

THE TOXIC SUBSTANCES CONTROL ACT OF
1971 AND AMENDMENT

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HEARINGS
BEFORE THE
SUBCOMMITTEE ON THE ENVIRONMENT
OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE
NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 1478

TO AMEND THE FEDERAL HAZARDOUS SUBSTANCES ACT,
AS AMENDED, AND FOR OTHER PURPOSES

AUGUST 3, 4, 5; OCTOBER 4, AND NOVEMBER 5, 1971

PART 1 OF 3 PARTS

TOXIC SUBSTANCES

PLEASE RETURN TO

Serial No. 92-50

Printed for the use of the Committee on Commerce

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GENERAL ACCOUNTING OFFICE

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WASHINGTON : 1972

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removal of such substance or product. Now, that is not strictly speaking a seizure of the product, but it seems to us it is very close and probably would accomplish the same end.

I believe also in section 204(b) there is an authority here in the case of an imminent hazard for the Administrator to request of the court authority to restrain the use or distribution of the chemical substance. Here again it seems to us very close to what you are striving for in your amendment.

Senator SPONG. Under S. 1478 and the amendment exports are excluded from coverage unless the substance exported presents a hazard to people of this country. Many have said that we ought not to inflict hazards on others that we would not accept ourselves. How do you answer that argument? I am referring to section 211(a) in your bill and 213(a) in my amendment.

Mr. TRAIN. I am glad you agree with the administration's bill.

Senator SPONG. I do. We have it in there for discussion today.

Mr. TRAIN. I think that this certainly is a subject of considerable debate. We have as a general rule tried to avoid any impression that the setting of standards in this country—environmental standards—constitutes a hidden trade barrier. So I think we tend to avoid where possible the imposition of restrictions on the free flow of trade as a result of environmental factors.

Of course, on the import side the very nature of the public policy would be negated if you permitted imports to come in which did not meet our standards while our own manufacturers had to meet those standards. That reason does not apply to exports. What we are trying to do here is meet a public policy desire on the part of the American people—other peoples may—this is a somewhat philosophical approach—other peoples may have different standards that they are interested in, and I think there is a considerable feeling that we should not impose our standards on others.

Obviously they are perfectly free to impose such standards as they wish, including limitations on imports of our goods that do not meet those standards. We do make clear that where the export of a product does have an adverse effect on human health or the environment in the United States that the export would come under the proposed legislation.

So if an export did in fact have such an effect on the global environment, if you will, that the effect would extend to the United States, then it would be covered.

Senator SPONG. I believe Senator Hatfield wants to follow up on that.

Senator HATFIELD. Thank you, Mr. Chairman.

Mr. Train, this same subject came up during the fish inspection hearing that we had a few weeks ago. Don't you believe that this is a rather weak defense or weak argument which you are giving us this morning on this so-called restriction of trade implication in this section 211? I say this in light of the fact that we are now in preparation for the Stockholm conference which is an attempt to bring together the nations of the world to understand the growing truth—the understanding of this truth that environmental problems are global in character?

I just recently returned from a conference in the Soviet Union in which the environmental issue was discussed in the context that we

92^D CONGRESS
1ST SESSION

S. 1478

IN THE SENATE OF THE UNITED STATES

APRIL 1, 1971

Mr. HART (for Mr. MAGNUSON) (by request) introduced the following bill;
which was read twice and referred to the Committee on Commerce

A BILL

To amend, the Federal Hazardous Substances Act, as amended,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That this Act may be cited as the Toxic Substances Control
4 Act of 1971.

5 SEC. 2. The Federal Hazardous Substances Act is
6 amended by inserting before section 1 of such Act the
7 following: "TITLE I—HAZARDOUS CONSUMER
8 PRODUCTS".

9 SEC. 3. Such Act is further amended by adding after
10 the aforesaid title I, that is, after section 18 of the Act, the
11 following new title:

1 "TITLE II—TOXIC SUBSTANCES

2 "POLICY

3 "SEC. 201. Whereas the American people are being ex-
4 posed to a large number of chemical substances each year;
5 and

6 "Whereas among the many new substances constantly
7 being developed are some which may be a danger to human
8 health or the environment; and

9 "Whereas the effective regulation of interstate commerce
10 in such chemicals necessitates the regulation of transactions
11 in such chemicals in intrastate commerce as well;

12 "Therefore, it is the policy of the United States that
13 new chemical substances should be adequately tested with
14 respect to their safety to man and the environment; and

15 "That adequate authority should exist to restrict the
16 distribution and use of chemicals found to be toxic; and

17 "That such authority over chemicals be exercised in
18 such a manner as not to unduly impede technological inno-
19 vation while fulfilling the primary purpose of this title to
20 assure that such innovation and commerce does not endanger
21 human health or the environment.

