

CHEM Trust – Written evidence (EEH0008)

CHEM Trust is a UK registered charity that works at EU, UK and international levels to prevent manmade chemicals from causing long-term damage to wildlife or humans, by ensuring that harmful chemicals are substituted with safer alternatives. Further details about CHEM Trust at: <https://chemtrust.org/policy/>, including our blog about the Trade & Cooperation Agreement (TCA) and its effect on protections from hazardous chemicals, <https://chemtrust.org/brexit-trade-deal-chemicals/>.

This submission relates to the effect of the TCA on environmental and public health protections from hazardous chemicals.

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

1. Our assessment is that this agreement does not adequately protect human health and the environment from hazardous chemicals. Early in negotiations, the UK ruled out what have been the best outcome for the environment and human health, as well as for industry. This would have been for the UK to remain within the world's most advanced system for regulating hazardous chemicals, the EU REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) Regulation, for example, by seeking associate membership of the European Chemicals Agency (ECHA). However, it made the decision that the UK should establish its own independent regulatory regime, GB REACH (with Northern Ireland remaining within EU REACH). This decision will substantially increase costs and bureaucracy for UK companies, while reducing protection of the public, workers and the environment from hazardous chemicals.
2. There has been much discussion within the sector about the failure of the agreement's chemicals annex to include access to ECHA's chemicals safety database, that was an objective of the UK government. However, this result was not a surprise to CHEM Trust, as it has always been our understanding that the EU would not allow the UK to cherry-pick access to the REACH database without – at a minimum – a commitment to align with EU REACH EU chemical-related laws. The failure to secure access to this database means, however, that industry is now facing the complex and costly challenge of negotiating access to data registered with EU REACH so it can be re-submitted for substances registered in GB REACH. This has prompted calls from some industry bodies to substantially deregulate the UK system to ease this data burden by arguing that GB REACH should only request safety data on an "exceptional" basis for chemicals of most concern. This must be resisted, however, as it would result in a very fundamental further weakening of the GB system, leaving the regulator unable to regulate effectively and robustly.
3. More positively, however, the deal avoids the potentially catastrophic deregulation that could have followed a no-deal outcome, commits the UK

to not regress from current levels of protection (though only if it affects trade or investment), includes a rebalancing procedure which could increase protection on both sides, and offers a platform on which a closer partnership could be negotiated in the future.

The chemicals annex

4. Our analysis of the TCA's annex on chemicals is that it is fairly weak and does not facilitate much closer cooperation than third countries (such as Canada and Japan) already have with ECHA.
5. Article 7.2 of the annex commits both parties to facilitating the exchange of "non-confidential information" and Article 7.4 commits both parties to cooperation on the dissemination of data related to chemicals safety and "upon request of either Party, the other Party shall provide available non-confidential information on chemicals safety". Sharing of only 'non confidential information' does not secure the UK Government's original objective for 'data-sharing'. The EU REACH system has already been designed to share non-confidential information widely, for example through the substance information available on ECHA's website.
6. The annex also includes the provision that the UK and EU can enter into consultations on chemical safety, but such consultations would not be mandatory if requested by one of the parties; as was originally proposed by the UK in the draft legal text it published in May. CHEM Trust was concerned that mandatory consultations could take up valuable time and resources in ECHA, that could potentially result in delays to, and disruption of, regulatory action.
7. The annex promotes cooperation around international standards, specifically the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The EU already works closely with international processes on chemicals, including GHS. However, these standards do not provide the same level of protection as REACH.
8. The failure of the deal to secure access to ECHA's chemical safety database means that businesses are now looking at processes that could spare them having to enter drawn-out and costly negotiations to purchase existing data from EU competitors. Some bodies such as the British Coatings Federation, are now proposing that safety data on chemicals should only be requested on an "exceptional basis" for prioritised chemicals of most concern, i.e. those GB REACH is investigating for authorisations or restrictions. Requiring data on an exceptional basis would undermine the 'no data, no market' principle of REACH and is not, in our view, a robust regulatory model. This system is similar to the discredited, ineffective and old-fashioned EU 'Existing Chemicals' process that was replaced by REACH. The slow progress made under this system, partly as a result of delays and 'delaying tactics' supplying this information, was one of the main reasons REACH was created. An analysis of the reasons for the failure of the Existing Substances Regulation is contained in the chapter on chemicals in Nigel Haigh, 'EU Environmental Policy - its journey to centre stage' (2016 Routledge).

