POSITION PAPER

PR China:
The Administration on the Control of the Pollution Caused by Electronic Information Products (ACPEIP)

Brussels, 15 November 2006

***Orgalime**, the European Engineering Industries Association, speaks for 36 trade federations representing some 130,000 companies in the mechanical, electrical, electronic and metalworking industries of 24 European countries. The industry employs some 10 million people in the EU and in 2005 accounted for some €1,598 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.*

Executive Summary

While Europe in Directive 2002/95/EC ("RoHS") has restricted the use of six substances in electrical and electronic equipment as of 1 July 2006, European manufacturers are now facing additional and multiple substance restrictions for their products by legislation adopted by other regions of the world, and the People's Republic of China in particular. Representing an industry that acts on global and highly competitive markets and that is characterised by ever shorter design, development, production and -in some cases even- consumption cycles, Orgalime is concerned with the **high degree of inconsistency and lack of harmonisation** between requirements established in the EU and those established in other parts of the world, and in particular the Chinese Ministerial Decree on the "Administration on the Control of the Pollution Caused by Electronic Information Products" (hereinafter ACPEIP), promulgated on 28 February 2006.

Orgalime believes that in its international relations the **European Union should foster a common understanding with its key trade partners on the basis of the following policy objectives:**

- **Consistency** of environmental priorities around the globe
- **Global harmonisation** of requirements and key compliance terms
- Creation of **a true level playing field** to foster **fair competition**
- Where deciding to legislate, to seek **legal certainty** for companies by fostering the establishment of **clear and timely requirements**
- To advocate for the **assessment of the impacts, costs and benefits prior to legislation** to identify most cost effective and efficient ways forward

In the interest of both, improving the global environment and securing fair competition in the market place, **Orgalime more particularly calls upon the European Commission to seek official confirmation from the responsible Chinese authorities** on the following points, partly addressed at the meeting of the EU-China Working Group on Electrical and Mechanical Products on 19 September 2006:

- the definition of key compliance terms, such as "launched or put on the market", "EPUP", "ESUP" or "EFUP" ,
- the precise scope of ACPEIP and the criteria and procedures for establishing "the catalogue" in particular,

- the substances to be restricted by ACPEIP and tolerated maximum concentration values,
- the precise information, labelling and marking requirements, and especially that products that comply with EU-ROHS would require a green mark only,
- a general phase in period of at least 3 years for ensuring compliance with any substance restriction,
- a minimum 12 months implementation phase as of the moment of completion of relevant standards to the date on which labelling and information requirements would become effective,
- involvement of all stakeholders, including Europe and its industry,
- to abandon mandatory third party certification (CCC) for products listed in "the catalogue",
- to apply international standards and allow internationally accredited laboratories for testing where necessary,
- to clarify the responsible market control bodies and the rules for their intervention.

Orgalime considers continuous and reliable access to information on ACPEIP **(and the publication of an official English translation in particular) as vital for companies to be in a position to fulfil the requirements of ACPEIP.**

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1. INTRODUCTION

On 28 February 2006, the People's Republic of China promulgated the so-called "ACPEIP". The European Commission reacted to the PR China's notification of ACPEIP to the WTO/TBT agreement. Orgalime welcomes the engagement of the European Commission for seeking clarification on ACPEIP and for challenging ACPEIP against the background of removing technical barriers to trade.

Furthermore, our industry welcomes the Commission's initiative for the organisation of an EU-China RoHS conference on 4/5 December 2006 in the interest of better understanding, mutual information and exchange of views in an area of direct relevance to consumers all around the globe, the environment, legislators and the competitiveness of European engineering industries that act globally.

The European engineering industry, and the electrical and electronics branch in particular, is characterised by the following elements:

- Dynamics in the market place are steadily increasing. Therefore development, design, production and in many areas also consumption cycles are becoming shorter and shorter.
- This industry operates on a global scale with highly complex global supply chains rendering the "just in time" flow of millions of components a prerequisite for manufacturing and growing in Europe. Globalisation also includes the transferability of manufacturing technologies and processes.
- In the face of strong competition, including counterfeiting, market forces that drive our business are getting even more relevant day by day.
- Any legislation on our industry's products, such as substance restrictions, be they European or other, shows an immediate impact on global performance and competitiveness. Substance restrictions in practice do not automatically equal innovation, as some may argue, but often translate into costly re-engineering and change of production cycles, even mid term, while not necessarily providing overall benefit to the environment from a life cycle perspective.

