

FINAL REPORT

**THE SOCIO-ECONOMIC IMPACT OF THE
USE OF NICKEL COMPOUNDS
COMMUNICATION NEEDS TO ADDRESS
THE NICKEL CLASSIFICATION ISSUE**

Prepared for
European Nickel Institute

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1. INTRODUCTION

In July, we outlined our view of the work elements which might be necessary in order to avoid the negative nickel compound classifications in the 30th and 31st ATPs. As an annex to that document, we set out the rationale for an additional communications effort, designed to exert the political pressure necessary for the Commission to think again.

This paper follows on from that, taking into account both external events and work completed in recent months.

The work to get other WTO members to complain to the EU about the 30th ATP through the TBT process was successful. It appears that the number of comments received has surprised parts of The Commission and caused them to pause for thought. However, others appear determined to press ahead regardless. In the light of this particularly we examine below what can be done in Europe in the short-term in addition to current activities, to bolster our chances of success.

2. COMMUNICATIONS TO POLITICIANS AND JOURNALISTS – COMMUNICATING THE DOWN-SIDE

Our argumentation to date has focused on (1) the flawed nature of the science and (2) the flawed nature of the process. These may prove to be insufficient arguments to achieve what we wish, particularly, as the view of some officials being that all process are not perfect, errors occur and that is just bad luck. In our experience, politicians are continually asking themselves, “If this goes through, what is the down-side to me? How bad could it be?” Their answer on the nickel classifications at the moment is clear. Regardless of whether they may privately think the classification fair or unfair, it is more important that their ATP process is not delayed then nickel is classified correctly. The nickel industry may be upset but the politicians see no significant downsides *for them* on the horizon.

We therefore need to introduce those down-sides and communicate them in clear terms.

We have completed a number case studies and documents on the uses of the nickel compounds in question and their important socio-economic value. We have reviewed each use and measured it for political value. Our conclusion is that the best two examples the Nickel Institute should use are nickel compounds in “hybrid cars” and in “fuel cells for stationary power”. These have the merit of being technologies which are environmental ‘plusses’; they are well-known uses and easy for non-technical people to understand; they are innovative/cutting edge; they help the EU achieve its commitments in other areas; and, finally, in the case of fuel cells the EU has actually invested taxpayers’ money in helping develop the technology. Most importantly, a clear case can be put that if a component of these technologies were to be removed,



this would be a ‘bad thing’, and investigation would follow to understand what had happened and who was to blame. In this way we get much closer to the real concerns of politicians and senior officials.

In addition to our description of socio-economic consequences in our papers, we have written up a communications ‘boxes’ tool which we attach in annex. This tool takes our core complaint plus the two ‘case studies’ above, and imagines a verbal description of our position to a journalist and to a politician.

3. ENSURING MEMBER COMPANY BUY IN

In the communications boxes tool there is one ‘box’ in the document which imagines a conversation with a member company of the Nickel Institute. We recommend that efforts are made to secure the engagement of senior-level company figures to help in the advocacy on this issue, by explaining to them in clear terms what is at stake and that their participation may make a difference. This will become more urgent should The Commission push ahead with the adoption of the 30th ATP signaling their determination to attack nickel compounds in spite of the clear concerns of many of the EU’s trading partners.

We believe that the chances of success with what appears to us to be the current level of company engagement are small. This is because the Commission, governments, other politicians and the media are frankly not intimidated by trade associations. There are thousands of trade associations in Brussels communicating with the Commission every day; the Commission knows that if a situation is truly as bad as a trade association says, then they will be contacted by high-level executives from the companies themselves. We have long experience of seeing the difference when a company ‘heavy hitter’ is brought in. Politicians ask to see CEOs and use the response as a means of calibrating the level of likely negative impact on them. The CEOs’ appearance changes the power dynamic; their absence is not only neutral, it is negative. We acknowledge the difficulties that this creates given both the diversified nature and the centre of operations of most of the Nickel Institute’s members.

4. ACCURATELY DESCRIBING THE IMPACTS

In highlighting the important uses of nickel compounds that could be lost as well as the resulting impact on key technologies, we need to be clear in advance exactly the impacts we are describing. In the ‘boxes document’ we describe the proposed classifications as leading over time to a removal from the market, either driven by consequent legislation or by market mechanisms (“skull and crossbones stigma”). As we prepare to deploy the arguments, we recommend reviewing exactly what the consequences of the 30th and 31st ATP decisions would be if they remain as currently proposed. For instance, is it correct that only the presence of the compounds in final consumer products would be prohibited? What does this mean for B2B applications? Is the concern one of other requirements such as worked safety legislation becoming too burdensome for customers? And/or is it a market supply chain issue (your customers/their customers will not use any Cat 1/2 CMR ingredients)?



