Toxic Partnership Revealed

September 2014

A leaked text for the Trans-Atlantic Trade and Investment Partnership (TTIP) from the European Commission shows that negotiations favour business interests over the protection of citizens' health and the environment. The leaked "chemicals annex"[1] closely follows the chemical industry's agenda for TTIP to minimize regulatory differences between the US and the EU (see Table 1).

Civil society groups from the US and EU have repeatedly voiced deep concerns regarding the dangers of TTIP for the protection of human health and of the environment. Over 110 public health and environmental organizations in the EU and US object to the inclusion of the chemicals sector in any of TTIP's relevant chapters, including Regulatory Coherence and Investment. These organizations evaluated industry proposals, concluding that rather than improving the regulation of chemicals, TTIP is poised to:

1) Freeze the development and implementation of stronger, more health-protective laws;
2) Derail European leadership on hormone (endocrine) disrupting chemicals, nanomaterials and other urgent and emerging issues;
3) Block US states and EU Member States from taking action in the face of inaction by the US federal government and European Commission;
4) Limit public access to information on toxic chemicals, impeding innovation;
5) Erase important differences between EU and US laws; and
6) Create duplicative inefficiencies, providing no added value to the general public.

The six concerns raised by over 110 public interest organizations are explained in greater detail below.

TTIP negotiators continue to downplay serious concerns raised by civil society, and the US chemical industry and US government show no sign of accepting the generally more health-protective EU approach to chemicals regulation.

The leaked chemicals annex of the European Commission would create additional procedural hurdles to delay the development and implementation of stronger, more protective laws and policies by the EU and United States, including by EU Member States and US states. The chemical industry has long benefited from a strategy of delaying any potential regulation of a chemical, or even an assessment of a substance as hazardous, for as long as possible, sometimes for a decade or more. Through this proposal, varying levels of precaution and protection between the EU and US could be erased or blocked, at the expense of human health and the environment.

The stated goal of TTIP is to reduce trade barriers, including technical regulations and product standards, which may vary from country to country (or region). However, these variations often arise to achieve important policy objectives, such as protecting human health, public safety, and the environment from toxic chemicals, and expanding the public's right to know about the use of toxic chemicals in consumer products. The US government and the chemical industry continue to argue that EU chemical laws violate WTO rules. A 2014 report from the Office of the US Trade Representative (USTR) on technical barriers to trade underlines US opposition to the prospect of stronger controls on endocrine (hormone) disrupting chemicals, precautionary measures for nanomaterials, and other public health issues of concern. USTR states in this report that "aspects of

[1] The leaked text was under restricted access. Only organizations that are members of the TTIP advisory group had access to the document in a reading room. The documents are accessible under the condition of not

REACH [the primary EU regulation for industrial chemicals] are discriminatory, lack a legitimate rationale, and pose unnecessary obstacles to trade."

As highlighted in a report analysing leaked proposals from the chemical industry submitted to TTIP negotiators, the EU and US have starkly different levels of protection from the risks posed by the use of toxic chemicals. The EU is implementing stronger regulations -- designed to move forward with phasing out the use of the most problematic chemicals including carcinogens, reproductive toxins and endocrine disrupting chemicals -- drawn up and approved in the last decade. Meanwhile, the US is still stuck with obsolete and ineffective legislation from the 1970s that has yielded – with the exception of the ban on PCBs -- virtually no meaningful national regulation of thousands of toxic substances in nearly 40 years. These facts, especially when taken together with the onerous procedures proposed for regulatory coherence and cooperation under TTIP, would likely weaken, slow or stop the development and implementation of stronger laws for toxic chemicals (including pesticides). Of particular concern is TTIP's potential to impair chemical regulation by US states, many of which are adopting stronger protections in the face of federal inaction.

