



Global Legislation Affecting The Automobile Industry

Trends and Compliance Challenges

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AGENDA

- Product Regulation
 - Who Is Pushing It?
 - Why Are They Doing It?
 - What Are They Doing?
 - Where Are They Going?
- Supply Chain Management And Compliance Challenges

Focus On Products Growing

- New Wave of Requirements on Product & Packaging Content, Use and End-of-Life
 - Driven by Public and Private Forces
 - Becoming an Issue of Competitive Advantage
 - Old Standby: Product Liability
- New attention to quality of products from outsourcing
- Requires Rethinking of Tracking, Planning, Management, and Advocacy Techniques
- It is Growing: In the U.S. and Internationally

Impacts What You Make, How You Make it, How you Sell It, Where You Sell It

The Government Perspective

- Traditional Facility-Based Regulatory Approaches Are Reaching Limits
- Broader Vision of Environmental Issues
 - Precautionary Principle
 - Life Cycle Analysis and Product Stewardship
 - Climate Change
 - Natural Resource Depletion
- More Sophisticated View Of Consumer Protection
 - Particularly regarding exposure to low concentrations of potentially toxic materials
- Recent recalls (e.g., Mattel) creating increased political and regulatory attention to content of outsourced products

The Government Response

- Decrease “Environmental Footprint” Throughout Product Life Cycle
 - Reduce/Eliminate “toxics” from products and packaging to mitigate environmental impacts associated with natural resource extraction, manufacturing, use and disposal
 - Performance standards (e.g., energy efficiency – climate change connection)
- Enhanced Producer Responsibility
 - Expansion of “polluter pays” beyond cleaning up pollution to “take-back” requirements that decrease waste
- Increased Public Awareness
 - More labeling and communication

Your Customers' Perspective

- Meet Legal Requirements Worldwide
- Risk/Liability Management
- Enhance Or Protect Brand Image
- Sustainable Development
- Obtain Competitive Advantage
- Reduce Costs

Your Customers' Response

- Recent high-publicity recalls may increase customer attention to quality/content of supplied products
- “Green The Supply (or Value) Chain”
 - Lists Of Restricted Chemicals
 - Require Formal Systems and Processes (e.g., EMS, QMS)
 - “Certify” or “Declare” That Supplied Products Meet Defined Requirements
 - Push Source/Waste Reduction Requirements “Upstream”
 - Demand Information About Component Content and Performance
- Climate change implications of products, logistics and supply chain management
- Supply chain management increasingly includes “sustainable development” components
 - E.g., labor, community relations, etc.

Legislative/Regulatory Trends

- **Broader Geographical Coverage**
 - In a global economy with multi-national supply chains, toughest region will drive the requirements
- **Tougher Controls on Metals**
 - Mercury, Hexavalent Chromium Are Favorite Targets
- **Expect the EU's Vehicle and Electronics Directives to get tougher**
 - Cut down on the exceptions
 - Enforcement may increase as Member States gain experience

Legislative/Regulatory Trends

- EU's REACH chemical regulation will increase chemical information and restrictions up and down supply chain
 - Increased regulation and scrutiny of “Articles” (e.g., auto parts)
 - Many REACH obligations likely to be passed on to suppliers
- EU process of classifying chemicals will continue to have major impacts
 - E.g., nickel and borates, both widely used in industry, targeted for stringent classification
 - Classification decisions will have significant impacts as REACH is implemented
 - E.g., if nickel classification makes it a substance of very high concern, that has major REACH implications, including for articles

Legislative/Regulatory Trends

- Global Harmonized System (“GHS”), an international agreement on classifying and communicating about chemicals, will be rolling through major countries’ regulatory systems
 - E.g., will result in major re-write of Hazcomm in the U.S.
- EU is widely viewed as a leader on product regulation, so other regions (particularly Asia) likely to follow, formally or informally, EU’s lead.
- U.S. will probably continue to be patchwork of State laws in the absence of Federal legislation
- Potential conflicts between regulatory initiatives
 - E.g., sophisticated lightweight materials for energy efficiency (i.e., climate change related) may be more difficult or expensive to recycle, or may raise safety issues

Non-Regulatory Trends

- Customers establishing supplier requirements that go beyond what the law requires
 - Sustainable development is putting the spotlight on suppliers
 - Retailers such as Home Depot and Walmart are imposing tougher environmental requirements (e.g., reduced or no packaging; climate change demands)
- Expanding supplier participation in the design process to the environmental issues
- Use of environmental performance for competitive advantage