Secondly, before these arguments are used, we need to be sure that our argumentation on alternatives is watertight. For example we say that any alternatives that there are pose sufficient difficulties for the technology to be under question. If a politician rang up a car company or a power plant using fuel cells, would they agree with our analysis?

In short, we need to work through our argumentation carefully to find and remove the weak links now ourselves, rather than this being done by others later. THE WEINBERG GROUP therefore suggests that those that will be leading the advocacy rehearse the argumentation (for example in a practice session) in advance, and these issues of impacts and alternatives will play a key part in that.

5. FINDING A SOLUTION

To date, it is clear that the Commission is not willing to do as the Nickel Institute and the industry wish, and that the nickel industry is not happy with the Commission's intentions. Moving to the more political argumentation above and seeking a negotiated solution may help this. However, as in any negotiation, THE WEINBERG GROUP believes it is worth briefly pausing to examine whether there are other solutions to this issue. So we would suggest, following standard negotiation preparation, looking at what are the reasons that the Commission is refusing to budge:

- They believe they are right?
- They believe that industry may have a case but they the Commission will get away with what they're doing anyway?
- They think there is less chance of embarrassing procedural errors coming to light if they push the process forward quickly now?
- To open up this case would open up examination of many other classification issues from the past?
- To open up this case would set a nasty precedent for industry seeing it was possible to stop classification it did not like?
- If they turned back now, they would be attacked by the Nordics? The European Parliament?
- They are worried that examination of the system now may be damaging just before REACH?
- To review this case would delay the ATP/s and they are on a tight timetable for REACH?

There is usually a mix of motivations for any position taken. But our recommendation is this: for many of the possibilities above, it would be possible to find a solution that addressed the Commission's concern and yet still delivered an outcome acceptable to the Nickel Institute and its members. The Nickel Institute



and its members should therefore review the mix of motivations driving the issue and seek solutions or responses which address the mutual concerns of the Commission and the industry.



ANNEX I - POLITICAL ARGUMENTATION ON THE IMPORTANCE OF NICKEL COMPOUNDS TO ENVIRONMENTALLY DESIRABLE TECHNOLOGY

<p>Large company member of association (e.g. BHP Billiton)</p>	<p>‘We need the help of your company to fight in Brussels against a threat to your commercial interests. The European Commission is about to classify a large number of nickel compounds as hazardous – carcinogenic and a number of other serious allegations. This will result in bans on certain uses of these compounds over time, and the market will be encouraged to move away from their use. Although we believe this classification to be scientifically flawed, arguing at the technical level is proving not to be sufficient. Greater political pressure needs to be brought to bear. The Commission is not sufficiently frightened of trade associations - they know that companies themselves will intervene if the issue is truly significant. We request that you make available senior executives for a small number of meetings with European Commissioners and their staff.’</p>		
	<p>General Issue</p>	<p>Hybrid cars</p>	<p>Fuel cells in power generation</p>
<p>Journalist (imagining a conversation between SB and Charlie Clover)</p>	<p>‘Now that REACH is almost upon us, an interesting and potentially concerning part of the system is emerging into the light. We know that most of REACH is based on hazard. The part of the EU that decides on chemical hazard is a small committee whose work almost never comes to light - its discussions are largely private. This committee is so overrun with work that it does two things - one, it gives the manufacturers of a particular chemical the choice of doing testing or it will decide the substance’s fate in the absence of testing. Secondly, in order to get through large numbers of chemicals quickly, it decides the fate of whole families of chemicals on the basis of information from perhaps one chemical out of the 100 in the family.</p> <p>This way of operating has just turned up an interesting case. I’m doing some work with the nickel industry. The committee looked at one nickel compound, and decided if no testing was</p>	<p>‘The interest here from a journalist’s point of view is that substances in question are being used in several technologies which everyone, including the Commission, is setting great store in on environmental grounds. One is the electric part of hybrid cars, the other is fuel cells.</p> <p>On hybrid cars, some of the nickel compounds in question form the key part of the battery. There are two battery possibilities, one is lead acid and the other is nickel hydride. The key point about the nickel hydride types is that they are increasingly going to make hybrid cars more and more viable - they are lighter, they give more power, and they last ten years rather than 3. The only other batteries being looked at are lithium ion batteries, but not only are these more expensive, there is concern about their safety after the Sony laptop fires.</p>	<p>‘The other interesting technology using these compounds is fuel cells. Although fuel cells may take some time to make it into cars, they are much closer to the market for power generation.</p> <p>So-called SOFC Solid Oxide Fuel cells are being integrated into power plants. The fuel cell acts on the fossil fuel prior to combustion to remove sulphur and to improve combustion efficiency. Both the EU and the US have been funding research into these fuel cells and they are beginning to enter the market, with reductions in NOx and SOx and CO₂ reductions – the US estimates these fuel cells can reduce CO₂ emissions from power plants by 40%.</p> <p>Some of the nickel compounds under discussion are the most widely used in</p>



