



Dear Stakeholder,

May 2016/v4

## Industry Letter in Support of CTACSub Upstream Applications for REACH Authorisation

This letter,<sup>1</sup> supported by all the indicated industry associations is written to express support for the REACH applications for authorisation ('AfAs') set out in the Annex, for some continued uses of Chromium Trioxide, the associated operational conditions ('OCs') and risk management measures ('RMMs'), with review periods as requested by the applicants.

### Context

Chromium Trioxide has been used in surface treatment technologies since the 1920's due to its ability to provide high levels of corrosion resistance, in combination with hardness and wear resistance. As a result of this it is used in the vast majority of manufacturing industries world-wide, through its application in various processes for multiple end products: Functional chrome-plating, Functional chrome-plating with decorative character, Surface treatment for applications in the aeronautics and aerospace industries as well as in various other industry sectors (architectural, automotive, metal

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<sup>1</sup> This letter has been drafted in cooperation with the CTACSub Consortium.

manufacturing and finishing, and general engineering) and in passivation of tin-plated steel. These uses include finishing steps and also pre-treatment of different substrates (i.e. plastics, magnesium...).

Virtually every type of machine or mechanism is, at least for the foreseeable future, dependent on the use of chromium trioxide in its supply chain. There are hundreds of companies, including many Small and medium-sized enterprises (SMEs), and thousands of sites across the European Economic Area (EEA), who use it in a carefully controlled way and it is regulated by many EU and national regulations<sup>2</sup>.

In 2013, Chromium Trioxide was added to REACH Annex XIV that lists substances subject to authorisation in Europe, with a sunset date of 21 September 2017. Use in Europe of the chemical as a substance or in a mixture after that date requires an authorisation for that use, held either by the downstream user or the user's upstream supplier. This means companies that manufacture, import or use Chromium Trioxide must put together applications and file these applications with ECHA to obtain an authorisation from the European Commission for the continued necessary uses. Each authorisation issued will contain a review period. Authorisation holders that wish to maintain their authorisations beyond the review period will have to file a full set of updated data for re-approval.

The Chromium Trioxide Authorisation Submission Consortium (CTACSub) application for authorisation is needed to cover the remaining uses of Chromium Trioxide in the industry applications where alternatives are not yet available.

### Current Status of the CTACSub Applications for Authorisation

CTACSub is a group of seven companies that are upstream suppliers of Chromium Trioxide to the European industry. They finalized the applications for authorisation developed by the CTAC Consortium (which consisted of 150+ companies mostly from the downstream user industries<sup>3</sup>) and jointly filed them with ECHA in May 2015. The applications are currently in the opinion development stage with ECHA's RAC and SEAC Committees and are expected to be passed on to the European Commission for preparation of a decision in or about June 2016.

This is the first time that an application has been filed 'upstream' to cover so many downstream users, downstream user industries and ultimately end product manufacturers. This is also the first time that an application has been developed based on data on alternatives, exposure conditions, emissions, and socio-economic considerations collected from a large and varied group of downstream users from all over Europe.

Because of the multitude of uses, users, confidentiality and competition law concerns, the data was collected by independent consultants and presented in a neutralized and aggregated form in the application. However, this form of presentation has led to numerous clarification requests from RAC and SEAC insisting that certain data be presented on a company-by-company basis.

Due to RAC / SEAC perceived 'uncertainties' in relation to exposure conditions at individual company and site level and/or availability of alternatives for certain sub-applications because of the large scope of the application, it is possible that RAC and SEAC may recommend short review periods and/or impose the setting of impractical workplace conditions in the authorization recommendation.

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<sup>2</sup> The use is regulated not only by Regulation (EC) No 1907/2006 ('REACH'), but also directly or indirectly by multiple EU and national regulations (national occupational exposure limits, EU End of Life Vehicles Directive 2000/53, BAT reference documents and emission limit values under the EU Industrial Emissions Directive 2010/75, the EU RoHS Directive 2011/65 and so on).

