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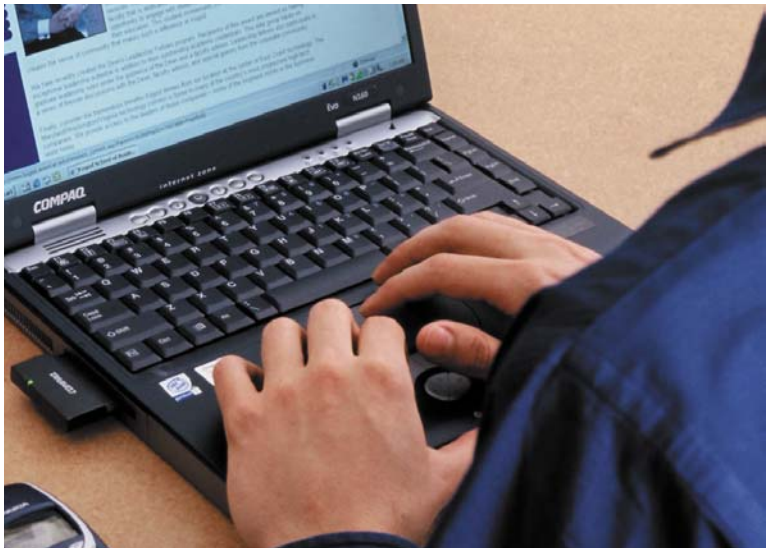
Spammers Will Ignore Anti-Spam Laws

Private Solutions Offer Better Options

by Hanah Metchis

Look closely at the spam filling your inbox, and you might notice one or two messages bearing a strange claim: "This e-mail is sent in compliance with the S.1618 bill Title III passed by the 105th U.S. Congress. This message cannot be considered Spam (sic) as long as it includes a way to be removed, Paragraph (a)(c)." Reading this, the average computer user will grumble, but delete the message without reporting it as spam. However, if you read closely, you might notice that the claim refers to a *bill* instead of a *law*. That is because the statement is totally false, and it shows how far spammers will go to avoid being prosecuted. The bill in question was proposed in 1998, but died in committee and never became law. Some spammers knowingly include this lie in their missives in the hope that recipients will not report the spam to their ISP.



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Currently, there is no federal law that specifically addresses unsolicited commercial e-mail. Yet there is much that consumers and entrepreneurs can do to curb the problem.

Still, Congress is determined to "do something," no matter how unnecessary or counterproductive. This year, legislators have put forward eight different bills on the subject of spam. The provisions of the various bills are highly overlapping, but can be divided into three categories: Labeling, Do Not Spam Registries, and Anti-Fraud. None of these are likely to cut down on spam—and in fact, some proposals could make the problem worse.

Labeling

Labeling bills require unsolicited commercial e-mail to have a subject line beginning with ADV and, in some proposals, ADV: ADLT for messages with adult content. Proponents argue that this makes it easier to filter out and delete unwanted e-mail. Spammers, of course, realize that messages beginning with ADV will be immediately deleted, possibly even by filters, before they are seen by a real person (and so might that note to your child titled "*Adv*ice for your first day of college"). But it is easy to remain anonymous on the Internet, so the temptation for spammers to ignore the law and hide behind technology is huge.

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In This Issue

From the President

ALIEN INVASION

America's Courts as Arbiters of Social Justice

by Fred L. Smith, Jr.

During the Cold War, American international relations were forced into an unusual—for a democracy—*realpolitik* status. While other nations might have had horrific human rights records and little regard for economic liberty, the reality was that if we didn't deal with these nations, then the Soviets certainly would. Americans believed, rightly in my view, that even one window into these dark corners of the world would yield a brighter world than would relegating their people to the horrors of communism.

But with the collapse of communism came a resurgence of utopian hopes—and fantasies—including the idea that America's legal system can fix the world's problems. With missionary zeal, environmental groups have sought to hold the world accountable to a standard of ecological purity that would have rendered America's own economic development impossible. Amnesty International demands a world without human rights violations. Religious tolerance is expected in all our trading partners. The National Association of Women and the NAACP seek a world free of sexism and racism. And, of course, the AFL-CIO wants "worker's rights" respected throughout the world.

Certainly, some activists' goals merit serious attention, and we're all painfully aware of how far short many nations now fall in these various dimensions. So what should be done to move the world forward?

Utopians are impatient—they want a better world *today*. To that end, some advocate an ever widening array of "progressive" treaties—from the Convention to Eliminate All Forms of Discrimination against Women to the Kyoto Protocol on Climate Change—with strong incentives to join. As carrots, they argue, America should grant generous foreign aid to nations who accede to such agreements; as sticks, we should limit trade with countries that fail to honor these meritorious goals. And now activists have a bigger stick.

Legal activists have resurrected a 1789 statute, the Alien Tort Act (ATA), enacted to address a specialized conflict between an American and a foreign citizen. That law was not used again until 1980 when an enterprising human rights activist realized that it provided a leveraged way to raise human rights issues. But there are major problems with this new use for an old law.

As I noted in a recent *Legal Times* article: "If you haven't yet been sued under this statute, don't worry, you will be!" ATA claims are motivated by the idea that all claims of justice must be allowed a forum somewhere on this planet. If the courts in the relevant nation states are closed, then the courts of the United States will do. But the belief that trial lawyers and American jurors are likely to advance justice is fanciful.

