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A SPECIAL INTEREST CASE STUDY:
THE CHEMICAL INDUSTRY, THE BUSH
ADMINISTRATION, AND EUROPEAN EFFORTS TO
REGULATE CHEMICALS

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EXECUTIVE SUMMARY

At the request of Rep. Henry A. Waxman, this report examines how the Bush Administration responded to a landmark effort by the European Union to reduce the risks of chemical exposure. The report is based on documents obtained by the Environmental Health Fund, a small nonprofit environmental organization, and provided to the Special Investigations Division. These documents show that the Administration, at the request of the U.S. chemical industry, mounted a campaign to block the efforts of the European Union to regulate chemical companies.

Under the Clinton Administration, it was U.S. policy not to intervene in the efforts of other countries to protect their environment. Vice President Gore stated: “We recognize and respect each nation’s right to set legitimate public health and environmental standards and to take appropriate precautionary action.”

The Bush Administration abandoned this approach in the case of a European Union initiative to regulate the chemical industry known as Registration, Evaluation, and Authorization of Chemicals (REACH). REACH is an effort by the European Union to require chemical manufacturers to provide safety data about chemicals they produce. It would also give the European Union the authority to ban especially hazardous chemicals.

The documents provided to the Special Investigations Division are a series of e-mails, cables, and memoranda from the State Department, the U.S. Trade Representative, the Commerce Department, and the U.S. Environmental Protection Agency about the REACH initiative. These documents show:

- Since REACH was proposed in February 2001, Administration officials “have been actively meeting with the U.S. chemicals industry to solicit their views and concerns” regarding the European Union’s proposal to regulate chemicals.
- In early 2002, a Commerce Department paper recorded that “[i]ndustry . . . would like the USG to work to educate [other countries] so that they can join the United States in raising concerns.”
- Shortly thereafter, in March 2002, Secretary of State Colin Powell sent a cable directing U.S. diplomatic posts to “raise the EU chemicals policy with relevant government officials” and to object to the REACH proposal as “a costly, burdensome, and complex regulatory system.”
- The Assistant United States Trade Representative for Europe and the Mediterranean “tasked” the chemical industry with developing “themes” for the Administration to convey to the European Union about the proposal. These themes were presented to Administration officials at a meeting on April 3, 2003.

- Later that month, Secretary Powell sent another cable to diplomatic posts about the European Union proposal. This cable repeated at length the themes developed by industry and directed the posts to object to REACH on a priority basis.
- Officials working for the United States Trade Representative exchanged e-mails with industry representatives identifying European Union nations that needed to be “targeted” and urging industry to “get to the Swedes and Finns and neutralize their environmental arguments.”
- Officials from four federal agencies — the State Department, the U.S. Trade Representative, the Commerce Department, and the U.S. Environmental Protection Agency — planned a wide range of actions to build opposition to REACH, including assigning industry representatives to coordinate the lobbying of specific countries, traveling to Europe to meet with government and industry representatives, and urging Asian and other non-European nations to oppose REACH.

The Administration’s efforts led to revisions to the REACH proposal. According to a 2003 report from the American Chemistry Council (ACC), “ACC rallied opposition to the draft proposal, including a major intervention by the U.S. government. . . . These efforts . . . brought about significant concessions in the draft.” A memo from the Commerce Department reports that senior chemical industry executives met with senior Commerce Department officials to “thank the U.S. Government for its efforts to garner support for U.S. industry’s position.”

The documents described in this report provide a case study in how a powerful special interest can influence the nation’s foreign policy. The chemical industry is one of President Bush’s biggest political supporters. As the documents reveal, the industry succeeded in using its access and influence to persuade the Administration to intervene to weaken a major environmental initiative in Europe. Members of the public and environmental organizations — even those closely following the REACH initiative — had no comparable opportunities to shape U.S. policy.

I. THE REACH INITIATIVE

In February 2001, the European Union issued a draft proposal for a new policy for regulating chemicals known as Registration, Evaluation, and Authorization of Chemicals (REACH). According to the European Union, REACH was proposed because:

The current legislative framework for chemicals is inadequate. It has not produced sufficient information about the effects of chemicals on human health and the environment, and where risks are identified, it is slow to assess them and introduce risk management measures. These shortcomings have potentially put human health and the environment at risk.¹

As proposed, REACH would require companies that manufacture or import more than one ton of a chemical substance per year to register the chemical in a central database. These companies would then be required to provide scientific data as a precondition for selling chemicals and products.² The data would include information on the intrinsic properties and hazards of each substance and the identified uses of the substance.³ These data submission requirements would address what environmental groups have called a “major failing of environmental policy”: the inability of governments to require chemical manufacturers to provide basic data on the potential health and environmental hazards of their chemicals.⁴

