AmCham EU's position on the circular economy

Looking at the global dimension

Executive summary

AmCham EU supports the underlying principles and objectives of a circular economy. We believe that the international dimension should be fully taken into account by the European Commission when drafting its proposal. Additionally, more efforts should be directed toward the consistent implementation of existing legislation to further promote a circular economy across Member States. AmCham EU stresses the need to ensure the proportionate sharing of costs and responsibility along the value chain and waste management chain. We warn against applying the same solutions and methodologies across sectors since many dimensions of the circular economy remain sector-specific.

* * *

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €2 trillion in 2014 and directly supports more than 4.3 million jobs in Europe.

* * *

POSITION PAPER

American Chamber of Commerce to the European Union (AmCham EU)
Avenue des Arts 53, B-1000 Brussels, Belgium
Register ID: 5265780509-97
Tel: +32 (0)2 513 68 92 | www.amchameu.eu

Secretariat Point of Contact: [Stéphanie Brochard]; [sbr@amchameu.eu] +32 (0)2 289 10 15

27 July 2015

1. General principles

The American Chamber of Commerce to the European Union (AmCham EU) supports the underlying principles and objectives of a circular economy. Industry has continuously been working towards cost-effective and resource-efficient solutions with a proven track record of innovative developments, and is keen to continue to promote a circular economy where technically and economically feasible.

The (high) expectations for growth and jobs that have been associated with further advancing the circular economy cannot be met without a regulatory framework that ensures transparency, accountability and fairness for industries that already comply with a comprehensive set of legal obligations. AmCham EU believes that the establishment of a successful and lasting circular economy can only be achieved if and when it **enhances and complements the development, growth and strength of the EU economy overall**.

Many of the proposed driving measures from the European Commission's initial package are a continuation of product policies that industry has been involved with and will continue to work on in a way that allows it to remain competitive. We see a definite focus to responsibly source materials; to seek greater resource efficiency both in production and for products; and to keep products, parts and materials in circulation in planning for products after use. At the same time there is a focus to develop innovative solutions and new markets (such as the sharing economy, product-service systems) that need to be supported.

Our experience with product policies over the past 20 years led us to the following conclusions:

- **There is no one size fits all solution. AmCham EU supports a sectoral approach to further promote the circular economy**. The EU regulatory framework should allow for flexibility to account for specificities of different products and sectors in terms of how to best achieve the objective of the circular economy. Therefore we caution against the development of 'generic' requirements covering all products, and which risk to hamper innovative breakthroughs. This principle must be reflected among others in any requirements on Eco-design, Life Cycle Assessment (LCA) and Product Environmental Footprint (PEF) development. Targeting and selecting specific sectors should be based on an impact assessment of the most promising levers, the biggest environmental impacts and economic potentials. Where additional legislation is considered, the interactions with existing legislation should be taken into consideration.

- **More efforts need to be placed on implementation across Member States and on the development of necessary infrastructure**. We are starting from a strong basis with many sectoral legislative frameworks already in place. The Eco-design Directive, end-of-life vehicles (ELV), Waste of Electrical and Electronic Equipment (WEEE) Directive, Restriction of Hazardous Substances (RoHS) Directive, Batteries Directive, Waste Framework Directive and Packaging and Packaging Waste Directive are all already maximising specific environmental benefits. More efforts should be put on consistent implementation and support for those Member States where basic infrastructure is lacking.

- **A proportionate sharing of costs along the waste management chain is essential**. There is a need to ensure a proportionate sharing of costs along the waste management chain – where producers, consumers and public authorities all have to share clearly-defined responsibilities and focus on areas where they can exercise a sufficient level of control. These clear responsibilities must also be defined across all relevant sectoral legislation and common minimum requirements for Extended Producer Responsibilities schemes need to be established.

