

US Intervention in EU Chemical Policy

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ENVIRONMENTAL HEALTH FUND
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Staff from TD and MAC have met with the American Chemistry Council and the American Plastics Council and have consulted with individual chemical companies to solicit their views on the strategy and its impact on the U.S. chemicals industry and European chemicals trade. USEU/FCS has also met with a number of U.S. chemical companies based in Europe.

The U.S. chemicals industry is concerned about a number of issues relating to the strategy including: division of authority between Member States and the Community, the focus on intrinsic properties as opposed to risk, and the impracticable testing and evaluation schedule. In addition, the new testing and reporting requirements for downstream chemicals users will increase their administrative costs and burdens

LEGISLATIVE ISSUES

None

ACTION FORCING EVENTS

USEU/FCS has informed TD/MAC that the Commission has begun drafting a proposed Directive in June with a prospective release date of July because of intense pressure from the Swedish Presidency. In their view it is imperative that the U.S. Government begin a dialogue with the EU on the strategy as soon as possible with the hope of influencing the draft text. TD/MAC has begun work with EPA and State to coordinate a USG position on the strategy and a series of questions regarding its proposed operation and affect on US/EU chemicals trade.

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related to transparency, risk assessment and mutual acceptance of existing chemicals. EU acknowledged that U.S. concerns are similar to those of their EU counterparts and is receptive to allowing the U.S. Environmental Protection Administration to provide technical assistance to the initiative.

Commerce and USTR have also met with representatives from the Synthetic Organic Chemical Manufacturers Association (SOCMA), American Chemistry Council (ACC) and the American Plastics Council (APC) to identify industry concerns with the Chemicals White Paper. These Associations have not developed an official position on the White Paper, but have identified areas (most notably risk assessment) in which the new EU chemical strategy could adversely affect U.S. chemical companies. Officials from the U.S. Mission in Brussels have also met with a number of European and U.S. chemical companies based in Europe to solicit their views on the strategy and its impact on their industry. The USG has advised industry to develop an official position and strategy as soon as possible to assist in influencing the EU's draft text. Senior representatives from U.S. chemical companies will meet in February 12 in London to develop a position on the White Paper and a strategy for moving forward.

Industry advises that EU Member States and third countries are largely unaware of this EU initiative and would like the USG to work to educate them so that they can join the United States in raising concerns with EU proposals for this important sector. MAC/Office of EU and Regional Affairs is working with TD/Office of Chemicals on a demarche to go to EU Member States and to important third countries to get this campaign going.

Talking Points:

- The United States is concerned that the EU will release the White Paper on Chemicals in the near future. We understand that specific proposals will be released as early as this spring. Can you provide more information on chemicals proposals?



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D. C. 20230

MEETING WITH AMERICAN CHEMISTRY COUNCIL (ACC)

DATE: Friday, October 25, 2002
TIME: 2:30 - 3:30 pm
LOCATION: Room 3864
FROM: Henry Levine, DAS for Europe
Prepared by: Don Wright, MAC/EUR/OEURA, X5844

I. OBJECTIVE/ROLE

- Get briefed on the agenda for the Transatlantic Business Dialogue (TABD) Chemicals CEO and Senior Government Meeting
- Discuss ACC's proposed recommendations for the Chemicals Working Group to insure a focused discussion and solid outcomes in Chemicals

II. Background

US INTERVENTION IN EU CHEMICAL POLICY

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SEPTEMBER 2003



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SUMMARY

In February 2001, the European Union released a plan for a sweeping reform of chemical regulatory policy known as REACH, which would require manufacturers to test chemicals for health impacts before putting them on the market. This report describes the efforts of the United States government, under the Bush Administration, to weaken REACH.

Documents obtained from anonymous sources and through the Freedom of Information Act lay out elements of an ambitious and wide-ranging campaign by the Environmental Protection Agency, State Department, Commerce Department, and United States Trade Representative to weaken REACH in concert with narrow chemical industry interests. The documents cover the period from April 2001 to April 2003.

The US chemical industry strongly opposes REACH, which would require the chemical industry to provide information about the health and environmental effects of their products, and which proposes a method for restricting use of the most dangerous chemicals. REACH was designed to address a previous regulatory system that “grandfathered” the majority of chemicals out of requirements for safety data. This system resembles the current situation in the United States, where 95% of the chemicals in use today lack basic safety data about possible hazards to human health and the environment.

The US chemical industry fears REACH might serve as a model to update the US chemical regulatory policy. To weaken REACH, the industry engaged the aforementioned four agencies of the US government.

As these documents show, the US government essentially operated as a branch office of the US chemical industry.

These activities merit a full Congressional investigation into corporate influence over government actions at the relevant agencies and raise questions about the objectives of US foreign policy. EPA, Commerce, State, and USTR should desist from further lobbying against REACH and the Administration should publicly affirm the right of the European Union to implement important public health laws such as REACH without US government intervention.

BACKGROUND

REACH HISTORY AND ELEMENTS

Events leading to the REACH proposal

In the 1980s, regulation of chemicals in the European Union divided substances into two classes: existing substances and new substances marketed since 1981. Risk assessments were required for the new chemicals to help provide safety information but the existing chemicals were effectively “grandfathered” into use and did not require any toxicity data. Since the existing chemicals occupied 99% of the chemicals in use, this system led to a situation in which there was inadequate safety information for most of the chemicals in widespread use.

