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DEPARTMENT PASS USTR FOR SANFORD, PRESCOTT, NORTON;
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TAGS: ECON, EIND, EPA, ETRD, EU
SUBJECT: EU CHEMICALS POLICY: EPA DELEGATION'S MEETINGS
WITH EUROPEAN COMMISSION

REF: A. A) 02 BRUSSELS 5989
B. B) 02 BRUSSELS 6085

SUMMARY
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1. (SBU) A U.S. EPA DELEGATION LED BY ASSISTANT ADMINISTRATOR STEPHEN JOHNSON MET DECEMBER 3-4 IN BRUSSELS WITH OFFICIALS IN THE EUROPEAN COMMISSION'S DIRECTORATE GENERALS FOR ENVIRONMENT, ENTERPRISE, AND TRADE TO DISCUSS THE COMMISSION'S PROPOSED NEW REGULATORY REGIME FOR CHEMICALS. THE EPA DELEGATION STRESSED THAT THE U.S. SHARES THE EU'S BROAD OBJECTIVES FOR THE REGULATION OF CHEMICALS, BUT WAS HAVING DIFFICULTY RECONCILING THE "VISION" OF THE FEBRUARY 2001 CHEMICALS WHITE PAPER WITH ITS PRACTICAL ASPECTS AND IMPLICATIONS FOR WORKABILITY. JOHNSON'S VISIT

ELICITED THE FOLLOWING EC ASSURANCES: THE EC WILL CONDUCT A CONSULTATION ON ITS DRAFT CHEMICALS DIRECTIVE VIA THE INTERNET, POSSIBLY IN LATE JANUARY OR FEBRUARY; THE EC WILL BE OPEN TO FURTHER TECHNICAL AND POLITICAL CONSULTATIONS WITH THE USG ONCE THE PROPOSAL IS FINALIZED; DG TRADE WILL THOROUGHLY REVIEW THE DRAFT POLICY FROM THE PERSPECTIVE OF COMPATIBILITY WITH THE WTO'S AGREEMENT ON TECHNICAL BARRIERS TO TRADE AND OTHER WTO OBLIGATIONS. END SUMMARY

2. (U) U.S. EPA ASSISTANT ADMINISTRATOR FOR PREVENTION, PESTICIDES, AND TOXIC SUBSTANCES STEPHEN JOHNSON VISITED BRUSSELS DECEMBER 3-4, 2002. JOHNSON WAS ACCOMPANIED BY CHARLES AUER, DIRECTOR OF EPA'S OFFICE OF POLLUTION PREVENTION AND TOXIC SUBSTANCES, AND BRECK MILROY, EPA'S BIOTECHNOLOGY COORDINATOR. THE DELEGATION, ACCOMPANIED BY USEU, MET WITH THE FOLLOWING EUROPEAN COMMISSION OFFICIALS: ROLF ANNERBERG, CHIEF OF STAFF IN DG ENVIRONMENT; JEAN-PAUL MINGASSON, DIRECTOR GENERAL IN DG ENTERPRISE; AND IAN WILKINSON, DIRECTOR IN DG TRADE. THE DELEGATION'S MEETINGS WITH EUROPEAN PARLIAMENTARIANS AND OTHERS WILL BE REPORTED SEPTEL.

MEETING WITH DG ENVIRONMENT
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3. (SBU) JOHNSON'S DECEMBER 4 MEETING WITH DG ENVIRONMENT CHIEF OF STAFF ROLF ANNERBERG ELICITED CONSIDERABLE INTEREST ON DG ENVIRONMENT'S PART REGARDING U.S. EXPERIENCE IN REGULATING INTERMEDIATE CHEMICALS. (DG ENVIRONMENT STAFF ROB DONKERS ALSO PARTICIPATED IN THE DISCUSSION)). DG ENVIRONMENT ALSO INDICATED INTEREST IN U.S. VIEWS ON HOW "PRODUCT GROUPING" MIGHT BE HANDLED AS A MEANS OF EASING THE ADMINISTRATIVE AND COST BURDEN OF THE PROPOSED CHEMICALS POLICY. ANNERBERG SPECULATED THAT "THERE MAY BE OTHER ISSUES" ON WHICH THE EC WOULD WANT TO CONSULT FURTHER WITH EPA.

