

The Disposal of White and Brown Goods

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1 Introduction

In order to attain waste reduction and the closing of material life cycles, the Dutch Ministry of Environment made an attempt to sign a covenant with the producers and importers of household appliances (the so-called white and brown goods). The negotiations started in 1992 involving all stakeholders: representatives of the producers and importers, the government (state, provincial and local level), the processing industry, the retailers and the environmental organisations. But some of the issues could not be solved and the discussions did not result in a covenant. From 1994 on, government started to prepare for regulation on the matter. Finally, in 1998 the *White and Brown Goods Disposal Order* was published. The Order arranges the producers' responsibility regarding the disposal of white and brown goods. After publication of the Order the sector started to develop a plan for disposal and processing of white and brown goods. Discussions with local authorities resulted in a logistical system for collection and disposal of the goods. As of January 1, 1999 the system has become operational and seems to work reasonably well. In the meanwhile the sector embraced the system, even to the point that its chairman (Coops, 2000) presents it as a product of responsible self-regulation and co-operation with government, in an article that is introduced as dealing with 'the success of an environmental covenant'.

The truth is that despite lengthy negotiations, the government was not able to sign a covenant with the white and brown goods sector. The matter - disposal of white and brown goods - had to be arranged via regulation: the White and Brown Goods Order. In the context of the NEAPOL project (Negotiated Environmental Agreements: Policy Lessons to be Learned from a Comparative Case study), this paper aims to explain the unsuccessful negotiations looking at the economic-institutional context where in the covenant was negotiated.

Section 2 of the paper describes the setting in which the covenant was negotiated: section 2.1 describes the development of the covenant as an instrument in Dutch environmental policy. Section 2.2 gives a general overview of the waste problem and describes the waste policy towards white and brown goods of the Dutch government and the European authorities. Section 2.3 describes the specifics of the white and brown goods sector.

Section 3 of this paper describes the negotiations for a covenant (section 3.1); the drafting of the regulation when it became clear that a covenant was not feasible (section 3.2); and the *White and Brown Goods Disposal Order* (section 3.3).

The case is analysed in section 4: the results of the negotiation process are analysed in terms of two relevant criteria of performance - feasibility, and resource development. Finally, concluding remarks and an explanation why a covenant was not feasible in this case are given in section 5.

2 The Case Context

2.1 *Covenants as policy instrument in Dutch environmental policy*

In the Netherlands more than 100 covenants have been signed between the Dutch government and private actors. Over the years, the covenant has become a well known and widely used instrument in Dutch environmental policy. Based on experiences with the instrument, it has been further developed. The first environmental covenants were introduced in the second half of the 1980s (Glasbergen, 1998, p. 133-156). These initial covenants concerned only one issue; were closed between the ministry of Environment and one actor (a company or branch organisation). The covenant instrument fitted with the idea of 'internalisation', the idea that the industry has to take its responsibility and deal with the problems (Suurland, 1994). Within this setting, the government closed many covenants and gradually also with more complex sectors of industry.

Key term during the nineties was the so-called target group policy (Bressers and Klok, 1996, p. 448-449). Goal of the Dutch government was to achieve a more integral environmental policy. This target group policy was officially announced in the first National Environmental Policy Plan (NEPP, 1989) and the NEPP-plus (1990). A fundamental principle underlying this approach is that the responsibility for reaching the environmental targets lies primarily with the target group. In the notes that specified the target group policy, 13 branches of trade were selected for the introduction of negotiated agreements. Now the covenants become multiple issue involving more actors! The involved branches of trade contain 12,000 companies, which have more than five employees. Together they are supposed to be responsible for more than 90 per cent of the industrial environmental burden in the Netherlands (Klok and Kuks, 1994, p. 89). These agreements were planned to be concluded by the end of 1992. However, the signing of the agreements was delayed, except for three branches of trade. By the end of 1997, nine of the selected branches of trade had concluded a negotiated agreement.

2.2 *The waste policy*

In the 1970s the Netherlands experienced an increasing shortage of space for the disposal of waste, influenced by a steep rise in waste production, together with a threatened exhaustion of raw materials, which led to increasing attention being paid to the re-use and recycling of discarded products. During the 1980s, the harmful effects of materials were increasingly the subjects of discussions between politicians and civil servants.

On the basis of historical sales figures, it has been estimated that the quantity of scrap white and brown goods will increase from 126.5 kton in 1992 to roughly 185 kton in 2005 (Novem/RIVM, 1997). But it is not only the quantity of scrap white and brown goods that is seen as a problem; the composition, too, is problematic. Consider, for instance, the use of CFC as coolant and in the manufacture of insulation for refrigerators and freezers.

A serious attempt by the central government to facilitate re-use and recycling, particularly in the white and brown goods sector, originated in 1989 in the National Environmental Policy Plan (NEPP). In this Plan, sustainable development was to be given form by, among other things, "*closing the materials cycle in the raw materials – production process – product – waste chain, together with the associated emissions*".

To this end, challenging and progressive standards were to be set, "*together with the business community, as far as possible*" (NEPP, 1989). Furthermore, the NEPP announced the setting up of collection mechanisms for waste streams, such as refrigerators (*inter alia* in connection with the retrieval of CFCs), electronic and electrical equipment.

In 1990 the Minister of the Environment sent a letter to the Lower House in which he announced a re-orientation of the waste policy. In the Minister's view, the producer and the importer should gain responsibility for their products in the disposal phase.

