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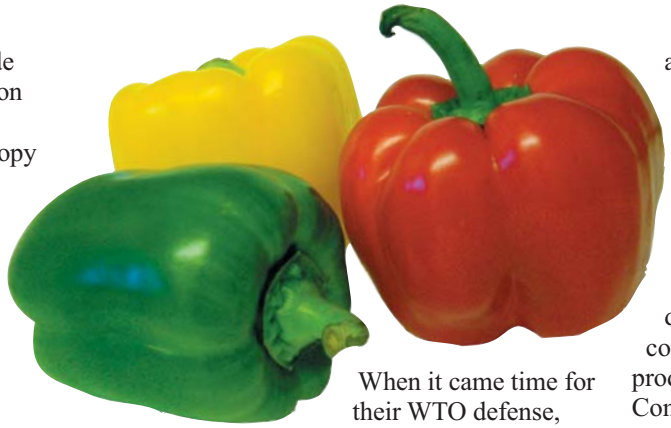
New Era, or 'Ancien Régime,' for European Biotech?

by Gregory Conko

The long-awaited World Trade Organization (WTO) decision on biotech food is due to be released this spring, but a leaked copy of the report has already elicited considerable buzz. Most analyses score it a resounding victory for the United States and its co-complainants, and a stinging defeat for European state protectionism.



The reality is that the decision is only a partial and largely symbolic victory. For not achieving a more complete and meaningful success, the United States, Canada, and Argentina, which jointly filed the complaint, have their own excessively risk-averse policies to blame.

Significantly, the WTO decision bluntly scolds the European Union (EU) for denying it had imposed a moratorium on biotech food approvals from 1998 to 2004. But that finding was a foregone conclusion. Until the WTO case was filed, European politicians freely admitted that a moratorium existed.

Anti-biotechnology activists hailed the moratorium as a sign of European moral superiority, and in 2001, then-EU Environment Commissioner Margot Wallström acknowledged that the moratorium was "an illegal, illogical, and otherwise arbitrary line in the sand."

When it came time for their WTO defense, however, the Europeans actually denied that a moratorium had ever existed. Fortunately, the WTO decision acknowledges the EU's illegal practices—and the disingenuousness of the EU's defense.

The WTO decision also makes clear that existing national bans on certain biotech foods in Austria, France, Germany, Greece, Italy, and Luxembourg blatantly violate those countries' treaty obligations. When the United States filed its initial complaint in 2003, European politicians insisted that the move was unnecessary. EU Trade Commissioner Pascal Lamy boasted, "We are confident that the WTO will confirm that the EU fully respects its obligations." But then, as now, the European Commission (EC) was unable to persuade its rogue members to conform to EU policies. The fact that those national bans all remain in effect argues in favor of intervention by the WTO. (Ironically, the current WTO Director General is none other than Pascal Lamy.)

The most important victory for the United States and its partners is the WTO's judgment that the EU failed to abide by its own regulations by "unduly delaying" final approval of otherwise complete applications for 25 food biotech products. The culprit here is the European Commission's highly politicized, two-stage approval process: Each application must first be cleared for marketing by various scientific panels, and then voted on by elected politicians.

Significantly, the WTO assumed that "the conclusions of the relevant EC scientific committees regarding the safety evaluation of specific biotech products" were valid. That is, the trade panel did not object to how the biotech products were reviewed. Although all 25 product applications had been approved by EU scientists, the EU Regulatory Committees and Council of Ministers—for transparently political reasons rather than concerns about consumer health or environmental protection—repeatedly refused to sign off on the final approvals.

But the safety of biotech foods is not really in doubt. The technology has been endorsed by dozens of scientific bodies

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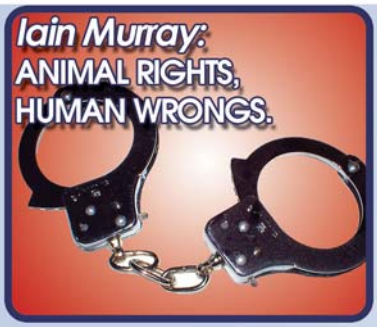
FEATURED ARTICLES



DEPARTMENTS:

>>FROM THE **GENERAL COUNSEL**

Accountability, Power, and Our CAP Project

by Sam Kazman

Violations of the Constitution come in all shapes and sizes. Many of you may be familiar with the Tobacco Master Settlement Agreement (MSA), which CEI is now challenging in federal court. The MSA was the culmination of a scheme by 46 state attorneys general and the tobacco industry to circumvent the Constitution's Compact Clause—a little-known provision aimed at limiting the ability of the states to gang up on the federal government or on each other. The MSA resulted in a *de facto* national sales tax on tobacco imposed without the vote of any elected official whatsoever.

The Constitution's Appointments Clause, which governs the naming of federal officials, may be as little known as the Compact Clause. Nonetheless, it is the focus of CEI's second pending constitutional case, our challenge to the Public Company Accounting Oversight Board (PCAOB). The PCAOB was established by the Sarbanes-Oxley Act of 2002, which Congress hastily enacted in the wake of the Enron collapse, and it has rapidly become one of the most far-reaching and costly federal regimes in existence.

