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. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, December 8, 2006

Mr. GILLMOR. Mr. Speaker, I am glad to join Chairman BARTON and Chairman BOEHLERT in introducing H.R. _____, compromise, consensus legislation to fully implement the legal obligations of the United States of America under the Stockholm, or POPs, Convention; the Rotterdam, or PIC, Convention; and the Aarhus POPs Protocol to the Geneva LRTAP Convention. This is solid public policy that I urge my colleagues to support because it reasonably implements the POPs and PIC Conventions and the LRTAP Protocol.

Over the past 4 years, and even as recently as a few months ago, I have heard people ask many questions about this bill. Why is it necessary for this legislation to become law? If the United States is already attending these meetings, isn't that enough—why do we need to move on this bill? What does being a full partner mean to these agreements and what does it give the United States Government and its people in terms of rights and opportunities that we do not already have? These are all good questions, but persistent repetition of these inquiries shows a fatal misunderstanding of these agreements and exactly why it is in the interest of the United States to become a party with ''full'' rights under these accords.

At a minimum, the failure of Congress to pass implementing legislation—thus securing Senate ratification of these treaties—leaves the United States Government in the position of defending its interests and sharing its expertise only when other countries welcome it, not when we wish and need, for our own national purposes, to offer it. The U.S. Environmental Protection Agency has testified before the House Energy and Commerce Subcommittee on Environment and Hazardous Materials that it has been forced to wait long periods of time to be recognized because the leaders of the treaty-related meetings did not consider our delegation important enough to be recognized sooner. This situation presents a radical departure from the leadership role our country took in building the consensus for these pacts to exist. Our delegations should not be welcomed at the receptions for these international meetings, but barred from being integral players in the technological discussions and final decision-making processes in these treaties. Failure to support this legislation is a clear signal that Congress misunderstands the sophistication of our nation's chemical knowledge base and regulatory experience and instead wishes the United States to cede its traditional leadership role in international toxic chemicals management.

Mr. Speaker, in 2001 the Bush administration pledged the commitment of the United States of America to join the Stockholm Convention on Persistent Organic Pollutants. That date marked the culmination of 10 years of bipartisan cooperation and leadership concerning global protection of the environment and public health. These efforts included not just POPs, but the Aarhus Protocol on Long Range Transboundary Air Pollution, LRTAP, of POPs, and the Rotterdam Convention on Prior Informed Consent, PIC. These were not the triumphs of Republican or Democrat White Houses, they were the victories premised on the various needs and hopes of all Americans. Sadly, the benefits of these agreements have not been actualized because of the policy and political agendas of the interested stakeholders as they relate to chemical management. It is unacceptable that those private parties that are subsets of the interests in our country, whether they are businesses or nonprofits, have as much, if not more, input than our own Government officials at these meetings. We must put these matters behind us and focus solely on making the U.S. a full partner.

Before I go into the specifics of this legislation and address some of its broader themes, I want to briefly further explain why this legislation is being introduced and why it is different from my bill, H.R. 4591, which also would totally implement and make the United States a full partner in these agreements. First, this bill is being introduced as a consensus position of the majority of stakeholders who have testified before the House Energy and Commerce Subcommittee on Environment and Hazardous Materials that they want the United States to pass implementing legislation. Second, this legislation is different from H.R. 4591, as introduced, because it represents a good-faith compromise among Members of Congress who actively sought to sit down with me and work out mutually acceptable provisions. I have always been willing to work with any Member of Congress on compromise provisions despite the fact that some Members' delay in getting back to me on whether they wanted to work out a compromise made enactment of this legislation nearly impossible. Finally, this legislation is a collaborative work of elected officials with input from others. Some people think that this kind of legislation needs to be delegated to interest groups to forge. Not only am I dubious about punting our constitutional responsibility to legislate to unelected persons, but history has shown that the same people who have called for a consensus stakeholder process have twice killed the resulting bills.