An example: American and other firms continued to do business in South Africa even after apartheid laws were enacted. Many sought to mitigate these racist rules—one effort was the creation of the Sullivan Principles, which encouraged businesses operating in that nation to work toward racial justice. Now, lawyers are suing these companies—using the argument that their signatures indicated that they realized the evils of apartheid and yet continued to profit from that system. The presumption is that the people of South Africa would somehow have benefited had these firms simply pulled out—leaving their facilities and workers to the mercy of the pre-Mandela realm. Indeed, South Africa's current government realizes the dangers of the Alien Tort Act, and has argued strongly against U.S. courts intervening in what they view as an internal South African matter.

Efforts to distort old laws like the Alien Tort Act into tools of utopian justice will only destroy the hopes of the poorer peoples of the world, who understand that the ladder out of poverty and oppression begins with small first steps. To allow western elites and American trial lawyers to posture as defenders of the exploited of the world while slowing the trade and investment that would actually better their status is immoral. America has drifted far from its constitutional moorings. It is time to restore the rule of law. That would be good for America; it is essential for the peoples of the world.

Fred Lee Smith Jr

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A bad labeling law could even make enforcement more difficult than it is now. The Stop Pornography and Abusive Marketing (S.P.A.M) Act (S. 1231), sponsored by Sen. Charles Schumer (D-N.Y.), exempts from its labeling provision companies that join a self-regulatory organization and adhere to best practices. Of course, the most unscrupulous spammers will cheat, skipping the label and claiming to be legal as they have in the past. This would create three categories of spam: labeled, legally unlabeled, and illegally unlabeled. Will a user receiving two pieces of spam, both labeled "this message is legal," know which to simply delete and which to report to his ISP? Law enforcement could be overwhelmed with complaints about marketing e-mails that prove to be legal, or they could find that confused e-mail users fail to report illegal spam at all.

Even if Congress were to create and pass the perfect anti-spam law, end users would not see a significant reduction in the amount of spam they receive, because spam is an international problem.

Do Not Spam Registry

The excitement over the new National Do Not Call Registry has led to calls for a Do Not E-Mail Registry on the same model. But while most telemarketers operate legally or in gray areas of the law, many spammers operate outright fraudulent and illegal businesses. A list of people who do not want to receive unsolicited e-mail is also a list of real e-mail addresses used by real people, and would make a tempting target for malicious spammers. It would need to be heavily encrypted to avoid becoming a "Please Spam Me" registry. And some spammers will just ignore the list, again trusting their ability to remain anonymous to avoid any repercussions.

Anti-Fraud Laws

Anti-fraud provisions are the most straightforward anti-spam measures. Such laws would require unsolicited commercial e-mails to include accurate header information so the message can be traced to its true sender. Other common anti-fraud provisions are a mandatory opt-out procedure, notification of a physical postal address for the company, and bans on misleading subject lines and e-mail address harvesting from websites. One of the Senate bills already out of committee, the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003 (S.877), introduced by Sen. Conrad Burns (R-Mont.), includes all of these provisions. Senator Orrin Hatch's (R-UT) Criminal Spam Act (S. 1293) takes a different anti-fraud approach, banning false registration of e-mail accounts and domain names for spamming purposes.

Certainly, commercial e-mail should not use fraudulent practices. But new anti-fraud legislation would not reduce or clean up spam very much. Many of these tactics are already illegal under more general false advertising laws. Very few spammers using illegal advertising methods have been prosecuted, and these few cases have been little deterrent to other spammers. False headers make an e-mail very difficult, sometimes impossible, to trace to its sender. This means that lawbreakers are hard to catch, and the level of enforcement is and will remain low. Spammers will learn that they can ignore the law with little chance of repercussions.

Real Solutions

Even if Congress were to create and pass the perfect anti-spam law, end users would not see a significant reduction in the amount of spam they receive, because spam is an international problem. By some estimates, nearly half of all spam received by American users originates in foreign countries. Even more is sent by American companies operating through foreign mail servers that are renowned for their indifference to spam and unwillingness to cooperate with law enforcement. A tough anti-spam law in the U.S. would simply encourage more companies to relocate overseas or use foreign resources.

That said, there is still hope for a good anti-spam solution. The government does not have the ability to stop spam, but private companies might. Anti-spam filtering programs, sender validation systems, and other blocking methods can significantly reduce the amount of spam that lands in a user's inbox. Some of these technologies now perform with near-perfect accuracy, and many are available for free. With these programs, users do not have to rely on one-size-fits-all definitions of spam. Instead, they can set their own criteria for e-mails they want or don't want to receive.

ISPs and software companies have always been on the forefront of the anti-spam fight. They should continue to educate their customers about spam and provide a variety of measures aimed at controlling spam problems. All the best intentions of congressmen cannot accomplish this much.

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Thank you Pew!

Eco-Alarmists Admit: Controlling CO_2 Emissions is Inconsistent with the Energy Needs of a Modern Economy

by Marlo Lewis, Jr.

You've got to hand it to the Pew Center on Global Climate Change—their timing is impeccable. Pew's latest big-splash report, *U.S. Energy Scenarios for the 21st Century*, hit congressional offices just as members began debating amendments to the Senate energy bill (S. 14). What can policy makers, journalists, and corporate CEOs—Pew's primary audience—learn from this report? What policy conclusions should Senators draw from it? Read on.

