

Business Europe / By C. Boyden Gray

Chemical Reaction

Brussels

It is well accepted that a key to unlocking Europe's innovation, creativity and growth potential is improving its regulatory climate. This entails both cutting back outmoded existing regulations and ensuring that the benefits of future regulations outweigh their costs to society. But it appears that the European Union is having difficulty turning the excellent intentions of its "better regulation" policy into reality.

There is perhaps no better example of this problem than the EU's gigantic chemicals regulation known as Reach, whose final adoption is expected by the end of 2006. Many improvements have been made, but Reach still has flaws that will hurt small European businesses and foreign companies in particular.

It is true that the EU proposed Reach before formally adopting its new requirements for cost-benefit analysis. But that is no excuse for failing to apply these precepts now. The fundamental flaw of Reach—which stands for the Registration, Evaluation and Authorization of Chemicals—is that it is not carefully tailored to address possible harms, and its potentially enormous costs are not offset by enough clearly identifiable health benefits. Reach would require producers and importers of chemicals and products containing chemicals that are manufactured in or imported into the EU in quantities over one metric ton per year—approximately 30,000 substances—to register them with a new EU agency in Finland, and to provide extensive information on their properties, uses and handling.

While this might seem unobjectionable, some of Reach's key provisions will apply to chemicals to which there is no human exposure—and thus no possibility of harm.

At the same time, the proposal exempts certain highly toxic chemicals where there is serious human exposure and much known existing harm. The latter group includes chemicals such as gasoline and diesel fuels—which, without an exemption, would likely be blacklisted by Reach.

For example, Reach covers reacted monomers—the chemicals that are combined to form the compounds used in plastics—even though it exempts the compounds they create. Why is this so? One explanation is that because Reach automatically applies to monomers made in Europe, firms here would be at a competitive disadvantage unless foreign firms also had to register the monomers they use in producing polymers for the EU market.

However, any protectionist gain from Reach will be short lived because, over the long haul, the entire industry will suffer from lack of growth from innovation as small companies are squeezed out of the market. At the same time, the lack of transparency and accompanying prospect of an "insider advantage" could discourage new outside investment.

The so-called "candidate list" could have the effect of inhibiting innovation. This is a list of 2,000 or so possibly harmful chemicals awaiting testing and evaluation to determine whether they can remain on the market and, if so, under what restrictions. The process by which the "candidates" are chosen is murky, is potentially subject to manipulation, and is by definition based on "potential" hazard rather than on clearly identified risks. Using the EU's own calculations on the ex-

pected pace of consideration, final decisions on these chemicals could take decades. But being put on the list to begin with is akin to an indictment—and is a death warrant for that product in the eyes of any sensible consumer.

With Reach, the EU creates a 'coalition of the excluded.'

The approach used to write the rules for applying Reach also disadvantages outsiders. Over time, these rules will become more important than Reach itself. Yet despite these rules' importance, participation in their development is so far by invitation only. In the U.S., participation in rule making of this kind is unlimited because requests for comment are widely published and agencies are held accountable for reasoned responses. In Reach, the uninvited will only be able to participate indirectly through leaks and obscure, unpublicized Web references.

This is a relatively comfortable process for established local players—at least in the short run. They have the central staffs to complete the paperwork and monitor the endless round of meetings that often accompany rule development. But this is not helpful to small companies, even those based in the EU, and it is more of a problem to non-EU companies both large and small.

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These factors explain why virtually every non-EU country with a chemicals industry has joined the U.S. in voicing serious concerns about Reach. This "coalition of the excluded" includes South Africa, which is worried that Reach will cripple the mining industry in some of the poorest parts of the developing world. At the other end of the spectrum are sophisticated high-tech producers in South Korea, India, Japan and Israel.

These countries have offered very specific suggestions: that the authorization process should be clearly risk-based; that the extension of Reach to chemicals that are embedded in manufactured goods with little risk of human exposure be strictly limited; that confidential trade secrets be protected where at all possible; and that the consultative process be more inclusive and transparent.

The EU response has not been encouraging on the whole, although some sympathetic national governments and members of the European Parliament have quietly tried to help. The EU's "party line" is that the current proposal is "balanced" and that the EU's trading partners have no choice but to comply. This is hardly the response one would expect from a major trading partner, particularly one that is striving for "better regulation."

For this reason, Reach may have consequences beyond the chemical industry because of the signals it sends about the development of regulations generally. The more regulation's unnecessary costs exceed its benefits, the greater the negative impacts on investment, innovation, job creation and economic growth.

Just as failure in the Doha round could seriously damage the cause of free trade, so can Reach discredit the idea of "better regulation," even if the EU promises to do better next time. Approving Reach in its current form would likely undermine "better regulation" and with it much of the Lisbon agenda. Conversely, a reform of Reach would greatly invigorate regulatory reform generally. In short, the EU needs a reform victory, not a defeat.

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