REACH would also require the chemicals to be managed based upon the risks they pose. In some cases, good ventilation or protective clothing would be sufficient risk management practices in occupational settings. However, REACH would authorize the European Union to establish additional restrictions for any substance that posed unacceptable risks. These restrictions could include banning uses in certain products, banning uses by consumers, or even complete bans.⁵

¹ European Commission, *Q and A on the new Chemicals policy REACH* (Oct. 29, 2003) (online at http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=MEMO/03/213|0|RAPID&lg=EN&display=)).

² European Commission, *Chemicals: Commission Presents Proposal to Modernise EU Legislation* (Oct. 29, 2003) (online at http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/1477|0|RAPID&lg=EN&display=).

³ European Commission, *supra* note 1.

⁴ World Wildlife Fund, *WWF Sees Global Benefits in Proposed EU Chemical Reforms* (May 6, 2003) (online at http://www.worldwildlife.org/toxics/whatsnew/pr_35.htm).

⁵ European Commission, *supra* note 1.

In March 2003, the European Commission, the administrative body of the European Union, calculated that REACH would provide significant benefits. The European Commission estimated that REACH could prevent 2,200 to 4,300 occupational cancer cases per year.⁶ Additionally, the Commission's Impact Assessment estimated that the health benefits of REACH could be on the order of magnitude of \$61 billion over a 30-year period.⁷

The European Commission accepted comments on the draft proposal from May to July 2003. A revised REACH proposal was formally proposed on October 29, 2003, and was forwarded to the European Parliament and the European Union's Council of Ministers to be adopted. Final action on REACH could occur in the next year.

II. CHEMICAL INDUSTRY OPPOSITION

From the outset, the U.S. chemical industry strongly opposed REACH. The chemical industry argued that REACH would interfere with trade, increase costs, discourage innovation, and hamper commerce. The industry maintained that REACH could discourage the sale of particular products that contained hazardous chemicals and that REACH could increase the costs of chemicals due to testing and evaluation costs.⁸

Instead of registration and regulatory requirements such as those proposed in REACH, the chemical industry advocated voluntary measures and multilateral consensus approaches. For example, the industry supported a nonregulatory international approach that would gather "available" information, characterize risk based on that information, and make relevant information available. Industry officials stated that a benefit of this approach would be that "testing may not be required in all cases," and confidential and proprietary information would be protected.⁹

The chemical industry is a regular campaign contributor with access to senior Administration officials. The chemical industry has given over \$21 million in campaign contributions since the start of the 2000 election cycle, with 79% of

⁶ European Commission Environment Directorate-General, *Assessment of the Impact of the New Chemicals Policy on Occupational Health Final Report*, iii (Mar. 2003).

⁷ European Commission, *supra* note 1.

⁸ Trans-Atlantic Business Dialogue, *EU Chemicals Policy and Industry's Approach to Chemical Management Policy in the Context of the Trans-Atlantic Business Dialogue* (transmitted from the American Chemistry Council to certain industry and governmental officials Jan. 9, 2002).

⁹ *Id.*

these contributions going to Republicans. During this period, President Bush was the top recipient of contributions from the industry, having received over \$900,000 since 1999.¹⁰ As the *Washington Post* reported in 1999:

[T]he chemical industry . . . is one of the most passionately pro-Bush industries, according to several sources. . . . “This industry has openly said we’re going to support Bush and [is] committing to raise a huge sum of money for him,” said the head of a major trade association familiar with the chemical group’s plans.¹¹

Documents provided to the Special Investigations Division by the Environmental Health Fund describe how the industry used its access to urge the Bush Administration to build opposition to REACH. These documents were obtained by the Environmental Health Fund through Freedom of Information Act requests and sources that requested anonymity. They include e-mails, cables, and memoranda from the State Department, the U.S. Trade Representative, the Commerce Department, and the Environmental Protection Agency.¹² The Environmental Health Fund is a small nonprofit organization based in Boston, Massachusetts.

