

December 30, 2004

RE: Federal Register Notice 04-18716, Public Dialogue on Enhancing the Transatlantic Economic Relationship

From: Meghan Purvis, Environmental Health Advocate, U.S. Public Interest Research Group

U. S. PIRG is pleased to be invited to submit comments on the United States Trade Representative's Public Dialogue on Enhancing the Transatlantic Economic Relationship. While U.S. PIRG is pleased the Office of the U.S. Trade Representative is encouraging public dialogue on this issue, our organization has concerns with actions taken by the Bush Administration to hinder Europe's progress in protecting public health and the environment. In addition, we are disappointed that the administration did not work harder to find a date for a meeting more public interest organizations could attend. These comments focus on steps the U.S. can take to further regulatory efforts developed by the EU, while increasing public participation and transparency in the process. In particular, the following comments focus on the U.S. governments' work against new European chemicals regulation.

U.S. Public Interest Research Group is the federal lobbying office for the State PIRGs. State PIRGs are non-partisan, non-profit, public interest advocacy groups with a strong 30-year history and subsequent expertise in protecting the public from harmful toxic chemicals. The State PIRGs have worked to pass laws to increase the public's right-to-know about toxic chemicals in Massachusetts, passed a law in California to phase out toxic flame retardants, and released reports, such as *Needless Risk: Oil Refineries and Hazard Reduction*, documenting the dangers of the chemical industry.

### **Chemicals Regulation: EU and U.S.**

The European Union issued a new proposal for chemical regulation in February 2001, known as REACH. REACH stands for the "Registration, Evaluation and Authorization of Chemicals," and includes three main regulatory steps. While we have a number of recommendations to improve the policy, REACH represents important progress in the regulation of chemicals, due to the fact that the chemical industry will be responsible for providing safety information for chemicals produced above a certain threshold (Registration). Benefits in the other steps in the process include the evaluation of chemicals of concern by government officials and experts. Chemicals determined to be of very high concern under this evaluation will be subject to authorization (others can be subject to risk reduction or no regulatory action). Authorized chemicals will be phased out of use unless industry proves the risk the chemical poses to human health and the environment is acceptable.

When implemented, REACH will have untold benefits for human health and the environment. The European Commission projected that REACH could prevent between

2,200 to 4,300 cases of occupational cancer each year, and prevent \$61 billion in health care costs over a 30-year period of time.<sup>1</sup>

REACH also includes many benefits for the U.S. economy, human health, and the environment. Because chemicals in the environment know no boundaries, regulatory action taken on chemicals in Europe that have the ability to travel long distances will positively affect the U.S. For example, action taken in the EU on brominated flame retardants may help to decrease the levels found both here in the breast milk of mothers in the United States as well as in the bodies of polar bears in the Arctic.

In addition, some of the information produced during the REACH process concerning the safety of chemicals will be available to the international public. The U.S. will be able to learn from the experience of the EU as it looks to fix the numerous problems with its chemicals regulatory system.

This proposed regulatory system is far more adequate in its protection of human health and the environment than current U.S. regulations. The Toxics Substances Control Act (TSCA) was passed in 1976 to enable the U.S. Environmental Protection Agency (EPA) to obtain more information on industrial chemicals (meaning chemicals that are not pesticides or pharmaceuticals) and to take regulatory action against those that pose a risk to human health and the environment. There are numerous downfalls to the TSCA program:

- **CHEMICALS ARE ASSUMED SAFE UNTIL PROVEN OTHERWISE.** For 99% of the chemicals currently on the market, EPA assumes these chemicals are safe unless proven otherwise. The burden then falls on EPA to assess thousands of chemicals and attempt to prove health effects. So great the responsibility, EPA has regulated only nine chemicals since TSCA was passed in the late 1970s. EPA failed in its attempt to use TSCA to regulate asbestos, a highly toxic chemical.
- **“MANAGING,” RATHER THAN AVOIDING THE RISKS.** Even when there’s credible evidence that harm may occur from exposure to a chemical, current practice relies on assessing and “managing” the risk, rather than avoiding risk where possible. When regulators are forced to assess risk, they spend years guesstimating the relative odds that a chemical’s guesstimated toxicity combined with the average person’s speculated exposure levels will produce an impact on health. Then regulators attempt to keep the risk to an “acceptable” level.
- **BURDEN FALLS ON TAXPAYERS, NOT PROFITERS.** When EPA must follow a high burden of proof in order to regulate a chemical, taxpayers, not the chemical companies that profit from its usage, pay for any testing that is done. In its 1998 review of high production volume chemicals, EPA estimated the cost for a full round of basic screening tests, including tests for reproductive and developmental toxicity, at about \$205,000 per chemical.<sup>2</sup> The chemical industry