Directing the Pew Center is former Clinton-Gore Administration Kyoto Protocol negotiator Eileen Claussen, so it is hardly surprising that *Energy Scenarios* endorses the substance—if not the details—of the Kyoto treaty. Like many previous Pew publications, *Energy Scenarios* calls for mandatory caps on U.S. emissions of carbon dioxide (CO_2). But this report contains an unexpected twist. It confirms what free-market analysts have said all along—Kyoto and other treaties of its ilk are nothing more than energy rationing schemes, a license for politicians and bureaucrats to restrict people's access to energy.

> Pew's scenarios are instructive, because they illustrate that Kyoto-style caps on carbon emissions are incompatible with the energy requirements of a modern economy.

The report examines three scenarios—possible future development paths—of the U.S. energy supply system from 2000 through 2035, and the increase in carbon emissions under each scenario.

- In "Awash in Oil and Gas," U.S. consumers enjoy secure access to abundant supplies of oil, natural gas, and coal, at low prices.

- In "Technology Triumphs," market preferences, technology breakthroughs, and state policy interventions converge to accelerate commercialization of high-efficiency, low-emission, and zero-emission energy technologies.

- In "Turbulent World," disruptions in foreign oil production, terrorism at home, and global warming-triggered extreme weather events wreak havoc on fuel prices, energy supply, and public confidence. This new and protracted "energy crisis" prompts policy makers to fund a crash program "on the scale of the Apollo 'moonshot,' to shift America from oil dependence to a hydrogen economy."

Assigning probabilities to these scenarios would be a fool's errand, and the Pew report's authors do not attempt to do so. However, that does not mean that all the scenarios are equally plausible.

Since the dawn of industrial civilization, and especially during the 20th century, hydrocarbon fuels have become cleaner, more abundant, and more affordable. This simple fact makes "Awash in Oil and Gas" the most eminently plausible by far of the three Pew scenarios. Further, the other two scenarios are based on questionable assumptions.

"Turbulent World" assumes the correctness of the dubious theory of catastrophic global warming. It also implies that U.S. military dominance, the toppling of Saddam Hussein, and the War on Terror leave America no less vulnerable to terrorism and the "oil weapon" than in the early 1970s, when OPEC wielded considerable influence and the Soviet Union vied with the United States for influence, allies, and military bases in the Middle East.

Even more problematic, "Technology Triumphs" and "Turbulent World" assume that political planners are wise enough to pick the technologies of the future, and to steer private and public sector investments accordingly.

"Technology Triumphs" is the least plausible scenario, because it postulates decades of "strong economic growth" even though political interventions, not market signals and incentives, direct the development of U.S. energy supply systems.

Nonetheless, Pew's scenarios are instructive, because they illustrate that Kyoto-style caps on carbon emissions are incompatible with the energy requirements of a modern economy.

In the "Awash in Oil and Gas" scenario, market forces determine the energy supply mix, and Americans are free to "consume whatever they can afford to buy." In this hypothetical future, OPEC countries increase oil

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production for export, Russia and Mexico accelerate oil field development, North American producers expand production from Canadian oil sands, Canada and Mexico increase natural gas exports to the United States, energy companies develop oil and gas resources in Alaska and the Rocky Mountain West, coal maintains a key role in electricity generation, the electron-fueled digital economy permeates homes and offices, and gasoline-powered vehicles rule the roads.

Not coincidentally, the U.S. economy sustains "significant GDP growth." America is prosperous, mobile, and productive—in no small part because of declining energy costs.

Thank you, Pew, for recognizing the vital contribution of affordable energy to prosperity and growth.

In this scenario, U.S. carbon emissions grow more than 50 percent between 2000 and 2035, as we might expect in a world "awash in oil and gas." What is surprising is that U.S. carbon emissions also grow substantially in the other scenarios, notwithstanding multiple interventions by federal and state policymakers to redirect the evolution of energy markets.

In the "Technology Triumphs" scenario, state governments set "rigorous" efficiency standards for appliances, enact caps on CO_2 emissions from power plants, and introduce more renewable portfolio standards (policies requiring specified percentages of electricity to come from wind, solar, and biomass technologies). States also enhance electric power generation and transmission efficiencies through tax preferences and other policies. Specifically, they promote investment in "combined heat and power" (on-site electric generating units that harness exhaust heat to support space and water heating, air conditioning, and various industrial processes) and "distributed generation" (small-scale units located at or near customer sites that avoid energy losses incident to long-range transmission). States also subsidize fuel cell research and effectively raise federal fuel economy standards by requiring new cars, minivans, and light trucks to reduce emissions of CO_2 per mile traveled.

These actions, combined with breakthroughs in solar photovoltaic manufacturing and a shift in consumer preference from "sprawling" to compact residential development, slow the growth of vehicle miles traveled, expand markets for hybrid cars, accelerate power sector fuel switching from coal to natural gas, and lay the building blocks of a hydrogen economy.

The "Technology Triumphs" scenario is really a "Politics Triumphs" scenario, with state governments implementing nearly all of the Kyoto crowd's favorite "technology forcing" schemes to "green" U.S. energy markets. For years we've heard that such measures are so cost-effective that they would make Kyoto-style carbon reduction targets almost painless to reach. Indeed, Clinton-Gore officials used to say that Kyoto would make America more competitive by creating opportunities for U.S. firms to lead the world in exports of energy-efficiency, renewable-energy, and emission-control technologies.

