New Power for 'Old Europe'

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The Bush Administration has interpreted its victory in the 2004 election as a mandate to take its free-market policies to further extremes. It is signaling its determination to unhinge US industry from what remains of regulations limiting the poisons in our water, our bodies and our air. But while they are newly emboldened at home, the Administration and its corporate allies are looking warily across the Atlantic to Brussels. Here, in the capital of the European Union, an unprecedented challenge to longstanding practices of American industry is unfolding.

Since the fall of the Berlin wall, the European Union has been steadily transforming itself from a facilitator of trade to a sophisticated geopolitical power with the teeth to back up its policies--an evolution that has occurred largely under the American public's radar. Over the past decade, EU member states have ceded governing and enforcement authority to Brussels in areas ranging from environmental regulation to food safety, accounting standards, telecommunications policy and oversight of corporate mergers. As a result, US companies that do business in Europe--which remains America's largest export market--are quickly learning that "old Europe" is now wielding new world power.

Just this year, US manufacturers of such goods as chemicals, cars and cosmetics have been confronted with EU regulations that force a choice: Either conform to the EU's standards of pre-emptive screening for toxicity--far tougher than US standards--or risk sacrificing the European market, which, with 450 million people, is now larger than that of the United States. In the process, the European Union is challenging US presumptions of unilateral decision-making on issues with tremendous consequences for American companies and consumers, treading on ground that has long been considered sacred turf.

"Americans are in for a rude shock," says Clyde Prestowitz, a former Reagan Commerce Department official and author of Rogue Nation: American Unilateralism and the Failure of Good Intentions. "Other players are establishing their own standards, and they have the muscle to make them stick. We are headed into a new era."

REACH and Ye Shall Find

Last summer, while Americans were focused on the worsening crisis in Iraq and the intensifying presidential campaign, the US chemical industry was consumed by plans at the EU's Environment Commission to complete the details of a proposed regulation known as REACH--Registration, Evaluation and Authorization of Chemicals. For the $500 billion chemical industry, REACH threatens a revolution in
In 1976 the US Congress passed the Toxic Substances Control Act, which required chemicals introduced after the law took effect in 1979 to be tested before being registered for use. The problem with TSCA—or what critics call the "Toxic Substances Conversation Act"—is that 80 percent of the chemicals on the market today were introduced before 1979. But Europe at that time followed the US model, so in effect TSCA established the global standard. No more. REACH is the first effort to secure environmental data on some 30,000 chemicals that have been on the market in the United States and around the world without any significant testing of their toxicity on human health and the environment.

These include an array of highly toxic substances that were effectively grandfathered into the market by TSCA, including industrial solvents like ethyl benzene, known to cause nerve damage; heavy metals like cadmium, an ingredient in many paints and industrial ceramics that can cause kidney failure; and a family of plastic byproducts, called furans, that are potent carcinogens and endocrine disrupters. Many of these chemicals have already been found in high concentration in the blood of Americans and Europeans; during a World Health Organization convention in Budapest last June, the World Wildlife Fund International revealed forty-four different hazardous chemicals in the bloodstream of top EU officials, including then-Environment Commissioner Margot Wallstrom, now the vice president of communications for the European Commission, the executive arm of the EU.

The proposed regulations, according to Robert Donkers, one of the authors of REACH and now posted in Washington as environment counselor for the European Commission's US delegation, evolved out of the realization that little was known about chemicals contained in a vast array of consumer products. "There was great political anxiety in Europe when we discovered that carcinogenic chemicals were being released from consumer products like diapers and softeners in baby toys. We discovered that neither consumers nor the government was informed about the chemical properties of what is in those and other products and how they break down. An overhaul was needed."

Under REACH, chemicals determined to be "carcinogens, mutagens or reproducive toxins" would have to be taken off the market within a decade. According to the EPA's own standards, this could amount to as many as 1,400 chemicals. For other chemicals, REACH establishes several layers of testing for toxicity—with strictures that grow tougher as the quantity and risk increases. The proscriptions also apply to chemicals in manufactured goods: REACH encourages substitutions for chemicals that pose "potentially serious or irreversible threats" to human health. A new European Chemicals Agency would administer the program from Helsinki.

