



Roundtable

# Trends in Brazilian Environmental Law and Enforcement Under the New Administration

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Beveridge  
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# Product Stewardship in Brazil: Phase Two

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# Major Initiatives of 2018-2019

- **Chemical Inventory Bill**
- **Proposed RoHS Regulation**
- **Reverse Logistics Implementation**

# Development of the Chemical Bill

- **Caption:** Inventory, Assessment and Control of Chemical Substances
- **CONASQ (National Commission on Chemical Safety) working group:**
  - Ministries of Environment (MMA), Health, Labor, Industry, Mining
  - Civil society: labor, indigenous rights, ABIQUIM
- **Studied existing chemical inventory programs:**
  - Combined elements of REACH, TSCA, Canada CMP, China New Chemicals Law
- **Published drafts:**
  - June 2016 – problematic, many ambiguities
  - September 2018 – responded to public comments
- **Current status unclear:**
  - Returned to MMA for further review

# Proposed Regulatory Framework

- **National Registry of Chemical Substances:**
  - Registration by substance for manufacturers & importers
  - Initial 3-year information gathering period
  - Then non-registered substances would require “new substance” review
- **Risk Assessment:**
  - Technical Committee
  - Would prioritize substances for assessment based on 7 listed “criteria”
- **Risk Management:**
  - Deliberative Committee
  - Would be authorized to impose risk management measures, including use restrictions, based on risk assessment

# Proposed Chemical Registry

- **Scope:** Chemical substances, “in themselves” or as ingredients in mixtures
- **Key exclusions & exemptions:**
  - Otherwise regulated substances – e.g., pesticides, pharmaceuticals
  - Natural substances – e.g., minerals, ores, petroleum
  - Polymers of “low concern,” some polymer components
  - Articles
- **Applicability:**
  - Companies that manufacture or import any covered substance:  $\geq 1$  metric ton in one calendar year
- **Required information:**
  - CAS#, GHS hazard classification, recommended uses, scale of production
- **New substances:**
  - Added to Registry unless any of the 7 risk assessment conditions apply

# Proposed Risk Assessment “Criteria”

- I. persistence and toxicity to the environment**
- II. bioaccumulation and toxicity to the environment**
- III. persistence, bioaccumulation and toxicity to the environment**
- IV. carcinogenicity, mutagenicity or reproductive toxicity**
- V. characteristics of endocrine disruptors, based on scientific evidence**
- VI. relevant potential for human or environmental exposure**
- VII. subject of an international alert, agreement, or convention of which Brazil is a signatory**

# Issues for Industry Attention

- **Scope ambiguities:**
  - Borderline “mixtures” – e.g., non-article products such as paint
  - Risk assessment / new substance “criteria” open-ended
- **Annual updates:**
  - Track & revise all information submitted to Registry
- **Confidentiality:**
  - Registry information would be public
  - Chemical identity could be cloaked for up to 5 years
  - Confidential studies & data would remain confidential
  - Data compensation from other companies that benefit from studies new to Brazil
- **Chemical Inventory, Assessment, & Control Tax:**
  - Would be established to fund regulatory activities



# Brazil RoHS: Overview

- **MMA working group:**
  - Large: ministries, technical agencies, environmental NGOs, 20 industry associations
- **Proposed regulation:** for enactment by CONAMA
  - Multi-party policy-making committee
  - Such regulations can be difficult to amend
- **Implementing rules:** for MMA & IBAMA to issue separately
  - Technical rules on exemptions, conformity assessment procedures & documentation
- **General objective:** harmonize with EU RoHS re
  - Restricted substances & thresholds
  - Product scope & exemptions
- **Current status:** MMA announced intention to proceed

# Brazil RoHS: Scope

- **Excluded EEE:**
  - National defense / satellites & ground control
  - Vehicles >3.5 tonnes / off-road machinery / aviation
  - Industrial: LSSIT & LSII
  - Photovoltaic cells (for professional installation)
  - R&D / replacement parts
- **Phased implementation:**
  - Upon publication: PBBs & PBDEs
  - 2020: mercury
  - +4 years: cadmium & hexavalent chromium
  - +5 years: lead
  - +7 years: phthalates (DEHP, BBP, DBP, DIBP)
  - Administrative obligations apply one year after restrictions take effect

