



FTA-Position on REACH 2005

Article 6 – Substances in Articles

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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 would fall into the scope of Art. 6 REACH.

Workability of Article 6 for importers of articles

Following Article 6 of the Commission proposal, importers shall trace "dangerous substances" in imported articles. If these substances are "intended to be released" from the product the importer shall register it. If the substance's escape is only "likely", the importer shall notify the REACH Agency of this matter.

Unfortunately the wording of Article 6 is rather vague and lacks definitions: The terms "intended to be released" and "likely to be released" can be interpreted in numerous ways and can be misused to broaden the scope of Article 6 to an unmanageable extent. Importers of articles would face a new barrier to trade. This opens the door to protectionism which would collide with international rules, namely the provisions of WTO-agreements.

Article 6 REACH has to comply with WTO-rules

A principal matter of concern is the compliance of Art. 6 to the rules of the WTO, namely the agreement on "Technical Barriers to Trade" (TBT).

An obligation to register chemical substances would without doubt represent a barrier to trade.

A barrier to trade is in principle allowed under the TBT agreement if it is required and appropriate to achieve a particular aim, namely the protection of human health. It is unnecessary if the target can be reached by alternative measures with less trade-restrictive effects.

For REACH this means: The fewer imported goods fall into the scope of application, the less likely becomes a WTO complaint from the USA. In other words: A registration duty for substances in imported products may only be imposed if it prevents a concrete danger for human health. The mere thirst for knowledge does not justify a barrier.

Importers have a vital interest in the safety of their products. Already now they comply with the provisions of the product safety directive and the product liability directive. Products are run through extensive and expensive tests before being placed on the EU market. The retail sector therefore welcomes the REACH initiative that will help improve information on chemical substances. It is ready to provide as much input as possible.

But it does not have the means to identify unknown substances in imported goods. On the other hand they can run their goods through tests that indicate whether they contain substances with special characteristics that will categorize them as "substances of great concern" as defined in Art. 54 REACH.

If the EU aims at a REACH-system that is in compliance with international rules it has to strive for a workable solution that can be realized by European and non-European traders. Art. 6 therefore has to focus on substances that represent a concrete danger and that can be identified by their characteristics.

The target for importers of articles should therefore be a sensible phase-in-principle that combines the state of the art possibilities of analyzing substances and the existing know-how in the trading and industrial sectors. But this will only be successful if retailers are supported by a capacity building project. Therefore the retail sector proposes a phase-in period of 9 years as follows:

Phase-in for substances in imported articles

Phase 1: 0-6 years

During six years after REACH comes into force, the REACH agency - in close cooperation with the business sector - develops a detailed implementation guideline for importers. This guideline identifies the substances of great concern that can be found in specific product categories. The guideline should also give best practice advice, namely make use of the experience already gained in dealing with these materials.

Phase 2: 6-9 years

In the sixth to the ninth year, the REACH agency offers a test phase in which the retail trade sector puts the procedures to the test on a voluntary basis. This is an opportunity to review the guideline for practicality and teething troubles and to improve on potential errors. At the same time the sector is trained in dealing with the new rules.

Phase 3: after 9 years

After nine years REACH finally comes into force for importers. Imported goods must then be tested for substances of great concern; regardless whether the substance is intended or likely to be released from the product.

FTA amendments

The FTA calls for the following amendments to the Commission proposal of October 2003:

Art. 6: General obligation to register substances in articles

FTA amendment 1 Article 6 (1)

Text proposed by the Commission	FTA amendment
<p>1. Any producer or importer of articles shall submit a registration to the Agency for any substance contained in those articles, if all the following conditions are met:</p> <p>(a) the substance is present in those articles in quantities totaling over 1 tone per producer or importer per year, each article type being considered separately;</p> <p>(b) the substance meets the criteria for classification as dangerous in accordance with Directive 67/548/EEC;</p> <p>(c) The substance is intended to be released under normal and reasonably foreseeable conditions of use.</p>	<p>1. Any producer or importer of articles shall submit a registration to the Agency for any substance contained in those articles, if</p> <p>(a) the substance surmounts a generally recognized de-minimis-threshold per article;</p> <p>And</p> <p>If one of the following conditions are met:</p> <p>(b) it fulfils the criteria referred to in Article 54 (a-e); or</p> <p>(c) has been identified in accordance with Article 54 (f);</p>

Justification

The de-minimis-threshold is necessary for a consequent implementation of the risk-based approach. This is a precondition for the WTO-compliance of REACH. If a substance of great concern appears in an article in an amount that can not cause any damage to human health a duty to register this substance would be against the TBT-Agreement as it would not be implemented for the protection of human health.

The scope of Art. 6 should be clearly defined by referring to Art. 54 REACH (substances of great concern).

The term "intended to be released" is not sufficiently defined and allows various interpretations. It will not provide legal security for importers. Instead Art. 6 should be based on a manageable phase-in system which imposes the duty to register substances of great concern in articles regardless whether this substance is being released from the product (see below).

