

# LOWEST COMMON DENOMINATOR

How the proposed  
EU-US trade deal threatens  
to lower standards of  
protection from toxic  
pesticides



Center for International  
Environmental Law



Erica Smith, David Azoulay, and Baskut Tuncak

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## Executive Summary

**S**tronger, more progressive regulations for the protection of health and the environment are being targeted by industry for elimination under the Trans-Atlantic Trade and Investment Partnership (TTIP).<sup>1</sup> Where stronger laws and standards have been democratically adopted—or are even proposed—for hazardous pesticides and other chemicals on only one side of the Atlantic, they have consistently been cast by industry as trade irritants, to be eliminated. Due to ongoing public health, food security and other concerns, several states of the United States and some Member States of the European Union continue to develop and advocate for stronger controls over the use of pesticides.

A recent report by the European Parliament expressed the concern that “there is

a risk with regulatory convergence, as well as mutual recognition, that the TTIP could align common standards with the lower level ones.”<sup>2</sup>

Prior to the sixth round of negotiations, American and European pesticide lobby groups CropLife America and the European Crop Protection Association (ECPA), representing the interests of powerhouse pesticide corporations active on both sides of the Atlantic, such as BASF, Bayer, Dow, DuPont, Monsanto, and Syngenta, produced recommendations for TTIP negotiators to consider on regulatory convergence.<sup>3</sup>

The general objective of industry and trade negotiators with TTIP is to prevent and minimize regulatory differences (i.e. regulatory divergence) between the EU and US, including the states of the US and

the Member States of the EU. The CropLife-ECPA proposal speaks of promoting “cooperation and harmonization,” aimed at developing and ensuring “the highest level of consumer and environmental protection, while promoting international trade, creating jobs, and enhancing social and economic viability of the EU and the US.”<sup>4</sup> Instead of taking this opportunity to align standards at the highest possible level to protect environmental and human health, the pesticide industry is attempting to manipulate trade negotiations to compel the EU into lowering their progressive environmental health and food safety legislation with little consideration for environmental or health consequences.

Nowhere in the CropLife-ECPA position paper do these trans-Atlantic industry



**Massive volumes of pesticides are applied to crops in the US and EU, resulting in human exposure through eating residues on food, drinking contaminated water, and breathing emissions into the air.**



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CropLife and ECPA are trying to increase the amount of pesticide residue allowed on food sold to consumers.

lobbyists suggest raising standards of protection of workers, communities and consumers from hazardous pesticides, or eliminating the massive use of loopholes that allow for circumvention of current standards. The laws that the pesticide industry associations target are precisely the laws that do—or are poised to—provide greater protection for people and the environment from the risks of hazardous pesticides.

This report provides a critical analysis of the CropLife-ECPA proposal for regulatory cooperation under TTIP. It demonstrates the pesticide industry's actual goal of increasing trade while increasing the risk of harm to European and American citizens. It reveals the extent to which the pesticide industry is willing to go to maximize profits. Their recommendations threaten to:

- Weaken EU laws to permit the use of carcinogens and other substances of very high concern as pesticides, posing a health hazard to workers, consumers, and communities;
- Allow the import of food from the US with higher levels of toxic pesticides;
- Weaken, slow or stop efforts to regulate endocrine (hormone) disrupting chemicals;
- Obstruct efforts to save bee populations, risking irrevocable damage to the quality and quantity of our food supply;

***This report demonstrates the pesticide industry's actual goal of increasing trade while increasing the risk of harm to European and American citizens. It reveals the extent to which the pesticide industry is willing to go to maximize profits.***

- Block access to information that is vital to developing non-toxic alternatives;
- Interfere with the democratic process by usurping the regulatory authority of US States and EU Member States; and
- Install a “regulatory ceiling” hampering global pesticide regulation.

Alarmingly, recent position papers of both the European Commission and the Office of the United States Trade Representative (USTR) show support for many of industry's proposals. The European Commission's position paper on regulatory cooperation, leaked to the public, reflects the industry's demand to create an institutional framework (i.e. Regulatory Cooperation Council) to facilitate an “early warning system” of consultations and influence over the development of stronger public health and

environmental laws, including of laws at the state level in the US and Member State level in the EU.<sup>5</sup> USTR's *2014 Report on Technical Barriers to Trade* explicitly targets stronger EU pesticide measures to address issues of concern such as endocrine disrupting chemicals and nanomaterials as trade barriers.<sup>6</sup>

Over 110 civil society organizations on both sides of the Atlantic reject the possible inclusion of the chemicals sector in TTIP, recognizing that stricter controls on hazardous chemicals are vital to protecting human health and the environment, and are placed in serious risk by TTIP.<sup>7</sup>

In response, on October 2, 2014, EU Commissioner De Gucht claimed that “a possible TTIP agreement would under no circumstance result in the lowering of existing EU environmental and health standards with regard to chemicals.”<sup>8</sup> On November 20, 2014, DG Trade's lead TTIP negotiator repeated that the EU is not going to change its food legislation because of TTIP.<sup>9</sup>

These words of caution are misleading. As stated repeatedly, the danger of TTIP lies in how existing laws are implemented and new laws are developed, not necessarily in changes to existing legislation. The CropLife-ECPA proposal for TTIP clearly illustrates this risk.

## CHAPTER 1

# Introduction

Only a few decades ago, food was primarily grown and consumed locally.<sup>10</sup> The rise of free trade agreements have contributed to a marked increase in trade in food, resulting in dramatic impacts of agriculture policy on the livelihoods of farmers, producers and consumers. The sustainability of essentially shipping large volumes of water (approximately 80% to 95% of the weight of produce is water) over long distances, is more than questionable. Setting aside the broader, legitimate questions around international trade and food production, this paper takes a narrower focus on the implications of ongoing trade negotiations for efforts to transition away from toxic pesticides.

The proposed Transatlantic Trade and Investment Partnership (TTIP) is a comprehensive free trade agreement currently being negotiated between the United States (US) and the European Union (EU). Tariffs between the two trading blocks are already extremely low.<sup>11</sup> Because tariffs are so low, TTIP's primary objective is to rid the playing field of "trade irritants," or non-tariff trade barriers, primarily under the ambit of "regulatory cooperation" and "regulatory coherence."<sup>12</sup> As a result, TTIP represents a different breed of free trade agreement, primarily a regulatory agreement, which seeks to minimize regional regulatory differences in an attempt to develop less trade-restrictive policies.<sup>13</sup>

Prior to the sixth round of negotiations, American and European pesticide lobby groups CropLife America and the European Crop Protection Association (ECPA), representing the interests of multinational powerhouse pesticide corporations, such as BASF, Bayer, Dow, DuPont, Monsanto, and Syngenta, produced recommendations for TTIP negotiators to consider.<sup>14</sup>

A recent report commissioned by the European Parliament expressed the concern



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**During critical windows of development, children are especially vulnerable to endocrine disruptors and other hazardous pesticides.**

that "there is a risk with regulatory convergence . . . that the TTIP could align common standards with the lower level ones."<sup>15</sup>

TTIP is premised on eliminating perceived "unnecessary" trade barriers.<sup>16</sup> The Office of the United State Trade Representative (USTR) has for many years advocated on behalf of the chemical and pesticide industry's concerns, concerns premised on the belief that the stronger levels of protection in the EU from toxic chemicals and pesticides are unnecessary (see *infra*).

This analysis shows that the main targets of the pesticide industry under TTIP

are the relatively stronger European public health and environmental policies and standards for pesticides and food safety.

Industry calls for regulation much more closely aligned with the weaker standards and policies of the US federal system, rather than the relatively stronger policies of EU or certain states and locales in the US. Indeed, nowhere in the CropLife-ECPA position paper do they suggest raising standards of protection for workers, communities and consumers from hazardous pesticides. Among numerous differences in standards and policies are the large

numbers of hazardous pesticides allowed for use by the US that are banned in the EU, as well as higher levels of pesticide residues on food sold to consumers in the US relative to the EU (see Table 1, p. 7, and Table 2, p. 12).

CropLife and ECPA, together with other industry allies, are seeking to use TTIP and its lack of transparency to classify important regulatory differences between the US and the EU as trade barriers; and to eliminate them by aligning standards of protection down to those least protective of human health and the environment. CropLife and ECPA's proposal illustrates that what trade negotiators say publicly about this unprecedented trade agreement—that TTIP will not result in the dilution of health and environmental standards<sup>17</sup>—

is not what industry believes is possible.

