Pesticide Regulation: Lessons Learned from Negotiating an EU-US trade deal
March 2018

Introduction

In 2015, the Center for International Environmental Law published a report 'Lowest Common Denominator' which examined how a proposed EU-US trade deal could weaken European standards of protection from toxic pesticides. The report analyses recommendations from pesticide industry lobby groups – CropLife America (CPA) and the European Crop Protection Association (ECPA) – to European and US negotiators. It concludes that, if followed, these recommendations would lower environmental and health standards, undermine democratic processes, and allow the use of toxic substances that the EU has explicitly committed to eliminating.

Although the EU-US trade deal (known as the Trans-Atlantic Trade and Investment Partnership or TTIP) remains unsigned, there are some valuable lessons for pesticide regulation that can be learned from the negotiation process. This is particularly true as the UK begins to consider its own post-Brexit trading arrangements. It is worth noting that all of the countries slated by the UK government as a priority for trade (for example the US and China) have significantly weaker pesticide standards than the UK currently enjoys under the EU regime. As such, there is an urgent need to highlight the lessons from the TTIP negotiations in order to ensure that upcoming post-Brexit trade deals do not undermine UK pesticide regulation.

Overview of report's key findings

- Industry are seeking to use the trade negotiations and their lack of transparency to classify important regulatory differences between the US and EU as non-tariff trade barriers or "trade irritants"; and to eliminate them by aligning standards of protection down to those least protective of human health and the environment.
- Instead of using the trade agreement as an opportunity to align standards at the highest possible level, 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.
- The industry proposal uses the guise of "regulatory cooperation" to attack the precautionary principle – the core principle underlying European chemical and pesticide policy – by urging the EU to replace its current system of hazard-based regulation with one based on risk assessment and management in alignment with US standards and regulatory culture.
- Summary of threats posed by industry recommendations:
    - Weaken EU laws to 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;
    - 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;
    - Install a "regulatory ceiling" hampering global pesticide regulation.
- The danger of trade agreements lies in how existing laws are implemented and new laws are developed, not necessarily in changes to existing legislation.

- The avenues of regulatory cooperation proposed by the pesticide industry will apply not only at the national level, but also at the state level, effectively pre-empting state and municipal efforts to develop protective environmental and health policies in the absence of federal action. A UK-US trade deal could therefore potentially impact upon the power of the devolved nations. Given that a stated intention of Brexit was to 'take back control', signing trade agreements which potentially limit the regulatory authority of both Westminster and the devolved administrations is highly problematic.
- If adopted, the industry'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.

Examples of specific industry proposals which would weaken EU protections

- The EU should switch from its "hazard-based" policies for pesticides to the risk-based approach employed by the US. As a result of these different approaches, the US allows large numbers of hazardous pesticides that have been banned by the EU. According to 2015 data, 82 pesticides banned from use in the EU are authorised in the US. Among these are carcinogens, endocrine or hormone disrupting chemicals (EDCs), and developmental toxins.
- Abandon the precautionary principle upon which the EU's pesticide policy is based. This principle allows authorities to take action to reduce risks from chemicals if the possibility of harmful effects on health is identified, but scientific uncertainty exists.
- Create an institutional framework to provide industry with 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.
- Requirements for trade impact analyses to be conducted for all relevant regulatory measures. Requiring complex trade analyses will only serve to extend an already lengthy regulatory process, and create an inherent bias against either the US or EU from taking action alone for stronger levels of protection.
- Increase the amount of pesticides the EU allows on food through the "significant harmonization" of processes setting limits for the amount of pesticide residue that can legally remain in or on food after treatment (knows as 'MRLs' in the EU and 'tolerances' in the US). The US permits higher levels of pesticide residues on food sold to consumers relative to the EU.
- Increase the practice of extrapolation which permits data from two or three representative crops to be used for setting the MRL for related crop committees in the same group or subgroup that have not undergone trial tests. The EU currently allows extrapolation for closely-related products under a set of strict criteria. Under 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.
- Establish a common understanding of the management of pollinator populations and the role played by pesticides in that management. This is likely to result in the forestalling of efforts in both the US and EU to protect bee populations from the toxic effects of neonicotinoids.
- Support "exclusive use" periods during which only the provider of data may use or gain access to that information for the purpose of supporting additional studies or registrations, 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.
- Develop a common framework to shelter ''confidential business information" (CBI) from public and scientific peer review. In the US, 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 (despite the fact they can comprise up to 99% of a product).
- Extend TTIP to the regulations of individual US states and EU Member States. Sub-regional and authorities will be substantially restricted in their ability to enact more protective regulation.

- Reduce EU requirements for authorisation of active substances. 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. As of October 2012, more than 65% of active pesticide products in the US were conditionally registered, meaning they did not have adequate information for a complete risk assessment when allowed for use. Conditional approval is not permitted in the EU.

Key recommendations in report

- The inclusion of the chemicals sector in TTIP should be rejected.
- 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.

PAN UK is keen to discuss and provide further detail on the issues outlined in this briefing. Please contact Head of Policy and Campaigns, Josie Cohen, at josie@pan-uk.org or on 01273 964 230.