Despite their relative anonymity, both of these clauses are central to the Constitution's chief purpose of restraining government. The Compact Clause restricts the ability of groups of states to form powerful factions—a threat that the Framers had painfully experienced under the Articles of Confederation. Similarly, British rule over the colonies had demonstrated the dangers of unfettered bureaucracy; in the words of the Declaration of Independence, King George had sent "Swarms of Officers to harass our People, and eat out their Substance."

The swarms sent out by the PCAOB involve the modern American equivalent of Crown officers—regulations. The Board has issued a series of incredibly far-reaching rules governing the internal controls of publicly held companies. These controls now need to be documented by comprehensive accounting audits. At the same time, the PCAOB's regulation of the accounting profession has drastically reduced competition in that field; many smaller accounting firms have simply stopped auditing even the smallest public companies due to the complexity involved. The annual costs of the Board's rules have been estimated at over $35 billion.

The Board's members are appointed by the members of the Securities and Exchange Commission (SEC). This violates the Appointments Clause, which requires that major government officers be nominated by the President or a court, while minor officers can be named by individual department heads. In contrast, the PCAOB's members are not named by any one person, but instead by a collective body—the SEC. (Moreover, the SEC itself is not a government "department" under the Constitution). As a result, neither the President nor any other individual in government is responsible for the PCAOB's actions. As John Berlau and Hans Bader point out in a CEI Issue Analysis, the Appointments Clause was intended to "promote effective management in government by preventing lack of accounting in a multi-member body." The lack of that accountability quickly turned the selection of PCAOB members into a Keystone Cops routine.

To top this off, Congress declared that the PCAOB is not a government agency.

In February, CEI and the Free Enterprise Fund filed a court challenge to the PCAOB on behalf of Beckstead and Watts, a small Nevada accounting firm. The firm specializes in serving micro-cap companies, but the PCAOB is attempting to force it to comply with auditing standards more suited to the Fortune 500. Standing up to a government force like the PCAOB takes guts, especially when Congress pretends it's a non-government force, and we applaud Beckstead and Watts for its courage.

Developments such as the tobacco deal and the PCAOB illustrate the amazing extent to which the Framers got it right over 200 years ago. They got it right, moreover, not just on such "big-picture" issues as free speech and property rights, but on the details in which the devil resides.

Both of these cases involve issues of accountability and power. The cases are part of CEI's "CAP Project." CAP stands for Control Abuse of Power, but it could just as well stand for Control the Accountability of Politicians.

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New Era for European Biotech?

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around the world, including the French Academies of Science and Medicine, the UK's Royal Society, U.S. National Academy of Sciences, American Medical Association, and many others. And, in 2003, EU Commissioner for Health and Consumer Affairs David Byrne acknowledged that currently marketed biotech crop varieties pose no greater food safety or environmental threat than the corresponding non-biotech varieties.

The good news, then, is that the WTO chastised the European Union for failing to follow its own regulatory rules. The bad news is the absence from the panel report of any condemnation of those rules themselves, in spite of the fact that they are blatantly unscientific and in clear violation of trade treaties enforced by the WTO.

Under the various WTO-enforced treaties, member countries are free to enact any level of environmental or health regulations they choose, with the stipulations that: 1) every so-called sanitary or phyto-sanitary regulation must be based on the results of a risk analysis showing that some legitimate risk exists; and 2) the regulation must bear a proportional relationship to that risk.

Every risk analysis performed by countless scientific bodies around the world has shown that the splicing of new genes into plants, per se, introduces no incremental risks. Even a 2001 report summarizing the conclusions of 81 different EU-funded research projects spanning 15 years concluded that, because biotech plants and foods are made with highly precise and predictable techniques, they are at least as safe, and often safer, than their conventional counterparts.

Not only is there no proportional relation between regulation and risk in the EU's biotech policies, there is actually an inverse relationship between degree of risk and amount of regulatory scrutiny. This is both absurd and illegal.

It is disappointing that the WTO did not condemn the clearly illegitimate European policies, but the WTO's actions were limited by the fact that the complainants did not challenge them.

How can that be? Simple: The United States, Canada, and Argentina didn't challenge those policies because they use the same flawed basic approach as the EU. Their regulations all discriminate against biotech products by subjecting them—and only them—to a stringent, pre-market approval process. Just like the EU, these countries have disregarded the same scientific consensus that what matters for health and safety assessments are the characteristics of new plant varieties, not the process by which they were developed.

Compulsory case-by-case review and costly field test design requirements have made biotech plants disproportionately expensive to develop and test, with no added safety benefit. In the United States, for example, these needless regulatory hurdles can add several million dollars to the development costs of every biotech plant variety—an amount that exceeds the total expected revenue stream for all but the biggest commodity crops. Getting approval in enough other countries to make the biotech varieties legally exportable can add tens of millions of dollars more.

It's no wonder, then, that the United States and its partners didn't mount a broader challenge to EU policies. They would have been laughed out of Geneva for challenging a regulatory approach not fundamentally different from their own.

Still, the European regulations are far more discriminatory and debilitating than those in the United States, Canada, and Argentina. For example, the EU now requires those few biotech foods that are allowed on the market to be labeled in such a way that every ingredient can be traced back to the farm on which it was grown. This is hugely expensive, utterly gratuitous, and—except for stigmatizing food that contains gene-spliced ingredients—accomplishes nothing.

