



October 31, 2019

The Honorable Robert Lighthizer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington DC 20508

Re: National Trade Estimate Report on Foreign Trade Barriers (84 FR 46079)

Dear Ambassador Lighthizer:

The American Chemistry Council appreciates the opportunity to submit public comments to assist the Trade Policy Staff Committee (TPSC) in identifying foreign trade barriers for inclusion in the 2020 National Trade Estimate Report.

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 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. 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 \$201 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 a 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, and that surplus is estimated to grow to \$61 billion by 2024.



Given the above, the U.S. chemical industry has a substantial interest in the removal of foreign trade barriers, including tariffs and burdensome regulatory measures. We have identified 21 issues for inclusion in the 2020 National Trade Estimate Report in the submission below and look forward to working with U.S. government leaders and experts to address these issues.

Also, as a highly regulated industry in jurisdictions across the world, we attach great importance to the full implementation of World Trade Organization (WTO) commitments by U.S. trading partners, in particularly those that relate to technical regulations and transparency (e.g., high standard notifications of proposed regulations to the WTO Technical Barriers to Trade (TBT) Committee). ACC and our members rely on the opportunities to offer meaningful, detailed comments on proposed regulatory measures that the WTO TBT Agreement affords interested parties. This avenue for engagement is critical to highlighting problems with proposed regulatory measures and preventing barriers to trade. We welcome your efforts to ensure that all WTO Members adhere to the WTO TBT Agreement's transparency provisions and reinvigorate the WTO committee process in order to prevent and address barriers to trade.

Furthermore, while we respect the right of WTO Members to regulate, we actively promote regulatory cooperation as a tool for creating cost-saving efficiencies for governments, industries, and consumers, including through trade agreements such as the U.S.-Mexico-Canada Agreement (USMCA); ongoing trade negotiations with the European Union (EU), Japan, and the United Kingdom (UK); and in industry-led efforts in Latin America, Southeast Asia, and other regions. ACC and our members are working closely with staff in your office to advance our regulatory cooperation goals at the WTO, as we believe that regulatory cooperation is an important element for making the WTO agenda relevant to the business community.

Thank you again for considering our comments below. We look forward to engaging with the TPSC further on these issues and would be happy to serve as a resource as USTR advances the U.S. trade policy and negotiations agenda.

Best regards,



Ed Brzytwa
Director for International Trade
American Chemistry Council



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American Chemistry Council
Issues for Inclusion in the 2020 United States National Trade Estimate Report

1. China

1a. Anti-Dumping and Countervailing Duties and Subsidy Transparency

China has repeatedly stated its intention to abide by its WTO commitments, and recently Premier Li Keqiang reiterated that WTO “core values must be adhered to.” The processes underpinning China's AD/CVD regime are not transparent, unnecessarily burdensome, and apparently weighted against foreign companies.

ACC Recommendation: ACC urges the U.S. government to request that China fully implement its WTO commitments under the Agreement on Anti-Dumping and the Agreement on Subsidies and Countervailing Measures by ensuring that determinations are based on law and facts, relying on transparent, standard AD/CVD processes, and notifying all of its subsidies to relevant WTO committees in a timely manner.

1b. Chemical Management

In February 2019, ACC submitted comments to China's Ministry of Ecology and Environment's (MEE) draft regulation on the Environmental Risk Assessment and Control Regulation for Chemical Substances, offered for public consultation in January 2019 (attached). ACC fully supports the efforts by the People's Republic of China to take a risk-based approach to controlling chemicals and to protecting human health and the environment. Our comments ask China to incorporate ACC's 10 principles for modernizing the Toxic Substances Control Act (TSCA) into its draft regulation on Environmental Risk Assessment and Control Regulation for Chemical Substances. We also offered substantive comments on number of elements of China's proposed measures: scope of application, inventory of chemical substances in China, environmental risk screening, new chemical substance registration, post-registration management, and liability of enforcement provisions.

In our view, MEE's proposal of this regulation relates to China's obligations under the World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement, and in particular Article 2.9, which concerns transparency and notification. As no international standard exists for this proposed regulation and as it may have a significant impact on international trade, Article 2.9 obligates China to notify this measure to the WTO TBT Committee. China notified the WTO TBT Committee of its proposed “Measures on the Environmental Management of New Chemical Substances” on September 2, 2019, in G/TBT/N/CHN/1351 and offered interested parties 60 days for public comment, consistent with the TBT Committee's recommendation.



