

Written evidence submitted by CHEM Trust to the UK House of Commons Environmental Audit Committee Enquiry on the Transatlantic Trade and Investment Partnership

January 2015

Executive Summary

- CHEM Trust aims to protect humans and wildlife from harmful chemicals. We do this by working at EU, International and UK levels to improve the regulation of chemicals; this gives us a good insight into the international aspects of chemical regulation.
- We strongly believe that inclusion of chemicals within TTIP will lower protection in the EU, and will further slow down a system which is already moving very slowly.
- We are very concerned that the US has a long history of lobbying against EU action on chemicals, and that TTIP could provide a method for them to institutionalise this.
- The US approach to chemicals regulation is generally acknowledged to be out-dated and ineffective, while the European approach is being copied by other jurisdictions, for example China and South Korean.
- Given the differences between the two regulatory approaches, and the inability of the US to strengthen its regulations, it seems most likely that any regulatory harmonisation would lead to reduced protection in the EU.
- There are already a number of international processes which facilitate collaboration on chemicals, including OECD and three International Conventions – though the US is still not a party to these conventions.

1. About CHEM Trust

- 1.1 CHEM Trust¹ is a UK registered charity that works at European, UK and International levels to prevent man-made chemicals from causing long term damage to wildlife or humans, working to ensure that chemicals which cause such harm are substituted with safer alternatives.
- 1.2 CHEM Trust is an accredited stakeholder at the European Chemicals Agency, and we also participate in international chemicals processes at the OECD and at meetings of the Strategic Approach to International Chemicals Management (SAICM). We are an active member of the UK Government's Stakeholder Forum on Chemicals.

2. General points

- 2.1 CHEM Trust is deeply concerned that inclusion of chemicals (including pesticides) within a TTIP deal will reduce the protection of the public and the environment from hazardous substances. We first outlined these concerns in a joint position paper in March 2014².
- 2.2 In July 2014, CHEM Trust joined with over 100 civil society organisation in Europe and the US to write to US and EU negotiators to call for chemicals to be excluded

¹ CHEM Trust website & blog: <http://www.chemtrust.org.uk/>

² *TTIP – how the EU-US trade talks could harm our health by affecting chemicals regulation*, CHEM Trust & HEAL, March 2014, <http://www.chemtrust.org.uk/wp-content/uploads/TTIP-briefing-FINAL-CTHEAL-Mar-14.pdf>

from TTIP³. We have also criticised proposals for increased regulatory co-operation between the EU and US on Endocrine Disrupting Chemicals⁴.

- 2.3 Our concerns can be split into four main categories: the history of US lobbying against regulatory action on chemicals by the EU; the substantial differences between the EU and US approaches (with the US approach being much weaker in general), the likelihood that regulatory convergence would, in time, reduce protection in the EU rather than increase protection in the US, and the fact there are already mechanisms for international collaboration on chemicals management.

3. The history of US lobbying against regulatory action on chemicals

- 3.1 There is a long history of US administrations – often at high level – lobbying against new European regulation of chemicals.
- 3.2 The best documented case of this lobbying took place as the EU was developing its REACH system for chemical regulation. As described in depth in a report prepared for Representative Henry Waxman in 2004⁵, the US administration, in collaboration with the chemical industry, organised a pan-European lobbying effort in order to build opposition to REACH. For example, they worked together in order to “*get to the Swedes and Finns and neutralize their environmental arguments*”. In another example, then Secretary of State Colin Powell sent a cable to US embassies around the world to ask them to talk to non-EU governments, using incorrect impact figures from a US Chemical Industry study.
- 3.3 The persistency of the US lobbying against many aspects of REACH is clearly stated in the US Trade Representative’s report for 2014⁶. This states that “*Concerns regarding REACH have been raised at every WTO TBT Committee meeting since 2003 by the United States*”, including “*that aspects of REACH are discriminatory, lack a legitimate rationale, and pose unnecessary obstacles to trade.*”