In the first half of 1993, the Environmental Plan 1994–1997 (NEPP, 1993) announced that a General Administrative Order in respect of the retrieval and re-processing of refrigerators and televisions was in preparation, and that discussions were being held with the industry in respect of its further development. It was expected that the implementation plan would be ready in the second half of 1993.

At the end of 1993 the Second National Environmental Policy Plan appeared (NEPP, 1993). As one of the central themes of disposal policy, it named the further detailing of the producers' responsibility for products in the discard phase.

A year later, in the Environmental Programme 1995–1998 (TK, 1994-1995), an announcement was made of a General Administrative Order, in preparation for mid-1995. According to the Long-term Plan, the Order was to contain an obligation on producers and importers to take back their own products, together with a re-processing regulation. Furthermore, it was announced that regular discussions would be held between the parties involved. The implementation plan was practically complete. The cabinet opted specifically for an 'integral chain' approach by seeking to prevent the existence of waste (prevention), and the leak-proof disposal¹ of unavoidable waste. One of the important premises here is the producer's responsibility for their products at the disposal stage.

If we follow the general policy trend, we see that the initial consensus approach to the producers' responsibility for products in the disposal phase grew slowly into the implementation of legislative regulation. However, the possibility of a voluntary agreement was also kept open, virtually throughout this period.

White and brown goods

Since 1989, white and brown goods were singled out as a special (waste) category. In the context of attempts to reduce waste and the recycling of materials, the Ministry of the Environment attempted in 1992 to agree on a covenant with the producers and suppliers of white and brown goods concerning the disposal of their products. In the remaining of the paper we consider this to be the first phase of discussions about the disposal of white and brown goods. The threat of a General Administrative Order (GAO) was retained; the threat of legislation was supposed to put the actors under pressure to gain agreement. A twin-track policy was pursued: the covenant and the legislation were prepared simultaneously. The point here is that, in the absence of such a threat, there may well have been no negotiations at all. An intense process of negotiation (1992-1994) is conducted between all the members of the target group, the government, and third parties. The goal of the process is not achieved; a covenant is not signed. In a second phase (1994 - 1996), the government drafts a GAO: the *White and Brown Goods Disposal Order*. This Order has gone into force on 1 January 1999. As a way out, the Order offered participation in a

¹ Leak-proof disposal comprises both re-use and environmentally responsible disposal.

covenant with the Ministry of the Environment. Producers and suppliers were held responsible for the disposal of their products in the discard phase, unless they collaborated with the government in the execution of a covenant.

European Regulation

European regulation has been in preparation for some time now. On October 9, 1997 the environment directorate published a working paper on the issue that finally should result in a proposal for an European directive. A fourth draft directive will be sent to the European Commission within a few months (*Directive on waste from electronics and electronic equipment*). As it looks now, the directive is in line with the Dutch policy regarding the disposal of white and brown goods as laid down in the White and Brown Goods Disposal Order.

2.3 The white and brown goods sector

The sector white and brown goods include the following product groups:¹

1. White goods: household appliances such as freezers; refrigerators; etc.
2. Brown goods: electronic appliances for households such as televisions; video recorders; etc.

There are only a few white goods producers in the Netherlands (Atag, Pelgrim, Schurink). The major producers of white goods are mainly to be found in Germany, Sweden, Italy, the United Kingdom, Spain and France. In other words, most white goods are imported into the Netherlands. The representative body of the white goods sector is the co-operative of producers and importers, united in the Association of Suppliers of Domestic Equipment in the Netherlands (Vlehan). Approximately 30 businesses are incorporated into Vlehan which is about 60 per cent of the group's total membership (mostly white goods importers of which there are about 50 in the Netherlands). In the negotiations around the covenant and later the regulation, Vlehan acts as a representative of the producers and importers of white goods, and conducts negotiations in their name.

Philips and Sony have approximately the same marketshare and dictate the position within the brown goods sector. It is important to note that the profit margins in the electronics sector were under considerable pressure at the time the policy was being framed (Van de Blaak, 1996: 22). In 1992, Philips, a major producer in the Netherlands, suffered a loss of approximately 2 billion guilders. The body representing the producers and importers of brown goods is FIAR: the Union of Manufacturers, Importers and Agents in the electronics area (brown goods), whose membership includes a number of major producers: Philips, Sony and JVC. FIAR has 35 members. Philips has a big influence on the decisions made by FIAR (Gemeentereiniging en Afvalmanagement, 4/97).

We assume that representative organisations in general well represent the general interests of their membership. This assumption is based on Sabatier and McLaughlin (1990). But that is not enough to fulfil the role as a representative in negotiations. The degree to which a representative organisation is actually able to represent its membership can furthermore be derived from the degree to which the organisation is in a position to mobilise the resources of its membership in specific processes. Not merely

¹ In this paper we do not include the so-called grey goods: the information and communication technology such as printers; copiers, computers, etc. These grey goods are included in the Decree.

in the sense of supporting protest activities, but also in the sense of contributing to a change of the target group's behaviour along the lines envisioned by the policy maker.

Vlehan's representation of the producers and importers in the negotiations appears at first glance to be beyond dispute. At every meeting of Vlehan's management, their representative informed the board membership of the progress. Up to a point, the target group's members extended a mandate to the Vlehan board. The individual members did not get involved with the decision making, allowing Vlehan to negotiate on their behalf. At the end of the first phase of the policy formation process (in 1994), a number of the companies that co-operated in Vlehan were however warned off by their German parent companies, since their co-operation would only be forthcoming if a single (similar to a German system) collection and processing system was adopted. At this point, Vlehan withdrew (temporarily) from the negotiations, as some of its members had demanded. This incident shows that there were clear limits to the degree that the Vlehan could thigh its members to obligations agreed upon with the negotiating partner.