4. (SBU) ANNERBERG CONFIRMED THAT DG ENVIRONMENT WILL CONDUCT AN INTERNET-BASED PUBLIC CONSULTATION ON THE FINALIZED DRAFT REGULATION (WHICH HE SPECULATED MIGHT BE READY IN JANUARY OR FEBRUARY). JOHNSON ASKED WHETHER THE CONSULTATION PROCESS WOULD INVOLVE THE USG AND EPA. ANNERBERG RESPONDED AFFIRMATIVELY, AND SAID "IF YOU WANT FURTHER CONSULTATIONS (BEYOND THE INTERNET CONSULTATIONS PROCESS), WE WILL CONSIDER THAT." ANNERBERG DID NOT RESPOND, HOWEVER, TO JOHNSON'S SUGGESTION THAT, BASED ON U.S. EXPERIENCE, THERE IS REAL VALUE IN A PROCESS THROUGH WHICH REGULATORS MUST ACTIVELY RESPOND TO COMMENTS RECEIVED, EVEN IF THERE IS DISAGREEMENT ON SUBSTANCE.

5. (SBU) JOHNSON AGAIN REITERATED THE NEED FOR POLITICAL-LEVEL DIALOGUE ON THE EMERGING EU POLICY, IN ORDER TO REINFORCE POTENTIAL FOR HARMONIZATION AND COOPERATION BETWEEN THE U.S. AND THE EU. HE ENUNCIATED KEY USG CONCERNS WITH RESPECT TO THE WHITE PAPER: LACK OF APPARENT SCIENTIFIC BASIS FOR REGULATION OF POLYMERS, INTERMEDIATES, AND

ARTICLES; LOOMING CHALLENGES FOR RESOURCE ALLOCATION IN ORDER TO EFFECTIVELY IMPLEMENT THE PROPOSED REGULATORY APPROACH; AN APPARENT MOVE AWAY FROM AN OECD/INTERNATIONAL CONSENSUS ON DEVELOPING HAZARD INFORMATION ON HIGH-PRODUCTION-VOLUME CHEMICALS; POTENTIAL FOR THE EXTREMELY HEAVY EU REGULATORY STRUCTURE TO FOCUS ON CHEMICALS WITH INCONSEQUENTIAL RISK, DIVERTING RESOURCES FROM THE TRUE PROBLEM AREAS; AND THE THREAT THAT HIGH COSTS WOULD INHIBIT CONTINUED INNOVATION OF NEW, SAFER CHEMICAL SUBSTANCES.

6. (SBU) ANNERBERG PICKED UP ON JOHNSON'S COMMENTS ON THE RESOURCE IMPLICATIONS OF THE WHITE PAPER APPROACH, AGREEING THAT "WE NEED TO HAVE SOME INTERNATIONAL DIVISION OF LABOR" ON DEVELOPMENT OF INFORMATION ABOUT CHEMICAL RISK. HE NOTED THAT THE ISSUE OF SCOPE OF REGULATORY COVERAGE WAS STILL OPEN, AND WAS BEING CONSIDERED FROM THE PERSPECTIVE OF CREATING A WORKABLE SYSTEM. IN THIS REGARD, DG ENVIRONMENT WAS PARTICULARLY INTERESTED IN THE U.S. REGULATORY APPROACH FOR INTERMEDIATE CHEMICALS. JOHNSON NOTED THAT EPA GENERALLY EXCLUDES FROM REGULATION INTERMEDIATES THAT ARE USED IN CLOSED SYSTEMS; INTERMEDIATES THAT ARE TRANSPORTED ARE SUBJECT TO CERTAIN REGULATORY REQUIREMENTS, SUCH AS LABELING AND CLASSIFICATION. JOHNSON SUGGESTED THAT U.S. AND EC TECHNICAL EXPERTS SHOULD CONSULT FURTHER ON THIS ISSUE.