Regarding the restriction of the use of substances in engineering products, Orgalime wishes to remind regulators that its industry is subject to multiple legislation: Directives 67/548[1] or 76/769[2] and its amendments, 2002/95/EC (RoHS) or the future REACH regulation, to name but a few.
Substance restrictions add on in an area where other environmental or safety legislation applies to our industry and its products in parallel.[3]

It is therefore all the more important that substance legislation, whether envisaged in the EU or elsewhere, should respect a number of primary objectives. These are mainly derived from the experience with the EU-RoHS directive and aim at helping to ensure workable, enforceable end environmentally effective requirements while at the same time not provoking adverse effects on our industry's competitiveness and innovation capacities:

- **Consistency** of environmental priorities and requirements around the globe
- **Global harmonisation**: Regional solutions are costly but not necessarily to the benefit of the consumer or the environment that does not stop at national or regional borders.
- In our industry, **fair competition** requires a **global level playing field**.
- If there is regulation, then we ask for requirements that guarantee **legal certainty** for companies. Such requirements should be timely and clear.
- **Cost efficiency** can only be fostered if the impacts and costs/benefits of a potential legislative initiative have been properly assessed in advance.

2. ORGALIME'S PARTICULAR CONCERNS AND PROPOSALS

ACCESS TO INFORMATION
Lacking **official English translations of ACPEIP** and **the related (draft) standards**, it is difficult for non-Chinese companies to identify the responsible Chinese authorities and to get confirmation on their understanding of key aspects of the Chinese legislation (e.g.: scope, compliance terms or information, labelling and marking requirements). We therefore encourage the European Commission and Chinese authorities to cooperate closely and continuously exchange information on this matter, including on the upcoming revision of the RoHS directive announced for 2008.

ENTRY INTO FORCE
ACPEIP is scheduled to enter into force on 1 March 2007. However, with only few months left, key aspects of ACPEIP have not been clarified, and a number of standards are left open. Considering that the implementation of new requirements needs sufficient time to be put into practice by companies, Orgalime believes that **a realistic transition period of at least 12 months** as of the moment of finalisation of any standard, has to be granted to enable companies to clear their supply chains and take the necessary changes to design and production lines to meet ACPEIP.

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[1] Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances
[2] Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations
[3] As examples, we quote: Directives 2002/96/EC (WEEE), 2005/32/EC (Eco Design of Energy Using Products), 89/106/EEC (CPD), 91/157/EEC (revised Batteries and Accumulators Directive), Cadmium Directive 91/338/EEC, Mercury Directives 82/883/EEC and 84/156/EEC, End of Life Vehicles Directive 2000/53/EC (ELV), General Products Safety Directive 2001/95/EEC, Machinery Directive recently updated by Directive 2006/42/EC, Low Voltage Directive 73/23/EEC, Electromagnetic Compatibility Directive 89/336/EEC updated by Directive 2004/108/EEC, Directive on the Protection of the Health and Safety of Workers from the Risks related to Chemical Agents at Work 98/24/EC (noise 2003/10/EC, vibrations 2002/44/EC, electromagnetic fields 2004/40/EC and optical radiation 2006/25/EC) or Carcinogens Directive 90/394/EEC.

SCOPE

One precondition for compliance is the clear and timely identification of **equipment that would fall under the scope of ACPEIP** and equipment that would not fall under its scope. This is yet not the case. There is still uncertainty in this area, e.g.:

- While ACPEIP is stated to apply to "Electronic Information Products" (article 3 chapter 1 on general principles), a government "note by category of electronic information products" in this context is claimed to be published on the website of MII, however is not available in English. The final catalogue of the products affected is to date not available or has been declared to be final.
- ACPEIP does not foresee an exemption mechanism, such as article 5.b EU-RoHS. ACPEIP seems to rather follow an "exhaustion method" for products to be listed in a so-called "catalogue". It remains however unclear which products would be listed in "the catalogue". Neither the criteria nor the procedure that would apply for the identification of products to be listed on the future catalogue are clear to date.
- Industry is still seeking clarification on how parts/components, parts for repair and parts for replacement would be tackled.
- It remains unclear whether batteries, large-scale industrial tools, medical devices, monitoring and control instruments, electric components, such as semiconductors or precursors, or the packaging of the "Electronic Information Products" would be covered by ACPEIP. What does the notion "household electronic product" refer to? Also, would there be different rules for B2B and B2C products?
- There are no derogation periods for requirements related to product design of equipment, also not for equipment with high requirements on reliability and performance, such as medical devices or measurement equipment.
- There is uncertainty whether or not a so-called "60%-rule" applies, including whether or not capital goods would be subject to ACPEIP.
- Products exported from China as well as parts imported to China for export seem to be outside the scope of ACPEIP.
- Furthermore, the scope of **substances to be restricted under ACPEIP** remains unclear since ACPEIP not only refers to the six substances listed in the EU RoHS directive, but also references "other toxic and harmful substances or elements specified by the state". The use of the criterion of "intentionally added" for hazardous substances creates many uncertainties since it cannot be easily evidenced whether an impurity has been added intentionally or not. The total value or threshold limit should be used instead.

These examples show that there may be significant differences between ACPEIP and EU-RoHS, which can clearly result in supply chain problems and possible barriers to trade.