The brown goods sector was represented by FIAR during the negotiations about the covenant. As Vlehan, FIAR had a mandate from its members to negotiate with the government. Philips - being the largest Dutch brown goods producer - had a large influence on the strategy played by the FIAR. Also, Philips kept direct relations/contacts with the ministry of Economics regarding the issue of disposal of white and brown goods.

The white and brown goods sector is a very heterogeneous sector including a wide range of products and many international affiliations and therefore also a wide range of interests. During the process differences in opinion arose between the sectors but also within the sectors! Still, throughout the process, Vlehan and Fiar were more or less on the same side. Together the two trade associations initiated the project Appareturn to gain insight in collection numbers and costs of disposal and processing of white and brown goods.

3 The Process

In order to reconstruct the way that the *White and Brown Goods Disposal Order* was introduced, use has been made of relevant policy documents, such as White Papers, memoranda, and notes from the Ministries of Public Housing, Spatial Planning and the Environment and Economic Affairs. Information was also drawn from other sources, such as newspaper and magazine articles from the period in which the Order developed. Above all, interviews were held with experts who were involved in the policy-making process leading to the Order. In the reconstruction of the background history of the *White and Brown Goods Disposal Order*, use has also been made of the work by Megens (1996). After reconstructing the history of development experts in the field were asked to comment on the reconstruction.

3.1 Negotiations for a Covenant

In global terms, we can divide the process of the creation of the *White and Brown Goods Disposal Order* into two phases (Megens, 1996). The phases differ in terms of the actors involved and the degree of interaction between these actors. The high point, in terms of the

number of actors and the degree of interaction, occurred in the first phase of the policy formation process. During this phase negotiations took place in order to come to an agreement (or covenant). The first phase (1992 - 1994) is characterised by the existence of a structural discussion between the actors centred on the disposal of white and brown goods. In 1994, negotiations about a covenant ended. In the second phase (1994 - 1996) the White and Brown Goods Disposal Order was drafted.

The actors involved from 1992 till 1994

In the first phase a great deal of discussion went on between the parties involved. On the side of the government and its policy formation the actors were the Ministry of Housing, Physical Planning and Environment (VROM: full title of the Ministry of the Environment) and, in a later phase, the Ministry of Economic Affairs. On the side of the target group major actors are the Association of Suppliers of Domestic Equipment in the Netherlands (Vlehan) and the Manufacturers, Importers and Agents in the electronic area (FIAR). Further, in regard to the collection of white and brown goods, we can distinguish the retail trade; represented by the Union of Electrotechnical Businesses (Uneto) and the Netherlands Retail Trades Council (RND), which represents the chain stores. Further, with regard to collection, we encounter the Netherlands Local Government Union (VNG) and the Interprovincial Consultancy Organ (IPO). The following actors are involved from the (re-) processing sector: The Federation for the Re-extraction of Raw Materials (FHG), the Association of Waste Processors (VVAV) and the Recycling Business Information Foundation (BVK, later represented by the Society of Recycling Businesses in the Netherlands, BKN). Finally, on behalf of the interests of the general public and the environment, the principal actors are the Consumers Union (CB), the Nature and Environment Foundation (SNM), and the Environmental Defence Union (VMD). These actors are also involved with each other outside the structural discussions on the disposal of white and brown goods. Maybe not in the broad context that we see here, but together in varying compositions. Table 1 summarises those involved in the structural discussions.

Table 1 Parties involved in the structural discussions around the creation of the White and Brown Goods Disposal Order.

Government policy formation	Target group	Collection	Processing	Consumers / General public
Ministry VROM	Association of Suppliers of Domestic Equipment in the Netherlands (Vlehan)	Union of Electro-technical Businesses (Uneto)	Federation for the Re-extraction of Raw Materials (FHG)	Consumers Union (CB)
Ministry of Economic Affairs	Manufacturers, Importers and Agents in the electronic area (FIAR)	Netherlands Retail Trades Council (RND)	Association of Waste Processors (VVAV)	Nature and Environment Foundation (SNM)
		Netherlands Local	Recycling Business	Environmental Defence Union

Government Union (VNG)	Information Foundation (BVK, BKN from 1995)	(VMD)
Inter- provincial Consultancy Organ (IPO)		

The negotiations for a covenant: 1992 - 1994

In April 1992, Minister Alders (Environment), revealed his plans to have the purchaser of refrigerators and freezers pay a contribution of a few tens of guilders towards the disposal of the equipment. This was done during the opening of Coolrec, a factory in the Netherlands for the environmentally responsible dismantling of cooling equipment so that it may be re-used. The disposal method that Coolrec used at that time cost more than it yielded. The money needed to bridge this gap was to come from the local authorities' waste disposal charges. Minister Alders sought to change that. In order that the polluter pays, he stated in 1992 that he was to send a Bill to the Lower House to institute a disposal charge. He planned to introduce the charge in 1994.

As has been described above, the Ministry of the Environment's general policy line is in the first instance to sign a covenant with producers on their responsibility for their own products in the discard phase. It was this that led the Ministry to set up discussions, to be held at four-monthly intervals, in which all those involved could negotiate on the content of this covenant.