In the end, however, it is unlikely that the WTO's slap on the wrist will induce any major change in EU policy. At a "background" briefing on February 8, EU officials lashed out at the WTO decision, but explained that, "It is nevertheless clear, beyond any doubt, that the EU will not have to modify its [biotechnology] legislation and authorization procedures."

Even if the EU does approve some of the 25 pending biotech products, few companies are likely to risk the tens of millions of dollars in regulatory costs to pursue new ones. Even worse, the less developed nations of Asia, Africa, and Latin America, which once anticipated that food biotechnology could provide them a brighter and more self-sufficient future, will continue to be shut out of the important European market by policymakers' callous obstructionism.

The limitations of the WTO decision are not the fault of the organization, of course, but of regulatory policies worldwide that defy science and common sense. The only winners from such wrong-headed public policy are European and other government regulators and anti-technology activists, who rejoice at excessive and debilitating regulation. The biggest losers are the rest of us, who systematically will be denied access to safer, more nutritious, and affordable foods.

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ANIMAL RIGHTS, HUMAN WRONGS.

by Iain Murray

Animal rights extremists—whom the FBI has labeled America's biggest domestic terrorism threat—have encountered a number of serious reverses recently. These reverses are a great victory for science, free inquiry, and public health. In particular, Americans could learn from a popular movement in Britain that is standing up to the threats and intimidation of the animal "liberation" movement and asserting the moral arguments for animal testing.

The poster child for animal liberation extremists has been Huntingdon Life Sciences (HLS), a British-based firm that conducts experiments on animals largely in the field of toxicology protection. In April 1997, the firm was found to have breached British animal protection laws and had its license revoked for three months. However, after that punishment was imposed a group of animal rights activists founded a gang called Stop Huntingdon Animal Cruelty (SHAC) with the express aim of closing down HLS within three years. SHAC claims to be committed to non-violent direct action, targeting not just HLS but anyone connected or doing business with it—whether a director of the firm or a cleaner doing contract work for it.

In February 2001, HLS Managing Director Brian Cass—who was later honored by Queen Elizabeth II for services to medical research—was attacked by three men armed with pickaxe handles. HLS Marketing Director Andrew Gay was attacked with a chemical spray that temporarily blinded him. After SHAC started using public records to threaten HLS shareholders, the company relocated its financial center to the state of Maryland.

SHAC supporters in the United States have also been accused of harassment, intimidation, arson, trespass, and vandalism. Eventually, the evidence became too hard to ignore and the U.S. branch of the group and six of its members were indicted for inciting violence and terror, and for stalking. On March 2 they were found guilty, some on several counts. Some of the six face up to 10 years in federal prison. While denying any intent to injure, one of the defendants said in the trial that it was fine to throw rocks through somebody's window as long as no one was home. SHAC has been condemned by people and groups from across the political spectrum, including the Southern Poverty Law Center, which compared SHAC to abortion clinic bombers.

Despite this, SHAC nearly succeeded in its efforts to close HLS down. Animal rights extremists have moved on to target other organizations using equally despicable methods. One egregious case happened last year: A British farm that bred guinea pigs for use in animal experiments pulled out of the business after the culmination of a long campaign against them when activists desecrated the grave of the owner's grandmother and "kidnapped" her body. The activists were tracked down and recently entered a plea of guilty to blackmail in relation to the desecration. However, the whereabouts of the remains remain unknown.

Yet with such "successes" under their belts, it was inevitable that the extremists would set their targets higher—so they went after the world's most distinguished institution of higher learning. Oxford University had decided to consolidate its dispersed facilities into one biomedical research center on South Parks Road alongside its other famous scientific centers. The new center would replace existing laboratories and at the same time upgrade them, thereby increasing the welfare of the animals involved. To the extremists, however, it was too good a target to miss and they resolved to make its construction impossible.

Threats were issued. The first contractor, Walter Lilly, pulled out of construction after SPEAK, the group coordinating activities against the new facility, began hosting demonstrations against it. It was during one of these demonstrations that on January 29 this year, a 16 year-old high school dropout named Laurie Pycroft thought that enough was enough. He spontaneously organized

a small counterdemonstration in favor of the benefits of animal research and with it Pro Test was born (http://www.pro-test.org.uk/).

Coincidentally, the most infamous of all the animal rights extremist movements, the Animal Liberation Front, got involved at about the same time. In a press release dated February 2, the ALF announced:

> *This is just the beginning of our campaign of devastation against ANYONE linked in ANY way to Oxford University. Every individual and business that works for the University as a whole is now a major target of the ALF. The University have [sic] made a crass decision to take us on and we will never let them win!*
>
> *This ALF team is calling out to the movement to unite and fight against the University on a maximum impact scale, we must stand up, DO WHATEVER IT TAKES and blow these f***ing monsters off the face of the planet. We must target professors, teachers, heads, students, investors, partners, supporters and ANYONE that dares to deal in any part of the University in any way.*
>
> *There is no time for debate and there is no time for protest, this is make or break time and from now on, ANYTHING GOES.*
>
> *We cannot fail these animals that will end up in those death chambers.*
>
> *Be warned, Oxford University, this is only the beginning of our campaign. Everyone linked to your institution is right now being tracked down and sooner or later, they will be made to face the consequences of your evil schemes.*

Apparently, this made legitimate targets of Bill Clinton, Tony Blair, and your present writer, among others. It also woke up about 18,000 students to the realization that they were now at risk of attack from a terrorist organization.