	<p>done it would give the same classification (which was negative, carcinogen category 1 and the like) to a large family of nickel compounds. The committee approached the company it thought was making the relevant family of compounds and offered its usual deal - do the testing or we'll give a blanket (negative) classification. The company decided not to invest and the blanket classification went through the process. The company's decision was a sensible one - because it didn't make the compounds under discussion! By the time that the real manufacturers of the substances found out, the process was too far gone to be called back. So a whole family are being classified on the basis of one compound, which I am told by the scientific people is nonsense.</p> <p>One would have thought that sensible people in the Commission would sort this out, yet they don't because of the way the system works. They push through a whole bunch of different classifications into law at one time - if one small group of classifications is allowed to be questioned, this delays the whole thing, so they push it through. Plus they know that they are unlikely to be sued, one because companies never get locus standi in the European law courts, two because the way the law works, the company can only take action after its product has been wiped from the market, at which point the case serves no commercial value to the company. ‘</p>	<p>Just as other car companies are following Toyota in the introduction of hybrid cars, a huge spanner could be thrown in the works by the European Commission's flawed removal of a critical raw material. ‘</p>	<p>SOFC's. There are alternatives but these are based on platinum and palladium and the view is that the significantly greater cost would delay the coming to market of the cells. It is therefore possible that an upcoming decision of the European Commission on nickel compounds will delay the commercialization of a technology which is immensely helpful to climate change and in which the Commission itself has spent European research money.’</p>
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Politician	<p>‘We wanted to alert you to a problem that may have repercussions for Europe with regard to emerging technologies to tackle climate change. The Commission is currently considering a series of chemicals for classification. Included in this group are a large number (>150) of nickel compounds, which are set to receive classifications which will effectively remove them from the market. A number of mistakes have been made in the process, including the relevant committee in dialogue with the wrong companies, so that the true manufacturers of the substances were not given the chance to do testing. These mistakes have now been spotted, but the current plan is to move ahead anyway because addressing this issue may delay the passage of the wider classification package.</p>	<p>‘The reason we are bringing this to your attention is that while we can all applaud tight regulation of chemicals, in this case a series of mistakes may well lead to the removal of some raw materials which are critical for emerging environmental technology.</p> <p>One of these technologies is hybrid cars. One of the nickel compounds under discussion is a key component of the battery for hybrid cars. The next generation of hybrid cars are being designed to use Nickel Metal Hydride batteries. These overcome some of the technological barriers hybrid cars have faced: this battery is lighter, it is more powerful, and it lasts for ten years rather than three. There is one alternative, lithium ion batteries, but people are somewhat wary of using these given the spate of laptop fires caused by these batteries.</p> <p>We ask that you push the Commission to consider this issue again with less haste, because if they don’t, by the time this issue of nickel’s importance to hybrid cars comes to light, the law will have already been passed.’</p>	<p>‘The other major concern for environmental technology is the fact that one of the other nickel compounds under discussion is a critical component in fuel cells. While it will take some years yet to produce fuel cell cars, research investment by the EU and by the Americans is leading to the commercialization of fuel cells in power generation. Fuel cells can be retrofitted to existing fossil fuel plants and reduce CO₂ emissions by 40%. While not the answer in the long-term, this is a very valuable technology for the next thirty years.</p> <p>The fuel cells which are nickel-based are called Solid Oxide Fuel Cells – SOFCs. These have come down in cost sufficiently to make them viable. There is an alternative technology but this is based on palladium and platinum, and the general view is that the cost of those metals means the entry of the technology could be delayed for quite some time.</p> <p>We ask that you push the Commission to consider this issue again with less haste, because if they don’t, by the time this issue of nickel’s importance to fuel cells comes to light, the law will have already been passed.’</p>
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