In 1993, the European Union adopted the Existing Substances Regulation. This law marked 141 existing chemicals for toxicity testing, placing the burden for this process on the government. In 10 years, less than 50 of those chemicals have been examined and less than five have been regulated.¹

Increasing recognition of the ineffectiveness of chemical regulation policies led to a debate at a meeting of European Council of Environment Ministers in 1998. The outcome of the meeting led to a process for creating a new regulatory scheme that emerged as the “White Paper on a Future Chemicals Policy” in 2001. The policy proposal became known as REACH, which the European Union released for public comment on May 7, 2003.

What is REACH?

REACH stands for Registration, Evaluation, and Authorization of Chemicals. Registration requires companies to provide data on their products including toxicity and information about how humans or the environment might be exposed to them. This places the responsibility and cost for information about the industry’s products on the industry. Evaluation is required for chemicals produced in large amounts or chemicals that are especially toxic. One consequence of evaluation might be to ban certain uses of a chemical. The most toxic chemicals would require Authorization. These chemicals could include carcinogens, mutagens, reproductive toxicants, and chemicals that persist and accumulate in the environment. One consequence of authorization is an outright ban on a chemical in favor of a safer alternative.

Unlike current US regulations, the underlying basis of REACH is the precautionary principle. This principle prudently advocates taking precautionary action when chemicals pose possible threats to human health and the environment, rather than waiting for complete scientific proof of cause and effect. This prevents damage while new information accumulates. The US government does not accept the precautionary principle as a basis for policy. As one US government official put it, “*We consider it to be a mythical concept, perhaps like a unicorn.*”² Recently, San Francisco passed a new environmental code that will use the precautionary principle to evaluate new city regulations.³

The European Union estimates the direct cost of REACH to be approximately \$4 billion; or less than 0.1% of EU chemical industry sales. The indirect costs of the proposal have been estimated at approximately \$15-30 billion. Though not easily quantified, the monetary benefits of REACH have also been estimated. The European Union estimates approximately \$20 - 50 billion in savings, taking into account only occupational health benefits. By expanding the health benefits of REACH to the general public, the World Wildlife Fund estimates approximately \$180 billion in net health benefits, taking into account the costs. The authors believe that this is an underestimate since environmental benefits were not taken into account.

For a short description of REACH see ⁵. For more detailed descriptions see ⁶, ⁷ and ⁸.

US CHEMICAL POLICY AND CONSEQUENCES

The Toxic Substances Control Act

The Toxic Substances Control Act (TSCA) is a principal law for chemicals regulation in the United States. TSCA separates chemicals into two groups; existing chemicals and new chemicals.

Chemicals that existed on the US market before 1980 are not regulated by TSCA. This group of “grandfathered” chemicals comprises more than 95% by volume of the chemicals used in production processes and consumer products. This means that most of the chemicals in use today lack basic safety data about possible hazards to human health and the environment.

Some of these chemicals are toxic in animal studies and found in human tissue, causing concern for health impacts. Examples include: brominated flame retardants (several of which were recently banned in California⁹), phthalates (several of which have been banned in toys and cosmetics sold in the European Union), and perfluorochemicals used in Teflon and Scotchguard (which are currently under investigation by the EPA).

For further information on brominated flame retardants see¹⁰; on phthalates see¹¹; and on perfluorochemicals see¹².

Chemicals covered under TSCA are difficult to restrict even if new information reveals possible danger. The law requires that the government demonstrate an “unreasonable risk” before a chemical can be regulated or restricted from the market. The government must also demonstrate that protecting public health outweighs industry costs of regulation. This arrangement usually results in extended court cases with the chemical industry. As a result, the EPA has restricted less than 10 chemicals under TSCA in 25 years. Examples include the use of hexavalent chromium in cooling towers, lead-based paint, and PCBs.

For a short description of TSCA vs. REACH see¹³. For a more detailed description of TSCA, see¹⁴ and¹⁵.

Estimating the cost of environmentally-related disease

The monetary benefits of updating US chemical regulatory laws to resemble REACH have not been estimated. However, the monetary cost of diseases due to chemical pollutants has been approximated for chil-

dren. Researchers at Mt. Sinai School of Medicine conservatively estimated that chemical pollutants causing lead poisoning, asthma, cancer, and developmental disabilities in children incur an annual cost of \$48.8 - \$64.8 billion. This represents approximately 2.8 percent of total U.S. health care costs.¹⁶

Body burden

Perhaps the most vivid demonstration of the failure of US chemicals regulation has been revealed by studies that measure the presence of the chemical industry’s products in human beings. In January 2003, the US Centers for Disease Control released the results of a large biomonitoring study that documented the presence of 116 industrial chemicals, most of which are toxic in laboratory animals, in the bodies of average Americans.¹⁷ One finding of the study was that children had higher levels of lead, tobacco smoke metabolites, phthalates, and some pesticides than adults. Mt. Sinai School of Medicine, Environmental Working Group, and Commonweal conducted another study that found 167 toxic chemicals in nine volunteers.¹⁸ Of the 167 chemicals measured, 76 cause cancer in humans or animals, 94 are toxic to the brain and nervous system, and 79 cause birth defects or abnormal development. For a summary of both reports see¹⁹.

