



PAPER ON REACH INFORMATION IN CUSTOMS DECLARATION

Date: 23 November 2010

General considerations on the involvement of Customs in the enforcement of REACH

The enforcement of the REACH Regulation is a Member State matter. The Regulation itself does not define who is responsible for the enforcement in each Member State, but includes a provision to create a Forum of enforcement authorities within ECHA (article 76.f). One of the main objectives of this Forum is the harmonisation of enforcement practices among EU countries which is crucial in the context of this topic as mentioned below.

Cefic and Eurometaux consider that it would be relevant to allow industry to contribute to the discussions concerning the scope and practicalities of Customs control on REACH in order to shape effective procedures whilst ensuring that unjustified blockage of goods at the border is avoided.

In general terms, Cefic and Eurometaux consider it as extremely important that Customs control provisions relating to REACH meet the following basic concerns:

- European manufacturers, traders, users, importers and Only Representatives must be **equally taken into account** by enforcement in order to maintain a level playing field. Therefore, customs involvement is needed in order to be able to **detect possible fraudulent cases** of REACH imports.
- Although control of imported goods is the responsibility of Customs, detailed evaluation of the REACH conformity of imports should happen at the **'most appropriate' place**, i.e. not necessarily exclusively at the border, but rather at the importer's premises.
- In case of suspicion by Customs inspectors, a more efficient strategy might be for **Customs to alert national enforcement agents** of a possible non-compliance and have them investigate once the shipment has reached its destination rather than blocking imports at the border. This would shift the burden of checking conformity with REACH for imported products onto a team of specialised local inspectors who will be more familiar with the complexities of REACH.
- In order to avoid inconsistency and confusion among shippers and importers, actual **harmonisation among EU countries** with regards to the Customs involvement is crucial, in both scope and procedures.
- In order to avoid commercial disruption routine **blockage of goods should be avoided** at borders (unless there is justified concern for public health or environment).

- Customs control on REACH compliance should be conceived in connection with general compliance/good practice in Customs-related procedures. For instance, for companies holding an Authorised Economic Operator (AEO) certificate, the control on REACH should be carried out on a procedural mode rather than on an individual transaction basis.

How to operate Customs controls on REACH

Most professional circles concerned agree on the fact that in practice REACH is inherently complex and a myriad of variations of REACH status can exist for the individual components of imported products where the product still conforms to REACH.

In view of this, Customs should not be expected to carry out an in-depth control on REACH compliance, but should rather operate a screening control that would allow to identify dubious cases and to alert the relevant national REACH enforcement authorities in. The following paragraphs explore how such screening could be facilitated.

Inclusion of Registration number on Customs declaration is not a feasible option

Industry is of the opinion that the inclusion of the REACH registration number in the Customs declaration is **not a feasible option** for the following reasons:

- The inclusion of the registration number in the Customs declaration would **not necessarily assure compliance with REACH** when considered in isolation by Customs inspectors. In addition, some products might not have registration numbers at the time of import for entirely valid reasons (e.g. later registration deadline) or may not have ever such a number because they are out of the scope of REACH (e.g. polymers, natural substances, exempted substances etc).
- The majority of products imported into EU are **mixtures**, which makes the demonstration of REACH compliance through registration numbers even more complex as verification should then concern all of the individual components:
 - There is no way that a Customs inspector would know **how many substances were present in a mixture** so it would be impossible for a Customs inspector to check that a valid registration number had been provided for every relevant substance.
 - In some cases, it will be difficult for Customs officers to realise whether the products are **substances / mixtures or articles** under REACH, leading to possible uncertainty and delays because each has different requirements.
 - The disclosure of registration numbers of all components on import documents would be tantamount to disclosing the full list of ingredients of the product, which is confidential business information – this would therefore directly contradict REACH Article 118 which confirms that the full composition of a product is normally considered to be **confidential business information**. Even in the SDS, the principle of not disclosing confidential business information is respected as only hazardous substances present in a

product above a specific threshold are mentioned and so disclosure of the full proprietary composition of the product is extremely rare..

- It is unclear how Customs inspectors would be able to quickly and efficiently check whether one (or more) registration numbers reported on the import documentation is/are valid. This is especially true if the document contains several registration numbers belonging to more than one **Only Representative** such as in **complex supply chains**. It is worth noting that the REACH importer does not necessarily need to be the same as the importer under the Customs legislation and/or the declarant in the Customs declaration. There will be many situations where, in order to verify that a shipment complies with REACH, the Customs inspector **would have to contact one or more Only Representatives** to check whether they can confirm that they are aware of the identity of the importer.

Due to the reasons outlined above, Industry believes that the display of registration number on Customs declarations is not a feasible option to facilitate control by Customs and this option should be disregarded.

Self-declaration by the importer is the preferred option

Cefic and Eurometaux believe that a self-declaration by the importer would be a workable approach that would enable Customs inspectors to operate effective control on REACH compliance.

Under previous EU legislation, importers assured compliance by self-declaration (e.g. by confirming that all substances were listed on EINECS). Whilst the situation under REACH is considered to be more complex, one of the ways to facilitate control at the border would be to include a statement of REACH conformity in the Customs declaration.

- The self declaration of REACH Compliance enables to operate checks at random or may serve as a **screening tool** to identify suspicious cases which should be followed up by a REACH-check on site
- This option is elegant in that it requires a much more **simple check by Customs** (declaration certifying that the shipment conforms to REACH) compared with alternative suggestions therefore it can be **quickly implemented**
- It is consistent with the REACH principle of having the **burden of compliance on an EU company** (the EU importer or the Only Representative of the non-EU manufacturer / formulator). Member States authorities could therefore prosecute an EU-based company if an illegal import was found to have taken place.
- It would raise awareness of exporters and importers about **REACH requirements**
- It is **valid for all products**, irrespective of their status as substances, mixtures or articles under REACH and is independent of transitional deadlines.
- In fact, **a similar approach works successfully for products imported into the US** where the importer (a US-based company) is required to provide the enforcement authorities with a written statement (certification) that the product conforms to the US Toxic Substances Control Act (TSCA). In this way, the enforcement authorities have

a legitimate company to prosecute if goods are subsequently found to have been imported illegally.

Practicalities of the self-declaration of REACH compliance

In the context of the Electronic Customs program, the Customs declaration should be made electronically, according to specifications made for such purposes.

In the Box 44 of the Single Administrative Document (= EU Customs declaration), we have the possibility to put additional information, indicating for the Customs authorities that a REACH self-declaration is at their disposal in case of control.

When the importer is aware of the full composition of the product he is importing, and has pre-registered and/or registered the substance(s) himself, or he is covered by one or more Only Representatives assigned by the non-EU manufacturer / formulator(s) for the different substances in the product(s), he should be able to provide a self-declaration.

Where a self declaration is found to be false, appropriate and proportionate legal sanctions should be taken.

Industry is open to discuss in more detail how to implement the concept of a self-declaration.