Regarding the specifics of this bill:

First, this bill is a targeted legislative fix that fills the existing legal gaps and only does what is important for us to become a full partner in these agreements. It does not repeal any part of Federal environmental law, but rather adds a new section to the Toxic Substances Control Act to ban the manufacture, processing, distribution in commerce, use, and disposal of agreed upon POPs and LRTAP POPs chemical substances and mixtures. This new section also grants separate, new authority for the United States to enact new regulations for future additions of POPs chemical substances or mixtures to the Stockholm Convention or LRTAP POPs Protocol. Because there has been concern from a number of persons about the difficulty existing TSCA provisions present in the way of regulating existing chemicals, this bill creates a distinct and different process within TSCA that couples similarly rigorous and sound scientific analyses, but with a more deferential regulatory standard and the elimination of procedural hurdles that many argue have hindered EPA from taking action regarding chemical protection. This is not the TSCA overhaul that many critics of the chemical manufacturing world have wanted, but it is a solid middle ground that relies on science rather than emotion to address these very insidious chemicals, while also keeping these treaties out of governing American manufacturing processes and decisions.

In addition, while many political opponents of past POPs legislative efforts have argued that the language in this legislation makes regulation of POPs more difficult and places profits of chemical companies over the protection of human health, a reading of the plain language of this legislation would prove how wrong and intentionally inflammatory they are to insist on this interpretation. Specifically, this legislation sets its regulatory standard at ''protecting human health and the environment'' and intends that while exercising this legal authority, the EPA Administrator, in choosing the means to provide that protection, is to balance costs and benefits. In other words, costs and benefits are to be taken into consideration in determining how to regulate a substance, not whether to regulate a substance.

Lastly, on this point, and to further buttress the point that this bill is a deliberately different way of handling chemicals than the way they are now treated under existing Federal environmental law, the sponsors of this bill and I recognize that implementation legislation for these international agreements is a distinct context in which to amend U.S. law. Recognizing that the underlying statutes being amended address the very broad and powerful reach of the Federal Government into U.S. manufacturing, this legislation is solely intended to allow the United States to be able to participate fully in these agreements to the extent that it wishes. The sponsors and I do not intend for the regulatory standards outlined in this bill, whether singularly or as a package, to be a blanket precedent for other environmental legislation. Future Congresses should be very careful in assessing the environmental, public health, and other social and economic needs of the country before copying this standard because of the unique circumstances and purposes to which this legislation is tied.

Second, consistent with the structures and rules of the POPs Convention, this legislation, places U.S. officials, laws, and standards—not those of an unelected and unaccountable international body—in charge of determining what specific control measures the United States should take. Treaties—just like allies—change and it is hard to predict their future. As the newly elected vice president of the NATO

Parliamentary Assembly, I see countries use environmental and safety laws as non-tariff trade barriers. In fact, we need not look any further than the World Trade Organization case involving Genetically Modified Organisms, or GMO, crops for an example of how the European Union tried to use its laws to bar market access for our farmers. I believe it is reasonable to suggest that in the same way that environmental and labor groups argued that added environment and labor considerations must not be divorced from trade agreements, such as NAFTA and GATT, you also cannot ignore that economic and labor issues need to play a role when countries enact environmental laws.

A minority of stakeholders in this country are unhappy with the chemicals policy of the present administration and support using a legal standard in this country that flows straight from these treaties and has the control measures also directed by the international treaty parties, not the United States. This type of effort not only removes the executive branch from involvement—the State Department has testified in opposition to this type of regime—but also the legislative branch from the process of considering the impact on U.S. interests and laws. Ultimately, in this construct, the judicial branch becomes the sole arbiter of rights and interpreter of obligations under these agreements—a place the framers of the U.S. Constitution never intended. In addition, these same persons want to use a judicial review standard that merely ratifies rather than questions the regulatory decisions of the executive branch. This circular argument on their part not only diminishes judicial review—which their proposals pose as the supreme avenue to set and resolve policy—but further reinforces a desire to have U.S. environmental and manufacturing policy set in foreign capitals. The legislation I am introducing today rightfully recognizes that these agreements will be law long after the current president is out of office and Congress should not and cannot pass reactionary legislation simply to hem in one leader. It is our obligation to pass the best legislation that will serve our country and its interests under every leader; this bill does that.