Level Playing Field provisions

9. The agreement's provisions on non-regression, level playing field and rebalancing, all cover environmental policy including chemicals.
10. Both sides have committed to non-regression, i.e. not weakening their environmental level of protection below the levels at the end of the transition period (31st December 2020), though only if the weakening affects trade or investment. CHEM Trust shares the concern of those in the environmental sector that this is not broader in scope and applies irrespective of its impacts on trade or investment. Our view is that the trade test could, however, be more ably demonstrated in relation to regression from chemical standards than to some other areas of environmental policy. For example, reduction of the data requirements for GB REACH could potentially demonstrate breach this clause and could therefore risk retaliatory measures from the EU.
11. The rebalancing process could also prevent significant divergence from future improvements to chemicals regulation at EU level, that would otherwise leave UK consumers and the environment less protected from hazardous chemicals than in the EU. Our understanding is that this process is designed to deal with divergences that occur if one party adopts significant new policies that lead to "material impacts on trade or investment between the Parties" and then "either Party may take appropriate rebalancing measures to address the situation". This process is potentially significant in the case, for example, of new EU policies like the Chemicals Strategy for Sustainability (CSS), which was launched in October 2020 to address weaknesses in EU REACH and to accelerate progress towards chemicals that are 'safe and sustainable by design'. If it could be demonstrated that the CSS created 'material impacts on trade and investment' then some sort of rebalancing measures could be taken by the EU against the UK.
12. In a post-deal [interview](#) with The Telegraph, the UK Prime Minister reportedly listed chemicals as an area where there could be a potential Brexit Dividend from the UK diverging from Brussels. Our view is that any future attempt by the UK to gain a competitive advantage from regressing from existing protections or diverging from future EU improvements - e.g. by allowing the use of hazardous chemicals in order to stimulate the development of a deregulated production base in the UK - could potentially breach the level playing field provisions. These provisions could also help prevent any undermining of EU REACH's relatively high environmental protections or improvements to them. Before the publication of the EU CSS, the director of the European Chemical Industry trade association CEFIC used Brexit to argue that the Commission should only change its rules in cooperation with the UK, otherwise this would risk damaging divergence. Our understanding is that the rebalancing provisions can be used to protect the side that's proposing higher standards, so enabling the EU to act if there were any trade or investment impacts of the CSS.

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?

13. Our view is that regulatory alignment with EU REACH remains the best option for maintaining our relatively high environmental and public health standards on chemicals in the UK. This would also provide a more credible basis on which to negotiate a closer and more beneficial partnership on chemicals with the EU and EU REACH in ongoing negotiations over the medium term, that could provide access to ECHA's chemical safety database, which could be added to the chemicals annex.
14. The EU's proposed actions for phasing out all but essential use of Per and Polyfluoroalkyl Substances (PFAS) chemicals will provide an early test for the UK regime in the short to medium term, and of the utility of the TCA's provisions on chemicals. These substances are used in non-stick pans, waterproof fabrics, food packaging and cosmetics. They can be toxic to both humans and wildlife and have been linked to cancers, thyroid disease and obesity and hardly degrade in the natural environment. As part of the Chemical Strategy for Sustainability, the EU has proposed a range of actions to address use of and contamination with PFAS, including a proposal to restrict all but essential uses in consumer products, with two actions due this year. It would be good to know if the Government is planning to align with EU actions on PFAS, if it will make use of Art.7.4 of the Chemical annex to request information from ECHA, and – without access to ECHA's chemicals safety database – how it would defend future controls on PFAS from legal challenge.
15. As the UK appreciated when it played an important role in the creation of EU REACH in 2007, the regulation of chemicals is best achieved through cooperation between countries, which has involved the central registration of chemical safety data and pooling of limited resources and expertise. Given the significance of chemicals regulation as a trading standard, a mid-Atlantic position is in our view unfeasible; the UK is unlikely to start setting international trading standards on its own.
16. These ongoing negotiations, in particular the potential 4-yearly review of the balance of the agreement, will provide future opportunities for achieving a close relationship with REACH in the UK-EU trade agreement. This may become easier in the future if the UK political focus moves away from 'sovereignty' and towards a more pragmatic consideration of what businesses need in order to be able to trade effectively with the EU – and the level of protection that the people of the UK will expect. There remain strong reasons for the EU to keep the door open to the UK too.