BEFORE THE
TRADE POLICY STAFF COMMITTEE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

STATEMENT OF U.S. SODA ASH PRODUCERS AND EUROPEAN UNION SODA ASH CONSUMERS ON U.S. OBJECTIVES AND PRIORITIES FOR THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP) NEGOTIATIONS

U.S. Producers of Soda Ash:
FMC Corporation
OCI Chemical Corporation
Searles Valley Minerals

European Union Consumers of Soda Ash:
Guardian Industries
Saint-Gobain
Ardagh Group

May 10, 2013

I. INTRODUCTION

This statement is submitted by three U.S. producers of soda ash and three companies that are major consumers of soda ash in the European Union (EU) in response to the April 1, 2013 *Federal Register* notice (78 *Fed. Reg*. 62) by the Trade Policy Staff Committee requesting comments on the United States' interests and priorities for a Transatlantic Trade and Investment Partnership (TTIP) Agreement. These comments urge U.S. government negotiators to seek the immediate elimination of the EU's 5.5 percent duty on soda ash (HTS 2836.20).

Soda ash is a basic chemical commodity required to manufacture commodities such as glass, detergents and other industrial products. These comments are filed on behalf of the following three U.S. soda ash producers: 1) FMC Corporation (headquartered in Philadelphia, Pennsylvania), 2) OCI Chemical Corporation (headquartered in Atlanta, Georgia) and 3) Searles Valley Minerals (headquartered in Overland Park, Kansas). These three companies produce nearly 60 percent of U.S. soda ash and account for roughly 45 percent of total U.S. soda ash exports to the EU. Joining in support of these comments are the following three major companies that consume soda ash in the EU: 1) Guardian Industries (headquartered in Auburn Hills, Michigan), 2) Saint-Gobain (headquartered in Paris, France) and 3) Ardagh Group (headquartered in Luxembourg).

The EU is the second largest soda ash consuming geographic market in the world, only behind China. Western Europe accounts for approximately 8 percent of total U.S. exports and the EU as a whole only slightly higher. As a result of the Uruguay Round multilateral trade negotiations, the EU adopted the Chemical Tariff Harmonization Agreement ("CTHA"), which resulted in the EU's tariff on soda ash being reduced from 10 percent *ad valorem* to the current CTHA tariff rate of 5.5 percent *ad valorem*. The U.S. applies a 1.2 percent *ad valorem* tariff on soda ash imports.

It is urged that the United States TTIP negotiators achieve an immediate elimination of the EU's 5.5 percent tariff on soda ash. A similar tariff elimination goal is also endorsed by the petitioners.

Not only will reciprocal tariff elimination between the U.S. and the EU benefit U.S. producers through increased exports and additional U.S. jobs, but tariff elimination will also benefit major EU industrial users such as the glass sector by offering them a predictable supply of highly competitive, environmentally-"friendly" and less energy-intensive natural U.S. soda ash.

II. CONGRESSIONAL PRIORITY TO SEE BILATERAL RECIPROCAL TARIFF ELIMINATION ON SODA ASH

It is recognized that Trade Promotion Authority (TPA) has expired. However, it is nonetheless dispositive to understand the importance Congress attached to achieving reciprocal tariff elimination on soda ash in "multilateral, regional and **bilateral negotiations**" (emphasis added).

The February 2002 Senate Finance Committee Report on the H.R. 3005, "The Bipartisan Trade Promotion Authority Act of 2002," identified the Committee's priorities that should be pursued by the Executive Branch in U.S. trade policy. The Report notes that Section 2(b) of the TPA bill directs the President "to obtain reciprocal tariff and non-tariff barrier elimination agreements, **with particular attention to products covered in Section 111(b) of the Uruguay Round Agreements Act**." The Committee specifically references those products "as described on page 45 of the URAA Statement of Administrative Action accompanying that Act." According to the SAA "Some sectors, namely…**soda ash**…complete duty elimination was not achieved. Obtaining further reductions in these sectors is a priority objective for U.S. multilateral, regional and bilateral negotiations."