THE CONTEXT FOR US LOBBYING ON REACH

Two important events provide context for US government lobbying on REACH: 1) Previous lobbying at the behest of the chemical industry by the Clinton Administration in the European Union; and 2) chemical industry fundraising efforts for George W. Bush in the 2000 elections.

In 1998, the Clinton Administration State and Commerce Departments lobbied on behalf of the chemical and toy industries to derail European Union efforts to limit the use of phthalates in vinyl toys.²⁰ The action provoked a letter from Reps. Henry Waxman and George Miller to the White House asking if US government lobbying against public health legislation in foreign countries was Administration policy. Their letter prompted a formal response from Vice President Al Gore who asked the State and Commerce Departments to stop lobbying against the EU legislation. *“We recognize and respect each nation’s right to set legitimate public health and environmental*

standards and to take appropriate precautionary action,” Gore wrote.²¹ The EU proceeded with an emergency ban on six phthalates that has been renewed every six months up to the present time.

In 1999, the chemical industry began aggressive fundraising efforts to promote Texas governor, George W. Bush, as a presidential candidate. The industry has a large presence in the state, had worked closely with Bush, and approved of his “hands-off” style of regulation. Fred Webber, CEO of American Chemistry Council, became a Bush “Pioneer” fundraiser by raising more than \$100,000 for Bush’s election effort. Webber also persuaded William Stravropoulos, CEO of Dow Chemical and Roger Hirl, CEO of Occidental Chemical, to help raise

money for Bush’s election effort. “*This industry has openly said we’re going to support Bush and [is] committing to raise a huge sum of money for him.*”²² As Fred Webber predicted, “*A Bush victory will give the industry access to a leader that’s ready, willing, and able to listen.*”²³ At the Republican National Convention in 2000, news reports described how donors and lobbyists paid high prices to gain access to politicians. The American Chemistry Council provided access to, “*...the most sought after group of all, the Republican majority on the house commerce committee.*”²⁴ Later, the industry would utilize these connections to oppose REACH.

US INTERVENTION IN EU CHEMICAL POLICY

CONVENING THE GOVERNMENT TEAM

In February 2001, the European Union published the White Paper that described the REACH proposal. Internal documents reveal that the US government began to work on REACH the same year with personnel from EPA, State, Commerce, and USTR working together with each other and with the chemical industry. From the beginning, the goal appeared to be intervening and changing REACH before the legislation became finalized. As one document declared, “*In their [USEU, US Mission to the European Union] view it is imperative that the U.S. Government begin a dialogue with the EU on the strategy as soon as possible with the hope of influencing the draft text.*”²⁵

EPA ARGUES FOR VOLUNTARY REGULATION

A document drafted by Charlie Auer, Director, EPA Office of Pollution Prevention and Toxics, reveals the key role of the EPA in making regulatory arguments against REACH.²⁶ The paper points out that the US does not recognize the precautionary principle as a

principle of international law. The document also comments on the EU’s reluctance to adopt the US form of voluntary regulation of chemicals but ironically points out the disadvantage of the US approach; “*EPA must identify necessary data on existing or new chemicals, and thus places much of the burden for information collection on the government.*” Finally, the EPA helped the industry attack REACH by advancing the idea of voluntary regulation. “*EPA is quite comfortable with a collaborative relationship with industry in such voluntary efforts.*”

COORDINATING WITH INDUSTRY

A June 14, 2001 document describes US government meetings with industry and coordination among government agencies with the goal of influencing REACH in agreement with industry interests.²⁷

“Staff from TD [Trade Development] and MAC [Market Access and Compliance] have met with the American Chemistry Council and the American Plastics Council and have consulted with individual chemical companies to solicit their views on the strategy and its impact on the U.S. chemicals industry and European chemicals trade...USEU/FCS [United States Mission to the European Union] has also met with a number of U.S.

chemical companies based in Europe...In their [USEU] view it is imperative that the U.S. Government begin a dialogue with the EU on the strategy as soon as possible with the hope of influencing the draft text... TD/MAC has begun work with EPA and State to coordinate a USG position on the strategy and a series of questions regarding its proposed operation and affect on US/EU chemicals trade.”

INDUSTRY COMPLAINT, GOVERNMENT RESPONSE

In September 2001, the chemical industry complained about the lack of an industry-friendly US policy on US-EU trade matters;²⁸ “...*government officials engaged in the discussion have not viewed their role as joint partners in the search for opportunities for creating more freedom in the Atlantic marketplace. Instead, they have chosen to respond only to the specifics of industry proposals without setting forth ideas of their own.*”

The US government responded by attending a meeting at American Chemistry Council headquarters on January 17 and 18, 2002.²⁹ Present were members of State, Commerce, EPA, USTR, EU officials, and industry representatives. The group was welcomed by Bush “Pioneer” fundraiser and American Chemistry Council CEO, Fred Webber, and the two-day meeting provided the chemical industry access to high-level government officials from the US and EU.

