**American Chemistry Council – Statement for the Record**

**June 17, 2020 Hearings of the House Ways & Means and Senate Finance Committees**

**2020 United States Trade Policy Agenda**

**July 1, 2020**

The American Chemistry Council (ACC) appreciates the opportunity to provide a statement for the record regarding the June 17, 2020 hearings on the 2020 United States Trade Policy Agenda at the House Ways and Means and Senate Finance Committees. These hearings were important opportunities for ACC to reflect on the state of U.S. trade policy and its impact on the operations, planning, and competitiveness of U.S. chemical manufacturers. We would like to offer the following perspectives in response to Ambassador Robert Lighthizer's testimony and responses to questions, in order to further the debate in the Congress on how U.S. trade policy can better serve the U.S. economy, businesses, workers, families, consumers, and communities.

## Smart U.S. Trade Policy Can Power the Business of Chemistry in the United States

The U.S. chemical industry is a $565 billion enterprise, supporting more than 25 percent of U.S. gross domestic product (GDP), and providing over 542,000 skilled, good-paying American jobs, with production in nearly every state. Thirty percent of these jobs are export dependent. And because over 96 percent of manufactured goods are touched by chemistry, the chemicals industry is the foundation of American manufacturing. For the first time in decades, the United States enjoys a competitive advantage in chemicals and plastic production, made possible by affordable domestic natural gas, the industry's primary feedstock.

Since 2010, chemical manufacturers in the United States have announced approximately $205 billion of investment in new chemicals and plastics domestic manufacturing capacity. More than 60 percent of that capacity stems from foreign direct investment. In 2016 and 2017, the chemical industry accounted for nearly half of all construction spending in U.S. manufacturing. Much of this capacity is intended for export, reflecting investors' understanding that the United States is competitively advantaged in serving the global marketplace. Due to the shale gas revolution, the United States has gone from one of the most expensive places to produce chemicals, to one of the world's lowest cost and most competitive producers.

American chemical manufacturers today produce 15 percent of the world's chemicals. They are one of the top exporting industries in the United States, accounting for 10 percent of all U.S. exports, which amounted to $136 billion in 2019. The U.S. trade surplus in industrial chemicals was $35 billion in 2019. Given the competitive advantage created by the American shale gas revolution, that surplus is estimated to grow to $61 billion by 2024.

In light of the importance that chemical exports have to the industry and the national economy, ACC strongly supports trade policy that both prevents and addresses barriers to trade and investment. For the U.S. chemical industry to succeed in the global marketplace, chemicals trade must be allowed to flow freely in and out of the United States in order to reach a wide range of global consumers -- especially in emerging economies -- and to compete effectively against significant global competition. Market-opening trade agreements level the playing field, create a shared path to growth and innovation, and fortify our country's relationships with key trading partners. Trade agreements also give U.S. chemicals manufacturers continued access to critical export markets and allow American firms to import materials and chemicals that are essential to U.S. manufacturing, but which may not be produced or available in the United States.

## U.S. Section 301 and Section 232 Tariffs and Retaliation by Trading Partners Continue to Undermine the Competitiveness of U.S. Chemical Manufacturers

As of the date of this statement, China is retaliating against over $11 billion in exports of U.S.-made chemicals in response to the U.S. Section 301 tariffs on imports from China. These tariffs impact $20 billion in imports of chemicals, many of which U.S. chemical manufacturers rely on to manufacture chemicals in the United States. The European Union, India, and Turkey are applying retaliatory tariffs on $1 billion in exports of U.S.-made chemicals in response to the U.S. Section 232 tariffs on steel and aluminum imports. The Section 232 tariffs and quotas have increased the cost of building chemical manufacturing plants in the United States and have limited the availability of steel necessary for plant construction and maintenance.

It is possible that additional Administration trade actions under Section 301 and Section 232 impact imports of chemicals from trading partners and result in retaliation by trading partners against U.S. exports of chemicals, further closing markets to U.S. chemical manufacturers and weakening their global competitiveness.

ACC remains concerned about overreliance on tariffs to address unfair trade barriers or other policy issues. Without an effective negotiation strategy to eliminate long-standing barriers to trade, overreliance on tariffs will reinforce a vicious cycle of unilateral U.S. tariff actions and trading partners imposing retaliatory tariffs on exports of U.S.-made chemicals and plastics. This vicious cycle will continue to undermine the competitiveness of the U.S. chemical industry and close markets to exports of U.S.-made chemicals and plastics. U.S. trading partners do not pay U.S. tariffs; tariffs are taxes on imports that Americans pay.