But the Pew report inadvertently pours cold water on such statist techno-fantasies. In the "Technology Triumphs" scenario, U.S. carbon emissions "rise 15 percent above the year 2000 levels by 2035"—about 35 percent above the U.S. Kyoto target—despite widespread regulation of CO_2 emissions from vehicles and power plants, mature markets for hybrid cars, widespread efficiency upgrades in the power sector, successful launch of the hydrogen economy, and the proliferation of "energy smart" communities and houses. Interventionist policies also figure prominently in the "Turbulent World" scenario—a future in which oil price shocks, supply disruptions, terrorist attacks on large energy facilities, and weather-related disasters discourage private-sector investment and depress growth. Responding to those challenges, federal policy makers enact a national renewable portfolio standard, increase new-car fuel economy standards to 50 mpg, promote distributed generation, and subsidize CO_2 capture and sequestration technologies. Above all, in 2010, the federal government launches a crash program to commercialize fuel cell and hydrogen technologies. Notwithstanding these measures, volatile energy prices, and a poorly performing economy, carbon emissions in "Turbulent World" "grow to almost 20 percent above the 2000 level in 2035"—about 40 percent above the U.S. Kyoto target.

> The Pew report's authors seem unconcerned about the economic effects of climate change prevention policies.

What does this all mean? The Pew report gets one thing right: "In the absence of a mandatory carbon cap, none of the base case scenarios examined in this study achieves a reduction in U.S. carbon dioxide emissions by 2035 relative to current levels." And it emphasizes: "This is true even in the scenario with the most optimistic assumptions about the future cost and performance of energy technologies." In other words, there are no magic technologies just around the corner that could simultaneously reduce carbon emissions and meet the energy requirements of a modern economy.

However, the Pew report's authors seem unconcerned about the economic effects of climate change prevention policies. To reduce emissions, they argue, it is necessary to enact "a mandatory carbon cap." It is necessary to make energy scarcer and less affordable. It is necessary to ration energy.

Thank you, Pew, for demystifying the debate over Kyoto and cap-and-trade. Clearly, what the Pew Center on Global Climate Change and other members of the environmental establishment want is energy rationing—a world in which governments control and restrict their peoples' access to energy.

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OPEN SKIES FOR A GLOBAL INDUSTRY

IT'S TIME TO REMOVE THE LAST BARRIERS TO AIRLINE COMPETITION

BY BRADEN COX

The airline industry's history is filled with dramatic events. One hundred years ago this year the Wright brothers flew the first successful sustained powered flight in a heavier-than-air machine. Twenty-five years ago Congress passed the Airline Deregulation Act. This year—76 years after Charles Lindbergh's first non-stop intercontinental flight—may well be remembered for the removal of regulatory controls that restrict transatlantic competition.

Two developments are currently at work that will affect the way we fly. First, the European Commission is seeking to negotiate, on behalf of its member nations, an "Open Aviation Area" with the United States. "Open Aviation Area" refers to free trade in international air transport. Second, the U.S. is considering a revision of rules that limit foreign ownership of U.S. airlines. The Open Aviation Area debate and the confluence of national and international interests provides all stakeholders an opportunity to advocate for doing away with parochial laws unfit for a global industry.

Free Trade in Air Transportation

"Open Skies" often refers to the bilateral agreements that currently govern competition and access between the United States and the European Union's member states. The U.S. has bilateral agreements with over 50 countries, including 11 of the 15 EU member countries. Open Skies agreements attempt to move away from the traditional approach to airline regulation based on nationality and have been successful at removing many price controls and other regulatory controls of aviation services. The bilateral agreements function as a *quid pro quo*—each country agrees to open up a portion of its market to the other. However, these agreements fail to approximate the freedoms that companies in other industries enjoy in entering a foreign market. For example, in the United States, a foreign carrier cannot provide domestic service and cannot fly directly to the U.S. from anywhere other than its home country.

In November 2002, the European Court of Justice held that certain provisions of the bilateral agreements between EU member states and the U.S. violated EU law. The Court concluded that in particular areas of aviation policy, member states were pre-empted by EU regulations. While the Court did not strike down the bilateral agreements themselves, the decision gives momentum to the European Commission's desire to move beyond "Open Skies" and negotiate an "Open Aviation Area" joining America and Europe.

Business Wire Photos

European airlines have complained about protectionist U.S. laws for years. The Commission wants complete liberalization while the U.S. is acting slowly to deregulate—an exceptional example of Europeans lecturing Americans about free markets!

Protectionist Laws Restricting Foreign Ownership

National ownership laws are the barriers to open aviation free trade. The restrictions are manifold:

- Federal law restricts the percentage of foreign ownership in air transportation.
- Only U.S. registered aircraft can transport passengers and freight domestically.
- Aircraft registration is limited to U.S. citizens or permanent residents, partnerships in which all partners are U.S. citizens, or corporations registered in the U.S. in which the chief executive officer and two-thirds of the directors are U.S. citizens and where U.S. citizens hold or control 75 percent of the capital stock.
- Only U.S. citizens are able to obtain a certificate of public convenience and necessity, a prerequisite for operation as a domestic carrier.
- The Department of Transportation (DOT) must approve all mergers involving U.S. carriers.