The chemical industry pushed for greater US involvement in EU policy-making, for US-style risk assessment, and for no regulation of existing chemicals. The US government echoed this position; “*U.S. concerns with EU chemicals proposals are related to transparency, risk assessment and mutual acceptance of existing chemicals.*”³⁰ The EPA’s role was to provide the technical details of the industry-favored US system over the EU proposal. EU officials responded positively to the idea. “*The EU acknowledged that U.S. concerns are similar to those of their EU counterparts and were receptive to allowing the U.S. Environmental Protection Administration to provide technical assistance to the initiative.*”

The Bush administration solicited the chemical industry’s position paper and the industry in turn asked for help in influencing EU Member States against the proposal.

“The USG has advised industry to develop an official position and strategy as soon as possible to assist in influencing the EU’s draft text...Industry advises that EU Member States and third countries are largely unaware of this EU

initiative and would like the USG to work to educate them so that they can join the United States in raising concerns with EU proposals for this important sector.”³¹

A briefing paper for Assistant Secretary of Commerce, Linda Conlin, reveals the Department’s impatience with the chemical industry and their active solicitation of the industry to lobby against REACH.³²

“The U.S. chemicals industry has been slow to respond to the White Paper...The American Chemistry Council drafted a preliminary set of concerns with the Strategy in January but have not finalized the text and forwarded it to the Commission...Despite this apparent lethargy, the industry is nonetheless concerned about the Strategy and has shared with Commerce Department and U.S. Trade Representative’s Office their concerns, their recommendations for improvement, and their analysis of the impact of the proposal on U.S. exports...Commerce and USTR have met with representatives from the Synthetic Organic Chemical Manufacturers Association (SOCMA), the American Chemistry Council (ACC), the American Plastics Council, ISAC 3, DuPont, and Dow to identify industry concerns.”

The US government agencies were so anxious to begin lobbying on the industry’s behalf, they did not wait for the industry’s position paper to begin the campaign.

“Because of the slow pace of industry response to the Strategy and growing concerns about trade effects and the influence of the Strategy on international environmental programs/activities for chemicals, Commerce, USTR, and EPA drafted a preliminary set of questions on the Strategy and provided them to the Commission in December. USTR also met with Commission officials at that time.”

THE US “NONPAPER”

The connections between the Administration and chemical industry solidified with the publication of the US government position, the “nonpaper”. Curiously, the “nonpaper” was an undated document lacking letterhead that no government agency wanted to take credit for writing.

The “nonpaper” effectively replicated the viewpoint of the chemical industry into the US government position. For example, the “nonpaper” asserted that REACH would reduce consumer choice due to restrictions on four toxic chemicals; acrylonitrile, propylene oxide, 1,3-Butadiene, and phenol. The document quoted chemical industry financial estimates nearly word for word to make the argument:

American Chemistry Council: *“Examination of just four commercially important chemicals on the EU authorization list shows that \$8.8 billion worth of U.S. exports are at risk.”*³³

US “nonpaper”: *“Examination of just four commercially important chemicals on the authorization list shows that \$8.8 billion worth of downstream products are at risk for bans or severe restrictions under the new system.”*³⁴

This financial estimate was widely quoted in press reports on the possible impact of REACH on the chemical industry.

The “nonpaper” also attacked several measures strongly opposed by the chemical industry. Like the chemical industry, the “nonpaper” attacked the substitution of safer chemicals for hazardous ones calling it *“arbitrary discrimination.”* The “nonpaper” also attacked the precautionary principle describing it as a way to *“... provide cover for politically-motivated bans and other severe restrictions.”*

US government refused to take authorship for the “nonpaper”, despite that fact that a nearly identical version of it appeared in the June 2002 issue of the magazine of the American Chemistry Council entitled, “US Government Responds to the EU Chemicals Policy”. The author was Jennifer Yoder Prescott, US Trade Representative.³⁵ USTR and other agencies claim that the “nonpaper” was not an “official” US position, though it was utilized in official State Department communications as described below.

POWELL TAKES ACTION

On March 21, 2002, Colin Powell responded to the chemical industry’s call for help by sending an “action request” cable to the US embassies in EU Member States and 35 other countries.³⁶ The cable described the chemical industry’s problem that, *“There is a perception among industry that their views have not been heard by key policy-makers...”*

Powell’s cable outlined chemical industry concerns that REACH, *“... would be significantly more burdensome to industry and government than current US and EU regulatory approaches.”* The memo outlined chemical industry arguments against the proposal and used financial estimates generated by the American Chemistry Council to make cost arguments against REACH.

Finally, Powell’s March 21st memo issued a call to action to distribute a US government document outlining the government’s position on REACH referred to by officials as the “nonpaper” (described above). *“Posts are requested to raise the EU chemicals policy with relevant government officials (e.g. officials from the Environment Ministry, Economics/Trade Ministry, and Foreign Affairs Ministry) and the local business community and offer the nonpaper as a brief description of USG views.”*

STATE WORKS WITH EPA AND INDUSTRY TO LOBBY GERMANY

On March 22, 2002, the US Embassy Environment Science and Technology Officer accompanied EPA and American Chemistry Council officials on a March 8, 2002 meeting with German government officials and business representatives to lobby them against REACH. One objective of the meeting was to promote the US regulatory system as a better alternative to REACH. Ironically, the weak US system resembles the EU policy that REACH was designed to replace.

