

July 23, 2018

The Honorable Robert Lighthizer
United States Trade Representative
Office of the United States Trade Representative
600 17th St, NW
Washington, DC 20006

Via Electronic Filing at <http://www.regulations.gov>

RE: Requests for 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-2018-0018

Dear Ambassador Lighthizer:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the Office of the United States Trade Representative (USTR) request for public comment regarding Docket No. USTR-2018-0018, Requests for Comments: Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.

About NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85% of the chemical distribution capacity in the nation and generate 93% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

NACD Members Depend on Chemical Imports to Meet U.S. Customer Demand

USTR has proposed to use Section 301 of the 1974 Trade Act to add an additional 25% tariff on over 200 products, over half of which are chemicals, totaling \$16 billion. These tariffs are intended to impose a total of \$50 billion in costs on Chinese goods imported into the U.S. when combined with the \$34 billion in tariffs that USTR finalized June 20. Less than a month after the initial announcement of the \$50 billion in tariffs, the Chinese government

announced they are placing tariffs on 128 U.S. products in retaliation, setting the stage for a back and forth escalation.

NACD is concerned with the impact the escalation of trade tensions with China could have upon U.S. chemical distributors and U.S. importers overall. Many of our member companies import chemicals from other countries and use significant resources to source products from China, often with longstanding suppliers. Several of our member companies have businesses that are structured to rely on purchasing imported chemicals to meet customer demand. Chemical imports go into agricultural, industrial, food, cosmetic, and medical applications. Additionally, some chemical distributors import chemicals from China that are then re-exported to other customers around the world.

For companies wishing to avoid the tariffs by switching to a new supplier in a different country, the path is not easy. Importers of products will have to take considerable time and effort to develop relationships, conduct due diligence, and establish business terms even before the first shipment from the new supplier can take place. Small businesses would be especially hurt by the additional tariffs. Smaller businesses lack the capital to absorb the tariffs and cannot quickly identify and develop relationships with new suppliers.

Furthermore, the approval of a new supplier can sometimes be contingent upon existing agreements with customers. In some cases when a chemical distributor finds a new source of supply for a product, the customer needs to be informed of a change in sourcing. The customer must then approve the new source or run tests on the product to determine that it meets the same standards as what was previously imported. Then, it's possible the ultimate end user of the product would also need to approve changes via another testing program. All these activities burden U.S. companies with further direct and indirect costs because the tariffs will make some products from China cost prohibitive.

Imposing these additional duties on chemical products would not be practicable or effective to obtain the elimination of China's acts, policies, and practices. In fact, the prices of chemical products overall from China have already increased within the past few years due to significant efforts by the Chinese government to improve environmental safety. Several factories that were previously producing chemical products in China have been shut down due to environmental violations as China attempts to solve its problems related to air pollution. Despite the commendable goal, the results have been increasing prices and pressure on U.S. importers due to lack of supply in China. Adding additional tariffs on top of already increasing prices would result in significant hardship upon the chemical industry, and the costs would be passed on to every market into which the chemical industry sells.

To make matters worse, on July 17, 2018, USTR proposed an additional \$200 billion in tariffs on over 6,000 articles. While those tariffs will not be the focus of these comments, NACD strongly opposes those and any additional tariffs that would impact the ability of chemical distributors to conduct business. Several of our member companies have implemented hiring freezes, delayed orders, and halted expansions due to the impending tariffs. There is a significant concern among the industry that these tariffs could ultimately put several of our member companies out of business. Any tariffs would result in higher prices for American consumers, higher costs for U.S. manufacturers, decreased demand for U.S. exports, and, ultimately, fewer jobs for American workers.

NACD Recommends that USTR Remove the Following HTS Codes From The Proposed List

Although many of the chemicals included under the proposed tariffs are essential to U.S. manufacturing and other markets, NACD specifically recommends excluding the following 44 HTS codes due to their direct and certain impact upon NACD members, as described below. We have provided additional information about the market, and why a particular chemical should be removed, where available.

