American Chemistry Council
Public Comments

"Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation"

Docket No. USTR-2019-0004

June 17, 2019

On behalf of U.S. chemical manufacturers, the American Chemistry Council (ACC) appreciates the opportunity to provide written comments on the proposed $300 billion in imports from China ("List 4") to which the Administration may apply an additional 25 percent tariff.

ACC and our members support the Administration's efforts to address unfair trade practices in China, including inadequate protections of intellectual property (IP) and forced technology transfer practices, which have hurt our industry. We believe the principles of free and fair trade should apply to all members of the World Trade Organization (WTO), including China. We also believe that the United States will succeed in addressing these practices principally through leveraging the multilateral, collective willpower of countries who share our concerns.

However, as one of this country's leading exporting industries, and an important trading partner to China, the U.S. chemical industry is increasingly concerned that China may not change its behavior in the way intended by ongoing and escalating tariffs. We urge the Administration to bring an end to the trade war or risk creating further imbalances as the U.S.-China relationship deteriorates even further.

ACC's position is that a prolonged trade war between the United States and China will decrease trade and dampen economic growth in both countries. The impact on the U.S. chemical industry will be profound. China supplies the United States with a number of chemicals which are not available anywhere else and which are critical inputs to U.S. manufacturing. China is also the third-largest export market for U.S. chemicals manufacturers. Future growth for our industry depends on a strong trading relationship with China and a trade policy that creates certainty and predictability for investors – not a looming threat of more or higher tariffs.

A prolonged trade war – whereby higher tariffs on all imports from China and exports to China become a fixture, not an exception – will not achieve a more balanced trading relationship between the U.S. and China. It will not advance the interests of the U.S. economy. And it will not help U.S. manufacturers and consumers. So far, study after study has shown that the tariffs have produced pain for the U.S. economy, businesses, and consumers – with no relief in sight.

Even more studies indicate that economies succeed and grow when they are more open and have low to zero tariffs.

In charting a course forward, we urge the Administration to revisit its goal of eliminating tariffs globally, as it stated at the G7 Summit in Canada in June 2018. ACC and our members support this goal and welcome opportunities to assist the Administration in achieving it, as we believe it will give U.S. chemical manufacturers the predictability and certainty they need to plan, grow, compete, and succeed in the global marketplace.

Aggregate Pressure from the United States and its Allies Will Change China's Behavior, Not Tariffs

ACC strongly urges the Administration to work closely with like-minded trading partners – including the European Union and Japan – to address long-standing problems with China through constructive negotiation, rather than through the blunt instrument of tariffs. Such collaboration should yield aggregate pressure on China and address its unfair trade practices through all available mechanisms, including coordinated strategies in bilateral and multilateral forums with China; joint enforcement actions through the WTO; and other mechanisms that persuade the world that China's practices are out of step with global norms.

ACC Supports Global U.S. Leadership and Sensible Solutions to Resolving the Trade War

ACC believes that the system of international trade disciplines must work for everyone. To that end, the United States, the European Union, Japan, China, Brazil, India and other key trading partners must work together to break down barriers to trade. Increased market access, not less, is essential to the success of the chemical industry and the global economy. Unilateral actions and corresponding retaliation by trading partners are creating less market access for U.S. chemical manufacturers and decreasing their opportunities to export, grow the economy, and create U.S. jobs.

Simply put, the global economy does not need and cannot afford a multi-front trade war – especially not one between the two biggest economies in the world. The United States and its trading partners should find ways to address and prevent unfair trade practices, including intellectual property theft and forced technology transfer, on a global scale. Such concerted effort will benefit the global economy, making trade work better for everyone, including businesses and workers in the United States.

We urge the Administration to lead the world into a new era of fairer, broadly beneficial global trade and investment. The Administration should bring all major trading partners together to disarm their tariff and retaliatory actions, bring this trade war to an end, and establish the framework for modernizing the multilateral trading system as embodied by the WTO so that all economies, businesses, and citizens benefit from trade.

The United States Should Seek Zero Tariffs on Chemicals and Plastics Globally

Part of this framework must include commitments by the critical mass of major global chemical manufacturing economies to eliminate their chemical and plastics tariffs and bind them at zero in their WTO goods market access schedules. In that regard, we commend the Administration for its goal of eliminating tariffs globally, as it stated at the G7 Summit in Canada in June 2018.

ACC and our members support this goal and welcome opportunities to assist the Administration in achieving it. 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, competitively-priced U.S.-made chemicals.