22 "DEFINITIONS

23 "SEC. 202. (a) 'Administrator' means the Adminis-
24 trator of the Environmental Protection Agency.

25 "(b) 'Chemical substance' means any organic or inor-

1 ganic substance of a particular molecular identity or any
2 uncombined chemical radical or element.

3 “(c) ‘Manufacturer’ means any person engaged in the
4 production or manufacture of chemical substances for pur-
5 poses of sale or distribution in commercial quantities, or
6 an importer thereof.

7 “(d) ‘Processor’ means any person engaged in the
8 preparation of a chemical substance for distribution or
9 use either in the form in which it is received or as part
10 of another product, as defined by regulations of the
11 Administrator.

12 “(e) ‘Restrict use or distribution’ means to prescribe
13 the amount sold to given types of processors, or to limit
14 the type of processor to whom a substance may be sold, or
15 to prescribe the amount which may be utilized by a given
16 type of processor.

17 “(f) ‘Byproduct’ means a chemical substance produced
18 as a direct result of the production, manufacture, or process-
19 ing of some other chemical substance which is subject to
20 the provisions of this title.

21 “(g) ‘Environment’ includes water, air, land, all plants
22 and animals living therein, and the interrelationships which
23 exist among these.

24 “(h) ‘Animal’ means all vertebrate and invertebrate

1 species, including but not limited to man and other mammals,
2 birds, fish, and shellfish.

3 “(i) ‘Protect health and the environment’ means pro-
4 tection against any injury to man and protection against
5 any substantial adverse effects on environmental values,
6 taking into account the public interest.

7 “(j) ‘District court of the United States’ includes the
8 District Court of Guam, the District Court of the Virgin
9 Islands, the District Court of the Canal Zone, and in the
10 case of American Samoa and the Trust Territory of the
11 Pacific Islands, the District Court of the United States for
12 the District of Hawaii, which court shall have jurisdiction
13 over actions arising under this title.

14 “RESTRICTIONS ON USE OR DISTRIBUTION

15 “Proposal To Adopt Restrictions

16 “SEC. 203. (a) For any chemical substance produced
17 in commercial quantities, after evaluating all information
18 developed by or otherwise provided to or made available to
19 him, and after referring the matter to a committee in ac-
20 cordance with section 208, the Administrator may publish
21 proposed regulations to:

22 “(1) restrict or prohibit the use or distribution of
23 the chemical substance to the extent necessary to protect
24 health and the environment; and

25 “(2) require that any or all persons engaged in

1 taken. The inventory shall be made in the presence of the
2 person executing the warrant and of the person from whose
3 possession or premises the property was taken, if they are
4 present, or in the presence of at least one credible person
5 other than the person making such inventory, and shall be
6 verified by the person executing the warrant. The judge or
7 magistrate, upon request, shall deliver a copy of the inven-
8 tory to the person from whom or from whose premises the
9 property was taken and to the applicant for the warrant.

10 “(4) The judge or magistrate who has issued a war-
11 rant under this section shall attach to the warrant a copy
12 of the return and all papers filed in connection therewith
13 and shall file them with the clerk of the district court of the
14 United States for the judicial district in which the inspection
15 was made.

16 **“EXPORTS AND IMPORTS**

17 **“SEC. 211. (a)** Notwithstanding any other provision
18 of this title, no substance shall be deemed in violation of
19 this title when intended solely for export to any foreign
20 country except if the Administrator finds that as exported
21 and used the substance, or particular uses of the substance,
22 will produce a significant direct or indirect hazard to human
23 health or the environment in the United States.

24 “(b) The Secretary of the Treasury shall refuse entry
25 into the United States of any chemical substance or article

1 containing such substance offered for entry if it violates
2 any of the provisions of this title. If a substance or article
3 is refused entry, the Secretary of the Treasury shall refuse
4 delivery to the consignee and shall cause the disposal or
5 storage of any substance or article refused delivery which
6 has not been exported by the consignee within three months
7 from the date of notice of such refusal under such regula-
8 tions as the Secretary of Treasury may prescribe: *Provided,*
9 That the Secretary of Treasury may deliver to the consignee
10 such substance or article pending examination and decision
11 in the matter on execution of bond for the amount of the
12 full invoice value of such substance or article, together with
13 the duty thereon, and on refusal to return such substance
14 or article for any cause to the custody of the Secretary of
15 the Treasury, when demanded, for the purpose of excluding
16 them from the country, or for any other purpose, said
17 consignee shall forfeit the full amount of said bond: *And*
18 *provided further,* That all charges for storage, cartage, and
19 labor on substances or articles which are refused admission
20 or delivery shall be paid by the owner or consignee, and
21 in default of such payment shall constitute a lien against
22 any future importation made by such owner or consignee.