The tide appears to have turned. Laurie Pycroft has become a celebrity and his cause is treated sympathetically by the British media. The grassroots nature of the Pro Test movement bears out another thing Dr. Harris said, that the British public values and respects the work of medical researchers:

> *My message to the scientists, researchers and students who carry out biomedical work using animals is that you are heroes—underpaid, under-pressure and under-praised. You have always had my full public support and that of the vast majority of my constituents, of my parliamentary colleagues, and of the British people. Your work is legitimate, necessary, carefully regulated, and—where authorized—the only or best way to provide insight into the causes and therapies of human diseases. You are right. You are brave. You are valued.*

With "successes" under their belts, it was inevitable that animal rights extremists would set their targets higher.

As a result, within a month of its founding, Pro Test was able to host a major rally in Oxford, with over 1,000 people attending and addresses from Professor Tipu Aziz, Consultant Neurosurgeon and professor of neurosurgery at Oxford University, Professor John Stein, professor of Physiology at Oxford, Dr. Simon Festing, Executive Director of the Research Defense Society, and Dr. Evan Harris, Liberal Democrat MP for Oxford West. Dr. Harris spoke with passion and eloquence, telling the crowd:

> *Several years ago I volunteered to be a human trialist of a potential new AIDS vaccine, developed here in Oxford. I know that would not have been possible without the use of animal models and safety testing in animals. I said at the time that animal research was vital if we are to conquer AIDS, TB, and malaria, and every time politicians talk about their concern for the developing world and those diseases they should mention the role that animal research will play.*
>
> *My message to the extremists is that you will never win. Every vile action of harassment, intimidation, or violence undermines any legitimacy your cause ever had and strengthens the resolve of those of us who support the rule of law and the role of science to resist you and to speak out against you.*

The American public certainly respects and values the work of medical researchers here. As the SHAC convictions have shown, animal rights extremism is alive and well in the United States as well. While organizations that want to end animal testing continue to bask in celebrity adulation, and with protests very much in the news these days, America could do with a Pro Test movement of its own.

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Time to End Big Sugar's Sweet Deal

by Frances B. Smith

Sugar is already shaping up to be a contentious issue in upcoming debates on the 2007 omnibus farm bill. The call for dismantling the antiquated sugar support system comes from a wide range of people and organizations. The costs of the U.S. sugar regime include higher food prices for U.S. consumers and thousands of lost jobs in sugar-using industries. In addition, the U.S. sugar program causes environmental damage, particularly in Florida, and blights economic opportunities for many small farmers in developing countries.

As is true with many government programs, the sugar program's benefits are concentrated and the costs are diffuse. It principally benefits large sugar cane producers in Florida and Louisiana and sugar beet farmers in 14 upper-Midwestern and Western states. For those who benefit, the rewards are significant—the General Accounting Office estimated in 1991 that 42 percent of the sugar grower benefits went to only 1 percent of all sugar farms, or 150 farms. Some 33 sugar farms received over $1 million in annual benefits.

No wonder the sugar industry wants to keep such a sweet deal.

However, this time around for a new farm bill, pressures to reform the sugar program are multiplying: The tighter federal budget, less solidarity among agricultural producers, loosening of some import restrictions on sugar, and agricultural reform looming in World Trade Organization (WTO) negotiations.

Tighter federal budgets and the need to reduce the federal deficit are sure to play an important role in shaping farm policy. Policy makers may finally look askance at providing generous support for agricultural programs that mainly benefit a small segment of the farm sector.

The driving force for any farm bill is the array of commodity programs that set out the workings of the complex system of farm subsidies, direct payments to farmers, counter-cyclical payments, price supports, and other programs to support farmers' incomes and prices. Besides this direct support, farm bills include other special farm assistance, such as agricultural loan programs, crop insurance and disaster assistance, rural development business assistance, land conservation and reserve programs, and programs for marketing agricultural products.

Stuck in the 1930s

Many of these farm programs had their origins during the Great Depression, when commodity prices plummeted as global demand for agricultural goods dropped sharply. Some of the agricultural support programs were to be temporary—to prop up farmers' incomes when the bottom fell out. Others were enacted in recognition of the role that U.S. agriculture played in the nation's economy. In the U.S. in 1930, for example, 21 percent of the workforce was employed in agriculture, and agriculture's share of the total Gross Domestic Product (GDP) was 6.8 percent, according to the U.S. Department of Agriculture's Economic Research Service.

But the U.S. agricultural sector has changed radically since the 1930s. Today, very large and highly mechanized farms predominate, employing substantially fewer people. With the U.S. a highly diversified economy in the 21st century, farming accounted for only 1.4 percent of total U.S. employment in 2001, and only 0.7 percent of U.S. GDP.

The U.S. sugar program, with its price supports and import restrictions, also had its origins in the Great Depression. Restricting the sugar supply to ensure a minimum price for sugar farmers remains the crux of the program. The sugar program regulates both the amount of sugar cane and sugar beets domestic producers can sell in the U.S.—through the use of "marketing allotments"—and the supply of foreign sugar that can come into the country—through import quotas. To ensure a minimum price for sugar producers and processors, the U.S. Department of Agriculture (USDA) provides loans to sugar processors, with the proceeds of the loans then paid to the producers at the minimum payments levels set by USDA. As a result, sugar in the United States costs two to three times the world market price. A GAO study in 2000 estimated that eliminating the sugar program could have resulted in an estimated welfare

gain in 1998 of up to $1.8 billion if cost savings were passed on to consumers. More recently, the OECD estimated that the cost of U.S. sugar policies to American consumers in 2004 was $1.5 billion.