III. THE BUSH ADMINISTRATION APPROACH

Under the Clinton Administration, the United States resisted intervening in the efforts of other countries to protect their environment. In 1998, for example, the chemical industry pushed the Administration to oppose European efforts to ban phthalates, an ingredient of vinyl suspected to affect the health of children. Vice President Gore rejected those efforts and clarified the U.S. policy in a December 21, 1998, letter to Reps. Henry A. Waxman and George Miller:

[W]e will be supportive of the precautionary steps that are being considered here and abroad. We recognize and respect each nation’s right

¹⁰ Center for Responsive Politics, *Chemical & Related Manufacturing: Long-Term Contribution Trends* (online at <http://www.opensecrets.org/industries/indus.asp?Ind=N13>). Information available from the Federal Election Commission as of February 9, 2004, show that the chemical and related manufacturing sector provided \$21,027,663 in campaign contributions in the 2000, 2002, and 2004 election cycles. Of this amount, \$16,543,081 was provided to Republicans. \$912,207 was given to George W. Bush.

¹¹ *Bush’s Capital Plan To Woo Big Business; First, He Wins over Trade Group Chiefs*, *Washington Post* (Aug. 1, 1999).

¹² There has been previous reporting of U.S. opposition to the REACH proposal. See *U.S. Opposes EU Effort to Test Chemicals for Health Hazards*, *Wall Street Journal* (Sept. 9, 2003). However, many of the key documents described in this report have not been previously disclosed.

to set legitimate public health and environmental standards and to take appropriate precautionary action. The President and I have made it clear that the Departments of Commerce and State should refrain from any actions to discourage individual countries, whether in the European Union or elsewhere, from implementing precautionary measures they deem appropriate to restrict the marketing or use of products containing phthalate.¹³

Almost immediately after its inauguration, however, the Bush Administration took a different approach. The Bush Administration's interest in REACH began in February 2001, one month after the Administration took office. According to a Department of Commerce briefing paper:

Since its presentation in February 2001, Commerce and USTR have been actively meeting with the U.S. chemicals industry to solicit their views and concerns. . . . 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. 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.¹⁴

The Commerce briefing paper states that in these meetings, government officials "advised industry to develop an official position and strategy as soon as possible to assist in influencing the EU's draft text."¹⁵

Another internal Department of Commerce document describes some of the exchanges between the chemical industry and U.S. officials. According to this document: "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."¹⁶

The document indicates that two offices within the Department of Commerce's International Trade Administration — the Office of EU and Regional Affairs and

¹³ Letter from Vice President Al Gore to Rep. Henry A. Waxman (Dec. 21, 1998).

¹⁴ Department of Commerce, *EU White Paper: Strategy for a Future Chemicals Policy* (undated) (prepared in January or February 2002).

¹⁵ *Id.*

¹⁶ Department of Commerce, *Chemicals White Paper* (undated) (prepared in January or February 2002).

the Office of Chemicals — agreed to assist the chemical industry in developing a “demarche,” a form of diplomatic protest, about the REACH proposal. According to the document:

Office of EU and Regional Affairs is working with . . . Office of Chemicals on a demarche to go to EU Member States and to important third countries to get this campaign going.¹⁷

IV. SECRETARY POWELL’S MARCH 21, 2002, CABLE

The efforts of the chemical industry to enlist U.S. opposition to REACH resulted in at least two cables and a demarche from Secretary Powell. The first cable from Secretary Powell was sent on March 21, 2002, to 36 U.S. diplomatic posts in nations outside of the European Union. It directed these posts 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.”¹⁸

Secretary Powell’s cable states: “U.S. industry, as well as European industry, have expressed serious concern with the white paper on both sides of the Atlantic.” His cable directs the posts to communicate to foreign governments that the EU policy “appears to be a costly, burdensome, and complex regulatory system, which could prove unworkable in its implementation.”

Secretary Powell’s cable asserts that “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.” This \$8.8 billion figure was obtained from a draft study provided to the Administration by the American Chemistry Council.¹⁹ There is no evidence in the available documents that the U.S. government performed its own analysis, subjected the draft ACC study to any form of peer review, or otherwise attempted to verify the basis for Secretary Powell’s direction to the diplomatic posts. Other

¹⁷ *Id.*

¹⁸ Cable from Secretary of State Colin Powell to U.S. Diplomatic Posts (Mar. 21, 2002).

¹⁹ E-mail from Charles Auer, Director, Office of Pollution Prevention and Toxics, U.S. EPA, to Alexandra McPherson, North American Director, Clean Production Action (Nov. 14, 2002). The ACC calculates the \$8.8 billion figure by assuming that if REACH were to be enacted, the EU could ban the importation of computers and other goods from the U.S. American Chemistry Council, *Impact of the Proposed EU Chemicals Policy on U.S. Exports* (Jan. 4, 2002).

informed analysts concluded, however, that the \$8.8 billion estimate could not be supported by a fair reading of the REACH proposal.²⁰

Secretary Powell's March 21, 2002, cable states that "a demarche to EU Member states has been sent." Although the cable does not describe the content of the demarche, this is presumably the official communication described by the Commerce Department officials protesting the REACH initiative.

