



December 10, 2018

Edward Gresser
Chair of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington DC 20508

RE: American Chemistry Council Public Comments on U.S. Objectives for U.S.-EU Trade Negotiations

Dear Chairman Gresser,

The American Chemistry Council (ACC) and our members appreciate the commitment to streamlining transatlantic trade and the focus on the chemicals sector made in the July 25, 2018, United States-European Union (EU) Joint Statement.

Trade in chemicals is a strong feature of the U.S.-EU trading relationship, totaling \$45.8 billion in 2017. Importantly, a significant portion of trans-Atlantic trade in chemicals is to related parties -- 80 percent of chemical imports from the EU, and 58 percent of chemical exports to the EU, are to related parties. The European Union is a critical market for U.S. chemicals exports, advantaged by significant investments in chemical manufacturing in the United States and highly integrated value chains. In 2017, U.S. exports of chemicals to the European Union were \$20.5 billion; U.S. imports of chemicals from the European Union were \$25.3 billion. U.S. chemicals trade with the European Union represented about 20 percent of U.S. chemicals trade with the rest of the world.

As the Administration defines its negotiating objectives, we offer our ideas for how both the United States and European Union can achieve concrete and tangible outcomes for chemicals manufacturers that will lower their costs, promote greater exports, and maintain high levels of protection for human health and safety and the environment.

- Tariff Elimination and Market Access:** We reiterate our desire for the United States and European Union to eliminate their respective chemicals tariffs under Harmonized System Chapters 28-40 without any transition periods or staging of tariff reductions. As the amount of trade is substantial in both directions, the transatlantic chemical industry would benefit greatly from the savings enabled by eliminating tariffs on chemicals. The average tariff rate on chemicals trade in both directions is 3 percent. Eliminating U.S. tariffs on chemical imports could save U.S. chemical manufacturers \$758 million annually. Eliminating EU tariffs on chemical imports would reduce tariffs paid in the EU by \$614 million annually. Tariff elimination would increase the competitiveness of U.S. exports of chemicals, resulting in increased exports of U.S.-made chemicals to EU customers and partners.



The U.S. and EU should further consider the benefits of making chemical tariff elimination a multilateral goal. As chemicals touch on 96 percent of all manufacturing and play a critical role in global, regional, and bilateral supply chains, duty-free trade will reduce costs for chemical manufacturers and promote innovation, job creation, and competitiveness for both parties. It will also compel other economies around the world to follow suit rather than maintain higher cost environments through higher tariffs. We also recommend that any U.S.-EU trade agreement allow companies to engage in duty drawback, which emphasizes that imports are essential to export competitiveness.

Furthermore, ACC urges the United States to eliminate its Section 232 tariffs on steel and aluminum imports from the European Union. The EU is applying retaliatory tariffs on \$500 million in exports of U.S.-made chemicals. These retaliatory tariffs are limiting the ability of U.S. chemical manufacturers to access the EU market. We also urge the United States and European Union to avoid the imposition of quotas of any kind on imports of EU steel and aluminum. Such quotas would cause significant disruption for U.S. chemical manufacturers building chemical manufacturing plants in the United States.

- 2. Regulatory Cooperation:** We believe that regulatory cooperation remains a powerful mechanism for preventing trans-Atlantic barriers to trade, aligning regulatory procedures, and creating efficiency gains for European and American businesses, particularly small and medium-sized enterprises. The United States and European Union made significant progress on regulatory cooperation for the chemicals sector during the TTIP negotiations. The United States has since made further progress in the Sectoral Annex for Chemical Substances in the U.S.-Mexico-Canada Agreement (USMCA). Based on this progress, we recommend that the new U.S.-EU negotiations create a distinct track for regulatory cooperation for the chemicals sector and build on the outcomes of the USMCA. Such an approach will allow both government and industry the opportunity to identify what we can accomplish in the short-term and how we can lay the ground work for longer term progress and success. In particular, we hope that there would be an opportunity to facilitate regulator-to-regulator dialogue on critical issues such as prioritization and classification. ACC will provide additional input on regulatory cooperation for the chemicals sector as the negotiations progress.
- 3. Rules of Origin for Chemical Substances:** Chemical manufacturers will benefit from duty-free trade only if the rules of origin for chemical substances are flexible, simple, and transparent. We recommend that the United States build on the rules of origin outcomes of the USMCA, in particular by ensuring that the chemical reaction rule is available to traders for conferring origin and avoiding regional value content requirements. In this regard, we propose a menu-based approach that has the fewest number of exceptions as possible. ACC will provide additional input on specific rules of origin as the negotiations progress.
- 4. Digital Trade:** The United States and the European Union are two of the world's digital leaders, with companies in all sectors transforming their operations through digital technologies. Digital trade based on the free flow of data across borders is critical to chemical manufacturers, which generate data for regulatory compliance, technical innovation, employee development, and global customer management. State-of-the-art