The Bottom Line

- Regulators and customers will continue to push to decrease the “environmental footprint” of products
- Suppliers will be the target of a big part of this pressure
- This pressure will come from all angles as the definition of the “environmental footprint” changes
 - E.g., raw materials sourcing, energy/climate change, product content, product performance, recyclability, upgradability, packaging
- Component performance will increasingly include environmental performance
- No one wants to be the next Mattel

MEETING THE CHALLENGE

- Systematically identify and manage product-related environmental obligations as part of the business
 - Integrate environmental considerations into product planning, design, marketing, sourcing
 - Establish defined responsibilities and procedures so that the issues are dealt with effectively and efficiently
 - Don't be reactive or ad hoc
- This is more than data management
- Consider advocacy strategies: don't let it just happen to you

THE ENDPOINT: INTEGRATING ENVIRONMENTAL ISSUES INTO BUSINESS & PRODUCT PLANNING TO CREATE COMPETITIVE ADVANTAGES AND MANAGE RISK

Compliance Challenges

- Some of the key product regulations, such as the EU's End-Of-Life Vehicle (ELV) Directive, do not establish a specific compliance or enforcement mechanisms
- In the absence of explicit requirements, the private sector has developed “due diligence” supply-chain solutions
- This has created ambiguity as to what is required by law and what is required by industry (e.g., by contract)
- REACH, which is more comprehensive than ELV has explicit supply-chain communication requirements, is going to make this more complicated

Compliance Challenges

- Supplier “certifications” or “declarations” are the popular private sector compliance mechanism: evidence of “due diligence” (though not required by the ELV Directive)
- The legal value of the declarations remains to be tested
 - Degree to which declarations will protect those with the formal legal obligations is uncertain.
 - Supplier’s liability is also unclear
 - If supplier declarations are not required by law, then an incorrect certification is a contractual, not compliance, issue
 - Suppliers’ liability to producers for incorrect declarations is unclear as well: Strict liability? Negligence? Who gets left holding the bag with “cascading” declarations?
- Contract and certification language will be important in resolving these issues

Compliance Challenges -- REACH

- Expect REACH to appear in the private sector ELV framework (e.g., IMDS, supplier declarations)
- REACH is more comprehensive than ELV, so process will be more complicated than ELV
 - Attention to detail will be important. For example, applicability of REACH to “articles” (e.g., auto parts) will often involve careful analysis
- You will have to look upstream and downstream
 - Need to identify your “REACH footprint” now
 - This will require effective communications with your suppliers and customers
 - REACH information gathering/sharing requirements may have legal and risk management consequences in the U.S.
- Legal obligations of REACH apply only to EU entities . . . so what will be the legal value of contractual “REACH declarations”?

Compliance Challenges

Common Issues in Declarations

- Accuracy: Sometimes the language is just wrong
 - Stating that a chemical is prohibited when there is an allowable concentration
 - Seeking declaration that a chemical is not used in a process when the restriction is on content
- Scope: Sometimes language goes beyond legal requirements
- Applicability: Sometimes your product or component might fit into an exemption
- Verification: Basis for making the declaration
 - Testing? Other supplier declarations? Reviewing MSDS? (Whatever it is, be clear in the certification/declaration)
 - Also watch out for generic language about components being “in compliance”: be specific about what you are certifying
- REACH will make all of this more complicated, and the likelihood of errors more probable

Compliance Challenges

Common Issues in Declarations

- Declarations, contracts or P.O.s frequently contain broad indemnification language: read it!
- Some issues:
 - Basis for liability
 - Strict liability? Negligence?
 - Allocation of liability among producer and various suppliers
 - Damages
 - Value of the contract? Cost of recall or repair? Damage to reputation?
 - Relationship to existing P.O.'s or contracts
 - What do they say about indemnities, damages, etc.? Are they consistent?
 - Standard legal issues
 - E.g., choice of law, venue, arbitration/mediation, costs/fees

Conclusions

- Product controls are the new frontier: expect more, not less
- This is not just a regulatory issue: pressure will continue to come from public and private sectors
- Successful companies will integrate environmental issues into strategic business planning, product design, marketing, etc.
- Private sector supply-chain management rules will be a significant element of the compliance system
 - This provides significant opportunities for practical and reasonable approaches . . . if you take them
 - Understand the specific legal and private sector supply chain management requirements . . . and the differences between them
- Pay attention to the details of the certification/declaration and contract language
- Verification: this is not just a paper exercise

Thank you for your time!

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