Subsequently, the U.S. embassy in Greece sent the State Department a cable stating that embassy officials, including Ambassador Thomas J. Miller, met with Dow Chemical executives "to discuss how to engage the Greek government."²¹ According to the cable, the embassy "advised them that they should activate their European industry colleagues" and "identified appropriate Greek government officials for industry contact and explained how best to approach them based on their political and philosophical orientation."²²

V. CHEMICAL INDUSTRY "TASKED" TO DEVELOP "THEMES"

The meetings between industry and U.S. officials continued after Secretary Powell's March 2002 cable. An April 4, 2003, e-mail from an official of the U.S. Trade Representative to industry trade associations and consultants reveals that Catherine Novelli, the Assistant U.S. Trade Representative for Europe and the Mediterranean, had "tasked" the chemical industry and the company Intel to develop "themes" for the U.S. government to use in opposing REACH. According to the e-mail:

At the last meeting, Cathy had tasked the industries to come up with 'themes' for their concerns about the proposed legislation. The chemical industry had done a list of themes dealing with the EU process. Intel had done a list of substantive themes.²³

The e-mail indicates that industry representatives met with USTR officials on April 3, 2003, to present these "themes." According to the e-mail, USTR officials indicated that the U.S. government would convey "[a]ll the issues from the [American Chemistry Council] and Intel themes" to the European Union. The e-

²⁰ World Wildlife Fund, *How the U.S. Can Benefit from Chemicals Policy Reform in Europe* (June 24, 2003) (presentation to National Foreign Affairs Training Center).

²¹ Cable from Thomas J. Miller, U.S. Ambassador to Greece, to Colin Powell, U.S. Secretary of State (Mar. 12, 2003).

²² *Id.*

²³ E-mail from Barbara Norton, USTR, to certain trade associations and companies (Apr. 4, 2003).

mail notes that the Synthetic Organic Chemical Manufacturers Association also weighed in with an additional reason to oppose REACH.

The e-mail states that the USTR officials and the industry representatives agreed that the prominence of the messenger for these themes must be elevated and discussed how to “take on” Margot Wallström, Commissioner for the Environment at the European Commission, who is responsible for developing the REACH proposal. According to the e-mail:

The only thing that will get the EU to stop is having the EU heavyweights come in and say that the Commission can’t take this forward until a real cost-benefit analysis is done. But who will take on Wallstrom — the answer is only other Ministers or Heads of State. The USG plans to send in our Ambassadors to Member States and Commission to make our case.²⁴

VI. SECRETARY POWELL’S APRIL 29, 2003, CABLE

On April 29, 2003, less than a month after the USTR-industry meeting summarized in the April 4, 2003, e-mail, Secretary Powell sent another cable about the REACH proposal. The cable was sent on a “priority” basis to diplomatic posts in European Union nations. It states that it is “important for posts to reiterate to the European Commission and EU Member states our general concerns before the commission reaches agreement on its formal proposal.”²⁵

Secretary Powell’s cable provided the diplomatic posts with a long list of arguments to use in urging opposition to REACH. These arguments reiterated the industry “themes” summarized in the April 4, 2003, e-mail. For example:

- **Industry theme:** “Before taking unilateral action and imposing its proposals on the rest of the world, the EU Commission should use multilateral forums to discuss its proposals.”

Secretary Powell’s cable: “We continue to support multilateral efforts in the OECD to promote greater international regulatory cooperation and harmonization in the area of chemicals. We note that the Commission’s approach in developing its proposal has departed from this ongoing OECD cooperation.”

²⁴ *Id.*

²⁵ Cable from Secretary of State Colin Powell to posts in the EU Member States and the Mission to the EU (Apr. 29, 2003) (copied to EU candidate states).

- **Industry theme:** “The EU should complete a cost/benefit analysis of the draft legislation, with particular emphasis on the effect on small and medium enterprises and downstream users of chemical products.”

Secretary Powell’s cable: “Before finalizing its proposal, we urge the [European Commission] to conduct a complete impact assessment, including the impacts on downstream users and future investment and innovations.”

- **Industry theme:** “REACH will work to stifle innovation and the introduction of new safer chemicals.”

Secretary Powell’s cable: “These compliance costs may negatively impact innovation and EU development of new, more effective, and safer chemicals and downstream products.”

- **Industry theme:** “Suppliers might not share information about chemicals and might pull a particular chemical off the market because they don’t want to go through the burden of testing and registration.”