The REACH directive represents an upheaval in the basic philosophy of chemical regulation, flipping the American presumption of "innocent until proven guilty" on its head by placing the burden of proof on manufacturers to prove chemicals are safe—what is known as the "precautionary principle." REACH adds extra bite with a requirement that toxicity data be posted publicly on the new agency's website. Thus, test results that were once tightly held by chemical companies will suddenly be available to citizens and regulators across the globe. That prospect foreshadows trouble for US chemical producers.

"The chemical industry is scared that the American people might not want to be second-class world citizens," says Charlotte Brody, executive director of Health Care Without Harm, a Washington, DC-based coalition of healthcare professionals. "If people in Europe have chemicals in their toys that are not dangerous, maybe we don't want those same chemicals for our kids." With REACH, the Europeans hit a powerful nerve. The chemical industry launched an intensive lobbying campaign, conducted in parallel with the Bush Administration, to derail the proposed directive before it becomes law.

In late January, when Defense Secretary Donald Rumsfeld issued his now-famous slight of our European
ally as "the old Europe," inside the State Department "old Europe" was causing panic: A draft position paper circulating inside Foggy Bottom expressed alarm at the evolving REACH proposal. By early March, the State Department sponsored a visit by Dow Chemical executives to Athens to lobby the Greeks--who at that time occupied the EU presidency--to oppose REACH. On April 29, Secretary of State Colin Powell sent out a seven-page cable to US embassies in all the EU member states claiming that REACH "could present obstacles to trade and innovation" and cost US chemical producers tens of billions of dollars in lost exports. The cable stated that REACH's precautionary principle was "problematic"--striking at the heart of the difference between the US and European regulatory approaches toward potential environmental hazards.

The State Department's tone and apocalyptic predictions that REACH could adversely affect "the majority of U.S. goods exported to the EU" (over $150 billion last year) mirrored the position papers of the industry's main lobbying organization, the American Chemical Council, on REACH. The State Department claimed that REACH would be "unworkable in its implementation, [would] disrupt global trade, and adversely impact innovation." In June US Trade Representative Robert Zoellick reiterated that argument in a submission to the World Trade Organization's Technical Barriers to Trade Committee in Geneva.

Those assertions have been vigorously disputed by the EU. In October the EU claimed in a countersubmission to the WTO that the costs of implementing REACH over the next eleven to fifteen years could total $3.5-$6.5 billion, but that those costs would be offset over time by profits generated from safer alternatives--and compare favorably to the $60 billion it estimates would be saved in chemical-related health costs alone over the next three decades.

Zoellick's objections to REACH prompted Senators Frank Lautenberg and James Jeffords to request that he provide details about who the Administration consulted before issuing its position to the WTO. "We are troubled," the senators wrote Zoellick on October 19, "by reports that the Administration fashioned its position on REACH to reflect unsubstantiated cost concerns raised by a narrow segment of U.S. industry, without any genuine consideration of the likely health and environmental benefits that such policies would generate." Thus far there has been no response to their queries.

EU officials I spoke with describe practically weekly visits from delegations representing the Commerce Department, the US Trade Representative, the State Department and/or the American Chemical Council. In April, then-Environment Commissioner Wallstrom complained to a meeting of EU and EPA officials in Charlottesville, Virginia, that REACH had been subject to "enormous interest and lobbying," but she insisted that the "consensus" for reform of the current system remains strong. The lobbying continues: In October the US mission to the EU sent out a joint appeal with the Australian mission to the EU missions of Canada, Japan and other Asian nations to attend a meeting to develop a "coordinated outreach" strategy among "EU trading partners" on REACH. Members of the European Parliament (MEPs) were invited to meetings with the US- and Australian-orchestrated delegations so the latter could communicate their opposition to REACH--an extraordinary intrusion of the United States into a debate over internal EU policy.

Never before has an EU proposal drawn fire from such heavy guns. The US chemical industry, like other American industries, has been discovering that a presence in Brussels is now a must--and has had to learn new ways to exert influence in a governing institution with three chambers, twenty-five countries and twenty national languages, and in which the usual cocktail of campaign contributions, arm-twisting and seduction are neither warmly received nor, in the case of campaign contributions, legal. "We've certainly had to learn a lot about a new parliament, new procedures, new political parties," says Joe Mayhew, senior adviser to the American Chemical Council.

