



Competitive Enterprise Institute

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Advancing Liberty – From the Economy to Ecology

March 29, 2006

No. 104

The U.N.'s Strategic Approach to International Chemicals Management Program

Stealth Attempt at Global Regulation

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In February 2006, at the United Nations Environment Programme's (UNEP) International Conference on Chemicals Management in Dubai, United Arab Emirates, more than 100 governments adopted a plan to implement the UNEP's Strategic Approach to International Chemicals Management (SAICM) initiative. SAICM is designed to set up a global chemicals agency to coordinate management of chemicals, wastes, and other substances on a global scale. The program is dubbed as a voluntary initiative through which "stakeholders" will engage in efforts to ensure safe management of chemicals. Proponents argue that centralization of chemical policy is important because of the number of chemicals in world commerce today—some estimates range up to 100,000—and because of estimates that place chemical production as increasing by 80 percent within the next 15 years.¹

United Nations bureaucrats have been looking at this issue since 1992, and their efforts are now maturing into an international initiative that promises far reaching impacts. Yet few of the businesses likely to be affected have probably even heard of SAICM. That is not surprising given minimal press coverage of the issue. To date, the *New York Times*, *USA Today*, *Financial Times*, and *Wall Street Journal* have largely ignored the issue. Yet inadequate press coverage of SAICM belies its importance.

History. SAICM began as an item discussed in Chapter 19 of *Agenda 21*,² a document agreed to at the U.N. Conference on Environment and Development (UNCED), held in Rio de Janeiro, Brazil, in 1992. It proposed a system for global chemicals management, outlining six program goals that include:

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- Expanding and accelerating international assessment of chemical risks;
- Harmonization of classification and labeling of chemicals;
- Information exchange on toxic chemicals and chemical risks;
- Establishment of risk reduction programs;
- Strengthening of national capabilities and capacities for management of chemicals; and
- Prevention of illegal international traffic in toxic and dangerous products.³

The Rio meeting led to the creation of the Intergovernmental Forum on Chemical Safety (IFCS or Forum), which was designed to facilitate these goals and set in motion a process for implementation. An official document on the Forum's history describes it thus:

The IFCS is a non-institutional arrangement whereby representatives of governments meet, together with intergovernmental and non-governmental organisations, to consider all aspects of the assessment and management of chemicals. The aim is to integrate and consolidate national and international efforts to promote the objectives of Chapter 19 of *Agenda 21*. The IFCS provides policy guidance, identifies priorities, develops strategies and, where appropriate, makes recommendations to governments, international organisations, intergovernmental bodies and non-governmental organisations involved in chemical risk assessment and environmentally sound management of chemicals.⁴

In October 2000, the Forum met in Salvador da Bahia, Brazil, where representatives from 83 governments produced and agreed to the Bahia Declaration, which reiterated and affirmed a commitment to the goals in *Agenda 21*—including promoting cooperation for global chemicals management and ratifying and implementing chemicals conventions and agreements—and resolved to set up institutions for implementing them.⁵ In addition, the Bahia meeting produced a document setting the priorities for the program.⁶ In 2002, the SAICM concept was endorsed by the delegates to the World Summit on Sustainable Development in Johannesburg, South Africa, calling for completion of the program's founding documents by 2005.⁷

Since then, the U.N. has held three preparatory meetings for SAICM—SAICM PrepCom1, in Bangkok, Thailand, in 2003; PrepCom2 in Nairobi, Kenya, in October 2004; and PrepCom3 in Vienna, Austria in September 2005.

At PrepCom3, conferees expected to draft three framing documents for SAICM—the High Level Declaration,⁸ Overarching Policy Statement,⁹ and Global Plan of Action—to be finalized at the Dubai meeting in February 2006.¹⁰ These documents with all the changes from PrepCom3 are included in that meeting's report.¹¹

Establishment of SAICM. SAICM is supposed to be a voluntary initiative of world governments to ensure the proper management of chemicals and wastes through information sharing, harmonization of chemical risk standards and labeling, and training.

In addition, it is supposed to ensure ratification and implementation of environmental treaties, but is unclear as to how those goals will be pursued.

The objective of PrepCom3 was to produce a clean text to be finalized at the Dubai meeting. However, there was considerable debate at PrepCom3, with the United States opposing language that set the “precautionary principle” as an object of the program—an approach that demands that products be proven safe before entering the marketplace.