New Competitive Pressures

Import quotas for sugar are administered by USDA and the U.S. Trade Representative, and must be consistent with the U.S. commitments to the World Trade Organization to allow 1.256 million short tons of imported sugar to enter the U.S. each year. That amount, allocated to 41 countries, can enter the U.S. duty-free or with a low tariff. Import amounts above that quota face a stiff tariff, unless the U.S. domestic supply has a shortfall in meeting demand, as it did in 2005, especially after Hurricane Katrina.

However, under the North American Free Trade Agreement, in just a few years Mexico will be able to ship its sugar surplus to the U.S. market duty-free (although U.S. officials argue that a different agreement was made in a side letter). If indeed this occurs in January 2008, the U.S. will not be able to maintain the price support program, which depends on the government restricting the supply of sugar.

The U.S. is facing other international pressures to reform its domestic agricultural support programs, including the sugar program. With tight deadlines looming and not much progress to show, the World Trade Organization is struggling to advance the Doha Development Agenda to better integrate developing countries into the world trading system. The key to success is reform of protectionist agricultural programs. Sugar reform should be high on that agenda.

Political Tide Turning

In negotiations and debate on farm bills, usually the farm sector bands together to get broad support for commodity programs. But the sugar industry's aggressive lobbying against the U.S.–Central America–Dominican Republic Free Trade Agreement alienated many other agricultural interests that saw the trade pact as benefiting their producers. Large agricultural producers are still frustrated that a small segment of the industry can hold up agreements that they see as benefiting the vast majority of farm interests. Sugar cane and sugar beets account for only 1 percent of total U.S. farm cash receipts.

Sweetener-using industries, too, are accelerating their long-time quest for sugar reform. Facing steep domestic sugar prices, some candy manufacturers have moved their operations to other countries; others have experienced significant job losses, as domestic companies paying high sugar prices find it hard to compete in world markets. A U.S. Department of Commerce study in February 2006 found that limiting sugar imports was "a major factor" in the loss of 10,000 jobs in candy manufacturing.

A new force pressing to reform the sugar regime is the Sugar Reform Alliance (SRA). The SRA, coordinated by the Competitive Enterprise Institute, is a working group of non-profit organizations dedicated to the elimination of the U.S. sugar program. SRA participants include consumer groups, international aid organizations, environmental groups, taxpayer groups, and think tanks from across the political spectrum, including CEI, the National Taxpayers Union, Citizens Against Government Waste, Consumers Union, Consumer Alert, Consumer Federation of America, Americans for Tax Reform, Consumers for World Trade, Oxfam America, Hudson Institute's Center for Global Food Issues, Foundation for Democracy in Africa, DKT Liberty Project, and the Free Enterprise Fund.

The Alliance points out the sugar program's costs to consumers and taxpayers, the lost jobs in sugar-using industries, the environmental damage that the program encourages, and the harmful effects on developing countries denied access to the U.S. market.

SRA and other opponents of the sugar regime realize that pointing out the harmful effects of the program is not enough. The next step is to provide alternatives for policy makers to consider in their deliberations on the 2007 farm bill.

A new white paper published by CEI points to some possible approaches to eliminate or phase out the sugar program ("Is the Sugar Program Solvable?" http://www.cei.org/gencon/025,05263.cfm). It won't be a simple task—"Big Sugar" has enormous political clout in Congress and a formidable lobbying machine. Yet with opponents beginning to coalesce and economic and trade pressures accelerating, opportunities for reform may be possible.

CEI Adjunct Fellow and Sugar Reform Alliance Coordinator Frances Smith presents a copy of the CEI Issue Analysis "Is the U.S. Sugar Problem Solvable?" to Rep. Jeff Flake (R-Ariz.) at an April 25 Sugar Reform Alliance briefing on Capitol Hill. To her left are fellow Alliance members Kristina Rasmussen of the National Taxpayers Union and Fred Oladeinde of the Foundation for Democracy in Africa.

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LET THE INTERNET GROW UP.

by Peter Suderman

America has developed a proud paternal bond with the Internet. We've watched and cheered the Net's growth from its awkward, text-heavy infancy into the capable, hard-working information network it has become. But, like many proud parents of prodigies, we're so pleased with our creation's current brilliance that we're on the verge of stunting its development with overbearing restrictions. These restrictions, ushered in through innocent-sounding but insidious "Net neutrality" legislation, threaten the Net's maturation into the powerful technology it ought to be.

Net neutrality regulations would restrict Internet Service Providers (ISPs)—the owners of the Net's infrastructure—from charging Web content providers for prioritized access. In the current scheme, all the bits and bytes passing through the Internet's information gateways are treated equally. But ISPs envision an Internet where, for a price, Net traffic from some sites could be given preferential treatment—like first-class ticket holders, those paying more would be bumped to the front of the line. Net neutrality legislation would prohibit such first-class treatment, enforcing a Net perpetually stuck in cramped coach seats.

