American Chemistry Council
Public Comments

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

Docket No. USTR-2018-0005

May 11, 2018

The American Chemistry Council (ACC) appreciates the opportunity to comment on the Administration's proposed trade action under Section 301 of the Trade Act of 1974. This proposed trade action is of fundamental concern to the business of chemistry in the United States, which is most successful when tariffs do not exist and costs are low. U.S. chemical manufacturers believe the principles of free and fair trade should apply to all members of the World Trade Organization, including China. It is not in the interest of the U.S. economy, manufacturers, or consumers to engage in a trade war with China for reasons outlined below.

The ACC shares President Trump's concerns about China's inadequate protections of intellectual property (IP) and forced technology transfer practices. At the same time, China is one of the U.S. chemical industry's most important trading partners. The ACC estimates that China's proposed retaliatory tariffs would affect $5 billion in U.S. chemicals and plastics trade to China. Though U.S. chemicals manufacturers would broadly feel the impacts of China's tariffs, the plastics sector would be the most heavily hit, as plastic products constitute about 60 percent of that $5 billion. China is a very important market for these American manufactured exports. For some of the plastics targeted by the Chinese tariffs, exports to China are 30 percent or more of all export sales. On average, about 14 percent of all export sales of these products are in China. China imported 11 percent, or $3.2 billion, of all U.S. plastic resins in 2017.

We support efforts by the Administration to resolve concerns with China, but strongly believe that these long-standing problems should be addressed through constructive negotiation, rather than through the blunt instrument of tariffs that could make the world's most important economic relationship even more difficult. Imposing increased duties on the products in the Annex to the Federal Register Notice would not be practicable or effective to obtain the elimination of China's acts, policies, and practices. In fact, these duties, if applied, would cause disproportionate economic harm to U.S. interests, including small and medium-sized enterprises and consumers.

The potential for substantial tariffs and retaliation by key trading partners is threatening to undermine the unprecedented competitive advantage the U.S. chemical industry now enjoys. The announced tariff lists based on the actions of Section 301 of the Trade Act of 1974 and Section

232 of the Trade Expansion Act of 1962, as well as possible difficult outcomes under the negotiations to modernize the North American Free Trade Agreement (NAFTA), create considerable uncertainty about the United States as a platform to produce goods to supply the growing global demand for chemical and plastic products. They also undo the considerable benefits that the administration's tax reform has offered.

History has shown that the imposition of tariffs is counterproductive. They often do little more than invite retaliation that ultimately undermines their stated intent. Therefore, we do not believe as a general matter that tariffs are consistent with the goals of U.S. economic growth, innovation and job creation. One conclusion that could be drawn from the Administration's proposed Section 301 and 232 tariffs is that they are intended to protect struggling domestic industries that have failed to achieve profitability in an increasingly global market. However, such protective tariffs in this case will cause one of America's most competitive and most successful industries – chemicals – to suffer.

These tariffs, if imposed, would increase the costs and decrease the availability of the necessary equipment and inputs for building and operating chemicals plants in the United States, potentially resulting in these plants being constructed elsewhere. They also invite retaliation from China, which will close that market for U.S. chemical manufacturers and lead to damaging trade and production diversion. ACC's public comments will describe the real world impacts of the proposed U.S. tariffs and China's proposed retaliation against our sector.

A policy that leverages enforcement (not only tariffs) combined with a strategy of engagement to seek real long-term solutions to U.S. manufacturers, workers and exporters is the best option.

The U.S. chemical industry is important to the U.S. economy

The U.S. chemical industry is a nearly $800 billion dollar enterprise, supporting more than 25 percent of U.S. gross domestic product (GDP), and providing over 822,000 skilled, good-paying American jobs, with production in nearly every state. 30 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. In the past eight years, chemical manufacturers in the United States have announced approximately $194 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 an excellent platform from which to serve the global marketplace.

Today, American chemical manufacturers produce 15 percent of the world's chemicals. They are the top exporting industry in the United States, accounting for 14 percent of all U.S. exports, which amounted to $181 billion in 2017. The U.S. trade surplus in industrial chemicals was $33 billion in 2017. Given the competitive advantage created by the American shale gas revolution, that surplus is estimated to grow to $73 billion by 2022.

ACC's views on the U.S. proposed list of tariffs against China

ACC notes that about 5 percent of the 1,333 products on the U.S. tariff list relate to chemicals. We advocate removing these products from this list. The chemicals industry is not asking for tariff protection, as tariff costs will diminish the competitiveness of our industry. We are also concerned about the large amount of equipment, steel, iron, and aluminum products on the list. Such tariffs will not only make importing key inputs for the construction of chemical plants more expensive, they will cause manufacturers of such equipment, steel, iron, and aluminum in the United States to raise prices and potentially threaten the viability of the $194 billion in announced chemical industry projects.

