From: MPS SYSTEM
To: IAPOLICYCABLES, OEURA TPDCable, ita-td-dc001p.CPBDCable support, ita-td-dc003p.accable support, doc-ita1.internet:"oete1@ita.doc.gov", doc-ita1.internet:"Tim_Wang@ita.doc.gov", ita-td-dc002p.SIFCable, ita-td-dc002p.OSICable, ita-td-dc002p.SIFOFCABL, Philip Combs, Randy Mye, JON BOYENS, doc-ita1.internet:"Janine.Galloway@noaa.gov", OEURAcable, doc-ita1.internet:"ecommerce@ita.doc.gov", Robert Shaw, doc-ita1.internet:"cables@ta.doc.gov", doc-ita1.internet:"rfm_mail@esdim.noaa.gov"
Date: Fri, Mar 22, 2002 10:36 AM
Subject: BERLIN 1116 Routine

INFO: 6110-01 420-01 ARCH-01 6360-01 4110-01 4121-01 500-01 534-01
REV-01 5110-01 1000-01 5131-01 6100-01 NOAA-01 6200-01
5130-01 4211-01 6132-01 6000-01 6201-01 4000-01 6700-01
6710-01 6730-01 6901-01 6902-01 6921-01 750-01 4212-01
ECOM-01 6130-01 OTEC-01 RFM-01
---------- AMADS AMADS 081/1126Z (TOTAL COPIES: 33)

RR RUEHDCA
DE RUEHRL #1116/01 0810921
ZNR UUUUU ZZH
R 220921Z MAR 02
FM AMEMBASSY BERLIN
TO RUEHC/SECSTATE WASHDC 6925
INFO RUCNMEM/EU MEMBER STATES
RUCNFRG/FRG COLLECTIVE
RUEHBS/USEU BRUSSELS
BT
UNCLAS BERLIN 001116

SENSITIVE

DEPT FOR OES/ENV MRICCIARDONE, OES/PCI BPOMAINVILLE
DEPT FOR EB/BTA, EUR/ERA, AND EUR/AGS
DEPT PLEASE PASS EPA/CCD CAUER
DEPT PLEASE PASS USTR JYODER
USEU FOR SMOUTON

E.O. 12958: N/A
TAGS: SENV, ETRD, EIND, KSCA, GM
SUBJECT: CHEMICALS WHITE BOOK: FRG TAKES PRO-BUSINESS STANCE

REF: STATE 52550

SUMMARY
---

1. (U) VISITING EPA CHEMICALS CONTROL DIVISION DIRECTOR CHARLES AUER AND ESTOFF, 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. ALL POINTS IN REFTEL DEMARCHE WERE COVERED DURING THE DISCUSSIONS. THE MINISTRY OF ENVIRONMENT RESPONDED WITH INTEREST TO OUR POSITIONS, WHILE THE MINISTRY OF ECONOMICS EVEN TOOK A DECIDEDLY PRAGMATIC AND PRO-BUSINESS STANCE. A GERMAN JOINT GOVERNMENT, INDUSTRY, AND TRADE UNION POSITION PAPER FROM MARCH 11 ECHOES MANY OF OUR POSITIONS.

USG POSITIONS
---

2. (U) VISITING EPA CHEMICALS CONTROL DIVISION DIRECTOR CHARLES AUER MADE A PITCH FOR MORE VOLUNTARY MEASURES IN CHEMICALS REGULATION ISSUES WHEN HE MET WITH GERMAN OFFICIALS AND INDUSTRY REPS MARCH 8. 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. OTHER EXAMPLES OF THIS RESOURCE MANAGEMENT AUER MENTIONED ARE THE EPA'S CONCENTRATION ON DANGEROUS CHEMICALS (RATHER THAN TRYING TO REGULATE ALL,) AN EXPEDITED AND LIMITED REVIEW REQUIREMENT FOR NEW CHEMICALS PRODUCED IN AMOUNTS LESS THAT 10 TONS AND OTHER WAYS TO LIMIT THE REVIEW PROCESS TO NEW CHEMICALS, AND PLACEMENT OF THE REVIEW PROCESS AT THE PRE-MARKET PHASE INSTEAD OF THE PRE-PRODUCTION STAGE. AUER ALSO DISCUSSED THE EFFECT THE INCLUSION OF DOWNSTREAM USERS COULD HAVE BY CAUSING DUPLICATION IN THE REVIEW PROCESS.

