

AmCham EU's position on a Swedish tax on hazardous substances

Existing EU chemicals legislation should be used to address hazardous substances of concern

Executive summary

The American Chamber of Commerce to the EU (AmCham EU) believes that the existing EU regulations on chemicals, especially the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), Regulation (EC) No. 1907/2006, is the appropriate mechanism to address substances of concern in a coherent, scientific way on a Union-wide basis. Therefore, we are opposed to Sweden or any other EU Member State introducing a national tax on chemical substances in certain product groups.

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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 more than €2 trillion in 2015, directly supports more than 4.3 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

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Introduction

In February 2013, the Swedish Chemicals Agency (KEMI) presented a report entitled "*När kan ekonomiska styrmedel komplettera regleringar inom kemikalieområdet?*" ("*When can economic control measures complement regulation of chemicals?*"). The report outlines different options when Sweden could use environmental taxation to complement current regulations. Several product groups, where such taxation initiatives could be considered, were identified.

A meeting with a limited number of Swedish stakeholders took place on 7 November 2014. Of the almost 100 submitted comments, including from the American Chamber of Commerce to the EU (AmCham EU), the majority were negative. The implementation was decided to be delayed by at least a year, mainly because necessary standard test methods for market surveillance to differentiate between additive and reactive substances are not available. On 31 March 2016, the Swedish Government presented an amended version of the proposed chemical tax, however with minor modifications only. Therefore, all of the arguments against this tax previously raised by AmCham EU remain unchanged.

Arguments against the proposed taxation and open questions

AmCham EU welcomes the opportunity to comment on the amended version. We believe that national taxation schemes on substances in selected product groups will undermine well-established and acknowledged instruments and processes of environmental and chemical regulation, as well as market access in the EU. Such policies will most likely apply in a subjective fashion (without a coherent methodology or criteria), and therefore could discriminate against certain substances without any robust scientific basis.

The tax is based on a technical property of a substance (if additive or reactive) but not on the health and environmental properties of the substance. This has two very negative consequences:

- substances with demonstrated good properties will be taxed;
- substances with poor properties will get maximum tax relief, i.e. there is a high risk for false substitution.

Selection of substances and product groups

The KEMI report gives no clear indication of what criteria were defined and applied to identify the proposed product groups and the mentioned substances. The last two groups 'chemical tax on several different consumer articles' and 'tax on chemical products' are especially vague and worrisome.

The report refers to 'undesirable substances'. While a clear definition of what constitutes an undesirable substance is lacking, the report highlights that economic policy instruments like the proposed taxation are not the right instrument if 'the undesirable substance is toxic and poses an acute risk to health'. The terminology here seems subjective, and without knowing what the difference is between an 'undesirable substance' and an 'undesirable substance which poses an acute risk to health', industrial actors have no legal certainty as to how their substances, or the finished good containing them, will be treated.

While some product groups mention single substances, others refer to groups of substances which we believe is not justified since individual substances, even if members of a 'group' or 'family', can have different hazard profiles and different properties. Any groupings need to be justified, based on EU/OECD guidance and substantiated by scientific evidence. In either case, there is a lack of criteria not only for the clear identification of a substance, but also for its environmental and human health profile in order to define what constitutes an 'undesirable substance' which would be subject to the proposed taxation.

Possible alternative measures to the proposed tax

The KEMI report states that 'The EU rules on chemicals today are extensive and have been completely replaced over the past ten years.' In the Swedish part of the report, several references are made to the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and the Restriction of Hazardous Substances (RoHS) directive.

AmCham EU considers existing EU regulation on chemicals as the appropriate tool to address substances of concern:

- In case a substance poses an acute risk to the health of consumers, the risk should be addressed through regulatory instruments, such as the REACH Restriction mechanism, which would also include imported products. In case Swedish authorities consider that a substance has an unacceptable hazard profile, it could be included on the REACH Candidate List for Authorisation, following defined criteria and processes.
- The RoHS directive is an additional instrument to address substances in electric and electronic equipment, which the report identifies as one of the product groups.
- Besides regulations, voluntary instruments such as ecolabels (e.g. German Blue Angel and Swedish TCO), with defined criteria for environmentally advanced products, already exist and could be used to meet Sweden's policy objectives. The EU's Green Public Procurement criteria for various product groups could also be used instead of an additional national tax. These existing instruments are better suited to support more sustainable products than the proposed taxation.

Alternatives and substitution

The report mentions that more investigation on alternatives is necessary, but fails to mention how exactly this should be done. Substitution is often complex and depends on several factors of equal importance, such as technical performance, availability and costs of the alternative substance. It is difficult for authorities to grasp trade-off between each of these factors for each given use of a substance. In addition, it is not always easy to judge whether the environmental or human health profile of the alternative would be better than that of the original substance. This applies even more to the current project which obviously is lacking/ignoring evaluation tools or methodology. While the REACH Restriction and Authorisation processes take information on alternatives and socio-economic analyses into account, the current taxation proposal does not explain how the Swedish authorities will assess the added value to consumers or to the environment of an alternative compared to the taxed substance. Such legislation could promote regrettable substitution(s), and this should be avoided at all costs.

Conclusion

If a substance poses no risk for human health or the environment, economic policy instruments are not an appropriate tool, as highlighted by the KEMI report. In addition, the lack of clear criteria for 'undesirable substances' and for the selection of the fourteen product groups identified in the proposal underlines how difficult it will be to enforce this law, and raises questions as to the need for this additional tax. If a substance poses an unacceptable risk to human health or the environment, REACH is the appropriate instrument to address these concerns.

AmCham EU therefore asks the Department of Finance, KEMI, and other involved Swedish authorities, to take our comments into account and refrain from any legislative proposals that would introduce a tax on certain chemical substances in Sweden.