# Brazil RoHS: Obligations

- **EEE labeling:**
  - Crossed-out wheelie bin
  - Registered name, trademark & address
  - Identity of the importer or domestic manufacturer
  - Durable enough to last as long as the product
- **Declaration of Compliance:** EU model form
- **Technical documentation:**
  - Required of manufacturers, importers, distributors & retailers\*
  - Update if product is modified\*
- **If non-compliant EEE is placed on the Brazilian market:**
  - Notify the agency & distribution chain
  - If feasible, recall products & notify consumers

# Brazil RoHS: Implementing Rules

- **Exemptions:**
  - Proposed CONAMA resolution includes general conditions
  - Product lists & response to industry requests
  - Harmonization provision would direct MMA to review exemptions of other countries
  - Initial exemption list to be based on the current EU list
- **Conformity assessment & technical documentation:**
  - Draft rule adopts IEC 63000, but criticizes its vagueness & flexibility; prescribes specific requirements
  - Would require part-by-part & supplier-by-supplier assessments for all products

# Reverse Logistics in Brazil

- **Federal Law 12305/2010:** National Solid Waste Policy
- **Producer obligations:**
  - Manufacturers, importers, distributors & retailers must implement reverse logistics systems to collect & recycle end-of-life products & packaging
- **Product scope:**
  - EEE, batteries, hazardous lamps, pesticide containers, lubricant containers, tires, packaging
- **Implementation: 3 models**
  - Sectoral agreement
  - Terms of commitment
  - Regulation
- **Oversight:** Reverse Logistics Implementation Guidance Committee (CORI)
  - Studies technical & economic viability
  - Establishes policy & evaluates performance

# Sectoral Agreements

- **Contract:** between MMA, trade associations & their members
- **Edital:**
  - Invites trades associations to submit proposals
  - Establishes product scope & detailed requirements
  - Quantitative criteria: geographical coverage & collection rates
- **In effect:**
  - Pre-existing programs: pesticide containers, lubricant containers, tires, batteries
  - New program: hazardous lamps
- **In progress:**
  - EEE, packaging-in-general (16-city pilot program)
- **Process failure:**
  - Pharmaceuticals

# Sectoral Agreement Obstacles

- **Aspirational criteria:**
  - Lack of infrastructure
  - Unrealistic coverage & collection rates
- **MMA bargaining posture:** strong demands, weak leverage
- **Diversity of interests:** disproportionate burdens for some producers & products
- **Competitive disadvantage:**
  - High costs of cooperation vs. no penalty for resisting
  - Decree 9177/2017, free-rider prevention: if an approved program exists, non-participating companies must operate a program that meets the same criteria
  - Lamp sectoral agreement requires importers of lamps & their components to prove compliance
- **Conflicting tax laws:**
  - ICMS – tax on transport of goods, federal but imposed by states
  - CONFAZ Agreement 99/2018: authorizes 9 states to exempt used EEE – but has no effect unless the states act
- **Hazardous waste classification:**
  - Regulatory consequences are prohibitive for some products – e.g., EEE
  - São Paulo has exempted EEE; IBAMA likely to follow

# São Paulo's Solution

- **SMA Resolution 45/2015:**
  - Wider scope than federal law – e.g., pharmaceuticals
  - Replaced 2011 regulation, postpones existing obligations
  - Requires CETESB to establish compliance criteria
  - Requires reverse logistics for environmental licensing of facilities
- **CETESB Decision 120/2016:**
  - Exempts reverse logistics from some waste management regulations
  - Limits licensing requirements
  - Allows management of EEE as non-hazardous waste
- **CETESB Decision 76/2018:**
  - Enforcement rule, implements facility licensing provision



# São Paulo Enforcement Regulation

- **Adopts federal scope & criteria:**
- **Compliance deadlines:**
  - Large facilities: October 1, 2018
  - Mid-sized facilities: 2019
  - All others: 2021
- **Cites federal “free rider” prevention regulation:**
  - If an approved program exists, non-participating companies must have a program that meets the same criteria
  - CETESB will enforce Decision 76 against any company subject to EPR obligations
- **Judicial challenges:**
  - Eletros (appliances) & Sindusfarma (pharmaceuticals) claim unconstitutional interference in free enterprise
  - So far, the rulings in both cases favor CETESB
- **CETESB has begun notifying companies, requesting proof of compliance**

# Questions?

Thank you!



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