ACC Recommendation: With China's notification of their draft regulatory measures to the TBT Committee, we would urge the U.S. government to continue to engage and promote stakeholder engagement and meaningful consultations on both the draft law and the implementation requirements, in order to avoid any potential trade barriers during compliance. Any amended legislation should be re-notified to the TBT Committee for additional input by interested parties, with at least a 60 day comment period.

1c. Protection and Enforcement of Intellectual Property, including Trade Secrets

Protection and enforcement of trade secrets and other intellectual property rights is essential for the success and competitiveness of U.S. chemical manufacturers globally. This is particularly true in the China market. While China has made significant progress on intellectual property rights, and has pledged to continue to address intellectual property protection, it still lags on enforcement of those rights.

In particular, significant trade secret cases often languish in court for years, even when there are clear cut cases of Chinese violations of the intellectual property rights of foreign companies. Similarly, Chinese courts have stalled recognition and enforcement proceedings for international arbitration awards obtained by foreign companies against Chinese companies. Delay or denial of prompt and credible enforcement of intellectual property rights' violations erodes U.S., international and, ultimately, Chinese interests in protecting intellectual property and preventing further trade secret misappropriation.

ACC Recommendation: We encourage the U.S. government to continue to press China to ensure broad protection of intellectual property rights, as required under WTO commitments.

1d. Tariffs

According to the WTO Tariff Profiles 2019, China's average most-favored nation (MFN) applied tariff rate for chemicals within Chapters 28-39 of the Harmonized System is 6.6 percent. Its average WTO bound rate for chemicals is 6.7 percent.

Relative to other large emerging markets, China's average MFN applied and bound rates are low. For example, India's average MFN applied rate is 8.1 percent and its WTO bound rate is 39.6 percent. However, China's average MFN applied and WTO bound tariff rates for chemicals are still higher than the average MFN applied rates for chemicals for the U.S. (2.8 percent), the EU (4.6 percent), and Japan (2.3 percent). China's relatively low rates are the result of China joining the WTO Chemical Tariff Harmonization Agreement as a part of its WTO Accession Protocol. The stability of China's tariff rates for chemicals and plastics had in the past provided U.S. chemical manufacturers certainty when exporting product to China.

ACC estimates that China's retaliatory tariffs in response to U.S. Lists 1, 2, 3, and 4 under Section 301 of the Trade Act of 1974 will ultimately impact almost \$12 billion in U.S. exports of chemicals and plastics. The U.S. additional tariffs cover 86 percent of chemical



imports from China and 100 percent of plastics products imports. The China tariffs cover 91 percent of U.S. chemicals exports to China and 100 percent of U.S. plastic products exports to China covered.

The additional tariffs on U.S. exports of chemicals and plastics have obviated the certainty of China's MFN tariff rates, thereby threatening investments in chemical manufacturing in the United States. U.S. chemical manufacturers now face additional tariffs of 5, 10, 20, and 25 percent depending on the product, on top of existing MFN tariff rates.

ACC Recommendation: ACC and our member companies support an outcome where the United States and China resolve their trade dispute and eliminate these additional tariffs, reverting to the previous status quo of MFN trade. Ideally, the United States and China would lead a global effort to eliminate the chemical tariffs of major chemical-producing WTO Members. Zero tariffs for chemicals and plastics trade globally would produce the most significant amount of certainty and predictability for U.S. chemical manufacturers, ultimately benefiting downstream users of chemicals in the United States in key sectors, such as agriculture, automotive, and building and construction. Zero tariffs globally would also leverage the historic competitive advantage the United States currently enjoys in chemical manufacturing, open new markets, and lead to more U.S. exports of chemicals and plastics to the rest of the world.

1e. WTO TBT Agreement Implementation

ACC and our members have a significant interest in China's full implementation of the WTO Agreement on Technical Barriers to Trade (TBT Agreement). Chemical manufacturers operate in highly regulated markets all over the world. They benefit from the TBT Agreement obligation in Article 2.9 to allow interested parties opportunities to provide public comment on proposed regulations not based on international standards. China's membership in the WTO has made a measureable impact on its ability to make its proposed regulations more transparent, notify its measures for review by stakeholders, and take the view of stakeholders into account.