7. (SBU) DG ENVIRONMENT ALSO REMAINED PREOCCUPIED, ANNERBERG SAID, ON THE CONSEQUENCES OF THE REGULATORY POLICY FOR SMALL/MEDIUM ENTERPRISES. HE ALSO INDICATED, WITHOUT ELABORATING, THAT THE COMMISSION WAS STILL DISCUSSING WHETHER TO IMPLEMENT THE CHEMICALS POLICY THROUGH A SINGLE REGULATION OR TWO DIRECTIVES.

8. (SBU) IN THE CONTEXT OF DISCUSSING THE NEED TO PRIORITIZE REGULATORY EFFORTS, JOHNSON REFERRED TO EPA'S PROGRAM FOR VOLUNTARY EVALUATION OF CHEMICALS (A SET OF ABOUT 25) WITH RELATIVELY GREATER POTENTIAL FOR EXPOSURE TO CHILDREN. JOHNSON STRESSED THAT THESE CHEMICALS WERE NOT PRESUMED TO BE HAZARDOUS; RATHER, THE EFFORT WAS TO GATHER DATA ON THESE SUBSTANCE IN LIGHT OF THE DEGREE OF EXPOSURE TO A VULNERABLE POPULATION. ANNERBERG AND HIS STAFF EXPRESSED INTEREST IN FOLLOW-UP ON THE APPROACH TAKEN BY THE EPA IN THIS AREA.

9. (SBU) JOHNSON NOTED HIS SURPRISE THAT THERE HAS NOT BEEN MORE PUBLIC DISCUSSION OR OUTCRY ON THE POTENTIAL ANIMAL TESTING IMPLICATIONS OF THE PROPOSED EU POLICY APPROACH, NOTING THAT EPA HAS COME UNDER SHARP ATTACK FROM ANIMAL RIGHTS ACTIVISTS FOR ITS OWN MUCH SMALLER PROGRAM OF EVALUATION ON HIGH-PRODUCTION-VOLUME CHEMICALS. DONKERS RESPONDED THAT, ON THE CONTRARY, THE EU ANIMAL RIGHTS MOVEMENT HAS BEEN VERY ACTIVE ("COME SEE THE 30,000 POST CARDS IN MY OFFICE"). THE ANIMAL TESTING INTEREST WAS ONE DRIVER, ANNERBERG SAID, FOR EXPLORATION OF ALLOWING TESTING OF GROUPS OF SIMILAR PRODUCTS.

10. (SBU) REGARDING COVERAGE OF "ARTICLES," ANNERBERG NOTED THAT "COVERAGE OF CHEMICALS IN PRODUCTS WILL BE VERY

DIFFICULT." DONKERS STATED THAT THE COMMISSION DOES NOT INTEND TO PROPOSE COVERAGE OF ARTICLES, BUT THE COUNCIL AND PARLIAMENT WERE NONETHELESS EXPECTED TO PRESS FOR SUCH COVERAGE. BOTH HE AND ANNERBERG STRESSED, HOWEVER, THAT THE EVENTUAL EU REGULATORY SYSTEM WOULD NEED TO ADDRESS THE ISSUE OF IMPORTED ARTICLES. THE PRESENCE OF CHEMICALS IN EU-PRODUCED ARTICLES COULD BE ADDRESSED THROUGH THE EVALUATION AND REGULATION OF THE UPSTREAM CHEMICAL COMPONENTS, BUT THE EU WOULD NOT HAVE THE SAME DEGREE OF CERTAINTY WITH RESPECT TO CHEMICALS ENCOMPASSED IN ARTICLES PRODUCED UNDER OTHER (NON-EU) REGULATORY REGIMES AND IMPORTED INTO THE EU. DONKERS INDICATED THAT THE EU "MIGHT NEED TO LOOK AT A SYSTEM LIKE YOURS," IN TERMS OF RELIANCE ON IMPORTER CERTIFICATION WITH RESPECT TO THE PROPERTIES OF CHEMICAL COMPONENTS OF THEIR PRODUCTS/ARTICLES.