FTA amendment 2
Article 6 (2)

Text proposed by the Commission	FTA amendment
<p>2. Any producer or importer of articles shall notify the Agency of any substance contained in those articles in accordance with paragraph 3, if all the following conditions are met:</p> <p>(a) the substance is present in those articles in quantities totaling over 1 tone per producer or importer per year;</p> <p>(b) the substance meets the criteria for classification as dangerous in accordance with Directive 67/548/EEC;</p> <p>(c) the producer or importer knows, or it is made known to the producer or importer, that the substance is likely to be released under normal and reasonably foreseeable conditions of use, even though this release is not an intended function of the article;</p> <p>(d) the quantity of the substance released may adversely affect human health or the environment</p>	delete

Justification

This follows from the previous amendment on Article 6 (1).

FTA amendment 3
Article 6 (3)

Text proposed by the Commission	FTA amendment
<p>3. If the conditions in paragraph 2 are met, the information to be notified shall include the following, in the format specified by the Agency in accordance with Article 108:</p> <p>(...)</p>	delete

Justification

This follows from the previous amendment on Article 6 (1).

FTA amendment 4
Article 6 (4)

Text proposed by the Commission	FTA amendment
4. The Agency may take decisions requiring producers or importers of articles to register, in accordance with this Title, any substance contained in those articles and notified in accordance with paragraph 3.	2. The Agency may take decisions requiring producers or importers of articles to register, in accordance with this Title, any substance contained in those articles, if all the following conditions are met: (a) the substance meets the criteria for classification as dangerous in accordance with Directive 67/548/EEC; and (b) the substance is released from the article, and (c) the release of the substance from the article presents a risk to human health or the environment.

Justification

This amendment will ensure that the Agency has the competence to demand the registration of substances meeting the criteria for classification as dangerous in accordance with Directive 67/548/EEC if there is a risk based on scientific evidence that the release of the substance from the article presents a risk to human health and/or the environment.

FTA amendment 5
Article 6 (5)

Text proposed by the Commission	FTA amendment
5. Paragraphs 1 to 4 shall not apply to substances that have already been registered for that use by an actor up the supply chain.	3. Paragraphs 1 and 2 shall not apply to substances that have already been registered for that use by any other actor .

Justification

This amendment is necessary for a consequent implementation of the OSOR-principle for importers. If only those substances do not have to be registered that have been registered by an actor "up the supply chain" REACH will produce multiple registrations for identical substances. The OSOR-principle must be adopted for importers in order to comply with the TBT-agreement, which allows only the least restricting trade barrier that is necessary for the protection of human health.

**FTA amendment 6
Article 6 (6)**

Text proposed by the Commission	FTA amendment
6. Paragraphs 1 to 4 shall apply 3 months after the deadline specified in Article <u>21(3)</u> .	4. Paragraphs 1 to 3 shall apply 9 years after entry into force of this regulation. Sector specific guidance shall be phased in on a voluntary basis 3 years before paragraphs 1 to 3 apply.

Justification

To achieve a functional system of managing the use of authorized chemicals in the supply chain of articles it is necessary to apply a step-by-step approach. The information collected during the development of sector specific guidance and the phase-in will provide a useful stepping-stone for further developments in the complex area of chemical uses in consumer articles. This amendment ensures that the sector specific guidance notes will be phased in over a 3 year period before Article 6 comes into force.

**FTA amendment 7
Article 6 (7)**

Text proposed by the Commission	FTA amendment
7. Legislation for the implementation of this Article may be adopted in accordance with the procedure referred to in Article 130(3).	5. Legislation for the implementation of this Article shall be adopted in accordance with the procedure referred to in Article 130 (3).

Justification

This follows from the previous amendments on Article 6.

Agency – Tasks

FTA amendment 8 Article 73 (2) (BIS)

Text proposed by the Commission	FTA amendment
2. The Secretariat shall undertake the following tasks: (a) – (i) (...)	2. The Secretariat shall undertake the following tasks: (a) – (i) (...) (j) Work within the first 6 years after entry into force of this regulation together with business sectors and other stakeholders on the identification of product categories for articles and the use of chemicals, which fulfil the criteria referred to in REACH Article 54 (a-e) or have been identified in accordance with Article 54 (f) in order to develop guidance notes for phasing in the obligations described in Article 6.

Justification

It is necessary that the Agency takes the lead in developing product specific guidance and that such work is based on a stakeholder approach. There is currently a number of good industry and individual company based practises, which can provide a basis for the debate and development of the sector specific guidance. The guidance notes should ideally identify how authorised chemicals are used in the product category, give an overview of best practise in supply chain management, explain how to register the authorised chemicals and look at characteristics for the consumer use and disposal.

Review

FTA amendment 11 Article 133 (4) BIS

Text proposed by the Commission	FTA amendment
	NEW: (4) Ten years after entry into force of this regulation, the Commission shall carry out a review of the functioning of Article 6 taking into account the scope and the role of the guidance referred to in Art. 6 (4), with the view to include substances classified as dangerous according to Directive 67/548

Justification

The review after 10 years will provide the basis for assessing the information registered into the REACH system. Drawing upon the knowledge base it will be taking the workable approach forward in estimating the need to extend the scope of Article 6 as well as identifying certain product categories where the use of authorized chemicals can be removed.

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