The WTO's World Tariff Profiles 2018[1] indicates that a number of U.S. trading partners maintain high average bound and most favored nation (MFN) applied duties for chemicals (see Table 1 below). A number 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. The United States average bound rate and applied MFN rate for chemicals is 2.8 percent; 100 percent of its chemical tariffs are bound. U.S. global leadership will be essential to broad, deep, and durable tariff elimination for U.S.-made chemicals.

Table 1: Average WTO Bound Rates and MFN Applied Rates on Chemicals for Certain U.S. Trading Partners Without Free Trade Agreements

Country	Average WTO Bound Rate	Average MFN Applied Rate	Percentage of Unbound Chemical Tariffs
Argentina	21.4	8.2	0
Brazil	21.1	8	0
China	6.7	6.6	0
European Union	4.5	4.6	0
India	39.6	8.1	11
Indonesia	37.9	5.3	4
Japan	2.3	2.3	0
Malaysia	11.5	2.5	24.8
New Zealand	4.4	0.7	0
Nigeria	74.6	7.3	98.5
Pakistan	57.4	8.0	0.1
Philippines	19.7	3.8	25.5
Russian Federation	5.2	4.7	0
Saudi Arabia	5.4	4.4	0
South Africa	12.4	2.1	0.4
Switzerland	0.9	0.9	0
Chinese Taipei	2.8	2.9	0
Thailand	29.9	2.6	38.8

[1] https://www.wto.org/english/res_e/booksp_e/tariff_profiles18_e.pdf

Turkey	16.6	4.7	32.8
Viet Nam	6.1	3.1	0

Source: WTO World Tariff Profiles 2018

ACC Opposes the Inclusion of Chemicals and Plastics on U.S. List 4

With this overarching perspective in mind, we respectfully urge the Section 301 Committee to remove the 214 eight digit U.S. Harmonized Tariff System codes for chemicals and plastics from List 4. These codes are in HTS Chapters 28, 29, 32, 33, 34, 35, 36, 38, and 39. We oppose the inclusion of these chemicals and plastics – as we opposed the inclusion of chemicals and plastics in Lists 1, 2, and 3 – because the success and health of the U.S. chemical sector is at risk for reasons outlined below. To illustrate the impact of these tariffs on our members, we are including an annex of stories that that demonstrate how the proposed and implemented Section 301 tariffs on imports from China and China's retaliatory tariffs impact their businesses.

Imposing increased duties on the products in the Annex to the May 9 Federal Register Notice[2] will unnecessarily prolong the current trade dispute. So far, the tariffs have yielded no progress toward obtaining the elimination of China's acts, policies, and practices. In the end, these duties, if applied, would lead to disproportionate economic harm to U.S. interests, including small and medium-sized enterprises and consumers.

According to published research, the tariffs are taxes that U.S. businesses and consumers have already begun to pay and will continue to pay for the duration in which the tariffs remain in effect. They are not paid by foreign governments. A prolonged trade war between the United States and China:

- Has the potential to seriously harm U.S. chemical manufacturers and their employees, as well as hamper innovation, research and development, economic growth, and job creation in the United States. U.S. manufacturing is already feeling the weight of the tariffs, with the U.S. Manufacturing Purchasing Managers' index falling by more than two points to 50.2 in May, the lowest level since September 2009, according to IHS Markit.[3]

- Will result in less efficient supply chains, higher costs, and weaker global competitiveness for the U.S. chemical industry and the U.S. economy as a whole.

- Will harm communities in states across the country. The Trade Partnership Worldwide, LLC[4] estimates that the trade war in total (a 25% tariff on all imports from China) could cost the average U.S. family up to $2,300 a year. The Federal Reserve Bank of New York[5] estimates that increase in the tariff rate on the $200 billion in imports will cost the average U.S. family $831 a year (tariff costs plus deadweight efficiency losses due to supply chain adjustments).