<sup>3</sup> For more information on CTAC and CTACSub, see consortia agreements and press releases at [www.jonesdayreach.com](http://www.jonesdayreach.com).

## Consequences of Short Review/Authorisation Periods or Non-Authorisation

**SVHC-free alternatives would need to be implemented across vast and complex supply chains, but only if and when they are available.**

The CTACSub applications for authorisation have been submitted because alternatives do not yet exist for many purposes.

If an authorisation is not granted at all, then many companies would be therefore forced to stop manufacture in Europe for many years until manufacturing activities can be fully relocated outside of Europe. This would cause a devastating economic impact, not only on the direct users of chromium trioxide but also on the entire value chain. The impacts associated with these disruptions would be devastating to the affected companies, as well as their customers, thus creating a tremendous impact to the overall European economy. For many segments these impacts may prove irrecoverable.

Chromium Trioxide is used in a complex supply chain involving multiple players in industries with multiple outsourcing of parts supply involving many SMEs (including automotive, aeronautics, machinery, engineering, sanitary, printing). Unavailability of a Chromium Trioxide treated component in a part to be incorporated into a vehicle, aircraft or machinery will impact the entire assembly, and it is feared that over the mid-term the entire assembly and associated R&D will be moved out of Europe. The end products are usually subject to specification, type approval or third party inspection / approval, and their construction can therefore not be readily changed to other parts or technology. This is especially true where safety and longevity in harsh environments are involved – which is what corrosion protection is for. Likewise, the use of Chromium Trioxide is essential for other functional reasons (such as heavy / long time of use). In these cases lower quality replacements will not be acceptable. Therefore production will be moved out of Europe where the use may be continued and ready-made products may be imported into Europe.

If the review period is too short, the short term benefit of continued use would be far outweighed by the effects of market uncertainty. Relocation of actors at multiple levels in the supply chain will undoubtedly occur, as uncertainty of future Chromium Trioxide availability in the market grows. Note that product planning for many products may take several years, and no risk may be taken as to the future availability of Chromium Trioxide treated parts. Moreover, it is expected that there would be loss of critical support from the upstream supply chain, including the current 7 applicants as well as other supply chain actors such as formulators. This would force widespread obsolescence and disruption of many industries. Investment would go into building new manufacturing lines outside Europe.

In any case an authorisation with an overly short review period would not change the availability of alternatives in any significant way; which should be the main basis for determining the length of the review period.

## The Need for Upstream Applications

The REACH Regulation allows applications for authorisation to be made upstream by a supplier or downstream by the end-user. It is understood that most of the authorisation decisions made to date have been for narrowly-defined use cases, whether applied for upstream or downstream.

Broad use cases like the use of Chromium Trioxide in functional chrome plating or surface protection, covering hundreds of companies and thousands of sites are better managed through upstream applications. Upstream applications de facto summarise information on uses and risk controls, and then rely on the flow down of a range of possible exposure scenarios and the Article 66 obligation for

downstream users to notify ECHA to ensure control of residual risks by enforcement through the EU Member States.

For broad-use chemicals such as Chromium Trioxide, the use of upstream applications provided in Article 56(2) REACH is essential because:

- Many users of such chemicals such as plating shops are SMEs, who cannot be expected to master the key skills, technical know-how, materials knowledge, language skills, or financial capacity to assemble and pursue complex applications for authorisation as downstream users.
- Customers of these downstream users cannot apply on behalf of their suppliers for uses in the upstream supply chain; this option is not provided in the REACH Regulation, since supplier coverage by a downstream user application is limited to supply of the substance.
- The formulation use of chemical suppliers cannot be covered by an authorisation granted to a user in the downstream supply chain. Formulators need to have their formulation use covered by a separate authorisation granted directly to them or to an actor up their supply chain (for instance the manufacturer of the Annex XIV substance).
- Penalising upstream applications would inhibit changes to the downstream user network acting as suppliers to the OEMs, which is normally needed to address issues such as cost, quality and the changing needs of the market place. This is the only way to allow for a dynamic supply chain organisation, which is typical for surface treatment service in large parts of the industry. The relationship of customers (who determine the surface specifications) with service providers should not be constrained or frozen by the administrative delay and cost of REACH Authorisation.