The Department of Domestic Waste, part of the Waste Directorate in the Ministry of the Environment, commenced its White and Brown Goods project in 1992. In the context of this project, the Ministry took the initiative to conduct regular discussions (every four months) with the main parties involved in the disposal of white and brown goods. The Ministry sent invitations to the parties involved and chaired the meetings. An external consultancy bureau was brought in by the Ministry to support the project. Respondents from the organisations that were present during these meetings characterised the gatherings as a circus event because so many organisations participated in the meetings; just stating their opinions not really responding to each other's arguments.

The allocation of disposal costs

Major differences of opinion arose during the structural discussions between the discussion partners. Sometimes difference occurred between the trade organisations of the white and brown good sector on one side and the Ministry of Environment on the other side. But also differences arose between the trade associations Vlehan and Fiar and even within the associations conflicts occurred. The main reason for these 'internal' conflicts were a difference in interests between the sectors that include a huge range of various product groups.

The most important point of dispute concerned the introduction of a charge to cover the costs of disposal. While nearly all those involved were agreed on the preference for a disposal charge — on different grounds, incidentally — *in advance* (on purchase), FIAR and later Vlehan, too, were against it. Vlehan and FIAR were afraid that the disposal charge would increase prices, thus harming the producers' competitiveness against foreign

imports. Both organisations emphasised that, if consumers and retailers were to start purchasing goods from the surrounding countries, this would have a negative effect on employment in the Netherlands. Vlehan and FIAR thus expressed a preference for waiting for European regulation before introducing a disposal charge in the Netherlands. A speedy conclusion to the negotiation process was thus not in the interests of Vlehan and FIAR. The two organisations (certainly FIAR) appeared to be bent on delaying the process. Various other actors, including the Environment Ministry, however, were set on a very rapid introduction of the producers' responsibility. This led Vlehan and FIAR into opposition, mainly with the Ministry of the Environment. In the meantime, the Environmental Management Act was amended in order to provide a legislative context for a possible disposal charge.

In March 1994 it appeared that Minister Alders had reached an agreement with the white goods importers that the retrieval and re-use of the equipment they supplied should be made compulsory from June 1995. The costs of dismantling could be passed on to the consumers. The first plan was to introduce a charge to cover these costs, which was to increase gradually from ten to about 65 guilders for each appliance over several years. The rate at which the charge was to increase depended on whether a similar charge would be introduced in surrounding countries. Initially, the costs of disposal would largely be born by the local authorities, but they would shift gradually in the direction of the producers. For white goods it was agreed that, from mid-1995, the retail traders would immediately take back old equipment when they delivered the newly purchased item. In the meantime, the white goods sector would set up an organisation to regulate the disposal of the apparatus they had taken back. The VNG agreed that the local authorities would process equipment that was retrieved but not replaced.

The agreement was ready for signature in June 1994. It was at this moment that Vlehan declared that it could no longer support the plan. In fact, Vlehan's membership had withdrawn the organisation from the negotiations. A number of companies that collaborated in Vlehan were warned off by their German parent companies. These parent companies in Germany wished only to co-operate in the case that a single (similar to a German system) collection and re-processing system was opted for. At that time it appeared that the German government would not opt for a disposal charge, but rather for a contribution on payment, which meant that the Dutch situation would differ from the German one. Vlehan therefore withdrew from the negotiations, but stated that it was still prepared to discuss matters with government and the other parties involved.

Furthermore, the Netherlands Retail Trades Council at that point objected to collection via the retail trade. In a letter to the Minister of the Environment, the Council set down its arguments as lack of space, possible costs, and hygiene problems. Uneto did not agree with the Council, incidentally. Uneto believed that the retail trade should indeed assume its responsibility for the environment by exchanging new equipment for old.

The scope of producers' responsibility

Another point on which the opinions of the different actors came to diverge was the degree of responsibility that the producers should be allocated. The Environment Ministry wished to have the producers accept a wide area of responsibility, making them responsible for the entire disposal of white and brown goods. This meant that the producers would not only be financially responsible for the *processing* of white and brown goods, but also for their *collection*. The view of the consumer and environmental organisations was also that the responsibility for the complete disposal of white and brown goods lay with the producers. The Netherlands Retail Trades Council (RND) also recognised the producers'

responsibility, but objected to the collection of the products by the retail trade. Uneto's standpoint on collection was somewhat milder: there were possibilities for collection by the retail trade.

Vlehan, however, was of the opinion that the government had been allocated the legal responsibility for discarded products, including white goods, and should accept it. Also, in view of the high processing costs, Vlehan considered that the producers only had a responsibility for collection. In regard to collection, Vlehan was afraid that too few discarded white goods would be collected in practice to allow them to be processed at reasonable cost. Vlehan's opinion, furthermore, was that the producers should not bear the costs of collection. If it were the case that producers were allocated the responsibility for collection, then the costs would have to be covered by a disposal charge, levied on consumers either at the time of purchase or disposal of the white and brown goods.

If, however, a general responsibility for disposal were to be allocated, then Vlehan's view was that there could be no question of responsibility for equipment that had come onto the market prior to the regulation. According to Vlehan, second-hand shops were selling extremely old equipment that contained large quantities of harmful substances. Processing such equipment would involve excessively high costs.

Neither did FIAR accept complete producer responsibility. Partial responsibility was negotiable. In this option, FIAR took on the responsibility for the design and production process. At the time this policy was being framed, the economic situation in the electronics sector was very poor. The introduction of complete producer responsibility would involve major financial consequences. Especially if the processing costs were to be incorporated into the sales price, the consequences for the competitiveness against foreign businesses might be very serious.

