

Who is the Importer under REACH?

An Importer under REACH is the individual or legal entity (company) established in the EU responsible for the **physical introduction** of a substance into the customs territory of the EU. However, REACH does not define clearly how to decide who is responsible for such physical introduction. For example, ECHA provides the following guidance:

“The responsibility for import depends on many factors such as who orders, who pays, who is dealing with the customs formalities, but this might not be conclusive on its own.”

The ECHA guidance then provides an example of who may **not** be an importer;

“in the case of a "sales agency" established in the EU but only acting as a kind of facilitator, a letter-box transmitting an order from a buyer to a non-EU supplier (and being paid for that service) but taking no responsibility whatsoever on the goods or the payment for the goods and not having their ownership at any stage, then, the sales agency is not to be considered as the "importer" for purposes of REACH. The sales agency is not responsible for the physical introduction of the goods.”

A company which intends to (pre)register substances as an importer will need to show that it is actually responsible for the ‘physical introduction’ of the (products containing) the substances that it supplies. A company with operations similar to that of the sales agency described in the ECHA guidance is not an importer and, therefore, cannot pre-register/register substances

The customer of a company similar to the sales agency described by ECHA will be the importer and will have the obligation to pre-register/register the substances supplied to it by the company. It is possible that the customer may be unaware of this obligation. Therefore, any customers of importing companies should check whether their supplier is actually an importer in the meaning of REACH and therefore able to pre-registration/registration substances supplied to them.

Each Member State is responsible for deciding its own arrangements for the enforcement of REACH. Thus, the approach taken by customs authorities may be different across the EU. In the UK, importers may be asked to demonstrate compliance with REACH during any inspection of their premises by HSE, local authority or Environment Agency operational staff. We understand that the UK Revenue and Customs will be empowered to impound products that are under investigation for REACH noncompliance but as yet there are no plans for REACH information to be included in customer’s documentation. Equally, there is no indication that Revenue and Customs will ask for REACH documentation during its own inspections. However, we also understand that other customs authorities, including those of Germany and Poland, may routinely seek proof of REACH compliance.

The UK REACH Competent Authority (the HSE) has been contacted for clarification on this issue. Unfortunately, no additional guidance was available.

Questions and Answers

My trading company imports substances and preparations from a supplier outside the EU. Generally, customers place orders with us and we then forward them to our supplier. The products are shipped to us, we clear them through customs and then deliver them to our customer. Who is the importer?

Generally, you would be considered the importer, as you are responsible for the physical introduction of the products into the EU (and undertake customs clearance). This will be clearer if you ensure that the customer pays you, rather than your parent company, and that your name and VAT number is on the customs forms.

If our supplier is also our parent company, does this make a difference?

No; the position will be the same as if you were importing from a separate company outside the EU. However, in this case you should make sure that your documentation makes clear that the order is placed with, and payment made to, you rather than your parent company.

Sometimes our supplier delivers direct to our customer, even though the order has been placed with us. Who is the importer then?

This is a more difficult case. If your customer clears the products through customs, he may be considered to be the importer. This will particularly be the case if he makes payment direct to your supplier. (This is like the ‘sales agency’ case described above). However, if you undertake customs clearance and ‘take ownership’ of the products at any time, even if they are not physically held at your premises, you could be considered the importer.

My company imports products from a manufacturer based outside the EU. Can the manufacturer pre-register and register its products as the importer?

Registration and pre-registration can only be carried out by companies or individuals within the EU. Non-EU substance manufacturers, formulators of preparations or article manufacturers, though, can appoint an Only Representative within the EU to fulfil the registration obligations of EU importers. Where you import products from a company which has registered the substances within them via an Only Representative, you have no obligation to (pre)register them. However, if you purchase the same substances from a different company, that has not appointed an only representative, you would have to register them.

My company imports products from a trading company based outside the EU. Can this company pre-register and register its products as the importer?

No; a company based outside the EU cannot (pre)register substances and a trading company cannot appoint an Only Representative. The only way that the non-EU trading company could register substances is through an EU-based subsidiary. If you purchase products from this subsidiary (customs cleared), you would be a downstream user purchasing from an EU supplier and you would have no obligations to register.

Recommended Actions

The uncertainties in deciding who is the importer make it vital that there is clear communication between you, your supplier and customer.

Ultimately, it will be a business decision whether:

- *You wish to take the responsibility of being the importer.* This will give you flexibility to change your source of supply and it could be a business advantage to be able to supply (pre) registered products to your customers. However, you would bear the costs of (pre)registration. If you wish to take on the responsibility, you should make sure that products are delivered to you, or at least that you undertake customs clearance and are able to demonstrate that you are responsible for ‘physical introduction’ of the products into the EU, for example because you had ownership of the products when they entered the EU;
- *You wish your non-EU supplier to take responsibility, by appointing an only representative.* This will mean that you avoid the costs of (pre) registration, but it will limit your purchasing flexibility, as you will only be able to purchase from suppliers with Only Representatives. As non-EU traders cannot appoint Only Representatives (this is limited to manufacturers of substances, formulators of preparations and producers of substances), you may be relying on actors several steps up the supply chain to take responsibility.
- *You wish your customers to take responsibility:* in some cases, where your customers are major companies who have a range of responsibilities under REACH, it may make sense for them to act as the importer. In this case, you should make sure that you restrict your role to that of the ‘sales agent’ as described in the ECHA guidance. You should make sure that you take no responsibility for the products, and that payment is made direct by your customer to the non-EU supplier.

Whichever approach you adopt, you should ensure that:

- you have a valid pre-registration number for all substances imported from all non-EU suppliers before 1 December 2008;
- you keep records making clear who the importer is; REACH requires such records to be kept for 10 years and made available for inspection by the enforcement authorities. In the UK, this includes HSE, local authorities and the Environment Agency.