Moreover, as a result of the tariff action under Section 232 of the Trade Expansion Act of 1962, the United States is already applying tariffs of 25 percent on top of existing anti-dumping and countervailing duties for many steel products coming from China. An additional 25 percent tariff will exacerbate the price impacts. Companies in the chemicals sector and companies consuming chemicals to manufacture their products or produce their agricultural goods will bear the brunt of these higher prices and costs.

As an example of the chilling economic effect of these tariffs, higher costs of steel inputs will undermine new plant construction and investments in the United States. These new investments are long-term commitments to U.S. manufacturing, establishing high-technology plants and high-value-add workforce opportunities that will benefit America for decades, once they are built. A higher cost of steel inputs fundamentally changes the value proposition of new construction and directly discourages future investments.

Higher tariffs in China as a result of retaliation will shut out U.S. chemicals exports to the benefit competitors in China, 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 higher prices for U.S. manufactured products – but could lead to inflation over time and a weaker U.S. economy with less demand and supply.

ACC's views on China's proposed list of tariffs against the United States

China knows how competitive the U.S. chemicals industry is and has very likely targeted U.S. chemicals exports because it is an area where the United States is poised to grow the most. 40 percent of the products on China's initial Section 301 list relate to chemicals. These products are largely basic chemicals, plastic resins, and some specialty chemicals as well as some finished forms of plastics (e.g. films, sheets, and other plastic products). That China has included these products on its tariff list is a recognition of the competitiveness of the U.S. chemicals industry and the challenge it poses to China's own fast growing chemicals industry.

Chemicals are used in almost every manufacturing activity here in the United States and chemicals are essential to creating the downstream products that are consumed domestically and exported. As such, China's tariffs will hit the U.S. chemicals industry, not once, but twice, since demand for chemicals by manufacturers that make products containing chemistry will drop.

Analysis by the Peterson Institute for International Economics[1] estimates that China's tariffs would impact U.S. exports of $3.5 billion in plastics and rubber; $2.1 billion in chemicals; and $1.7 billion in mineral fuels. The Brookings Institution[2] estimates 2.1 million jobs in all parts of the United States and high numbers of jobs in chemicals and plastics manufacturing will be exposed to China's tariffs. Many US chemical industry jobs depend directly on the ability to export products. Using input-output relationships, ACC assessed the total jobs that would be lost in chemicals and downstream sectors. We found that as many as 24,000 U.S. jobs would be lost including 3,600 in the chemicals sector.

The threat to American chemical manufacturing goes beyond tariffs on these goods. It is also apparent through the tariffs on goods that use our products. The proposed 25 percent Chinese tariff on U.S. exports would be expected to result in a decline in U.S. chemical production of $2.4 billion to $2.8 billion, because there will be less demand for U.S.-made chemicals. For example, a drop in soybean exports affects fertilizer and crop protection sales in the United States. Similarly, a reduction in exports of U.S. vehicles would lead to less demand for U.S.-made chemicals, because nearly 20 percent of the weight of an average vehicle is a product of chemistry and the average light vehicle contains more than $3000 of chemistry products.

The effect on the American economy of the Chinese government's proposed tariffs on chemicals and plastics goes well beyond chemical manufacturers. Dozens of other sectors that rely on chemical and plastic products including the automotive, health care, building and construction and consumer goods industries could shoulder higher related costs. Ultimately it is the consumer who pays the price. For example, chemicals comprise a significant amount of value in the production of manufactured goods[3] and agriculture[4]. Less demand for manufactured goods and agriculture will result in less demand and production of chemicals products, and therefore less investment and job creation over time.

[1] https://piie.com/blogs/trade-investment-policy-watch/more-soybeans-trumps-section-301-tariffs-and-chinas-response

[2] https://www.brookings.edu/blog/the-avenue/2018/04/09/how-chinas-tariffs-could-affect-u-s-workers-and-industries/

[3] Electromedical, industrial and navigational electronics - $9.3 billion; semiconductor and other electronic components - $11.2 billion; medical equipment and supplies - $7.3 billion; transportation/aerospace - $3.9 billion; transportation/motor vehicles - $42.2 billion.

[4] Agriculture (not equipment) - $10.0 billion.

The real world impacts of China's retaliation on the business of chemistry in the United States

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. If this uncertainty persists and increases, companies will consider investing in markets with greater policy certainty, low to zero tariffs, and lower input costs.

Our member companies tell us that China's retaliatory tariffs will lead to reduced U.S. production and jobs and will incentivize offshoring:

- One company reports that a number of its U.S.-sourced specialty plastic products are on China's list. The overall direct impact to this company is likely to be into the millions of dollars. It is also worried about the indirect, downstream impact of the tariffs, which they expect to be significant. It anticipates moving the production of these materials to its European or Asian operations.