## Tariff Relief Is Essential to the U.S. Chemical Industry and America's Response to COVID-19

In the days following President Trump's declaration of a national emergency on March 13, 2020, the Department of Homeland Security (DHS) identified the chemical industry and its employees as an industry sector critical to public health, safety, and economic and national security. Since that time, the American Chemistry Council (ACC) and its members have responded quickly to mitigate the impact of COVID-19 by placing an emphasis on safe operations while ramping up the supply of essential ingredients and materials that healthcare workers, consumers, and essential industries need to protect Americans and stop the spread of the virus.

Despite the best efforts of businesses around the country, healthcare workers, consumers, and workers in essential industries are in dire need of products and equipment that can help save lives. Chemicals and plastics specifically have been recognized for their critical role in adding value to the production and distribution of life-saving products:

- For example, chemistry represents 75 percent of the value of cleaning and disinfectant products;
- 27 percent of the value of medical equipment, including face masks, diagnostic equipment, disposable gowns, shoe booties and hoods; and
- 25 percent of the value of material inputs used to make medical supplies such as test tubes, housings for test kits, goggles, surgical gloves, and surgical instruments.

Despite the immense value that chemistry provides to these products, U.S. Most Favored Nation (MFN) and additional tariffs on critical inputs to manufacturing processes, as well as other supply chain disruptions, are limiting their speed of production, availability, and use. These high-demand products are in shortage in the United States and around the world. Minimizing existing barriers to trade in these products should be a priority.

To that end, we filed comments with USTR[1] and the USITC[2] asking for tariff relief for specific, essential products under Chapters 22, 28, 29, 32, 34, 38, 39, and 84 of the U.S. Harmonized Tariff System (HTS), in particular from the additional tariffs on imports from China under Section 301 of the Trade Act of 1974. Eliminating additional tariffs of 25 percent (for Lists 2 and 3 products) and 7.5 percent (for List 4A products) on imports from China of these chemical and plastic inputs, especially where there is not sufficient domestic production or investment, is one of the quickest, most straight-forward approaches to cutting the costs of making high-demand products in the United States.

To help businesses weather this difficult time, the Administration in April announced a program to allow the deferral on Most Favored Nation (MFN) duty payments. This move was a welcome step to help American companies stabilize their finances and preserve cash during the unprecedented economic crisis resulting from the COVID-19 outbreak. Duty deferral freed up cash for companies to make investments in personal protective equipment and cleaning supplies, pay critical bills, and in some cases avoid default.

However, many companies were not able to avail themselves of the intended relief. To truly fulfill its stated goal, we ask for the Committees' support in urging the Administration to: (1) extend the duty deferral policy to cover imports through at least the summer months; (2) apply the policy retroactively; (3) broaden the scope of duties that may be deferred; and (4) modify the hardship test to allow companies in different circumstances to defer duties.

[1] https://www.americanchemistry.com/ACC-Comments-to-USTR-Seeking-Section-301-Tariff-Exclusions-for-Essential-COVID-19-Fighting-Products.pdf

[2] https://www.americanchemistry.com/ACC-Comments-to-USITC-on-Essential-Chemicals-and-Plastics-Needed-to-Combat-COVID-19.pdf

With tariff relief, our industry can deploy the full power of chemistry to help combat the spread of the novel coronavirus, maintain essential operations and pay our workers, and continue to serve critical sectors of the U.S. economy.

**The U.S. Chemical Industry Offers Alternatives for Addressing the Impact of the U.S.-China Trade Dispute**

The COVID-19 pandemic has produced significant disruptions in chemical supply chains, including with respect to imports from China that are essential to U.S. chemical manufacturing competitiveness. This situation expands the challenge that U.S. chemical manufacturers have faced for the last two years. Due to the U.S. Section 301 tariffs on imports from China and China's retaliatory tariffs, bilateral chemicals trade is dropping rapidly, resulting in significant loss of market access for U.S. exporters to China and reduced ability to import mission-critical chemicals from China. U.S.-China bilateral chemicals trade is down 19 percent year-on-year in February and down 24 percent year-on-year in March.