[2] https://www.federalregister.gov/documents/2019/05/09/2019-09681/notice-of-modification-of-section-301-action-chinas-acts-policies-and-practices-related-to
[3] https://news.ihsmarkit.com/press-release/economics-media/pmi-drops-lowest-september-2009
[4] https://tradepartnership.com/wp-content/uploads/2019/02/All-Tariffs-Study-FINAL.pdf
[5] https://libertystreeteconomics.newyorkfed.org/2019/05/new-china-tariffs-increase-costs-to-us-households.html

- Will offset the impact of tax reform. According to the Tax Foundation, if the Administration follows through on all tariffs announced thus far (China, autos and auto parts), U.S. gross domestic product (GDP) would fall by 0.74 percent ($184.07 billion) in the long run, effectively offsetting 44 percent of the long-run impact of the Tax Cuts and Jobs Act.[6]

- Will lead to weaker global economic growth. The International Monetary Fund estimates that all the U.S.-China tariffs could subtract about 0.3 percent from global GDP in 2020.[7]

In contrast, a U.S. trade policy predicated on low to zero tariffs and eliminating tariffs in key trading partners will produce broad benefits for the U.S. economy, businesses, workers, and consumers, principally due to the create of certainty, predictability, and confidence in the trading environment. Trade economist and historian Douglas Irwin found in a recent paper[8] for the Peterson Institute of International Economics found that that "trade reforms that significantly reduce import tariffs have a positive impact on economic growth."

The U.S. Chemical Industry Is Growing the U.S. Economy and Increasing U.S. Exports

The U.S. chemical industry is a $553 billion dollar 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 in one way or another by chemistry, the chemicals industry is truly 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 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, chemical manufacturers in the United States have announced approximately $204 billion of investment in new chemicals and plastics production 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 the new capacity is intended for export, reflecting investors' belief that the United States is superior platform from which to serve the global marketplace.

Today, American chemical manufacturers 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 $140 billion in 2018. The U.S. trade surplus in industrial chemicals was $31 billion in 2018. Given the competitive advantage created by the American shale gas revolution, that surplus is estimated to grow to $61 billion by 2024.

The U.S. Tariffs Across All Four Lists Are Devastating to U.S. Chemical Manufacturers

Imports of the chemicals and plastics from China that are on the proposed products in "List 4" were $11.0 billion in 2017. Seventy-seven percent of that total - $8.5 billion – is plastics. Tariffs on the chemicals and plastics in List 4 will be on top of $15.4 billion already exposed to

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[6] https://taxfoundation.org/trade-china-tariffs-economic-impact/#total
[7] https://blogs.imf.org/2019/06/05/how-to-help-not-hinder-global-growth/
[8] https://piie.com/system/files/documents/wp19-9.pdf

additional U.S. tariffs on imports of chemicals and plastics from China. If the List 4 tariffs come into effect, U.S. chemical manufacturers will then be subject to a 25 percent tax increase on a total of $26.4 billion in imports of chemicals and plastics from China. Such a change in costs is increasing uncertainty and unpredictability in the U.S. chemical sector, which will have ripple effects across the U.S. economy.

U.S. chemical manufacturers are experiencing difficulty in mitigating the impact of the Lists 2 and 3 tariffs, but it could have been worse. When the initial U.S. List 3 ($200 billion list) was published, it included 1,505 chemicals and plastics products, valued at approximately $16.4 billion. When the final U.S. List 3 was published, USTR removed at least $3 billion in chemicals and plastics imports from China. 1,364 chemicals and plastics product imports from China remained on the list, valued at $13.2 billion – about 7 percent of the $200 billion total.

For 44 (of the 141 products) that were removed from the final List 3, 100 percent of foreign supply originates from China. The products are essential inputs to U.S. manufacturing processes, and U.S. chemicals manufactured welcomed their removal from the final list. With the recent publication of List 4 USTR has proposed a 25 percent tariff on an additional $11 billion in chemicals and plastics imports from China. This includes at least 114 chemical and plastics products that had been on the proposed List 3 but did not make it into the final List 3.

The Section 301 Committee had previously determined that these 114 products, which account for $2.68 billion in imports of chemicals and plastics using 2017 trade data – were essential to U.S. manufacturing and agriculture and therefore should not be subject to tariffs. Now the Section 301 Committee has reversed course, determining that these products are not essential and therefore should be subject to a 25 percent tariff. The inclusion of these products is surprising and sowing confusion and greater uncertainty in the U.S. chemical sector.

Many of these products in Lists 2, 3, and 4 are inputs into chemical manufacturing - building block chemicals, raw materials, and feedstocks - that can only be sourced from China. There are no alternative sources for these products in the United States or other markets. If companies want to continue producing chemicals that require these inputs, they will move production to or invest in other countries. High-paying, high-skilled jobs will move from the United States to other markets. U.S. hiring may slow and U.S. production facilities could close. Small and medium-sized chemical manufacturers will bear the disproportionate effects of these tariffs, as they will not be able to mitigate their impacts in the same way that multinational companies can.

