



**ENFORCEMENT OF REACH AT THE BORDERS:
WHAT HARMONIZED MEANS ?**

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ENFORCEMENT OF REACH AT THE BORDERS: WHAT HARMONIZED MEANS ?

- I. Setting the scene & principles
- II. Customs controls & procedures
 - Examples
 - Customs & Wastes
 - Cross sectorial survey
- III. Proposals for harmonized control projects
- IV. Conclusions

I. SETTING THE SCENE & PRINCIPLES

Art. 5: No data, no market !

One of the strongest provisions ever adopted in environmental legislation!

National Customs authorities lack time, and appropriate tools and training!

ECHA and Members States are working hard... with less and less means.

Seven years after REACH entry into force, not all relevant areas have been covered by REACH enforcement programs yet ...

I. SETTING THE SCENE & PRINCIPLES

Competition and level playing field provisions of REACH, triggering actions at the EU borders

- Legislation should be applied in a non-discriminatory way whether substances are traded on the internal market or internationally in accordance with the Community's international commitments (recital 3)
- This Regulation should be without prejudice to the full and complete application of the Community competition rules (recital 48).
- To ensure transparency, impartiality and consistency in the level of enforcement activities by Member States, it is necessary for Member States to set up an appropriate framework for penalties with a view to imposing effective, proportionate and dissuasive penalties for non-compliance, as non-compliance can result in damage to human health and the environment (recital 122 and Art. 126).

I. SETTING THE SCENE & PRINCIPLES

“Authorities are concerned about the high number of products that appear to be out of compliance at borders, and that it might be difficult to trace such shipments if they were allowed to pass through customs”.

Dr. Mayer-Figge, Ministry of Employment, Integration and Social Affairs, North RhineWestphalia, Germany), Chemical Watch Workshop on REACH Enforcement of June 2012

➔ **Since then, what has happened at the borders ?**

I. SETTING THE SCENE & PRINCIPLES

In the context of the revision of Regulation 765/2008 on accreditation and market surveillance in order to improve product safety, BusinessEurope also underlined the need for stricter and more harmonized disciplines with respect to enforcement of legislative requirements.

(letter to Commissioners Tajani, De Gucht, Barnier, Dalli, , Šemeta, Sept. 2012)

➔ **REACH is not an exceptional case!**

Reply:

“...Market Surveillance Regulation and a multi-annual market surveillance plan, remains a priority for the Commission...

I share your position that we need to ensure better and more coherent enforcement of product safety rules across Member

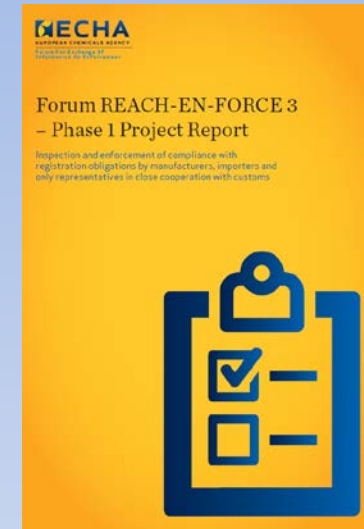
States to protect the legitimate interests of consumers and businesses”



I. SETTING THE SCENE & PRINCIPLES

REACH-EN-FORCE-3

ECHA and Members States launched REF-3 enforcement project focusing on piloting cooperation with customs and on only representatives. Outcome of phase I:



“REACH-EN-FORCE-3 has proven that REACH enforcement authorities in the 28 participating countries have established a functioning cooperation with customs. This allows enforcement authorities to make use of data from individual customs declarations in their routine inspections of REACH duties.”

Follow-up is eagerly awaited !...

II. CUSTOMS CONTROLS & PROCEDURES

WHAT HAPPENS IN THE ABSENCE OF SPECIFIC CUSTOMS CODE (TRADE NOMENCLATURE)?

Goods are identified at the borders by their CN code (6 digits at World level – Harmonized System - and 8 digits at EU level).

REACH covers about 143 000 Substances of which

- Only a few hundreds are identified in the CN with a specific customs tariff code.
- Many belong to a “basket heading” (a subdivision called “other”).

