

David Wright, Director General, United Kingdom Lubricants Association Limited – Written evidence (EEH0005)

1. The United Kingdom Lubricants Association (UKLA) is the trade sector body for the petrochemical lubricants sector based in the United Kingdom. Our members represent organisations ranging from large multinationals to small and medium-sized enterprises involved with formulating, blending and marketing lubricants which are used across every sector of society from the automotive, industrial, aviation, marine, rail and construction industries.

2. The United Kingdom is the second largest market for petrochemical lubricants in Europe with a 15% market share, second to Germany and ahead of Italy, France and Spain. The market volume is around 600,000 metric tonnes a year and is equally split between automotive and industrial applications. The market is comprised of large multinationals which make up around 60% of the market volume, and a large number of small and medium-sized enterprises which make up the remaining 40%.

3. UKLA welcomes the opportunity to submit evidence to the Inquiry concerning the EU/UK Trade Cooperation agreement and its impact on the chemicals sector, including REACH, in light of the UK's departure from the European Union.

Question 1. Please indicate which of the following industries or policy areas are you responding in relation to: energy, environment, health, food trade, agriculture, fishing, climate change, chemicals.

4. I am responding in relation to chemicals.

Question 2. What is your assessment of the relevant provisions in the UK-EU Trade and Cooperation Agreement, and their impact on your business or policy area?

5. Over successive decades lubricant companies in the United Kingdom have taken advantage of the European Single Market and Common Tariff area to integrate their supply chains across national boundaries. Consequently many large companies in the sector service the needs of their consumers in the UK from bases on mainland Europe, particularly the Netherlands, where lubricants are formulated and blended before being exported as finished goods into the UK.

6. There are a number of local or national UK blenders and marketers which are typically small and medium-sized enterprises which continue to produce finished goods for the UK and export markets. However as the United Kingdom is neither self-sufficient in the component parts, either base oil or additives, required for finished goods then they too are reliant on the import of raw materials from North America and mainland Europe that go to make up their products.

7. Until 1st January 2021, the UK abided by chemical regulation established by the European Union. These regulations included REACH or the Registration, Evaluation and Authorisation of Chemicals, which required chemicals in excess of one metric tonne to be registered with the European Chemicals Agency, ECHA. The Classification of Labelling & Packaging regulation, or CLP, itself based on the United Nations Globally Harmonised System for labelling & packaging which determines how chemical products and their hazards are communicated throughout the supply chain. The Biocides Product Regulation, or BPR, requiring pre- authorisation of biocides placed on the market, and Prior Informed Consent or PIC. The way waste chemicals are managed and disposed of is also contained in the Waste Management Framework, or WM3.

8. From 1st January 2021, Great Britain adopted existing EU chemicals regulations into its own law through a succession of statutory instruments or secondary legislation. Northern Ireland continues to follow EU chemical regulations through the Northern Ireland protocol which treats the island of Ireland as a single entity. Although chemical products being placed on the market of Great Britain from Northern Ireland do so with a light touch notification process to the regulator the Health & Safety Executive through the unfettered access principle underpinning the United Kingdom. Nevertheless, Northern Ireland does not participate in UK REACH and Great Britain does not participate in EU REACH.

Question 3. What do those provisions achieve?

9. The UK-EU Trade and Cooperation (UKEUCTA) agreement allows for continued free trade between the UK and the EU, free of tariff and quota, which is to be welcomed. In 2019, the EU was the UK's largest trading partner accounting for 47% of the UK's total trade, 43% of all UK exports and 52% of all imports according to a House of Commons Library briefing paper no. Number 7851, dated 10 November 2020.

10 The European Union accounts for 60% of the exports of petrochemical lubricants from the United Kingdom. Market access for the export of finished goods from the UK, and the import of raw materials from Europe as well as North America, in the absence of self-sufficiency of supply in this country, is paramount.

11 The UKEUCTA enshrines the Classification of Labelling & Packaging or CLP, based on the United Nations Globally Harmonised System of labelling & packaging, or GHS into the provisions of the agreement and therefore continued compliance with the UK's and EU's obligations falling under this chemical regulation which provides certainty to businesses based in the United Kingdom in working to one common, accepted and well-understood international standard on labelling & packaging.

12 However this provision has not been extended within the agreement to include other forms of chemical regulation such as UK REACH, BPR or PIC. This provides uncertainty for businesses in the future on both sides of the channel who seek to work to one common set of standards that are well-understood and accepted across both the UK and the EU. There is no certainty that the UK will continue to abide by existing EU chemical regulation it has adopted into UK law prior to the end of the transition

period and this creates uncertainty for British businesses and the possibility of future divergence between the UK and the EU which will add to the cost of doing business.