Secretary Powell’s cable: “Manufacturers of chemicals for many applications may halt production where demand does not justify registration and testing costs.”

- **Industry theme:** “Articles should be exempted.”²⁶

Secretary Powell’s cable: “[W]e suggest the exclusion or more limited treatment of certain low risk types of chemicals . . . and most constituents of articles.”

- **Industry theme:** “The EU should consider fully the comments of stakeholders and their concerns and suggestions, making adjustments to the draft.”

Secretary Powell’s cable: “We urge the Commission to provide all stakeholders a meaningful opportunity to provide comments on its 1200 page draft regulation, including an explanation for how such comments were considered in its final proposal.”

In total, the April 4 e-mail indicates that there were 11 themes that the industry wanted U.S. officials to pursue. All 11 are reflected in Secretary Powell’s cable.

²⁶ “Articles” include everyday manufactured items, such as plastic consumer products and textiles.

VII. BUILDING OPPOSITION WITHIN THE EUROPEAN UNION

The documents obtained from the Environmental Health Fund reveal that the U.S. government worked to create opposition to REACH within the European Union. This was accomplished in at least three ways. First, the U.S. Trade Representative worked with industry to develop a list of “target” countries and assigned industry representatives to build opposition within these countries. Second, EPA staff, accompanied by chemical industry representatives, traveled to meet with foreign industry and government representatives to enlist their opposition to REACH. Finally, the Department of Commerce developed an elaborate strategy to conduct “outreach” to “stakeholders” in the European Union.

A. “Targeted” European Nations

The April 4, 2003, e-mail from USTR to industry groups reveals that the Administration worked with U.S. industry to identify countries that should be “targeted” and that “we need to get to . . . and neutralize.” The e-mail states:

It was agreed that the following Member States needed to be particularly targeted: Germany, UK, France, Italy, Netherlands, and Ireland because they all have large production of chemicals and downstream products. In Italy, it will be important to get to Prodi. In addition, we need to get to the Swedes and Finns and neutralize their environmental arguments.²⁷

The e-mail made specific suggestions for companies that should be enlisted in this effort. As part of the effort to “neutralize” Sweden and Finland, the e-mail states: “it was agreed that the electronics industry would see if Nokia and Ericsson might be helpful, although it was noted that neither manufacture in Europe anymore. It was then suggested that Volvo (and Saab) might be helpful, as well as the paper industry, with its huge papermaking operations in Scandinavia.”²⁸

The e-mail from USTR even made specific assignments to industry groups. According to the e-mail:

The following industry reps agreed to coordinate comments for particular countries (note: this does not mean that they intended to do all the work, but just to coordinate, so we know the full extent of our efforts):

Bill Primosch (NAM) — Italy and UK
Patricia Sherman (Siemens) — Germany

²⁷ E-mail from Barbara Norton, *supra* note 23.

²⁸ *Id.*

Robbins Pancake (Agilent) — France
Steve Harper (Intel) — Ireland
Jason Linnell (EIA) — Sweden²⁹

B. EPA's European Union Trips

As part of the effort to generate opposition to REACH, officials from the U.S. Environmental Protection Agency traveled to Europe in 2002 to deliver the chemical industry message in conjunction with the American Chemistry Council. A cable from the former senator Daniel Coats, U.S. Ambassador to Germany, describes one EPA meeting in Germany:

Visiting EPA chemicals control division Director Charles Auer . . . accompanied by representatives of the American Council on Chemicals, advocated efficient voluntary measures and science-based decision-making in regulating chemicals during a March 8 meeting with German officials and business reps.³⁰

The Coats cable notes that a German chemical industry representative “praised EPA’s presentation and asks that the EPA organize seminars to educate Government officials in Germany and Europe on how the EPA review system works.” As further evidence of the success of the EPA efforts, the Coats cable states that “a German joint Government, Industry, and Trade Union position paper from March 11 echoes many of our positions.” Ambassador Coats describes opposition to REACH by a German chemical company as “German business carries our water.”³¹

U.S. EPA held subsequent senior level meetings in Europe to explain the U.S. regulatory system and express concerns with REACH. A cable from the U.S. Mission to the European Union details a number of meetings between EPA Assistant Administrator Stephen Johnson and various governmental entities.³²

²⁹ *Id.*

³⁰ Cable from Daniel Coats, U.S. Ambassador to Germany, to Secretary of State Colin Powell (Mar. 22, 2002).

