April 8, 2021

The Honorable Chairman Wyden
The Honorable Ranking Member Crapo
Senate Committee on Finance
Attn. Editorial and Document Section
Rm. SD-219
Dirksen Senate Office Bldg.
Washington, DC 20510-6200

Re: How U.S. International Tax Policy Impacts American Workers, Jobs, and Investment – Hearing Thursday March 25, 2021 9:30 am

Dear Chairman Wyden and Ranking Member Crapo:

The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC member companies apply the science of chemistry to create and manufacture innovative products that make people's lives better, healthier, and safer. The business of chemistry is a $565 billion enterprise and a key element of the nation's economy. Over 25% of U.S. GDP is generated from industries that rely on chemistry, ranging from agriculture and automotive to semiconductors and electronics, textiles, pharmaceuticals, and building and construction. Materials and technologies from our industry are used to create solutions that enhance sustainability, including electric and fuel-efficient vehicles, wind turbines, solar panels, advanced batteries, and energy-efficient building materials.

ACC appreciates the opportunity to submit comments in response to the Committee's hearing last week on the effect of the international provisions in the Internal Revenue Code on domestic workers, jobs and investment. Since 2010, the chemical industry has invested $97 billion in new or expanded facilities in the United States. These 229 projects are completed and operating. Another 40 projects cumulatively valued at $31 billion are under construction, while 80 projects valued at $81 billion are in the planning phase. This investment in facilities drives business and job growth in the United States.

In light the vigorous discussion during the March 25 hearing, the ACC makes the following observations regarding potential changes to the international provisions of the Tax Cuts and Jobs Act (TCJA).

At the outset, it is important to note the OECD and Inclusive Framework countries are working toward a deal on Pillars 1 (profit split to address the digital economy) and Pillar 2 (controlled foreign company rules/global minimum tax). If the United States agrees to a deal on Pillar 2 this summer or by the end of 2021, then Congress will be required to change many provisions in the

TCJA to align with new global tax standards. It is therefore premature to recommend and make changes to the U.S. international tax system before the outcome of the Inclusive Framework negotiations is known.

Under current law, global intangible low taxed income (GILTI) taxes income in excess of 10% of qualified business asset investment (QBAI). The purpose of the QBAI exemption is to exempt the ordinary returns and tax the income associated with intellectual property. Due to the proration of foreign tax credits, the GILTI applies a tax rate of at least 13.125%.

During the hearing, witnesses expressed concerns that multinational enterprises (MNEs) could manipulate GILTI and offset high-tax income with low-tax income by moving facilities out of the United States. There is much confusion about the roles tax departments play in site selections for new plants. Contrary to the claims of some witnesses, the tax department of a MNE does not select the new location of a plant. Business needs drive the location and growth of business, and the tax department can play a role in maximizing tax benefits once the decision is made. The tax department does not drive site selection. ACC is unaware of a U.S. MNE moving a facility abroad in order to obtain a GILTI benefit.

For these reasons, ACC recommends retaining QBAI and the current structure and rates for GILTI. Failure to do so will make the United States uncompetitive in the bid for manufacturing investment dollars and resulting economic benefits. The movement to a full inclusion system without deferral would make it more difficult for U.S. MNEs to compete abroad for market share.

If the Committee decides to modify GILTI, it should also address issues that will be exacerbated by a country-by-country regime. First, a controlled foreign corporation (CFC) should be permitted to carry forward tested losses. Failure to do so will undermine the growth of U.S. businesses. For example, a chemical company may decide to build a greenfield facility in Germany in order to be close to market and to minimize shipping costs. If the group does not already have a taxable presence in Germany, then the German operations will generate losses until the plant is operating and able to turn a profit. Such losses should offset future income. Without a carry forward, U.S. businesses will be at a competitive disadvantage overseas in pricing in a foreign market. Second, Congress should restore the full foreign tax credit for GILTI.

We urge the Committee to consider ways to retain and strengthen the foreign derived intangible income (FDII) to encourage businesses to export products from the United States. ACC members benefit from FDII, which replaced the domestic production deduction (former section 199) as an incentive to manufacture in the U.S. for export. FDII supports U.S. manufacturing and jobs.

ACC agrees with the majority of the Committee that the base erosion and anti-abuse tax (BEAT) should be revised. It targets behavior that is not base erosion (e.g., the Work Opportunity Tax Credit, a domestic jobs credit, is treated as base erosion) and is also under-inclusive. The cost of goods sold exception (COGs is not treated as a deduction for BEAT purposes) is important for ACC, and we urge retention of the exception. We welcome the opportunity to work with the Committee to create a sensible anti-base erosion regime.

We look forward to continuing engagement regarding potential changes to the TCJA. Our tax code should create an environment in which U.S. companies can compete effectively in global markets and ensure investment dollars, output, and jobs stay in the United States.

Sincerely,

Robert B. Flagg
Senior Director, Federal Affairs
American Chemistry Council