

Latin American Environmental Law Roundtable

March 11, 2015

Washington, DC

www.bdlaw.com/LARRoundtable2015



Product Stewardship Trends in Latin America

Latin American Environmental Law Roundtable
March 11, 2015

Russell Fraker
rfraker@bdlaw.com



Overview



Background

Objectives

Products
Covered

Drivers

Implementation

Case Studies

Background



Latin America is a global leader in product stewardship initiatives



Product stewardship or “producer responsibility” is a broadly defined policy principle in framework laws and informs regulatory development



Initial policy focus has been on take-back or “reverse logistics”



“Producer” is also broadly defined and can include various actors: manufacturers, importers, distributors, retailers, consumers



Policies are now moving up the supply chain and can be expected to cover product design, including materials content

Objectives



A definition: “minimizing the health, safety, environmental, and social impacts of a product and its packaging throughout all lifecycle stages” (Product Stewardship Institute)

- Shifting financial and management responsibility, with government oversight, upstream to the manufacturer and away from the public sector
- Providing incentives to manufacturers to incorporate environmental considerations into the design of their products and packaging

Subject matter of Latin American product stewardship initiatives

- Product take-back
- Substance restrictions
- Energy efficiency
- Consumer information
- Recyclability / recycled content ?
- Supply chain / sourcing ?
- Embedded carbon ?
- “Sustainability” ?

Products



- Product stewardship initiatives cover a wide and expanding range of consumer products
- Binding initiatives already exist for:
 - ◆ Electronics
 - ◆ Batteries
 - ◆ Lamps
 - ◆ Tires
 - ◆ Lubricants
 - ◆ Pesticides & Fertilizers
 - ◆ GMOs
 - ◆ Pharmaceuticals
 - ◆ Cosmetics & Personal Care Products
 - ◆ Toys & Children's Products
 - ◆ Packaging



Drivers



Numerous factors influence the development of product stewardship initiatives:



Lack of Infrastructure

- e.g., weak waste management capacity



International Treaties & Standards

- e.g., Basel Convention e-waste focus



Popular Demand

- recent surge in consumption & environmental awareness



Free Trade Agreements

- e.g., NAFTA CEC batteries



Political Expedience

- lack of domestic products manufacturing sector



European Influence

- e.g., EU WEEE

Implementation



Market Access Requirements

- Management plans (permits)
- Lab testing (often in-country)
- Certification
- Labeling
- Registration
- Customs enforcement

Who Is/Are the Responsible “Producer(s)”?

- Brand owner
- Manufacturer
- Importer
- Distributor
- Retailer



Testing & Certification



Products Affected

- ◆ Electronics
- ◆ Batteries
- ◆ Toys & Children's Products
- ◆ Health Care Products

Key Requirements & Issues

- ◆ Waste classification
- ◆ Substance limits
- ◆ Local lab, local interpretations
- ◆ Expensive and redundant sampling
- ◆ No harmonization or recognition of foreign sampling or testing
- ◆ Lack of capacity, bizarre results



Case Study: Testing & Certification



Electronics in Chile



Product Take-Back

Products Affected

- ◆ Electronics
- ◆ Batteries
- ◆ Pesticides
- ◆ Pharmaceuticals
- ◆ Tires

Key Requirements & Issues

- ◆ Producer, importer, distributor, retailer obligations
- ◆ Management plan approval
- ◆ Vendor permitting requirements
- ◆ Annual reporting and quotas
- ◆ Waste classification
- ◆ Lack of qualified infrastructure
- ◆ Inspections and agency scrutiny

Case Study: Take-Back



Electronics in Colombia



Product Registration

Products Affected

- ◆ Toxic Substances
- ◆ Pesticides & Fertilizers
- ◆ Drug Precursors
- ◆ Electrical & Lighting (Energy Efficiency)

Key Requirements & Issues

- ◆ Registration prior to import and market access
- ◆ Significant technical information
- ◆ Dossiers in Spanish/Portuguese
- ◆ Country-specific requirements and interpretations
- ◆ Lack of recognition of other country requirements
- ◆ Lack of “follow-on” applications
- ◆ Lengthy and administratively burdensome process
- ◆ Difficult to appeal denials

Case Study: Product Registration



Biocides in Mexico



Product Labeling

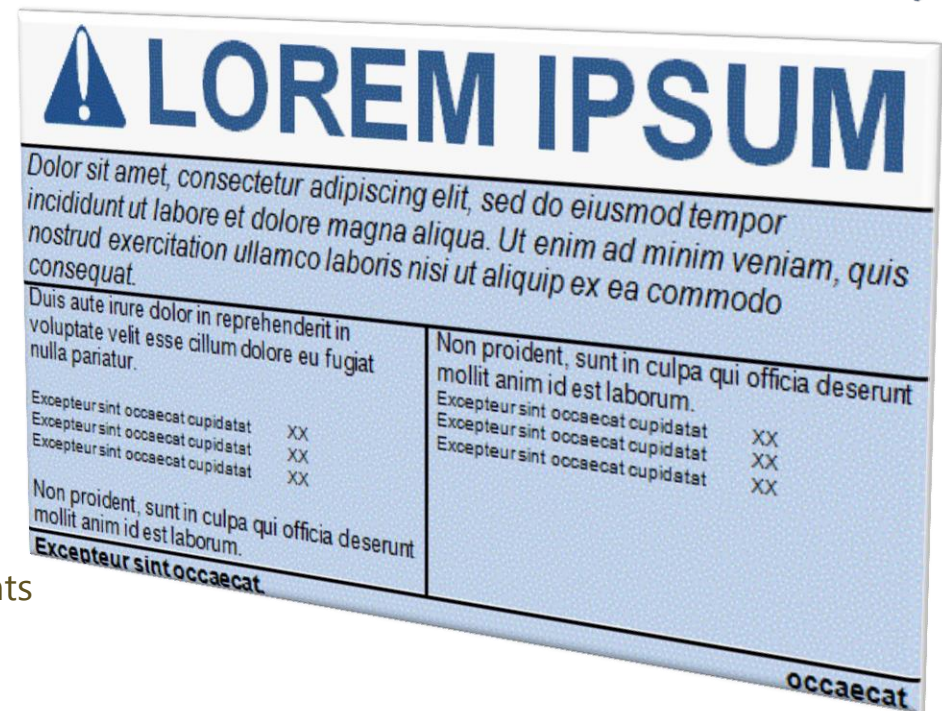


Products Affected

- ◆ Cosmetics & pharmaceuticals
- ◆ Electronics
- ◆ Batteries
- ◆ Toys
- ◆ Consumer Protection Laws

Key Requirements and Issues

- ◆ In Spanish or Portuguese
- ◆ Country-specific information requirements
- ◆ Design / format specifications
- ◆ “Approved” by the Agency
- ◆ Placement on product / packaging



Case Study: Product Labeling



Personal Care Products in Brazil





Future Trends

- New Jurisdictions Adding Framework Laws
- Expansion to New Product Categories
- Enhanced Consumer Protection Laws
- Collision of Strong Aspirations & Weak Capacity
- Emphasis on Enforcement
- Litigation: Citizen Complaints, Class Actions

Thank you!



Russell Fraker
Associate
Washington, D.C.
rfraker@bdlaw.com
+1-202-789-6048



Madeleine Kadas
Principal
Austin
mkadas@bdlaw.com
+1-512-391-8010