Table 1: **Elements of chemical industry proposal from Dec 2013 for TTIP, and their translation into the draft chemicals annex proposed by the European Commission**

Chemical Industry Proposal	Selections from EU draft outline for provisions on chemicals
Regulatory coherence, including implications for US states and EU Member States	**YES** – "[Chemicals] sector provisions can be amended in accordance with the provisions established in the Horizontal Regulatory Chapter and the institutional chapter" and "… consultation on regulatory processes affecting individual substances and on new draft regulations… covered at both EU and Member States, and Federal and State level…"
Chemical Sector Joint Cooperation Committee (CSJCC) and a EU-US scientific body	**YES** – Chemicals Working Group "in charge of overseeing the application of the provisions of this annex…can establish ad hoc expert or scientific groups…"
The increased use of cost-benefit analyses	**YES** – Contained in leaked EU position paper on Regulatory Coherence
Harmonized risk and hazard assessment methodologies, including data requirements	**YES** – "Cooperation and exchanges on assessment methodologies…allow for mutual consultation…when assessment methodologies are reviewed or technical guidance documents are developed or reviewed…"
Common prioritization	**YES** – "Cooperation on prioritization of substances for assessment" including when "setting or reviewing criteria for defining priority substances [and] updating priority lists."
Greater coherence in classification and labeling	**YES** – "Commitment to apply GHS across all chemicals within X years… Establishment of a common list of agreed classifications…"
Mutual recognition, for example of EU registrations (info. required) and US notifications of new chemicals (no info. required)	**Potentially** – Not explicitly excluded
Aligning regulations on "emerging issues" such as endocrine disrupting chemicals (EDCs) and nanomaterials	**YES** – In addition to a recently announced pilot project on EDCs, TTIP would seek "Cooperation on new and emerging issues of common interest…to promote in so far as possible a common understanding of the science underpinning regulatory decisions"
Data sharing and the protection of confidential business information (CBI)	**YES** – "…establish agreement to exchange and protect CBI," with principles and modalities to be developed at later stage

Concerns raised by 111 civil society organizations on both sides of the Atlantic

1. Freeze the development and implementation of stronger, more health-protective laws

The proposed creation of an EU-US "institutional framework" for regulatory cooperation (also known as the Transatlantic Regulatory Cooperation Council or RCC) would create additional procedural hurdles to delay the development and implementation of stronger, more protective laws and policies by the EU and United States, including by EU Member States and US states. This would have a ripple effect on other international agreements and national policies and practices.

TTIP proposals that have emerged thus far would provide multiple opportunities for chemical and other corporations to comment on draft rules and laws, starting at early stages in the formative process. The EU's regulatory cooperation proposal for TTIP would require that, in addition to cost-benefit analyses, each Party would need to conduct time and resource-consuming analyses emphasizing chemical regulations' costs to transatlantic trade, not the benefits of such protective laws for society. This additional "cost" calculation could have a chilling effect on the enactment of stronger chemical protections. And the US proposal for regulatory cooperation would require excessive and duplicative notice and comment procedures beyond those already provided to the public on both sides of the Atlantic.

'"The idea that we would then have to take a rule that we have spent so much time writing and go to an additional approval means that ***you're going to have many, many, many years of waiting for safety regulation.*** *And I think that we all know that safety delayed is safety denied in too many respects"*

- Robert Adler, Commissioner and former acting chair, US Consumer Product Safety Commission (CPSC)

US regulators have expressed concern regarding the potential for TTIP to further delay regulation. Robert Adler, a Commissioner on the US Consumer Product Safety Commission (and at the time the Acting Chair) expressed exactly this concern.

Furthermore, the TTIP proposal for a common prioritization of chemicals of concern ignores the fact that the EU is far ahead of the United States in identifying, prioritizing and managing the risks of chemicals of concern. Proposals for sanitary and phytosanitary measures (SPS) under TTIP, meanwhile, threaten to delay protective or precautionary measures by requiring scientific certainty about prospective threats before regulatory action can be taken. Such mechanisms have enabled the US chemical industry to freeze the development of stronger controls for toxic chemicals at the US federal level for decades. These TTIP proposals would create additional processes that industry can exploit in seeking to prevent more robust protections.

2. Derail European leadership on hormone (endocrine) disrupting chemicals, nanomaterials and other urgent and emerging issues

The EU has been the global leader in finally beginning to address urgent and emerging chemicals management issues. This includes efforts to reduce the presence of hormone (endocrine) disruptors in everyday products and food and to ensure safeguards for nanomaterials – substances with never-before-seen properties, and thus unique risks to people and the environment. In addition, the EU is beginning to assess the real-life dangers of toxic chemicals, recognizing that people are exposed to a cocktail of hazardous substances daily.