MEETING WITH DG ENTERPRISE
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11. (SBU) IN HIS MEETING WITH DIRECTOR-GENERAL JEAN-PAUL MINGASSON, JOHNSON UNDERSCORED THAT PROTECTION OF THE ENVIRONMENT IS A SHARED GOAL AND THAT OPPORTUNIIES EXIST FOR COOPERATION BETWEEN THE U.S. AND THE EU ON THE HARMONIZATION OF CHEMICALS REGULATION. AS A REGULATOR, HOWEVER, HE EXPRESSED CONCERN WITH THE EU'S CURRENT APPROACH. JOHNSON EMPHASIZED THE IMPORTANCE OF BASING REGULATIONS ON SOUND SCIENCE AND BALANCING THE GOALS OF HEALTH AND ENVIRONMENTAL PROTECTION WITH SUSTAINABILITY, TRADE AND COMPETITION. HE INVITED DG ENTERPRISE TO LEARN FROM EPA'S EXPERIENCES, BOTH GOOD AND BAD. HE ALSO ENCOURAGED DG ENTERPRISE TO GIVE SERIOUS CONSIDERATION TO STAKEHOLDER INPUT AND TO TAKE SUCH VIEWS INTO ACCOUNT WHEN DRAFTING THE FINAL LEGISLATION.

12. (SBU) REGARDING THE SCOPE OF THE EU'S FUTURE CHEMICALS POLICY, JOHNSON URGED THE COMMISSION TO PRIORITIZE ITS FOCUS ON CHEMICALS OF GREATEST CONCERN AND, SPECIFICALLY, TO RE-THINK THE INCLUSION OF POLYMERS, CLOSED-SYSTEM INTERMEDIATES, AND END ARTICLES. SPEAKING AS AN EXPERIENCED REGULATOR, HE VOICED CONCERN THAT TOO BROAD A SCOPE WOULD DIVERT SCARCE GOVERNMENT RESOURCES AWAY FROM MORE CRITICAL TASKS. THIS, IN TURN, COULD SIGNIFICANTLY DIMINISH THE EFFECTIVENESS OF THE EU'S CHEMICALS POLICY AS WELL AS DIVERT RESOURCES AWAY FROM IMPORTANT WORK ALREADY PROCEEDING IN THE U.S. AND OECD. JOHNSON ALSO CAUTIONED DG ENTERPRISE TO CONSIDER THE POTENTIAL IMPACT OF EU REGULATION ON INNOVATION SO AS NOT TO STIFLE THE DEVELOPMENT OF SAFER, MORE ENVIRONMENT-FRIENDLY CHEMICALS THAT THE U.S. IS OBSERVING WITHIN INDUSTRY TODAY.

13. (SBU) JOHNSON OUTLINED FOR DG ENTERPRISE THE REGULATORY APPROACH TAKEN BY THE EPA, WHICH IS FOCUSED ON THREE CATEGORIES OF CHEMICALS: 1) CHEMICALS OF KNOW CONCERN (E.G. MERCURY);
2) HIGH PRODUCTION/HIGH VOLUME CHEMICALS FOR WHICH LITTLE IS KNOWN (2,800); AND
3) CHEMICALS OF PERIODIC CONCERN, TO INCLUDE THOSE OF POTENTIAL RISK TO CHILDREN AND/OR THE AGED (25).

BASE-SET HAZARD INFORMATION IS BEING DEVELOPED IN THE U.S. ON 2,800 CHEMICALS FALLING INTO THE SECOND CATEGORY. THIS INFORMATION SHOULD BE COMPLETED IN THE 2004/2005 TIMEFRAME, JOHNSON INFORMED. EPA WOULD THEN STUDY THE RESULTS AND DEVELOP A PLAN OF ACTION BY 2005/2006.