The law limiting foreign ownership is at the heart of a proceeding currently being conducted by a DOT administrative law judge. DHL Airways is under scrutiny from the Department of Transportation to determine

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whether it is a U.S. citizen for purposes of federal aviation law. DHL Airways, an American company, is the principal airline vendor for the express delivery company DHL Worldwide, a subsidiary of the German Deutsche Post, although the two companies have separate ownership. The proceeding will determine whether DHL Worldwide is in *de facto* control of DHL, thus making the airline a foreign entity unable to fly domestic routes in the U.S. A ruling against DHL Airways would increase the scope of national ownership rules and further hurt competition.

National ownership rules are essentially restrictions on foreign investment and competition. They artificially limit a firm's entry into the market and access to capital. In an industry as capital-intensive as air transportation, access to capital is crucial to maintaining a robust and competitive marketplace.

Restrictive regulatory policies can make an otherwise attractive business unappealing and create entry barriers to new competitors. When an industry is subject to foreign investment restrictions, participants battle for limited available investment dollars. A new market entrant is concerned not only about attracting capital, but also about the cost of that capital. Larger, more established firms typically face lower capital costs than do newcomers, so limits on foreign ownership compound the upstarts' disadvantage.

Foreign investment has a storied history in the United States. Foreign investors helped finance the American Revolution and the Louisiana Purchase. During the railroad construction boom of the mid 1800s, railroad construction was moving at such a fast pace that U.S. savings were inadequate—foreign investors owned the majority of stock in six major railroads and more than one-fourth of American railroad bonds.

Reasons for "Closed Skies"

The 1944 Chicago Convention organized international air transport and promulgated the principle of national sovereignty over airspace. The Chicago Convention is one of the main air transport treaties that enumerate the building blocks of the regulatory framework and international route network we have today. The Convention gave governments a central role in negotiating route rights and enacting national ownership and control laws, even though its text is neutral on the subject of foreign ownership.

Governments have argued that foreign ownership of airlines could compromise national security because civilian aircraft capacity may be used by the military in times of national emergency. Other arguments against opening up the airline industry to foreign competition include economic security (labor unions fear competition from less expensive foreign workers) and the weakening of safety standards.

But these arguments fail to make it off the ground. At U.S. seaports, foreign-owned ships dock under the same rules as American ships—with no compromise in national security or emergency readiness. In addition, foreign investment stimulates job creation, preserving jobs that would otherwise be lost through downsizing or bankruptcy, and potentially offsetting any job losses to lower-wage competition.

Further, aviation safety today is very high and actually improved in the U.S. during the deregulatory shakeup of the 1970s and 1980s. There is no evidence that foreign airlines that meet the international standards of the International Civil Aviation Organization would be any less safe.

Open Skies—Completely

A global industry deserves a globally-minded set of rules. If there is an industry that deserves the "global" tag, it is air transport. Affected by terrorist attacks, war in Iraq, and dire financial straits, airlines need the ability to adapt quickly to international events—an ability that requires foreign partners, flexible access to international routes, and global sources of capital. A more efficiently organized industry with better access to capital wouldn't be looking for bailouts and bankruptcy protections.

Government-negotiated bilateral arrangements are a slow and costly proposition. Instead, governments should focus on removing their own restrictive regulations and allow airlines the ability to compete on equal footing in a free marketplace. There is no reason why foreign airlines should not be able to fly within the United States, especially to pick up passengers to ultimately take them to a foreign destination. American and foreign airlines should be able to merge to better take advantage of global synergies.

The Bush administration is asking Congress to raise the permissible level of foreign ownership of a U.S. airline's stock from 25 percent to 49 percent. This is a move in the right direction, but it does not go nearly far enough. Instead of minor tweaking or adjusting, the current rules limiting foreign ownership should simply be removed.

NATIONAL OWNERSHIP RULES ARE ESSENTIALLY RESTRICTIONS ON FOREIGN INVESTMENT AND COMPETITION. THEY ARTIFICIALLY LIMIT A FIRM'S ENTRY INTO THE MARKET AND ACCESS TO CAPITAL.

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The European Union's "Precautionary" Chemicals Policy is Something to Fear

The Latest Episode of the Precautionary Principle's Grim History

by Angela Logomasini

European Union (EU) officials are deliberating on whether to apply the "precautionary principle" to nearly all chemicals in commerce within the EU—a move that could stall scientific innovation and eventually ban many existing products. Indeed, wherever it has been applied, the precautionary principle has hindered innovation by codifying excessive caution as policy.

Under the EU Chemicals Policy, now being considered, manufacturers would have to conduct studies to show that chemicals used in their products are safe before sale. Chemicals already in commerce would remain on the market while new health studies are underway. But once studies are complete, EU regulators will decide which to register for legal sale and which to ban. New products would not even enter markets at all until they are studied and approved.

Supposedly, this approach will prevent the introduction of new "dangerous" and allegedly cancer-causing chemicals and force the elimination of existing "dangerous" chemicals. The more likely result is delay and arbitrary bans based on theoretical risks and political considerations—a policy that will promote stagnation over progress.

EU Policy Unnecessary

Advocates of the policy note that much data is lacking on specific chemicals, but there is enough information about the general sources of cancer-related disease to cast serious doubts on the EU policy's alleged benefits.