Currently, U.S. regulators follow a more risk-based approach, assessing the risks of products and setting regulations that allow an “acceptable” level of risk. Under the present U.S. system, regulators must demonstrate products are unsafe before removing them from the market. While this approach often produces very restrictive regulations—including bans of many products—it provides some protection against arbitrary governmental coercion.

In contrast, the precautionary principle reduces regulatory accountability by shifting the burden of proof, demanding that manufacturers prove that their products are safe before allowing them to enter into, or continue in, commerce. Since *nothing* in life is 100 percent safe, the precautionary principle means that governments can regulate products simply because they decide that products *might* pose public health risks—making regulation arbitrary and subject to political whims.

At the September 2005 PrepCom3 meeting, U.S. negotiators advocated a risk-based approach that is more compatible with America’s regulatory tradition. The result of that meeting was a document that included bracketed language that would be subject to negotiation at the Dubai meeting. It is important to note that at that time the term “voluntary” was also in brackets, throwing into question stated intentions that the program would be voluntary rather than binding international law.

This document, renamed the Dubai Declaration after its approval, created the SAICM Secretariat housed at UNEP. In addition, governments pledged \$10 million for a program called Quick Start to provide assistance to developing nations.

Opposition to some provisions by the United States and other countries—including Australia, Japan, South Korea, and Canada—nearly halted the SAICM process, but negotiators agreed to a last-minute compromise just before midnight on the last day of the conference.¹² They removed language on the precautionary principle from the document, which now states that the program will “take into account” the wording of the Rio Declaration. While this creates some confusion as to whether the program will follow the precautionary principle, there is reason to believe that it eventually will take a precautionary approach, since the Rio Declaration endorses the principle.

Additional compromises secured by the United States and its allies included provisions to allow participating countries to exempt food and medicine from SAICM provisions because nations already have domestic regulations governing such issues. The United States also demanded that the voluntary nature of the program be clear. Final language on

that topic reads: “We acknowledge that as a new voluntary initiative in the field of international management of chemicals, the Strategic Approach is not a legally binding instrument.”¹³

A number of environmental activists expressed dismay at the result. Clifton Curtis of the World Wildlife Fund’s Global Toxics Program says the agreement result is “akin to achieving half a loaf of bread, not well baked.”¹⁴ Environmental activists complained that the program has been rendered ineffective by officials from the United States and its allies.¹⁵

Policy Implications. Despite the paucity of news coverage, SAICM represents a policy whose scope is as extensive as that of the Kyoto Protocol on climate change,¹⁶ which seeks to control use of the world’s energy. SAICM covers the other half of the universe. Whereas Kyoto attempts to regulate the world’s energy, SAICM seeks to manage matter—all non-living physical objects on Earth.

SAICM is seen as innocuous because it is considered a voluntary effort. Yet despite its nonbinding nature, SAICM is likely to possess a substantial policy role—setting global standards that will likely become models for governments to follow as the basis for environmental treaties and other international agreements that, unlike SAICM, will be binding.

In fact, one of SAICM’s key goals is to ensure that existing chemical and waste disposal-related treaties all are ratified and become subject to implementing legislation in the various nations. The United States, a likely target of ratification/implementation efforts, has yet to ratify a number of treaties, including the Stockholm Convention of Persistent Organic Pollutants,¹⁷ which bans a number of chemical internationally, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal,¹⁸ which regulates shipment of hazardous wastes.

SAICM supporters acknowledge that the program is designed to have important policy impacts. For example, UNEP Executive Director Klaus Toepfer commented that existing chemical treaties alone are not enough, concluding: “[I]t has been clear for some time that simply ticking off groups of chemicals one by one [is] becoming impractical. A new approach, a new way forward for chemicals management was needed, which is what SAICM now offers.”¹⁹

SAICM’s “Global Action Plan” offers an idea as to the program’s ambitious agenda for chemicals. It includes nearly 300 “concrete measures” for the various stakeholders to pursue. These include many items that are restrictive in nature, including, for example intentions to “restrict availability of” or “substitute” “highly toxic pesticides;” “promote substitution of hazardous chemicals;” “regulate the availability, distribution and use of pesticides;” “halt the sale of and recall products” that pose “unacceptable risks;” and “eliminate the use” of certain “hazardous chemicals.”²⁰

SAICM and REACH. Another reason to believe that SAICM will have a substantial regulatory role is that many proponents see it as the perfect vehicle for the European Union (EU) to globalize its REACH proposal, which is expected to become law in Europe by 2007. REACH—which stands for Registration, Evaluation, and Authorization of Chemicals—applies a precautionary approach to chemical regulation that will be followed by government regulation, demanding that firms demonstrate safety through a complicated registration and information collection program that will inevitably result in the ban of some products.