- **It is crucial to factor in the international dimension**. In April 2011, Pascal Lamy, Director-General of the World Trade Organisation (WTO), launched an initiative called 'Made in the World', to underline how international supply chains have become inextricably linked, and in view of this, determine whether the WTO rules need to be adjusted. The experience of companies operating in multiple markets, many of which are represented in the membership of AmCham EU, suggests that any sophisticated product – whether physical, digital or (often) a combination of both – will be made up of inputs, both physical and intellectual, from multiple sources in different countries. The advent of e-commerce can result in these products being sold online by a company in one country to anywhere in the world. If it is a physical product, it may be manufactured in one place using components and expertise from all over the world, packed in a warehouse in a different location, and delivered to a consumer in a third country. It is crucial to acknowledge these increasingly complex situations and products. Such a complex context is calling for simple measures in order to be effective. Additionally, effective solutions require the involvement of other regions in the world to create a global level playing field when it comes to supply chain requirements. The EU should therefore contribute to this effort and avoid creating administrative burdens which will disadvantage companies operating in Europe.

- **The EU's circular economy ambition should be to create global loops rather than closing borders.** Value creation is global and so are many circular economy models (e.g. flows for refurbishment and repair). The EU should not give in to the temptation of designating frontiers in a European circular economy. Rather, a global circular economy integrating other markets should be the ambition. For example, the attempt to define equivalent waste treatment conditions for recycling shipments should not create non-tariff barriers to trade. U.S. best practices should be accepted as equivalent.

- **Access to raw materials should be safeguarded by the European Commission**. European industry, which depends strongly on the import of raw materials, resource efficiency is already common practice. But, as recognised by the Commission in their Market Access Strategy, currently European industries still face access restrictions to raw material, particularly export taxes and pricing practices. The EU should reinforce its commitment to using multilateral institutions (e.g. WTO) and bilateral channels (e.g. FTA), to promote market access and liberalisation, market opening, and approximation of standards and norms between the EU and its trading partners.

2. Specific comments on the measures considered to encourage the circular economy

Targets & calculation methods

In addition to increasing the targets, the Commission may also propose to change the underlying methodology used to calculate recycling performance. This will undoubtedly affect the current baseline

and the effect has not been fully considered in the impact assessment. Therefore AmCham EU calls for a proper impact assessment, which reflects the new calculation methods and the actual efforts that will be required.

Headline target

AmCham EU is doubtful that a target based on the weight of resource use compared to the economic output is suitable. Such a target will not account for the performance, functionality and renewability of a material, which are important values to support the circular economy. It would also be a disadvantage to those economic systems that feature a high percentage of industrial value added. Resource efficiency should not only focus on quantity, but more importantly on quality and value throughout the whole life cycle of materials. Our members support the view that a too simplistic target will not capture the complexity of resource use, production and consumption.

Eco-design

The overarching goal of eco-design is to reduce adverse environmental impacts of products throughout their entire life cycle. This will in any case involve balancing the environmental aspects of the product with other factors, such as its intended use (functionality), performance, cost, marketability, quality and existing legal requirements. It is important to point out that eco-design also has to address basic design considerations (e.g. functions provided by a product).

AmCham EU generally questions the need to regulate aspects either driven by customer demand (e.g. durability, reparability) or by existing legal requirements such as WEEE (recyclability), energy related products (ErP) (use phase efficiency), Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and RoHS (substitution). Any 'double' legislation will require additional resources to comply with potentially conflicting requirements (e.g. durability vs. reparability vs. recyclability).

In the context of developing product policy for the circular economy (specifically under ErP), it is necessary for both economic operators and market surveillance authorities to be able to assess compliance using standardised methods (with quantifiable metrics on measurement uncertainty etc.).
AmCham EU is of the opinion that more research into these subjects is needed before embarking on applying specific requirements related to durability, modularity, reusability and recyclability. Rushing to set up specific criteria on eco-design will likely stifle innovation and make it less likely that environmentally beneficial innovations would be developed.

Remanufacturing

The European Commission should better include the concepts and best practices of remanufacturing in its future communication. Remanufacturing is a circular process in itself and not limited to the design step in the overall circular economy. A remanufactured component fulfils a function which is at least equivalent to the original component. It is restored from an existing component (CORE), using standardised industrial processes in line with specific technical specifications. A remanufactured component is given the same warranty as a new component. It is clearly identified as a remanufactured

component and states the remanufacturer. It is different from a reused, repaired, rebuilt, refurbished, reworked or reconditioned component - and it is also different from recycling.