For instance, if trace levels of chemicals were a source of health problems, one might expect that along with increased chemical use, there would be some measurable adverse impact on life expectancy, cancer rates, or other illnesses. But in developed nations, where chemical use has greatly increased, people are living longer, healthier lives. According to the World Health Organization (WHO), the average worldwide human life span has increased from 45 years in 1950 to about 66 in 2000, and will most likely continue to increase to 77 years by 2050.

Meanwhile, cancer rates in developed nations actually show a *decline* when factors like smoking and the fact that the population is aging are considered. The WHO's *World Cancer Report* includes some statistics on world cancer rates that show improvements and indicates that there isn't any chemically caused cancer crisis. Likewise, a report of the National Cancer Institute notes: "Cancer incidence for all sites combined decreased from 1992 through 1998 among all persons in the United States."

Advocates of the EU Chemicals Policy note that much data is lacking on specific chemicals, but there is enough information about the general sources of cancer-related disease to cast serious doubts on the EU policy's alleged benefits.

In a study on cancer trends, researchers from the University of Alabama Schools of Medicine and Public Health note: "A typical commentary blamed 'increasing cancer rates' on 'exposure to industrial chemicals and run-away modern technologies whose explosive growth had clearly outpaced the ability of society to control them.'" But their research finds: "There is no denying the existence of environmental problems, but the present data show that they produced no striking increase in cancer mortality."

In addition, studies assessing whether cancers are a result of trace levels of chemicals in the environment have also not found a direct link. For example, a study among women in Long Island, New York—one of the largest breast cancer studies produced in the U.S.—could not find a link between the chemicals most often cited as a potential cause of breast cancer (DDT and other pesticides as well as PCBs) and an elevated level of cancers in that area.

If the EU is actually concerned about cancer, then it is

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clearly focusing on the wrong source of the problem. The WHO estimates that 1 to 4 percent of cancers can be attributed to environmental pollution in developed countries. The WHO suggests that cancer prevention efforts should focus on three factors: tobacco use, diet, and infections—which together account for 75 percent of cancer cases worldwide

A Dangerous Standard

If there is anything to fear, it isn't chemicals, but an overly precautionary chemicals policy. By applying the precautionary principle to chemicals policy, the EU would codify an impossible and dangerous standard. The standard is impossible because you cannot prove a negative: Manufacturers can never demonstrate that anything is *100 percent* safe. As a result, bans are likely to be arbitrary; many valuable products—including life saving products—may be removed from the market and others may never see the light of day. And the damage would not be restricted to Europe.

"Precautionary" policies are already producing seriously adverse impacts around the world. A dramatic example is the ban of the pesticide DDT. DDT can be used in limited amounts to control malaria in a way that has no adverse public or wildlife impacts. Yet developing nations have followed western advice to ban the product even though it was helping alleviate malaria in the developing world and has eradicated malaria in the West. As a result, malaria cases have skyrocketed in poor nations that banned use of DDT. Currently, about 2.1 billion people a year are at risk from mosquito-borne diseases, according to the WHO. In Africa, 1.5 to 2.7 million people, mostly children, die from malaria alone every year.

Even in the United States—where there is no official precautionary policy and where regulators are supposed to consider tradeoffs and weigh the risks—regulators are banning chemicals on specious grounds just to be "on the safe side."

Consider U.S. pesticide policy. "A growing problem in controlling vector-borne diseases is the diminishing supply of effective pesticides," says a 1992 National Academy of Sciences report. Because all pesticides must go through an onerous U.S. Environmental Protection Agency registration process, "some manufacturers have chosen not to reregister their products because of the expenses of gathering safety data. Partly as a result, many effective pesticides over the past 40 years to control agricultural pests and vectors of human disease are no longer available." And this situation persists.

Alleged "precautionary" approaches are also adversely impacting health care. For years, the U.S. Food and Drug Administration (FDA) has been delaying the introduction of life-saving drugs into the market, sometimes for decades, with deadly results. For example, FDA delayed approval of the Omnicarbon heart valve for 15 years, finally granting approval in 2001. Meanwhile, this device had been saving lives in Italy, Germany, France, Switzerland, and Japan since 1986, with nearly 30,000 of such devices implanted during the years of FDA delay.

Biotechnology offers more examples of overly precautionary policies harming and even killing people. "Precaution" in this area has even led some nations to refuse food donated to starving people. For example, in September 2002, the EU's moratorium on biotech crops led the government of Zambia to refuse food because it was produced using biotechnology—despite the fact that Zambians were starving and Americans had been eating biotech foods safely for years. Eventually, people broke into sheds where the food was stored to avoid starvation.

By applying the precautionary principle to chemicals policy, the EU would codify an impossible and dangerous standard. The standard is impossible because you cannot prove a negative: Manufacturers can never demonstrate that anything is *100 percent* safe.

The precautionary principle has a miserable record when applied to policy. Yet its advocates continue pushing for it. We already are seeing cases in which misguided allegedly "precautionary" approaches are proving deadly, particularly to people in the developing world. The EU chemicals policy promises to expand such failed approaches, depriving consumers of access to beneficial—and sometimes life saving—products.

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The Good, the Bad, and the Ugly

The Good: Congress Kills Menendez Climate Change Amendment

On July 9, members of the House Energy and Commerce Committee stripped an amendment to the State Department Authorization bill (H.R. 1950) that called for the United States to "demonstrate international leadership" on preventing climate change and to create emissions trading systems and carbon sequestration projects. Rep. Robert Menendez (D-N.J.), of the International Relations Committee, who introduced the amendment on May 7, tried to argue in front of the Rules Committee for continued debate on his amendment, but on July 15, the Rules Committee rebuffed his attempts, thus ending a two-month jurisdictional struggle between the Energy and Commerce and International Relations committees. Energy and Commerce Committee members took great umbrage at this invasion of their jurisdictional territory. Rep. John Dingell (D-Mich.) commented: "I don't think the other committee should be putting its nasty little nose under our door."