The State Department representative attacked the substitution principle of REACH that would require the replacement of toxic chemicals with safer alternatives.

EPA’s Charlie Auer strongly argued for voluntary regulation of chemicals with the German government. *“He stressed that limited resources make it necessary to narrow down the scope of regulatory engagement, and pointed to EPA successes in ensuring voluntary compliance through spot checks.”* The chemical industry’s opposition to the EU intention to require comprehensive testing was also effectively laid out by Auer, who mentioned, *“...the EPA’s concentration on dangerous chemicals (rather than trying to regulate all)...”* Finally, Auer advocated a key chemical industry lobbying position; *“...placement of the review process at the pre-market phase instead of the pre-production stage.”*

The cable summarizes the German Ministry of Environment’s Deputy Assistant Secretary, Wilfried Mahlmann’s disbelief that voluntary regulation could work but the EPA - American Chemistry Council team was animated when he, *“...demonstrated an openness to USG [US government] positions, especially*

in view of the wealth of experience the EPA displayed in the matter.”

The cable indicates that the EPA-chemical industry collaboration was warmly received. *“The Ministry of Environment responded with interest to our positions, while the Ministry of Economics took a decidedly pragmatic and pro-business stance.”* One cable heading is entitled, *“Little opposition from MOE [Ministry of Environment]”*. Auer’s lobbying received the gratitude of a chemical industry representative as he, *“...praised EPA’s presentation and asks that EPA organize seminars to educate government officials in Germany and Europe on how the EPA review system works. To help clear up misconceptions about the efficacy and efficiency of the US approach.”*

In the opinion of the US State Department, the lobbying trip was successful since, *“A German joint government, industry, and trade union position paper from March 11 echoes many of our positions.”* The US was gratified to see the, *“...recognition of the need for a workable, affordable, and not overly burdensome solution...”* in accordance with chemical industry interests.

OFF-THE-RECORD COMMERCE MEETING

On April 9, 2002, the US Chamber of Commerce held a closed members-only meeting in Washington DC to discuss how, *“...to advance Chamber members agenda in the European Union (EU).”* REACH was one of the principal topics and Jennifer Yoder-Prescott, US Trade Representative attended the meeting to answer “off-the-record” questions on the proposal.

US AMBASSADOR SPEAKS OUT

On May 21, 2002, US Ambassador to the EU, Rockwell Schnabel, commented on US government help to the chemical industry on REACH lobbying at a speech at the European Policy Center. “The implications of this for industry are massive. We warned businesses over a year ago that they needed to watch carefully how these rules develop... We are now working with industry to ensure that the EU doesn’t reinvent the wheel and that the regulatory process follows those principles I laid out.”

DONALD EVANS WRITES DUPONT

On May 28, 2002, Secretary of Commerce, Donald Evans, wrote to Geoffrey Gamble of Dupont, in his capacity as Chair of the US Trade Representative’s Industry Sector Advisory Committee on Chemicals and Allied Products (ISAC-3). The Committee provides the chemical industry with many opportunities to influence US trade policy.

Evans assured Gamble that the Commerce Department, *“...has been monitoring developments with regard to this [White] paper since its introduction in February 2001. Together with the Office of the United States Trade Representative, we have been engaged in an active and productive dialogue with the European Commission on the paper.”* Evans encouraged Gamble and other chemical companies to provide comments on REACH and to, *“...continue to work with Departmental staff following this issue.”*

Gamble’s Committee had strongly opposed including a public interest NGO representative on the all-industry panel. In 2000, Earthjustice Legal Defense Fund, Basel Action Network, Public Citizen, and the Washington Toxics Coalition filed suit to force the Administration to include a public interest viewpoint on the panel. Gamble counter-sued to preserve the panel’s all-industry composition. After nearly two years, an out-of-court settlement granted public interest NGOs a single seat on the USTR panel.³⁸

US AMBASSADOR ISSUES WARNINGS

On July 25, 2002, Rockwell Schnabel mentioned that the US government was closely following REACH in a speech at the Los Angeles World Affairs Council.³⁹ Schnabel quoted the American Chemistry Council figures for REACH costs and issued a threat to the EU; *“If we fail to get our needs accepted, the resulting conflicts can be protracted, sometimes politically nasty—and always economically costly for business.”*

UK CHEMICAL INDUSTRY HELPS FORMULATE UK POLICY

A United Kingdom chemical industry executive contacted Charlie Auer of the EPA, in late August 2002. Liz Surkovic, UK Chemical Industry Association, informed Auer that the industry had effectively placed itself in the position of helping to formulate UK policy on REACH by “loaning” her to the UK government.⁴⁰ Surkovic sought Auer’s advice about substituting the US chemical regulatory system under TSCA for the REACH proposal. *“I am consistently asking myself questions about ‘how can we do this?’ and finding potential solutions from the US system...I have no feel for how well they work in practice and whether you would recommend any elements of TSCA.”* In October, Surkovic contacted Auer again to praise his effective EU presentations. *“At a conference this morning, Rob Donkers was talking about the new legislation and EPA got an honourable mention so he clearly has been listening! Your views and opinions really are valuable to us, so I hope we can keep chatting.”* Surkovic promised to send Auer drafts of the UK proposals that she described as “nonpapers”.