These differences of opinion between the Environment Ministry, Vlehan and FIAR peaked in 1993, when the Economic Affairs Ministry became involved in the discussions, in an intermediary function, as it were. The Ministry is also formally involved in the disposal of white and brown goods, insofar as the competitiveness of the white and brown goods sector is involved. Formally speaking, then, the Ministry also plays a part in respect of the possible disposal charge for such goods.

At this point the Environment Ministry, possibly under the influence of the Ministry of Economic Affairs, proposed that Vlehan/FIAR should have a role in directing the disposal. To this end, Vlehan/FIAR itself should propose a disposal plan. At that point, the Environment Ministry had allocated responsibility for collection jointly to the local authorities and the retail trade. However, the local authorities and the retail traders did not agree with the director's role to be played by Vlehan. They foresaw problems with Vlehan's involvement with their own part of the disposal – the collection of white goods. At this point the Ministries of the Environment and Economic Affairs, on one side, were in conflict with the local authorities and the retail trade on the other.

When it appeared that Vlehan's plans for the co-ordination of the disposal of white goods did not fulfil the expectations of the Ministries of the Environment and Economic Affairs, the difference of opinion slowly spread to all the actors involved. The Ministries regarded the achievement of a covenant within a reasonable time as no longer feasible. As a result, the structural discussions were terminated.

3.2 *Drafting the Regulation (1994–1996)*

As the structural discussions between the actors in the network stranded in 1994, the Ministries of the Environment and Economic Affairs decided to prepare for legislation. The Environment Ministry actually had a draft General Administrative Order ready in the first half of 1994. This went far further than the final General Administrative Order, as presented in 1996. Officials from both Ministries had been in contact on this matter. Since the Ministries could not form a common position at the official level, the draft Order was discussed at the Ministerial level. The Ministers decided to leave the issue open for a new cabinet.

A new cabinet assumed office. The Ministers of the Environment and Economic Affairs offered the producers a last chance to come up with their own plans for the disposal of white and brown goods. The plans would have to be submitted before the end of 1995, or else it was threatened that an Order would be in place in the course of 1996.

The actors that we have seen in the previous phase no longer appear in the same composition in the negotiations in the present phase. Two networks can be distinguished in the negotiation that was conducted in this phase of the policy formation. In the first place, there were repeated discussions on the disposal of white and brown goods between the Ministries of the Environment and Economic Affairs, and Vlehan and FIAR. Outside this process, the Ministries contacted Vlehan and FIAR separately on other matters. In this phase the other actors initially had no contact with each other on the disposal of white and brown goods. In a later stage of this phase of policy formation (1996), discussions were held between VNG, NVRD, HBD, the Consumers Union, the Nature and Environment Foundation (SNM), the Environmental Defence Union (VMD), Uneto and, later, BKN on the disposal of white goods. These discussions were intended to influence the content of the Order, which had by then been announced.

When it appeared that, in view of the wide differences of opinion, a covenant was scarcely feasible within a reasonable time, the Ministry of the Environment initiated preparations for legal regulation. Many of the actors involved in the first phase were looking forward to legislation with pleasure, in view of the long drawn out negotiating process. It was mainly the Consumers Union; the environmental organisations and the retail trade that found that the process had gone on long enough; they wanted a speedy regulation of the producers' responsibility for white and brown goods. The various actors were in large measure unanimous about a policy instrument in the form of legal regulation. Only Vlehan and FIAR did not fit in with these unified objectives, since they rejected any form of producer responsibility, other than in a European context.

One point on which there was still a difference of opinion between the actors related to the content of the General Administrative Order in preparation. The Environment Ministry, which had in the first instance declared itself to be in favour of the incorporation of environmental criteria¹ in the regulation, now abandoned these demands for the reason that the Ministry -as the other parties- did not have insight into collection numbers. A number of organisations (with HBD as the principal and co-ordinating actor) acquainted the Economic Affairs Minister with their concerns on this point, among others, in June 1996. In a letter, HBD, Uneto, RND, CB, SNM, NVRD, VNG and VMD emphasised the importance of a rapid introduction of a far-reaching producer responsibility, together with the incorporation of environmental criteria into the plans. The letter went on to emphasise

¹ Such as collection percentages, percentages for the re-use of products and materials, and the processing of waste streams.

that there was a wide area of support for the environmentally responsible disposal of white goods.

In 1995 Vlehan and FIAR started a pilot collection project, called Appareturn (Apparettour in Dutch), in the Eindhoven area. The project was supported by financial contributions from the Ministries of the Environment and Economic Affairs, among others. The project was to give the sector a better insight into costs of disposal and the degree to which obsolete equipment could actually be re-used. Furthermore, Vlehan and FIAR wanted to see whether collection projects would deliver sufficient equipment, after German pilot projects had appeared to show that little used equipment was being returned. They wanted to wait for the pilot project's results before negotiating with the Ministries about a national introduction. According to the agreement with the Ministries, the pilot project was to run to the end of 1996. Neither of the Ministries agreed to this, however. In June 1995, the Ministries of the Environment and Economic Affairs wrote a letter to the producers and importers co-operating in Vlehan, informing them that they had to present a declaration of intent before 1 July, in which they were to make clear their views on product disposal.

Thereafter, before 1 November of the same year, they were to come up with concrete solutions. While a declaration of intent was in fact signed, the 1 November ultimatum passed without the submission of any concrete plans for the regulation of retrieval and re-processing. The producers and importers finally submitted their plans at the end of 1995. At first sight, Minister De Boer (Environment) regarded the plans as acceptable: *"They offer sufficient perspective to be incorporated into legislative regulation"*.