14. (SBU) MINGASSON RESPONDED THAT DG ENTERPRISE IS INTERESTED IN STRIKING THE RIGHT BALANCE WITH ITS FUTURE CHEMICALS POLICY AND THAT HE IS CONFIDENT A REASONABLE CHOICE WILL BE MADE WITH RESPECT TO THE CHEMICALS COVERED. HE AGREED WITH THE NEED TO PRIORITIZE AND ADDRESS THE MOST DANGEROUS CHEMICALS FIRST. HE ASSURED EPA THAT THE COMMISSION ALSO WOULD TAKE A RESTRICTIVE APPROACH ON POLYMERS AND CLOSED-SYSTEM INTERMEDIATES. AS TO END ARTICLES, HE SAID THE COMMISSION INTENDS ONLY TO COVER THOSE END ARTICLES THAT RELEASE CHEMICALS DIRECTLY INTO THE ENVIRONMENT.

15. (SBU) JOHNSON ASKED WHETHER THE COMMISSION WAS UNDER ANY PRESSURE FROM ANIMAL RIGHTS GROUP TO NARROW THE SCOPE OF THE EU CHEMICALS POLICY. HE EXPLAINED THAT THERE IS A STRONG ANIMAL WELFARE MOVEMENT IN THE U.S. AND THAT ONE ADDED BENEFIT TO A FOCUSED PROGRAM OF CHEMICALS MANAGEMENT IS THE AVOIDANCE OF UNNECESSARY ANIMAL TESTING. DG ENTERPRISE OFFICIALS RESPONDED THAT ANIMAL WELFARE HAS NOT SURFACED AS A MAJOR ISSUE TO DATE WITH RESPECT TO THE EU CHEMICALS POLICY.

16. (SBU) ANOTHER IMPORTANT ISSUE THAT DG ENTERPRISE IS CONSIDERING, SAID MINGASSON, IS THE COST OF THE EU'S FUTURE CHEMICALS POLICY. AT A MINIMUM, THE COMMISSION ESTIMATES THAT INDUSTRY WILL NEED TO SPEND 2 BILLION EUROS ON COMPLIANCE OVER THE NEXT TEN YEARS. TO REDUCE COSTS, DG ENTERPRISE IS LOOKING AT WAYS TO GROUP CHEMICALS. JOHNSON RECOMMENDED THAT DG ENTERPRISE EXAMINE TWO MODELS FOR DATA COMPENSATION THAT HAVE WORKED IN THE U.S. AND ALSO OFFERED TO PROVIDE INFORMATION ON THE PBT PROFILER TOOL THAT THE U.S. HAS DEVELOPED. MINGASSON EXPRESSED INTEREST IN BOTH.

17. (SBU) MINGASSON ENCOURAGED THE U.S. TO PARTICIPATE IN THE UPCOMING INTERNET CONSULTATIONS AND ASSURED THE EPA DELEGATION THAT SOME SORT OF FEEDBACK ON U.S. COMMENTS WOULD BE PROVIDED. THE COMMISSION EXPECTS TO COMPLETE ITS FINAL PROPOSAL FOR LEGISLATION IN THE FIRST QUARTER OF 2003. COUNCIL AND PARLIAMENT WOULD THEN REVIEW IT UNDER CO-DECISION PROCEDURE. MINGASSON WARNED THAT THERE IS A RISK OF SOME UNWELCOME DEVELOPMENTS WHEN THE PROPOSED LEGISLATION REACHES PARLIAMENT.

MEETING WITH DG TRADE
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18. (SBU) AT DG TRADE, THE EPA DELEGATION MET WITH DIRECTOR IAN WILKINSON AND ADMINISTRATOR DOMINIQUE KLEIN. WILKINSON STRESSED THROUGHOUT THE CONVERSATION THAT DG TRADE DOES NOT HAVE THE LEAD ON THE CHEMICALS ISSUE, BUT IS SEEKING INVOLVEMENT IN THE POLICY DEVELOPMENT PROCESS IN ORDER TO ENSURE THAT THE EU MEETS ITS INTERNATIONAL TRADE OBLIGATIONS.

