

## Lawrence A. Kogan - Print Interviews 2005-2006

During 2005-2006, Lawrence Kogan was interviewed by several print media sources. They include:

- Power News
- BNA Daily Environment Report
- Pesticide.net Insider
- Platt's Electric Utility Week
- Pharmaceutical Executive Magazine

Date: 03/06

Periodical: Power News Electronic Newsletter

Title of Article: Northeastern US States Release Draft 'Model Rule' For CO2 Trading Program

Dialogue:

One expert, Lawrence Kogan of the Institute for Trade, Standards and Sustainable Development, raised major concerns with the constitutionality of the program. Although RGGI states claim their approach is constitutional, Kogan told Platts that the rule's references to the United Nations and cooperation with Mexico and Canada raises questions about whether RGGI states are stepping into an international role reserved for the federal government. "By saying non-participating states in the RGGI process, that means everybody else," Kogan said.

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Date: 11/25/05

Periodical: BNA Daily Environment Report

Title of Article: Consumers Could See Annual Energy Savings If Regional Credits Used For Energy Efficiency

Dialogue:

Cost Estimates Dubbed 'Abnormally Low'

The research group's cost estimates came under fire from electric utilities and the Institute for Trade, Standards and Sustainable Development, a legal research organization that opposes the regional cap-and-trade program.

The head of ITSSD, Lawrence Kogan, told BNA Nov. 23 that the Economic Development Research Group's projected costs for implementing for implementing the regional trading scheme are "abnormally low" and either minimize or completely ignore factors ranging from potentially higher energy costs to supply bottlenecks.

The cost estimates "basically rely on energy efficiency model estimates which are in themselves pie in the sky", Kogan said. Figures purporting to show cost savings for consumers who implement energy conservation around the home are based on historical estimates that almost always overstate the savings a household receives from those measures, he said.

"I've been speaking to a number of industry players on this, and they're very concerned" over the push to implement the RGGI in the United States, Kogan said.

Some of the pressure for implementing the regional program in the United States is coming from Europe, he said, where electric utilities and other energy providers want a "level playing field" as European members move toward compliance with a similar cap-and-trade emissions system.

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Date: 9/13/05

Periodical: Pesticide.net Insider

Title of Article: America 'Should Draw A Line in the Sand' Against European Lobbying For Precautionary Principle, White Paper Says

With the United Nations serving as its proxy, the Europe is promoting a multi-pronged effort to impose the precautionary principle on the regulatory schemes of the United States and other countries, the Institute for Trade, Standards and Sustainable Development argues in a recent white paper.

The paper, "Precautionary Preference: How Europe's Regulatory Protectionism Imperils American Free Enterprise", was issued in July. It was authored by Lawrence Kogan, CEO of the Princeton, N.J.-based group.

Dialogue:

*Insider* asked Kogan to discuss his conclusions, and their implications for U.S. pesticide producers.

*Insider:* The White Paper points out that the EU moratorium against U.S. biotech products was lifted. Wouldn't that suggest that the EU lost that round?

*Kogan:* The moratorium was imposed in a factual sense by different member states. It wasn't the European Commission, which is the executive branch of the European Community, which imposed the moratorium. It was imposed by member states that happened to act in concert. The European Commission negotiated with the governments of those member states to drop their de facto moratorium against biotech imports. The de facto moratorium was lifted as a quid pro quo for the European Commission adopting and implementing some regulations concerning traceability, pre-market authorization and labeling of biotech products.

*Insider:* How does the EU Biocidal Products Directive [on non-agricultural pesticides and anti-microbials] requirement for pre-market authorization and study submission differ from the EPA study requirements for pesticide registration?

*Kogan:* The difference is that the information required by the Directive is based on a prior presumption that these things are harmful and need to receive authorization for their sale. EPA does not presume that everything is harmful [before a registration application is submitted].

In addition, the Directive affects the entire supply chain by affecting the processes and products necessary to produce the biocides. They follow the traceability regime established for biotech products to impose the burden of using the safest alternatives in the manufacturing process, even if the manufacturers are already in compliance with the [data] requirements of the Directive. That's part of the burden of the precautionary principle. It intrudes on the discretion of businesses to use the substances and processes they want for manufacturing. And, there are releases of proprietary information along the supply chain when you make regulatory filings.

*Insider:* The proprietary information isn't shielded?

*Kogan:* The intellectual property protections are inadequate, which as a result, allows for the inadvertent disclosure of proprietary information.

*Insider:* Is there any congressional interest in enacting regulations similar to the REACH proposal from the European Commission?

*Kogan:* There isn't any effort to adopt REACH as a federal statute, wholesale, but the GAO recently issued a report that talks about the ability of EPA to conduct a viable scientific risk assessment of chemicals. The conclusion of the report, which was commissioned by a partisan group of congressman, was that the EPA does not have that ability, and therefore, [congress] needs to change the TSCA and FIFRA statutes to provide it with that ability. The appendix to the GAO report plainly refers to the REACH proposal.

