



September 18, 2019

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

Re: ACC Public Comments on China's Compliance with its World Trade Organization (WTO) Commitments (84 FR 40471)

Dear Ambassador Lighthizer:

The American Chemistry Council (ACC) appreciates the opportunity to provide public comments on China's compliance with its WTO commitments. These comments outline four areas where China's compliance with its WTO commitments would make a meaningful commercial difference to U.S. chemical manufacturers:

- Rolling back WTO-inconsistent use of anti-dumping and countervailing duties and increasing its subsidy transparency;
- Preventing the theft of trade secrets and other intellectual property;
- Implementing the WTO Agreement on Technical Barriers to Trade in full; and
- Eliminating additional tariffs on chemicals and plastics.

A stable, predictable U.S.-China trade relationship is critical to the success and competitiveness of U.S. chemical manufacturers. China's chemical manufacturing sector is the largest in the world and projected to grow even further in the coming years.¹ That growth will afford significant opportunities for U.S. chemical manufacturers to increase their exports of U.S.-made chemicals to China. However, for those increases to happen, full implementation of China's WTO commitments is necessary, as the basis for reforms that allow more foreign competition.

U.S. chemical manufacturers value their business relationships with partners in China. They want to continue to supply China's growing market with innovative and sustainable chemicals and plastics products. China is the U.S. chemical industry's third-largest export market overall. U.S. chemical manufacturers exported \$13 billion in chemicals and plastics to China in 2017. In fact, a notable amount of U.S.-China chemicals trade is between related parties: 28 percent of U.S. imports from China and 37 percent of exports to China.

¹ <https://www.mckinsey.com/industries/chemicals/our-insights/chinas-chemical-industry-new-strategies-for-a-new-era>



China's Commitments on 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 urges the Administration 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.

WTO Norms on the Protection and Enforcement of Intellectual Property Rights, 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 establishing precedents to prevent further trade secret misappropriation.

We encourage you to continue to press China to ensure broad protection of intellectual property rights, as required under WTO commitments.

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. 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 Reform.²

² <https://www.oecd.org/regreform/34989455.pdf>



Tariffs Impede Market Access for U.S. Chemical Manufacturers

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 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 and our member companies support an outcome where the U.S. and China resolve their trade dispute and eliminate these additional tariffs, reverting to the previous status quo of MFN trade.

Ideally, the U.S. and China would lead a global effort to eliminate chemical tariffs in 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.

Conclusion

ACC and our members value the efforts of the U.S. government to ensure that China implements its WTO commitments, and to address other trade-distorting practices, such as the lack of intellectual property protection, forced technology transfer, and subsidization of domestic industries. Unfair trade practices have undermined the competitiveness of our industry in China.

We believe it is critical for the U.S. to work with like-minded allies at the WTO to find solutions to unfair trade practices in China, creating a greater incentive for China to support the multilateral trading system. We look forward to working with you and your team at USTR on



China's implementation of its WTO commitments, resolving the ongoing trade dispute, and eliminating tariffs between the U.S. and China.

Best regards,



Ed Brzytwa
Director for International Trade
American Chemistry Council

