

## **Resolution on better transatlantic cooperation on chemicals in light of the Trans-Atlantic Trade and Investment Partnership (TTIP)**

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### **Introduction**

In October 2013, the Transatlantic Consumer Dialogue (TACD) issued a Resolution on *Better regulation of chemicals, including nanomaterials, in light of the Trans-Atlantic Trade and Investment Partnership*.<sup>1</sup> At the time, TACD appealed to U.S. and EU policy makers to conclude a transatlantic agreement that would enable reduction of consumer exposure to harmful chemicals. Commitments to remove non-tariff barriers through a TTIP agreement should only be pursued provided existing consumer protections remain untouched and that new chemicals be subject to scientifically robust pre-market safety assessments.<sup>2</sup>

In view of the subsequent publication of European Commission TTIP proposals on chemicals<sup>3</sup> and on regulatory cooperation<sup>4</sup> as well as the leaked TTIP texts released on 2 May 2016,<sup>5</sup> this Resolution offers a set of updated recommendations to the negotiating parties on how to achieve better transatlantic cooperation in chemicals management. We likewise refer negotiators to the recommendations set out in our resolution of October 2013.<sup>6</sup>

### **Recommendations**

In theory, TTIP could offer opportunities to boost implementation of more protective chemicals laws on both sides of the Atlantic. An ideal outcome would be a TTIP agreement that creates a robust process for systematic identification and reduction of chemicals risks.

Given the sharp difference in EU and U.S. approaches to chemicals management,<sup>7</sup> the basis for a chemicals annex to TTIP has to be that both sides maintain their capacity to regulate. This also includes the right for EU Member States and U.S. States to adopt ambitious environmental, health and safety measures beyond the regulator determined 'appropriate level of protection' allowed in the WTO SPS Agreement.<sup>8</sup>

TACD again appeals for U.S. and EU negotiators to pursue a TTIP agreement that brings substantial benefits to consumers. A future TTIP agreement should under no circumstance act to delay or compromise progress on reducing consumer exposure to toxic chemicals.

TACD recommends that the U.S. and the EU:

- **Improve transparency in the negotiations and provide opportunities for public scrutiny of all TTIP proposals.** We emphasise that vague verbal reassurances by the negotiating parties are not enough: trust will only grow from transparency, effective legal safeguards in negotiating texts and improved communication. A bilateral commitment to discussions that are truly transparent and open to public input is urgent. Trade negotiators should post on their respective websites lists of all company and NGO visitors as well as copies of the materials left by visitors.
- **Commit the resources necessary to reduce human and environmental exposure to harmful chemicals.** This includes a political commitment to ensure the proper, timely and effective implementation of existing EU and U.S. chemical management frameworks. Both Parties also need

to strengthen and develop their current regulatory frameworks to better regulate new and emerging technologies used to produce chemicals, such as nanotechnology and synthetic biology.

- **Strengthen and extend consumer access to information on toxic chemicals.** A TTIP agreement should enable better exchange of information on dangerous substances among U.S. and EU authorities, including the ability to exchange information without the prior consent of the data rights-holder (industry). Both Parties also need to limit the scope of trade secrets protections in the pre-market regulatory review and post-market monitoring process to make sure businesses do not bypass their disclosure obligations and thus endanger public access to information.
- **Ensure that a future chapter on regulatory cooperation does not impact the implementation of regulations or the development of regulatory definitions affecting the protection of public health and the environment** *e.g.* for nanomaterials or endocrine disrupting chemicals.
- **Exclude the chemicals sector from TTIP's chapter on regulatory cooperation.** The scope of TTIP's horizontal regulatory cooperation chapter should be restricted to areas where the EU and the U.S. offer similar levels of protection for consumers. This is not the case in the chemicals area as the regulatory frameworks are too different.<sup>9</sup> If chemicals are left under the scope of TTIP's horizontal chapter, it would create backdoor mechanisms for industry lobbying to compromise consumer protections.
- **Avoid commitments to follow particular practices in future regulatory actions.** TTIP should not commit the EU and the U.S. to particular regulatory practices. Both the European Commission's proposal for a Good Regulatory Practices chapter<sup>10</sup> as well as the leaked U.S. proposal,<sup>11</sup> envision numerous obligations for domestic rule-making. If codified in TTIP, these regulatory practices could create a wealth of opportunities for industry to question existing processes regulating toxic chemicals or to impede the development of new, more protective chemicals regulations through speculative and inaccurately inflated trade 'impact assessments'.<sup>12</sup> TTIP would, in consequence, straitjacket the implementation of U.S. and EU chemicals policies.
- **Create a voluntary mechanism to facilitate better transatlantic cooperation on chemicals management.** The existing U.S. EPA – ECHA Statement of Intent<sup>13</sup> illustrates that transatlantic cooperation does not need to be compulsory to achieve its goals. As envisioned by the European Commission,<sup>14</sup> a chemicals annex could, however, require EU and U.S. authorities to provide detailed and expansive justifications for their decisions to target chemicals for regulatory scrutiny.
- **Ensure balanced and representative stakeholder involvement and allow for public scrutiny of health, safety and environmental data.** Transatlantic cooperation on chemicals management should provide for accountability towards stakeholders. Confidentiality exclusions in applications to commercialise chemicals should not apply to environmental and health risk data. Stakeholders representing businesses have more resources than smaller stakeholders, such as NGOs, to optimise their input and as a result to influence regulators. Consultation processes therefore need to be inclusive and representative. Regulators should commit to promptly respond to freedom of information requests, including to requests filed during the development of new regulations.
- **Improve transatlantic cooperation on the regulation of new and emerging risks.** Better transatlantic cooperation on endocrine disrupting chemicals (EDCs), combination and low dosage effects of chemicals, and on nanomaterials, especially in relation to definitions and test methodologies, is imperative. TTIP must support the development of regulations for health and environmental safety, not erect trade-related barriers to regulation. A TTIP agreement must therefore ensure that basic requirements for risk analysis are not stigmatized as "non-trade barriers" subject to "necessity" tests, such as *ex ante* cost-benefit econometric claims.