It is particularly necessary to clarify the implementation process of ACPEIP.
Orgalime particularly advocates that **the establishment of "the catalogue" does not lead to conflicting scopes of ACPEIP and EU-RoHS.**. "The catalogue" should be established in a **transparent way** with the **involvement of stakeholders** and be **predictable**. It should equally respect **technological feasibility** and **reliability**.
In order to ensure compliance with any substance restrictions in time, industry requires a **phase in period, which in our view should be at least three years.**

As to the issue of repair or upgrade of EIP products with non-compliant materials we believe that a new provision should clarify this matter.

DEFINITIONS OF COMPLIANCE TERMS

Compliance requires clear and unambiguous definitions of key compliance terms. ACPEIP today does not properly define the term "launched or put on the market", nor sufficiently clarify what "environmental protection use period of an EIP", "safe useful life period" or "environment-friendly use period" would exactly mean. The issues of "EPUP", "ESUP", "EFUP" as well as others in the different documents are inconsistently described and therefore confusing.

Orgalime considers a clear understanding of these terms a necessary prerequisite before ACPEIP obligations start. The term “launched or put on the market” should be aligned with the definition applying for the EU RoHS directive.

We particularly seek the confirmation by authorities that an EPUP mark would not be necessary for products that comply with EU-ROHS directive.

INFORMATION, LABELLING AND MARKING REQUIREMENTS

Orgalime understands that ACPEIP introduces multiple labelling requirements for all electronic information products, including parts and components unless used in manufacturing. Such products would be required to bear an “EIP Pollution Control” mark, an “Environmental Protection Use Period” mark and a material declaration table unless marked with the green “e”.

As exemptions, such as those under EU-RoHS are not granted under ACPEIP, **all** products would have to be marked orange.

Considering that in basic materials such as steel, copper or aluminium the concentration values of e.g.: lead, are higher than the general maximum concentration limits of 0.1 wt%, it remains unclear whether or not a possible belated publication of exemptions to ACPEIP would change certain marking requirements from orange to green.

Such extended requirements are not only very different from the EU-RoHS directive, they are extremely burdensome for industry and may easily result in barriers to trade.

We therefore advocate for the introduction of **a minimum 12 months implementation phase** as of the moment of completion of relevant labelling standards to the date on which labelling and information declaration requirements would become effective. Also, we request **international marking standards** to be used to allow European industry to participate in the drafting of any standard. It would also be necessary to clarify where these marks or labels are supposed to be put (e.g.: on the product itself, on its packaging, on the accompanying documentation or the customs clearance document).

As far as electronic components and subassemblies (manufacturing and repair) are concerned, we take the view that these should only be covered as parts of a final product and would therefore not require separate labelling.

While earlier versions of the ACPEIP also seem to have required a “mark of origin”, we understand that such a requirement has now been dropped. We support this.

CONFORMITY ASSESSMENT

Orgalime is highly concerned with the mandatory third party certification that ACPEIP requires for EIP listed in “the catalogue”. Mandatory third party certification not only costs money, it is time-consuming, in the case of ACPEIP limited to an insufficient number of available (Chinese) laboratories, and not necessarily to the benefit of the environment.

Orgalime is also concerned about the uncertainty of whether or not the certification of a covered product would have to be repeated annually and whether or not the certification could have a “periodic production inspection” as a consequence, such as this is the case under CCC in general.

Orgalime takes the view that **presumption of conformity** and **manufacturer’s self-declaration** should be used in the assessment of conformity. As far as testing would be concerned in specific cases**, international testing standards** should be applied where testing is perceived necessary and companies should be allowed to choose **internationally accredited laboratories** (e.g.: by a member body of the international mutual recognition agreement of ILAC).

Also, if products for export were not to require certification, this could infringe trade rules, which should be removed.

ENFORCEMENT
Finally, we are concerned that it remains unclear which authority would carry out market surveillance to ACPEIP and what rules/procedures/test methods would apply for market control. We encourage the European Commission to seek clarification from Chinese authorities also in this respect.

3. CONCLUSIONS

While European engineering industries have just faced the challenge of implementing the EU's RoHS directive, our industry is concerned about the potential backlash of this European Directive on manufacturers in Europe through additional and highly differing legal requirements to be brought forward by major trading partners and the People's Republic of China in particular.

The degree of uncertainty of ACPEIP is considerable as elaborated in part 2 of this paper.

Orgalime therefore thanks the European Commission for its recent initiative for an EU-China-RoHS Conference that will take place shortly and encourages the Commission to foster a common understanding of key elements of ACPEIP and EU-RoHS against the background of a globally acting European engineering industry.

In particular, Orgalime seeks the support of the Commission to get official confirmation on the issues addressed in this paper in order for European manufacturers to be able to prepare for the implementation of ACPEIP without major adverse effects on its competitiveness and innovation capacities.

We hope that the European Commission will see fit to address these concerns of European engineering industries with Chinese authorities and get the necessary official confirmation in order to avoid that what has been a European "solo run" on RoHS should not end up with a completely unharmonised approach in different countries of the world, causing major problems for European industries at global scale.

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