Remanufacturing helps reduce costs, and substantially minimises the environmental impact through waste reduction, lowering greenhouse gas emissions and lessening the need for raw materials. It hits the right balance between efficiency, affordability and the environment. To promote resource efficiency and sustainable development, the EU should adopt a common language in its trade agreements which would treat remanufactured goods like corresponding new goods and address market access barriers that can arise when third countries apply measures concerning the importation of used goods to remanufactured goods, or classify remanufactured goods as used goods for customs purposes.

Effective use of Product Environmental Footprinting

AmCham EU supports efforts to assess the capabilities of environmental footprinting methodologies to determine how they may be effectively used to improve the environmental performance of products and organisations. There is a clear need to better understand both the limitations and the potential of these methodologies.

Harmonised and consistent global product environmental footprinting methodologies can be of great value when applied strategically and selectively in conjunction with a life-cycle management program. They can also be important tools to help develop game-changing products, technologies, and services that deliver real and lasting environmental benefit. The most important thing is to ensure a balanced approach between different stages when making a final assessment. Also, it should be acknowledged that because of the complexity and differences of industries, one single LCA methodology cannot be applied uniformly to all sectors and/or products.

Active involvement of business in partnership with the European Commission is essential to success and can be accomplished by: *i*. having businesses participate as active stakeholders in discussions regarding how to most effectively implement environmental methodologies into various circular economy policy instruments and; *ii*. keeping the possibility of a case-by-case approach to focus on the most relevant criteria. This could ensure the creation of the right scalable assessment tools.

'Repair as produced'

Central to the circular economy is the 'repair-as-produced' principle under which early generation of product waste is prevented. Depending on the type of product, this could vary from two to more than twenty years, and many products have generic replacement parts available.

For products with replaceable parts, it is important that spare parts are made available in a timely, efficient and cost-effective way, without obliging manufacturers to make spare parts available indefinitely. As an example, the supply of spare parts for some products is also regulated at a national level, such as in Germany, where a minimum ten year availability obligation must be fulfilled.

In order to be successful, accountabilities must be fair and logical: for some products, generic parts are readily available but are supplied by industries different from the original producer. In that case, product producers cannot be held responsible for the availability of these spare parts or for the industry that does the repair.

Coherence with chemical legislation

Spare parts

AmCham EU member companies are committed to the REACH regulation and its mechanisms to explore further substances and develop additional data if needed (substance evaluation), strictly regulate the most hazardous ones (authorisation) and restrict the use of those posing a risk at the EU level (restriction). For spare parts, however, substitution implies that components would have to be redesigned each time a currently-used substance is regulated. Consequently, original spare parts could no longer be used. Such modified components have to be tested both individually and as part of the end product (cars for example) in order to satisfy all requisite testing, conformity and assessment. When the original product is not manufactured anymore, redeveloping and manufacturing spare parts may not be technically or economically feasible.

Existing EU environmental laws such as the recast RoHS Directive (RoHS 2) and the ELV Directive contain exemptions for spare parts put on the market. RoHS 2 grants time-limited exemptions for spare parts of certain products (Annex III). RoHS restrictions also apply to spare parts (article 4(1)) with some further exceptions defined in article 4(4-5).

The REACH regulation currently does not foresee a general exclusion for spare parts which is problematic with regard to substances subject to REACH restriction or authorisation, hence a longer transition periods for the use of spare parts should be introduced, similar to RoHS 2.

Recycling

The aim of reaching higher recycling rates is also interlinked with regulation on chemical substances. In the voluntary EU ecolabel scheme ('EU Flower'), a restriction of substances beyond legally-binding regulation such as REACH or RoHS would make recycling more challenging because materials currently containing these substances could not be recycled to be again awarded the EU Flower in the future.

Similarly, articles with substances now restricted under REACH Annex XVII cannot be recycled if the substance concentration exceeds a certain limit. The allowed threshold set by RoHS and REACH is 1000 parts per million (ppm) and generally recognised as an appropriate unintentional contaminant level. Lowering this threshold to below 1000 ppm, would make recycling even more challenging because it would result in increasing difficulties in detecting and identifying such substances in a given waste stream.

Extended Producer Responsibility

Costs, effectiveness and performance of Extended Producer Responsibility (EPR) schemes differ significantly between Member States. A clear framework and minimum requirements on EPR are needed. Clarity of roles and responsibilities of all actors increases transparency and efficiency and common minimum requirements ensure a level playing field and fair competition among the EPR schemes. Industry should be able, within an environment of fair competition to choose how it meets its EPR obligations (i.e., operationally and/or financially) in order to incentivise the whole process. Consequently, respective responsibilities must be aligned with the activities that each actor in the chain can control.