provisions on promoting data privacy, enabling open cross-border data flows, prohibiting data localization requirements, and strengthening cybersecurity while respecting intellectual property rights will be critical. Data flows are essential for establishing and maintaining global value chains. They are, therefore, essential for strengthening manufacturing in both the United States and European Union and also vital for the downstream industries that the business of chemistry supports (e.g., agriculture and autos). We recommend that the United States and European Union take the digital trade outcomes of the USMCA as their starting point and build on and strengthen them where possible. Both parties must set the digital trade standard for the rest of the world, which will enhance and sustain their mutual global competitiveness.

5. **Trade Facilitation**: ACC recommends that the United States and European Union pursue a World Trade Organization (WTO) Trade Facilitation Agreement “plus” approach to customs and trade facilitation efforts in their bilateral negotiations. This includes promoting digital trade, including electronic filing and digital signature; targeting infrastructure projects to remove bottlenecks on the movement of exports; modernizing transport security requirements; and harmonizing clearance procedures.
6. **Dispute Settlement**: The U.S. and European Union are global leaders in trade and investment and must maintain their leadership in the dispute settlement area. We recommend that the United States and European Union agree on binding and enforceable state-to-state dispute settlement. We also urge both parties to accept investor-state dispute settlement provisions for all sectors without limitations on the claims that investors can make on specific investment protections, which we expect would be the highest standard protections in the world. Outcomes that fall short of this standard will give other countries in the region ample reason to weaken the rule of law, due process, and transparency in their own domestic systems and in their trade agreements.
7. **Duration of the Agreement**: Given the critical nature of the U.S.-EU relationship globally, we believe that a U.S.-EU trade agreement should stand the test of time in order to provide maximum predictability and certainty to investors and traders. We support making improvements to the agreement as international trade evolves, but recommend avoiding the inclusion of timeframes for an early termination or sunset of the agreement.
8. **Addressing Sources of Marine Litter**: The United States and the European Union are world leaders in addressing marine litter through market-based and innovative means. We recommend that the U.S.-EU trade agreement build on the marine litter language in the USMCA Environment Chapter. There is a global need to support infrastructure development to collect, sort, and process used plastics. Such infrastructure will create opportunities for trade and investment and help keep used plastics out of the environment, thereby reducing marine litter. The U.S. and EU can play a strong role together in promoting better waste management capacity for used plastics in all countries. We also recommend that the U.S.-EU trade agreement promote global and regional cooperation in facilitating trade in used plastics. Many countries lack adequate capacity to recycle used plastics and so ship plastics to other areas for processing. Trade in used plastic enables efficient processing of those materials, while creating valuable new materials and business opportunities.



9. **Addressing Outstanding Trade Concerns**: U.S. chemicals manufacturers face a number of outstanding trade-related concerns in the European Union, such as overly stringent maximum residue limits (MRLs), pending regulation classifying titanium dioxide as a suspected carcinogen by inhalation, and restrictions on the use of siloxanes in certain personal care products. We have attached an Annex to this letter that describes these issues and our specific concerns and requests in more detail.

10. **Addressing Trade-Distorting Practices**: Lastly, we believe that the United States and European Union must work with like-minded governments to address trade-distorting practices by other countries. In specific, both the United States and European Union should develop new rules on protecting and enforcing trade secrets; eliminating forced technology transfer; ensuring the free flow of data across borders; reducing barriers to foreign direct investment; and championing free markets over state-led capitalism, including by addressing state-owned enterprises and illegal subsidization of industries inconsistent with World Trade Organization (WTO) rules. We stand ready to assist the Administration in achieving these objectives and creating the necessary larger coalition of like-minded allies in the WTO.

We look forward to working with USTR and interagency leaders and staff to achieve success in the negotiations with the European Union. As U.S. preparations proceed, please do not hesitate to reach out to us for more information.

Sincerely,

Ed Brzytwa
American Chemistry Council
Director for International Trade



Annex – ACC Trade Concerns in the European Union

1. Maximum Residue Limits

ACC remains concerned that the European Commission (EC), EU governments and their regulatory authorities continue to introduce non-scientific, quasi-scientific or even political factors into regulatory policy-making. In addition, the implementation and the development of these regulations are inconsistent with the internationally agreed standards that form the basis for the WTO principles, in particular as embodied in the Agreement on Sanitary and Phytosanitary Measures (SPS). The EU's actions lead to confusion with trading partners and form the basis for non-tariff trade barriers.