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<sup>1</sup> European Commission Environmental Directorate General, *Assessment of the Impact of the New Chemicals Policy on Occupational Health Final Report*, March 2003.

<sup>2</sup> U.S. EPA, Office of Pollution Prevention and Toxics, *Chemical Hazard Data Availability Study*, April 1998.

reports profits of about \$17 billion per year, thus, they should pay for the screening tests in order to better protect public health.<sup>3</sup>

REACH, although clearly more comprehensive than the US system of chemicals regulation, has its own set of weaknesses. The most glaring include the lack of a full public right-to-know. Here in the United States, state-based right-to-know programs have proven to be effective in phasing out chemicals of concern. For instance, California's Proposition 65, which guarantees citizens the right to know about toxic substances in consumer products, has led to the reformulation of numerous consumer products. Therefore, REACH should include right-to-know provisions that allow a consumer or other downstream user to determine if a certain product contains a chemical that may be of concern.

Other weaknesses of the EU REACH proposal include: lack of deadlines by when chemical companies must submit safety data; need a watchdog approach to industry-submitted safety information; immediate phase out of the chemicals of 'very high concern.'

### **U.S. Intervention in the REACH Process**

Taking into account the current U.S. chemicals regulatory system and the hazard it places on human health and the environment, as well as the gaps in the proposed EU system, the U.S. should have intervened in order to strengthen the EU proposal. Instead, many examples have become public as to how the U.S. government worked with industry to successfully weaken the proposal, with little public notification, and without the sincere involvement of environmental and consumer groups.

From the beginning, the chemical industry opposed efforts in the European Union to change the chemical regulation process. Instead, the chemical industry has supported voluntary measures that do not require testing of all chemicals.<sup>4</sup> A report written in April 2004 by the minority office of the Committee on Government Reform for Representative Henry Waxman (CA) exposed the link between the chemical industry and the Bush Administration in their work against REACH. Based on documents provided by the Environmental Health Fund, including e-mails, cables, and memos from the State Department, the U.S. Trade Representative, the Commerce Department, and the Environmental Protection Agency, this report found that the Administration worked in conjunction with the chemical industry to weaken the REACH proposal. (Copy of report included with this comment)

The Bush Administration reversed the position previously held by the Clinton Administration, and one month after the Administration took office "Commerce and USTR [were] actively meeting with the U.S. chemicals industry to solicit their views and

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<sup>3</sup> Lowell Center for Sustainable Production, *The Promise and Limits of the United States Toxic Substances Control Act*, October 10, 2003.

<sup>4</sup> Committee on Government Reform – Minority Office; *The Chemical Industry, The Bush Administration, and European Efforts to Regulate Chemicals*, April 1, 2004.

concerns,” and “advised industry to develop an official position and strategy as soon as possible to assist in influencing the EU’s draft text.”<sup>5</sup>

Instead, the Bush Administration should have worked to strengthen REACH, in order to fully protect human health and the environment. At a minimum, the Administration should have included health, environment, and consumer groups in a transparent and inclusive process to develop a coherent position. Numerous environmental groups have requested this in the past year. As a result, a meeting was held in December of 2004; however, many of the organizations with expertise and concerned memberships were unable to attend. Requests to choose a date where many representatives could be at the table were denied, and the process continued with the request of written comments instead.

As the EU REACH proposal continues to be developed and adopted, the Administration should reverse past actions and allow efforts to move forward to protect human health and the environment through improved chemicals regulation.

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<sup>5</sup> Department of Commerce, *EU White Paper: Strategy for a Future Chemicals Policy*, January or February 2002, obtained by Representative Waxman for investigative report.