23 “(c) The Secretary of the Treasury, in consultation
24 with the Administrator, shall issue regulations for the
25 enforcement of subsection (b) above.

"CONFIDENTIALLY

1

2 "SEC. 212. (a) The information obtained from any
3 manufacturer or processor shall be confidential to the ex-
4 tent that it comprises matters referred to in section
5 552 (b) (4) of title 5 of the United States Code.

6 "(b) The Administrator may at his own initiative or
7 at the request of a manufacturer or processor issue a pro-
8 tective order respecting the confidentiality of information
9 obtained from a manufacturer or processor pursuant to the
10 provisions of this title, as he may deem appropriate to pro-
11 tect the manufacturer or processor from competitive injury.

12 "(c) Information deemed to be confidential in accord-
13 ance with the provisions of subsections (a) or (b) may be
14 disclosed to other Federal officers or employees when neces-
15 sary to accomplish the purposes of this title except that the
16 provisions of section 1905 of title 18 of the United States
17 Code shall continue to apply, and such information may
18 be disclosed in camera when relevant in any administrative
19 or judicial proceeding under this title. In any such proceed-
20 ing, the administrative body, the Administrator, or the court
21 shall issue such orders as may be appropriate to protect the
22 confidentiality of the materials designated as such by the
23 foregoing provisions.

24

"PROHIBITED ACTS

25

"SEC. 213. The following acts and the causing thereof
26 are prohibited—

92^d CONGRESS
1st SESSION

S. 1478

IN THE SENATE OF THE UNITED STATES

JULY 27 (legislative day, JULY 26), 1971

Referred to the Committee on Commerce and ordered to be printed

AMENDMENT

Intended to be proposed by Mr. SPONG to S. 1478, a bill to amend the Federal Hazardous Substances Act, as amended, and for other purposes, viz: Strike out all after the enacting clause and insert in lieu thereof the following:

1 SEC. 2. (a) The Federal Hazardous Substances Act is
2 amended by inserting before section 1 of such Act the
3 following:

4 "TITLE I—HAZARDOUS CONSUMER PRODUCTS".

5 (b) Such Act is further amended by adding after
6 section 18 thereof the following new title:

Amdt. No. 338

1 "TITLE II—TOXIC SUBSTANCES

2 "POLICY

3 "SEC. 201. Whereas the American people are being
4 exposed to a large number of chemical substances each
5 year; and

6 "Whereas among the many chemical substances con-
7 stantly being developed and produced are some which may
8 be a danger to human health or the environment; and

9 "Whereas the effective regulation of interstate com-
10 merce in such chemicals necessitates the regulation of trans-
11 actions in such chemicals in intrastate commerce as well;

12 "Therefore, it is the policy of the United States that—

13 "(1) new chemical substances and hazardous or po-
14 tentially hazardous existing chemical substances should
15 be adequately tested with respect to their safety to man
16 and the environment; that such testing should be the
17 responsibility of those who produce such chemicals; and

18 "(2) chemical substances should serve useful pur-
19 poses; and,

20 "(3) adequate authority should exist to restrict the
21 distribution and use of chemicals found to be harmful;
22 and

23 "(4) authority over chemicals be exercised in such
24 a manner as not to unduly impede technological inno-
25 vation while fulfilling the primary purpose of this title

1 to assure that such innovation and commerce in such
2 chemicals does not endanger human health or the
3 environment.

4 "DEFINITIONS

5 "SEC. 202. As used in this Act the term—

6 "(1) 'Administrator' means the Administrator of
7 the Environmental Protection Agency;

8 "(2) 'Chemical substance' means any organic or
9 inorganic substance of a particular molecular identity, or
10 any uncombined chemical radical or element, except such
11 substances which are of no public health or environmen-
12 tal significance as determined by the Administrator by
13 regulations;

14 "(3) 'Existing chemical substance' means any
15 chemical substance which is first produced in commier-
16 cial quantities before the effective date of initial regula-
17 tions promulgated pursuant to section 203;

18 "(4) 'Manufacturer' means any person engaged in
19 the production or manufacture of chemical substances
20 for purposes of sale or distribution in commercial quan-
21 tities, or an importer thereof;

22 "(5) 'Processor' means any person engaged in the
23 preparation of a chemical substance for distribution or
24 use either in the form in which it is received or as part

1 of another product, as defined by regulations of the
2 Administrator;

