

Ambassador Michael Froman
United States Trade Representative
Executive Office of the President
600 17th Street NW
Washington, DC 20508

Commissioner Karel de Gucht
Commissioner for Trade
European Commission
BE-1049 Brussels

July 10th, 2014

Dear Ambassador Michael Froman and Commissioner Karel De Gucht:

The undersigned organizations write to express our strong opposition to the inclusion of any terms in the Transatlantic Trade and Investment Partnership (TTIP) agreement that implicate the regulation of chemicals. This includes, but is not limited to, chapters on regulatory cooperation, investment, technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS), and all sectoral annexes. By “chemicals,” we mean to include both pesticides and industrial chemicals, and their subsequent use in any sector covered under TTIP.

Stricter controls (including restrictions on some or all uses) of hazardous chemicals – including carcinogens and hormone disrupting chemicals – are vital to protecting public health, and to moving society in the direction of greater innovation in its use of chemicals, with greater safety as a fundamental component of that innovation. EU and U.S. trade policy should not be geared toward advancing the chemical industry’s agenda at the expense of public health and the environment – but that appears to be exactly what is currently underway with TTIP.

We are highly concerned to see recent position papers by the European Commission on regulatory cooperation that, by embracing proposals from the chemical industry for TTIP, would threaten to chill or even freeze forward-looking chemical regulations. Equally alarming is that the Office of the U.S. Trade Representative (USTR) is promoting an approach to regulatory cooperation that would export to the EU the current U.S. rulemaking process, which has proved to thwart the timely promulgation of important regulations and impose requirements such as cost benefit analyses that result in regulations being weakened. As well, USTR’s continued targeting of EU laws that protect both Americans and Europeans from toxic chemicals as “technical barriers to trade” is a worrying sign with respect to the U.S. approach to TTIP TBT rules or annexes.

Moreover, the proposed inclusion of investor-state dispute settlement (ISDS) terms in TTIP would undermine stronger chemical regulations by empowering corporations to circumvent domestic courts and directly challenge such protections before extrajudicial tribunals. The attached Annex briefly summarizes our key concerns with TTIP proposals. This Annex is based on the very limited information currently available to the public about the negotiations, so the list of concerns is indicative, rather than exhaustive.

The presence of toxic chemicals in our food, our homes, our workplaces, and our bodies is a threat to present and future generations, with staggering costs for society and individuals. Chemical industry-driven proposals for TTIP would neither reduce these costs nor increase the efficiency or effectiveness of regulators on either side of the Atlantic. Chemical sector estimates provide only unspecified and hypothetical gains from minimizing regulatory differences between the EU and United States, ignoring the cost savings and significant health, economic and social benefits of protective laws that reduce or eliminate exposure to hazardous chemicals.

Regulatory differences between the EU and United States that include stronger protections for people and the environment, targeted by TTIP as non-tariff “barriers” to trade, are not *per se* problems that need to be swept away via trade policy – even if they pose inconveniences and some costs to the chemical industry. In fact, these regulatory differences are drivers of innovation, creating safer products, healthier workplaces, and a cleaner environment.

We are deeply concerned that the EU and U.S. officials negotiating this “trade” deal behind closed doors appear simultaneously blind to the implications of seeking to adopt and globalize the chemical industry’s anti-regulatory, anti-health agenda as international trade policy, and deaf to the general public’s concerns about the health impacts of constant exposure to hazardous substances.

In a deal where fundamental changes to sub-national, national and regional policies and lawmaking processes are being proposed and negotiated, the non-disclosure of TTIP negotiating positions or texts is inexcusable and inconsistent with the principles of a modern democracy.

We call on the USTR and DG Trade to publish TTIP negotiating proposals and texts, and to reverse course and exclude chemicals regulations from the entire scope of the prospective Transatlantic Trade and Investment Partnership.