This paper provides an analysis of the pesticide industry's proposal. Below, we examine the proposals by CropLife and ECPA under TTIP that would:

- Change EU laws to permit the use of carcinogens and other substances of very high concern as pesticides, posing a health hazard to workers, consumers, and communities;

***A recent report for the European Parliament expressed the concern that “there is a risk with regulatory convergence . . . that the TTIP could align common standards with the lower level ones.”***

- Allow the import of food from the US with higher levels of toxic pesticides;
- Weaken, slow or stop efforts to regulate endocrine (hormone) disrupting chemicals;
- Obstruct efforts to save bee populations, risking irrevocable damage to the quality and quantity of our food supply;
- Block access to information that is vital to developing non-toxic alternatives;
- Interfere with the democratic process by usurping the regulatory authority of US States and EU Member States; and
- Install a “regulatory ceiling” hampering global pesticide regulation.

BOX 1

**How the European Commission's Leaked Position on Regulatory Convergence Could Slow, Stop or Reverse the Development of Stronger Laws for Food Quality**

The primary distinguishing characteristic of TTIP lies in its nature as a “regulatory” agreement, rather than a typical trade agreement aimed at reducing tariffs. The CropLife-ECPA proposal must be read in the context of the trade negotiations as a whole and the European Commission's position on regulatory coherence itself in order to fully comprehend the gravity of the situation and the consequences of accepting the pesticide industry's recommendations at face value.<sup>18</sup>

In December 2013, a leaked European Commission position paper on regulatory coherence suggested the creation of a regulatory cooperation framework, including a trans-Atlantic Regulatory Cooperation Council (RCC) that would oversee the development of regulatory processes in both the US and the EU.<sup>19</sup>

The scope of the RCC, as envisioned by the European Union, is extremely expansive. It would cover all matters of general application having the ability to impact trade, and all levels of decision making.<sup>20</sup> Requirements that could be imposed on US and EU regulators include mandatory consultations at the outset of the regulatory process, trade impact analyses and long and complex dispute settlement processes.

The breadth and depth of the long list of issues that will be discussed by the RCC indicates that this will not be a simple process. Considering that regulatory processes are already resource intensive on both sides of the Atlantic, adding additional layers of burdensome bureaucracy is likely to further delay and most likely stall stronger protections from toxic chemicals and pesticides.

Similar to a joint proposal by non-agricultural chemical industry lobbyists (the American Chemistry Council (ACC) and Cefic), the CropLife-ECPA proposal supports the adoption of a “broader consultation process, at the earliest stages” in order to “ensure minimum unfair competitive impact before regulation is proposed and implemented.”<sup>21</sup> This type of “regulatory cooperation” would likely give industry both early warning of stricter standards and new opportunities to oppose such measures. As designed, the RCC would give industry ample opportunity to spin information and scientific uncertainty in their favor before any decisions are made.

Further, the European Commission suggests that US and EU regulators assess impacts on international and trans-Atlantic trade when carrying out impact assessment and cost benefit analyses for all regulatory measures covered under the RCC.<sup>22</sup> Requiring complex trade analyses will only serve to extend an already lengthy regulatory process, and create an inherent bias against either the US or the EU, including states and Member States, from taking action alone for stronger levels of protection. It is difficult to envision any stricter control for toxic chemicals on only one side of the Atlantic not having a hypothetical trade impact.

Taken with industry's recommendations, the proposed RCC will offer significantly less opportunity for transparency and public engagement than those currently afforded by existing domestic regulations, and potentially circumventing the traditional democratic processes.<sup>23</sup>

## CHAPTER 2

## Industry's Proposal that the EU Abandon Stronger Laws and Policies for Toxic Pesticides

The CropLife-ECPA proposal calls for the EU to change its laws and policies to the lower standards of protection found in the United States. In particular, it calls for the EU to abandon its “hazard-based” policies for pesticides. CropLife and ECPA argue that the EU approach is not science-based, stating that “without science-based risk assessment as the unified basis for pesticide regulation, any additional requests for regulatory convergence are unattainable.” They then unequivocally predicate any possibility of regulatory convergence between the

*A hazard-based approach acknowledges decades of evidence that the risks of pesticides with certain intrinsic hazards cannot be adequately predicted or controlled, and thus exposure should be prevented.*

US and EU on the prerequisite that TTIP mandate “the inclusion of science-based risk assessment as the unified basis for pesticide regulation.”<sup>24</sup>

Historically, the EU and US have reached different conclusions about the risk of hazardous pesticides. For example, 82 pesticides are banned from use in the EU, but allowed in the US (Table 1). Among these 82 pesticides are carcinogens, endocrine or hormone disrupting chemicals (EDCs), developmental toxins, and other hazardous pesticides. Indeed, progress in the EU to limit the use of hazardous pesticides has eventually influenced stronger standards around the world, including the US.

EU laws contain stronger protections than US laws from hazardous pesticides. The



Huge volumes of agricultural products are traded between the US and EU daily, creating a large carbon footprint from essentially shipping large volumes of water across the Atlantic.



TABLE 1  
**82 pesticides banned in the EU, but allowed in the US**

	Active Ingredient	Allowed in EU?	Allowed in US?	Hazardous Characteristics
1	1,3,-dichloropropene	No	Yes	US EPA Probable Carcinogen
2	Acephate	No	Yes	US EPA Possible Carcinogen, Suspected EDC
3	Acetochlor	No	Yes	CA Prop 65 Known Carcinogen, Suspected EDC
4	Acifluorfen	No	Yes	CA Prop 65 Known Carcinogen, Suspected EDC
5	Agrobacterium radiobacter K84	No	Yes	Inadequate Information
6	Alachlor	No	Yes	CA Prop 65 Known Carcinogen, Suspected EDC
7	Aldicarb	No	Yes (Phase out by 2018)	WHO Ia – Extremely Hazardous
8	Ametryn	No	Yes	Suspected EDC
9	Amitraz	No	Yes (Review ongoing)	Suspected EDC, CA Prop 65 Developmental Toxin
10	Anthraquinone/Antraquinone	No	Yes	CA Prop 65 Known Carcinogen
11	Atrazine	No	Yes (review scheduled for 2013)	Suspected EDC
12	S-Bioallethrin	No	Yes	Suspected EDC
13	Bromethalin	No	Yes	WHO Ia - Extremely Hazardous
14	Butralin	No	Yes	WHO III - Slightly Hazardous
15	Carbaryl	No	Yes	Suspected EDC, CA Prop 65 Developmental & Reproductive Toxin
16	Carbofuran	No	Yes (Documentation suggests all uses to be cancelled)	WHO Ib – Highly Hazardous, Suspected EDC
17	Chlorfenapyr	No	Yes	WHO II – Moderately Hazardous
18	Chlorthal-dimethyl (DCPA)	No	Yes	US EPA Possible Carcinogen, Suspected EDC
19	Cycloate	No	Yes	CA Prop 65 Developmental Toxin
20	Cyfluthrin	No	Yes (review pending since 2011)	WHO II – Moderately Hazardous, Suspected EDC
21	Diazinon	No	Yes (restricted uses in 2007)	WHO II – Moderately Hazardous, Suspected EDC
22	Dichlorvos (DDVP)	No	Yes	WHO Ib – Highly Hazardous, Suspected EDC
23	Dicrotophos	No	Yes (review pending since 2008)	WHO Ib – Highly Hazardous
24	Difethialone	No	Yes (Restricted to commercial users in May 2008)	WHO Ia – Extremely Hazardous
25	Dimethenamid	No	Yes (conditionally in 1993)	US EPA Probable Carcinogen
26	Disodium octaborate tetrahydrate	No	Yes	None Listed

TABLE 1  
**82 pesticides banned in the EU, but allowed in the US** (continued)