The lobbying campaign has largely backfired. Its primary effect has been to delay a final vote on REACH in the European Parliament from February to the middle of next year at the earliest. But there is little doubt it will pass--almost a decade in the making, support for REACH in the Parliament stretches broadly across
party lines. "It is not a question of if but when," says the EU's Robert Donkers. Hearings will commence in the Parliament on January 19. The current Dutch president of the EU has committed to forging political agreements around REACH for consideration by the Council of Ministers before the hearings begin.

The fact that policies emanating from Brussels now threaten longstanding American industrial practices is a sign of how profoundly trans-Atlantic relations are shifting. "We used to have to deal with individual countries," comments Mayhew of the American Chemical Council. "We'd pay attention to, say, France. Not to be pejorative here, but we wouldn't really pay much attention to what Spain was doing. Having the EU as a single bloc with regulatory authority is a new thing for us."

**A Makeover for the Cosmetics Industry**

Every morning across America, tens of millions of women apply to themselves an average of nine "personal care" products. From tubes and bottles and delicate brushes come the tools of beauty and self-preservation known as cosmetics. Users of these products might assume that somebody is watching to insure that potentially toxic ingredients are kept away from intimate contact with their body. They would be wrong. Neither the Food and Drug Administration nor any other government agency regulates ingredients used in the preparation of cosmetics. The Food, Drugs and Cosmetics Act of 1938 established extraordinarily lax standards for the regulation of cosmetic ingredients. But earlier this year, when the Environmental Working Group compared the ingredients in 7,400 personal care products with potentially hazardous chemicals identified by the Centers for Disease Control and other leading medical institutions, dozens of varieties of skin and tanning lotions, nail polish, mascara and other personal care products were found to contain known and suspected carcinogenic, mutagenic and endocrine disrupting chemicals.

The improvisational nature of the cosmetics industry is about to change. EU member states submitted plans to the European Commission to institute new guidelines established by what's known as the "Cosmetics Directive," which takes effect this coming February. The directive calls for the removal of ingredients suspected of causing "harm to human health" from cosmetics and personal care products in Europe. The effects of that directive are being felt around the world.

The main regulatory body for cosmetics in the United States is the industry itself, represented by the Cosmetic, Toiletry and Fragrance Association (CTFA). What that means, in effect, is that several times a year a Cosmetic Ingredient Review board (CIR)--made up of toxicologists drawn primarily from universities and paid for by the CTFA--reviews the existing literature on ingredients and makes recommendations to the industry. There is nothing that requires any member company to respond to the board's safety or health recommendations.

Over the past three years the review board suggested that at least nineteen ingredients be removed from personal care products--including coal tar, a hair dye linked to high rates of bladder cancer among hairdressers; sodium borate, sometimes called boric acid, which has been linked to testicular development problems and is included in Desitin diaper rash ointment for infants, and which the CIR recommended "should not be used on infant or injured skin"; iodopropynyl butylcarbamate, a mutagen in animal testing included in a South Beach tanning spray that the CIR recommended "not be used in products intended to be aerosolized"; and ethoxyethanol acetate in nail polish, which the CIR stated is "unsafe for use in cosmetic products." The FDA has done nothing to mandate removal of these or legions of other potentially dangerous ingredients, according to the Environmental Working Group.

Last spring the Safe Cosmetics Campaign, a group of women's and environmental health NGOs, sent an appeal to some 250 firms that sell personal care products in the United States, asking that they conform to the health requirements of the EU's Cosmetics Directive as well as take other actions to insure more stringent controls over potentially toxic ingredients. Of those, the campaign heard from sixty-five
companies; responses ranged from resistance to accommodation. Revlon and Estee Lauder replied by citing the CTFA's official response to the EU: On March 25, CTFA stated that the directive "represents an unnecessary change in the philosophy of regulation of cosmetic ingredients in the EU."