WILKINSON WELCOMED JOHNSON'S SUGGESTION THAT THE CONSTRUCTIVE, TECHNICAL LEVEL U.S.-EU CHEMICALS DIALOGUE COULD BE STRENGTHENED BY GREATER POLITICAL-LEVEL ATTENTION. THEY AGREED THAT THE DIALOGUE ON CHEMICALS AT THE RECENT TRANS-ATLANTIC BUSINESS DIALOGUE MEETING IN CHICAGO HAD BEEN USEFUL IN THAT REGARD.

19. (SBU) JOHNSON STRESSED THAT THE POTENTIAL TRADE IMPACT OF THE WHITE PAPER APPROACH WAS A SIGNIFICANT USG CONCERN, ARISING LARGELY FROM THE CREATION OF UNNECESSARY BURDENS FOR BOTH GOVERNMENT REGULATORS AND FOR INDUSTRY. WILKINSON ACKNOWLEDGED THAT "WE HAVE A BIG TECHNICAL MESS" REGARDING THE WHITE PAPER'S APPROACH TO EXISTING CHEMICAL SUBSTANCES, BUT ALSO STRESSED THAT THERE IS AN UNAVOIDABLE "POLITICAL IMPERATIVE" FOR STRONGER REGULATION. DG TRADE, HE SAID, IS (LIKE DG ENTERPRISE) CONCERNED ABOUT THE WORKABILITY OF THE PROPOSED APPROACH, AND ITS EFFECT ON EU COMPETITIVENESS. DG TRADE RECOGNIZES THAT IF THE REGULATORY APPROACH IS NOT WORKABLE, "TRADE PROBLEMS WILL INEVITABLY ARISE." DG TRADE WAS FOCUSING CURRENTLY ON MEASURING THE EVOLVING OUTLINES OF THE PROPOSAL REGULATION AGAINST THE WTO AGREEMENT ON TECHNICAL BARRIERS TO TRADE (TBT), WITH PARTICULAR ATTENTION TO THE TBT AGREEMENT'S NOTIFICATION REQUIREMENTS.
20. (SBU) THE EPA DELEGATION ASKED ABOUT PROSPECTS FOR A CONSULTATION PROCESS UPON COMPLETION OF THE DRAFT REGULATION, AS WELL AS EXPECTATIONS FOR A SECOND-PHASE ECONOMIC IMPACT STUDY. WILKINSON INDICATED THAT THERE WOULD BE AN INTERNET-BASED CONSULTATION PERIOD, AS REFLECTED IN RECENT CORRESPONDENCE FROM COMMISSIONER LAMY TO U.S. TRADE REPRESENTATIVE ZOELLICK. REGARDING THE IMPACT STUDY, KLEIN NOTED THAT IT WAS EXPECTED TO BE COMPLETED IN JANUARY 2003, AND WOULD FILL IN GAPS LEFT BY AN EARLIER SUCH STUDY. JOHNSON QUESTIONED WHAT EFFECT THE SECOND IMPACT STUDY COULD BE EXPECTED TO HAVE SO LATE IN THE PROCESS OF DEVELOPING THE DRAFT REGULATION.

21. (SBU) EPA'S AUER PROBED WILKINSON AND KLEIN ON THE WHITE PAPER'S APPROACH WITH RESPECT TO COVERAGE OF DOWNSTREAM "ARTICLES." WILKINSON OFFERED THAT "AS A NON-SCIENTIST, I SEE A NIGHTMARE." KLEIN INTERVENED THAT THERE "WILL BE SOMETHING ON ARTICLES," BUT THE SCOPE OF COVERAGE WAS STILL UNDER DISCUSSION. HE STATED THAT THE COMMISSION IS CURRENTLY LOOKING AT SUBSTANCES THAT ARE EMITTED OR RELEASED FROM ARTICLES, AND THAT THE EVENTUAL APPROACH MIGHT BE FOCUSED MORE IN THIS DIRECTION. AUER STRESSED THE IMPORTANCE OF TRADERS BEING ABLE TO CLEARLY UNDERSTAND THE POTENTIAL FOR SIGNIFICANT RELEASE OF SUBSTANCES, AND OFFERED TO SHARE THE DEFINITIONAL LANGUAGE USED IN CONNECTION WITH EPA'S REGULATION OF EMITTED SUBSTANCES.

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