Such globalization may be, in the minds of EU bureaucrats, a way to “level the playing field.” The European Report recently noted such intentions for SAICM:

There can be no doubting the links between the future European system for the registration, evaluation and authorisation of chemicals (REACH) and SAICM: the two mechanisms share the same general objective (minimising the impact of chemicals on the environment and health). Moreover, many of the recommendations included in SAICM will also be implemented in the context of the new EU regulation (information on substances, minimising risks, liability of industry in ensuring safety, etc.)...EU sources also point out that the REACH process was actually launched in the 1990s. At the international level, the approach can be traced back to the Johannesburg Summit Declaration of September 2002 in which the parties pledged to reduce the negative impact of chemicals by 2020. This concrete objective spurred the EU into pressing ahead. Work at the European and international level since 2002 has therefore followed a convergent parallel path.²¹

European regulators had previously considered other ways to globalize REACH. For example, there is considerable evidence that they planned to push international implementation of an early version of REACH through the Organization for Economic Cooperation and Development.²² Now SAICM allows them a new outlet to globalize REACH, a prospect that would expand regulatory controls and impose heavy costs on businesses around the world. Application of REACH in Europe alone is destined to be expensive for Europe and its trade partners. A European Commission-funded study estimates REACH’s costs to fall somewhere between €2.8 billion (\$3.4 billion) over 11 years to €5.2 billion (\$6.3 billion) over 15 years.²³ However, these studies only assess a fraction of REACH costs. Moreover, the likely benefits of REACH have not been adequately demonstrated.²⁴

SAICM and Public Health. While it is true that some of SAICM’s goals are reasonable, such as ensuring that developing nations gain information regarding the proper handling of chemicals, the program is likely to fail when it comes to attaining these goals. It will fail for the same reasons centralized economic planning has failed: Government officials are too removed from the many diverse problems that individuals face in a society and lack the information necessary to solve those problems. Uniform policies will not work in the various situations around the world; such political processes

tend to serve organized players rather than the common good, and policy goals are often based on misperceptions.

Market economies are better situated to address problems associated with chemicals management and some of the larger problems that hinder human well being in developing nations. Indeed, many of the serious problems that SAICM proposes to address—such as developing nations’ mismanagement of dangerous substances due to their lack of resources to pursue policies for proper handling—would be solved through the promotion of economic growth, not through expensive global governance. The costs of SAICM will likely have the opposite result, by diverting resources from more important issues and by undermining commerce and economic development.

In fact, most of the world’s serious environmental problems are the effects of poverty in developing nations. According to a 2001 World Bank study, *Environment Strategy Papers: Health and Environment*, the most prevalent global environmental problem is inadequate sanitation. This is something that only economic growth can address through improved infrastructure and increased access to chemical disinfectants, such as chlorine. Next on the list of problems is limited access to modern energy sources, including electricity and fossil fuels. Lacking such amenities means that the rural poor around the world rely on burning biomass fuels—such as cow dung—in their homes as an energy source. Resulting pollution leads to an estimated 1.7 million deaths associated with respiratory illnesses each year.²⁵ While U.N. bureaucrats fret that someone might consume trace levels of chemicals found in plastic packaging, the absence of such sanitary packaging and refrigeration in developing nations kills tens of thousands every year.