13 In 2019, the Department for the Environment, Food and Rural Affairs set out the UK Government's ambition for a new independent chemical regulatory system that sits apart from that of the European Union. The UK Government stated that it would not abide by the decisions of the European Court of Justice (ECJ) which is the final arbiter on disagreements concerning EU REACH, and has not sought 'associate membership' of the European Chemicals Agency, ECHA, thereby securing continued participation for British businesses in EU REACH. Instead the United Kingdom pursued an independent chemical regulatory framework called UK REACH.

14 By adopting existing EU chemical regulation and porting these over into UK law ahead of the end of the transition period, the Government provided initial certainty that both businesses based in the UK and the EU would still be working to one common set of standards. However the UK Government stopped short of adopting any new provisions in chemical regulation that the EU adopted after the start of the transition period.

Question 4 What, if any, challenges arise because of those provisions? How could these challenges be resolved?

15 In its 25 year Environmental Plan published in 2018, the UK Government set out its vision for the UK to be a global leader and world champion on environmental matters. In future this allows for the prospect that the UK will go further, faster than other countries in developing new environmental laws. The risk in future is that the UK will begin to diverge from common and widely-accepted international standards on chemical regulation by either not adopting new developments in regulations from other regions, such as the EU, or developing its own independent regulations that are not recognised outside the United Kingdom leaving UK businesses to work to multiple standards across different regions which might leave some foreign-based companies refusing to trade with the UK if the cost of doing business outweighs the value of that business in a market of 15% of the size of the EU.

16 Today many British businesses form part of complex trans-national supply chains stretching across Europe and beyond. The UK lubricants sector is partly comprised of foreign owned subsidiaries of multinationals and locally-owned and managed business who work with suppliers, customers and distributors across the world. Companies based in the United Kingdom trade across international boundaries and hence any laws or regulations in the United Kingdom work to the interest of British business where they are aligned, recognised and adopted across these same international boundaries to ensure seamless trade.

17 Pragmatically, UK businesses requires certainty to enable it to confidently continue to invest in trade with Europe and other markets around the world. This certainty must come from the United Kingdom continuing to adopt any developments in the current laws and chemical regulations it has already accepted as part of its membership of the European Union.

18 Already UK companies operating in the petrochemical lubricants sector have spent on average six figures on EU chemical compliance including EU REACH registrations and authorisations, CLP, BPR and PIC. Some companies such as BASF estimate the costs of re-registering their 1800 substances under UK REACH to be in the order of £75m. Therefore it is important that the UK continues to align with EU chemical regulation otherwise UK companies will incur additional costs to comply with both the UK and EU regulation which will divert resources away from product, process or service innovation towards regulatory compliance at a time when the sector faces significant and unique challenges from government policy aimed at reducing dependence on hydrocarbons and moving to a 'net zero' economy.

19 One such example where the UK has stopped adopting any further development of chemical regulations introduced by the EU, is the harmonising regulation on Poison Centres which came into effect on 1st January 2021. The regulation obliges importers and downstream users within to notify their mixtures in a harmonised format to the National Poison centre and unique formula identifiers (UFIs) must be included on mixture labels.

UK REACH

20 UK REACH in the United Kingdom has replaced EU REACH which is widely understood, and accepted by British businesses who have worked to this common regulation since the middle of the last decade. UK REACH is a new regulatory framework replacing an existing framework that provides business with certainty, rather than providing a lack of clarity and uncertainty at this crucial time. The former Secretary of State for DEFRA, the Rt Hon Michael Gove MP, set out that the UK Government's approach to REACH was to initially adopt the articles and annexes of EU REACH into UK law within a commitment to continue to abide by the articles of EU REACH but not the annexes. However UKLA believes that the annexes are intrinsic to the functioning of the existing chemical framework as they deal with core matters such as the use of nanomaterials, CLP and cost sharing amongst companies.

21 The other complication is that issues relating to the environment are a devolved matter under devolution to the four nations of England, Scotland, Wales and Northern Ireland. Although the UK Government has set out its intent to adopt a single overarching chemical regulatory framework covering the whole of the United Kingdom, the four nations could instead, if they so choose, develop their own chemical regulatory framework. This could lead to potentially four different regulatory frameworks operating in the United Kingdom which would create great difficulties and uncertainty for British business.

22 The underpinning principles of REACH are one substance, one registration. We are now in a situation of one substance, two registrations. Over time the priorities of both the UK Government and the European Union may well diverge creating further issues surrounding data sharing costs and requirements. Scrutiny of an individual substance dossier underpinning a registration by ECHA and DEFRA, the lead UK Government department responsible for policy, may highlight separate concerns raising additional data requirements to fulfil specific market requirements of the UK and the EU, this exposes a company who has interests in both markets to twice the potential costs.