³¹ *Id.*

³² Cable from James J. Foster, Deputy Chief of Mission, U.S. Mission to the EU, to Secretary of State Colin Powell (Jan. 9 2003).

C. Efforts of the Department of Commerce

The Department of Commerce also developed an extensive outreach plan to influence “stakeholders” within the European Union. To generate opposition within EU countries, the Commerce Department proposed to:

arrange possible travel, video conferences, or calls with “stakeholders” in the EU countries. Stakeholders would be EU [small and medium enterprises] and Large Corporations, U.S. Subsidiaries, and End Users, as well as other interested parties (press/legislators/government officials/other stakeholders particular to the country).³³

The Commerce Department also proposed that the U.S. government “[i]dentify wide-range of publications for the chemical’s industry, and submit short article for newsletters/magazines/etc. on the proposed EU system.”³⁴

The Commerce Department plans included securing congressional involvement. In addition to briefing relevant congressional committees, the Department planned to “identify relevant Congressman and then brief any that may be traveling to Europe this spring.”³⁵

Finally, the Commerce Department proposed that Assistant Secretary William Lash and other Department of Commerce staff make international outreach trips to meet with both industry and governmental representatives.³⁶ A subsequent Department of Commerce document from June 2003 appears to be a briefing paper for Commerce Assistant Secretary Lash for a meeting with representatives of the U.S. and European metals industry.³⁷ The briefing paper contains talking points that state:

- Our primary reason for addressing you today is to encourage active participation in the [REACH] comment period.

³³ E-mail from Penelope Naas, Office Director, Market Access and Compliance, Department of Commerce, to Charles Ford, Commercial Minister Counselor, U.S. Mission to the EU, Department of Commerce, and Henry Levine, Deputy Assistant Secretary, Department of Commerce (Feb. 10, 2003).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Department of Commerce, *Event Brief* (June 12, 2003).

- We must take advantage of the opportunity to comment. We also ask that you pass this information onto other interested parties.³⁸

The American Chemistry Council expressed its appreciation for these efforts. A memo from Henry Levine, Deputy Assistant Secretary for Europe in the Commerce Department, describing an upcoming meeting with Mr. Garrity Baker from the ACC states:

Mr. Baker will also thank the U.S. 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 U.S. government was instrumental in setting up meetings between representatives from the American Chemistry Council (ACC) and U.S. Ambassadors in Italy, Ireland, Spain, Austria and Portugal to foster the U.S. position on REACH. We expect [the ACC representative] also to ask for continued senior level support in raising U.S. industry's concerns to the EU and its member states.³⁹

VIII. BUILDING OPPOSITION OUTSIDE OF THE EUROPEAN UNION

According to a Commerce document, the Department planned to reach out to countries planning to join the European Union, as well as countries outside of the European Union, in an effort to increase opposition to REACH.⁴⁰

A Commerce document entitled “Chemicals Outreach Strategy” lays out a lengthy list of outreach activities.⁴¹ For instance, it lists trips by Undersecretary Grant Aldonas, Assistant Secretary Lash, and Office Director Penelope Naas, as well as a Commerce Department trip to Rome. The document also lists outreach activities to be undertaken by the “U.S. chemical business in the U.S.,” including outreach to small and medium-sized businesses “through ACC.” The document shows that activities were contemplated for the U.S. government both inside of and outside of Europe and in the U.S. Congress.

³⁸ *Id.* (emphasis in original).

³⁹ Memorandum from Henry Levine, Deputy Assistant Secretary, Department of Commerce, to unnamed recipient (Oct. 25, 2002).

⁴⁰ E-mail from Penelope Naas, *supra* note 33.

⁴¹ Department of Commerce, *Chemicals Outreach Strategy* (undated) (this document was produced by the Department of Commerce under the Freedom of Information Act, although it does not otherwise have identifying marks to show itself as a Commerce Department document).

This plan appears to have been executed, at least in part. A Commerce Department document reporting on a February 12, 2003, meeting of the Asia-Pacific Chemical Industry Coalition (APCIC) in Thailand details some of the U.S. government's activities.⁴² The meeting was chaired by the United States and was attended by the governments of Australia, Canada, Chile, China, Hong Kong, Indonesia, Korea, Malaysia, Mexico, Philippines, Chinese Taipei, and Thailand. Industry representatives from Japan, Malaysia, Mexico, Singapore, Chinese Taipei, Thailand, and the United States also attended. The report notes that Mexico and Japan had expressed concern about REACH to the European Union. The Commerce Department report states: "We will be encouraging other delegations here to do likewise."