3. (U) ESTOFF RAISED CONCERNS THAT THE APPLICATION OF THE SO-CALLED SUBSTITUTION PRINCIPLE COULD INSERT A DEGREE OF ARBITRARINESS INTO THE DECISION-MAKING PROCESS. HE NOTED THAT IT WAS UNCLEAR HOW THE DECISION WOULD BE MADE THAT ONE CHEMICAL IS A SUBSTITUTE FOR ANOTHER, AND ADDED THAT THE SO-CALLED PRECAUTIONARY PRINCIPLE INTRODUCED AN ADDITIONAL DEGREE OF UNCERTAINTY BY ALLOWING FOR SCIENCE-BASED EVALUATIONS TO BE TRUMPED BY POLITICAL EVALUATIONS BASED ON VAGUELY DEFINED CONSIDERATIONS.

GERMAN BUSINESS CARRIES OUR WATER
---

4. (U) RAINER KOCH, A REP FOR BAYER, CALLED FOR A HARMONIZED, COHERENT, AND CONSISTENT SYSTEM THAT DID NOT UNDERMINE EUROPEAN COMPANIES' GLOBAL COMPETITIVENESS. FOR THIS REASON, HE ADVOCATED INTERNATIONAL CONSISTENCY WITH WTO AND OECD REGIMES. HE ALSO ADDRESSED THE STRUCTURAL CHANGES IN THE EUROPEAN CHEMICALS INDUSTRY THAT WOULD RESULT FROM THE INCLUSION OF DOWNSTREAM USERS IN THE APPROVALS PROCESS. THE CHEMICALS INDUSTRY ASSOCIATION (VCI) REP DR. DIETER FINK SAID SOME GROUPS INTENDED TO USE THE SUBSTITUTION PRINCIPLE TO "BLACKMAIL" SUBSTANCES OUT OF THE MARKET. HE LATER IN A TELEPHONE CALL WITH ESTOFF 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. TO HELP CLEAR UP MISCONCEPTIONS ABOUT THE EFFICACY AND EFFICIENCY OF THE U.S. APPROACH.

ECON MINISTRY PRO-BUSINESS
---

5. (U) ECONOMIC MINISTRY DAS FOR ECOLOGICAL ECONOMIC POLICY, DR. HERMANN PIEPER, RAISED CONCERNS THAT COMPANIES COULD GET HIT FROM BOTH SIDES IF THEY WERE FIRST REQUIRED TO JUMP THROUGH REGULATORY HOOPS IN ORDER TO GET THEIR PRODUCTS APPROVED, BUT WERE NOT ACCORDED ANY PROTECTION FROM LIABILITY ISSUES THROUGH THAT APPROVAL. HE ALSO DOUBTED THAT THE SITUATION OF SMALL AND MEDIUM ENTERPRISES (SMES) WAS ADEQUATELY TAKEN INTO CONSIDERATION BY THE WHITE PAPER.

6. (SBU) KNUT BRUENJES, DAS FOR TRADE POLICY AT THE MINISTRY OF ECONOMICS, TOLD ECON COUNSELOR MARCH 21 THAT EU TRADE COMMISSIONER PASCAL LAMY WANTS TO SET A POSITIVE AGENDA FOR U.S.-EU TRADE RELATIONS AND IS LOOKING FOR ISSUES ON WHICH WE CAN WORK TOGETHER. GIVEN THE STRAINED TONE OF THE RELATIONSHIP FOLLOWING THE STEEL ANNOUNCEMENT, THE GERMANS STRONGLY SUPPORT LAMY'S SUGGESTION THAT WE ACTIVELY LOOK FOR AREAS IN WHICH WE CAN COOPERATE. BRUENJES NOTED THAT CHEMICALS TESTING MIGHT BE ONE SUCH ISSUE.

LITTLE OPPOSITION FROM MOE
---

6. (SBU) THE MINISTRY OF ENVIRONMENT'S QUESTIONS DURING THE 3/8 MEETING SHOWED THEY HAD DIFFICULTY BELIEVING VOLUNTARY SYSTEMS CAN BE MORE EFFECTIVE THAN RIGOROUSLY REGULATED ONES. HOWEVER, THEY DEMONSTRATED AN OPENNESS TO USG POSITIONS, ESPECIALLY IN VIEW OF THE WEALTH OF EXPERIENCE THE EPA DISPLAYED IN THE MATTER.