→ There is no “matching” between REACH registered substances and CN codes. Fraud at the border is very easy!

II. CUSTOMS CONTROLS & PROCEDURES

SCREENING OF COMMON CUSTOMS TARIFFS - COMMISSION IMPLEMENTING REGULATION No 1001/2013 (OJ L 290 OF 31.10.2013)

Screened sections

- Mineral Products
- Products of chemical or allied industries (except pharmaceuticals, fertilizers, cosmetics)
- Plastics and articles thereof; rubber and articles thereof
- Articles of stone, plaster, cement, asbestos, mica or similar materials; ceramic products; glass and glassware
- **Base metals and articles of base metal**

II. CUSTOMS CONTROLS & PROCEDURES

SCREENING OF COMMON CUSTOMS TARIFFS - COMMISSION IMPLEMENTING REGULATION No 1001/2013 (OJL 290 OF 31.10.2013)

Results

- More than 540 “Other” basket headings,
 - of which more than 180 for the section “Base metals and articles of base metal”

This is generating many opportunities for putting substances under general headings (« Other ») and creates uncertainty with respect to their identification in the customs control phase

➔ **How to ensure** proper control by national customs authorities ?

II. CUSTOMS CONTROLS & PROCEDURES

EXAMPLE 1 - RESTRICTION OF MERCURY* (1/2)

Entry 18a of Annex XVII of REACH:

5. The following mercury-containing measuring devices intended for industrial and professional uses shall not be placed on the market after 10 April 2014:

- a) barometers;
- b) hygrometers;
- c) manometers;
- d) sphygmomanometers;
- e) strain gauges to be used with plethysmographs;
- f) tensiometers;
- g) thermometers and other non-electrical thermometric applications.

* ANNEX to Commission Regulation No 847/2012 of 19 September 2012

II. CUSTOMS CONTROLS & PROCEDURES

EXAMPLE 1 - RESTRICTION OF MERCURY (2/2)

Common Customs Tariffs of Commission Implementing Regulation No 1001/2013

9025 Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments:

– Thermometers and pyrometers, not combined with other instruments:

9025 11 – – Liquid-filled, for direct reading:

9025 11 20 – – – Clinical or veterinary thermometers .

9025 11 80 – – – Other

9025 19 – – Other:

9025 19 20 – – – Electronic .

9025 19 80 – – – Other

9025 80 – Other instruments:

9025 80 20 – – Barometers, not combined with other instruments

– – Other

9025 80 40 – – – Electronic

9025 80 80 – – – Other

9025 90 00 – Parts and accessories

→ How to make the distinction between barometers with or without mercury content?

II. CUSTOMS CONTROLS & PROCEDURES

EXAMPLE 2 - RESTRICTION OF CADMIUM*

Mixtures and articles produced from plastic material as listed above (i.e. PP, PET, PVC, LDPE, PUR ...) shall not be placed on the market if the concentration of cadmium (expressed as Cd metal) is equal to or greater than 0,01 % by weight of the plastic material.

Chapter 39 of Common Customs Tariffs : Plastics and articles thereof

There are at least 40 entries named “other”. Cadmium presence is not reported in the tariffs headings or related explanatory notes.

Identification with ad hoc tariff headings is impossible

→ How to make the distinction between plastics above or below the required threshold and how to ensure control at the borders ?

* ANNEX to Commission Regulation No 835/2012 of 18 September 2012

II. CUSTOMS CONTROLS & PROCEDURES

EXAMPLE 3 – RESTRICTION ON CADMIUM

Cadmium and its compounds shall not be used, or placed on the markets in paints [3208][3209] if the concentration of cadmium (expressed as Cd metal) is greater than 0.01% by weight.

Common Customs Tariffs:

3208 Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium; solutions as defined in note 4 to this chapter:

3208 10 90 -- Other

3208 20 90 -- Other

3208 90 19 --- Other

3209 Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in an aqueous medium:

3209 90 00 – Other

→ Targeted paints fall under basket headings. How to control ?

II. CUSTOMS CONTROLS & PROCEDURES

EXAMPLE 4 –RECOMMENDATION FOR INCLUSION IN ANNEX XIV*

(Zirconia-) Aluminosilicate Refractory Ceramic Fibres (RCF)

Common Customs Tariffs:

6806 10 00 – Slag-wool, rock-wool and similar mineral wools (including intermixtures thereof), in bulk, sheets or rolls . . .