	Active Ingredient	Allowed in EU?	Allowed in US?	Hazardous Characteristics
27	Endosulfan	No	Yes (Phase out to be complete July 31, 2016)	WHO II – Moderately Hazardous, Suspected EDC
28	EPTC	No	Yes	CA Prop 65 Developmental Toxin
29	Ethoxyquin	No	Yes	Suspected EDC
30	Ethylene oxide	No	Yes	IARC Known Carcinogen
31	Fenbutatin oxide	No (Expiry March 2014, Grace period - Dec. 2015)	Yes (review pending)	None listed
32	Fenithrothion	No	Unclear	WHO II – Moderately Hazardous, Suspected EDC
33	Fenpropathrin	No	Yes (review pending)	WHO II – Moderately Hazardous
34	Fentin hydroxide (TPTH)	No	Yes	CA Prop 65 Known Carcinogen, Suspected EDC
35	Ferbam	No	Yes	Suspected EDC
36	Flumetsulam	No	Yes (review pending)	None listed
37	Hexazinone	No	Yes	WHO III – Slightly Hazardous
38	Hydramethylon	No	Yes	US EPA Probable Carcinogen
39	Imazethapyr	No	Yes	None Listed
40	Lactofen	No	Yes (review pending since 2007)	CA Prop 65 Known Carcinogen
41	Maleic hydrazide and its salts	No	Yes	IARC Unclassifiable
42	Methoprene	No	Yes	Suspected EDC
43	Methyl isothiocyanate	No	Yes	WHO II – Moderately Hazardous, CA Prop 65 Developmental and Reproductive Toxin
44	Metolachlor	No	Yes	US EPA Possible Carcinogen, Suspected EDC
45	MSMA	No	Yes	None Listed
46	Novaluron	No	Yes (conditionally)	None Listed
47	Oxydemeton-methyl	No	Yes	WHO Ib - Highly Hazardous, CA Prop 65 Reproductive Toxin
48	Paraquat Dichloride	No	Yes	WHO II - Moderately Hazardous, Suspected EDC
49	Peroxyacetic acid (peracetic acid)	No	Yes	None Listed
50	Permethrin	No	Yes	US EPA Likely Carcinogen, Suspected EDC
51	Phenothrin	No	Yes	WHO Ia – Extremely Hazardous
52	Phorate	No	Yes	WHO Ia – Extremely Hazardous
53	Potassium Silicate	No	Yes	None Listed
54	Prometryn	No	Yes	Suspected EDC
55	Propargite	No	Yes	US EPA Probable Carcinogen
56	Quintozene (PCNB)	No	Yes	US EPA Possible Carcinogen, Suspected EDC

TABLE 1  
**82 pesticides banned in the EU, but allowed in the US** (continued)

	Active Ingredient	Allowed in EU?	Allowed in US?	Hazardous Characteristics
57	Resmethrin	No	Yes	CA Prop 65 Known Carcinogen & Developmental Toxin, Suspected EDC
58	Rotenone	No	Yes	WHO II – Moderately Hazardous
59	Sethoxydim	No	Yes	WHO III – Slightly Hazardous
60	Silver nitrate	No	Yes	None Listed
61	Simazine	No	Yes	Suspected EDC
62	Sodium Carbonate	No	Yes	None Listed
63	Sodium dimethyldithiocarbamate	No	Yes	CA Prop 65 Developmental Toxin
64	Strychnine	No	Yes (with restrictions)	WHO Ib – Highly Hazardous
65	TCMTB	No	Yes	US EPA Probable Carcinogen
66	Tebuthiuron	No	Yes (review pending since 2010)	WHO III – Slightly Hazardous
67	Tempehos	No	Registered (review proposed)	None Listed
68	Terbacil	No	Yes	CA Prop 65 Developmental Toxin
69	Terbufos	No	Yes	WHO Ia – Extremely Hazardous
70	Terbutryn	No	Unclear	US EPA Possible Carcinogen, Suspected EDC
71	Tetramethrin	No	Yes	US EPA Possible Carcinogen, Suspected EDC
72	Thidiazuron	No	Yes	None Listed
73	Thiobencarb	No	Yes	WHO II – Moderately Hazardous, Suspected EDC
74	Thiodicarb	No	Yes	US EPA Probable Carcinogen
75	Tolyfluanid	No	Yes (as residue on imported products)	US EPA Likely Carcinogen
76	Tralomethrin	No	Yes (review pending since 2010)	WHO II – Moderately Hazardous
77	Triadimefon	No	Yes	US EPA Probable Carcinogen, Suspected EDC
78	Tribufos	No	Yes	CA Prop 65 Known Carcinogen, Suspected EDC
79	Trichlorfon	No	Yes (for non-food and non-feed uses)	Suspected EDC
80	Trifluralin	No	Yes	US EPA Possible Carcinogen, Suspected EDC
81	Triforine	No	Yes	CA Prop 65 Developmental Toxin
82	Trimeclure	No	Yes	None Listed

SOURCES: Information compiled from the European Commission, EU Pesticide Database; National Pesticide Information Retrieval System, Center for Environmental and Regulatory Information Systems, Purdue University; Pesticide Action Network, Pesticide Database; International Agency for Research on Cancer Carcinogen List; US National Toxicology Program Carcinogen List; State of California Prop 65 Chemical List; European Commission, EU prioritization list for endocrine disruptors; The Endocrine Disruption Exchange (TEDX); and US EPA Toxic Release Inventory List.

EU's hazard-based approach to pesticides with unmanageable risks is a pragmatic and science-based step towards enabling global progress toward a toxic-free environment.<sup>25</sup> A hazard-based approach acknowledges decades of evidence that the risks of pesticides with certain intrinsic hazards cannot be adequately predicted or controlled, and thus exposure should be prevented. Hazardous pesticides that meet categorical cut-off criteria prohibiting their use in Europe include those that can cause cancer, interfere with the normal functioning of the hormone system, persist in the environment and accumulate in people and other intrinsic hazards.

***Substances are authorized for use without adequate scientific evidence of their risks, especially health and safety information.***

Unlike the US, the EU's pesticide policy is based on the precautionary principle, which allows authorities to take action to reduce risks from chemicals if the possibility of harmful effects on health is identified, but scientific uncertainty exists.<sup>26</sup> The application of the precautionary principle led the EU to adopt the "hazard-based" approach to pesticide management in 2009, which entered into effect beginning in 2012.<sup>27</sup> The pesticide carbendazim, classified as a reprotoxin and mutagen, and

subsequently banned in 2014, is the first pesticide where citizens in the EU benefit from the hazard-based approach.<sup>28</sup>

While the hazard-based approach is an important and necessary step to attaining more protective pesticide regulations, it is important to point out that no pesticide in the EU is banned without exception. For example, Regulation 1107/2009 (art. 53) allows for use of any pesticide, banned or restricted, in cases of emergency, for a period of 120 days (in Europe generally close to one season). Recent reports demonstrate the massive misuse of this provision in the Regulation by EU Member States to enable the use of pesticides that are not authorized, non-approved or banned for health reasons (Box 2).<sup>29</sup> CropLife conveniently makes no mention of this provision in its proposal.

Contrary to the argument of CropLife and ECPA, in reality the US approach is not science-based to a large degree. A "typical risk assessment consists of about fifty separate assumptions and extrapolations."<sup>30</sup> In addition to an unreasonably high degree of uncertainty in exposure and variables in risk assessment calculations, substances are authorized for use without adequate scientific evidence on their risks, especially health and safety information. Under US pesticide legislation, "conditional" temporary registrations allow a new pesticide to be placed on the market for an unspecified amount of time while the manufacturer generates the

requisite data for registration.<sup>31</sup> Although Congress intended the use of conditional registration to be a limited and temporary occurrence, as of October 2012, more than 65% of active pesticides products in the United States have been conditionally registered, according to the National Resource Defense Council (NRDC).<sup>32</sup> An investigation into the matter by the US Government Accountability Office (GAO) in August 2013 revealed a defective system that seriously undermines the ability of the EPA to engage in informed decision-making.<sup>33</sup> A form of conditional approval existed in the EU for new pesticides for a short period, but is no longer permitted under the new legislation for pesticides (1107/2009).

Nonetheless, CropLife and ECPA suggest that the EU switch from a more protective hazard-based approach to a less protective risk-based approach, which could allow the use of hazardous pesticides restricted from use in the EU, but not the US. Indeed, it would likely have the effect of opening the European market to pesticide products containing known carcinogens, mutagens, hormone disrupting chemicals, and reproductive toxicants at the expense of the health of European citizens. In short, CropLife and ECPA's position is that the EU change its laws and lower standards of protection, despite public statements from the US and EU that TTIP will not do either.