Third, the public should be fully informed about actions being taken under these agreements and Congress should be informed when conflicts with existing environmental statutes occur. Neither the public nor Congress should be prevented from providing input to our Government about structures that are going to affect our lives simply because it is inconvenient. History will show that cooperation between parties has allowed our treaties to function more successfully than when either Congress or the public is cut out. This contains public notice and comment throughout the entire treaty process, including the regulation of chemicals as part or our country's desire to ''opt-in.''

Fourth, this legislation preserves the existing public petition process under the Administrative Procedure Act and provides certainty to all Americans as to what rights and obligations they would have. We must not forget that we have both a mature chemical industry and a well-established set of legal rights and responsibilities that are the envy of most countries. This bill draws on—not adds to—the well-founded petition processes in all environmental laws and maintains—unamended—the current Federal-State dynamic in all environmental laws. Most importantly, nothing in this bill affects any other environmental statute, or State delegated programs under those other statutes, or any other environmental board constituted outside of TSCA.

Fifth, sound, objective, peer-reviewed science should be at the core of any decisions made by the United States under these treaties. I believe we need to focus our finite resources on the most pressing problems, not disproportionately or fully on every problem we face without regard to context. Currently, an assessment of ''risks and effects'' is called for in other environmental statutes and is not unprecedented.

In addition, the legislation being introduced today amends a provision contained in section 2 of H.R. 4591 that created a new TSCA section 503(e)(4) that relied on a determination by the EPA Administrator of the ''weight of the evidence'' when making a regulatory determination regarding restrictions on newly added POPs chemicals. It requires the EPA Administrator to use sound and objective scientific practices, the best available science, and to describe in the rulemaking record the quality of the scientific information on which the Administrator based a decision to take action against a POPs or LRATP POPs chemical substance or mixture.

Sixth, this legislation alters no existing rights and responsibilities of the States under Federal chemicals laws. First, every right, obligation, and opportunity of the States that exists under TSCA are still available to the States. Some, including several Democrat State attorneys general who were up for reelection, have argued that States would be precluded from legislating or litigating around the Federal Government in a way that they can do now. Nothing could be further from the truth. Second, even if one were to accept the argument that States should be able to act any way they want, we should not forget that this is a treaty and that States should not unwittingly put the United States out of compliance with its obligations under these agreements through their own enactments and the State Department has written to me that we should not allow that to happen. Finally, to clarify concerns raised about potential pre-emotion possibilities in the face of long-standing State Department practice—that the United States 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 pre-emption 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. Concurrently, section 2 of this bill requires, in new TSCA section 506, that no regulation issued under this authority can become effective unless the United States consents to be bound to a treaty obligation regarding that chemical substance or mixture.

Seventh, and finally, while this legislation is careful to ensure that only U.S. officials are the drivers of decisions affecting our Nation and its citizens—a feature expressly guaranteed by these treaties—I also want to point out that this legislation also recognizes the global nature of this treaty and the important contributions that other countries may make to inform our decisions. Section 2 of this legislation establishes a new TSCA section 503(e)(2)(B) that allows the EPA Administrator to use internationally generated information or scientific studies, so long as they meet the scientific soundness and objectivity criteria in this legislation, in assessing the statutory considerations regarding the domestic regulation of a new POPs or LRTAP POPs chemical substance or mixture.

Furthermore, new TSCA section 503(e)(2)(v) of section 2, requires domestic consideration of ''national and international consequences that are likely to arise as a result of domestic regulatory action (including the possible consequences of using alternative products or processes).'' In doing so, this provision's use of the word ''consequences'' is not meant to automatically imply negative connotations, but rather that the EPA Administrator is to look at the national and international positive and negative benefits that would flow from domestic regulatory action. That being said, the inclusion of this provision is in no way meant to give new legal rights or standing to foreign-based entities in U.S. courts regarding U.S. domestic regulatory actions under this legislation or the international environmental accords that this legislation implements.

Mr. Speaker, this legislation is a true compromise that represents the middle ground on treaty implementation legislation and a place where most Americans believe our policy should be. If the United States is to remain a leader in the global environmental debate it must have legislation that fully implements these treaties. The time has come for us to make a difference in global environmental protection from the most toxic of chemical substances and mixtures. I urge Congress to pass this legislation as soon as is practicable and make a strong statement of our national resolve to tackle these matters rather than place mere words behind our commitments.

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