<u>HTS Code</u>	<u>Additional Information/Reasoning for Removal (if available)</u>
1. 2710.19.30 Lubricating oils	
2. 2710.19.35 Lubricating greases	
3. 2710.19.40 Lubricating greases	
4. 3403.99.00 Lubricating preparations	
5. 3901.10.10 Polyethylene	
6. 3901.10.50 Polyethylene	
7. 3901.20.10 Polyethylene	
8. 3901.30.20 Ethylene copolymer	
9. 3901.30.60 Ethylene-vinyl	
10. 3901.90.90 Polymers of ethylene	
11. 3902.10.00 Polypropylene	
12. 3903.20.00 Styrene-acrylonitrile	
13. 3903.30.00 Acrylonitrile-butadiene-styrene	
14. 3904.10.00 Polyvinyl chloride	
15. 3904.21.00 Polyvinyl chloride	
16. 3904.30.20 Vinyl chloride copolymer	Vinyl resins are not currently manufactured in the U.S. Many years ago, Dow Chemical closed the last U.S. manufacturing facility. After they left the market, chemical distributors searched for replacement suppliers and found some in China. These vinyl resins go into coatings for food packaging and adhesives for pharmaceutical and food packaging. They are also used in inks and in auto refinish formulations. The market would see huge increases in cost for these applications should tariffs be imposed and there is no domestic supplier.
17. 3904.30.60 Vinyl chloride-vinyl	
18. 3904.50.00 Vinylidene chloride polymers	
19. 3904.61.00 Polytetrafluoroethylene	
20. 3905.29.00 Vinyl acetate copolymers	
21. 3905.30.00 Polyvinyl alcohols	Although there are two U.S. producers of polyvinyl alcohol (PVA), there is a critical shortage of vinyl acetate monomer (VAM),

	<p>the key raw material needed to produce PVA. Dow, the largest U.S. producer of VAM, declared force majeure May 18, 2018, and U.S. PVA manufacturers cannot obtain any additional raw materials beyond existing contract quantities. Therefore, there is greater demand than supply for PVA in the U.S. On May 25, the cover story of <i>ICIS Chemical Business</i>, an industry trade publication, announced “crazy” tightness in global VAM markets. In these circumstances, imposing a tariff on PVA imports will not reduce imports or help the U.S. domestic industry. PVA imports will continue and end-users will be forced to pay tariffs passed along through the supply chain.</p>
<p>22. 3905.99.80 Polymers of vinyl esters</p>	<p>One NACD member company reports that this product is used as a binder in dietary supplements and pharmaceuticals. This market is already very competitive, and it is typical that a supplier can lose a customer on a very marginal price difference. For this member company, this would mean going through the time-consuming and costly process of approving a new manufacturer. Given the marginal price differences, it is likely that current customers would look to other markets outside of the U.S., driving business away from U.S. companies.</p>
<p>23. 3906.90.10 Acrylic polymers</p>	
<p>24. 3906.90.20 Acrylic plastics polymers</p>	
<p>25. 3906.90.50 Acrylic polymers</p>	<p>Acrylic polymer beads, classified under this HTS code, are used in a wide variety of applications, including in paints, sealants, and even in dental applications. This item is only produced in China and Germany, but production issues in Germany have resulted in one NACD member having to bring in this product from China. The acrylic market overall does not have any competitive issues resulting from Chinese trade practices. Acrylics go into construction, automotive, and even some military applications. There already exists a 4.2% duty on this HTS code from China and adding an additional 25% could create a dramatic shortage in the U.S. of all acrylic products, and potential loss of production in multiple industries in the U.S. U.S. manufacturers would likely have to end or scale back production.</p>

26. 3907.10.00 Polyacetals	
27. 3907.20.00 Polyethers	
28. 3907.30.00 Epoxide resins	
29. 3907.40.00 Polycarbonates in primary forms	
30. 3907.91.20 Unsaturated allyl resins	
31. 3908.10.00 Polyadmie-6	
32. 3909.10.00 Urea resins	
33. 3909.40.00 Phenolic resins	
34. 3909.50.10 Polyurethanes	
35. 3910.00.00 Silicones in primary forms	<p>Silicones are raw materials used in a variety of markets, including construction, oil gas, automotive, paper manufacturing, industrial processing, etc. These products have been in very tight supply in the U.S. market for the last three years due to the major U.S. supplier of silicones withdrawing supply from the open market, causing the prices to more than double within the last two years. Putting tariffs on silicones will only boost prices to an even higher level, affecting many U.S.-based industries. The competitiveness of U.S. exports will also be affected as silicones are used to manufacture many products that are eventually exported around the world. Placing a tariff on silicone products would only have the effect of raising prices on an industry that is already at maximum capacity and is very limited in expansion ability.</p>
36. 3911.10.00 Petroleum resins	<p>Petroleum resins are in drastic shortage in the U.S. Thousands of U.S. manufacturers of adhesives, sealants, paints coatings, plastics, printing inks, and resins rely on purchasing these materials, which are already taxed a 6.1% duty rate. Reliable and cost-effective supply of these resins is critically important to U.S. manufacturing. These U.S. manufacturers employ tens of thousands of U.S. citizens and must compete with large, multi-national, and often foreign-owned companies.</p> <p>In addition, the use of fracking in the U.S. has prompted a massive shift to low cost natural gas as the primary source for ethylene production. Since liquid petroleum resin feedstocks come solely from heavy oil-based ethylene production, there has been a significant U.S. decline in these feedstocks.</p>