BOX 2

**Problems on Both Sides: Abuse of Exceptions to, and Derogations from, the Proper Assessment of Pesticides**

Both the EU and US follow a science-based and risk-based approach to pesticide regulation. The difference between the US and EU is how they respond to the significant uncertainties when making risk assessments and, perhaps more importantly, how they allow for the use of derogations from the traditional rules governing the pesticide assessment process.

As of October 2012, more than 65% of active pesticides products in the United States have been conditionally registered, meaning they did not have adequate information for a complete risk assessment when allowed for use. On top of conditional registrations, several more derogations are used in the US, such as "minor use," "emergency exemptions" and "experimental use," allowing industry to bypass full risk assessment for indeterminate periods of time.<sup>34</sup>

The EU also allows for substantial derogations; however, conditional registrations were recently discontinued. One particularly damaging derogation that continues in the EU is the "resubmission program," where to date 88 banned pesticides have been given a second chance for approval. In an agreement with industry to prevent massive court cases, industry managed to get nearly all of the 88 approved on the basis of many assumptions and speculations and with little additional testing.<sup>35</sup> Emergency use is also a big loophole in the EU, with a recent report by Pesticide Action Network (PAN) Europe demonstrating massive and growing misuse of the clause for pesticides, including banned pesticides.<sup>36</sup> Minor use is on the agenda in the EU and will likely be further developed and introduced.

## CHAPTER 3

## Industry's Proposal that the EU Increase the Amount of Pesticide Allowed on Food

Under existing standards, food in the US and the EU can contain certain levels of pesticides. The CropLife-ECPA proposal calls for the EU to increase the amount of pesticide allowed on fruits, vegetables, and other foods sold to consumers through the “significant harmonization” of processes setting limits for the amount of pesticide residue that can legally remain in or on food after treatment.<sup>37</sup> These limits are known as “maximum residue levels” (MRLs) in the EU and “tolerances” in the US. In the context of EU MRLs, industry’s proposal expresses “particular concern about the EU’s hazard-based cut off criteria,” and “stresses the need for legislation governing the setting of MRLs to be based on a system of risk assessment.”<sup>38</sup>

Harmonization is a favorite topic of industry advocacy, and one that has engendered immense regulatory changes at the expense of consumer health in the past. For example, in 2008 after many years of industry lobbying, the existing food standards in the different EU Member States were harmonized to form a regional food standard for the EU. Around 100,000 standards were placed at the lowest level of protection (highest Maximum Residue Limit) available in any EU Member State, defining the so-called EU “temporary MRLs.” In later years, many of these MRLs were tightened because the standards did not ensure food was safe for human consumption and exposure, especially children and other vulnerable populations.<sup>40</sup>

There is a general pattern of lower amounts of pesticides allowed on food in the EU relative to standards instituted by the US and those of the Codex Alimentarius Commission (Table 2, p. 12).

CropLife-ECPA suggests that in the absence of an authorized MRL or tolerance, laws be “amended in the EU and US such that Codex MRLs could be accepted as the



Under existing standards, food in the EU and US can contain certain levels of pesticides; however, there is a general pattern of lower amounts of pesticides allowed on food in the EU relative to standards in the US.

reference compliance standards,” despite the assertions of political leaders that TTIP won’t change laws regarding toxic chemicals.<sup>41</sup> As shown in Table 2, recognition of Codex MRLs (known as CXLs) would similarly require the EU to accept imported food with higher levels of toxic pesticides, as Codex has a history of setting weaker safety standards than European counterparts due to the influence of US and corporate lobbying.<sup>42</sup> A recently leaked draft of the Sanitary and Phytosanitary (SPS) chapter indicates that TTIP would require both parties to adopt Codex standards within 12 months, in alignment with CropLife and ECPA’s recommendations.<sup>43</sup>

Recently, Codex has departed from its traditional consensus-based CXL setting process to adopt CXLs for the controversial growth hormone ractopamine, banned in the EU but permitted in the US and Canada, on beef and pork, by an unusually contentious 69 to 67 vote.<sup>44</sup> The underly-

ing scientific study supporting the standard performed by the Joint FAO/WHO Committee on Food Additives was heavily criticized as being based largely on insufficient and skewed data.<sup>45</sup> Global consumer association Consumers International expressed concern that with this vote “we now see a situation where trade concerns are trumping science. This does not bode well for the credibility of Codex standards in the future.”<sup>46</sup>

MRLs in the EU and tolerances in the US are applied to both domestic and imported products. If a product does not comply with the importing authority’s established MRL/tolerance, the product can be subject to seizure, blocked access to the port of entry or other enforcement actions. According to CropLife and ECPA, the “financial risk of a commodity shipment being rejected at the port of entry due to the absence of legal or harmonized trading standards is not acceptable to the food

chain.<sup>47</sup> The industry groups therefore recommend that the EU and US develop parallel MRL authorization processes to establish MRLs concurrently for both domestically produced and imported produce, in order to allow the import of crops from the US with higher levels of certain toxic pesticides.<sup>48</sup>

However this is less of a concern than CropLife and ECPA believe. Food traders analyze their products to check on the food standards before shipping. The EU rapid alert system shows only four cases of import problems were reported for fruit and vegetables from the US in 2014, with only one case (freeze dried organic goji powder) of border rejection.<sup>49</sup> In a case involving US lentils exceeding EU standards for 2,4-D residue, the exporter received a “note for attention” and the product was still distributed in the EU.

In the most recent EU pesticide residue monitoring report, the percentage of US-imported fruit and vegetables exceeding their MRLs was only 1.3%, with no mention of blocked access or destruction. The fruit and vegetables apparently were still received and consumed. According to the latest data available from the FDA, in 2011 only 12 of 190 samples (6.3%) tested by the FDA from commodities imported from the EU to the US exceeded relevant tolerances.<sup>50</sup> The facts show in practice there is minimal risk, if any, with financial loss of commodities being blocked from import due to MRL/tolerance violations.

CropLife and ECPA’s proposal implies that the EU’s MRL standards offer no greater protection from toxic pesticides than the generally weaker US standards. They argue that “MRLs are compliance standards and not, as is commonly thought, directly related to the toxicity of a substance.”<sup>51</sup> This is misleading. While MRLs are not health standards, they are set in relation to chronic and acute reference doses, which are health standards established during the risk assessment process.<sup>52</sup>

Europe’s precautionary approach has resulted in more health-protective standards. For example, commodities treated with pesticides that lack adequate safety information or are not approved for use in the EU are given a default MRL at 0.01 mg/kg or the lower limit of determination, meaning that products containing detectable

TABLE 2  
Comparison of Maximum Residue Levels (MRLs) (mg/kg)<sup>39</sup>

Crop	Pesticide	US MRL	Codex MRL	EU MRL
Apple	Captan	25.0	15.0	3.00
	Clothianidin	1.00	0.40	0.40
	Diazinon	0.50	0.30	0.01*
	Diphenylamine	10.0	10.0	0.01*
	Malathion	8.00	0.05	0.02*
	Methomyl	1.00	0.03	0.02*
	Tebuconazole	0.05	1.00	0.30
	Ziram	7.00	5.00	0.10*
Asparagus	Carbaryl	15.0	15.0	0.01*
	Chlorantraniliprole	13.0	—	0.01*
	Glyphosate	0.50	—	0.01*
	Methomyl	2.00	2.00	0.02*
	Zeta-Cypermethrin	0.05	0.40	0.10
Potato	Dimethoate	0.20	0.05	0.02*
	Paraquat Dichloride	0.50	0.05	0.02*
	Metribuzin	0.60	—	0.10
	Metconazole	0.04	—	0.02*
	Inorganic bromide	75.0	—	50.0
Carrot	2,4-D	0.10	—	0.05*
	Deltamethrin	0.20	0.02*	0.05*
	Difenoconazole	0.50	0.20	0.40
	Iprodione	5.00	10.0	0.50
	Mancozeb	1.00	1.00	0.20
Cabbage	Carbaryl	21.00	—	0.01*
	Fluopicolide	5.00	7.00	0.20
	Glyphosate	0.20	—	0.10*
	Mancozeb	9.00	5.00	3.00
	Metalaxyl	1.00	0.50	1.00
	Novaluron	0.50	0.70	0.01*
	Permethrin	6.00	5.00	0.05*
Sweet Corn	Cyfluthrin	0.05	—	0.02*
	Glyphosate	3.50	3.00	3.00
	Malathion	2.00	0.02*	0.02*
	Propiconazole	0.10	0.05*	0.05*
	Simazine	0.25	—	0.01*
	Terbufos	0.05	0.01*	0.01*