A TTIP agreement designed according to these recommendations could facilitate progress on reducing consumer exposure to toxic chemicals.

Should the U.S. and the EU fail to incorporate our recommendations into negotiating proposals, the TACD insists that chemicals be excluded from the scope of TTIP's sectoral *and* horizontal regulatory cooperation chapters. A chemicals sector carve-out would then ensure that a future TTIP agreement does not weaken or compromise current consumer protections. Moreover, given that the U.S. is still in the process of writing regulations to implement its recent re-approval of the Toxic Substances Control Act, including these recommendations is essential for the U.S. and EU negotiators.

## **Background**

The U.S. and the EU differ fundamentally<sup>15</sup> in their approach to regulating chemicals. Nonetheless, a common feature of both regulatory systems is their inadequate capacity to control chemical risks as well as emerging technologies such as nanotechnologies. TACD has repeatedly called on policy makers on both sides of the Atlantic to ensure better regulation of chemicals, including nanomaterials.

We strongly criticize the resistance by both EU and U.S. governments to develop and adapt regulatory frameworks to ensure pre-market safety assessment and pre-approval of nanomaterials used in consumer products to protect the public, workers and the environment. As is evident from the recently announced European Commission voluntary nanomaterials observatory,<sup>16</sup> EU and U.S. governments systematically fail to impose any obligations on industry for the generation and collection of information about the safety of nanomaterials. Instead, this approach shifts financial costs as well as health and environmental risks on to society and consumers. This is unacceptable.

Against the backdrop of significant shortcomings in existing chemicals management frameworks, the EU and the U.S. entered the TTIP negotiations with a focus on reducing non-tariff barriers.

TACD believes the ongoing TTIP negotiations, in theory, could offer unique opportunities to strengthen the protection of consumers against harmful chemicals.

To date, however, neither the U.S. nor the EU have tabled proposals for transatlantic cooperation on chemicals that would bring real benefits to consumers and the environment. We see, on the contrary, a risk that current TTIP proposals would delay or thwart progress on reducing consumer exposure to toxic chemicals.

The European Commission's proposals for chapters on 'Regulatory Cooperation'<sup>17</sup> and 'Good Regulatory Practices'<sup>18</sup> thus threaten to trigger future regulatory changes that would weaken existing consumer protection standards on both sides of the Atlantic.<sup>19</sup> The leaked TTIP texts moreover confirm that the United States wants to export to the EU, via TTIP, a regulatory regime that has often failed to protect U.S. citizens and the environment.<sup>20</sup> If the United States succeeds in its project, corporate stakeholders will gain unchecked power to delay new European regulations and to water down existing laws.<sup>21</sup> This is unacceptable.

Although the EU and the U.S. at present have ruled out harmonisation for the chemicals sector, current TTIP proposals for regulatory cooperation suggest that harmonisation could in fact be introduced at a later stage – and certainly for regulation of emerging risks, such as EDCs or nanomaterials. The TTIP negotiations have already led to 'downwards harmonisation' for endocrine disrupting chemicals, freezing European initiatives to regulate these harmful chemicals.<sup>22</sup> We expect that if the TTIP negotiations result in a formal and implemented agreement, this regulatory freeze will intensify.