SAICM is not the solution to such problems and arguably represents a serious misallocation of limited resources. Indeed, developing nations cannot afford the regulatory burdens proposed by many of the world’s environmental treaties; and many of these treaties promise to undermine economic growth. For example, a study by the Liberty Institute in India shows that the Basel Convention has proved counterproductive and detrimental to development in poor nations.²⁶

SAICM is also unlikely to improve public health in developed nations by reducing cancer rates as its proponents believe it will do. If chemicals were a source of health problems, one might expect that as chemical use has increased around the world, there would be some measurable adverse impact on life expectancy, cancer rates, or other illnesses. Yet in developed nations, where chemical use has greatly increased, people are living longer, healthier lives. According to the World Health Organization’s (WHO) *World Cancer Report*, 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 2050.²⁷

Nonetheless many complain that chemicals are causing a cancer epidemic in developed nations. But trace level chemicals have never been shown to be a significant cause of cancer. The WHO report estimates that at most 1 to 4 percent of cancers can be attributed

to environmental pollution in developed countries, citing a world-renowned study by scientists Sir Richard Doll and Richard Peto.²⁸

While Doll and Peto note that 80 to 90 percent of cancers are caused by “environmental factors,” this phrase encompasses *everything* other than genetics. It does not include pollution alone. Environmental factors include smoking, diet, occupational exposure to chemicals, “geophysical factors” such as naturally occurring radiation, manmade radiation, medical drugs and radiation, and pollution. According to Doll and Peto, pollution accounts for only 2 percent of all cancers.²⁹ Neither Doll and Peto nor the WHO mention exposure to chemicals through consumer products as a serious cause of cancer, which is a key focus of SAICM. In addition, the EU policy will not likely affect occupational exposures in the developed world since, as the WHO notes, “most occupational carcinogens have been removed from the workplace.”³⁰

Doll and Peto report that tobacco use accounts for about 30 percent of all annual cancer deaths, and dietary choices for 35 percent.³¹ The WHO confirms these figures, attributing 30 percent of cancers to smoking and 30 percent to dietary factors.³² The WHO notes that chronic infections—which are particularly a problem in developing nations—cause about 18 percent of worldwide cancers.³³ Genetic factors may lead to an additional 4 percent of cancers. That means that less than 20 percent of cancers result from all other causes, including pollution, alcohol, occupational exposures, medical drugs, radiation, immune-suppression problems, and reproductive factors and hormones.

Nonetheless, since cancer is a disease related to aging, the developed world’s aging population does indeed present new health challenges that are important to address. 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.³⁴ Efforts to encourage people to change personal habits by eating better are likely the most effective cancer prevention policy.

Conclusion. Despite limited coverage and interest in the media, SAICM represents a major international policy development. Businesses may soon be caught by surprise after the SAICM Secretariat begins to affect policy around the world. And despite the fact that SAICM is primarily intended to assist developing nations with the management of chemicals, developing nations stand to lose the most from the program, which seeks to impose burdensome regulations.

Notes

¹ “Ministers Reach Global Agreement in Sound Management of Chemicals,” *European Report*, Feb. 11, 2006.

² *Environmentally Sound Management of Toxic Chemicals, Including Prevention of Illegal International Traffic in Toxic and Dangerous Products (Chapter 19)*, in United Nations Conference on Environment and Development, June 3-14, 1992, Agenda 21: Earth’s Action Plan, U.N. Doc. A/CONF.151/26, <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter19.htm> (last visited Mar. 19, 2006).

³ *Id.*

⁴ World Health Organization (“WHO”), *Intergovernmental Forum on Chemical Safety: Brief History and Overview*, Dec. 2005, http://www.who.int/ifcs/documents/ifcs_overview_dec05.doc (last visited Mar. 7, 2006).