The Menendez amendment's enactment would have spelled bad news for the U.S. economy. The amendment reflects the Kyoto treaty vision of catastrophic climate warming, and advocates Kyoto-style energy rationing. As Myron Ebell, CEI's Director of Global Warming Policy, states: "The Kyoto Protocol is a dead end...and so too are all similar approaches based on forcing cuts in carbon dioxide emissions. Adopting Kyoto-style policies would have enormous economic costs without making significant reductions in greenhouse gas levels."

The Bad: Northeastern Governors Agree to Enact Regional Emissions Cap

On July 24, New York Governor George Pataki announced that a coalition of 10 northeastern governors has agreed to develop the nations' first regional greenhouse gas cap-and-trade program. The program would impose a carbon dioxide (CO_2) cap on power plants (plants that exceed the limit may buy "pollution allowances" from "cleaner" plants to meet the state cap) and open the door to regulating other industries in the region. Pataki, a Republican who has done much to appease Empire state greens, asked governors from nine surrounding states in April to partner in a regional strategy to reduce power plant CO_2 emissions. Governors joining Pataki in this effort include five Republicans—from Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont—and four Democrats—from Delaware, Maine, New Jersey, and Pennsylvania. The only governor to turn down Pataki's offer, Republican Bob Ehrlich of Maryland, said he would look into joining the partnership later.

If all goes according to Pataki's plan, the states will reach an agreement by April 2005 establishing the cap-and-trade program. This is a hazardous idea that could severely hurt the economies of the participating states. Indeed, the federal government is considering a similar proposal, the Climate Stewardship Act, which Senators John McCain (R-Ariz.) and Joe Lieberman (D-Conn.) offered earlier this session. CEI Senior Fellow Iain Murray has pointed out that, if this bill were to go into effect, "people will lose thousands of dollars of income they could use to help their households, travel less, and may even lose their jobs." The governors should think long and hard before traipsing down the carbon-capping path.

The Ugly: PETA Sues KFC—Appeasement Backfires

On July 7, People for the Ethical Treatment of Animals (PETA) sued Yum! Brands, the parent company of KFC (formerly Kentucky Fried Chicken), under California's Business and Professions Code, which prohibits "unlawful, unfair or fraudulent" business acts, but does not require that plaintiffs reside in California or that they show they were actually hurt by the defendant. Laws like this are part of a large problem: As long "venue shopping" remains an option for plaintiffs, activist groups will remain able to use the legal stick to force corporations to adopt their agenda. It is especially disturbing when the plaintiff is someone as ruthless as PETA.

PETA claims that KFC misled consumers when the fast food chain maintained in press releases that the chickens it purchases from producers are raised in humane conditions. The suit is but the latest episode in a long campaign by PETA against Yum! and KFC—a campaign that has been vicious and relentless. PETA threatened to picket a Los Angeles production of the musical *The Producers* starring former KFC spokesman and *Seinfield* star Jason Alexander. And in June, Yum! Brands CEO David Novak was sprayed with fake blood by animal rights activists in Frankfurt, Germany.

If the suit moves forward, PETA will have complete access to KFC files, and perhaps try to exact more "concessions" from the fast-food chain—never mind that "concessions" have yet to buy KFC any peace. In May, KFC announced new standards for the raising and slaughtering of chickens, in return for PETA halting protests. Just goes to show you can never appease fanatics.

Now one of PETA's demands is that KFC require its suppliers to kill chickens by gas rather than by electrical stunning—something that KFC execs would have to be just plain stupid to accept, since it would give PETA a chance to reprise its revolting "Holocaust on Your Plate" campaign, a traveling exhibit that featured displays juxtaposing piles of dead animals with piles of dead bodies of Nazi concentration camp inmates.

Media Mentions

Senior Fellow Marlo Lewis, Jr. emphasizes the key role that energy prices have in a robust economy:

The Senate this week will vote on amendments to its version of the 2003 energy bill (S. 14). Senators John Kerry (D., Mass.), Joe Lieberman (D., Conn.), Jim Jeffords (I., Vt.), and John McCain (R., Ariz.) will likely try to amend the bill into a vehicle for Kyoto-inspired anti-energy policies. McCain and Lieberman, for example, may attempt to attach their "Climate Stewardship Act," which would require U.S. firms to reduce emissions of carbon dioxide, the inescapable byproduct of the hydrocarbon fuels—coal, oil, and natural gas—that supply 70 percent of U.S. electricity and 84 percent of all U.S. energy.

President Bush opposes the Kyoto Protocol and McCain-Lieberman. However, the White House wants an energy bill—any energy bill. That puts pressure on Republicans to make compromises they may later regret.

- *National Review Online*, July 28

Senior Fellow Christopher C. Horner praises the Administration's acknowledgement of the fundamental uncertainties of current climate science:

On Thursday Energy Secretary Spencer Abraham and Commerce Secretary Donald Evans released the Bush administration's Climate Change Science Program (CCSP) strategic plan. According to the press announcement:

"The strategic plan describes the research activities to be undertaken by 13 agencies and departments of the federal government to determine the causes and effects of natural and human-induced global climate change.... The strategic plan was developed in response to President Bush's charge to study areas of uncertainty and set priorities where climate science investments can make a difference."