Due to the nature and complexity of the supply chains like that for CTACSub, an application in any other format than an upstream application would therefore have extremely limited benefit in the described broad upstream cases, result in an unacceptably high risk of supply-chain disruption, and put unbearable limitations on enterprise and trade.

Broad upstream applications cannot be avoided for many chemicals; they are driven by the nature of the chemical, the supply chain context and the range of uses across European industry. If this option would be practically limited due to default short review periods for upstream applications, the REACH authorization system would not be viable in practice.

## Conclusion

**Industry has spent considerable resources over 5 years to build the CTAC/CTACSub collective dossiers, overcoming competition law constraints, intellectual property rights issues, and diverging business interests.**

**Upstream applications for authorisation are a fundamental necessity due to the data requirements in the technical dossier, resource and knowledge limitations at the downstream user level - often SMEs - and the management of complex supply chains in a changing market with global competition.**

**If authorisation is not granted, the economic consequences for the EEA will be huge** - production of products relying on Chromium Trioxide would be stopped in Europe, with supply disruption affecting many different industries and large scale job losses. Such disruption would continue until supply chains can be established outside of the EEA, with no benefit to health/environment, or even a worsened health/environmental impact as a result of relocation to less controlled locations despite any efforts to source responsibly. Export of well-controlled production processes with Chromium Trioxide to countries

with less stringent environmental and occupational health and safety laws could increase risks to human health and the environment.

**If authorisation is granted with too short review periods, the economic consequences for the EEA will be significant** - critical support of upstream applicants will erode, and confidence in the production of products relying on Chromium Trioxide will be uncertain. Relocation of actors at multiple levels in the supply chain will cause obsolescence and disruption.

**The industries represented in this joint letter fully support the durations requested in the CTACSub dossier which are based, in accordance with the REACH Regulation, on the non-availability of viable alternatives to the use of Chromium Trioxide.**

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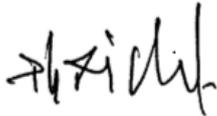
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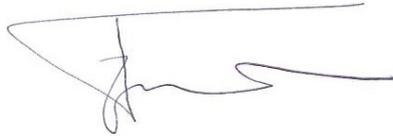
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## Annex – CTACSub Applications for Authorisation

Consultation number on ECHA website	Applicants	Review Period Requested	Use name
0032-01	<ul style="list-style-type: none"> <li>• <b>LANXESS</b> Deutschland GmbH in its legal capacity as Only Representative of LANXESS CISA (Pty) Ltd.</li> <li>• <b>Atotech</b> Deutschland GmbH</li> <li>• <b>Aviall</b> Services Inc</li> <li>• <b>Bondex</b> Trading LTD, in its legal capacity as Only Representative of Aktyubinsk Chromium Chemicals Plant, Kazakhstan</li> <li>• <b>Cromital</b> S.P.A. in its legal capacity as Only Representative of Soda Sanayii A.S.</li> <li>• <b>Elementis</b> Chromium LLP in its legal capacity as Only Representative of Elementis Chromium Inc</li> <li>• <b>Enthone</b> GmbH</li> </ul>	12 Years	Formulation of mixtures
0032-02		12 Years	Functional chrome-plating
0032-03		7 Years	Functional chrome-plating with decorative character
0032-04		12 Years	Surface treatment for applications in the aeronautics and aerospace industries, unrelated to Functional chrome plating or Functional chrome plating with decorative character
0032-05		7 Years	Surface treatment (except passivation of tin-plated steel (ETP)) for applications in various industry sectors namely architectural, automotive, metal manufacturing and finishing, and general engineering (unrelated to Functional chrome plating or Functional chrome plating with decorative character)
0032-06		4 Years	Passivation of tin-plated steel (ETP)