SOURCES: United States Department of Agriculture Foreign Agricultural Service, FAS Online, International Maximum Residue Level Database, last accessed December 22, 2014. Figures marked with an asterisk indicate that the MRL is at or near the Lowest Analytical Limit of Determination (LOD) for a particular crop, according to the assessing institution. A dash indicates that there is no approved CXL for the crop in question. MRLs listed in the FAS Online database may differ from those in the EU Pesticide Database due to variations in the comparability of representative crop groups and extrapolation guidelines between the US and the EU.

amounts of residue of the pesticide in question will be barred from entering the EU market. If an importing country seeks a higher MRL, an “import tolerance” can be requested from the EU, upon submission of proper field trials if the reason for non-approval was not health related.

The best example of the use of the precautionary approach in the EU is the EU-regulation on baby food.<sup>53</sup> Pesticide residues are not allowed to be present in baby food above the level of detection (set as default level of 0.01 mg/kg). As a result, in many cases companies choose to compose their products entirely from organic crops.

CropLife and ECPA call on both parties to “mutually accept all residue studies conducted in the EU and the US, provided that the Good Agricultural Practices (GAP) are comparable,” citing “persistent differences” within the two regimes as “problematic.”<sup>54</sup>

In order to derive MRLs, crop field trials are conducted to determine the magnitude of pesticide residues in or on raw agricultural commodities as a result of typical pesticide use patterns.<sup>55</sup> In the US, tolerances are based primarily on crop field trial residue studies that are conducted in several locations that are “representative of the variety of growing conditions in areas where the crop is grown, and reflect maximum use rates, maximum number of applications, and minimum duration after application that the crop may be harvested as defined by the pesticide registration and label.”<sup>56</sup> The EU also relies on crop field trials, but has strict requirements in place concerning comparability, extrapolation, representative crop grouping and data requirements in the MRL setting process, as compared to the US.<sup>57</sup>

One of the most distressing aspects of CropLife-ECPA’s proposal concerns the practice of extrapolation—permitting data from two or three representative crops to be used for setting the MRL for related crop commodities in the same crop group or subgroup that have not undergone trial tests.<sup>58</sup>

To a limited degree, the EU allows for extrapolation for closely related products such as peaches and nectarines only if the metabolism of the residues in the crop is known, if conditions of use, application, formulation and climate are comparable and if a minimum of eight field trials are submitted for the crop. The EU’s use of

the OECD calculator significantly narrows the EU definition of comparability, substantially limiting allowed variability in residues among crops for purposes of setting a group MRL.<sup>59</sup>

On the other hand, under the Codex and the US system, MRLs for the representative crops can be up to five times higher than that of any one crop in the group, had it been tested alone, which raises questions of the appropriateness of MRLs established on the basis of representative crop trials.<sup>60</sup>

***CropLife-ECPA suggests that the EU increase the amount of pesticide residue allowed on European food to match weaker US standards, despite the assertions of political leaders that TTIP won’t change laws regarding toxic chemicals or lower standards of protection.***

Further, the EU requires documentary evidence that all variables are comparable—information which may be lacking due to a general lack of data accompanying pesticide registrations within the US.<sup>61</sup>

It is important to note that from January 1, 2014 on, the EU GAP is based on Integrated Pest Management (IPM), as defined in the Sustainable Use Directive 2009/128.<sup>62</sup> According to this Directive, GAP should be adapted in the future, for instance by lowering the spraying frequency to counter the effects of the introduction of resistant plant varieties and of crop rotation, which would likely result in lower MRLs.

Problematically, US EPA is already discussing expanding extrapolation for large groups of commodities, for instance including 41 commodities in the “leafy vegetable group,” despite little to no evidence supporting extrapolation at this scale.<sup>63</sup> Pesticide residues will be present at different levels in different crops depending on the number of spraying occasions (for crop-specific pests), the timing of spraying before harvest, the metabolites formed in the crops, the climate and many other variable conditions.

Setting MRLs for an entire crop group based on field trials in only one single crop, without consideration of information on

other crops within the group that could affect health and safety, places consumers at increased risk of harm. The EU Regulation requires “no harmful effect,” necessitating the testing of every crop for specific pests, for different regions and for different climates.<sup>64</sup> Extrapolation is only appropriate for closely related products as described above, in strong contrast to what CropLife and ECPA propose.

CropLife and ECPA also promote the use of international joint reviews with an aim of developing harmonized MRLs.<sup>65</sup> Both the US and the EU are current participants in a preexisting OECD international joint review process. However, CropLife complains that the EU is a “distant or reluctant participant” in the OECD process.<sup>66</sup> As CropLife and ECPA are well aware, additional joint reviews with the US will have little effect on increased regulatory coherence and cooperation, unless the EU abandons its more precautionary approaches, especially the potential to increase the use of the hazard-based approach in the future.<sup>67</sup> For example, MRLs for endocrine disrupting pesticides will be put at the default level of 0.01 mg/kg once criteria are adopted.<sup>68</sup>

The call for joint reviews simply duplicates existing efforts for international cooperation and creates new opportunities to stall progress towards stronger measures for hazardous pesticides. According to the OECD, pesticide companies coordinate joint review projects together with “groups” of countries.<sup>69</sup> The practice of pesticide companies such as Syngenta, Bayer, and Monsanto helping to organize joint reviews raises substantial questions around accountability and oversight.<sup>70</sup> At the very least, industry-organized joint reviews provide a way for industry to delay progress by creating contradictory studies that distort information and grossly underestimate a substance’s potential for harm.<sup>71</sup>

Taken in conjunction with the regulatory coherence chapter, any disagreement concerning a pesticide undergoing joint review may prevent authorities on either side from establishing regulations regarding that pesticide until the disagreement is solved within the review.<sup>72</sup> Given the current deep divide on hazard-based cut-off criteria, this is likely to be a difficult process, resulting in a profound chilling effect.<sup>73</sup>

## CHAPTER 4

## Industry's Attempt to Use Trade Impacts to Weaken Efforts to Better Regulate Hormone Disrupting Pesticides

**H**ormone or endocrine disrupting chemicals (EDCs) are linked to a myriad of adverse effects even at very low doses, including mental, physical and reproductive effects, as well as cancer and birth defects. Exposure during critical periods of childhood development is a particular concern.<sup>74</sup>

Under current EU pesticide and biocide regulations, EDCs should be banned due to their intrinsic hazards. The legal text concerning pesticides is the most stringent, permitting the use of EDCs only in cases of “negligible exposure,” whereas the biocide regulation includes a number of exceptions, including use for socio-economic reasons.<sup>75</sup> Although the European Commission was required to establish criteria for identifying which EDCs are subject to this hazard-based cut off in 2013, progress on defining the criteria has stagnated, due in large part to fierce lobbying efforts by the pesticide industry.<sup>76</sup>

In March 2013, CropLife and ECPA estimated that up to 37 active substances used in pesticides would be banned as endocrine disruptors if the hazard-based

criteria were adopted. The groups alleged that such bans would dramatically reduce exports of US raw agricultural commodities and result in more than \$4 billion in lost profits.<sup>77</sup> To generate this highly exaggerated figure, CropLife and ECPA ignored existing alternatives (including chemicals and non-chemicals methods and practices) and assumed worst-case, unrealistic estimates for yield losses. The industry's exaggerated loss projections, coupled with an opinion produced by a panel of the European Food Safety Authority (EFSA) including almost no endocrinologists, have put pressure on the European Commission to revert from the hazard-based approach back to weaker approaches.<sup>78</sup> This example clearly illustrates the danger of calls for the use of trade-impact assessments by industry governments under TTIP.