3 “(6) ‘Restrict use or distribution’ means to pre-
4 scribe the amount sold to given types of processors, or to
5 limit the type of processor to whom a substance may be
6 sold, or to prescribe the amount which may be utilized
7 by a given type of processor, or to limit the manner
8 in which a substance may be manufactured, used,
9 handled, or disposed of by any person, and such restric-
10 tion on use or distribution may include a total ban;

11 “(7) ‘Byproduct’ means a chemical substance pro-
12 duced as a direct result of the production, manufacture,
13 processing, use, or disposal of some other chemical sub-
14 stance which is subject to the provisions of this title;

15 “(8) ‘Environment’ includes water, air, land, all
16 plants and animals living therein, and the interrelation-
17 ships which exist among these;

18 “(9) ‘Animal’ means all vertebrate and invertebrate
19 species, including but not limited to man and other
20 mammals, birds, fish, and shellfish;

21 “(10) ‘Protect health and the environment’ means
22 protection against any unreasonable threat to human
23 health or the environment resulting from any chemical
24 reaction of a chemical substance taking into account the
25 benefits of the chemical substance as compared to the
26 risks to man or the environment;

1 are present, or in the presence of at least one credible person
2 other than the person making such inventory, and shall be
3 verified by the person executing the warrant. The judge or
4 magistrate, upon request, shall deliver a copy of the inven-
5 tory to the person from whom or from whose premises the
6 property was taken and to the applicant for the warrant.

7 “(4) The judge or magistrate who has issued a warrant
8 under this section shall attach to the warrant a copy of the
9 return and all papers filed in connection therewith and shall
10 file them with the clerk of the district court of the United
11 States for the judicial district in which the inspection was
12 made.

13 “EXPORTS AND IMPORTS

14 “SEC. 213. (a) Notwithstanding any other provision of
15 this title, no chemical substance shall be deemed in violation
16 of this title when intended solely for export to any foreign
17 country except if the Administrator finds, by regulation, that
18 as exported and used the chemical substance, or particular
19 uses of the substance, will produce a significant direct or
20 indirect hazard to human health or the environment in the
21 United States.

22 “(b) The Secretary of the Treasury shall refuse entry
23 into the United States of any chemical substance or article
24 containing such substance offered for entry if it violates any

1 of the provisions of this title. If a chemical substance or arti-
2 cle is refused entry, the Secretary of the Treasury shall re-
3 fuse delivery to the consignee and shall cause the disposal
4 or storage of any substance or article refused delivery which
5 has not been exported by the consignee within three months
6 from the date of notice of such refusal under such regulations
7 as the Secretary of the Treasury may prescribe, except that
8 the Secretary of the Treasury may deliver to the consignee
9 such substance or article pending examination and decision
10 in the matter on execution of bond for the amount of the full
11 invoice value of such substance or article, together with the
12 duty thereon, and on refusal to return such substance or
13 article for any cause to the custody of the Secretary of the
14 Treasury, when demanded, for the purpose of excluding them
15 from the country, or for any other purpose, said consignee
16 shall forfeit the full amount of said bond. All charges for
17 storage, cartage, and labor on substances or articles which
18 are refused admission or delivery under this section shall be
19 paid by the owner or consignee, and in default of such pay-
20 ment shall constitute a lien against any future importation
21 made by such owner or consignee.

22 “(c) The Secretary of the Treasury, in consultation
23 with the Administrator, shall issue regulations for the en-
24 forcement of subsection (b) of this section.

"CONFIDENTIALITY

1

2 "SEC. 214. (a) The information obtained from any man-
3 ufacturer shall be confidential to the extent that it includes
4 matters referred to in section 552 (b) (4) of title 5 of the
5 United States Code. For the purposes of this title any such
6 information shall be confidential only if such information is
7 unobtainable by competitors and its disclosure would lead to
8 competitive injury to the manufacturer. Only such informa-
9 tion as is relevant to the purposes of this title shall be dis-
10 closed to the public.

11 "(b) The Administrator may at his own initiative or
12 at the request of a manufacturer or processor issue a protec-
13 tive order respecting the confidentiality of information re-
14 ferred to in subsection (a).

15 "(c) Information deemed to be confidential in accord-
16 ance with the provisions of subsection (a) or (b) may be
17 disclosed to other Federal officers or employees when nec-
18 essary to accomplish the purposes of this title except that the
19 provisions of section 1905 of title 18 of the United States
20 Code shall continue to apply, and such information may be
21 disclosed in camera when relevant in any administrative or
22 judicial proceeding under this title. In any such proceeding,
23 the administrative body, the Administrator, or the court
24 shall issue such orders as may be appropriate to protect the
25 confidentiality of the materials designated as such by the
26 foregoing provisions.