The underlying idea is a common one among couriers of physical property: Larger loads and faster service entail higher fees. Think of ISPs as virtual shipping companies. Instead of physical goods, they deliver information. And just as physical shipping companies charge more to move larger packages or for quicker delivery, ISPs want to build a tiered business model where the price matches the quality and quantity of service.

But Net neutrality proponents don't think ISPs should be allowed to offer such prioritized services. Gigi B. Sohn, for example, president of the tech-advocacy group Public Knowledge, has complained that "Prioritization is just another word for degrading your competitor." But this is hardly the case. Rather, prioritization allows providers of online services to receive and react to market signals, allowing them to provide better service.

Neutrality regulations also threaten to impede digital property rights. ISPs have invested massive sums in building the communications infrastructures that allow the transmission of information over the Net; neutrality advocates would commandeer these information pipelines

from their rightful owners and attempt to force these owners into a mandated business model.

Neutrality proponents bury their arguments within a mound of rhetoric about consumer choice, but the choice they offer is a stagnant, underdeveloped Internet, robbed of its tremendous potential. There is a prevailing, misguided notion in their arguments that the Net we have now is the Net we will always have. It is easy to forget that just over a decade ago, now-common features like Flash animation, web video and Internet telephony were still gleams in their developers' eyes.

Currently, the Web is poised to deliver an even wider array of heretofore unavailable, advanced features that would consume enormous amounts of bandwidth. Prioritized access fees would generate new revenue that could help fund the bandwidth increases that these new services will entail; neutrality advocates want to close off these revenue streams and their attendant market signals. The consumer choice offered by neutrality advocates refuses to accept a grand buffet of tasty new Net services in favor of the bland familiarity of an Internet no more exciting than a brown bag lunch.

Many of the Web's largest content providers are disingenuously lauding neutrality proposals for their alleged consumer-friendly bent. But the praise offered by companies like Amazon and eBay is designed primarily to insulate them from the delivery costs of the new bandwidth-hungry content they want to develop. Under the neutrality rules, these companies would get to ship bigger, better, faster content without any concurrent change in price. Despite their name, these rules are about as neutral as a football game in which one team gets to play wearing rocket boots.

It's understandable for Americans to feel protective of the Net. We're proud of what it has become, and we're afraid of what change could bring. But the Internet is still developing, and Net neutrality laws would hinder that growth. Instead of relegating the Net to its current, immature state, let's let dump the idea of neutrality and let the Internet keep growing up.

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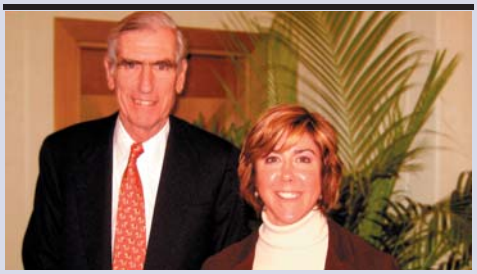
CEI Vice President for Policy **Clyde Wayne Crews, Jr.** (left) presents a Bureaucrash "Enjoy Capitalism" T-shirt to **Johan Norberg** of the Swedish think tank Timbro at the conference "The Macro Issues of the Microsoft Case."

CEI Takes the Fight for Freedom Across the Pond

As the economy has become globalized, so has regulation—and CEI has jumped to meet the challenge. Recently, CEI has increased its activities in Europe, where several CEI representatives have been busy promoting the ideas of free enterprise and limited government.

In Brussels, on February 25, while CEI President Fred Smith was addressing the Libertarian International group—delivering two talks, "Communicating Market Liberty in a Non-Liberal World" and "Protecting the Planet through Private Property"—Senior Fellow Iain Murray and Vice President of Development Terry Kibbe attended a strategy session sponsored by FreedomWorks Foundations' Center for Global Economic Growth. The meeting focused on promoting free market policies and preventing wrong-headed proposals such as the European Union's (EU) proposed REACH chemicals policy. The newly appointed American Ambassador to the EU, C. Boyden Gray, was featured at the conference, which was also attended by leaders from free market think tanks throughout Europe.

Fred Smith, Iain Murray, and CEI Senior Fellow Chris Horner then traveled to Iain's old stomping ground of London. Fred provided a luncheon talk to the Adam Smith Institute, "A Perspective on Anglosphere Politics." They also met with other think tanks, including Reform, the Globalisation Institute, the Institute of Ideas, and Civitas; with journalists from *The Times, Spectator*, *Financial Times,* and *Daily Mail*; and with the economic adviser to the Shadow Chancellor. They also hosted a dinner at the celebrated Carlton Club for three Members of Parliament. Iain then visited Oxford to meet with the University's Conservative Association. He was heard to murmur, "If this is Tuesday, this must be Oxford."



CEI Vice President of Development Terry Kibbe and American Ambassador to the European Union C. Boyden Gray.

And on April 20 in Brussels, CEI and the Centre for the New Europe co-sponsored "The Macro Issues Of the Microsoft Case: Antitrust Regulation's Threat To European Innovation," a half-day conference focusing on the risks to innovation and competitiveness of Europe's embracing of American-style antitrust regulation and blocking of industry institutional evolution. CEI Vice President for Policy Clyde Wayne Crews, Jr. was a featured speaker. The conference brought together academics and professionals to discuss the risks of antitrust regulation in the dynamic world of high technology.