ACC Recommendation: We urge the U.S. government to continue working with regulatory agencies and the center of government in China to ensure that it implements the TBT Agreement in full and adopts good regulatory practices, as embodied by the APEC-OECD Integrated Checklist on Regulatory Reform¹.

¹ <https://www.oecd.org/regreform/34989455.pdf>



2. Colombia

2a. Chemical Management

ACC remains concerned about the development of chemical management regulation in Colombia. We offered general comments to the government of Colombia in 2018. These comments concerned the scope of legislation, the national inventory of industrial chemicals, assessment requirements, prioritization, confidential business information, and stakeholder input. We have provided our comments as an attachment to this document. Colombia is still in the process of addressing comments received and may issue a revised regulation in 2019.

We would prefer Colombia's regulation to avoid a hazard-based approach to chemical management, and instead to adopt a risk- and science-based model similar to those under development elsewhere in Latin America. ACC is working closely with industry in Latin America to ensure that Colombia considers regulations under development in Argentina and Brazil, two close trading partners of Colombia.

We are seeking engagement by Colombia regulators with counterpart regulators and industry to develop a science- and risk-based implementation plan for chemical regulatory management legislation. This engagement should work towards better alignment, transparency and efficiency for Colombia producers and investors in the U.S. bilateral market, as well as across the region.

Colombia did notify this measure to the TBT Committee on May 25, 2018, in COL/232, offering 60 days for public comment. We applaud this step and have encouraged Colombia to continue offering stakeholders opportunities for public comment through robust notice and comment processes with sufficient time to familiarize themselves with any revision to the measure.

ACC Recommendation: We request that the U.S. government ask Colombia for an update on its revision to the measure referenced in COL/232 and to notify any revised measure to the TBT Committee, so as to allow interested parties to familiarize themselves with it, giving interested parties at least 60 days to provide comments. We also ask the U.S. government to urge Colombia to avoid adopting a final regulation until it has notified the revised measure and taken comments from interested parties into account.



3. European Union

3a. 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 European Union's actions lead to confusion with trading partners and form the basis for non-tariff trade barriers.

ACC also remains troubled by the European Union's establishment of regulations that lack technical justification and whose burdens of implementation are not proportionate to intended consumer or environmental benefits. The European Union's 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.

ACC Recommendation: 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.

3b. Regulation Regarding Ecodesign Requirements for Electronic Displays - ban on brominated flame retardants

The EU Regulation Regarding Ecodesign Requirements for Electronic Displays is an implementing measure under the 2019 Eco-design Directive. It is intended to update requirements for electronic displays with a focus on reducing electricity consumption and associated GHG emissions and saving natural resources. Requirements are also proposed to enhance repair and reuse, and facilitate recycling with higher yields of recovered materials. As part of the process, the EU Commission examined how aspects such as resource efficiency, reparability, recyclability and durability can be assessed and taken into account when revising the European Union's existing ecodesign measures. The scope of the proposed Lot 5 measure covers a range of displays, including televisions, computer monitors for home and office use, and display signage.

As part of the process, the proposed regulation originally included a proposal that "the use of "halogenated flame retardants" be prohibited in the enclosure and the stand of electronic displays." As a result of stakeholder input, including that of the electronics and chemical sectors, the language was removed in the draft regulation that was notified to the WTO (see notification G/TBT/N/EU/581).



In late December 2018 and after the WTO notification deadline had passed, the Ecodesign Regulatory Committee (made up of representatives of EU Member States) approved the proposed draft regulation but re-instated the ban on halogenated flame retardants. Since this language was added in after the WTO notification there has been no opportunity of the international community to comment on this provision of the Regulation.

Despite feedback from multiple WTO Members, in September 2019 the European Union adopted and published the regulation in the EU Official Journal.

