



**ASSURING REACH CONFORMITY OF IMPORTED PRODUCTS:
ROLE OF CUSTOMS IN REACH ENFORCEMENT**

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REACH CONFORMITY OF IMPORTED PRODUCTS

ATC has, through their Health and Safety Legislation Group (HSL), taken the opportunity to provide comments on the role of Customs in assuring REACH conformity of imported products. Together with CEFIC, ATC and individual member companies have already played a leading role in working with the authorities to ensure suppliers, in particular ensuring formulators do not need to disclose sensitive technical knowledge. We look forward to participating fully in discussions concerning this REACH practical challenge and have the following comments concerning the communication of REACH compliance up and down the supply chain and the role of Customs in REACH enforcement:

1. In 2008 ATC developed an approach (ATC Document 94) utilising a communication document known as the "Declaration of REACH Conformity" (DRC) which has since been widely accepted by and is being successfully used by the global lubricant and fuel additive industry to ensure that, in conjunction with the safety data sheets, all necessary information associated with imports is communicated along each individual supply chain. Other similar systems are also operational (e.g. the CODE system) and ATC is concerned that the proposed enhancement of Customs' responsibilities in the enforcement of REACH at the point of EU import undermines this approach without proper consideration. We recommend that an alternative perspective should be considered, especially as this is underpinned by the existing working supply chain solution currently employed in our industry sector.
2. ATC supports, in principle, the proposal to provide a 'REACH importer contact' person in the customs declaration and this is also provided for in the DRC concept, which provides a "communication road map" for national enforcement authorities to trace the governance (from a REACH perspective) of all the substances contained in a mixture. However, it must be recognised that a product being imported, if a formulation, may contain substances initially sourced from various suppliers. In such cases the named 'REACH importer contact' person may need to refer the national enforcement authority back up its supply chain to ascertain definitive compliance to REACH of each given constituent in the formulation. This could result in disruptions and delays in customs clearance of products whilst these checks up the supply chain are undertaken.
3. ATC supports the position that the responsibility for demonstrating full REACH compliance, and therefore any enforcement activity, should ultimately take place at the 'most appropriate place' in the supply chain (i.e. at the company/site where the product is used) by the Member State Competent Authority for REACH enforcement rather than at the border.
4. ATC acknowledges, however, that it is important to ensure that there is a level playing field between EU manufactured vs. imported products. As such consideration should be given to some other proportionate action, such as a signed declaration by the importer that the product conforms to REACH in the same way that US importers have to make a TSCA 12b declaration. Nevertheless, detailed REACH compliance checks at border controls by Customs inspectors unfamiliar with the complex nuances of REACH will needlessly disrupt and delay supply chains.

5. We strongly oppose making the disclosure of all registration numbers on customs declarations for mixtures mandatory, not least because this is not a practical solution for ensuring compliance due to the complexities of such mixtures. In many cases some substances might be present below the 1 MT threshold (and therefore still permitted for import without a registration), they might be exempt from REACH or they could be polymers without registration.

Furthermore our concern is that Customs will demand full compositional disclosure which will lead to products being quarantined, while members of the supply chain refuse to provide compositional information to their customers to protect their confidential business information. Avoiding full compositional information is critical to all sectors of the chemical industry, including the lubricant and fuel additive industry, to maintain competitiveness by protecting intellectual property and proprietary mixture information.

The disclosure of registration numbers of all components on import documents also directly contradicts REACH Article 118 which confirms that the full composition of a product is considered to be confidential business information, and should only be disclosed when there is a threat to human health or to the environment. By comparison only hazardous substances present in a product above a specific threshold must be mentioned in the SDS, but if registration numbers were required for all substances importers would then receive a full list of ingredients via the customs declaration.

Conclusion

The ATC supports some form of control for goods that come within the scope of REACH at the point of entry into the EU. The means of achieving this should be carefully thought out however. It should not be too burdensome on Customs officials at the points of entry, and due to the highly confidential nature of our business we would strongly object to any requirement for full disclosure of exact compositional information (including the registration number of all individual ingredients) because such information is rarely shared with our downstream customers. In fact such a disclosure requirement could cause significant confusion, delay and additional work for the officials at the point of entry because not all ingredients in a product will have a registration number but will still be compliant with REACH (e.g. polymers or low volume substance not subject to registration).

One method of control already operating successfully is the USA's TSCA Import certificate where the importer (or his agent) is legally responsible for certifying that the imported goods are compliant with the relevant USA law. This simple administrative procedure allows the authorities to investigate imports as part of a routine audit or where a suspicion of non-compliance exists, and prosecutes a responsible person where necessary. It should therefore be considered whether the existing industry schemes providing a signed statement of REACH compliance (or valid exemption) for all imported goods that are in scope at point of entry could be inserted into existing custom declarations, thereby avoiding the creation of additional paperwork and avoiding any potential burden to Customs, protecting the intellectual property and proprietary composition information of formulators and ultimately maintaining competitiveness in the market.