We believe the U.S. and China should agree to suspend all the additional tariffs on bilateral trade immediately. Until such an agreement is possible, ACC urges the Administration to:

- Provide indefinite product exclusions for all chemicals and plastics on Lists 1, 2, 3, and 4a (HTS Chapters 28-39) – approximately $20 billion in imports. This should align with China's tariff exclusion process and encourage China to exclude indefinitely all U.S. chemicals and plastics exports (approximately $11 billion) from the application of its retaliatory tariffs.

- Eliminate Section 301 tariffs for products in Lists 1, 2, 3, and 4a and are also covered by the Miscellaneous Tariff Bill of 2018 (MTB) and the next MTB bill that the Congress legislates. The Congress in passing the MTB decided that certain imports, including a wide range of chemicals, were essential for U.S. manufacturing competitiveness. The Section 301 tariffs across all four lists have obviated the benefits of the MTB to U.S. chemical manufacturers relying on those imports to manufacture certain chemistries in the United States. Furthermore, it is worth considering whether the next iteration of the American Manufacturing Competitiveness Act should exclude products under future MTBs from the application of Section 301 and Section 232 tariffs.

- Eliminate chemicals tariffs globally, particularly between the top chemical producing countries. Achieving this goal will give U.S. chemical manufacturers the predictability and certainty they need to plan, grow, compete, and succeed in the global marketplace.

- Obtain two binding, enforceable commitments from China in the Phase 2 Agreement negotiations:

    - First, China should harmonize its WTO tariff bindings for chemicals and plastics to U.S. levels under the Chemical Tariff Harmonization Agreement (CTHA) at the World Trade Organization (WTO).

- Second, China should work together with the U.S. to bring other markets (e.g., Brazil, India, Kenya, and the United Kingdom) into the CTHA, to broaden the scope of participation in that initiative, bind currently unbound tariffs for chemicals and plastics (e.g., for India, Kenya, Malaysia, and Nigeria), and lower both the bound and applied rates for chemicals and plastics for new participants.

Until the U.S. and China tariffs are lifted, we urge the Committees to demand that USTR improve the Section 301 product exclusion process and percentage of approvals so that it provides meaningful relief. We urge the Committees to increase their oversight of the exclusion process and insist that USTR administer the process in a fair, transparent, and efficient manner to ensure that it provides meaningful relief for those bearing the brunt of these harmful tariffs.

**Avoidance of New U.S. Tariffs and Retaliation is Paramount to the U.S. Chemical Industry**

In recent months, the Administration has initiated new Section 232 investigations on whether imports of electrical transformers, mobile cranes, and vanadium threaten to impair the national security. If the Administration determines that imports of the above products threaten to impair the national security, it could choose to apply tariffs to adjust imports and address possible national security threats. ACC recently filed comments[3] with the U.S. Department of Commerce regarding possible Section 232 tariffs on electrical transformers, arguing that tariffs will increase costs for U.S. chemical manufacturers with respect to plant construction, operations, maintenance, and further investment expansion. We have similar concerns with respect to possible Section 232 tariffs on imports of mobile cranes and vanadium.

The Administration also on June 3 initiated a Section 301 investigation on whether proposed and in force "digital services taxes" (DSTs) on a range of countries pose unfair barriers to trade. It may be the case that these DSTs are discriminatory, pose unfair barriers to trade, and therefore merit enforcement action. If the Administration determines that the DSTs are unfair barriers to trade, then it may choose to levy additional tariffs as a means of changing the behavior of trading partners. ACC filed comments[4] with USTR regarding France's DST in January.

The preference of the U.S. chemical industry would be for the United States to come back to the negotiating table at the Organization for Economic Cooperation and Development (OECD), continue negotiations with trading partners seeking to impose DSTs, and reach a fair solution to the international taxation problem at hand, in order to prevent new DSTs and harmful U.S. unilateral trade actions.

The U.S. chemical industry is concerned that Section 301 tariffs on imports of chemicals from the identified U.S. trading partners in the DST investigation may increase the costs of chemicals used as inputs in chemical manufacturing in the United States, thereby further weakening the competitiveness of our industry. Furthermore, given that U.S. trading partners retaliated against exports of U.S.-made chemicals in response to the U.S. Section 232 tariffs on steel and aluminum and the Section 301 tariffs on imports from China, U.S. trading partners will likely

---

[3] https://www.americanchemistry.com/ACC-Comments-for-Section232-Investigation-on-Imports-of-Transform.pdf
[4] https://www.americanchemistry.com/Policy/Trade/ACC-Comments-on-Section-301-Investigation-of-France-Digital-Services-Tax.pdf

retaliate against highly competitive U.S. exports, such as chemicals and plastics. Retaliation will further limit market access in U.S. trading partners such as the European Union (EU) and India.