The RND reacted to the plans of Vlehan and FIAR with disappointment. In RND's view, the proposals to the Ministry embraced only a very limited form of producer responsibility. In the main, it was the responsibilities of the other actors, such as the retail trade, that was set out. The Council informed Vlehan that the key role in the area of physical collection is reserved for the local authorities, in the context of their legal responsibility to take care of consumer waste. The retail trade is prepared to assume a number of tasks within such a physical structure, if that were to lead to discarded white goods being disposed of in an environmentally unobjectionable manner (RND, 1996).

After further study of the plans submitted in December 1995, the Ministry of the Environment sent a letter to the suppliers in April 1996, in which it indicated that *"the plans as submitted, in particular as these concern consumer goods, do not yet offer sufficient perspectives for the realisation of an adequate disposal structure. This has led to the Ministers', ..., decision to adopt legislation. This legislation will be very limited in scope, leaving as much room as possible for self-regulation."* The letter furthermore made it clear that the producers and importers of white goods would be allocated a directing function (via their branch organisations) for the creation of a disposal structure. *"Producers and importers shall agree with other involved parties on their role."*

In the interim, the Eindhoven pilot project was still running. The environmental movement stated that the meagre results of the pilot project (in their view) suited the producers. As a counter-activity, the Environmental Defence Union (VMD) organised a collection, to last for three days at the end of 1996. According to the Union's figures, this three-day campaign resulted in an equal quantity of equipment being collected as the Appareturn project had managed in eight months.

The policy forming actors in the process leading to the *White and Brown Goods Disposal Order* were the Ministries of the Environment and Economic Affairs. The actors attempted to formulate a joint policy on the disposal of white and brown goods. The policy's target group is formed by the producers and importers of white and brown goods in the Netherlands. In the policy formation process surrounding the disposal of white goods, Vlehan and FIAR represented the target group. During the first phase in the formation of the policy, these organisations also participated in the structural discussions organised by the Environment Ministry. Other participants in these discussions were the representatives of lower tiers of government (IPO and VNG) and the Dutch retail trade (Uneto and RND, in connection with the collection; representatives of the waste processing sector (FHG, VVAV, BVK); and the Consumers Union and environmental organisations (SNM and VMD) as representatives of consumer and environmental interests. Major conflicts arose during the negotiations on a covenant regarding the disposal of white and brown goods. The ministry of Economics was in an intermediary position and did not agree with the 'full' producer responsibility proposed by the Environment and others. The trade associations were reluctant to take responsibility for the waste products: they did not consider this to be their problem. Within the sector also major differences in opinion existed regarding the disposal issue. The fact that especially the brown goods sector had great difficulties at that time due to a bad economic performance in the sector and heavy competition also created an atmosphere that was not ideal for coming to an agreement. Clearly, the trade associations operated a strategy of delay by: keeping discussions going and not taking decisions; wanting to wait for the results of the Appareturn project; and wanting to wait for European regulation. One uniform European regulation was attractive to them because (1) this would avoid distortion of competition in Europe and (2) this would create one uniform disposal system in Europe for the producers instead of having to adapt to different systems in different countries. At the same time, the sector did not participate heavily in European for a to influence European policy making. It seems that the forthcoming EU regulation was used in discussions to delay decision taking.

In the second phase of the policy formation process, Vlehan and FIAR were also involved in negotiations with the policy makers, in a small circle. The other actors played a less important part in this phase. They stated their objections and interests to the policy makers. Now the policymakers - the Ministries of Environment and Economics were on the same side, having the same goal: establishing a system for the disposal and processing of white and brown goods.

3.3 *The outcome: the White and Brown Goods Disposal Order*

The draft General Administrative Order – the White and Brown Goods Disposal Order as drafted by the Ministries of Environment and Economic Affairs in the course of 1996 – is an outline regulation. The final order was published on April 21, 1998. The main elements of the Order are the following:

- Producers and importers of white and brown goods are responsible for the disposal and processing of white and brown goods. Therefore they have to set up a disposal structure which is free of leaks and organise for an environmentally friendly processing of these goods.
- A prohibition (ban) to incinerate or dumping of white and brown goods
- A prohibition on the trade in freezers that contain CFCs

- The retailer has to take in the old product from the consumers for free when a new product is bought (old for new system). The retailer can bring the old products to the local authorities or give it to the producers/importers.
- The municipality has to collect the white and brown goods separately. And they have to take in the old products from the retailers without charging them for this service (which is normally the case when it concerns industrial waste). In addition, the municipalities are responsible for the collection and processing of old products of which the producer/importer does not exist anymore.

The producers and importers of white and brown goods have to inform the minister how they intend to fulfil their obligations concerning the disposal of the goods before September 1, 1998. The Order offers three ways to do this:

- The producers and importers can make individual plans (an individual announcement to the minister).
- The producers and importers can make a joint plan (a collective announcement).
- They can close a covenant with the government that then discharges them from the obligations in the Order.

It is striking that the order still offered the option for a covenant although it is not a real advantage anymore (not for the government and not for the sector) since the order requires the same elements as a collective or individual announcement. There is a difference in regulatory sense: a covenant makes all partners responsible for the implementation; the Order holds the government responsible for the implementation. According to a respondent of the Environment Ministry, the option has been included under pressure of the ministry of Economics who wanted to keep the option of a covenant open.