ACC Recommendation: This proposed regulation's ban on a broad range of chemistries was adopted in a manner that is inconsistent with EU regulations, was not appropriately notified to the WTO, will negatively impact trade, and will undermine international product safety and performance. For these reasons, we urge the U.S. government to express its concerns to the EU Commission, request that the Commission issue correcting amendments to address the feedback of WTO Members, and seek re-notification of the regulation to the WTO TBT Committee.

3c. Siloxanes Restrictions

In 2018, the EU imposed restrictions on the use of two siloxanes (D4 and D5) in wash-off personal care products. The 2018 restriction goes into force in early 2020. Earlier this year, the European Union has proposed an additional restriction on the siloxanes D4, D5, and D6 in leave-on personal care applications as well as consumer and industrial applications. This additional restriction has been proposed without any consideration of the utility of the initial wash-off restriction for accomplishing the European Union's risk management goals for siloxanes. Actual monitoring data that has been collected to evaluate the impact of the wash-off restriction indicate that the levels on D4, D5, and D6 that are being measured in wastewater treatment plant (WWTP) effluent and already at, or approaching, the concentration goals that were established by the European Union as goals for risk management. These data were collected prior to the initial wash-off restriction going into force, and questions the need for the restrictions in the first place. Unlike the regulatory evaluations for siloxanes that were conducted in Australia and Canada, the EU siloxane evaluations did not consider the levels of the compounds that are present in the environment. This practice is not consistent with the best available science, is not risk-based, and has led the European Union to adopt a disproportionate risk management measure for siloxanes that will not result in any measurable environmental benefit.

The REACH evaluations for D4, D5, and D6 did not consider the wealth of international exposure data, which demonstrates that none of the materials have 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, D5, and D6 pose low risk to organisms in the environment. Both Canada and Australia have conducted robust risk-based evaluations for D4, D5, and D6 which considered the available exposure data, and neither country has imposed any restrictions on the use of D4, D5, or D6 in commerce.



D4, D5, and D6 are chemical intermediates that are used primarily to make silicone polymers. These polymers provide unique product performance characteristics that spur 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, reduce product quality, and jeopardize innovation without any measurable environmental benefit.

Wastewater treatment plant monitoring has been initiated at locations in Europe to evaluate the impact of the restriction of D4 and D5 from wash-off personal care products. The monitoring is intended to measure the concentrations of D4 and D5 during the period before the restriction is in place (pre-restriction period), the period during which the restriction is being implemented (transitional period), and the period subsequent to restriction being in force (post-restriction period).

For the pre-restriction period monitoring, the observed concentrations for D4 and D5 for all of the locations is approaching or well below the concentrations that the European Union was targeting to achieve after the restriction was in force. This strongly suggests that the restriction was not warranted. In addition, the restriction will likely disrupt global supply chains and jeopardize trade and investment without any meaningful environmental benefit.

ACC Recommendation: We urge the U.S. government to request the European Union to withdraw immediately the proposed restriction for D4, D5, and D6 in leave-on personal care products and consumer and industrial applications. This additional restriction would not provide any practical benefits to the environment since the initial restriction was not warranted, is inconsistent with risk-management measures being pursued by other jurisdictions for the materials, and would create trade barriers that impede global commerce.

3d. Silver

On May 28, 2019, the European Commission notified proposed technical regulations concerning silver biocidal products to the World Trade Organization (WTO) Committee on Technical Barriers to Trade. These proposed regulations would ban the use of silver compounds as an active ingredient for use in certain biocidal products based on unprecedented principles for efficacy. ACC finds the European Commission's decisions troubling, given that they are based on a novel approach and risk review process that is both legally and scientifically unsupported. If implemented, the regulations will create considerable inconsistencies in how biocides are reviewed from country to country and will result in an unnecessary barrier to trade and market segmentation for silver products.

By way of background, the European Commission, based on a recommendation from Sweden, is proposing a marketing ban ("non-approval" decisions) for silver zeolite, silver copper zeolite and silver sodium hydrogen zirconium phosphate in two product categories. Sweden's recommendation is predicated on an alleged lack of efficacy of these substances. Study of the record of review for these products show that inherent or innate efficacy of the products was indeed demonstrated. That has been and remains the standard for approval in the European Union. However, for these silver substances, the standard has been "changed"



to require the data to demonstrate a need or benefit from the treatment of a product with the substances. The regulated community maintains that this standard is not in accordance with the European Union's legislation on biocides, the Biocidal Products Regulation (BPR).