EU organizations

Alliance for Cancer Prevention
ANEC, the European consumer voice in standardisation
Berliner Wassertisch
Breast Cancer UK
BUND e.V. (FoE Germany)
The Cancer Prevention and Education Society
ChemSec
CHEM Trust
ClientEarth
Consumer Association the Quality of Life-EKPIZO
Danish Ecocouncil
Danish Society for Nature Conservation
Deutscher Naturschutzring (DNR)
Ecologistas en Acción
European Environmental Bureau (EEB)
European Environmental Citizens Organization for Standardization (ECOS)
European Public Health Alliance (EPHA)
European Speleological Federation (FSE)
Generations Futures

Health and Environment Alliance (HEAL)
KEPKA - Consumers Protection Centre
Non Au Mercure Dentaire
Pesticide Action Network Europe (PAN-Europe)
Pesticide Action Network Germany (PAN Germany)
Quercus - ANCN
Swedish Society for Nature Conservation (SSNC)
Umweltinstitut München
Voice Ireland
Wemos Foundation
Women in Europe for a Common Future (WECF)

Transatlantic organizations

Center for International Environmental Law (CIEL)
GoodElectronics
Health Care Without Harm

U.S. organizations

Alaska Community Action on Toxics (ACAT)
Alliance for a Healthy Tomorrow
Alliance of Nurses for Healthy Environments (ANHE)
Asian Pacific Environmental Network (APEN)
Beyond Pesticides
Beyond Toxics
Breast Cancer Action
Breast Cancer Fund
Californians for a Healthy and Green Economy (CHANGE Coalition)
Californians for Pesticide Reform
California Rural Legal Assistance Foundation
Carmel Valley Women's Network
Center for Biological Diversity
Center for Effective Government
Center for Environmental Health
Center for Food Safety
Center for Media and Democracy
Central California Environmental Justice Network
Citizens' Environmental Coalition
Clean Air Watch
Clean and Healthy Indiana
Clean and Healthy New York
Clean Water Action
Coming Clean
Commonweal
Earthjustice
Ecology Center
Empire State Consumer Project
Environmental Health Strategy Center
Epic - Environmental Protection Information Center

Friends of the Earth
GreenCAPE
Green Party of Monterey County
Greenpeace
Healthy Child Healthy World
Healthy Legacy
Hesperian Health Guides
Institute for Agriculture and Trade Policy
Instituto de Educacion Popular del Sur de California
International Campaign for Responsible Technology
International Center for Technology Assessment
Klamath Forest Alliance
LabelGMOs.org
League of Conservation Voters
Lymphoma Foundation of America
Massachusetts Council of Churches
Medfield Green
MOMS Advocating Sustainability
National Council for Occupational Safety and Health
Natural Resources Council of Maine
Natural Resources Defense Council (NRDC)
New Jersey Work Environment Council
Oregon Environmental Council
Pesticide Action Network North America (PANNA)
Physicians for Social Responsibility
Promotores Comunitarios del Desierto
Public Citizen
Safer Chemicals, Healthy Families
San Francisco Bay Area Physicians for Social Responsibility
Science and Environmental Health Network
Sciencecorps
Sierra Club
TEDX, The Endocrine Disruption Exchange
United Support and Memorial for Workplace Fatalities (USMWF)
Union of Concerned Scientists, Center for Science and Democracy
U.S. Public Interest Research Group (U.S. PIRG)
Washington Toxics
Women's Voices for the Earth
Worksafe, Inc.

Other organizations

APROMAC Environment Protection Association (Brazil)
AMAR Environment Defense Association (Brazil)
IndyACT (Lebanon)
Pesticide Action Network Switzerland (PAN Swiss)
Prithvi Innovations (India)
RightOnCanada.ca

Sustainable Development Policy Institute (SDPI) (Pakistan)
TOXISPHERA Environmental Health Association (Brazil)

Cc:

EU: Ignacio Garcia Bercero (Chief Negotiator, DG Trade), Klaus Berend (Chemicals Negotiator, DG Enterprise and Industry), Benjamin Musall (Chemicals Negotiator, DG Trade), Bjorn Hansen (Head of Unit, DG Environment), Roman Mokry (Policy Officer, DG Health and Consumers), Ivone Kaizeler (Cosmetics Negotiator, DG Trade), Constantin Livas (Textiles Negotiator, DG Enterprise and Industry), Lorenzo Terzi (SPS Negotiator, DG Health and Consumers), Ulrich Weigl (SPS Negotiator, DG Trade), Geraldine Emberger (Regulatory Cooperation Negotiator, DG Trade), Paul De Lusignan (TBT Negotiator, DG Trade), Leopoldo Rubinacci (Investment Negotiator, DG Trade), Colin Brown (Investor-State Dispute Settlement, DG Trade), Fernando Perreau de Pinninck (Coordination of Regulatory Negotiations, DG Trade)