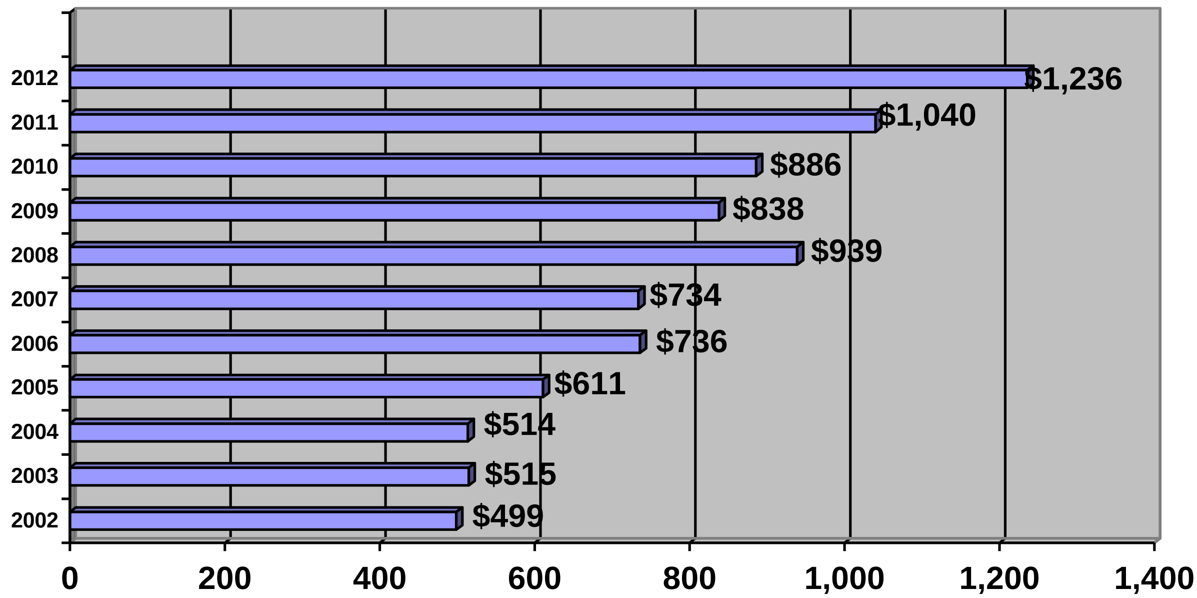
On page 45 of the Senate Finance Committee TPA Report, the Committee again stressed the need to negotiate a zero-for-zero tariff agreement on soda where it states: "Finally, the bill reaffirms the residual proclamation authority granted to the President in Section 111(b) of the URAA…During that round, the United States sought, **but did not achieve, reciprocal duty elimination in…soda ash**…It is the expectation of the Committee that the President will continue the efforts at tariff elimination and harmonization left over from the Uruguay Round…"

III. MORE ABOUT SODA ASH AND THE U.S. INDUSTRY

U.S. soda ash is the most competitive and environmentally-friendly in the world due to a unique natural deposit of the soda ash raw material trona located in Green River, Wyoming, from which the U.S. could supply world demand for over 1,000 years. The U.S. industry produces roughly 20 percent of total global output. Due to flat demand for soda ash in the United States, export markets are critical to maintain industry growth. Soda ash is the largest U.S. inorganic chemical export and the industry directly and indirectly accounts for nearly 20,000 jobs in the United States.

The U.S. soda ash industry is an export success story. The United States exports over 52% of U.S. production. For the first time, in 2011, U.S. exports exceed $1 billion, increasing to over $1.2 billion in 2012 (see Chart #1, below). Export markets are essential to the U.S. jobs dependent both directly and indirectly on the industry.

Chart #1: US World Soda Ash Exports
(2002-2012)
($Millions)



The U.S. is the largest global producer of "natural" soda ash. Nearly all other countries, including those in the EU, produce soda ash through a synthetic process, which requires significantly more energy and man-hours than natural soda ash. Moreover, the higher-cost synthetic soda ash produces a byproduct – calcium chloride – which when disposed has major environmental consequences.

IV. THE EUROPEAN COMMUNITY – A FAILED U.S. EXPORT SUCCESS

A. Soda Ash Production in the European Community

The five soda ash producers in the EU, their geographic location and production capacity (in thousands of MTS) are below in Chart #2.

Chart #2: EU Soda Ash Producers
(2012)

Company	Location	2012 Capacity
BASF	Belgium	25
BASF	Germany	50
Ciech	Germany	600
Ciech	Poland	1,200
Ciech	Romania	420
Novacarb	France	600
Solvay	France	700
Solvay	Germany	1,140

Company	Location	2012 Capacity
Solvay	Italy	1,000
Solvay	Portugal	230
Solvay	Spain	1,020
Solvay-Sodi	Bulgaria	1,350
Tata Chem Europe	United Kingdom	1,000

B. U.S. Exports are Low Relative to EU Market

The export success the U.S. soda ash industry has experienced throughout most of the world has simply not materialized in the European Union. Despite the fact that the EU is the second largest consumer of soda ash in the world, U.S. exports remain negligible. For example, only the Netherlands appears on the list of top 20 U.S. soda ash export markets in 2012, and exports there were less than to the United Arab Emirates.