In addition, it appears likely, based on the record for review of these substances, that the European Commission will further propose a marketing ban on treated articles with these same substances in additional product categories. The record of review indicates that a "major concern" was identified with these substances. What is new – and unprecedented – is that the "major concern" falls out of the realm of the traditional carcinogenic, mutagenic and reprotoxic criteria. Instead, the "major concern" is the relationship between silver and argyria. This expansion of "concerns" beyond those generally accepted is deeply troubling and sets the stage for any health effect to be classified as a "major concern." Furthermore, the risk assessment conducted was overly-conservative and exposure scenarios were exaggerated. A proposal to "non-approve" or ban the substances based on the analysis conducted is not warranted.

In sum, if allowed to take force, the proposed regulations will set a terrible precedent, as it would in essence bless the European Chemicals Agency decision to follow a globally divergent approach to assessing efficacy and identification of major concerns for human health in connection with all biocidal product reviews and assessments. This novel approach is not globally followed and would result in a severe reduction in the approval of effective and safe biocidal products on the global marketplace. Accordingly, adoption of this approach would have a major impact on trade in this sector.

The European Commission's approach is also procedurally deficient. Its notifications to the TBT Committee signal that it is not serious about taking stakeholder comments into account. ACC welcomes the 60 day comment period offered by the Commission, which is consistent with TBT Committee guidelines. However, the proposed date of adoption is September 2019, which is only one month after the end of the comment period. The proposed adoption date is insufficient for the Commission to address the concerns expressed by the CBC and other stakeholders. We respectfully request that you urge the Commission to revise these notifications and offer a longer time period before it adopts these proposed regulations.

ACC Recommendation: Given the seriousness of the situation and the precedent these regulations could set, we respectfully request that the U.S. government ask the European Commission to reconsider or at least delay the proposed regulations notified to the WTO based upon these concerns.

3e. Tariffs

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 European Union 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 United States and European Union 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 European Union is applying retaliatory tariffs on \$500 million in exports of U.S.-made chemicals, largely essential oils and preparations across 12 eight digit tariff lines. 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.

The European Union is also targeting exports of U.S.-made chemicals in its possible WTO-authorized countermeasure tariffs under the ongoing Large Civil Aircraft dispute. The proposed EU list of products covers a range of traded goods, including \$3 billion in traded chemicals and plastics (5 products in Chapter 29, 5 in Chapter 30, 1 in Chapter 32, 15 in Chapter 33, 16 in Chapter 35, 4 in Chapter 38, and 22 in Chapter 39). Chemicals and plastics - including polyethylene - represent 15% of the total value of U.S. exported goods that are covered by the European Union's tariff list. If the EU tariff rates go up to the maximum level allowed, which is 100 percent, this could effectively block U.S. chemical manufacturers from accessing the EU market for the products on the EU list. U.S. chemical manufacturers seeking to maintain access to the EU market may decide to move production and jobs out of the United States into the European Union, the Middle East, or Asia.

3f. Titanium Dioxide (TiO₂)

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 Commission adopted the classification proposal through a delegated act on October 4, despite significant push-back from at least 9 EU member states representing just over half the EU population. The adopted classification proposal is currently in a 2-month scrutiny period by the European Council and Parliament. 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 European Union'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 European Union'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.

ACC Recommendation: We request that the U.S. government ask the European Commission to clarify numerous legal and regulatory questions about the impacts of the proposed classification on affected sectors. The Commission's decision is inconsistent with the United Nations Globally Harmonized System (GHS) of Classification and Labeling of Chemicals. More appropriate regulatory measures were proposed that would manage



concerns while avoiding unintended consequences, such as harmonized occupational exposure limit for TiO₂.

3g. Microplastics

The European Union has recently completed its public consultation period with respect to a proposal under REACH to regulate intentionally added microplastics to a wide suite of products and in various applications. A combined final opinion is scheduled to be submitted to the European Commission autumn 2020, with a draft Amendment to Annex XVII (a draft restriction) to be subsequently prepared. The sweeping proposal would impose additional regulatory burdens, including labeling and handling restrictions, across a wide range of sectors including cosmetics, inks and printing, packaging, paints and coatings, pharmaceuticals, and feeds and foods.