SAM BODMAN SPEAKS OUT

Former CEO of Cabot Chemical Corporation and current Deputy Secretary of Commerce, Sam Bodman, addressed the American Chemical Society in August 2002.⁴¹ Bodman publicly criticized REACH using chemical industry arguments and informed the crowd that, *“...we are very closely monitoring the implementation of this framework... In March of this year, we forwarded a text to the Commission that expressed our specific concerns about the proposed system, including the costs to industry, impact on jobs, possible discrimination, and consistency with WTO obligations.”* Bodman asked the audience to comment on REACH to the EU and encouraged the corporate audience to communicate with the Department of Commerce.

STATE WORKS WITH EPA ON LOBBYING TRIP TO BRUSSELS

In September 2002, the US State Department helped coordinate another lobbying trip to the EU.⁴² The US

Embassy Environment Science and Technology Officer, Todd Wilson, arranged a trip for Charlie Auer and Susan Hazen of the EPA, to Brussels to meet with EU officials and chemical industry executives. *“I’d like to ask if you would be willing to provide a debrief of your visit (to date and prospective) to the participants at the informal roundtable on the EU Chemicals White Paper (Tuesday), and then to take industry representative questions as a basis for the roundtable discussion.”* Wilson played a key role in arranging meetings with EU officials and representatives of NGOs and the chemical industry

INDUSTRY GRATITUDE

In October 2002, the American Chemistry Council thanked the US Government, *“...for its efforts to garner support for U.S. industry’s position on the new EU Chemical Strategy (REACH - Registration, Evaluation, Assessment of Chemicals). The US Government was instrumental in setting up meetings between representatives from the American Chemistry Council (ACC) and the U.S. Ambassadors in Italy, Ireland, Spain, Austria and Portugal to foster the U.S. position on REACH.”*⁴³ Note that the “US position” and the chemical industry position were identical. Finally, the Administration expected the chemical industry, *“...to ask for continued senior level support in raising U.S. industry’s concerns to the EU and its member states”* and wanted to know, *“How can Grant [Aldonas, Under Secretary of Commerce] and the other US officials present play the best role possible?”*

HIGH-LEVEL CLOSED-DOOR MEETING

A high-level meeting between US and EU officials took place December 16, 2002. Participants included European Commissioner for Enterprise and Information, Erkki Liikanen, Under Secretary of Commerce Grant Aldonas, Deputy Assistant Secretary of Commerce, Henry Levine, and other Department of Commerce officials. The objectives of the meeting included the US raising concerns regarding the White Paper and discussing the revitalization of the Trans Atlantic Business Dialogue.

Briefing documents for the meeting reveal the Commerce Department’s view that lobbying at the industry’s behest to the exclusion of the public interest was their duty.⁴⁴ *“Secretary Evans and his EU*

counterparts have a critical role in facilitating the participation of heads of U.S. government agencies and senior Commission officials in addressing specific transatlantic industry concerns.”

The US team made a trade threat on REACH saying that the proposal, *“...must be applied in ways that are consistent with the EU’s obligations to its trading partners under the WTO.”* The Commerce Department also implied that the EU must subjugate its public health protections under REACH to the WTO. *“The proposals could also violate the non-discrimination requirements of the WTO, and could impose more trade-restrictive measures than are necessary to accomplish the EU’s health and safety objectives.”*

The Commerce Department admitted heavy US industry lobbying of the EU on REACH. *“Both sides of the Trans-Atlantic Business Dialogue Chemical Working Group have been very active in lobbying the Commission, as well as Member States on the draft legislation.”* Finally, the Commerce Department admitted that its lobbying on behalf of the industry was successful. *“The U.S. Government has had an ongoing dialogue with the Commission on the issue, and succeeded in getting some proposals modified to address US concerns.”*

GRANT ALDONAS SPEAKS OUT

On December 17, 2002, Under Secretary of Commerce, Grant Aldonas further revealed the Department’s dedication to the industry position at a press conference at the US Mission to the EU in Brussels. Aldonas ridiculed the REACH’s registration requirement calling it, *“...comprehensive registration of chemicals that are demonstrably safe.”* Currently, less than 10% of the most widely used chemicals in US and EU commerce have even basic toxicity data, making it impossible to declare whether they are safe.

SCHNABEL CLAIMS STAKEHOLDER INVOLVEMENT

In March 2003, Rockwell Schnabel wrote an editorial in the European Voice claiming to have engaged, *“...all US stakeholders - the administration, the business and environmental community at an early stage in the development of these new rules.”*⁴⁵ Neither Schnabel or anyone from the State Department ever engaged

public interest NGOs for environmental or public interest input in developing the US position on REACH. In addition, no independent analysis of REACH’s financial cost or benefits was ever undertaken by the government. The chemical industry position on REACH was identical to the US government position from the start.