CropLife and ECPA's proposal aims to further undermine ongoing efforts in the EU to regulate substances with endocrine disrupting properties. Instead of the more protective EU approach, CropLife and ECPA advocate for a traditional toxicological approach, i.e. a “risk assessment

approach to evaluation of endocrine disruptors.” This position defies the wealth of information suggesting that EDCs break “all the rules and assumptions that have guided toxicology through the era of modern chemical regulation.”<sup>79</sup> According to UNEP and WHO's review of the current state of the science on endocrine disrupting chemicals, no “threshold” safe level of exposure to EDCs can be assumed.<sup>80</sup> Even if thresholds were to exist at which EDCs could be safely used, current gaps in research and outdated testing methods dictate that it would be nearly impossible to determine them with any accuracy.<sup>81</sup> The EU's precautionary policies reflect this scientific reality, unlike existing policies in the US.

Such anti-scientific industry advocacy for a risk-based EDC assessment model is especially alarming considering that the EU and US announced a pilot program in October 2014 aimed at developing a “harmonized approach” to testing chemicals in order to determine whether they have endocrine disrupting properties.<sup>82</sup> The initiative joins two other EU-US pilot programs on chemical screening and labeling.<sup>83</sup> The scheduling of the program is incredibly problematic, considering that the European Commission is still in the process of reviewing its EDC legislation, enabling continued pressure on the EU to adopt a weaker position.<sup>84</sup>

Troublingly, the US government is allied with industry in a campaign against progressive EDC regulation in Europe. USTR's 2014 *Report on Technical Barriers to Trade* explicitly targets EDCs as an area for bilateral engagement to remove the EDC “[trade] barrier” under TTIP.<sup>85</sup> The report clearly demonstrates support for CropLife's concerns, reiterating the pesticide industry's fears that “categorization and development of lists of chemicals according to categories such as ‘suspected EDs’ based



Industry lobbying has delayed the development of criteria for regulating EDCs in the EU, resulting in the continued exposure of Europeans to chemicals that interfere with the normal functioning of hormone systems.

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Adverse effects that are increasingly linked to exposure to pesticides with endocrine disrupting properties include: effects on reproduction, such as infertility; various cancers; type 2 diabetes, obesity, and heart disease; neurobehavioral outcomes; and thyroid and immune system dysfunction.

purely on availability and activity would likely precipitate decisions to stop using those products,” and that “a large number of substances will be affected by the new categories and with-drawn from the EU market as a result.”<sup>86</sup>

Political and industry pressure to use TTIP to prevent the EU from departing further from weaker US standards by strengthening its standards for hazardous pesticides may already be having an effect. For example, DG Environment’s initial proposal for the regulation of EDCs released in February 2013 supported a hazard-based approach, to the concern of both industry and the USTR.<sup>87</sup> In June 2013, a group of 71 scientists, over 40 of whom were later discovered to have industry ties, drafted a letter to the EU Chief Scientific

Advisor (CSA) wrongfully asserting that the proposed framework was “based on virtually complete ignorance of all well-established and taught principles of pharmacology and toxicology” and urging the CSA to review the policy.<sup>88</sup> Both the USTR and ECPA subsequently referenced the letter as support for adopting a risk-based assessment framework for EDCs, shrewdly contributing to the controversy between different Commission departments on the approach followed.<sup>89</sup>

Shortly thereafter the Commission Secretary General determined that “diverging views held by the stakeholder community” on EDCs necessitated that an economic impact assessment be undertaken before moving forward in the regulatory process—a step that has significantly delayed the EDC

regulatory process, exposing consumers to continued risk of EDCs in food and the environment.<sup>90</sup> Further, scientific criteria are now being made subject to economic impact assessment, an element that should have no role in the development and implementation of a health-based regulation.

Anticipation of TTIP may already be having an impact on how the EU chooses to regulate EDCs. In June 2014, the European Commission released a roadmap for possible impact assessment frameworks for future EDC regulation.<sup>91</sup> Two of the three options are similar to the US risk-based approach, representing a major substantive shift in EU policy under industry and foreign government pressure.<sup>92</sup> The proposed options in the roadmap, if adopted, will lead to a dramatic change in the pesticide regulation, indicating that despite the assurances of politicians otherwise, changes to laws and regulations governing food safety are already being considered by the EU.

## CHAPTER 5

## Industry's Attempt to Weaken Efforts to Protect Bee Populations and Food Security

Recently, a wealth of information has been uncovered that links the use of certain pesticides with “colony collapse disorder,” a phenomenon that has resulted in drastic annual declines in honeybee populations.<sup>93</sup> As approximately a third of the human diet is derived from insect-pollinated plants, of which honeybees pollinate approximately 80%, the continued use of these pesticides poses a substantial risk to global food supply.<sup>94</sup>

The class of pesticides linked to the drastic declines in honeybees—neonicotinoids—is a unique type of insecticide, distinguished by the ability to permeate throughout a crop, remaining in the plant’s tissues and eliminating the need for repeated treatments.<sup>95</sup> Initially marketed as a replacement for the highly toxic organophosphate class of insecticides, neonicotinoids have become the most heavily used insecticides within the US and are used on virtually all canola and corn crops and half

the soybean crops grown.<sup>96</sup> Despite widespread use, a survey of 19 scientific studies by the Center for Food Safety found that neonicotinoids confer minimal agronomic benefits.<sup>97</sup>

Given the wide divergence in regulatory actions taken by the US and the EU with regards to the use of neonicotinoids, it is difficult to imagine the “common understanding” CropLife and ECPA expect to be reached with regards to the “management of pollinator populations and the



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Certain pesticides are linked to “colony collapse disorder,” a phenomenon that has resulted in drastic annual declines in honeybee populations, presenting a severe threat to global food supply.

role played by pesticides in that management,” as discussed in their proposal.<sup>98</sup> It is highly unlikely the industry associations expect common understanding to converge on the stronger measures in place by the EU.

In March 2013, the European Commission mandated the European Food Safety Authority (EFSA) to conduct a scientific report about the colony collapse phenomenon. After EFSA found that the insecticides carried a “high acute risk” to honeybees, the European Commission decided on a moratorium on the use of three neonicotinoids (clothianidin, imidacloprid and thiametoxam) on flowering crops for a period of two years while additional scientific research was conducted.<sup>99</sup> Use of these neonicotinoids on non-flowering crops such as cereals is still permitted during this period.

It is important to note that the case on the three neonicotinoids is one of the first cases in which EFSA took into account independent literature, largely because industry-sponsored studies turned out to be flawed. However, this example has yet to be extended to pesticide assessment in general.

In the US, environmental groups and beekeepers urged US EPA to consider similar action to address potential toxic effects of neonicotinoids.<sup>100</sup> Although the EPA confirms its “scientific conclusions are similar to those expressed in the EFSA report with regard to the potential for acute effects and uncertainty about chronic risk,” EPA has neglected to follow suit in prohibiting the use of neonicotinoids because the report that EFSA relied on in its determination did not address risk management, “a key component of EPA’s pesticide regulatory scheme.”<sup>101</sup> Risk management is not in the remit of EFSA, but is rather within the responsibility of the European Commission, Member States and the European Parliament.<sup>102</sup>

Instead, EPA has issued revised labeling requirements and released updated guidance on the risk assessment of bees to be used in the upcoming registration reviews of six commonly used neonicotinoids,

that are scheduled to be completed by 2019.<sup>103</sup> A recent EPA benefit analysis of neonicotinoid treatment of soybeans further found that use of the pesticides provides little to no benefit on soybean yield.<sup>104</sup> This finding, although a small step, could support future federal action to restrict the pesticides. However, actions to date by the EU and US further illustrate the vast differences in the level of precaution taken, despite potentially disastrous consequences of miscalculation in the level of precaution needed.

***Regulatory cooperation and coherence as proposed by CropLife and ECPA is unlikely to include the US matching the EU’s efforts in mitigating the disastrous effects of the toxic insecticides on global bee populations. On the contrary, such actions are likely to result in the forestalling of efforts in both the US and EU to protect bee populations from the toxic effects of neonicotinoids.***

In the US, state and local authorities have been developing progressive pesticide legislation to fill regulatory gaps arising from the weakness of the federal system. For example, in the absence of decisive federal action on neonicotinoids, the city of Eugene, Oregon became the first jurisdiction in the US to adopt a complete ban on neonicotinoid use on city property.<sup>105</sup> The town of Ogunquit, Maine followed shortly thereafter, banning the toxic pesticides on both public and private property within its jurisdiction.<sup>106</sup> As discussed in Chapter 7, the avenues of regulatory cooperation proposed by CropLife-ECPA and the European Commission will apply not only at the national level, but also at the state level, effectively preempting state and municipal efforts to develop protective environmental and health policies in the absence of federal action.