The European Union's approach with respect to microplastics, however, is inconsistent with scientific principles, and the European Union itself has not reached a determination of risk necessary to justify chemical management regulation under REACH in the first place. This approach is a dangerous and unfounded precedent that could be improperly used to impose restrictions on virtually any material that is durable and does not break down in the environment – from glass to diamond, gold to aluminum, granite to steel. The mere fact that a material is durable (persistent) alone does not mean that it presents a health or environmental hazard; this approach to regulation is not only outside the authority of REACH itself, it is regulation untethered from risk and science.

ACC recommendation: The U.S. government should strongly urge the European Union to discontinue use of REACH as a mechanism to address intentionally added microplastics. (Concerns about product regulation, product formulation, and/or wastes entering the environment should be addressed under other approaches). If nevertheless a chemical management statutory scheme such as REACH is to be used to address microplastics, there must be a foundational determination of risk to move ahead with regulation -- based on a high quality scientific review -- and if this does not exist risk management measures should not proceed.



4. Republic of Korea

4a. Chemical Management

ACC remains concerned about the Republic of Korea's implementation of its Act on Registration and Evaluation, Authorization, and Restriction of Chemical Substances (AREC), which we find to be more trade restrictive than necessary. We and our members continue to engage with Korea's Ministry of Environment to offer more trade- and investment-friendly approaches to AREC implementation.

ACC is concerned that Korea's ongoing efforts to amend AREC create uncertainty for those exporting and importing chemical products and substances into Korea. We are especially concerned about the lack of clarity and guidance from the Ministry of Environment (MOE) and the Ministry of Employment and Labor regarding the amendments. We also believe that the Republic of Korea will find it more cost-effective to complete full implementation of AREC and develop a full set of guidance documents before introducing modifications to the Act.

We believe that completion of AREC's implementation will provide the government with sufficient data on types of registration and levels of compliance that will provide a basis for determining the need for amending AREC. Further, ACC recommends removal of the amendment's requirement for updating pre-registration information. We believe that the number of pre-registrations could be substantial, as an indication of a company's intention to use a substance, but the statement of intention does not mean that all pre-registered chemicals eventually will be registered.

For example, polymer registration, which is a key element of Korean chemical regulatory approvals, lacks sufficient guidance from MOE. Guidance was published but it does not provide details or insight for all relevant scenarios. Further, the guidance does not include long-standing international principles such as a chemical safety report (CSR) exemption. This has a severe impact not only on securing approvals but on ensuring reliable supply to downstream customers and Korea's domestic manufacturing industry.

Additionally, ACC encourages the Republic of Korea to accept Quantitative Structure-Activity Relationship (QSAR) models under its AREC amendments. Consistent with global practice, it is critical to provide a QSAR as part of a Weight of Evidence (WoE) approach for registration, regardless of the tonnage band, for regulatory efficiency and for fulfilling AREC's principle of minimizing animal testing (as specified in Article 14 of the Act).

ACC Recommendation: We request that the U.S. government continue to ask the Republic of Korea for information on its implementation of AREC and urge the Republic of Korea to respond to comments from interested parties.



4b. Biocidal Products

On November 6, 2018, the Republic of Korea notified four proposed technical regulations concerning biocidal products to the WTO TBT Committee: KOR/801; KOR/800; KOR/799; KOR/798. The Republic of Korea indicated in these notifications that interested parties only had 20 days to submit comments. This practice is inconsistent with the recommendation of the TBT Committee in G/TBT/1/Rev.9 that WTO Members should provide comment periods of at least 60 days.

The notifications also indicated that Republic of Korea would adopt these measures on January 1, 2019. This practice is inconsistent with recommendation of the TBT Committee that WTO Members should provide an interval of more than six months between the publication of proposed technical regulations and their entry into force. The Republic of Korea's notifications did not specify why the 20 day comment period and 55 day interval prior to entry into force were necessary. The notifications also provide no guidance on the approval process for active biocide agreement and biocidal product approval.