The sector didn't make use of the covenant option. The FIAR and the Vlehan submitted a joint plan - a collective announcement - before the deadline was passed. The plan was for a large part based on the experience with the pilot project Appareturn in Eindhoven. The plan described the disposal structure for white and brown goods and included among others:

- Collection scheme for the appliances
- Percentages for re-use of products and materials
- Finance system
- Monitoring system for the disposal structure

The FIAR and Vlehan together include about 80 % of the total market of the producers and importers of white and brown goods. Those that are not member of Vlehan or FIAR can join this collective initiative.

The Dutch government approved the plans submitted by the Vlehan and FIAR. However, this didn't mean that the removal and processing of disposed white and brown goods was effective. For the system to become operational, an agreement had to be reached between the other players in this field: most importantly the local authorities who - on basis of the Order - are responsible for those appliances that have been brought on the market by producers and importers that are not active anymore (the so-called 'verweesde apparaten'). In addition, the industry and the local authorities had to come to an agreement on the logistical system. Especially the cost item (who will pay for what) made the discussions difficult.

The producers and importers of white (Vlehan) and brown (FIAR) goods created a new organisation - the NVMP¹ - that was made responsible for organising the disposal and processing of white and brown goods. The local authorities were represented by the NVRD.² The discussions regarding the collection of white and brown goods took place between the NVMP and the NVRD.

One month before the system had to be effective (January 1, 1999) an agreement was reached between the NVMP and the NVRD. It was decided to use existing regional stations (the so-called ROS, in Dutch: Regionaal Overslag Station) as the central point for handing over the disposed white and brown goods to the industry. At the ROS of which there are 50 spread out over Holland, the appliances coming from the consumers and the retail will be collected and divided in different product groups. The NVMP will take care of the goods from the ROS on. The NVMP will pay the ROS a handling fee.

To finance the whole system, the consumers pay a separate sum (a so-called 'disposal contribution', in Dutch: verwijderingsbijdrage) that is added to the price of the product. The sum have been set for each product type separately and is based on the expected costs of processing. The retailers have to administrate this amount separately so that it can be transferred to a fund that will be used to pay the costs of collection and processing.

The Dutch government decided to lay down the producer responsibility in a general order after it became clear that a covenant was not feasible. The order determines the general responsibilities of the various players in this field. The industry is given the task to set up a system for collection and processing of the disposed white and brown goods. The sector organisations - Vlehan and FIAR- set up a separate organisation – NVMP - that developed a plan for collection and processing. The plans were sent to the government before the deadline had passed and were approved by the authorities. Now a new round of discussions started between the actors that play a role in the collection system and which had to co-ordinate their actions: the local authorities, the retailers and the producers and importers. The RVND (on behalf of the local authorities) and the NVMP reach an agreement on logistics and costs in December 1998. On January 1, 1999 the collection and processing of disposed white and brown goods has become effective. Respondents at the ministries of Environment and Economics state that they are satisfied with the final outcome: a collective disposal system in which local authorities, the retail trade and the producers co-operate. The system has been effective from January 1, 1999. Due to the short preparation period (in December an agreement was reached between RVND and NVMP), the implementation of the system shows some deficiencies in the beginning but is now working reasonably well. The sector even has become proud of it, even to the point that its chairman (Coops, 2000) presents it as a product of responsible self-regulation and co-operation with government, in an article that is introduced as dealing with 'the success of an environmental covenant'.

4 Analysis of the case

Since the negotiations did not result in an agreement it is only possible to look at part of the performance of the covenant. Taking our theoretical framework as a starting point,

¹ NVMP: the Dutch Association for Disposal of Metal Electronic Appliances

² Branche organisation of the waste collection departments of the local authorities

we can conclude that we can only assess the feasibility and the resource development aspect of the performance.

Feasibility

Although initially all actors preferred to sign a covenant, in the end a covenant was not feasible mainly due to opposing objectives and a lack of willingness to compromise. As we have seen, the primary objective of both the Ministries of Environment and of Economic Affairs was an extension of producer responsibility (although the ministry of Environment wanted to go further in this respect than the ministry of Economic Affairs), whereby the costs of disposal would have to be born by the producers. They may pass these costs on to the consumer.

Insofar as the disposal of white goods did not fall to the account of the suppliers, and thus did not necessitate the introduction of a nation-wide price increase, the sector (producers/importers) was prepared to negotiate on the disposal of white goods.¹ While they were willing to consider disposal, and seek to contribute to a solution, the sector wished to avoid incurring the costs. The position of the sector was also determined by the foreign offices: the sector in the Netherlands mainly consists of importers, the producers are located outside the Netherlands. These foreign producers were kept informed of the negotiations and also had influence in the position that the Vlehan took in the negotiations. When, during the negotiations on a possible covenant, the conflicting views of the sector and the policy makers collided, the sector withdrew (temporarily) from the negotiations. Apart from objectives concerning the content of the measures, we also have to consider here the various objectives concerning the process. The Ministry of the Environment and the other actors were concerned that the producer's responsibility should not be postponed but introduced as quickly as possible. Vlehan and FIAR, however, were bent on delaying the introduction of national regulation. Such a delay would give Vlehan/FIAR the advantage that a regulation might possibly be introduced on the European level, or that one might come into view.

The resulting situation consists of a failed attempt to sign a covenant and later on a regulation that however still has some remaining elements that make negotiation based elaboration possible. All in all we assess the performance as “non feasible”.