US: Dan Mullaney (Chief Negotiator), David Weiner (Deputy Chief Negotiator, USTR), Daniella Taveau (Chemicals Annex Negotiator, U.S. EPA), Jim Jones (Assistant Administrator, U.S. EPA), Ashley Miller (Chemicals Annex Negotiator, USTR), David Oliver (Environment Negotiator, USTR), Rachel Shub (Regulatory Coherence and Transparency Negotiator, USTR), Julia Doherty (Technical Barriers to Trade Negotiator, USTR), Jai Motwane (Investment Negotiator, USTR), Jim Sanford (Sectoral Annexes/Regulatory Cooperation Negotiator, USTR), Barbara Norton (Sectoral Annexes/Regulatory Cooperation Negotiator, USTR)

Annex:

Our organizations support transatlantic efforts to increase protection for human health and the environment from toxic chemicals--a race to the top, not a race to the bottom. However, the proposals under discussion for TTIP would do the opposite. They would undermine public health and environmental protection in the following ways:

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

The proposed creation of an EU-U.S. "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 U.S. states. A ripple effect on other international agreements and national policies and practices would have similar results.

TTIP regulatory cooperation 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 U.S. 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.

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. SPS proposals discussed for 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 U.S. chemical industry to freeze the development of stronger controls for toxic chemicals at the U.S. federal level for decades. These TTIP proposals would create additional processes that industry can exploit in seeking to prevent more robust protections.

2. 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 U.S. chemical regulatory regimes. The existing Statement of Intent between the U.S. Environmental Protection Agency (EPA) and the European Chemicals Agency (ECHA) illustrates that TTIP is not required for collaboration between EU and U.S. 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 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."

3. Favor chemical industry and other corporate rights over public health and the environment through ISDS

ISDS should be excluded from TTIP. The unpopular proposal to include ISDS in TTIP would force the public and their representatives to decide between compensating corporate polluters for lost profits due to stronger laws, or continuing to bear the health, economic and social burdens of pollution. There is no justification for the inclusion of these provisions, as the EU and United States have two of the most robust judicial systems and strong property rights provisions in the world, providing equal protection to both domestic and foreign investors. Inclusion of ISDS would pose new liabilities, both to U.S. and EU government treasuries, as well as important public interest policies. Currently very few of the 70,000 cross-registered U.S. and EU corporations can launch ISDS cases against the U.S. or EU member state governments – a new power they would gain were TTIP to include ISDS.

Under ISDS provisions of existing U.S. and EU pacts, foreign corporations have repeatedly skirted domestic courts to challenge public health and environmental laws designed to protect people and the environment from toxic chemicals and other risks, often succeeding in extracting taxpayer compensation for the protections. ISDS cases have even forced governments to roll back protections against toxic chemicals either as an explicit component of a settlement signed with the foreign investor or as an implicit decision to avoid further ISDS cases. Called a “full frontal assault on democracy” by the media, these proceedings are not conducted in public courts, but in arbitration panels comprised of private industry attorneys who are not bound by precedent, the opinions of States or a meaningful appeal system. These panels have interpreted the substantive foreign investor “rights” proposed for TTIP as extending far beyond the rights afforded to domestic firms, incentivizing the recent spike in ISDS cases against health, environmental and other public interest protections.

4. 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 from 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 U.S. government interference in the EU’s development of more protective measures, and indicates how the U.S. government and industry allies would try to use TTIP rules to weaken stronger measures by the EU and U.S. states.

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

TTIP proposals by the EU and industry groups would curtail the ability of U.S. states and EU Member States to regulate. The EU proposes that, “[b]oth sides would also inform each other about

activities at [the] sub-federal level in the U.S. and Member State activities in the EU, respectively” opening the door to the above procedural mechanisms for freezing regulatory action.¹ EU position papers have repeatedly stated an intent to prevent regulatory differences between U.S. states and the U.S. federal government – without saying that federal standards should rise to match the most protective levels adopted by U.S. states or the EU. Just as regulatory divergence between the U.S. 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 U.S. federal government on industrial chemicals, as many as 30 U.S. 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, proposals to implement the UN Globally Harmonized System (GHS), and other TTIP measures would effectively preempt the ability of states to use restrictions to inform and protect the public.

6. 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 U.S. 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 U.S. laws.

7. Erase important differences between EU and U.S. 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 U.S. 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 has ruled out the application of these “tools” for regulatory cooperation for the chemical sector, because of the drastic difference in the level of protection

¹ EU position on chemicals (last updated 14 May 2014), available at: http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152468.pdf

provided by stronger EU laws versus weaker U.S. laws, the EU continues to propose harmonization and mutual recognition in chemical-relevant sectors such as textiles and cosmetics, respectively, posing significant concerns for chemical safety. 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.