→ How to properly control the granting of authorization if the imported goods cannot be distinguished from other slags or rock wools ?

* Authorization 5th priority list

II. CUSTOMS CONTROLS & PROCEDURES

EXAMPLE 5 - AUTHORIZATION

Diarsenic trioxide (sunset date 21/05/2015)

Common Customs Tariffs:

2811 29 10 – – – Sulphur trioxide (sulphuric anhydride); diarsenic trioxide

Diarsenic pentaoxide (sunset date 21/05/2015)

Common Customs Tariffs:

Not identifiable as such in the customs code. It would therefore fall under basket heading: 2811 29 90 – – – Other

→ How to control the granting of authorization if the imported substance is not properly identifiable in the Customs Tariffs ?

II. CUSTOMS CONTROLS & PROCEDURES

EXAMPLE 6 - LIST OF (POTENTIAL) SVHC: ARE THEY IDENTIFIABLE IN THE COMMON CUSTOMS TARIFFS ?

Cadmium sulfate

Common Customs Tariffs:

2833 29 20 [Sulphates; alums; peroxosulphates (persulphates)] Of cadmium; of chromium; of zinc

Cadmium fluoride

Common Customs Tariffs: falls under “other” basket heading :

2826 Fluorides; fluorosilicates, fluoroaluminates and other complex fluorine salts:

– Fluorides:

2826 12 00 – – Of aluminium

2826 19 – – Other:

2826 19 10 – – – Of ammonium or of sodium

2826 19 90 – – – Other . .

→ How to control proper classification and related RMM if the imported substance is not properly identifiable in the Customs Tariffs Nomenclature?

II. CUSTOMS CONTROLS & PROCEDURES

STILL FUZZINESS IN THE ABSENCE OF SPECIFIC CUSTOMS CODE (TRADE NOMENCLATURE)

“For the customs declaration of REACH chemicals, we are thinking on the feasibility to replace the description by the CUS number of ECICS** database, which could ensure a traceability of each chemical separately. But it is the future (2015?).”*

DG Taxud – June 2011

* CUS - Customs Union and Statistics

** ECICS - EUROPEAN CUSTOMS INVENTORY OF CHEMICAL SUBSTANCES

II. CUSTOMS CONTROLS & PROCEDURES

CUSTOMS AND WASTES

STUDY ON THE ROLE OF CUSTOMS IN ENFORCEMENT OF EUROPEAN COMMUNITY LEGISLATION GOVERNING THE PROTECTION OF THE ENVIRONMENT AND ITS BEST PRACTICE (March 2011) commissioned by TAXUD.

The issue covers waste shipments between the EU and Asian ASEM member countries. The study was focusing on how Customs authorities might contribute towards eliminating illegal trafficking and ensure compliance with the existing legal framework.

A particular topic addressed is the absence of matching between goods identification codes (used by the Customs Combined Nomenclature) and the waste identification codes of the Basel Convention and the European Waste List.

This lack of consistency generates

- serious challenges for the collection of accurate and appropriate statistical data and
- a fundamental weakness in a critical management tool with implications for policy, commerce, revenue, economic and enforcement monitoring.

II. CUSTOMS CONTROLS & PROCEDURES

CUSTOMS AND WASTES

The recommendations are directed at what Customs can do to help resolving the issues arising from the waste shipments control and include measures in the following areas, i.e.:

- Differentiation between 'product' and 'waste' in the Customs Single Administrative Document (SAD) to improve statistical data capture.
- Formal co-operation arrangements with legitimate traders, carriers and logistics operators to provide information and intelligence.
- Inter-agency Co-operation.
- Customs Post-Clearance Controls and Audit.
- Customs participation in IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law).

➔ **AND WHAT ABOUT REACH?**

II. CUSTOMS CONTROLS & PROCEDURES

CROSS SECTORIAL SURVEY

A short survey among the minerals, metals, alloys and other inorganic sectors on customs controls was launched early 2014.

Respondents: consortia, manufacturers, importers, traders and only representatives, customs agents.