The U.S. tariffs on the products in all four lists harm the customers of the U.S. chemical sector as well. Higher prices lead to less demand as companies decide not to invest or expand their business in order to adjust to a higher-cost business environment. The U.S. chemical sector supplies chemicals to a wide range of economic sectors in the United States - agriculture building and construction, automotive products, civil aviation, information technology. Less demand for U.S.-made chemicals in these sectors – as a result of higher prices – will cause further dislocation in the U.S. chemical industry, as companies take hard looks at the diminishing returns on their investments.

U.S. Section 301 Tariffs Undercut the Benefits of the Miscellaneous Tariff Bill (MTB) Duty Suspensions and Reductions

Also confusing is the significant overlap between the chemical products in the Miscellaneous Tariff Bill (MTB) and all the China Section 301 tariff lists. It is our view that these products should not be subjected to any additional tariffs, as the U.S. International Trade Commission and the Congress deemed them to be essential to U.S. manufacturing competitiveness. ACC provided public comments regarding this overlap in the International Trade Commission's Investigation No. 332-565 ("American Manufacturing Competitiveness Act: Effects of Temporary Duty Suspensions and Reductions on the U.S. Economy"). ACC's analysis indicates that the Section 301 additional tariffs severely undercut the benefits of the MTB, not just for chemicals and plastics, but all products in the MTB that U.S. companies import from China. Seventy-six percent of the chemicals and plastics covered by the MTB are also on the China Section 301 tariff lists in effect. List 4 could increase that percentage.

China's Retaliation Against Exports of U.S.-Made Chemicals and Plastics Increases the Harm of the U.S. Tariffs

ACC analysis indicates that China's tariffs on $11 billion in imports of chemicals and plastics from the United States to date has caused U.S. exports of these products to decrease by 24 percent from December 2017 to December 2018. Overall U.S. exports of chemicals and plastics to China increased over that period by only 2.6 percent, compared to double digit increases in previous years. China is the third most important export market for the U.S. chemical sector.

ACC analysis also indicates that China's retaliatory tariffs may result in the loss of 55,000 U.S. jobs and weaken economic activity in the United States by $18 billion. This harm is due to the closure of the China market to U.S. exports of chemicals and plastics but also the closure of that market to U.S. exports of products with embedded chemistries (e.g., high tech machinery, agricultural goods, and autos).

The Chinese tariffs on U.S. chemical and plastics exports will lead to a reduction in demand for those exports. Depending on the elasticity of demand (responsiveness) for U.S. products in China, the retaliatory tariffs could result in substantial losses for American producers, their employees, and for the communities that depend on the economic activity that the chemicals and plastics industry generates.

In the baseline case (the scenario where, initially, Chinese importers are more challenged to find alternative sources to U.S. products), ACC estimates that the loss in U.S. chemicals and plastics exports to China would be equivalent to $1.6 billion annually.

In the worst case scenario (where Chinese customers can more readily adjust their supply chains to substitute for U.S. sourced-goods), the loss to U.S. chemical and plastics exports could reach $6.1 billion annually. The worst case scenario is entirely possible, especially in the longer term. As the Administration continues to erect costly barriers to accessing global supply chains and foreign customer markets, the Chinese government is actively working towards directing industrial capacity expansions in their own domestic economy and eliminating tariff and other barriers to doing business with other (non-U.S.) foreign partners.

China will likely retaliate further against U.S. exports of chemicals and plastics, through tariffs and non-tariff barriers. China will also retaliate against exports of U.S. products with embedded chemistries, which will lead to less demand for chemicals in the United States. In order to maintain access to the China market and avoid China's retaliatory tariffs, U.S. chemical manufacturers may decide to move production to facilities in Asia, Europe, and the Middle East.

U.S. chemical manufacturers are very concerned about China's threatened non-tariff retaliation. In late May, China threatened to cut off exports of rare earth metals to the United States as an additional retaliatory measure and further leverage in negotiations – using the historically loaded phrase "don't say we didn't warn you." Limiting supplies of the 17 rare earths to U.S. buyers would cause problems throughout the U.S. high tech supply chain, as production of these metals outside of China is small and could not meet existing U.S. demand in the production of military equipment, information technology products, and other industrial applications.