ACC did not have sufficient time to read and analyze these measures and were not able to provide public comment in advance of the deadline of November 26. Furthermore, the short adoption period was insufficient for U.S. chemical manufacturers to prepare to come into compliance with these measures. These short term transition periods are highly trade restrictive given supply chain commitments and long-term contracts.

ACC Recommendation: We request that the U.S. government ask the Republic of Korea why it was not able to respect the relevant TBT Committee recommendations on comment periods and adoption intervals in their notifications and urge the Republic of Korea to abide by these recommendations in future notifications to the TBT Committee.



5. India

5a. Chemical Management

ACC is reviewing and developing comments for the upcoming/expected public consultation on India's *Draft Report on National Action Plan for Chemicals, issued December 2018 by the Hazardous Substance Management Division of the Ministry of Environment, Forest & Climate Change*. The *Draft Report* sets the framework for assessing India's state of preparation for "sound management of chemicals to identify the gaps where capacity needs strengthening and to define priority for action for effective management of chemicals." Our comments will encourage India to take a science- and risk-based approach to chemical regulation and one that relies heavily on the lessons learned from the Canadian CMP, which has set a global standard as a multi-stakeholder, transparent, efficient, and effective system for regulating chemicals.

We are uncertain whether India's Draft Report constitutes a proposed technical regulation. The Draft Report contains a number of elements that if implemented in a technical regulation could have a substantial impact on international trade.

ACC Recommendation: We request that the U.S. government ask India to provide an update on the Draft Report, indicate any next steps (e.g., when the public consultation will be announced and the length of time to comment during the consultation), remind India of its TBT transparency commitments under Article 2.9, and offer at least 60 days for interested parties to provide public comment when it notifies any draft chemical regulation to the WTO TBT Committee.

5b. Mandatory Standards for Chemicals

India is proposing to make 41 chemical/petrochemical standards mandatory by introducing a permitting system on importers, manufacturers (and possibly foreign manufacturers). Under the system, products are certified for standards conformity. Companies meeting the standards will have a logo/label on the packages as conforming to Indian standards, and the importers and manufacturers obtain permits to import/manufacture. Historically, the Certification Scheme has been voluntary in nature and, under the recent proposal, it becomes mandatory when specifically notified.

These standards cover various basic chemicals as well as many commodity polymers such as polyethylene (PE), polypropylene (PP), polyvinyl chloride (PVC), and polyurethane (PU). Some are based on specific end-uses such as food packaging, while others are based on manufacturing processes.

Our understanding is that the future enforcement with respect to imports will be administered by Indian Customs, likely based on HS Codes, while for locally manufactured products enforcement will be through inspection. We understand that the goal for the



proposal is for the protection of safety, health and environment, and protection of national security.

ACC is has the following concerns regarding this proposal:

- Permitting adds a significant level of bureaucracy, and significantly delays the process of importation especially with the inclusion of common non-hazardous polymers into the coverage of mandatory standards. This will create a potential trade barrier for imported products.
- Based on the proposed process, Indian Customs will identify the need for permits through the HS codes, which normally are used for the purpose of administering tariffs. The standards focus on either end-use or manufacturing process of many common polymers, which is a very different matter than HS codes. A check based on HS codes adds bureaucracy and cost does not advance environment, health, safety, or security goals.
- In today's global trade, the down-stream customers who manufacture the products using the common polymers have the responsibility and also interest to ensure the quality of these polymers. A permit for importing such listed chemicals adds little value, and creates significant trade barriers.
- Industry has vast experience in the safety and quality of chemicals including polymers, packaging material, specific end-uses, such as food packaging.

ACC Recommendation: Given the above concerns, ACC requests that the U.S. government press India on providing more opportunities to consult with industry and allowing more time for public consultation before the standards become mandatory. We encourage the U.S. government to promote alignment of the BIS standards to international approaches, such as the UN Globally Harmonized System for Classification and Labeling of Chemicals (GHS).

5c. Tariffs

On June 13, 2018, India submitted its notice of intent to impose countermeasures against the United States in response to the U.S. Section 232 tariffs on imports of steel and aluminum from India. Its revised submission can be accessed [here](#). Four of the 30 products which now face tariffs are chemicals: phosphoric acid (28092010), 15% tariff; boric acid (28100020), 10% tariff; other diagnostic reagents (38220090), 10% tariff; and other binders for foundry molds (38249990), 10% tariff. The value of these exports to India in 2017 totaled \$289 million. Downstream products from the agriculture and motor vehicle industries are also listed so there will be indirect losses to the U.S. chemical industry related to decline in demand for chemicals.