Since the institution of the EU moratorium, chemical producers Syngenta and Bayer have engaged in furious lobbying efforts to persuade the EU into abandoning the neonicotinoid regulations, stating that the bee deaths were the result of misuse by farmers and that more time is needed to assess the issue prior to removing the pesticides from the market because “wrong conclusions from a rushed process . . . could have disastrous implications for agriculture and ironically for bee health.”<sup>107</sup> Syngenta referred to the EFSA report as “fundamentally flawed” and in letters sent to USTR, CropLife has referred to the European ban of neonicotinoids as an “abuse of the precautionary principle.”<sup>108</sup> Syngenta and Bayer subsequently filed suits against the European Commission in the EU Court of Justice.<sup>109</sup> Several public interest organizations have intervened to defend the ban.<sup>110</sup>

Even as research linking neonicotinoid pesticides with bee deaths grows and lawsuits against neonicotinoid manufacturers pile up, Syngenta is requesting that EPA increase the allowable levels of the company’s neonicotinoid, thiamethoxam, within the US.<sup>111</sup> Industry has even devised a way to profit over the public concern for bee health. A new bill in the US Congress (H.R. 5447), introduced by Rep. Austin Scott, proposes that the EPA allow for expedited approval of pesticide products that control the Varroa mite and other parasitic pests that prey on bees, even if the pesticides themselves are highly hazardous, and therefore may be contributing to the bee declines.<sup>112</sup>

Regulatory cooperation and coherence as proposed by CropLife and ECPA is unlikely to include the US matching the EU’s efforts in mitigating the disastrous effects of the toxic insecticides on global bee populations. On the contrary, such actions are likely to result in the forestalling of efforts in both the US and EU to protect bee populations from the toxic effects of neonicotinoids.

## CHAPTER 6

## Industry's Attempt to Limit Public Access to Information about the Risks of Pesticides

CropLife and ECPA's proposal seeks to restrict public access to information that is vital for developing non-toxic substitutes for pesticides by encouraging the EU and the US to support "exclusive use" periods under TTIP and in all other free trade negotiations in which they are participants.<sup>113</sup> Since developing less hazardous alternatives is required under the precautionary principle, adoption of this restriction in TTIP would arguably violate the Lisbon Treaty, which forms part of the constitutional basis for the EU.<sup>114</sup> Exclusive use periods under US law allow for the concealment of regulatory data for a minimum of 10 years after registration.<sup>115</sup> During the exclusive use period, only the provider of data may use or gain access to that information for the purpose of supporting additional studies or registrations,<sup>116</sup> effectively blocking public access to data and information that could illustrate risks and lead to the development and commercialization of safer alternatives to hazardous pesticides.

The CropLife-ECPA proposal also calls for the development of a common framework for the protection of confidential business information (CBI) in order to protect regulatory data from disclosure and unauthorized use, to be used as "a clear example for all other multilateral Free Trade Agreements worldwide."<sup>117</sup> This appeal does not mention the EU's obligations as a party of the Aarhus Convention, which legally commits the EU to protect the public's right to information relating to the environment and the right to participate in environmental decision-making.<sup>118</sup> The US, by contrast, is not a Party to the Convention. A common framework developed between the US and the EU to shelter CBI data from public and scientific peer review may undermine the EU's international obligations.

Furthermore, there are distinct differences between EU and US laws regarding access to information and the definition of trade secrets. Under FIFRA, Section 3, pesticide manufacturers may claim certain data as protected "trade secrets," including manufacturing processes; methods of testing, detecting, or measuring inert substances; and the identity or percentage of inert ingredients.<sup>119</sup> Inert ingredients, including solvents, adjuvants and surfactants, can comprise up to 99% of a product and yet federal law does not require disclosure of the ingredients to consumers, despite EPA recognition that "the term 'inert' does not imply that the chemical is nontoxic."<sup>120</sup>

Access to information regarding the identity of chemicals is vital for the identification of hazardous properties and for the generation of health and safety information

regarding those properties, enabling scientists to develop safer solutions.<sup>121</sup> Permitting such information to be concealed as CBI impedes innovation and slows the transition to non-toxic alternatives.

A recent landmark decision of the EU Court of Justice upheld the right of European consumers to information regarding the exact composition of active ingredients and impurities in pesticides, "even if such disclosure is liable to undermine the protection of the commercial interests of a particular natural or legal person, including that person's intellectual property." Unlike the US practice, the EU court decision recognizes the overriding public interest in substances that constitute "emissions into the environment" as defined by EU legislation under the Aarhus Convention.<sup>122</sup>



CropLife and ECPA's proposal aims to limit access to information that is vital for the generation of safer substitutes for pesticides by supporting US "exclusive use" periods and CBI provisions allowing for prolonged concealment of regulatory data.

## CHAPTER 7

## Industry and Government Proposals Would Usurp Regulatory Authority of States in the US and Other Governments

Read together, the European Commission's position on regulatory coherence and the CropLife and ECPA proposal support the extension of the regulatory coherence chapter of TTIP to regulations of individual US states and EU Member States, despite including assurances that the right to regulate will be upheld.<sup>123</sup> Sub-regional and sub-federal authorities will be substantially restricted in their ability to enact more protective pesticide regulation. Existing regulatory authorities of the states and Member States are likely to be usurped by these proposals, given the lack of clarity on the role state and Member State authorities will have within the proposed institutional framework for regulatory cooperation (RCC).

CropLife and ECPA's proposal for "regulatory cooperation" would slow or even stop the development of stronger standards wherever they may begin. Seeking to strengthen weak pesticide regulations under the US federal system, US state and local authorities have stepped forward to implement stronger regulatory protections than those of the federal government. For example, Oregon recently adopted legislation restricting the application of any product containing the two types of neonicotinoid insecticides (dinotefuran or imidacloprid) on linden trees.<sup>124</sup> California, Minnesota, and New York are also all considering legislation to protect the environment from neonicotinoids.<sup>125</sup> Minnesota, North Carolina, and Wisconsin have placed increased regulations on endocrine disrupting substances such as atrazine, alachlor and acetachlor, herbicides already banned in the EU based on scientific evidence, because US EPA has failed to do so.<sup>126</sup>

Industry calls for enhanced regulatory convergence threaten to stop or even reverse the progress these States have made



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As the EU and US together comprise almost half of the global economic output, regulatory treatment of non-tariff trade barriers under TTIP will have far-reaching ramifications for other bilateral and multilateral free trade agreements in the future.

***Regulatory convergence under TTIP would set a regulatory ceiling for environmental health and safety standards around the world—a ceiling that would likely be much higher without industry proposals for TTIP.***

with regard to pesticide and biocide use by impeding, if not implicitly preempting, state and local regulatory innovation.<sup>127</sup> For example, in submissions to USTR, the US Council for International Business, which counts CropLife as a member explicitly argues with regards to TTIP, that "[a]pproval by the EU or US federal authorities should be adequate to ensure safety across the entire US or the European Union. Subsidiary political units, such as

EU Member States or US States should be prohibited from seeking to impose separate requirements for approval or local restrictions on sale or use."<sup>128</sup>

### **Install a "Regulatory Ceiling" Hampering Global Pesticide Regulation**

As CropLife's proposal recognizes, the US and the EU often set the bar for the rest of the international world in terms of food and health safety measures.<sup>129</sup> Regulatory convergence under TTIP would set a regulatory ceiling for environmental health and safety standards around the world—a ceiling that would likely be much higher without industry proposals for TTIP. Comprising 40% of the global economic output, TTIP will establish norms for how the actors involved in global trade arrangements treat non-tariff barriers in other bilateral and

multilateral agreements, including among the BRICS (Brazil, Russia, India, China, and South Africa) emerging economies.<sup>130</sup>

EU Trade Commissioner Karel De Gucht has stated that “any transatlantic standards we create will have weight, given they will

apply in half of the world economy . . . and that will be a strong incentive for other jurisdictions to adopt similar approaches—because it would make the lives of their exporters easier.”<sup>131</sup> Any agreement will therefore have implications for environ-

mental and health policies reaching far beyond the EU and the US, effectively raising the stakes of the negotiations far above the bilateral forum in which they are being conducted.

