



Background note on “regulatory cooperation” related to toxic chemicals

A leaked European Commission document on “regulatory cooperation” for the chemicals industry closely resembles the text of industry proposals for “regulatory cooperation.”

The leaked document. As the joint analysis of the Center for International Environmental Law, Client Earth, and the Natural Resources Defense Council states: “The leaked chemicals annex of the European Commission 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 US states. The chemical industry has long benefited from a strategy of delaying any potential regulation of a chemical, or even an assessment of a substance as hazardous, for as long as possible, sometimes for a decade or more. Through this proposal, varying levels of precaution and protection between the EU and US could be erased or blocked, at the expense of human health and the environment.”

Implications. The term “regulatory cooperation” suggests a benign voluntary process of harmonizing regulations but there is nothing innocent about the regulatory review process for toxic chemicals proposed by the European Commission. As Friends of the Earth Europe and others have explained, this kind of regulatory cooperation is “a highly strategic plan to resolve some of the most controversial aspects of the [U.S.-E.U.] deal after the treaty has been finalized and the public scrutiny waned.” Public interest legislation and regulations would be screened by committees of bureaucrats and industry experts (a.k.a. lobbyists) to identify “non-tariff barriers to trade.” The process would be coordinated by a “Regulatory Cooperation Council,” consisting of U.S. and E.U. trade authorities, and the U.S. Office of Information and Regulatory Affairs. OIRA, which has its cultural roots in the anti-environment politics of the Reagan Administration, has been described by Public Citizen as “anti-regulatory.” Such a regulatory review process would operate outside parliaments and with little public scrutiny. Environmental safeguards and other public interest regulation could easily be stalled or stopped before they are even disclosed or discussed by parliaments and the public.

Regulators would be hamstrung. Legislators would be denied access to the tools they need to effectively protect human health and the environment. Chemicals regulation in the United States and Europe would be pushed to the lowest common denominator. The E.U.’s REACH policy sets the global high bar for regulation of chemicals in terms of protecting human health and the environment; in contrast, the U.S. has a broken and outdated chemical regulatory system, the Toxic Substances Control Act. Under proposed regulatory cooperation provisions, REACH would likely be weakened significantly. In addition, currently U.S. states are able to set more stringent chemicals policies, but such state initiatives would likely be subject to preemption if the U.S.-E.U. trade deal includes regulatory cooperation provisions.