– Clyde Wayne Crews, Jr., Iain Murray, Ivan Osorio, Fred Smith, and Terry Kibbe

THE GOOD

WTO Strikes Down EU Biotech Ban

On March 27, in a unanimous vote, the Federal Elections Commission (FEC) decided to leave most political activity on the Internet unregulated, amid bipartisan worries that new rules could stifle online political speech. The rules, which regulate paid political advertisements, exempt bloggers, the many online pundits who use personal websites to publish commentary on political events. FEC Chairman Michael Toner said that the rules "totally exempt individuals who engage in political activity on the Internet from the restrictions of campaign finance laws. The exemption for individual Internet activity in the final rules is categorical and unqualified."

The prospect of regulation was troubling to bloggers across the political spectrum, who welcomed the decision. Conservative blogger Mike Krempaksy wrote, "This is a tremendous win for speech," while liberal blogger Duncan Black (under the pseudonym Artios), wrote, "This could have been an utter disaster, but it appears to have all worked out in the end."

THE BAD

Automakers Saddled with New Fuel Economy Standards

On March 29, U.S. Transportation Secretary Norman Mineta announced new Corporate Average Fuel Economy (CAFE) rules for light trucks, including sports utility vehicles. The rules would raise the average gas mileage standard for light trucks from 21.6 miles per gallon (mpg) to 22.2 mpg starting in 2007.

The new rules are the biggest changes to the CAFE program in decades—yet environmental activist groups like Environmental Defense remain unsatisfied, claiming that they are not enough. But as CEI General Counsel Sam Kazman points out, the new fuel standards are unnecessary. "Now, as in the past, rising gas prices are leading to more fuel-efficient vehicles. Politicians may love to appear proactive, but this is a problem that solves itself," he says.

It could have been worse. "There is one good thing about the new CAFE program—it may no longer be as lethal as it once was," Kazman notes. "Previous CAFE standards encouraged production of small, light cars. This improved fuel economy, but it also reduced crashworthiness. The new CAFE program has been reformed to reduce the downsizing incentive by introducing an mpg standard tied to vehicle size." But that only minimizes the program's damage rather than eliminate it. "CAFE is still a lethal program. Those who push for higher standards should acknowledge that. Until they do, the debate over fuel economy regulation is a dishonest one."

THE UGLY

Activists Protest Wal-Mart's Entrance into Banking Industry

The campaign to prevent Wal-Mart from operating its own bank is mounting. At an April 10 Federal Deposit Insurance Corporation hearing, representatives from the banking industry, unions, and self-styled consumer groups testified against allowing the retail giant to open its own financial facilities to expedite and lower costs in its own payment processing. Wal-Mart has stated that it does not intend to enter into the branch banking business, but that hasn't been enough to calm the critics. Rep. Stephanie Tubbs Jones (D-OH), who heads a group of lawmakers opposed to Wal-Mart expanding into financial services, went so far as to claim that Wal-Mart's "massive scope and international dealings" would expose the federal government to financial disaster.

But this demagoguery is nothing new. As CEI Adjunct Scholar Zachary Courser notes, Wal-Mart's opponents are simply following a tradition of protest that periodically meets growth and change in America's retail sector. "The same story has repeated itself through each major change to retailing: Groups mobilize against a vanguard of a new retail paradigm, public campaigns begin to rock the foundations of that enterprise, and eventually, legislatures react to restore normalcy by regulation that business' practices, allegedly in the public instance. The tragedy in each instance is that the American consumer loses most in this drive for control over the forces of retail innovation."

MediaMENTIONS

Compiled by **Richard Morrison**

Director of Energy and Global Warming Policy Myron Ebell takes Congress to task for grandstanding on gas prices:

As public anger over soaring gas prices continues to build, members of Congress have noticed that their re-elect numbers continue to go down. And so they are scrambling to find someone or something to blame. Big oil companies are the favorite scapegoat, but the President, China, automakers, the Iraq War, and speculators are also popular targets.

Most senators and representatives should be looking in the mirror in order to find who is really to blame. Those who are complaining the loudest have voted again and again over many years for policies designed to constrict energy supplies and thereby raise energy prices.

- *Human Events*, April 28

Warren Brookes Journalism Fellow Timothy Carney untangles the cross subsidies to be found in the airliner industry:

The Export-Import Bank (Ex-Im), a federal agency that subsidizes U.S. exports primarily through loan guarantees, dedicated a majority of its guarantee dollars again last year to subsidies for Boeing sales, according to the agency's annual report. Weighted by dollar value, Boeing directly benefited from 52.2% of Ex-Im's long-term loan guarantees—the only transactions Ex-Im itemizes in its report this year. Over the last nine years, Boeing's share of Ex-Im loans and long-term guarantees is 52%.

With the agency's authorization expiring this year, Ex-Im officials have been touting their support for small businesses—an issue that lawmakers raised last time Ex-Im came before Congress for reauthorization.

- *Human Events*, April 20

Vice President for Policy Clyde Wayne Crews, Jr. makes the case for radical reform of the Federal Communications Commission:

The FCC exists almost as it was when it was established way back in 1934. Of the three major telecom reform bills circulating in Congress, none has addressed institutional reform at the FCC.

As a result, all the telecom reform bills both overappreciate and underestimate new Internet communications. They go too far to apply new laws to Internet services, yet don't go far enough to strip away at core institutional regulation in light of the growth and of these Internet services. Watching policymakers neglect or mangle telecommunications reform gives the impression they wouldn't recognize deregulation if it was on fire and rollerblading naked past them.