*Insider:* The White Paper suggests that the GAO investigation was related to a UN Environment Programme Finance Initiative report. Are you suggesting a direct link between the UN and the GAO investigation?

*Kogan:* There was an interesting confluence of events, to the say the least. UNEP has been the focal point for UN activities on exactly the same activities that the Europeans are focusing on. It also happens to be coincidental that many of the initiatives being proposed in the U.S. at the state and local levels by civil society groups cite UN declarations and the UNEP programs. Is there any evidence showing a direct link to the GAO report? No. But, I surmise that there must be an indirect linkage based on all the activity coming out of UNEP; the references in the initiatives proposed at the state, local and even federal levels; and how hard Europe has been pushing its agenda through UNEP.

*Insider:* Given the large databases on U.S.-registered pesticides, do you think the REACH requirements would still impose additional testing mandates on domestic pesticide exporters?

*Kogan:* You would think that would be duplicative, based on how thoroughly pesticides have been studied, so the question would be what additional aim would be achieved by imposed REACH on pesticide manufacturers? I imagine that REACH, being based on the precautionary principle, would shift the burden of proof to industry and would change the standard of proof from significant harm to any potential harm. REACH also applies to the risk of any potential harm.

*Insider:* Do you feel that the risk assessment paradigm established by the Food Quality Protection Act could be modified to re-establish the Delaney Clause [which prohibited the use of food additives known to be carcinogenic] for pesticide regulation, even though Delaney was eliminated from pesticide regulation in exchange for industry agreement to support FQPA enactment?

*Kogan:* Delaney is the precursor to the precautionary principle, and therefore, there is an attempt on multiple fronts to reinstate a form of Delaney through the precautionary principle for all types of chemicals and substances, including pesticides. That effort is being led by the NGOs, but there are also bills going through certain state legislatures with an interest in Delaney – and there are some members of Congress looking into that, as well.

*Insider:* The White Paper maintains that Europe has been eager to provide China with technology, “especially if it disadvantages U.S. industry”, and asserts that Europe hopes “to move China towards European precaution-based regulatory rules”.

In view of the Chinese environmental track record – such as reports that a Chinese province supposedly dedicated to ‘organic’ food production has exported produce with residues of conventional pesticides, along with the uncontrolled sulfur dioxide emissions from Chinese electric utilities – are the Europeans naïve in hoping that the Chinese will actually adopt precautionary regulations in exchange for Western technology?

*Kogan:* They're not naïve because Europeans take a long view on most things. They believe that through the process of time and persuasion, and that fact that they present the largest market for Chinese exports, that they can persuade the Chinese to come along with their view.

In order to have a bilateral agreement with the Chinese, there would have to be some agreement on the stringency of their Euro-based regulations, and in order to do that, you would have to have some type of harmonization of regulatory frameworks.

*Insider:* How would the Europeans know if the Chinese were enforcing the precautionary regulations?

*Kogan:* They already have a science and technology office in Beijing and they're working with the Chinese on a daily basis. So, what they're trying to do through their science and technology agreements is to bring the Chinese along to harmonize their regulatory approach with the European approach.

*Insider:* the Chief of the UN Treaty Section is quoted as saying that public and NGO pressure is an important tool to compel corporate compliance with "global environmental standards" by "shaming" them. That official mentions Home Depot and Citibank, but he doesn't mention any European-based multinationals or corporations. Do you feel that official is targeting U.S. companies, in particular, for a "shame game"?

*Kogan:* I believe that the UN is being used as a proxy to promote European values, and those values are not consistent with U.S. values. The whole notion of globalization has an anti-American sentiment attached to it, and there are many documents on our website under the 'Issues' section that point that out. So, while I believe that they are targeting all multinationals, I also believe that they are, now, specifically targeting U.S. companies which have thus far not cooperated with the effort to impose international corporate social responsibility norms.

*Insider:* Do you foresee a scenario in which U.S.-produced pesticide products could be subjected to trade barriers because their producers have been "shamed" by non-compliance with those norms?

*Kogan:* There's this notion of blacklisting, and that is quite possible...[If companies are not deemed socially responsible, according to principles first articulated by the Global Compact Office of the UN, it is quite possible that companies that do not meet the emerging standards will be blacklisted, and that social blacklisting could have an impact on regulators as well as consumers.

*Insider:* Who do you foresee issuing the blacklists?

*Kogan:* Most likely Greenpeace, the World Wildlife Fund, Friends of the Earth, and they would exaggerate their perception of reality from the facts. The more interesting issue is that of government procurement contracts. If governments adopted these standards in

their procurement practices, you could see regulations come on line that have a social responsibility dimension.

*Insider:* What are your predictions for the progress of European standards in the United States?

*Kogan:* This is going to be a difficult challenge for the United States to overcome because it requires coordination on multiple levels, and the Europeans have had a lot of time to create this labyrinth of rules and standards – and this is also part of the overall movement towards global governance, which many commentators have found to be inimical to U.S. national security, our economy, and other interests.