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- ⁵ Intergovernmental Forum on Chemical Safety (“IFCS”), “Bahia Declaration on Chemical Safety,” in *Forum III Report: Third Session of the Intergovernmental Forum on Chemical Safety*, Oct. 2000, <http://www.who.int/ifcs/documents/forums/forum3/en/Bahia.pdf> (last visited Mar. 7, 2006).
- ⁶ IFCS, “Priorities for Action 2000 and Beyond,” Annex 6 in *Forum III Report: Third Session of the Intergovernmental Forum on Chemical Safety*, Oct. 2000, <http://www.who.int/ifcs/documents/forums/forum3/en/annex6.pdf> (last visited Mar. 7, 2006).
- ⁷ *Report on the International Summit on Sustainable Development*, Johannesburg, S. Afr., 19-20, Sept. 2002, http://www.un.org/jsummit/html/documents/summit_docs.html (last visited Mar. 7, 2006).
- ⁸ Draft High-Level Declaration, Strategic Approach to International Chemicals Management (“SAICM”), July 13, 2005, http://www.chem.unep.ch/saicm/meeting/prepcom3/en/saicm_3_2e.pdf (last visited Mar. 7, 2006).
- ⁹ Draft Overarching Policy Strategy, SAICM, July 12, 2005, http://www.chem.unep.ch/saicm/meeting/prepcom3/en/saicm_3_3e.pdf (last visited Mar. 7, 2006).
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- ¹¹ *Report of the Third Session of the Preparatory Committee for the Development of a Strategic Approach to International Chemicals Management*, Oct. 19, 2005, <http://www.chem.unep.ch/saicm/meeting/prepcom3/en/3-5%20Report%20E.pdf> (last visited Mar. 7, 2006).
- ¹² Press Release, International Chemicals Secretariat, SAICM: Chemical Negotiations Salvaged, International Secretariat (Feb. 7, 2006), <http://www.chemsec.org> (last visited Mar. 16, 2006).
- ¹³ Pat Phibbs, *International Negotiators Reach Agreement on Voluntary Plan for Chemical Management*, *Envirowire*, Feb. 7, 2006.
- ¹⁴ *UN Global Environmental Chemical Deal Wins Approval*, Reuters, Feb. 7, 2005.
- ¹⁵ *UN Chemicals Agreement reached despite U.S. and European Differences*, Ass’d Press, Feb. 7, 2006.
- ¹⁶ Kyoto Protocol to the United Nations Framework Convention on Climate Change was adopted on 11 December 1997, http://unfccc.int/essential_background/kyoto_protocol/items/2830.php (last visited Mar. 8, 2006).
- ¹⁷ Stockholm Convention on Persistent Organic Pollutants, May 23, 2001, 40 I.L.M. 532 (2001), http://www.pops.int/documents/convtext/convtext_en.pdf (last visited Mar. 16, 2006).
- ¹⁸ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Mar. 22, 1989, 28 I.L.M. 649, <http://www.basel.int/text/con-e-rev.pdf> (last visited Mar. 16, 2006).
- ¹⁹ *UAE-Environment: New Global Chemicals Strategy Given Green Light*, Qatar News Agency, Feb. 10, 2006.
- ²⁰ Draft Global Plan of Action, *supra* note 10.
- ²¹ *European Report.*, *supra* note 1.
- ²² See Eileen Ciesla, *Will the United States Let the European Union Regulate our Chemicals Industry through the OECD?* (Competitive Enterprise Institute., Apr. 15, 2002), <http://www.cei.org/gencon/004,02960.cfm> (last visited Mar. 7, 2006).
- ²³ Joan Canton and Ch. Allen, *A Microeconomic Model to Assess the Economic Impacts of the EU’s New Chemicals Policy*, European Commission/DG Enterprise, Nov. 2003, http://europa.eu.int/comm/enterprise/reach/docs/reach/effects_new_chem_policy-2003_11_17.pdf (last visited Mar. 7, 2006).
- ²⁴ For a detailed analysis of REACH, see Angela Logomasini, *Europe’s Global REACH: Costly for the World, Suicidal for Europe* (Hayek Institute, 2005), http://www.fahayek.org/index.php?option=com_content&task=view&id=387&Itemid=40 (last visited Mar. 16, 2006).
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- ²⁶ Prasanna Srinivasan, *The Basel Convention 1989: A Developing Nation’s Perspective* (Liberty Institute, Sept. 24, 2001), http://www.libertyindia.org/pdfs/basel_convention_srinivasan.pdf (last visited Mar. 7, 2006).
- ²⁷ WHO & Int’l Agency for Research on Cancer, *World Cancer Report* (2003), at 320.
- ²⁸ Richard Doll and Richard Peto, *Causes and Prevention of Cancer: Quantitative Estimate of Avoidable Risks of Cancer in the United States Today*, *J. of the Nat’l Cancer Instit.* 66, no. 6 (Jan. 21, 1981), at 1191-1308.
- ²⁹ *Id.* at 1251.
- ³⁰ *World Cancer Report*, *supra* note 27, at 33.
- ³¹ Doll & Peto, *supra* note 28, at 1224.
- ³² *World Cancer Report*, *supra* note 27, at 33, 62.
- ³³ *World Cancer Report*, *supra* note 27, at 61.
- ³⁴ *World Cancer Report*, *supra* note 27, at 321.