- *The Washington Times*, April 15

Director of Communications Christine Hall-Reis exposes the unholy alliance between tobacco companies and state governments:

States are embroiled in a nasty squabble with their business partner of seven years: Big Tobacco.

Major tobacco companies Philip Morris and R. J. Reynolds have accused the states of failing to enforce anti-competitive laws that were instituted as a part of the major tobacco settlement of 1998. Under the terms of the settlement, the companies were given the right to reduce their payments to the states if they could prove two things: that the settlement caused them to lose market share, and that the states failed to "diligently enforce" laws imposing special taxes and regulations on small competitors.

In 2006 alone, Big Tobacco companies gave over $6 billion in settlement payments to the states. That figure could plummet by as much as $1.2 billion following a March 28 ruling by an independent arbiter, which held that major tobacco companies did in fact lose market share due to advertising restrictions imposed by the 1998 deal.

- *National Review Online*, April 12

Assistant Editorial Director Peter Suderman explains the latest battle in the war against technological innovation:

The French climate of economic sluggishness and widespread unemployment has led to a pervasive restlessness. Many—especially the youth—have taken to rioting, striking, and protesting with a festival-like vigor. Naturally, anything with this sort of rock-concert aura deserves a soundtrack…But the French, never content without *dirigiste* government intervention, have decided that even their digital music needs to be saddled with the burden of regulation. Now Apple's iTunes music store is under fire from a law that would strip Apple of the right to protect its property without providing consumers any serious benefits. Supporters of stricter corporate regulations often fly under the flag of freedom, but what advocates of these proposals (and the French in general) often forget is that the doors to freedom swing both ways. Seemingly nowhere is this a more difficult concept than in the protection of digital media, where ideas that would seem laughable in the context of physical property suddenly become tenable.

- *National Review Online*, April 12

President Fred L. Smith, Jr. wades into the fight over federal budget earmarks:

During the Capitol Hill budget debates, many spectators must have found the use of the term "earmarking" somewhat strange. What does it have to do with budgeting?

The term refers to the practice of specifying that a portion of a generalized spending bill will be used for a certain purpose—for example, a bridge in Alaska. In theory, this practice reduces the power of the bureaucracy and requires Congress to become more accountable for spending decisions. In practice, the degree of specificity makes it easier to create alliances to increase overall spending. I'll back your bridge, if you back my convention center—and so on.

- *Liberty*, March 2006

...END NOTES

Life Imitates *Life of Brian*
Thought the feud 'twixt the People's Front of Judea and the Judea People's Front in Monty Python's *Life of Brian* was confusing? In Italy today, life imitates Python. According to *The Wall Street Journal*, in Italy's recent elections, voters in some districts were able to "choose between the Refounded Communist Party, the Party of Italian Communists and the Marxist-Leninist Party of Italian Communists." So is there a Communist Party of Italian Marxist Leninists lurking out there scratching for a fight with these groups?

Invest in Carbon Credits for This?
Prices plunged by half during the last week of April at the European Union's (EU) Emissions Trading System, a carbon permit exchange established under the Kyoto Protocol, reports Agence France-Presse. The cause? Several European countries found out they were polluting less than they thought, thus reducing the demand for credits to comply with Kyoto. Carbon emission permits began trading at $37.75 at the start of the week, and dropped throughout the week to end at $16.60 per ton. So does this mean that Kyoto is working *too well*? Hardly. Fifteen EU countries are still on track to exceed their eventual Kyoto targets.

What Would They Blame Starbucks For?
The anti-Wal-Mart campaign has tried different approaches to attack the retail giant—and now it's really reaching. A group called WakeUpWalMart.com is accusing Wal-Mart of being "unsafe for shoppers," due to an allegedly high number of police calls to Wal-Mart stores. Never mind that, as the largest retailer in America, Wal-Mart stores are *everywhere*—so is it shocking that there would be police incidents at a chain that is ubiquitous?

Gouge Now!
In February, the Minnesota Commerce Department announced plans to fine a gas station chain $140,000 for selling gas *too cheaply*. State officials said that Midwest Oil repeatedly sold gas below the state's minimum price law, which was established in 2001 on a formula based on wholesale prices, fees, and taxes, allegedly to prevent large oil companies from driving smaller competitors out of business. It's also a good way to make consumers run out of money.

Shunned Smokers Flock Together
Actor Russell Crowe was recently investigated for allegedly violating his native New Zealand's smoking ban by lighting up at a nightclub where he was appearing with his band, reports the BBC. Penalties for public smoking include heavy fines. Excessive? If Crowe thinks so, he could move to Chicago—he currently lives in Australia—where he could patronize Marshall McGearty Artisans, a "tobacco lounge" that is defying the city's smoking ban, albeit legally. Marshall McGearty is technically a tobacco retail shop that makes at least 65 percent of its sales from tobacco. Sadly, smokers patronizing establishments that cater exclusively to them is still not enough for health nannies. "This is just another slimy trick by Big Tobacco to circumvent the system," a spokeswoman for Americans for Nonsmokers' Rights told *The Washington Post* (R.J. Reynolds is Marshall McGearty's parent company). "For the people of Chicago, this is an equal opportunity killer." So much for individual choice—even a limited one.

— Ivan Osorio

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