	As a result, supply must be imported from liquid petroleum producing regions. Of these, China is the largest. Currently, over 60% of U.S. imports of petroleum resin are from China. There are very few such resin projects elsewhere in the world, making China a critical supply option. These imports are necessary to prevent undue cost and supply disruption to U.S. manufacturers.
37. 3911.90.25 Thermoplastic polysulfides	
38. 3911.90.45 Thermosetting polysulfides	
39. 3911.90.70 Chlorinated synthetic rubber	
40. 3911.90.90 Polysulfides	
41. 3912.39.00 Cellulose ethers	HEC (Hydroxy Ethyl Cellulose), classified under this HTS code, is produced by one manufacturer in the U.S. – Dow Chemical. Dow’s plant is primarily a food grade/pharmaceutical HEC producer. The HEC that one NACD member imports is primarily for the oil and gas industry. The import of this product would be significantly affected with an addition of 25% tariff. With no domestic producer, focusing on the production of HEC, importers would be forced to pass the cost down the supply chain, further impacting U.S. manufacturers.
42. 3912.90.00 Cellulose	PAC (Polyanionic Cellulose), classified under this HTS codes, is produced by one manufacturer in the U.S. - Ashland. Ashland’s plant is primarily a food grade CMC (Carboxymethyl Cellulose) producer. CMC is produced using the same process as PAC but is a more purified technology and used mostly in the food industry. Since no U.S. producer focuses on manufacturing this product, importers would be burdened with the additional tariff and pass it along to their U.S. customers.
43. 3913.10.00 Alginic acid	Seaweed hydrocolloids, classified under this HTS code, are very important to the food chemical/ingredient distribution business and are sold by several chemical distributors to U.S. customers. Seaweed hydrocolloids are used in a wide variety of foods as a thickener/gelling and suspending agent. The major food products containing seaweed hydrocolloids include Asian noodles, fabricated onion rings, processed cheese, restructured meat and vegetable products, as

	well as fillings and toppings. There is no longer a factory in the U.S. producing alginates. All these ingredients are imported either from China or Chile. The tariff upon this HTS code would result in increased prices to U.S. food manufacturers.
44. 3913.90.50 Natural polymers	

According to an analysis by John Dunham & Associates commissioned by NACD, the United States imported about \$405.2 million of these 44 products from China and Hong Kong in 2017. A 25% tariff increase would be equal to a price increase of \$96.3 million. If transportation costs are included, the increased cost to chemical distributors would be \$101.3 million. Based on that price increase, the tariffs are likely to result in about 700,000 tons of reduced sales, totaling about a 1.07% decrease in overall U.S. chemical distribution sales. It is estimated that over 530 chemical distributor jobs could be lost because of higher prices resulting from the tariffs.

Conclusion

NACD appreciates the opportunity to submit feedback on USTR's request for comment. We strongly recommend USTR remove the above HTS codes from consideration and find alternate approaches to address the "law, policies, practices or actions of the Government of China that may be unreasonable or discriminatory and that may be harming American intellectual property rights, innovation, or technology development." USTR's Section 301 proposed tariffs will not deter China from its current course of action when it comes to violation of U.S. intellectual property and technology development and, instead, will only hurt U.S. consumers and businesses. There will be significant and possibly irreparable harm to the U.S. chemical distribution industry should these tariffs be implemented.

Thank you for the opportunity to comment on USTR's notice of determination. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



Jennifer C. Gibson
Vice President, Regulatory Affairs