Other major producers, like L'Oreal, Liz Claiborne and Gillette, responded that they were already beginning the process of reformulating their products to conform to the requirements of the Directive; the Gap and Alberto Culver indicated that they would do so if they discovered ingredients within the EU's range of health concerns. Natural product companies, like Aveda, Custom Aesthetics and numerous small firms, claimed they were already in compliance. Several of the largest companies, like Unilever, have yet to respond, while Procter & Gamble insisted to the campaign that it would continue its policy of formulating products on a market-by-market basis. After the Safe Cosmetics Campaign began running a newspaper ad in the fall about the potential health dangers from cosmetics, Revlon shifted gears, indicating its willingness to abide by the EU's new strict rules.

"We are asking companies to be accountable for the safety of their cosmetics," says Janet Nudelman, program director of the Breast Cancer Fund. To accomplish that goal, public health advocates looked not to Washington but to Brussels--where the EU is now a force that enjoys transatlantic reach and is far tougher than our own FDA.

A Car's Life

Jean Tinguely was a Swiss sculptor renowned for his grand mechanical creations, huge machines full of whirring wheels and gears that were designed to self-destruct. His works, widely dispersed through Europe's finer art institutions--and showing up more rarely in the United States--evoke a kind of grinding perfection, a speed-up of what is built into every mechanical device: its own death. Much like the automobile, which may purr steadily for ten or twenty years or even longer. But ultimately those gears and crankshafts, like a Tinguely machine, will fail, and the automobile will die. Then what happens?

Every year aging cars, left to decay in scrapyards or fields or suburban driveways, create more than 15 million tons of waste across the United States and Europe. Many components in those autos contain toxic ingredients, including metals like lead, mercury, chromium and cadmium, which are known to induce problems such as nerve damage and cancer in laboratory animals. The plastic in the seats and dashboards never biodegrades. Cars and their component parts are left to despoil the landscape, leach into the soil and poison groundwater. There is nothing to stop them.

Across the Atlantic, the EU has implemented a program with the oddly philosophical title "End of Life Vehicles Directive." Starting in 2006, all cars produced or sold in the EU must be built with at least 85 percent recyclable components; by 2015 that figure rises to 95 percent. The directive also bans toxic heavy metals like cadmium and requires that manufacturers take responsibility for disposing of their cars. According to the European Commission's administrator for the vehicles program, Rosalinde van der Vlies, European, Japanese and Korean car manufacturers are already beginning to adapt their production processes in anticipation of the new requirements.

For US car manufacturers the directive presents a historic challenge. American car companies export virtually no cars to Europe; thus US manufacturers are under little direct pressure to adapt to European standards. But each of the US Big Three has substantial ties to the European market: Ford has its own Ford Europe production facilities and owns the Jaguar line in Britain. General Motors owns the German Opel, the Swedish Saab and produces its own line of vehicles in Britain under the Vauxhall label. DaimlerChrysler is owned by the German manufacturer Daimler-Benz.

Glenn Mercer, an auto industry analyst for the consulting firm McKinsey & Company, says there is no sign
of these reforms’ being instituted by either US parent or subsidiary companies, nor is a serious effort being made to develop alternatives to the toxic chemicals included in American cars. The concept of being responsible for the ultimate disposal of those cars has been received in this country like a message from another planet.

Mercer comments: "Every time you drive a car you've made a decision to pollute. With every car, you have the decision: Do you dispose of it in a controlled setting, as required by the European Union? Do you find alternatives to the chemicals and take the hit on sales that may result from a higher price? Or do you leave them in your car, and have them dispose themselves into the environment over fifteen years?" Thus far, the United States has been taking the latter approach--duel production according to dueling standards.

At the core of the EU's regulatory approach is what van der Vlies calls "life cycle analysis": assessing the actual costs over the lifetime of consumer products, from their creation to their demise. The End of Life Vehicles Directive is intended to insure that those costs are shared by the manufacturer--while providing a powerful incentive to develop more sustainable alternatives.