On May 31, 2019, China's Commerce Ministry announced that it would set up an "unreliable entity list," which would consist of foreign companies, organizations, and individuals that violate market rules and contracts, disrupt supplies to Chinese companies for "non-commercial purposes," and otherwise damage Chinese business and national interests, said a ministry spokesman in comments posted on its website. It may be the case that U.S. chemical manufacturers end up on this list.

Chemical Supply Chains May Not Move Back to the United States

The stated, official intent of the U.S. Section 301 tariffs on imports from China is to change China's unfair trade practices. However, an unofficial, stated intent of the tariffs is to force U.S. companies to move their supply chains out of China to the United States or other countries. Due to higher U.S. tariffs on imports of chemicals and plastics from China and higher China tariffs on imports of chemicals and plastics from the United States, supply chains most likely are moving to other countries that have duty-free access to both markets. This means that other countries will benefit from the trade war, not the United States.

In fact, companies seeking to maintain access to the large and growing China market may choose to stay in China as opposed to moving their production out of China. Companies that predicated their investments in the U.S. chemicals marketplace for the purpose of exporting to China will move their supply chains out of the United States. Countries with stable, certain, and predictable trade policies are becoming more attractive destinations for chemical industry investments. If we look back at this moment in time a year from now and review the flows of foreign direct investment, it is possible that we will see chemical industry investments shifting to Europe, the Middle East, and Asia. Growth in investments in the U.S. chemical sector may slow, despite the large comparative advantage of low-cost, abundant supplies of natural gas in the United States.

ACC believes that the Administration should take advantage of this historic comparative advantage and open new markets for the U.S. chemical industry. Higher tariffs on imports and U.S.-made exports of chemicals and plastics waste this advantage.

<u>How will U.S. Chemical Manufacturers Respond to the U.S. Tariffs and China's Retaliation?</u>

Our member companies have provided an array of impact stories on U.S. tariffs and quotas and retaliation by trading partners, including China. They tell us that China's retaliatory tariffs will lead to reduced U.S. production and jobs and will incentivize offshoring. The Administration's proposed Section 301 tariff action and the resulting Chinese retaliation together create significant uncertainty for chemical companies as they plan and build new chemical plants and projects in the United States and work to export U.S.-made chemicals to trading partners. Industry-rich states like Louisiana, Michigan, Ohio, Pennsylvania, and Texas will feel a disproportionate brunt of China's retaliatory tariffs. With their economies heavily reliant on the manufacture of chemistry products destined for China, states could see steep losses in jobs, investment, and new construction. If this uncertainty persists and increases, companies will consider investing in markets with greater policy certainty, low to zero tariffs, and lower input costs.

Higher tariffs in China as a result of retaliation will shut out U.S. chemicals exports to the benefit of competitors in Asia, Europe, and the Middle East. The overall uncertainty in the trading environment will lead to less wage and job growth in the United States. These dynamics would not only damage the chemical industry and the downstream manufacturers using chemicals – higher prices for chemicals lead to less demand for U.S. chemicals, less manufacturing in the United States, less job creation and workforce development, less investment, and costlier, less competitive U.S. manufactured products – but could lead to inflation over time and a weaker U.S. economy.

<u>Conclusion</u>

ACC opposes including chemicals and plastics on the U.S. Section 301 tariff lists, including the proposed List 4. We urge the Administration to remove chemicals and plastics from List 4, especially those products that had previously removed from List 3 and those products that are subject to duty suspensions and reductions under the MTB. We urge the Administration to get back to the negotiating table, end the trade war, and lift the China Section 301 additional tariffs, so that China can then lift its retaliatory tariffs on U.S.-made exports of chemicals and plastics. We equally urge the Administration to exercise global leadership on eliminating tariffs and bringing the world into a new era of fairer, broadly beneficial global trade and investment. We look forward to working with the Section 301 Committee as it reviews our comments.

The American Chemistry Council (ACC) represents a diverse set of companies engaged in the business of chemistry. An innovative, $553 billion enterprise, we work to solve some of the biggest challenges facing our nation and our world. Our mission is to deliver value to our members through advocacy, using best-in-class member engagement, political advocacy, communications and scientific research. We are committed to fostering progress in our economy, environment and society. The business of chemistry drives <u>innovations</u> that enable a more sustainable future; provides 542,000 skilled good paying <u>jobs</u>—plus over six million related jobs—that support families and communities; and enhances <u>safety</u> through our diverse set of products and investments in R&D.