

THE INTRODUCTION OF COMPROMISE LEGISLATION TO FULLY IMPLEMENT THE LEGAL OBLIGATIONS OF THE UNITED STATES OF AMERICA UNDER THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS, POPS, THE ROTTERDAM CONVENTION ON PRIOR INFORMED CONSENT, PIC, AND THE AARHUS POPS PROTOCOL TO THE GENEVA CONVENTION ON LONG RANGE TRANSBOUNDARY AIR POLLUTION, LRTAP

HON. SHERWOOD BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, December 8, 2006

Mr. BOEHLERT. Mr. Speaker, I am pleased to join Mr. BARTON and Mr. GILLMOR in introducing this compromise version of treaty implementation legislation, which reflects many long hours of serious negotiation between our staffs.

I entered into those negotiations because I believe it is important for the U.S. to be a party to these important treaties to help protect the global environment. This is a view shared by both the environmental community and the chemical industry. The U.S. ought to maintain its traditional leadership role in this area, first, to protect our own national interests and to protect our citizens from hazardous pollutants that circulate globally, but also to improve health and the environment around the world.

The bill we are introducing today is a genuine compromise. It's not what I would write if I were drafting a bill alone, and it reflects movement by Mr. BARTON and Mr. GILLMOR away from their original vehicle, H.R. 4591. No doubt further improvements could be made to it, but it should serve as a marker to show the way in the next Congress. This bill should demonstrate that it is possible to write worthy implementation language without opening the "can of worms" involved in rewriting all of the Toxic Substances Control Act, TSCA. But the regulatory mechanisms created by this bill should not be seen as a precedent for other environmental statutes.

Let me make one more general point before getting into the interpretation of specific sections: I am cosponsoring this bill because I believe it will enable and facilitate the regulation of pollutants, not stymie that regulation. Quite properly under this bill, the U.S. cannot be forced to regulate a chemical by any international body. But the bill should pave the way for the U.S. to regulate additional dangerous pollutants. If the processes set out in this bill are used primarily as barriers to regulation, then that will mean that the bill is being misinterpreted or abused. The bill does require thoughtful and thorough analysis, but that is not intended to prevent any regulation from moving forward.

With that general precept in mind, let me focus on the important language in the new section 503(e)(1) of TSCA. The language calls for regulation "to the extent necessary to protect human health and the environment in a manner that achieves a reasonable balance of social, environmental, and economic costs and benefits." There are two distinct ideas and

processes encapsulated in that language. First, the Environmental Protection Agency, EPA, is to determine whether a substance needs to be regulated "to protect human health and the environment." Then, separately, it needs to determine precisely how to regulate that substance—i.e., the "manner" of regulation—taking into account "social, environmental and economic costs and benefits." I want to say this directly here to clarify language that was intended to make the same point in the Committee report that was filed on H.R. 4591.

The sponsors also want to make clear that the consideration described in the new section 503(e)(2)(A)(v) of TSCA is meant to direct EPA to consider, among other things, both the domestic and international benefits that would flow from U.S. regulation of a substance.

Now let me turn to two important differences between this bill and H.R. 4591. First, we have entirely rewritten the new section 503(e)(4) of TSCA to clarify its intent, to drop the controversial and contested notion of "weight of the evidence," and to remove any implication that that paragraph was creating a new legal or scientific standard of review. Language in the committee report on paragraph (4) does not apply to this bill.

The paragraph (4) in this bill is designed primarily to ensure transparency by requiring EPA to describe the information that was used in its decision-making and the quality of the information on which the agency based its decision.

Second, this bill clarifies when State preemption occurs. Section 6(e) now makes clear that no State preemption occurs unless and until a regulation that has been promulgated under the new section 503 of TSCA has gone into effect. No action short of that and no action under any statute other than TSCA can trigger preemption under this bill.

I greatly appreciate the openness the Energy and Commerce Committee has demonstrated during the negotiations on this bill and the courtesy they have extended to me and my staff. I hope this bill paves the way to U.S. full participation in the important treaties covered by this bill.

THE INTRODUCTION OF CONSENSUS LEGISLATION TO IMPLEMENT THE LEGAL OBLIGATIONS OF THE UNITED STATES OF AMERICA UNDER THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS (POPS), THE ROTTERDAM CONVENTION ON PRIOR INFORMED CONSENT (PIC), AND THE AARHUS POPS PROTOCOL TO THE GENEVA CONVENTION ON LONG RANGE TRANSBOUNDARY AIR POLLUTION (LRTAP)

HON. JOE BARTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, December 8, 2006

Mr. BARTON of Texas. Mr. Speaker, I am glad to join Chairman GILLMOR and Chairman BOEHLERT in introducing H.R. _____, consensus legislation to implement the legal obligations of the United States of America under the Stockholm, or POPS, Convention; the Rot-

terdam, or PIC, Convention; and the Aarhus POPs Protocol to the Geneva LRTAP Convention.

This legislation represents an enormous effort that started in the Energy and Commerce Committee over 2 years ago to bring the United States into compliance with 3 multilateral chemical agreements that have already gone into effect. It is vitally important that the United States be full-fledged participants at these Conventions and this legislation, along with ratification by the Senate, enables us to be a full and active party. More importantly, it allows our country to contribute its vast database of knowledge on chemical substances and mixtures as new chemicals are added to these agreements. Without implementing legislation, the United States government participates at a level akin to that of an NGO: permitted as "outside lobbyists," but not permitted to vote on important decisions where our expertise and scientific knowledge will be critical.

How is this bill different from H.R. 4591, the bill that was reported favorably by the Energy and Commerce Committee on Wednesday, July 12, 2006? While both bills give full, legal consideration to costs and benefits through a strong and transparent rulemaking procedure characterized by rigorous scientific analysis, the consensus bill eliminates the requirement to utilize a "weight of the evidence" approach in assessing risks and effects.

This bill also clarifies concerns raised about potential state preemption possibilities. In accord with long-standing U.S. practice to not agree to new treaty obligations unless our country has the legal authorities in place to comply with those obligations, section 6(e) of this legislation provides that any Federal preemption of state laws cannot occur unless a rule or order implementing our obligation has been issued under this Act and has gone final or become effective. Additionally, section 2 of this bill provides that no regulation issued under this authority may become effective unless the United States consents to be bound to a treaty obligation regarding that chemical substance or mixture. This modification will end the misguided criticism of H.R. 4591 on preemption issues, while preserving and codifying State Department practice.

Mr. Speaker, this legislation does not represent an overhaul to the Toxic Substances Control Act, which could take years to debate. Instead it represents a broad consensus to enact the limited legislative fixes to bring the United States into full compliance with its obligations under these agreements, and authorizes discretion to the Environmental Protection Agency to regulate additional chemicals that combines a deferential regulatory standard with rigorous and practical sound scientific analysis. As decisions are currently being made that affect American interests, the legislation represents the responsible thing to do and I would urge our colleagues in both bodies to pass it as soon as practicable.

Mr. Speaker, on a personal note it's my pleasure to offer our colleague from New York, Mr. BOEHLERT, my best wishes as he leaves this body to pursue new endeavors. His collaboration on this bill, and others, has had a real impact.