This applies to littering: manufacturers of products cannot be held responsible for the broader societal problem of littering and for bearing the costs of remedy. Those that litter are primarily responsible for causing the problem and the legal responsibility and financial costs associated with remedying these issues must therefore be attributed according to their roles and responsibilities.

3. Barriers to a circular economy

End of waste

AmCham EU notes the level of ambition announced by the Commission when it withdrew its former proposal. However, we are surprised to see that it does not mention one of the key tools at the EU's disposal to help increase Europe's recycling rate, namely end-of-waste criteria.

Many secondary products already comply today with the criteria outlined in Article 6.1. of the EU Waste Framework Directive[1] and can *de facto* qualify for end-of-waste status. These products can bring real benefits both for the economy and the environment, and their added-value should be recognised by the EU legislation.

End-of-waste criteria represent a low-hanging fruit towards a circular economy and should be granted to new products in order to unlock their markets which are too often hampered by unnecessary administrative burdens deriving from their waste status. The harmonisation of the legal status of secondary products will undoubtedly contribute in turning precious waste quantities into true resources and allow a full market take-up of these products.

Positive impacts from the completion of the Single Market would not only come from economies of scale and the reduction of administrative and shipment costs associated to waste products, but would also come from subsequent professionalisation of the sector which should boost employment and skills of the workforce, besides improving the overall quality of the secondary products.

Therefore, AmCham EU encourages the Commission to continue working on end-of-waste criteria for plastics as well as for other waste streams for which a strong demand exists, such as scrap metal, glass cullet or rubber granulates.

Scrap leakage

Over the last ten years we have seen a steady increase of net exports of metal, paper and glass going where the price dictates, which led to a loss of recycling basis in the EU. Therefore for some waste flows, despite the increase of collection rates, we do not observe a corresponding increase in the European recycling end-market activities and companies often are under pressure to buy scrap of lower quality and are faced with additional costs of sorting and purifying.

[1] Article 6.1. reads that end-of-waste criteria can be granted to secondary products for which a) the substance or object is commonly used for specific purposes; b) a market or demand exists; c) their use does not lead to overall adverse environmental or human health impacts; d) they comply with existing standards or specifications for trading.

AmCham EU supports the global free flow of scrap and calls for this issue to be reflected in the upcoming circular economy package; we would also welcome the ability to monitor this trend as part of the efforts to improve statistical reporting. This would help to understand the amount of high quality scrap that is currently lost from the EU market and how this affects the cost-effectiveness of EU recycling facilities.

Shipments of used equipment

Shipments of used equipment and their parts for repair, refurbishment, root cause analysis, remanufacturing and reuse are a significant activity in several product sectors. Consumer equipment, but in particular professional, capital and infrastructure equipment is given a new lease of life, and a prolonged lifespan, if it can be repaired or remanufactured. The expertise and know-how to repair complex products (such as large servers) is not available everywhere. This means that the products, or their faulty components, need to be shipped to centres of excellence where the necessary expertise is available; otherwise the products would unnecessarily and prematurely become waste.

The recast WEEE Directive lays down how legitimate shipments of used equipment for repair can be distinguished from suspicious and illegitimate shipments of e-waste that are being sent under the guise of second-hand goods. However, the practical implementation of these provisions can be fraught with difficulties. AmCham EU urges Member States to consult the European Commission's Guidance or Frequently Asked Questions documents issued in April 2014. We also encourage the Commission to further improve its guidance document with a view to ensuring that legitimate shipments of used equipment for reuse, repair and refurbishment can continue to contribute to a successful circular economy. EU shipment conditions for testing, repair and refurbishment should be harmonised with the recently-negotiated Basel Convention Technical Guidelines, which have also been supported by the EU delegation. If satisfactory harmonised measures can be reached in the centres of regulatory innovation (such as the EU), it will become much easier to convince other regulatory markets to transpose the technical guidelines. This would significantly facilitate shipping used equipment and parts for repair, refurbishment, root cause analysis, remanufacturing and reuse. This would avoid early and unnecessary waste creation, and will significantly underscore the goals of a circular economy.