Every European diplomat I spoke with was careful to insist that Europe's new generation of environmental directives is not intended to "impose" Europe's will upon the United States. Camilo Barcia Garcia-Villamil, the Spanish consul in San Francisco, who spent fifteen years working with the EU in Brussels, comments: "The European Union now has increased decision-making capacity. And if American companies want to be active in the European market, they must take account of European rules. We are not imposing our standards. We are making foreign companies respect our standards when they are in Europe." This is diplomatic language that is new in the context of transatlantic relations--though its inverted formulation would be quite familiar to generations of postwar American policy-makers.

"Economically, Europe stands toe to toe with the United States," says Clyde Prestowitz, now head of the Economic Strategy Institute in Washington. "We can't dictate to it any longer. We have to negotiate."

**The New Power of 'Old Europe'**

When Henry Kissinger was Secretary of State for President Ford in 1977, he famously asked in frustration, "What telephone number do you dial to reach Europe?" Today, the area code for that number is clear: 32-2, for Brussels, which has been transformed from the provincial capital of a small European country into an international metropolis bustling with a multilingual, highly educated EU workforce drawn from across the continent.

The European Union has its roots in a simple "coal and steel pact" signed between France and Germany in 1951 to facilitate trade in those critical commodities to aid in postwar reconstruction. Over the subsequent decades of the cold war, an integrated Europe was supported by the United States as a restraint on Germany's resurgence and a critical Western bulwark against the expansion of the Soviet Union.

The pact would later evolve into the Common Market and, finally, into the political and economic powerhouse of today's European Union. For the first time in history, a superpower has emerged that is not based on nationalistic ambitions or military power but upon a voluntary submission of national aspirations to a transnational authority. Its architects were well aware of the EU's departure from the usual march of political history: Jacques Delors, the visionary European Commission president from 1985 to 1994, used to refer lightheartedly to the evolving Union as an "Unidentified Political Object."

On foreign affairs, Europeans continue to have trouble speaking with one voice--as the divisions in Europe over the US invasion of Iraq showed. But on domestic matters, the EU speaks for Europe--and it is those initiatives, emanating from Brussels, that are sending powerful messages across the Atlantic. "In Europe
today, we are seeing a focal point of regulatory action other than the United States that, for the first time in the postwar period, is driving world markets," says David Wirth, a trade law specialist who negotiated the Montreal Protocol on ozone depletion on behalf of the United States and is currently director of international studies at Boston College Law School.

Indeed, a broad spectrum of American industry has already felt the potency that comes from an integrated market and differing standards of environmental and consumer protection. Microsoft, for example, was fined $497 million earlier this year by the EU for its "anti-competitive practices," and General Electric's long-planned takeover of Honeywell was skewered in 2002 by the EU's Competition Commission, which has now emerged as a critical first stop by corporations en route to a merger. "It used to be," comments Amelia Torres, spokeswoman for the Competition Commission, "that the EU would be the last part of any deal. Now they know they have to come here first." The agribusiness company Monsanto became accustomed to contentious forays into Brussels while struggling to obtain EU acceptance of its genetically engineered seeds.

EU politics are a complicated business; the Parliament is as tumultuous a democratic body as any. The recent controversy over the nomination of a new European justice commissioner with extreme views on women and homosexuals illustrated some of the social and political frictions that continue to divide Europeans, a passing storm to which much of the American media responded with smug condescension. These developments came on the heels of a European parliamentary election last June that drastically changed the composition of the legislature: Ten new member countries, most from the orbit of the former Soviet Union, sent delegations to the Parliament; 50 percent of the MEPs who won election had never before served in Brussels. But these changes show little sign of derailing the regulatory policies that are now embedded in the EU's machinery of government.

Now that Europe has a phone number, US ardor for integration has begun to cool. "The White House is questioning whether it's a good idea for Europe to be speaking with one voice," says Fraser Cameron, who served with the European Commission's delegation to Washington until 2002 and is now director of studies at the European Policy Center in Brussels.

Cameron points out that the United States and the European Union remain each other's most significant trading partners in the world--our entanglements are deep and abiding. But as Europe becomes a more assertive political force, the question will become, as he puts it, "Why shouldn't Americans enjoy the same standards as Europeans?"

Such a basic question used to run in the other direction, when the United States set the gold standard for the world's environmental health. And the answer strikes at the core of the Bush Administration's most savored narratives--that we, alone, are masters of our nation's fate.