### BOX 3

#### Behind Closed Doors: Secret Negotiations

The negotiation patterns in TTIP thus far have followed a problematic pattern in trade talks: a pattern of secrecy, where negotiations have taken place behind closed doors, with little opportunity for public input.

In the EU, TTIP negotiation documents are considered top secret, and can therefore be concealed from the public by the European Commission—a protection that could last up to 30 years.<sup>132</sup> Civil society and public interest organizations have had to rely on leaked drafts to obtain what little information they possess. Ironically, leaked TTIP documents liberally promote the value of “transparency,” despite the fact that there has been little to date in the actual negotiation process.<sup>133</sup> Recent decisions in the European Court of Justice (ECJ) support the argument that documents relating to international trade agreements should not automatically be withheld from the public.<sup>134</sup>

There is substantial concern that even regulatory and legislative authorities themselves have little access to the negotiations or even to the draft negotiation texts. Under Article 218 of the Lisbon Treaty, the Commission’s power to negotiate international trade agreements is subject to the condition that “the European Parliament shall be immediately and fully informed at all stages in the process.”<sup>135</sup> The current arrangement between the US and the EU involving “reading rooms” where regulators are provided with only limited access to EU-US negotiation text violates that condition.<sup>136</sup> As a result, the European Ombudsman has opened up investigations concerning the lack of transparency, calling on the European Council and the Commission to “step up their proactive transparency policy.”<sup>137</sup>

In the US there is equal apprehension regarding the lack of transparency on TTIP both for the public and members of

Congress. In response to the public outcry for more transparency, USTR accepted a proposal to create a Public Interest Trade Advisory Committee (PITAC).<sup>138</sup> It is no secret that the current US Trade Advisory System has posed serious constraints on the ability of the public to participate in trade negotiations and decision-making processes.<sup>139</sup> However, creation of the PITAC, which is to be segregated from the industry trade committee process, will only further marginalize civil society by clumping representatives from a vast array of diverse sectors into a single group that is woefully outnumbered by representatives of the sixteen Industry Trade Advisory Committees and Agricultural Committees comprising 85% of the US Trade Advisory System.<sup>140</sup>

On both sides of the Atlantic, industry has taken full advantage of unequal access and lack of transparency in the process to bend the negotiations to their own economic will.<sup>141</sup>

A recent report for the European Parliament recognized that:

*“unsurprisingly, the TTIP may be used by parties with vested interests willing to pass their own regulatory agenda. There are already several examples of cases where a particular lobby uses the fact that regulations are different on the other side of the Atlantic to support its opposition or resistance to a domestic regulation.”*<sup>142</sup>

This statement is clearly referring to efforts by American and European pesticides and chemical lobbies and other industry groups on both sides of the Atlantic, who have released proposals suggesting regulatory changes to consider during TTIP negotiations. The chemical lobby group American Chemistry Council (ACC) and Cefic, its European counterpart, even included convenient draft of the text to be included in the prospective TTIP agreement.<sup>143</sup>

## CHAPTER 8

# Conclusion



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CropLife and ECPA's propositions will undermine pesticide regulation at a critical juncture where emerging concerns such as EDCs and colony-collapse pollinators demand decisive regulatory action to protect human health and the environment.

The CropLife-ECPA proposal uses the guise of “regulatory cooperation” to attack the core principle underlying European chemical and pesticide policy, the precautionary principle, by urging the EU to replace hazard-based regulation with risk assessment as the foundation for pesticide assessment in alignment with US standards and regulatory culture. TTIP represents a new-era of trade agreements seeking “regulatory convergence,” with little or no incentive to go beyond the status quo and barriers to the development of more protective public health and environmental laws. If done without adequate oversight and scrutiny, as is currently the case, such efforts can result in freezing the development of necessary protections for human health and the environment, including stifling innovation in the development of less-toxic alternatives for hazardous pesticides.

Although the specific terms used by CropLife-ECPA are “cooperation” and “convergence,” the proposal is premised on the EU unequivocally adopting lower standards, for example aligning either with the

***Where US states and municipalities choose to develop stronger standards and policies for pesticides, they appear effectively preempted from development and implementation.***

weaker US federal tolerance (MRL) standards or the international standards of Codex. In fact, most of the recommendations in the proposal are predicated on the EU abandoning its hazard-based approach to pesticide regulation. CropLife and ECPA do not even contemplate the reverse: that the US align its standards with the stronger, more protective EU regulations and standards.

If adopted, CropLife and ECPA’s recommendations will likely delay, weaken and ultimately frustrate pesticide regulation at a time when regulation is desperately needed to address substances linked with public health and environmental risks such as endocrine disruption and bee

colony collapse (neonicotinoids). The proposed additional channels for regulatory coherence and cooperation would needlessly complicate the regulatory process, give the pesticide industry undue influence on assessment processes, and result in higher costs to taxpayers, in the form of additional bureaucratic institutions and externalized costs of pesticide use, both in terms of healthcare and ecosystem damages.

CropLife and ECPA, while initially appearing to support international initiatives, are actually attempting to exploit lower international standards, leveraging them to lower standards, or at least preserve the status quo through the erection of a regulatory ceiling. Regulatory authorities must preserve not just the right, but also the power to exercise their right to go above and beyond the status quo and applicable international standards, to continually strive for higher levels of consumer and environmental protection.

Where US states and municipalities choose to develop stronger standards and policies for pesticides, they appear effectively preempted from development and implementation.

CropLife and ECPA misleadingly promote a science-based approach and risk assessment, where the underlying motivation is applying the lowest common denominator.

This type of “cooperation” would mean unilaterally lowering environmental and health standards, undermining democratic processes, and allowing the use of toxic substances that the EU has explicitly committed to eliminating and substituting with non-toxic alternatives. Activities aimed at regulatory cooperation and collaboration are already being attempted in the more appropriate multilateral arena of the OECD, with active US and EU participation. CropLife and ECPA’s proposal is highly unlikely to result in any added value to these processes, and rather will impede ongoing efforts.

## Endnotes

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- 16 See EU position paper on Regulatory Coherence.
- 17 Scott Flaherty, *US-EU Trade Pact Won’t Dilute Regulations, Negotiators Say*, Law360, December 20, 2013, available at: <http://www.law360.com/articles/497363/us-eu-trade-pact-won-t-dilute-regulations-negotiators-say> (quoting Ignacio Garcia Bercero, lead EU negotiator on TTIP, “I think I can speak for both sides that we are committed to ensuring that these negotiations will not be about lowering or compromising the highest standards of consumer, environment, privacy, health, or other legitimate protections and that each side will obviously maintain its regulatory authority... The TTIP is not, and will not be, about a deregulation agenda.”).
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36 *See id.*

37 CropLife & ECPA Proposal at 1.

38 CropLife & ECPA Proposal at 6.

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# LOWEST COMMON DENOMINATOR

## How the Proposed EU-US Trade Deal Threatens to Lower Standards of Protection from Toxic Pesticides

The proposed Transatlantic Trade and Investment Partnership (TTIP) is a comprehensive free trade agreement currently being negotiated between the United States (US) and the European Union (EU). TTIP represents a different breed of free trade agreement, primarily a regulatory agreement, which seeks to minimize regional regulatory differences in an attempt to develop less trade-restrictive policies. Prior to the sixth round of negotiations, American and European pesticide lobby groups CropLife America and the European Crop Protection Association (ECPA), representing the interests of multinational powerhouse pesticide manufacturers, produced recommendations for TTIP negotiators to consider. This paper provides an analysis of the pesticide industry's proposal, explaining how the pesticide industry proposes use TTIP to lower levels of protection for people and the environment from hazardous pesticides.



1350 Connecticut Avenue NW, Suite #1100, Washington, DC 20036 USA • +1 202 785-8700  
15 rue des Savoises, 1205 Geneva, Switzerland • +41 22 789 0500

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