- U.S. specialty polymer producers serve global markets from U.S.-based plants and compete with a large number of suppliers based outside the United States. The proposed China tariffs will create an uneven playing field rendering the U.S. producers noncompetitive in very important export markets. Producers of specialty polymers in the United States will not be able to avoid the proposed China tariffs. With small exceptions, they do not have redundancy to halt production in the United States and then shift production to other countries globally to maintain access to China's market. Inability to access China's market would lead to reduced capacity utilization and therefore lower profitability and employment.

- U.S. produced specialty polymers are typically sold into applications requiring lengthy and costly technical qualification. The increased tariffs could result in significant supply chain interruptions for critical applications, such as healthcare and water purification. Most specialty polymer product sold into China's markets is exported for consumption in China and then exported from China to the United States and other countries as final products. Increased tariffs imposed on imports into China will raise prices of goods in the global market.

- A number of chemical manufacturers are also invested in the agricultural crop protection arena. With the proposed 25 percent tariff on U.S. soybean imports to China they anticipate a loss of earnings with expected redirection of trade flows to Argentina and Brazil, making the U.S. crop protection market less attractive.

- U.S. chemical manufacturers often procure key raw materials in both domestic and international markets for production of finished chemicals and goods. Increased U.S. tariffs on these raw materials would limit the ability to produce finished goods at competitive manufacturing costs, making it very difficult for U.S. chemical manufacturers to offer a value product at a competitive price globally. Similarly, higher Chinese tariffs on imports of these finished chemicals eliminates the competitiveness into that market, leading to lower profitability and reduced workforce in U.S. manufacturing plants.

- Given the complex and costly process to produce such products, duplicate plants and manufacturing technologies are not readily available. U.S. chemical manufacturers are then unable to produce these chemicals in other regions to maintain uninterrupted and sustained supply of chemical products to key customers. And since these chemicals are used in applications requiring long qualification periods, such forced changes in material and origin resulting from high tariffs could lead to major interruptions for part manufacturing in key sectors.

Practical recommendations for managing the Section 301 proposed action

We strongly urge the U.S. government to avoid the imposition of tariffs and therefore preempt retaliation by China. There is ample evidence that tariffs lead to higher costs for downstream producers, higher prices for consumers, fewer jobs in downstream industries, and less economic growth, investment, and innovation in the United States. A trade war will also make cooperating on non-trade issues and real national security concerns of mutual interest that much more difficult.

The Administration should not take these enforcement actions on the backs of the growing, value-add U.S. chemicals industry and other U.S. industries producing trade surpluses, increasing their exports, and entering new markets. We are hopeful that the Administration will recognize the risks for our economy of a continued escalation with China and will engage in a constructive, long term effort to address its concerns.

We urge the Administration to focus on concrete initiatives to address the underlying barriers and distortions, including through work directly with U.S. industry on the following alternatives:

- Develop and execute a comprehensive strategy to effectively address longstanding trade policy issues in China. This strategy must include clearly defined objectives, direct negotiating mechanisms with the Chinese, targeted deliverables, and deadlines with measurable results. This policy must be clearly communicated with stakeholders, and must ensure mechanisms to hold China accountable for achieving the results.

- Develop a concrete list of political and binding commitments and actions China can take to meaningfully address significant IPR challenges emanating from China, including IPR theft, forced technology transfers, industrial policies that discriminate against foreign companies, and rampant counterfeiting and piracy. These must be transparent, targeted, monitored and credibly verified – and where possible backed by enforcement mechanisms. They must also reflect the long-standing concerns expressed by a wide range of economic sectors in the United States and should not be narrowly targeted at a select group of sectors.

- Work in coordination with our like-minded trading partners to address China's 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.

For the chemicals sector, the United States and China should:

- Avoid raising tariffs or erecting barriers between them or cause other markets to raise tariffs or erect barriers;

- Work together to cut costs in chemicals trade by eliminating tariffs and dismantling trade barriers bilaterally and across the world, including at the World Trade Organization and the Asia-Pacific Economic Cooperation forum; and

- Work together to reestablish trust in our societies that the international trade system will benefit more people and be more inclusive.

The ACC believes that the system of international trade disciplines must work for everyone. To do that, the United States, the EU, Japan, China 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. Unilateral actions have the potential of creating less market access, and therefore less opportunities to export, grown the economy and create U.S. jobs. Simply put, the world does not need and cannot afford a trade war. The United States and its trading partners should find ways to address and prevent steel overcapacity, IP theft and forced technology transfer practices on a global scale. Such concerted effort will only benefit the global economy, making trade work better for everyone, including businesses and workers in the United States.

The American Chemistry Council (ACC) represents a diverse set of companies engaged in the business of chemistry. An innovative, $800 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 innovations that enable a more sustainable future; provides 822,000 skilled good paying jobs—plus over six million related jobs—that support families and communities; and enhances safety through our diverse set of products and investments in R&D.

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