7. (SBU) ENVIRONMENT MINISTRY DAS MAHLMANN REFERRED TO WORK-PLACE SAFETY CONCERNS FOR REGULATING AT THE PRE-PRODUCT STAGE. HE SAID THE IMPORTANCE OF THE SUBSTITUTION PRINCIPLE WAS VASTLY OVERRATED, AND MORE OF AN ISSUE WITH OTHER EU MEMBER STATES. KOCH REJECTED MAHLMANN'S VIEW OF THE SUBSTITUTION PRINCIPLE AND LATER TOLD ESTOFF THAT MAHLMANN WAS DOWNPLAYING THE ROLE SUBSTITUTION SHOULD TAKE ACCORDING TO SOME EU MEMBERS. KOCH CLAIMED THOSE MEMBERS' GOAL WAS TO SUBSTANTIALLY NARROW THE LIST OF CHEMICALS APPROVED FOR USE IN THE EU.

8. (U) THE MOE INFORMED US THAT A DRAFT GERMAN LAW REGULATING CONSUMER PROTECTION AND FOOD SAFETY IN ITS CURRENT VERSION WAS APPROVED BY THE CABINET MARCH 13. IT CONTAINS A CLAUSE SPECIFYING THAT CHEMICALS AND BIOCIDES WILL NOT/NOT

FALL UNDER THE PURVIEW OF THE AGENCIES TO BE ESTABLISHED UNDER THE NEW LAW, BUT WILL CONTINUE TO BE REGULATED BY THE EXISTING CHEMICALS LAW. THE DRAFT LEGISLATION NEXT GOES TO THE BUNDESTAG.

U.S. POSITION RESONATES IN GERMAN JOINT MEMO
---

9. (U) THE GERMAN GOVERNMENT, TOGETHER WITH THE GERMAN CHEMICALS INDUSTRY ASSOCIATION (VCI) AND THE MINING, CHEMICALS, AND ENERGY TRADE UNION (IGBCE), ISSUED A POSITION PAPER ON THE CHEMICALS WHITE BOOK DATED MARCH 11. RECOGNITION OF THE NEED FOR A WORKABLE, AFFORDABLE, AND NOT OVERLY BURDENSOME SOLUTION PERMEATES THE PAPER. KEY POINTS INCLUDE:

- CHEMICALS PRODUCED IN AMOUNTS LESS THAN ONE TON SHOULD NOT BE AFFECTED BY THE DIRECTIVE.

- THE DIRECTIVE OUGHT TO BE COMPATIBLE WITH WTO, OECD, AND UN REGULATIONS.

- SUBSTITUTION NEEDS TO BE TREATED IN A MORE DIFFERENTIATED WAY.

- THE SPECIAL NEEDS OF SMES SHOULD BE TAKEN INTO ACCOUNT.

10. (U) AN ARTICLE PUBLISHED ON THE EURACTIV.COM WEBSITE ERRONEOUSLY CLAIMS THAT THE GERMAN PAPER ADVOCATES REMOVING THE "PRECAUTIONARY PRINCIPLE" FROM THE CHEMICAL DIRECTIVE. AN OFFICIAL BACKGROUND PAPER ASSOCIATED WITH THE MEMO IN FACT PRAISES THE APPROVAL PROCESS AS A CLEAR IMPLEMENTATION OF THE "PRECAUTIONARY PRINCIPLE."

CHEMICALS AT WSSD
---

11. (U) AT THE MEETING, ALL SIDES AGREED THAT THE SUCCESS OF THE PIC AND POPS CONVENTIONS SHOULD BE HIGHLIGHTED AT THE JOHANNESBURG WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT AS ONE OF THE FEW AREAS WHERE AN ARTICLE IN AGENDA 21 HAD ALREADY BEEN IMPLEMENTED. THE FRG SAID PAKISTAN WANTS TO BRING THE ISSUE TO WSSD PREPCOM 3 IN NEW YORK. IN RESPONSE TO QUESTIONS, AUER ARGUED THAT IN VIEW OF UNEP'S EFFECTIVENESS IN ITS CURRENT SET-UP, CAREFUL THOUGHT SHOULD BE GIVEN TO THE IDEA OF EXPANDING UNEP TO INCLUDE OTHER RESPONSIBILITIES. ESTOFF SUPPORTED THAT VIEW AND ADDED THAT THE FRG HAD APPROACHED THE USG IN ANOTHER CONTEXT, SUGGESTING THE CREATION OF A WORLD ENVIRONMENTAL ORGANIZATION (WEO) ON THE LEVEL OF THE WTO, CREATED OUT OF A STRENGTHENED UNEP PUT ON FIRMER FINANCIAL FOOTING. ESTOFF STATED THAT THE USG PREFERRED MAKING THE EXISTING ORGANIZATIONS MORE EFFICIENT,

AND DID NOT SEE THE NEED TO FIX UNEP IF IT WASN'T BROKEN.
COATS
BT
#1116