ACC Recommendation: We urge the U.S. government to reach an agreement with India that would remove both the Section 232 tariffs on imports of steel and aluminum from India and India's retaliatory tariffs on imports of chemicals from the United States. Additionally,



given the ongoing bilateral dialogue between the United States and India, we urge both governments to focus on reducing tariffs particularly for necessary inputs that are not manufactured in India but are critical to the downstream value chain, such as silicones. In that regard, we request that the U.S. government work with ACC and the chemical industry to define a key list of targeted tariff reductions for consideration by government of India.



6. Thailand

6a. Draft Chemicals Management Law

The government of Thailand is in the process of establishing a new chemicals management regime. As Thailand is an important, growing market for the consumption and production of chemicals, it is important for the government of Thailand to take appropriate steps to consult stakeholders in its regulatory process. We understand that the government of Thailand has initiated a public consultation on its draft law. However, it has not yet notified the WTO TBT Committee of this proposed measure, which may have a substantial impact on international trade and investment. We appreciate the meaningful consultation and industry engagement by Thailand thus far and welcome the opportunity to further progress a sound science- and risk-based draft regulation.

ACC Recommendation: We urge the U.S. government to press Thailand on meeting its WTO TBT commitments on transparency, including by notifying its proposed chemical management law to the WTO TBT Committee at the appropriate time (e.g., prior to endorsement by the Cabinet of Thailand), offering interested parties at least 60 days for public comment, and taking comments into account before adopting the proposed law. If the government of Thailand revises the proposed law, we urge the U.S. government to request that the government of Thailand re-notify the revision to the WTO TBT Committee and again offer at least 60 days for public comment.



7. Turkey

7a. Tariffs

On May 21, 2018, the Delegation of Turkey to the World Trade Organization submitted a notice of intent to impose countermeasures against the United States in response to the U.S. Section 232 tariffs on imports of steel and aluminum from Turkey. It can be accessed [here](#). The goods identified in the notice are subject to additional duties ranging from 5% to 40% and cover products in 22 different HS codes. In addition to the four HS codes for chemicals and plastic products, there are many codes covering products that use U.S. chemicals as inputs (for example, machines and appliances, motor vehicles and medical apparatuses).

The four chemical and plastic product industries subject to additional tariffs are: beauty and make-up preparations (3304), PVC (3904.10), polyamides (3908.10), and miscellaneous plastic products (3926). The value of these exports to Turkey in 2017 totaled \$169 million. Duties levied on these products range from 10% to 32% and expected duties collected would be \$46 million (based on previous importation trends). Out of all of the additional duties that Turkey is collecting, 21% are from chemicals and plastic products.

ACC Recommendation: We urge the U.S. government to reach an agreement with Turkey that would remove both the Section 232 tariffs on imports of steel and aluminum from Turkey and Turkey's retaliatory tariffs on imports of chemicals from the United States.



8. Vietnam

8a. Draft Chemicals Management Law

The government of Vietnam is in the process of establishing a new chemicals management regime. As Vietnam is an important, growing market for the consumption and production of chemicals, it is important for the government of Vietnam to take appropriate steps to consult stakeholders in its regulatory process. We understand that the government of Vietnam has initiated a public consultation on its draft law. However, it has not yet notified the WTO TBT Committee of this proposed measure, which may have a substantial impact on international trade and investment. We appreciate the meaningful consultation and industry engagement by Vietnam thus far and welcome the opportunity to further progress a sound science- and risk-based draft regulation.

ACC Recommendation: We urge the U.S. government to press Vietnam on meeting its WTO TBT commitments on transparency, including by notifying its proposed chemical management law to the WTO TBT Committee at the appropriate time, offering interested parties at least 60 days for public comment, and taking comments into account before adopting the proposed law. If the government of Vietnam revises the proposed law, we urge the U.S. government to request that the government of Vietnam re-notify the revision to the WTO TBT Committee and again offer at least 60 days for public comment.

