July 15, 2020

Joseph Barloon
General Counsel
Office of the United States Trade Representative
600 17th St. NW
Washington DC 20508

RE: Initiation of Section 301 Investigations of Digital Services Taxes (85 FR 34709)

Dear Mr. Barloon:

The American Chemistry Council ("ACC") appreciates the opportunity to submit comments on whether "digital services taxes" (DSTs) under consideration or adopted in a range of countries (Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom) are unreasonable or discriminatory and burden or restrict U.S. commerce under Section 301 of the Trade Act of 1974.

We also offer our perspectives on possible trade actions the Administration may take in response the DSTs identified in 84 FR 34709. While the DSTs as constructed may have limited impact on U.S. chemical manufacturers, possible U.S. remedies (which might include tariffs on imports from these countries) could have a significant negative impact on the business of chemistry in the United States.

<u>The U.S. Chemical Industry Drives American Manufacturing and U.S. Exports</u>

The U.S. chemical industry is a $565 billion dollar enterprise, supporting more than 25 percent of U.S. gross domestic product (GDP), and providing over 544,000 skilled, good-paying American jobs with production in nearly every state. Thirty percent of these jobs are export dependent. Chemical products are essential inuts to America's manufacturing industry. Almost all manufactured goods are touched in one way or another by chemistry. The chemical industry is the foundation for 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. The United States has gone from one of the most expensive places to produce chemicals to one of the world's lowest cost producers. Since 2010, U.S. chemical manufacturers have announced approximately $205 billion of investment in new chemicals and plastics production capacity. More than half of the announced investments in the chemical industry have already been completed or are in progress and new capacity has come online. In recent years, the chemical industry has accounted for as much as 40 to 50 percent of all manufacturing construction spending. More than 60 percent of the new capacity in the United States stems from foreign direct investment. Much of the new capacity is intended for export, reflecting investors' belief that the United States is a superior platform from which to serve the global marketplace.

Today, American chemical manufacturers produce 14 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. Flexible, innovative, and competitively advantaged in energy and feedstock, the U.S. chemical industry will maintain a net exporter position for years to come given a supportive regulatory and policy environment in the United States.

The U.S. Chemical Industry Supports a Multilateral Approach and Negotiated Outcomes Regarding DSTs

ACC does not dispute the Administration's June 3 initiation of a Section 301 investigation on whether proposed and in force DSTs pose unfair barriers to trade. It may be the case that these DSTs are unreasonable or discriminatory, or burden or restrict U.S. commerce, and therefore merit enforcement action.

However, the the U.S. chemical industry would prefer negotiation of a multilateral solution with trading partners that have imposed or seek to impose DSTs. This multilateral solution should narrowly address the complexities of taxing the digital economy, while minimizing the impact to businesses that are taxed appropriately based on the current international tax framework. For instance, the chemical industry predominantly operates in countries through a physical presence, such as fixed assets, and, therefore, has a nexus to those countries. We urge the Administration to continue negotiations in any and all forums, including the Organization for Economic Cooperation and Development (OECD), to reach a fair, multilateral solution to the international taxation of the digital economy in order to avoid harmful U.S. unilateral trade actions and market-closing retaliatory tariffs.

ACC believes that any changes to the international tax system should be pertinent to the perceived issues with taxing the digital economy; be achieved throughbroad-based consensus; and tax income on a net basis. Further, the scope of any new taxing rights should *exclude* businesses (such as the chemicals industry) that lack the characteristics inherent in the digital economy such as scale without mass and significant reliance on intangibles. This process should move forward quickly; countries should not resort to unilateral measures while that process is ongoing. The United States should also insist on the retroactive revocation of any unilateral measures as part of a multilateral solution. A multilateral solution is only effective if it includes an agreement to remove all unilateral measures promulgated both before and during the negotiation process and prevents promulgation of new unilateral measures.

Short of a multilateral solution, we encourage the Administration to negotiate narrow bilateral outcomes with the jurisdictions imposing or considering DSTs. Another option would be to establish new trade rules at the World Trade Organization (WTO) in the ongoing digital trade/e-commerce negotiations that clarify how governments can impose DSTs in a non-discriminatory manner, consistent with the WTO national treatment and most-favored-nation principles.

The U.S. Chemical Industry Should Not Be Collateral Damage in Another Trade War

We caution the Administration against taking unilateral trade actions to respond to the DSTs that impact the chemicals industry. We recognize that 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[1] with USTR regarding France's DST in January and argued against the use of tariffs on imports of chemicals so as to avoid retaliation on our exports.

Our industry and the U.S. manufacturing sector should not be collateral damage in yet another damaging trade war, especially a trade war created by digital companies. 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 U.S. chemical manufacturing, thereby further weakening the competitiveness of our industry (and potentially our collective response to the ongoing COVID-19 pandemic).

Furthermore, retaliation by trading partners against exports of U.S.-made chemicals and plastics is not theoretical:

- China has retaliated against $11 billion in exports of U.S.-made chemicals and plastics in response to the U.S. Section 301 tariffs on $370 billion in imports from China.

- The European Union, India, and Turkey have retaliated in total against $1 billion in exports of U.S.-made chemicals and plastics in response to the U.S. Section 232 tariffs on steel and aluminum.

- The European Union has threatened to impose countermeasure tariffs on $3 billion in U.S.-made chemicals and plastics after it receives WTO-authorization under the Large Civil Aircraft dispute.

Additional tariff actions by the Administration could increase costs of U.S. chemical manufacturing and cause U.S. trading partners to retaliate against U.S. exports of chemicals and plastics. For example, we anticipate that the European Union may advance its retaliatory tariffs on behalf of France in response to the U.S. Section 301 additional tariffs on French imports to address France's digital services tax, which USTR imposed and then suspended on July 10, 2020. Further U.S. trade actions and retaliation will undermine this historic competitive advantage. Retaliation will further limit our market access in key U.S. trading partners such as Brazil, the EU and its relevant member states, India, and Indonesia.

Access to global supply chains is critical to the competitiveness of our industry and all of our manufacturing customers downstream. As U.S. manufacturers grappled with higher tariff rates on U.S. imports and on U.S. exports to key trading partners, the U.S. manufacturing sector lapsed into recession prior to the COVID-19 pandemic. Since the pandemic, as businesses have

[1] https://www.americanchemistry.com/Policy/Trade/ACC-Comments-on-Section-301-Investigation-of-France-Digital-Services-Tax.pdf

closed and unemployment has increased, we have seen demand for chemicals weaken across a wide range of customer segments in the United States and abroad. More tariffs on imports and retaliatory tariffs on exports of U.S.-made chemicals and plastics will further hurt the competitiveness of the U.S. chemical industry.

Conclusion

We urge the Administration to avoid placing any additional tariffs on imports of chemicals and plastics - no matter the tariff level - to lessen the probability that our trading partners will retaliate against U.S.-made exports of chemicals and plastics. We also urge the Administration to work with our industry to find new export opportunities in markets around the world in order to remedy the loss of market access in China, the European Union, India, and Turkey.

Sincerely,

Ed Brzytwa

Director for International Trade
American Chemistry Council