Brexit and Chemicals: What are the challenges?

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About CHEM Trust

• A UK registered charity working at EU, UK & Global levels to protect humans & wildlife from harmful chemicals
• Working with scientists, technical processes and decision makers, in partnership with other civil society groups
• Focus on identification of, and action on, hormone disrupting chemicals
• See our blog & twitter for more: www.chemtrust.org
Why are chemicals important?

- Industrial chemicals are in almost everything
  - Furniture, inks, till receipts, clothes…
  - Across the whole economy
- The chemical industry is a significant part of the Scottish & UK economies
  - Around 200 companies in Scotland, around 12% of Scottish manufacturing exports
- Chemical regulations affect all the downstream uses of chemicals
  - From furniture to cleaning products to textiles
- Thousands of chemicals, millions of uses….
Why do chemicals need regulation?

• **Tens of thousands of chemicals are in use**
  • Most are probably safe, but a lot aren’t
    • E.g. cancer causing, accumulate in our bodies, disrupt hormones

• **The challenge is working out which chemicals are safe & which aren’t**
  • Regulators have been trying to solve this problem for >50y

• **The EU’s REACH chemicals regulation system is the best in the world – though it isn’t perfect [1]**
  • After 10 years over 18,000 substances have been registered by industry in over 70,000 individual registrations.
  • Even now, many of these registrations are not of a high enough quality
The Brexit challenge on chemicals

• UK laws on chemicals almost entirely based on EU law
• EU REACH chemicals system – the most advanced in the world – is very centralised:
  • One database of chemical safety in ECHA in Helsinki
    • Not accessible to countries not involved in REACH (e.g. Switzerland)
  • Harmonised decision making
    • EEA countries in the room, can’t vote
  • Complex rules on sharing safety data and costs between companies
• REACH vital for trade in chemicals and goods
  • Companies and trade associations concerned about losing it
• UK can’t copy the REACH system
  • Database not available once outside REACH; would be huge cost for Government & Industry to copy it, though UK claims that this is what it will do
WTO option analysed [2]

Exhibit 2: Estimated cost of tariff and non-tariff barriers on the UK economy, by sector

POST-MITIGATED COST
PERCENTAGE OF SECTOR GVA
LEFT AXIS, BAR CHART

£ BILLION
RIGHT AXIS, POINT CHART

Post-mitigated cost as percentage of GVA
In or out of REACH?

- A country is either in or out of REACH
  - **IN**: EU member states, EEA
  - **OUT**: Everyone else, including Switzerland

- If you are in, you participate in decisions and access the full database, if you aren’t, you don’t

- Of not in:
  - UK companies must move registrations into EU countries – and potentially register chemicals in a separate UK system
  - UK system is completely separate, and will not be able to access safety data from the EU = i.e. a largely empty database
  - Even if copy EU decisions, will be time delays & legal issues
Brexit scenarios

1) Dirty/No Deal/Cliff Edge Brexit
   • Exit with nothing resolved, nothing agreed – a mess

2) A normal Free Trade Agreement (FTA) like CETA
   • Some text on not undercutting EU environmental policy

3) Extensive FTA with REACH and some/all other environmental policies
   • Closer EEA, but not the same

4) EEA-type arrangement with REACH and some/all other environmental policies

5) No Brexit
UK Government on REACH

• Theresa May, 2\textsuperscript{nd} March 2018:
  • We will also want to explore with the EU, the terms on which the UK could remain part of EU agencies such as those that are critical for the chemicals, medicines and aerospace industries: the European Medicines Agency, the European Chemicals Agency, and the European Aviation Safety Agency.
  • We would, of course, accept that this would mean abiding by the rules of those agencies and making an appropriate financial contribution.
  • Apparently an important step forward – but this access will come with conditions…
Early this morning…

• Baroness Goldie in the House of Lords early this morning:
  • “..Prime Minister has said we will want to explore with the EU the terms on which we could continue to co-operate with the European Chemicals Agency and participate in certain processes” [my emphasis]
  • This suggests that the Government is not aiming at full participation in the chemical agency & REACH, but just at ‘cherry picking’ some elements
    • The EU27 won’t accept this…..
Conditions for ECHA access

- Based on the Swiss attempt to join REACH
- To stay in, UK must:
  - Accept a court – ECJ, EFTA or something similar
  - Accept EU decisions in REACH – UK should be in the room, but with no vote (like Norway)
  - Retain EU chemical-related laws (Health and Safety, pollution etc)
- The UK will be in or out – not part way in
  - See [http://www.chemtrust.org/uk-reach-brexit/](http://www.chemtrust.org/uk-reach-brexit/)
The will of the people?

• Many claims are made about the will of the people & Brexit
• We got together with SumOfUs & GQR research to find out what the public wants on chemicals [3]
• Question:
  • “There should be no reduction in regulatory standards that protect people and the environment from potentially harmful chemicals when the UK leaves the EU”
Sovereignty and decision making

• The UK will no longer have a vote on EU processes if Brexit has happened.
  • But the UK will be bound by those EU decisions if the UK stays in REACH, for example

• But what is more sovereign?
  1. Copying out all REACH restrictions and authorisations from outside, with no role in the decision or access to detailed evidence
  2. Participating in REACH discussions in ECHA, submitting dossiers, having access to REACH data – but not voting in final decisions
Where is Brexit going?

• The EU27 view (draft negotiation guidelines, March 2018)

• Focus on developing a CETA-like ‘Free Trade Agreement’:
  • “the European Council has to take into account the repeatedly stated positions of the UK, which limit the depth of such a future partnership. Being outside the Customs Union and the Single Market will inevitably lead to frictions.”

• A key component is the ‘Level Playing Field’:
  • “The aim should be to prevent unfair competitive advantage that the UK could enjoy through undercutting of current levels of protection with respect to competition and state aid, tax, social, environment and regulatory measures and practices.”

• A closer deal is possible, if the UK’s red lines change:
  • “The above approach reflects the level of rights and obligations compatible with the positions stated by the UK. If these positions were to evolve, the Union will be prepared to reconsider its offer”
Options for post-Brexit Scotland

• The UK Government’s “Frameworks analysis”[4] accepts that chemicals is an area where:
  • “the devolution intersect will require more detailed discussion and may include a mixture of reserved and devolved competence, including where technical standards that derive from EU law are relevant”

• Scotland could push to go beyond UK positions:
  • E.g. Follow EU decisions on restricting and authorising chemicals, regardless of the UK position
    • May disrupt the UK internal market, but it will ensure that Scotland is consistent with the EU internal market
  • On chemical pollution regulations to protect public & environment
Conclusions

• CHEM Trust’s analysis is that staying within REACH is the best option for UK wildlife and human health
  • This approach is also supported by the CBI and the Chemical Industry Association

• Sovereignty is not an all or nothing concept
  • it is better to be in the room, rather than outside copying

• The EU27 will set conditions for continued UK participation in REACH
  • Brexit is the UK’s problem (“Leaver Responsibility”) – don’t expect the EU27 to change their laws and procedures to help the UK leave.

• The UK Government is not yet accepting what it will need to do to retain involvement in REACH

• If the UK does leave REACH, Scotland could continue to remain aligned with decisions in REACH
  • See also our Chemicals & Brexit page: http://www.chemtrust.org/brexit/
References


[2] “What is the will of the UK people on hazardous chemicals?”, CHEM Trust, 28th September 2017: http://www.chemtrust.org/uk-poll/