23 UK Government must ensure the continued application of the UK REACH regulation across the United Kingdom, and must also ensure that both the articles and annexes contained within EU REACH, as well as any future regulatory developments, are accurately reflected in UK REACH to give businesses the certainty they need to continue to trade with confidence and certainty with our European neighbours.

Question 5 What should the UK seek to accomplish with the EU in relation to your industry or policy area within the parameters of the Agreement in the short- and mid-term?

UK REACH

24 the advent of UK REACH includes provision to 'grandfather' existing EU REACH registrations to the UK--based system, overseen by the Health & Safety Executive, by providing basic data by 30th April 2021 to the regulator and then a full registration within a period of 2,4 or 6 years from 28th October 2021. This timescale has been welcomed by UK businesses as an extension from a previous timescale set out by UK Government, although due to the hazardous nature of petrochemical lubricants, all registrations will be need to have been made within a period of two years from 28th October 2021.

25 Small businesses making registrations to EU REACH were encouraged to cost share and work together in consortia or SIEFFS, to share the costs associated with preparing a data dossier and making a full submission to the European Chemicals Agency, ECHA. Consortia were also encouraged to use model forms of agreement drafted by CEFIC, the European Chemical Industry Council, to provide a standardised approach to joint and collaborative working.

26 The outcome of the collaborative working approach is that UK companies do now own the rights to the data underpinning a REACH registration in their own right. The cost and ownership of the data is shared across all companies within the consortia. Therefore to apply to use the existing EU REACH data for a further registration under UK REACH, the individual company must apply for a letter of access to allow the consortia to release the data in return for a fee. Although the individual company has already paid a share of the initial costs of developing the underpinning data to support an EU REACH registration, they will have to pay again to use the data to support a UK REACH registration.

27 There is also no guarantee that the consortium would release the data to one of their members for a different purpose than that for which the data had been developed. If the consortia chose not to allow access to the existing data for a UK REACH registration, then it is unlikely that small and medium-sized companies would have the resources necessary to make a new registration under UK REACH by themselves.

28 According to a consultancy called the Chemical Inspection and Regulation Service, the average cost to a petrochemical company for a letter of access is around 10,000 euros per substance and so if a consortium registered 40 substances on behalf of its

members the cost for a letter of access for each substance within the consortia, then the cost could easily reach 400,000 euros for UK companies seeking to re-register the same substances within UK REACH. For a market the size of the UK which represents around 15% of the total EU market, it might well be uneconomic for all substances to be re-registered with UK REACH.

29 In addition to the data developed by the consortia specifically for the purpose of underpinning a registration of a chemical substance, consortia were also encouraged to use 'read across' data which is a technique for predicting endpoint information for one substance, called the target substance, by using data from the same endpoint from another substance or substances, according to ECHA. The use of this data has been negotiated by the consortia for use in registering its substances but the data used is not owned by the consortia. Consequently if any read across data has been used, the UK company must also negotiate a separate letter of access for the use of this data in any UK REACH registration and the costs may well be another 10,000 euros per substance.

30 Although many Initial registration data requirements under EU REACH have been met through read across or data waiving statements, these when under evaluation are often rejected and demands for substance specific data are received from ECHA. If this were to happen under UK REACH it could raise the possibility of UK companies incurring additional and unexpected costs.

31 Some companies have begun to scale back production of new or niche products due to the cost implications of UK REACH, which in turn stifles innovation and competition. By reducing production to below thresholds which qualify for UK REACH, companies avoid the costs of re-registration but reduce their own competitiveness by refusing to service or withdrawing from certain high value markets.

32 The added complication is that when consortia used CEFIC model forms of agreement to establish the consortia initially, these were with the sole intent of making a substance registration to ECHA under EU REACH. Under the constitution of these consortia, UK REACH did not exist and so it is likely that there would also need to be a change of constitution in these consortia to allow for the release of data subject to a letter of access, to make a separate registration under UK REACH. It is not known what appetite the different European consortia would have for changing their constitution to allow for such a registration.

33 Overall it is vitally important that the UK continues to align with chemical regulation of its nearest and largest trading partner in order to avoid businesses working to two sets of standards should the UK diverge from existing regulation and go its own way. Already the situation is complicated by the UK having already established its own independent chemical regulatory framework. In future to avoid increasing costs of regulatory compliance, diverting investment away from innovation at a crucial time, and risking companies not servicing the UK market as it has all the costs associated with EU regulatory compliance but in a market size only 15% that of the EU, continued regulatory alignment will be key to the success of British businesses.

34 UKLA would be pleased to provide further evidence to the EU Environment Sub-Committee or answer any queries the committee may have.