That' a good goal. And the plan does in fact detail a litany of predicate knowledge necessary to enact any "climate change" policies. As a result, it acknowledges that our current knowledge about climate change is insufficient to serve as a basis for any policy decisions.

- *Tech Central Station*, July 25

Senior Fellow Iain Murray defends the effort to keep the Environmental Protection Agency intellectually honest:

In the normal course of review, the White House altered a new study from the Environmental Protection Agency to remove references to discredited studies on climate change and to delete a sentence that could be an environmentalist's holy mantra. This led to cries of "censorship" and even "junk science" from the environmental lobby and their allies in the media, when it is actually they who want to censor real science while promulgating junk science....

White House climate experts took exception to the EPA tiredly repeating what has become conventional wisdom about global warming. It is taken as given that mankind's actions are heating up the world to an unacceptable level that could prove catastrophic. Yet this is not what the science is telling us.

- *The Washington Times*, July 2

Director of Risk and Environmental Policy Angela Logomasini challenges the claim that pesticides that keep away the West Nile virus are devastating bird populations:

As public health officials consider spraying pesticides to control the mosquito-borne West Nile virus, anti-pesticide activists claim that spraying devastates birds and other wildlife. But such claims should be viewed with skepticism.

It seems that West Nile virus and other natural factors may pose much greater threats than spraying. The Centers for Disease Control reports that West Nile has killed birds from at least 138 bird species, including some endangered species. In the Midwest last year, 400 great horned owls were found dead from West Nile. Researchers estimate that for each dead bird reported, there are probably 100 to 1,000 unreported cases, which means there could have been as many as 40,000 to 400,000 great horned owl deaths from West Nile last year alone.

- *USA Today Magazine*, July 2003

Adjunct Fellow Roger Bate weighs the costs of environmental correctness in the case of public health policy:

The use of insecticides sprayed on the walls of dwellings to deter malarial mosquitoes is the most cost-effective method of achieving dramatic reductions in malaria, and had been the favoured method of the WHO in the 1960s and 1970s. But because insecticides can cause environmental problems--and since the main weapon historically was DDT, that totemic enemy of the Green movement--[former World Health Organization Director-General Gro Harlem Brundtland] refused to allow insecticide use to be a part of her Roll Back Malaria (RBM) program. The impact of this policy has been dramatic. Bed nets are useful and can prevent malaria, usually resulting in about a 30 percent reduction when there is near-universal coverage in a village. But DDT will reduce numbers by over 60 percent (usually within two years), and at half the direct cost.

The impact of a DDT-free WHO was that it discouraged nations from using the chemical, costing thousands of lives and millions of dollars in less-effective alternatives.

- *Tech Central Station*, August 1

...END NOTES

Greenpeace Loses Consultative Status at U.N. Agency

In June, the International Maritime Organization, a United Nations agency, revoked Greenpeace's consultative status. Although no official reason was given, press accounts attribute the move to Greenpeace's protests on the high seas, which shipping companies argue recklessly endanger shipping.

Hormel Tries to Take Back the Term "Spam"

In late June, Hormel Foods Corp. filed two legal challenges with the U.S. Patent Office to try to stop SpamArrest, a software manufacturer that specializes in blocking junk email, from using the name Spam. Hormel holds the trademark for Spam brand canned meat products. Hormel does not object to "spam" being used to describe unwanted bulk e-mail, reports the Associated Press, but does object to pictures of its product being used in association with the e-mail term (Note: This issue's cover story on spam features an illustration of two hands typing on a computer rather than pictures from the Spam Museum, which opened in Austin, Minn. in June).

RIAA: "Ve Haff Vays of Knowing Who is Sharing Files"

Online music file swappers are turning to private encrypted networks to share files, since the Recording Industry Association of America (RIAA) threatened to sue downloaders of copyrighted material. The private networks comprise about 20 to 30 people and users' identities and transactions are protected by the same technology that protects online credit card transactions. But don't expect the RIAA to give up on its bullying threats. "If users think that any particular service guarantees their anonymity, they're wrong," an RIAA spokesman told CNN.com. "There are ways to determine a user's identity." Not so, says Jim Lowrey, a network encryption expert whose company is designing a file sharing system for corporate clients. "You'll know they're talking, but you won't know what they're saying. It's quite impossible to crack the algorithms." Maybe the RIAA will sue university math departments next.

Federal Cops Lose Guns; New York Cops Get Segways

According to a July General Accounting Office (GAO) report, federal law enforcement agencies are still unable to account for 824 of 1,012 lost or stolen firearms a full year after the weapons were reported missing. The agencies with the largest number of missing weapons were the Federal Bureau of Investigation, with 386, and the National Park Service, with 196 weapons unaccounted for. The report also found that only 11 of the 18 agencies involved required individuals responsible for weapons inventories to be trained in inventory counting procedures.....Meanwhile, in late July, the New York City Police Department began deploying 10 Segway individual transport vehicles to officers as part of a 60-day trial program, reports *The New York Post*. Segway-riding officers could give tickets to other Segway users. The state Department of Transportation has not approved the Segway for use on roads in the state.

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