CONCERN THAT OTHER COUNTRIES MIGHT IMITATE REACH

On April 2, 2003, Jeffrey M. Burnam, Assistant Secretary for Environment, spoke at a meeting of the Society of Organic Chemical Manufacturers Association. Burnam expressed concerns that REACH-style legislation that better protects public health might spread to other countries. *“The danger is that countries that don’t have adequate chemical management schemes in place may imitate the European system.”*⁴⁶

POWELL LOBBIES BEFORE REACH RELEASE

On April 29, 2003, just several days before REACH was released for public comment, Colin Powell sent a cable to EU Member States.⁴⁷ The cable repeated industry objections to REACH and urged US government agencies, *“... to reiterate to the European Commission and EU Member States our general concerns before the Commission finalizes its formal proposal in early May... Posts in EU Member States are requested to communicate USG concerns to appropriate host government environment, trade, industry and foreign ministry officials, drawing upon the talking points in para 11 as appropriate.”*

Powell’s talking points included objections to the precautionary principle, REACH’s *“...complex regulatory approach”*, and its overly broad focus on *“...tens of thousands of chemicals”*. In its place, the State Department memo proposed the industry-favored US-style regulatory system as one where, *“...environmentally sound management of chemicals can be achieved through approaches that better balance risk and economic considerations.”* Powell also described the EPA’s role in the lobbying effort; *“EPA is engaged in a constructive dialogue with the Commission at the regulatory level.”* The State Department cable criticized costs and other *“burdens”* without mentioning the

public health costs of poor chemical safety regimes. The cable complained about the length of the proposed 5-week comment period and urged US government lobbying to extend it as requested by the chemical industry.

BIGGER THAN THE GMO DISPUTE

In May 2003, the EU formally presented REACH for public comment. William Lash, Assistant Secretary, Department of Commerce, told the New York Times that, *“This is a big game; it will dwarf the G.M.O. dispute.”*⁷⁸ Using chemical industry language, Lash described REACH as, *“...a barrier based on unsound science or non-existent risk analysis that damages our exports...”*⁷⁹ He also admitted that Commerce officials had met frequently with EU leaders to express “concerns” about the proposal. In news reports, the Commerce Department announced their intention to hold a series of public town hall meetings to organize opposition to the proposal beginning May 16th. Replies to inquiries from public interest NGOs about the locations and times of the meetings were vague and unresponsive.

STATE SUPPORTS INDUSTRY TRADE GROUP

On May 6, 2003, the State Department issued a press release promoting a report from the National Foreign Trade Council (NFTC) concerning *“...trade barriers that ignore sound science.”* The report features REACH as an example where, *“...U.S. and foreign exporters are effectively prevented from fully participating in the regulatory drafting and review process.”* NFTC’s 300 member companies include Dow Chemical, DuPont, and ExxonMobil.

SCHNABEL DENIES US ATTACKS AND ENCOURAGES INDUSTRY PARTICIPATION

Press reports described the US government’s opposition to REACH was due to, *“...unsound science and an abuse of regulatory authority...”*⁸⁰ This prompted a letter from Rockwell Schnabel, US Ambassador to the EU.⁸¹ Despite two years of US government lobbying at the behest of the chemical industry, Schnabel denied that the US had criticized REACH or identified it as a possible trade dispute because he claimed that the government had not yet had time to study the proposal.

On May 12, 2003, Rockwell Schnabel commented on REACH to students at Bocconi University in Milan, Italy.⁸² He praised the EU for extending the comment period as requested by industry and encouraged industry to participate. *“We strongly support and encourage efforts by AmCham Italy [American Chamber of Commerce in Italy] and the Italian chemicals association to take part in these consultations.”*

CONCLUSION

The US government adopted the chemical industry position on REACH and aggressively advanced it to intervene in the EU legislative process. The government developed its policy in closed-door meetings with the industry to the exclusion of citizens, public interest advocates, environmental organizations, and public health professionals, even though these stakeholders are relevant to REACH's environmental and public health emphasis. The government never even analyzed REACH's business benefits and apparently felt justified in trying to weaken public health legislation in sovereign countries at the behest of the interested industry.

Ironically, the US chemical industry opposes REACH precisely during a time when public confidence in the chemical industry is very low. As the EU inevitably moves forward with the legislative process to implement REACH, the US industry has an opportunity to regain public confidence by supporting the legislation as a first step toward overhauling a long outdated US system. Instead, the industry remains mired in the past and is initiating a new plan to spend hundreds of millions of dollars on a PR campaign in an attempt to improve its image.

The recent activities uncovered by the internal government documents reveal agency actions that are incompatible with their mandates. For example, the EPA mandate to protect human health and safeguard the environment is not consistent with their joint mission with US chemical industry executives to lobby the German government against REACH. The Commerce Department adopted the chemical industry's arguments without considering the REACH's beneficial effect on other industries. For example, REACH would reduce product liability concerns currently borne by industries that use the chemical industry's products such as cosmetics, toys, textiles, building products, and electronics.

At the behest of the chemical industry, the US government intervened to weaken EU efforts to enhance public health. This merits a full Congressional investigation into the corporate influence over government actions at the relevant agencies and raises questions about the objectives of US foreign policy. EPA, Commerce, State, and USTR should desist from further lobbying against REACH and the Administration should publicly affirm the right of the EU to implement important public health laws such as REACH without US government intervention.

APPENDIX 1.

LETTER FROM HEALTH CARE WITHOUT HARM TO PRESIDENT GEORGE W. BUSH

September 9, 2003
President George W. Bush
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

On behalf of public health professionals, physicians, nurses, children's health advocates, environmental organizations, and community groups, we are writing to express our deep concerns about the United States government efforts to undermine proposed reforms of the European Union chemicals policy also known as REACH (Registration, Evaluation, and Authorization of Chemicals). We request that you instruct key officials within your administration to stop using federal funds to undermine this important proposed legislation, and seek ways to support progressive reform of chemicals policy that benefit public health.