Moreover, while an important step towards trade tariff elimination, the 4.5 percent reduction in the EU tariff as a result of the Uruguay Round has not resulted in a measurable increase in U.S. exports to the EU. In 1993, prior to the Marrakech Agreement, when there were 12 EU member States, U.S. exports to the EU totaled 445,000 mts. Yet, 19 years later, in 2012, when the EU has expanded to 27 Member states, U.S. exports totaled 534,000 mts.

C. U.S. Exports Limited by the EU Tariff and Historically by Trade Remedy Investigations

The reasons U.S. exports to the EU have failed to increase significantly is attributed to the following factors:

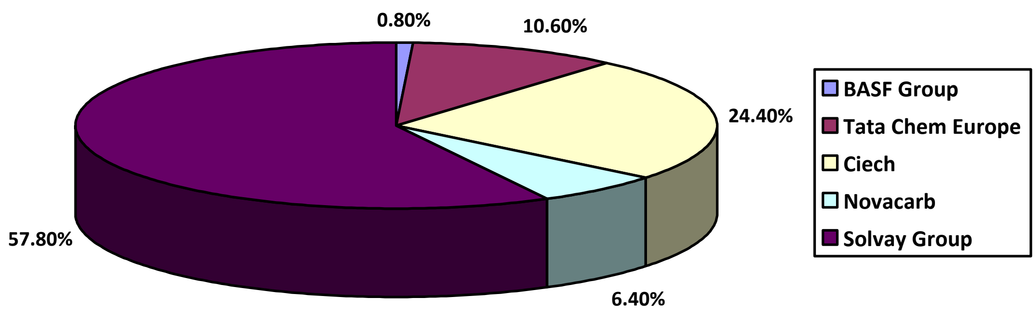
1. **The 5.5 percent EU tariff – The principle impediment to U.S. exports**. The EU's 5.5 percent tariff is the principal remaining impediment to U.S. exports. The EU's pre-Uruguay Round 10 percent tariff was reduced in incremental stages over five years to the current 5.5 percent rate, effective January 1, 2000. Soda ash is a bulk chemical commodity and, as a result, price determines whether or not a sale is made. While the U.S. natural soda ash industry is clearly the world's most competitive, this advantage is partially offset by the costs associated with moving soda ash from production located in the Western United States to European customers. These additional costs include: 1) transport by rail from the West to the U.S. ports on the coast; 2) port costs at the point of shipment; 3) ocean vessel costs to European ports; 4) insurance coverage for shipments; and 5) the imposition of the 5.5 percent import tariff.

   These additional costs on the price of soda ash act as a penalty on the price that can be offered by U.S. producers to its European customers.

2. **Historical protection sought by EU's highly concentrated soda ash industry.**

a. The EU's highly concentrated soda ash market. The following five companies produce soda ash in the EU: 1) Solvay Group; 2) Novacarb; 3) Ciech; 4) Tata Chemicals Europe; and 5) BASF. As indicated below, the EU's soda ash industry is highly concentrated, with the Solvay Group controlling nearly 60 percent of production capacity (see Chart #3).

Chart #3: EU Soda Ash Production Capacity (2012)



b. EU producers' efforts to keep out U.S. soda ash. The EU's soda ash producers pursued a nearly 20-year campaign to restrict imports of American natural soda ash through the use of antidumping laws.

In 1983, antidumping measures were imposed on U.S.-origin imports of soda ash. The measures were amended in 1984. In 1988, the European Commission initiated a review of those measures. In 1990, the review was terminated and the antidumping measures were revoked on the basis that there was no injury.

In August 1993, following a complaint lodged by the European Chemical Industry Council ("CEIFC"), the European Commission again initiated an antidumping investigation into U.S.-origin soda ash. In October 1995, the European Commission imposed antidumping duties (ranging from 2.5 percent to 13.9 percent) on American soda ash.

In August 1996, the European Commission initiated an interim review of the antidumping measures imposed on soda ash originating in the U.S. In April 1997, four EU producers representing roughly 80 percent of the total production of soda ash withdrew their support for the antidumping proceeding. This withdrawal was driven by Solvay and the problems it faced in responding to complaints by the Italian Competition

Authority. As a consequence, the antidumping measures imposed in October 1995 were lifted.

In 1999, there were again rumors that EU soda ash producers were preparing still another antidumping complaint. However, the complaint was never filed. There are no indications EU producers have recently revived their campaign to use the community's trade remedy laws to restrict U.S. imports.

D. EU Commission Competition Investigations Against EU Soda Ash Producers

While EU soda ash producers vigorously sought protection from American soda ash imports by means of antidumping laws, they have also been the subject of intense investigation by the European Commission's antitrust/competition authorities.