ACC also remains troubled by the EU's establishment of regulations that lack technical justification and whose burdens of implementation are not proportionate to intended consumer or environmental benefits. The EU is taking actions to dramatically reduce Maximum Residue Levels (MRLs) for pesticides on imported crops even though these products are approved for use in numerous countries throughout the world. These levels are not aligned with levels adopted by Codex and are based on hazard rather than risk-based assessments, which is inconsistent with the SPS agreement. This action will have a serious impact on both U.S. producers and manufacturers.

We urge that regulatory policy on both sides of the Atlantic be based solely on the principles of sound science, risk management and assessment, and transparency. Transparent processes that allow reasonable opportunities for public access to all stakeholders should develop standards, technical regulations and conformity assessment procedures.

2. Classification of titanium dioxide as a suspected carcinogen by inhalation

ACC continues to watch closely the European Chemical Agency's proposed harmonized classification for titanium dioxide (TiO₂) as a suspected carcinogen (category 2) by inhalation. The proposal is currently under consideration by the EC and Member States. ACC has significant procedural and scientific concerns about the proposal, which will have serious socio-economic and trade impacts without enhancing any human health benefits or further protecting workers or consumers.

Procedurally, the classification proposal was put forward in 2016 without allowing the completion of the substance evaluation for TiO₂ under the EU's REACH Regulation, which was due to start in 2017. The substance evaluation process is designed to consider evidence of whether the substance poses a risk to human health or the environment and, if needed, recommend the most appropriate regulatory measures. The data developed by industry for the TiO₂ evaluation process would be relevant to the decision on the classification, but the acceptance of a dossier in advance of the REACH substance evaluation limits the ability of industry to respond to the classification proposal. It may take industry months (if not years) to develop data, all of which was not necessarily available for the CLH ("Harmonized Classification and Labeling") public comment period, which took place in 2016.



ECHA's Risk Assessment Committee (RAC) acknowledges a number of uncertainties in its opinion. For example, there are no robust carcinogenicity studies in species other than rats and how to interpret that data for humans is uncertain. Notably, the opinion does not consider 50 years of epidemiological data on more than 24,000 workers showing TiO₂ is not associated with cancer in humans. Instead, it relies primarily on two studies in which rats were exposed to levels of TiO₂ exponentially greater than would reasonably be experienced by workers or the public. In view of these uncertainties and to support the substance evaluation, the TiO₂ industry is undertaking a major scientific program to bring forward new data.

Several Member States have raised reservations about proceeding with the classification proposal due to concerns about its wide-ranging impacts. Classifying TiO₂ as a suspected carcinogen will have significant impact on industry and consumers by resulting in unintended restrictions on the use of TiO₂ in products and raising waste management costs, even when inhaling TiO₂ would be impossible. The classification would affect a wide range of industry sectors from paper, plastics, paints, cosmetics and automotive. It would also affect the jobs of millions of workers and the billions of dollars of value added to the economy.

Further, the EU's decision on TiO₂ classification will likely be precedential for other widely used, poorly soluble particles (PSPs). The proposal will start a domino effect, triggering the classification of more than 300 similar substances and resulting in similar trade barriers. In view of these potential trade impacts of a category 2 classification it is essential that robust scientific standards of evaluation are rigorously applied and regulatory measures are limited to only those necessary and proportional to the risk.

3. **Siloxanes**

The EU imposed restrictions on the use of two siloxanes (D4 and D5) in certain personal care products. The regulatory evaluation that underpins the EU restriction was primarily hazard-based, did not consider all of the available information, and is inconsistent with the regulatory evaluations conducted for D4 and D5 by other OECD countries, notably Canada and Australia.

The REACH evaluation of D4 and D5 did not consider the wealth of international exposure data, which demonstrates that neither material has been measured in the environment at sufficient concentrations to merit regulatory restrictions. Environmental monitoring studies conducted by the silicone industry, the government of Canada, and numerous academic experts at locations in North America, Europe, and Asia consistently demonstrate that environmental loadings of D4 and D5 pose low risk to organisms in the environment. Both Canada and Australia have conducted robust risk-based evaluations of D4 and D5 which considered the available exposure data, and neither country has imposed any restrictions on the use of D4 or D5 in commerce.

D4 and D5 are chemical intermediates that are used primarily to make silicone polymers. These polymers provide unique product performance characteristics that engender innovation in thousands of products that benefit key segments of the global economy, including building and construction materials, electronics, health care applications, and transportation. The EU



siloxane restrictions limit consumer choice, reduces product quality, and jeopardizes innovation without any measurable environmental benefit.

