to more innovation but to relocation of production sites and to a loss of diversity of products  → <b>failed: decrease of jobs in the EU</b>
close <b>knowledge</b> gap on chemical substances produced or imported in volumes higher than 1 t/year per manufacturer/importer	-the knowledge gap can not be closed with a tonnage-based approach; too many substances would not be covered  → <b>inefficient: loopholes for circumvention</b>
increase <b>protection</b> of human health and the environment via the tonnage based principle	-the impact of a chemical substance does not depend on amount and weight of a chemical substance but on its characteristics  → <b>inefficient: risk and exposure principle necessary</b>
<b>speed up</b> registration of new substances and reduce bureaucracy	-the procedures described in REACH are complicated, time intensive and involve enormous documentation and several actors -companies will have difficulties to handle the procedures, especially SMEs but also other sectors outside the chemical industry, which do not have the relevant know-how  → <b>failed: slow procedures and heavy bureaucracy</b>

The initial targets are important and desirable. But the tabled text can not serve as an instrument to achieve them. The principles of REACH must be changed. Many constructive suggestions have been made lately such as the risk and exposure principle or the one substance one registration approach. Even so the decision-making bodies in the EU are hesitant to rethink the overall concept and prefer to stick to the text of the Commission proposal of 2003.

### **Will Art. 6 (Substances in Articles) help achieve the targets of REACH?**

A comprehensive registration system regarding the production and use of pure substances in the chemical industry and by downstream-users is vital for the future. The presently existing numerous regulations and laws must be replaced by a transparent and predictable framework.

However, importers of articles do not handle big amounts of pure substances. They simply sell consumer goods from abroad on the European market. Consumers and the environment can already now rely on the safety of imported consumer goods, because of the Product Safety Directive, the Product Liability Directive and the Waste Directive. The presently dis-

cussed version of REACH will impose unnecessary burdens on importers - for reasons that are only indirectly related to the protection of human health and the environment: The European industry fears competitive advantages for imported articles as these can be produced abroad without the financial burden of REACH.

But the EU, being a member of the World Trade Organisation (WTO), must create the REACH-system in compliance with international regulations. WTO members can implement measures for the protection of public health as long as these measures are non-discriminatory vis-à-vis other members. They have to be in proportion to the objectives prescribed. Therefore Art. 6 should focus on the effective risks for health and the environment and only impose registration duties that are inevitable in order to protect these assets.

If importers of articles from other WTO countries would have to run through costly registration procedures without achieving by this an improved protection of human health and the environment, they could claim to be hampered by unjustified technical barriers to trade.

The present wording of Art. 6 does not yet guarantee the exclusion of superfluous registrations. Instead it gives potentially reason for trade disputes on WTO level

## **Art. 6: amendments proposed by FTA**

At present, the decision-makers discuss amendments to the REACH text tabled by the EU-Commission. The FTA proposes the following amendments, in case the overall concept should not be withdrawn.

### **•Define the terms “intended to be released”, “likely to be released” and develop exposure scenarios**

This could be achieved through the development of exposure and use categories for articles regarding: routes of intake, duration of exposure, fields of application and paths.

### **•Define the term “types of articles”**

Importers are familiar with the HS-Code (Harmonised System), which lists groups of articles. The code could serve as a basis to define the term “types of articles”

### **•Draft a positive-list with dangerous substances**

This will enable importers to test the content of imported articles on chemical substances. It is not possible to test and prove unknown substances in articles.

**●De-minimis-clause**

Dangerous substances that only appear to a very small amount in articles should neither be subject to registration (presumption of safeness) nor be added to the yearly weight of substances, imported by the importer. Relevant directives with defined concentration limits exist already and could serve as guidelines (i.e. Art. 3 (3) Directive 1995/45/EC; Annex I to Directive 67/548/EC)

**●One substance one registration**

Producers or importers of articles must only register harmful substances in articles that have not been registered for that use before (delete “registered up the supply chain” in Art. 6).

**Outlook**

European Parliament and Council face at present a fairly impossible task. Singular changes to the Commission text that was drafted with the involvement of many stakeholders have the potential to destroy the whole puzzle. As the actual discussions concern core issues, it may be necessary to rebuild the whole structure.

The main problems result from the endangered international competitiveness of many European sectors. They raise the principle question, whether the EU can afford such an ambitious system.

Globalisation is already our business reality. We do not only compete with foreign companies on the EU market, we can also move to third countries and enjoy the benefits of other legal frameworks.

The targets of REACH are desirable and important. They can not be achieved as an isolated project. The involvement of our business partners and competitors abroad is inevitable.

The FTA therefore encourages the EU to take up consultations on international level and develop a joint strategy that will help achieve the targets of REACH without paying the price for the loss of competitiveness, jobs and credibility on WTO-level.