

## International Law Reporter

### **New Regulation on the Registration, Evaluation, Authorization and Restriction of Chemicals**

Regulation (EC) No. 1907/2006 (REACH), effective 1 June 2007, is a new European Community regulation that introduced new standards for the manufacture and import of approximately 30,000 chemical substances on the European market. REACH is intended to harmonize the laws applicable to chemicals within the EU, as well as to improve the protection of human health and the environment.

REACH extends to far more than just the chemical and petrochemical industries. For example, it also applies to cosmetics, toys, metals and other products and industries if they contain or such industries use regulated chemicals. On the other hand, chemicals in food and pharmaceuticals are widely exempted from REACH, as these products are governed by other European Community legislation.

The REACH regime imposes a dual registration and authorization regime. Most chemical substances must be registered if they are manufactured in or imported to the EU in volumes above one ton per year per legal entity. In contrast, authorization is only required in regard to specific chemicals.

Registration is generally accomplished by submitting an application containing comprehensive data, including a toxicological study, on the properties of the respective chemical substance. Only an EU entity may register a substance, though non-EU companies may nominate an EU company to carry out registration on their behalf. Authorization involves a more rigorous process and requires not only submission of extensive data but proof that placing the substance on the market is not harmful.

The registration and authorization requirements apply to all entities, including Chinese companies that manufacture or import products that incorporate the regulated chemical substances. REACH implemented a pre-registration process beginning 1 June 2008. Companies that fail to pre-register by 1 December 2008 will be immediately barred from manufacturing or importing chemical substances until they have successfully completed the registration process.

Although the registration and authorization procedures are carried out with the European Chemicals Agency, enforcement of REACH is performed at the national level, and the member states of the EU have assigned REACH-related tasks to different national authorities. It is important, therefore, for companies to understand how these various authorities will interpret REACH and how they intend to enforce it. The EU has published guidance on certain aspects of REACH, but such guidance is generally not legally binding, so it is crucial to investigate how REACH will be enforced in practice.

### **The US Consumer Product Safety Commission Reform Act of 2008**

On 14 August 2008, the *Consumer Product Safety Commission Reform Act of 2008* ("Consumer Product Reform Act"), a comprehensive overhaul of the consumer product safety regulations in the United States, came into law. The Consumer Product Reform Act imposes strict new requirements on consumer product imports to the US and substantially increases the budget and staffing of the Consumer Product Safety Commission (CPSC), the relevant regulatory authority, enabling it to better enforce the new rules.

To prevent dangerous products from reaching consumers, over 15,000 products from coffee makers to toys, lawnmowers to fireworks, now fall within the scope of the CPSC's jurisdiction. Of critical importance to Chinese manufactures and distributors of consumer products, the Consumer Product Reform Act conditions importation of such products to the US on the manufacturer's compliance with certain inspection and record keeping requirements and requires certain manufacturers or distributors to post escrow or provide proof of insurance to cover recalls.

The bill also requires the creation of a searchable public database for reports of injuries, deaths, illnesses or risks related to consumer products, mandates third party certification of products made for children aged 12 years or younger, authorizes enforcement by state attorneys general, provides public and private sector whistleblower protections and increases civil and criminal penalties for violations of product safety legislation to \$10,000 per violation and \$15 million for aggregate violations.

In particular, the Consumer Product Reform Act bans outright certain phthalates, a class of chemicals commonly found in plastic children's toys that have been linked to reproductive and developmental abnormalities in fetuses and infants and bans three other types of phthalates pending further study. The relevant portions of the bill represent a fundamental shift in the federal government's approach toward regulating toxic substances by requiring proof of the safety of an imported product that contains banned phthalates before the product may enter the market.

In addition, the bill imposes a general ban on lead in all products in excess of 0.1 percent and tightens the federal standard on lead paint to 0.009 percent from 0.06 percent. A series of product recalls in 2007 involved lead in paint and other product components. The Consumer Product Reform Act also imposes or modifies requirements regarding portable gasoline containers, toy safety, all-terrain vehicles, garage door openers, carbon monoxide, cigarette lighters, and consumer product registration forms.

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