4. There are substantial differences between US and EU chemicals management approaches

- 4.1 Over the last 15 years the European Union (EU) has begun to implement relatively stronger and more systematic policies. These provide a framework for replacing hazardous chemicals with safer, more innovative solutions (under REACH) as well as encourages new solutions for agricultural practices with less pesticides in the context of the sustainable use directive. Many EU businesses have therefore successfully developed new approaches to chemicals management⁷. In contrast, the US federal chemical regulatory system, the Toxic Substances Control Act (TSCA) dates from

³ CHEM Trust joins with >100 US and EU NGOs asking for chemicals to be removed from TTIP, July 2014, <http://www.chemtrust.org.uk/chem-trust-joins-with-100-us-and-eu-ngos-asking-for-chemicals-to-be-removed-from-ttip/>

⁴ TTIP or not, EU-US co-operation on Endocrine Disrupting Chemicals is likely to lead to delay, September 2014, <http://www.chemtrust.org.uk/eu-us-co-operation-on-endocrine-disrupting-chemicals-likely-to-lead-to-delay/>

⁵ A Special Interest Case Study: The Chemical Industry, the Bush administration, and European efforts to regulate chemicals, US House of Representatives, April 1st 2004. http://safecosmetics.org/downloads/Waxman-report_2004.pdf

⁶ 2014 REPORT ON TECHNICAL BARRIERS TO TRADE, USTR, <http://www.ustr.gov/sites/default/files/2014%20TBT%20Report.pdf>

⁷ ECHA Newsletter: Substitution & Innovation, April 2014, http://newsletter.echa.europa.eu/documents/6362380/21743968/newsletter_2014_issue_2_april_en.pdf

1976 and very few chemicals have been regulated in the nearly 40 years since it came into force⁸.

- 4.2 A number of jurisdictions around the world are developing new chemicals regulatory processes inspired by the EU's REACH system, including the reformed Chinese Chemical Law and Korea's new "K-REACH"⁹. It is clear that the REACH-type approach is the future of global chemicals regulation, not TSCA.
- 4.3 The report "Toxic partnership" from March 2014 written by the Center of International Environmental Law (CIEL) and ClientEarth¹⁰ analysed the proposals for TTIP made by the EU and US chemical industries. This report's view of the CEFIC and ACC proposal is that: "*There is not a single idea in this proposal that could increase efficiency of trade between the two blocs, nor reduce costs to governments. Instead, it would create additional committees at further cost to the taxpayers and interject new barriers to necessary regulation at all levels of government that would reduce regulatory efficiency and efficacy.*" Analysis of leaked EU proposals by civil society¹¹ has found that these deeply problematic industry proposals are being adopted by EU TTIP negotiators. This is public knowledge only because secret documents were leaked.
- 4.4 Regarding pesticides, a recent CIEL report analysed the differences in the EU and US regulatory systems, including a table of 82 pesticides which are banned in the EU but not in the US¹². The concerns regarding lowering the standards of protection seem to be well justified as revealed by the EU's negotiating position on food safety and animal and plant health proposal made public in January 2015¹³. The EU proposes that pesticide residue limits set by the UN's Codex Alimentarius Commission should be the default that applies between the EU and the US. These limits, which frequently allow more pesticides in food than levels set by the EU, will apply unless the importer files a "reservation" with the Codex Alimentarius Commission¹⁴.
- 4.5 A study for the European Parliament's Environment Committee examined potential impacts from TTIP on policy areas relevant to the committee¹⁵. On chemicals in

⁸ *Observations on Improving the Toxic Substances Control Act*, Statement by John Stephenson, Director Natural Resources and Environment, Government Accountability Office, December 2009
<http://www.chemicalspolicy.org/downloads/GAO-10-292T.pdf>

⁹ *Comparison of REACH, K-REACH and China Reach*, Chemical Watch
<http://chemicalwatch.com/K-REACH-questions-download>