The report states that action would be taken to involve the Asia-Pacific Economic Cooperation (APEC) Business Advisory Council (ABAC).⁴³ This would bring in industry opposition from 21 countries. The Commerce Department states: "We will follow up with the ABAC during their 2–5 March meeting in Lima. The goal will be to get the ABAC to include concerns in their pre-report to Ministers in May." ABAC sent a letter expressing concerns about REACH to the APEC Ministers on April 10, 2003.⁴⁴

The report even states that "US industry offered to draft a negative economic impact paper, which could be submitted to the EU as APEC collective comments."⁴⁵

⁴² Department of Commerce, *A Report on the APEC Meetings* (Feb. 18, 2003).

⁴³ APEC is the Asia-Pacific Economic Cooperation, an intergovernmental group established in 1989 to further enhance economic growth and prosperity for the region and to strengthen the Asia-Pacific community. APEC has 21 members: Australia; Brunei Darussalam; Canada; Chile; People's Republic of China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; The Republic of the Philippines; The Russian Federation; Singapore; Chinese Taipei; Thailand; United States of America; and Viet Nam. APEC website (http://www.apec.org/apec/about_apec.html). The APEC Business Advisory Council (ABAC) was created by the APEC Economic Leaders in November 1995 to provide advice on specific business sector priorities and to respond when the various APEC fora request information about business-related issues or to provide the business perspective on specific areas of cooperation. ABAC website (<http://www.abaconline.org/aboutus/default.asp>).

⁴⁴ Letter from Viphandh Roengpithya, Ph.D., ABAC Chair 2003, to APEC Ministers Responsible for Trade (Apr. 10, 2003).

⁴⁵ Department of Commerce, *supra* note 42.

IX. FORMAL COMMENTS ON THE REACH PROPOSAL

During the summer of 2003, the Administration filed formal comments with the European Commission regarding the REACH draft proposal. These comments are consistent with the chemical industry's position. The comments raise concerns about the costs of REACH; suggest a multilateral, consensus approach; urge certain exclusions; and argue that REACH will lead to decreased innovation.⁴⁶

X. THE IMPACT OF U.S. EFFORTS

The extensive U.S. efforts had an impact on the REACH proposal. The draft REACH proposal was released in February 2001. Over two years later, on October 29, 2003, the European Union released a final proposal. A comparison of the positions advocated by the Administration and the changes made to the REACH proposal show the changes often reflected positions advocated by the Administration.

The Administration advocated “the exclusion or more limited treatment of certain low risk types of chemicals — such as certain polymers and intermediates where exposure is negligible — and most constituents of articles.”⁴⁷ The REACH proposal was revised to exempt polymers from registration, and the requirements for substances in articles were relaxed.⁴⁸ Additionally, the European Commission announced that it would present a new impact assessment as advocated by the Administration.⁴⁹

The U.S. lobbying efforts also appeared to succeed in building opposition within the European Union. In April 2003, a USTR e-mail had discussed the importance of getting the “EU heavyweights” — ministers or heads of state — to “take on” the European Commission and “say that the Commission can’t take this forward

⁴⁶ European Commission, *Comments of the United States on the European Commission's Draft Chemicals Regulation* (Summer 2003) (http://europa.eu.int/comm/enterprise/chemicals/chempol/contributions/public/usa_gvnt_public.pdf).

⁴⁷ Cable from Secretary of State Colin Powell, *supra* note 25.

⁴⁸ Euractiv.com, *Chemicals: Commission Modifies Legislative Plans after Successful Consultation* (Sept. 25, 2003) (online at <http://www.euractiv.com/cgi-bin/cgint.exe?204&OIDN=1506288&-home=home>).

⁴⁹ *Id.*

until a real cost-benefit analysis is done.”⁵⁰ Five months later, in September 2003, the United Kingdom, France, and Germany wrote to the President of the European Commission to express concern about REACH and request additional analysis and an assessment of the effects on industry.⁵¹

The net effect of the changes was a significantly weaker proposal. According to European environmental groups:

[U]nprecedented interference by the chemical producers in Europe and the US, has led the Commission to considerably weaken the proposal and to tip the balance away from environmental and public health protection towards the self-interests of business.⁵²

For its part, the American Chemistry Council acknowledged that the “major intervention by the U.S. government” resulted in “significant concessions” in REACH. The ACC’s 2003 annual report states:

ACC rallied opposition to the draft proposal, including a major intervention by the U.S. government, and ACC actively supported the European industry’s advocacy efforts with the leaders of Britain, France, and Germany, and many Southeast Asian nations. These efforts helped to build an aggressive position worldwide, and brought about significant concessions in the draft now being considered by the European parliament.⁵³

XI. THE EXCLUSION OF THE PUBLIC

While the chemical industry had extensive access to federal policymakers, the public was largely shut out. Although USTR held two small meetings for public interest nongovernmental organizations, the concerns of these groups appear never to have been seriously considered. On November 11, 2002, more than 50 public health professionals, labor unions, children’s health advocates, environmental organizations, and community groups wrote to President Bush to

⁵⁰ E-mail from Barbara Norton, *supra* note 23.