Our response to the challenge depends on the willingness of industry to work alongside government and other groups to promote an alternative paradigm to the one that enshrines the precautionary principle. Europe and the UN are promoting a negative paradigm based on a premise expounded by [19<sup>th</sup> century social theorist] Thomas Malthus. There is another, positive paradigm of sustainable development which does not require using the precautionary principle, and which is based on the notion of international free market environmentalism, private property rights, intellectual property protection and free markets.

We think the recent Vioxx decision [awarding \$235 million to the widow of a man who was allegedly killed by the Merck heart medication], is a significant reflection of the precautionary principle. A recent *Financial Times* article framed the issue of the Vioxx litigation as one of public perception – not of regulatory compliance or common law requirements. The article suggests that the public, which was once willing to assume some risk [from pharmaceuticals] in exchange for the hope of quality-of-life improvement, is no longer willing to accept those risks.

But, in terms of the global perspective, the biggest issue we'll be dealing with is whether "better safe than sorry" is evolving into a customary international legal norm. Once that occurs, countries that are not parties to treaties could be bound by that norm. That's the issue I'm now addressing for the International Law Association. The precautionary principle is embedded in some environmental treaties, but the U.S. approach to that term is different than what the Europeans envision. So, if the U.S. is a party to such a treaty, you could have two types of interpretation and implementation. The question is, is it better to be outside the regime and have no influence by persistently objecting to its existence, or to create a separate contrary practice within the regime? It depends on whether you can form a coalition of other treaty parties to go along with you. If you're a lone wolf it may be self-defeating to ratify a treaty and stand out as the sole contrarian. That's the big issue the U.S. will be facing – whether we stand alone or accept European values.

The Europeans believe in the "General Will" principle of Rousseau. They believe in consensus, and they disparage our frontier mentality, which has made us a nation of inventors and gives us a competitive advantage. It's killing them economically, so they're

collaborating with idealists to set their agenda. Europeans have governance mechanisms that impart authority to civil society [groups] which monitor everyone else. On one level, it's like living in one of those towns that tell you what color to paint your front door. On another level, they seem to believe that they are destined to be our philosopher kings.

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Date: 8/1/05

Periodical: Platt's Electric Utility Week

Title of Article: Push For U.S. Greenhouse Gas Regulations Seen As Move To Protect European Business

Dialogue:

State and regional greenhouse gas regulations in the U.S. are part of a European effort to extend non-scientific policies and protect its business, according to a new paper. Standards originating in Europe are affecting U.S. businesses by "regulation without representation", according to Lawrence Kogan, director of the Princeton, N.J.-based Institute for Trade, Standards and Sustainable Development (ITSSD).

...Kogan does not deny that climate change is occurring, but said in an interview that, "The jury is still out" on whether the change is cyclical or due to human activity. Meanwhile, many environment, health and safety (EHS) standards are being based on "an evolving international legal norm" known as "the precautionary principle", which his paper calls "a non-scientific 'better-safe-than-sorry' risk-averse philosophy of regulation". European regulators have adopted the approach and want to impose it on the U.S., the paper says.

..."Greens have red underbellies", Kogan said in an interview. "After the fall of the Berlin Wall, communists needed to find a new vocation, so they embraced environmental issues." He added that, "The UN is the best forum to spread the message", via the Kyoto Protocol, and that Europeans are determined to impact the U.S., despite the country's shunning of the Kyoto system.

Kogan asserts that European influences are helping to shape the Regional Greenhouse Gas Initiative (RGGI), a plan launched by New York Gov. George Pataki (R) to establish a carbon cap-and-trade system...RGGI is meant to be a model for the nation, and has already spawned a "clone" that would cover California, Oregon and Washington, Kogan notes.

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Date: 7/18/05

Periodical: Pharmaceutical Executive Magazine

Title of Article: Brazil Uses Compulsory Licensing Threat in Negotiations

Dialogue:

The negotiations between Brazil's health ministry and Abbott Laboratories over pricing of protease inhibitor Kaletra (lopinaver/ritonavir) for the South American nation's STD/AIDS program may not be over, as declared July 8.

In an interview with Brazilian newspaper Correio Braziliense on July 14, the nation's new health minister, who took office on the day the deal was announced, said that the agreement is not final. He added that the threat of using a compulsory license to produce a generic version of the drug was still on the table.

...The nation's threat of issuing a compulsory license has drawn the eyes of a variety of interest groups. Some admonish Brazil for its interpretations of the TRIPS agreement. Others salute the nation for its commitment to AIDS treatment.

...The Institute of Trade, Standards and Sustainable Development accused Brazil of abusing the public health section of the Doha agreement to build its generic pharmaceutical industry, with hopes of exporting products to developing countries around the world.

"Brazil is basically assuming a role of leadership", said Lawrence Kogan, spokesman and co-author of a paper on Brazil's pharmaceutical patent policy.