¹⁰ *Toxic partnership: A critique of the ACC-CEFIC proposal for trans-Atlantic cooperation on chemicals*, CIEL, March 2014
http://www.ciel.org/Publications/ToxicPartnership_Mar2014.pdf

¹¹ *Toxic Partnership Revealed*, CIEL, Climate Earth and NRDC, October 2014
http://ciel.org/Publications/TTIP_Leaked_29Sep2014.pdf

¹² *Lowest Common Denominator: How the proposed EU-US trade deal threatens to lower standards of protection from toxic pesticides*, CIEL, January 2015
http://ciel.org/Publications/LCD_TTIP_Jan2015.pdf

¹³ TEXTUAL PROPOSAL: SANITARY AND PHYTOSANITARY MEASURES (SPS), European Commission, January 2015
http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153026.pdf

¹⁴ *EU wants new approach on pesticide residues in TTIP*, ENDS Europe, January 2014
<http://www.endsurope.com/38607/eu-wants-new-approach-on-pesticide-residues-in-ttip>

¹⁵ *ENVI relevant legislative areas of the EU-US Trade and Investment Partnership (TTIP) Negotiations*, November 2014

cosmetics, for example, it found that in the EU more than 1,300 ingredients are banned whereas in the US less than twenty ingredients are prohibited.

5. The likelihood that regulatory convergence will damage progress on EU regulation rather than increasing the stringency of the US chemicals regulation

- 5.1 A recent report for the European Parliament¹⁶ highlighted that *“If regulatory convergence were to level the playing field, there would be a risk of downward harmonisation. While consequences in terms of food safety and consumer protection should not be overestimated, this could lead to major changes in EU legislation, which may undermine the traditional EU precaution and risk management policy on which the current regulatory framework is based.”*
- 5.2 This is to a large extent connected to the proposed enhanced regulatory cooperation mechanisms *“due to its potentially significant chilling effect on the regulation of toxic chemicals, greenhouse gases, and other public health and environmental threats.”* This and other specific aspects under discussion are described in more detail in an important analysis of the EU position on chemicals and TTIP by CIEL and ClientEarth from July 2014 *“Toward a toxic partnership”*¹⁷.
- 5.3 Though there are currently US bills under discussion reforming US chemical regulation, they bear *“no meaningful resemblance to”* relevant EU laws, and *“the ‘priority’ chemicals between the U.S. and EU are almost completely incompatible, so the trade blocks don’t really agree on what are chemicals of concern. Part of that is a reflection of just how far the U.S. is behind the EU in taking action on chemicals”* – according to CIEL’s Baskut Tuncak.¹⁸
- 5.4 The lack of progress on improving chemical regulation in the US may be due to the strong influence of business lobbying in the US political system. Academic research examining decision making in the US has found that *“economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence”*.¹⁹
- 5.5 Up to now, the US government hasn’t revealed any meaningful information on its TTIP negotiating position. However, the US government has repeatedly made clear that they disagree with the EU’s approach for protecting the public from toxic chemicals, including the presumption against the use of carcinogens, hormone (endocrine) disrupting chemicals, and other chemicals of concern; and that these

[http://www.europarl.europa.eu/RegData/etudes/STUD/2014/536293/IPOL_STU\(2014\)536293_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/536293/IPOL_STU(2014)536293_EN.pdf)

¹⁶ *Risks and opportunities for the AGRI-Food sector in a possible EU-US trade agreement*, 2014
[http://www.europarl.europa.eu/RegData/etudes/STUD/2014/514007/AGRI_IPOL_STU\(2014\)514007_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/514007/AGRI_IPOL_STU(2014)514007_EN.pdf)

¹⁷ *Toward a Toxic Partnership: A critique of the EU position on chemicals under the Trans-Atlantic Trade and Investment Partnership (TTIP) Agreement with the US*
<http://www.clientearth.org/reports/10714-response-to-eu-position-paper.pdf>