1) Current experience

- ⇒ The vast majority does not experience ANY control at the borders
“Customs agents do not care about REACH matters”
- ⇒ In some countries, SEVESO inspectors have access to customs data, but old and uncompleted (i.e. France)

II. CUSTOMS CONTROLS & PROCEDURES

CROSS SECTORIAL SURVEY

2) All are unanimously in favor of harmonized controls at the borders:

- ⇒ In current control practices, many differences between countries and even within a same country
- ⇒ REACH = Regulation equally applicable in all Member States. Same should be true for enforcement
- ⇒ Harmonized regime for controls at EU borders is an absolute necessity **to avoid distortion of completion of the internal market**. Also it will surely help to avoid free-riding by making it more difficult to get not at all - or not properly - registered material into the EU*.

*****"The same market must have the same rules. This not necessarily calls for stricter rules but for strictly the same rules for all."***

* There is of course a fine balance between holding back the transported goods in customs until REACH compliance has been checked on the one hand side, and ensuing quick release of the goods to the recipient without undue delay on the other side.

** International Antimony Association i2a

II. CUSTOMS CONTROLS & PROCEDURES

CROSS SECTORIAL SURVEY

3) The vast majority sees an added value to harmonized customs/borders controls

- ⇒ Same level playing field for all importers
- ⇒ Immediate controls at the borders prevent the risks of disappearance of the material through complex supply chain paths (dispersion via multiple locations)
- ⇒ Controls at end-user's place
 - a) could be a costly exercise in terms of travelling costs (in case of supplier's mandatory presence)
 - b) make it difficult to keep producer's data undisclosed

IV. PROPOSALS FOR HARMONIZED ENFORCEMENT PROJECTS

End 2013

In response to the Enforcement Forum's invitation to provide contributions on Future Harmonised Enforcement Projects, the Metal/Alloys Industry (Eurometaux) has proposed 3 projects:

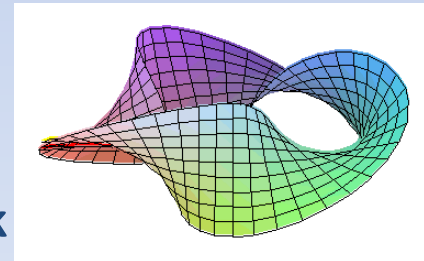
- ❑ **Check/compare and enforce** procedures used (at the borders) by national customs to check REACH compliance for imports

- ❑ **Check correct application of**
 - operational conditions (OC) and risk management measures (RMM) by Downstream Users (DU) as recommended in the Exposure Scenarios (ES) and Safety Data Sheet (SDS) or
 - information received according to Art 32 (d) from suppliers

- ❑ **Check proof of legitimate access** to data used in registration dossiers and implementation of actions in case of non-compliance (both for lead-registrant and co-registrants)

V. CONCLUSIONS

- ❑ **Enforcement = not only prevention, but control and remediation AND warning and/or sanctions**
- ❑ Even if a full harmonization of enforcement procedures might not be feasible across all member states. Commonly-based methods/procedures should therefore be adopted so as to ensure a proper EHS control of movements of goods entering the EU territory to avoid distortion of competition between importers and EU manufacturers subject to multiple inspections (because operating on the EU territory)/OR
- ❑ Does the lack of fraud records/statistics reflect an efficient respect of the Regulation or does it reflect a lack of efficient procedures to identify the frauds ?



V. CONCLUSIONS

- ❑ Do target defrauders and **not-yet-compliant** companies

- ❑ Do not encourage defrauding and do not discourage yet compliant companies

- ❑ Do act at the earliest stages possible
 - ⇒ REACH IT
 - ⇒ Delivering of Registration Numbers
 - ⇒ At the borders

V. CONCLUSIONS

Do show credibility

At the Workshop on policy options for the new EU framework on environmental inspections of September 2013 at the European Parliament one of the conclusions was:



The consequences of this lack of proper enforcement results in a failure to achieve stated policy objectives for health and environment protection, hampers the credibility of the EU, creates a non-level playing field for economic development, and creates uncertainty for valuable investments.



THANK YOU FOR YOUR ATTENTION!

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