We also anticipate that if the United States and the EU do not resolve their dispute at the World Trade Organization (WTO) regarding discriminatory subsidies for large civil aircraft prior to the WTO authorizing the EU to impose countermeasure tariffs, the EU could then impose high tariffs of up to 100 percent on U.S. exports of chemicals and plastics. These tariffs would close a critical market to U.S. exports and allow EU and other competitors to eat into the market share of U.S. chemical manufacturers in Europe. ACC filed comments[5] with USTR in June regarding the impact of possible EU countermeasure tariffs on U.S. exports of chemicals and plastics.

**<u>The North American Chemical Industry Strongly Supports USMCA Implementation</u>**

The USMCA provides needed certainty for the North American chemical industry to further integrate and enhance its competitiveness relative to the rest of the world. ACC and our association partners in Canada and Mexico joined together in asking for USMCA to retain NAFTA's tariff-free environment; streamline and simply rules of origin for chemical substances; and advance regulatory cooperation amongst the three parties. USCMA met these objectives and others that the North American chemical industry had identified during the negotiations.

ACC and our association partners are proud to support USMCA implementation, particularly regarding the innovative regulatory cooperation provisions, which we hope the Administration can replicate to the greatest extent possible in the new free trade agreements it is negotiating. We also welcome the six-month period for companies to comply with the rules of origin, which will give U.S. chemical manufacturers sufficient time to adjust.

**<u>U.S. Chemical Manufacturers Support New Market-Opening Trade Agreements</u>**

ACC welcomes the new U.S. free trade agreement negotiations with the United Kingdom and Kenya. We urge the Administration to ensure that these negotiations yield high standard, comprehensive agreements that eliminate tariffs on chemicals immediately upon entry into force and establish flexible and transparent rules of origin for chemical substances. ACC filed comments with USTR[6] and the USITC[7] on the Kenya negotiations and recently issued joint comments[8] with the UK Chemical Industries Association on our shared priorities for the U.S.-UK free trade agreement negotiations.

These negotiations are also significant opportunities to foster greater regulatory cooperation between U.S. regulators and their counterparts in these markets and promote risk and science-based approaches to regulation. Innovative regulatory cooperation provisions in trade agreements, building on the U.S.-Mexico-Canada Agreement (USMCA) and tailored to market conditions, will prevent and address barriers to trade and investment while increasing levels of

---

[5] https://www.americanchemistry.com/ACC-Written-Submission-on-Enforcement-of-US-WTO-Rights-in-Large.pdf
[6] https://www.americanchemistry.com/ACC-Public-Comments-on-US-Kenya-Trade-Negotiations_050620.pdf
[7] https://www.americanchemistry.com/ACC-Public-Comments-on-Impact-of-Tariff-Elimination-under-a-US-Ken.pdf
[8] https://www.americanchemistry.com/US-UK-Chemical-Industries-Joint-Comments-on-Bilateral-Trade-Negotiations_200511.pdf

protection for human health, safety, and the environment. Furthermore, as a result of these negotiations, the Administration should suspend the additional tariffs on imports of steel and aluminum that it imposed in 2018 and 2020. Suspending these tariffs will provide cost relief for chemical manufacturers building innovative new manufacturing facilities in the United States.

We also urge the Administration to continue its negotiations with Brazil, the European Union, India, and Japan, with the view to preventing new barriers to trade, addressing existing barriers to trade, and negotiating high standard, comprehensive, market-opening agreements. Tariff elimination and regulatory cooperation should also be important elements of these negotiations. Any limited trade package should incorporate ongoing dispute resolution mechanisms so that there is a fast-track method to resolve any follow-on trade distorting efforts by our trade partners

**U.S. Membership in the World Trade Organization (WTO) is Essential to the Global Competitiveness of the U.S. Chemical Industry**

The U.S. chemical industry remains a strong supporter of the WTO and U.S. membership in the WTO. We advocate for greater participation in WTO initiatives concerning tariff elimination and harmonization. We also advocate for strong enforcement of WTO agreements, and in particular, the WTO Agreement on Technical Barriers to Trade (TBT). We advise against abolition of the WTO and withdrawal by the United States from the WTO. We also advise against a reset of U.S. WTO tariff bindings, which will only cause widespread uncertainty throughout the multilateral trading system and retaliation by U.S. trading partners against U.S. exports.