⁵¹ Letter from Tony Blair, Prime Minister of the United Kingdom, Jacques Chirac, Prime Minister of France, and Gerhard Schröder, Chancellor of Germany, to Prof. Romano Prodi, President of the European Commission (Sept. 20, 2003).

⁵² European Environmental Bureau (EEB), *EEB Position on Commission Proposal for a Regulation on REACH* (Dec. 10, 2003). EEB is a federation of 143 nongovernmental environmental groups in 31 countries.

⁵³ American Chemistry Council, *2003 in Review*, 4 (Jan. 2004).

express their concerns about the U.S. efforts to undermine proposed reforms of the European Union chemicals policy. The letter stated:

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. . . . The [U.S. position] runs counter to the public interest and to the transparency that is critical to our democracy. For this reason, we request that the Administration, through the U.S. Environmental Protection Agency, the U.S. Trade Representative, Commerce Department, and State Department, solicit public comments from the American people — including but not limited to NGOs and business — to formulate a forward looking position on chemicals policy and prepare for new economic realities of the 21st century.⁵⁴

On September 9, 2003, more than 70 public health professionals, physicians, nurses, children's health advocates, environmental organizations, and community groups again wrote to the President to urge the Administration to discontinue efforts to oppose REACH and constructively engage in efforts to protect public health. The letter states:

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.⁵⁵

These individuals and groups never received a response from the President.

The *International Herald Tribune* reported on May 8, 2003, that at public meetings the Commerce Department and industry groups would discuss their opposition to REACH.⁵⁶ Similarly, William Lash, Assistant Secretary of Commerce for Market Access and Compliance, told the trade press that the Commerce Department was planning a series of town meetings around the country to prepare U.S. companies to comment on the European policy.⁵⁷ But when public interest organizations inquired about the meetings and the possibility

⁵⁴ Letter from Alexandra McPherson, Clean Production Action; Jeremiah Baumann, US PIRG; Clifton Curtis, World Wildlife Fund; et al. to President George W. Bush (Nov. 11, 2003).

⁵⁵ Letter from Charlotte Brody, R.N., Executive Director, Health Care Without Harm, et al. to President George W. Bush (Sept. 9, 2003).

⁵⁶ *New Trans-Atlantic Trade Dispute; Washington Criticizes Europe's Plan to Regulate Chemicals*, *International Herald Tribune* (May 8, 2003).

⁵⁷ *EU Moves Ahead with Chemicals Policy As U.S. Tries to Slow Process*, *Inside U.S. Trade* (Apr. 25, 2003).

of participating, Commerce Department officials provided vague, unresponsive answers.⁵⁸ Ultimately, the public meetings appear to have been cancelled. Environmental groups such as the Environmental Health Fund that closely followed the development of the REACH initiative are not aware of any public meetings held to offer the public a chance to comment on the proposal.⁵⁹

There also does not appear to have been any independent analysis of the REACH proposal or its environmental or economic impacts conducted by the Administration. None of the documents obtained by the Environmental Health Fund since April 2001 under the Freedom of Information Act or from other sources indicate that government scientists or other experts independent from the chemical industry were ever called upon to analyze the REACH proposal.⁶⁰

XII. CONCLUSION

Taken together, the documents described in this report provide a case study of how a well-connected special interest can reverse U.S. policy and enlist the support of numerous federal officials, including a cabinet secretary, to intervene in the environmental policies of other countries. Under President Clinton, the United States adopted a policy of recognizing the authority of other nations to act to protect their public health and environment. At the urging of the chemical industry, however, the Bush Administration reversed this policy and actively opposed European Union efforts to improve the regulatory system for chemicals. The Administration's opposition to the initiative was extensive, involving multiple government agencies, cables from Secretary of State Colin Powell, and an international lobbying strategy closely coordinated with representatives from industry. Ultimately, the European Union adopted numerous changes proposed by the Administration.

⁵⁸ Telephone conversation with Mr. Joe DiGangi, Environmental Health Fund (Mar. 10, 2004).

⁵⁹ *Id.*

⁶⁰ *Id.*