¹⁸ *Leaked: US And EU Chemical Lobbies Fighting To “Freeze” Industry Regulation*
<http://www.mintpressnews.com/leaked-us-and-eu-chemical-lobbies-fighting-to-freeze-industry-regulation/186655/>

¹⁹ Gilens, M., & Page, B. I. (2014). *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens. Perspect. polit.*, 12(03), 564-581
http://www.journals.cambridge.org/abstract_S1537592714001595

measures constitute a trade barrier (see also 3.3). This does not sound like the right basis for increasing European protection levels.

6. There are already mechanisms for international collaboration on chemicals regulation

- 6.1 TTIP is not needed to enable international collaboration on chemical safety, as a range of other international processes already exist. There is a risk of duplication and inefficiency, further decelerating already slow international processes.
- 6.2 The OECD has a range of work underway on Chemical safety²⁰, including past or on-going work on all major activities proposed by industry on chemicals under TTIP, including an advisory group on Endocrine Disrupters Testing and Assessment.
- 6.3 UNEP has a chemicals branch²¹, which “works to protect humans and the environment from adverse effects caused by chemicals throughout their lifecycle, and hazardous waste. It is the focal point of UNEP activities on chemicals issues and the main catalytic force in the UN system for concerted global action on the environmentally sound management of hazardous chemicals.”
- 6.4 There are a number of international conventions on chemicals – Basel²², Rotterdam²³ and Stockholm²⁴, controlling trans-boundary movement of hazardous waste, trade in hazardous chemicals and persistent organic pollutants respectively. The EU is a party to these conventions and their requirements have been incorporated in EU law. The USA is not a party to any of these conventions; if they wish to improve international collaboration on chemicals management, may be they should start here.
- 6.5 The Strategic Approach to International Chemicals Management²⁵ is a global policy framework to foster sound management of chemicals.

7. Other general points on the content and negotiations for TTIP

- 7.1 CHEM Trust is very concerned at the proposal to grant investors rights for compensation claims through Investor-State Dispute Settlement (ISDS). Similar provisions in other trade and investment agreements have already enabled corporations to demand revision and/or compensation for lost profits from stronger public health and environmental measures. Examples can be found in an overview provided by Corporate Europe Observatory.²⁶
- 7.2 The European Ombudsman continues to raise concerns about the secrecy of the TTIP negotiations, and on 7th January 2015 called for greater transparency, and pointed out the continuing lack of openness from the USA²⁷. We share the concerns

²⁰ *Chemical Safety and Biosafety*, OECD, <http://www.oecd.org/chemicalsafety/>

²¹ *UNEP Chemicals branch*, <http://www.chem.unep.ch>

²² <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>

²³ <http://www.pic.int/TheConvention/Overview/tabid/1044/language/en-US/Default.aspx>

²⁴ <http://chm.pops.int/TheConvention/Overview/tabid/3351/Default.aspx>

²⁵ *Strategic Approach to International Chemicals Management*, <http://www.saicm.org>

²⁶ *A Transatlantic Corporate Bill of Rights: Investor privileges in EU US trade deal threaten public interest and democracy*, Corporate Europe Observatory/Trans National Institute / Seattle to Brussels Network, October 2013

<http://corporateeurope.org/trade/2013/06/transatlantic-corporate-bill-rights>

²⁷ *"Further steps to increase TTIP transparency necessary"*, European Ombudsman, January 2015
<http://www.ombudsman.europa.eu/press/release.faces/en/58669/html.bookmark>

raised by civil society organisation about the secrecy and lack of democratic oversight of the negotiations.²⁸

²⁸ *TTIP: Covert attacks on democracy and regulation*, Corporate Europe Observatory, September 2014, http://corporateeurope.org/sites/default/files/ttip_covert_attacks.pdf