USTR continues to target EU efforts to address the hazards of endocrine disruptors and nanomaterials as "trade barriers." USTR's 2014 Report on Technical Barriers to Trade clearly continues the trend of US government interference in the EU's development of more protective measures, and indicates how the US government and chemical industry allies would try to use TTIP rules to weaken stronger measures by the EU and US states.

3. Block US states and EU Member States from taking action in the face of inaction by the US federal government and European Commission

TTIP proposals by the EU and industry groups would curtail the ability of US states and EU Member States to regulate. The EU proposes the exchange of information about activities at [the] sub-federal level in the US and Member State activities in the EU, respectively, opening the door to the above procedural mechanisms for freezing regulatory action. EU position papers have repeatedly stated an intent to prevent regulatory differences between US states and the US federal government – without saying that federal standards should rise to match the most protective levels adopted by US states or the EU. Just as regulatory divergence between the US and Europe has been a key driver of progress in environmental and public health standards, regulatory innovation and experimentation among the various states has long played the same role within the United States. Given decades of inaction by the US federal government on industrial chemicals, as many as 30 US states have developed or proposed stronger measures to prevent or reduce the hazards of toxic chemicals for consumers, workplaces, and the environment. Some measures were inspired and enabled by the EU's earlier development of stronger protections. The proposed institutional framework for regulatory cooperation, and other TTIP measures would effectively preempt the ability of states to use restrictions to inform and protect the public.

4. Limit public access to information on toxic chemicals, impeding innovation

Inventors need access to information about chemical hazards and exposures to develop safer and healthier solutions. Consumers and downstream users need access to information about chemicals in products to enable them to choose safer products, thereby incentivizing innovation toward safer alternatives. Workers and employers need access to information about chemicals to incentivize the innovation of cleaner and healthier production processes. And regulators need access to hazard and exposure information to restrict the use of hazardous chemicals, enabling safer alternatives to overcome barriers to entry.

Important differences exist between relevant EU and US laws, with each system enabling access to information on the other side of the Atlantic. Industry proposals to implement more stringent standards on data protection and confidential business information through TTIP would limit access to data and information, adversely affecting innovation in improved public health, consumer safety, occupational health, and environmental protection. This includes new rules regarding how governments access information, what types of information is eligible to be confidential business information, and for how long it can be protected. These TTIP proposals will undermine and disregard right-to-know provisions for chemical-related risks found in existing EU and US laws.

5. Erase important differences between EU and US laws

Harmonization or mutual recognition could be applied to the chemical sector through TTIP or at a later stage via the proposed institutional framework for regulatory cooperation. Mutual recognition could erase important protections for EU or US consumers, workers and employers by inaccurately describing them as providing similar levels of protection. Where levels of protection are unequal, harmonization typically results in an averaging of higher and lower standards, or even a lowest-common denominator approach; it does not raise everyone to the higher standards.

Although the EU's lead negotiator and public position paper ruled out the application of these "tools" for regulatory cooperation for the chemical sector because of the drastic difference in the level of protection provided by stronger EU laws versus weaker US laws, the leaked EU text makes no mention of this exclusion. The application of industry proposals for mutual recognition would erase necessary precautions found under EU law but not US chemical laws, such as the requirement of a minimum set of health and safety data for regulators to decide the degree to which a chemical presents a risk to public health. Harmonization, mutual recognition or equivalence is wholly inappropriate not only for chemicals-specific provisions in specific sectors, but for any sector in which consumers, workers or the environment could be exposed to chemicals.

6. Create duplicative inefficiencies, providing no added value to the general public

Much of the work proposed under TTIP on chemicals is already the subject of past or ongoing work by OECD. For example, efforts were made through OECD to cooperate on risk assessments, with little to no success due to differences between the EU and US chemical regulatory regimes. The existing Statement of Intent between the US Environmental Protection Agency (EPA) and the European Chemicals Agency (ECHA) illustrates that TTIP is not required for collaboration between EU and US regulatory agencies. The EU Registration, Evaluation and Authorization of Chemicals (REACH) Regulation provides for procedures to comment and participate in discussions about prioritization, classification and labeling and restrictions of chemicals. Thus, it is unclear what the added public value of including chemical regulations in TTIP would be. Rather, doing so would establish an institutional framework for greater industry and foreign government influence under the guise of “regulatory cooperation.”