Meeting AmCham and Ministry of IenW, the Netherlands

8 July 2020, video conference

Participants Ministry of Infrastructure and Water Management:

5.1.2e

5.1.2e

Participants from AmCham EU Environment Committee:

5.1.2e FirstSolar

5.1.2e BCW

5.1.2e 3M

5.1.2e Carrier

5.1.2e Daimler

5.1.2e EPPA

5.1.2e Cambre Associates

5.1.2e Covestro

5.1.2e Squire Patton Boggs

5.1.2e GE Aviation

5.1.2e GE

5.1.2e Chevron

5.1.2e FleishmanHillard

5.1.2e ExxonMobil

5.1.2e Dupont/HSC

5.1.2e Honeywell

5.1.2e Mayer Brown

5.1.2e AmCham EU

The meeting, at the request of AmCham (representing US companies with presence in the EU), was about priorities in Dutch chemicals policy, including the PFAS restriction.

First item on the agenda was the question which are **the Netherlands' priorities** in relation to REACH, the Green Deal and the future of chemicals policy.

Ministry referred to the upcoming chemicals strategy and the green recovery from corona crisis as key EU developments. NL focusses on addressing combination effects, improvements to several of the REACH procedures, including restrictions and SEv. Also safe by design / challenge for innovation as input to Horizon Europe. Also a reference to the link between Circular Ecomomy, product policy and chemicals policy. Important to work with safe and sustainable chemicals. Specific on NL policy how to deal with recycling of legacy chemicals (chemicals that are no longer allowed or severely restricted but still present in materials which can be recycled). NL chooses a case by case assessment to decide between recycling or disposal and replacement by virgin materials.

Some participants referred to the unclarity related to polymers under REACH and the difficulty for industry to predict what to expect. Here, the Ministry referred to ongoing work at EU-level and probable decision making in about 3 years from now at the next REACH review.

Several participants were anxious to learn whether this next REACH review could indeed lead to amending the legal text of REACH. In reaction, it was made clear that up to 2018 REACH was still not fully operational as the last registration deadline was only June 2018. Now that REACH is fully operational, there might be more possibilities for improvements to the legal text at the next review. However, this will largely depend on the Commission and their conclusions towards the functioning of REACH in 2023.

Another question was on the status of the fitness check of EU legislation related to endocrine disruption substances. Here as well, the Commission is to take the initiative. The NL has concerns related to the difficulty to identify ED and that the data requirements in REACH do not match with the extensive information needed under the criteria set for plant protection and biocidal products.

As to **PFAS**, it was made clear from the outset that at this stage we could only answer to procedural questions but not to the content.

Points raised included:

- Concerns about the broad definition of PFAS and skepticism whether a risk could be demonstrated for the entire group, also including polymers. Ministry explained that if you start wide, it is possible to narrow down in the process. However, if you start narrow, it is almost impossible to extend during the process. This process is also needed to get complete overview of all uses. It does however not pre-empt the exact scope of the final restriction.
- Discussion whether burden of proof now seems to lie with industry rather than with authorities, which should be the case with restrictions. Ministry emphasized that the principle of REACH is that the burden of proof of safety of chemicals is with one placing it on the market. It was also made clear that not all relevant information is available at government level so information from industry and other stakeholders during the public consultations is crucial. At the same time, the process is done with five Member States because it is a huge amount of work to assess and come to substantiated choices.
- Concerns about the short time of the consultation for companies to give information (now open for three months). Ministry pointed at various opportunities at a later stages as well to provide information, in particular the 6 months consultation once the restriction proposal has been drafted and handed over to ECHA.
- Questions from AmCham what are the criteria for essential uses and for exemptions. Ministry replied that similar decisions are already taken within REACH but that this will be further developed. We cannot pre-empt the outcome. It is likely that this discussion will build on experiences with e.g. POP regulation where e.g. some medical applications are exempted and the Montreal Protocol on ozone depleting substances.
- Question whether persistence on its own it sufficient to regulate a substance, also in connection with the microplastics restriction. Ministry explained that with the microplastics restriction the concern is about accumulation in the environment and not only persistence as such.
- Question why refrigerants are in scope, while they are already regulated in F gases regulation. Ministry answered that this is part of the approach of starting with a wide scope, but that obviously we will avoid double regulation.
- Some exchange of views how to assess alternatives – industry stressed to really look at the user requirements and performance standards at an early stage and also to the need to compare the effects on health and environment with the alternatives.
- Question whether we expect some more predictability about the application of the PMT concept. Ministry replied that article 57f of REACH dictates that this is a case-by-case approach to substantiate that in each individual case the risks to heath or environment are indeed of equivalent concern. This will probably remain the case in the short term.

As to the **SCIP Database**, concerns where expressed as to the difficulty to use, proportionality, usefulness of the resulting information in the data base and the future impact on REACH.

The Ministry explained that we cannot question the legal requirement as such as it has been adopted by the European Parliament and the Ministers in all their wisdom. At the same time, the concerns as to the level of detail and the proportionality was shared. Therefore, the Netherlands would be in favor of a fast evaluation of this provision. It was also mentioned that due to the corona crisis, there seems to be willingness by some Member States to postpone, noting however that the EU directive does not allow for such delay. It was emphasized that the intention to get clear information on SVHC's in products, is fully shared. A product passport might in future provide an alternative way to meet this.