## ENDNOTES

- <sup>1</sup> TACD, Resolution on better regulation of chemicals, including nanomaterials, in light of the Trans-Atlantic Trade and Investment Partnership: What should policy makers agree on in the interest of consumers? October 2013.
- <sup>2</sup> TACD, Resolution on better regulation of chemicals, including nanomaterials, in light of the Trans-Atlantic Trade and Investment Partnership: What should policy makers agree on in the interest of consumers? October 2013.
- <sup>3</sup> European Commission, Outline for provision on chemicals, September 2014.  
[http://trade.ec.europa.eu/doclib/docs/2014/november/tradoc\\_152912.pdf](http://trade.ec.europa.eu/doclib/docs/2014/november/tradoc_152912.pdf)
- <sup>4</sup> European Commission, TTIP - EU proposal for Chapter: Regulatory Cooperation, March 2016.  
[http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc\\_154377.pdf](http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc_154377.pdf)
- <sup>5</sup> <https://ttip-leaks.org/>
- <sup>6</sup> TACD, Resolution on better regulation of chemicals, including nanomaterials, in light of the Trans-Atlantic Trade and Investment Partnership: What should policy makers agree on in the interest of consumers? October 2013.
- <sup>7</sup> The EU's chemical legislation REACH is based on the principle „no data – no market” which means that a manufacturer has to prove that a chemical is safe before placing it on the market. In the US, every chemical can be placed on the market unless the US EPA determines that a chemical is harmful. In the EU, a manufacturer is obliged to register a chemical and to provide information to the EU chemicals agency ECHA before marketing, which allows competent authorities to evaluate and further regulate chemicals based on the precautionary principle. A similar procedure is missing in the US.
- <sup>8</sup> TACD, Resolution on better regulation of chemicals, including nanomaterials, in light of the Trans-Atlantic Trade and Investment Partnership: What should policy makers agree on in the interest of consumers? October 2013.
- <sup>9</sup> For further explanation, see footnote 7.
- <sup>10</sup> European Commission, TTIP - EU proposal for Chapter: Good Regulatory Practices, March 2016.  
[http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc\\_154380.pdf](http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc_154380.pdf)
- <sup>11</sup> <https://ttip-leaks.org/hektor/doc9.pdf>
- <sup>12</sup> See Jennifer Sass and Daniel Rosenberg, The Delay Game. How the Chemical Industry Ducks Regulation of the Most toxic Substances, NRDC, October 2011.
- <sup>13</sup> Signed in December 2010, the Statement of Intent seeks to strengthen the scientific dialogue between the EU and the U.S. and to enhance cooperation on technical matters and other issues of common interest such as chemical hazards and emerging risks of chemical substances, risk management tools, scientific collaboration and information exchange, including best practice on how to more efficiently address chemicals of concern.  
[http://echa.europa.eu/documents/10162/13606/soi\\_echa\\_us\\_epa\\_20101220\\_en.pdf](http://echa.europa.eu/documents/10162/13606/soi_echa_us_epa_20101220_en.pdf)
- <sup>14</sup> European Commission, Outline for provision on chemicals, September 2014.  
[http://trade.ec.europa.eu/doclib/docs/2014/november/tradoc\\_152912.pdf](http://trade.ec.europa.eu/doclib/docs/2014/november/tradoc_152912.pdf)
- <sup>15</sup> For further explanation, see footnote 7.
- <sup>16</sup> <http://www.beuc.eu/publications/civil-society-demands-action-not-words-nanotechnology/html>
- <sup>17</sup> European Commission, TTIP - EU proposal for Chapter: Regulatory Cooperation, March 2016.  
[http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc\\_154377.pdf](http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc_154377.pdf)
- <sup>18</sup> European Commission, TTIP - EU proposal for Chapter: Good Regulatory Practice, March 2016.  
[http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc\\_154380.pdf](http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc_154380.pdf)
- <sup>19</sup> See BEUC, The Incompatible Chemistry between the EU and the U.S., January 2016. <http://www.beuc.eu/press-media/news-events/incompatible-chemistry-between-eu-and-us>
- <sup>20</sup> E.g. Jonathan Latham, Unsafe at any Dose? Diagnosing Chemical Safety Failures from DDT to BPA, *Independent Science Report*, May 16, 2016. <https://www.independentsciencenews.org/health/unsafe-at-any-dose-diagnosing-chemical-safety-failures-from-ddt-to-bpa/>
- <sup>21</sup> See Leaked TTIP Documents: Threats to Regulatory Protections. Statement of Robert Weissman, President, Public Citizen. <http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=5880>
- <sup>22</sup> Stéphane Horel and Corporate Europe Observatory, A Toxic Affair: How the Chemical Lobby Blocked Action on Hormone Disrupting Chemicals, May 2015. [http://corporateeurope.org/sites/default/files/toxic\\_lobby\\_edc.pdf](http://corporateeurope.org/sites/default/files/toxic_lobby_edc.pdf)