

Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

May 10, 2013

**Comments  
Concerning the Proposed Transatlantic Trade and Investment Partnership:  
Federal Register Docket USTR-USTR-2013-0019**

The Center for International Environmental Law (CIEL) and ClientEarth appreciate the opportunity to comment on the proposed Transatlantic Trade and Investment Partnership (TTIP), which was notified to the U.S. Congress on the 20th of March 2013 and announced by the European Commission on the 13th of March 2013.

Established in 1989, CIEL is a nonprofit organization that uses the power of law to protect the environment, promote human rights and ensure a just and sustainable society. CIEL has been engaged actively on issues relating to trade and the environment for nearly two decades.

ClientEarth is an organisation of activist lawyers committed to securing a healthy planet. ClientEarth works in Europe, bringing together law, science and policy to create pragmatic solutions to key environmental challenges. Its goal is the successful implementation of effective environmental law throughout Europe and worldwide.

CIEL endorses and adopts by reference the comments submitted by the Sierra Club in this docket on May 10, 2013, which comments are herein incorporated by reference with respect to CIEL.<sup>1</sup> With regard to the issues transparency, public participation and chemicals regulation, CIEL and Client Earth offer the following additional comments.

*1. The Negotiating Process Must be Open, Transparent and Fully Participatory*

Recent trade negotiations by both the United States and the EU with other countries or regions have been conducted in a manner that does not satisfy the requirements of transparency in a constitutional democracy, despite profound implications for public health, well-being and the environment. Negotiations between the United States and the EU should demonstrate a clear commitment to public participation and should be conducted in an open, transparent and participatory manner. Specifically, the United States and the EU should commit to broad public access to negotiating documents and positions, to facilitate informed public debate regarding the negotiations and any resulting agreement.

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<sup>1</sup> Client Earth does not express a view on the submission by Sierra Club or any other commenter.

*2. Health and environmental safeguards such as the precautionary principle must not be sacrificed in exchange for increased trade and stronger investors' rights*

There is increasing pressure from industry lobbies to lower regulatory burdens and to water down legitimate regulations for the protection of human health and the environment. In the chemicals industry and other contexts, these regulations have been shown to be cost efficient, by shifting the burden of proof to industry on the safety of substances and by reducing the costs associated with environmental degradation and disease burdens.

The negotiations should preserve the legitimate policy choices of each party to fully protect human health and the environment, and should include a mutual commitment by both parties to increase the protection of human health of the environment to the highest standards established by either of the Parties to the trade agreement.

To address the potential impact of a comprehensive trade agreement on the regulation and use of toxic chemicals, CIEL and Client Earth specifically urge the parties to ensure that TTIP:

1. Does not impede the further development of stronger chemicals legislation in the United States and EU. While the EU's hazard-based approach to the regulation of chemicals of concern offers a far greater measure of protection than the narrow risk-based approach applied by U.S. legislation for industrial chemicals, there are weaknesses in both U.S. and EU laws. There is sufficient evidence that stronger laws to protect people and wildlife from chemicals spurs innovation in the chemicals sector.<sup>2</sup>
2. Does not include fair and equitable treatment clauses. Such provisions place the public in a lose-lose situation – bearing either the burden of either compensating companies for their losses, or the substantial and rising costs of inaction due to chemical pollutants. Public health laws and other safeguards in regions of both the EU and United States could be overturned through the use of such provisions.<sup>3</sup>
3. Increase access to information on chemical hazards and uses. More information on chemicals should be made available and exchanged between regulatory authorities in the U.S. and EU to aid regulatory decision-making, including primary source of information on chemicals' hazards.<sup>4</sup> Moreover, consumers

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<sup>2</sup> CIEL, *Driving Innovation: How Stronger Laws Help Bring Safer Chemicals to Market* (2013), available at: [http://ciel.org/Publications/Innovation\\_Chemical\\_Feb2013.pdf](http://ciel.org/Publications/Innovation_Chemical_Feb2013.pdf)

<sup>3</sup> For example, in November of 2012, the American oil and gas company Lone Pine Resources Inc. challenged a shale drilling moratorium in Quebec, Canada under a "fair and equitable treatment" clause in the North American Free Trade Agreement (NAFTA).

<sup>4</sup> GAO report number GAO-10-292T, *Chemical Regulation: Observations on Improving the Toxic Substances Control Act* (December 2, 2009), available at: <http://www.gao.gov/assets/130/123794.html>; and

should have greater access to information about hazardous chemicals in products, to reward businesses that substitute hazardous chemicals with safer alternatives, an additional driver of innovation.<sup>5</sup>

4. Does not erode the ability of governments to prefer environmentally friendly products, such as those without chemicals of concern, through the inclusion of provisions that restrict how local governments spend their resources on goods, services and infrastructure and with clauses that protect investors' rights.
5. Does not further increase the pressure to use hydraulic fracturing (fracking) for natural gas extraction. Lower tariffs can increase the use of fracking in areas where it is allowed. Fair and Equitable Treatment clauses may be used to challenge precautionary public-health measures in place in Europe and the United States.

Thank you for your consideration. CIEL wishes to testify orally at the hearings to be held on the 29th and 30th of May, 2013. We look forward to contributing to a frank and open public debate regarding the risks and opportunities presented by these negotiations.

Sincerely,

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GAO, Chemical Regulation: Options Exist to Improve EPA's Ability to Assess Health Risks and Manage Its Chemical Review Program, GAO-05-458 (June 13, 2005), available at:

<http://www.gao.gov/products/GAO-05-458>

<sup>5</sup> CIEL, *Driving Innovation: How Stronger Laws Help Bring Safer Chemicals to Market* (2013), available at: [http://ciel.org/Publications/Innovation\\_Chemical\\_Feb2013.pdf](http://ciel.org/Publications/Innovation_Chemical_Feb2013.pdf)