The creation of the WTO in 1995 deeply embedded critical principles from the earlier General Agreement on Tariffs and Trade (GATT) into the multilateral trading system and expanded the number of governments committed to upholding these principles. For the U.S. chemical industry, adherence to the principles created the requisite certainty for expanding into global markets and establishing the United States as a platform for exporting competitively priced, high quality chemicals to trading partners around the world.

Tariff elimination and harmonization with key trading partners through the WTO and the goods market access schedules of WTO members is essential to the global competitiveness of U.S. chemical manufacturers. U.S. global leadership will be essential to broad, deep, and durable tariff elimination for U.S.-made chemicals, whether at the WTO, through plurilateral or regional initiatives, or through free trade agreements with key trading partners.

Tariff elimination for chemicals must lead to the lowest possible bound rates at the WTO and the avoidance of additional duties on top of applied duties. High chemicals tariffs around the world impact the ability of U.S. chemical manufacturers to access new markets. They also limit opportunities for buyers of chemicals in key economic sectors (e.g. building and construction, automotive, agriculture, consumer goods, information technology, and civil aviation) from buying innovative attractively priced U.S.-made chemicals.

The WTO's World Tariff Profiles 2019[9] indicates that a number of U.S. trading partners maintain high average bound and most favored nation (MFN) applied duties for chemicals (see

[9] https://www.wto.org/english/res_e/booksp_e/tariff_profiles19_e.pdf

Table 1 below). WTO Members participating in the Chemical Tariff Harmonization Agreement (CTHA) have bound their chemical tariffs at relatively low levels, and thus have low average applied tariff rates. Those WTO Members who are not participating in the CTHA have a large percentage of unbound chemical tariffs, meaning that WTO rules do not prevent them from raising tariff rates for certain products to prohibitively high levels. They also have higher-than-average bound and applied tariff rates for chemicals. By contrast, the United States average bound rate and applied MFN rate for chemicals is 2.8 percent; 100 percent of our chemical tariffs are bound.

**Table 1: Average WTO Bound Rates and MFN Applied Rates on Chemicals for Certain U.S. Trading Partners Without Free Trade Agreements (CTHA participants in green)**

| Country | Average WTO Bound Rate | Average MFN Applied Rate | Percentage of Unbound Chemical Tariffs |
|---|---|---|---|
| Argentina | 21.4 | 8.2 | 0 |
| Brazil | 21.1 | 8.1 | 0 |
| China | 6.7 | 6.7 | 0 |
| European Union | 4.5 | 4.6 | 0 |
| India | 39.6 | 10.1 | 11.1 |
| Indonesia | 37.9 | 5.3 | 4 |
| Japan | 2.3 | 2.1 | 0 |
| Malaysia | 11.5 | 2.5 | 24.8 |
| New Zealand | 4.3 | 0.7 | 0 |
| Nigeria | 74.6 | Not reported | 98.5 |
| Pakistan | 57.4 | 7.9 | 0.1 |
| Philippines | 19.7 | 3.6 | 25.5 |
| Russian Federation | 5.2 | 4.6 | 0 |
| Saudi Arabia | 5.4 | 4.9 | 0 |
| South Africa | 12.4 | 2.1 | 0.4 |
| Switzerland | 1.0 | 0.9 | 0 |
| Chinese Taipei | 2.8 | 2.9 | 0 |
| Thailand | 29.9 | 2.6 | 38.8 |

Rather than seeing the above asymmetries as examples of unfairness, we urge the Administration to view them as opportunities to provide more market access to U.S. exporters in key markets that will drive global economic growth in the future.

ACC encourages the Administration to recommit to efforts to reform the WTO, especially to ensure that the organization can re-engage on driving common approaches to emerging trade issues. A functioning WTO has the potential to advance market access and commercial opportunities for the chemical industry across a range of issues from regulatory cooperation to digital trade policy to environmental market access for innovative solutions and products.

## Conclusion

Thank you again for the opportunity to provide this statement for the record. We look forward to working with the House Ways & Means and Senate Finance Committees as they work with the Administration to advance and shape the U.S. Trade Policy Agenda. The American Chemistry Council would be pleased to provide more information to Committee staff as necessary.