Capability, Impact and Resource Development

Since no covenant was signed in the end, we can not assess its capability and impact. The negotiations did not result in a covenant. However, as we have seen the negotiations continued in a somewhat smaller group. The subject was the same: the disposal of white and brown goods. The instrument was different: not a covenant but regulation. It might be interesting to see if and how the negotiations on a covenant strengthen or weakened the resource base for the further discussions on the regulation.

The development of the resource base can be looked at from three perspectives:

Learning: During the negotiations many questions and issues came up regarding the disposal and processing of white and brown goods. An answer was not always available. The issues were among others: the extent of the producer responsibility; question of how to finance the system; question of how to deal with the equipment of which the producer/importer does not operate at the market anymore. In this context, the negotiations provided a forum for discussing these issues and learning about possible solutions.

¹ The financial problem involves in particular the disposal of the (obsolete) CFC-containing refrigerators and freezers.

Building relationships: The first phase of the negotiations (1992-1994) involved many organisations. In interviews, participants referred to these meetings as ‘circus events’ and complained that the meetings were too big in order to be productive. On the one hand, the meetings established communication lines between all that had a stake in the issue. On the other hand you can question the quality of these relations. The discussions taking place in smaller circles involving the ministries and trade associations had more impact on building relationships.

Improving general awareness and attitudes: Interviews with and articles by representatives of the two key organisations, Vlehan and FIAR, clearly show that the sector was not prepared to take responsibility for their products in the final, disposal phase. In interviews (Milieumagazine 12-98, Magazine recycling Benelux nr. 1-1999) Vlehan still argued that the disposal and processing of consumergoods is a responsibility of the (local) authorities and not a responsibility of the sector. At the same time, the sector – once the regulation was published in April 1998 – took up the implementation in a progressive way. In October 2000 an interview with the chair of VLEHAN was published in an practitioners’ journal in which the introduction of the writer suggested that it was a successful covenant and the interviewee suggests that it was the product of co-operative negotiations with the Ministry, presents is as obvious that the sector feels itself responsible for a well functioning system and proudly claims that the ‘Dutch approach’ is influential in shaping the European regulation (Coops, 2000).

5 Conclusions

Since 1989, white and brown goods were singled out as a special (waste) category in Dutch environmental policy. In the context of attempts to reduce waste and the recycling of materials, the Ministry of the Environment attempted in 1992 to agree on a covenant with the producers and suppliers of white and brown goods concerning the disposal of their products. An intense process of negotiation (1992-1994) is conducted between all the members of the target group, the government, and third parties. The goal of the process is not achieved; a covenant is not signed. In a second phase (1994 - 1996), the government drafts a GAO: the *White and Brown Goods Disposal Order*. This Order has gone into force on 1 January 1999. The sector has set up a system for the disposal of white and brown goods in co-operation with the local authorities.

Several factors explain why a covenant was not feasible in this case concerning the disposal of white and brown goods. Of the hypotheses with which this study started out, two were rejected on the basis of the case analyses.

The *competition hypothesis* seems to suppose another context than that of a complete sector negotiating with government, leaving no consumer choice to evade possibly bad environmental behaviour within the domestic market.

In the case of the *instrumental hypothesis* the relationship with this case is somewhat mixed. Although the threat of alternative policy instruments, namely regulation, was present, this didn’t push the negotiations towards a covenant. The explanation lies in the position of the Dutch government during the negotiations and in the fact that at another policy level, the European level, regulation was in preparation. This ‘alternative policy instrument’ didn’t act as a threat, but instead as a sign of hope for the sector negotiators, making them prone to delay rather than accept any agreement. So it is difficult to say to what extent the hypothesis failed or is confirmed in this case.

Two other hypotheses about the explanation of the feasibility of a negotiated agreement in this case were supported by the case description.

The *policy hypothesis* stresses the importance of a climate of consensus seeking and mutual trust. In this case, the lack of a real climate of consensus seeking and joint problem solving during the negotiations has played an important role in the outcome that a covenant was not feasible. The case supports the hypothesis.

The *sectoral hypothesis* is also confirmed. Within the sector differences in opinion existed on the issues discussed, since the interests of the sectors differed, due to heterogeneity. The power of the representative associations over their members was limited. Their mandate to compromise with government on behalf of the sector was restricted, among others due to the involvement of the foreign producers.

Partly as a background for these conclusions and partly as additional explanations the following observations deserve mention here.

Firstly a *joint problem perception* on the basis of which a sense and acceptance of inevitability could raise, was lacking in this case. The producers and importers of white and brown goods - did not consider the waste coming from 'their' goods as their problem. The authorities in the Netherlands had always been responsible for the disposal of household waste and this wasn't to change in their opinion. They certainly did not agree with the principle of producer responsibility that was a key issue in the discussions.

Secondly the sector didn't see these negotiations as possibly leading to new *joint business opportunities*. Instead they saw such opportunities better warranted by a European regulation that would place them in the same position as their international competitors, but also as their foreign mother companies. Instead of looking for compromises or solutions to the problems, the sector operated a strategy of delay arguing that they wanted to wait for European regulation on the matter.

Thirdly, though the negotiations failed, nevertheless some positive learning occurred making the drafting of formal regulation thereafter more feasible. In that sense the negotiations have had an important *information resource building* function.

Fourthly, when the sector was forced by a regulation to pick up its responsibility, it not only did so, but even tries to present its efforts as belonging to the main stream of Dutch co-operative covenant-based policy implementation. Also the relationship with European regulation seems to be turned around. The Dutch approach is claimed to have a big impact on the formulation of the European regulation.

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