The U.S. Administration has actively lobbied against the European proposals for reform through actions of the State Department, Department of Commerce, US Trade Representative, and the US Environmental Protection Agency (EPA). We find it particularly troubling that the position of the US government closely reflects the narrow interests of U.S. chemical manufacturers, to the exclusion of other business sectors who will benefit from the production of cleaner, safer chemicals, as well as public health and environmental advocates working to secure policies that will safeguard the American and European public from dangerous chemicals.

Recent scientific evidence from the United States, Canada, and Europe demonstrates that untested, unregulated chemicals are accumulating in human body tissue and breast milk. Toxicological findings indicate that exposures to even low doses of certain chemicals can result in profound yet subtle effects including birth defects, reproductive disorders, and neurological abnormalities. We are particularly concerned about a variety of ubiquitous substances that have been measured in the general public. For some, like mercury, their toxicity is beyond doubt. For others, adequate toxicity testing data are simply not available. The public's continued exposure to these substances vividly demonstrates the need for comprehensive safety testing in order to protect human health and the environment.

The chemical management system proposed under REACH addresses many of the flaws of the current system both in the United States and Europe. As you know, lax chemical regulations in the U.S. have created a situation whereby an estimated 95% percent of the chemicals in commerce today lack basic testing data on potential health and environmental impacts.

REACH would begin to fill in the information blanks by first and foremost demanding better health data for the existing and new chemicals produced or used in quantities greater than one ton per year. It would also restrict and in some cases ban the use of chemicals that are inherently harmful, i.e. carcinogens, mutagens, and reproductive toxins, in addition to those chemicals that persist and accumulate in the environment. Requiring manufacturers to demonstrate that a particular chemical is safe to use in commerce is a commonsense and long overdue approach to chemical management.

The United States government and the chemical industry claim that the costs of increased scrutiny of chemicals proposed in REACH will place a burden on business. However, the latest estimates from the European

Commission put the total costs of the REACH reforms at 4 billion -- or just 0.1 percent of annual chemical sales in the European Union. This is a very modest investment in environmental protection, especially in comparison to the billions of dollars spent on health care, pollution control, and cleanup of contamination caused by chemicals.

The US government and chemical industry opposition to REACH also neglects the immeasurable cost of human suffering and disease due to poorly regulated environmental pollutants. The monetary costs alone are staggering. In the US, scientists from the Mt. Sinai School of Medicine estimated that the total annual costs attributable to environmental pollutants for children's lead poisoning, asthma, cancer, and neurobehavioral disorders totaled \$54.9 billion. In the EU, Environment Commissioner Margot Wallström estimates that REACH will save \$20 to \$60 billion in health care costs over the next thirty years, as well as reduce 2,200 to 4,300 cancer cases per year.

We urge the U.S. government to recognize the potential benefits to American consumers and businesses and cease all efforts to undermine EU chemicals policy reforms. We request that the Administration, through the U.S. EPA, the U.S. Trade Representative, Commerce Department, and State Department, solicit public comments from the American people -- including but not limited to NGOs and businesses -- to formulate a forward-looking position on chemicals policy and prepare for new economic realities of the 21st century.

For more information concerning this issue, please contact:

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We look forward to your response.

Sincerely,

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CC:

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The Hon. Donald Evans, Secretary, Department of Commerce
The Hon. Marianne Lamont Horinko, Acting Administrator, U.S. Environmental Protection Agency
The Hon. Robert Zoellick, U.S. Trade Representative
The Hon. James Connaughton, Chairman, Council on Environmental Quality

US House of Representatives

The Hon. Billy Tauzin, Committee on Energy and Commerce
The Hon. John Dingell, Ranking Minority Member, Committee on Energy and Commerce
The Hon. Paul Gillmor, Chair, Subcommittee on Environment and Hazardous Materials
The Hon. Hilda Solis, Ranking Minority Member, Subcommittee on Environment and Hazardous Materials
The Hon. Cliff Stearns, Chair, Subcommittee on Commerce, Trade, and Consumer Protection
The Hon. Jan Schakowsky, Ranking Minority Member, Subcommittee on Commerce, Trade, and Consumer Protection
The Hon. Tom Davis, Chair, House Committee on Government Reform
The Hon. Henry Waxman, Ranking Minority Member, House Committee on Government Reform

US Senate

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The Hon. James Jeffords, Ranking Member, Committee on the Environment and Public Works
The Hon. Lincoln Chafee, Chair, Subcommittee on Superfund, Toxics, Risk, and Waste Management
The Hon. Barbara Boxer, Ranking Member, Subcommittee on Superfund, Toxics, Risk, and Waste Management
The Hon. John McCain, Chair, Committee on Commerce, Science & Transportation
The Hon. Fritz Hollings, Ranking Member, Committee on Commerce, Science & Transportation
The Hon. Susan Collins, Chair, Committee on Governmental Affairs
The Hon. Joseph Lieberman, Ranking Member, Committee on Governmental Affairs

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