In December 2000, the European Commission readopted three decisions fining Solvay (EUR 23 million) and Imperial Chemical Industries Plc ("ICI") (EUR 10 million) for breaches of the EU competition rules committed in the 1980s. The three original decisions dated December 1990 had been annulled by the European Court of First Instance in 1995 on purely procedural grounds because the decisions had been authenticated by the signatures of the Commission's President and Secretary-General only after they had been notified to their addressees. The Commission lodged an appeal against the CFI's ruling with the European Court of Justice, but the latter upheld in April 2000 the CFI's judgment. In December 2000, the Commission simply readopted the original decisions in due form.

The first Commission decision concerned an agreement concluded towards the end of the 1980s between Solvay and a German company guaranteeing the latter a minimum volume of sales, with Solvay itself buying up any shortfall so as to keep the price of soda ash artificially high in Germany. The Commission found that this restrictive practice constituted an infringement of Article 81 EC and imposed a fine of EUR 3 million on Solvay and EUR 1 million on the German company for sharing the German market.

The two other Commission decisions imposed fines of EUR 20 million on Solvay and EUR 10 million on ICI (now Tata Chemicals Europe) for abusing their dominant positions on the soda ash market.

During the antidumping review proceedings which took place in 1996-97, Solvay planned to acquire the Bulgarian soda ash producer, Sodi, which was being sold by the Bulgarian Government. However, the acquisition caused serious competition concerns in the Italian soda ash market since Solvay had a dominant position in that market. Sodi ranked second, whereas the other firms held insignificant market shares. There was a risk that the merger could strengthen Solvay's dominant position, thus consolidating the quasi-monopoly situation existing in the Italian market. The Italian Competition Authority feared that Sodi, the most important of Solvay's rivals, would be eliminated and competition would be reduced substantially and on a lasting basis. Therefore, the Italian National Competition Authority concluded that the combination of antidumping duties imposed U.S. soda ash and the acquisition of Sodi by Solvay would have the effect of isolating the Italian market from competition.

Therefore, the original concentration project was considered incompatible with the existence of effective competition on the Italian market. However, according to the Italian Authority "*the modifications and the commitments given by Solvay have changed the terms of the evaluation of the effects on the relevant market*" (§ 97 of the decision dated April 29, 1997). One result was a commitment given by Solvay to the Italian Competition Authority to withdraw its support for the dumping complaint. Solvay undertook not to participate in the review of the antidumping measures by the Commission. Moreover, in order to achieve what is necessary to eliminate the duties, Solvay committed itself to persuading a sufficient number of the other community producers to support a closure of the proceeding. Consequently, a number of EU producers withdrew their support for the maintenance of antidumping duties on the U.S. imports in the context of the review proceedings taking place at EU level. Therefore, in consideration of the position of these producers, which together accounted for over 75 percent of soda ash production in the EU, the European Commission terminated the antidumping duties.

V. THE CASE FOR RECIPROCAL TARIFF ELIMINATION IN THE TTIP NEGOTIATIONS

A. Benefits to the United States

Elimination of the EU 5.5 percent duty will enable U.S. producers to establish and sustain a competitive presence in Europe that, in turn, will benefit the U.S. economy and U.S. jobs.

As indicated above, as this country's largest inorganic chemical export, soda ash greatly contributes to the U.S. balance of trade. Aside from the thousands of jobs dependent upon U.S. producers in Wyoming and California, soda ash exports generates other economic activity important to the U.S. economy. U.S. railroads (principally the Union Pacific and the Kansas City Southern) move tonnage principally through the Texas port of Port Arthur and the Port of Portland. Further, U.S. stevedoring firms have assisted in the establishment of soda ash bulkloading terminal at the ports for transferring the product from rail to ocean cargo vessels.

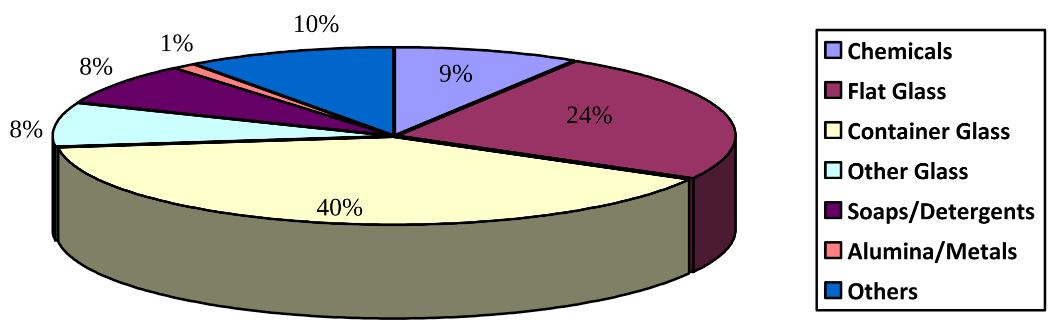
B. Benefits to the European Union from Tariff Elimination

1. Major Industrial Consumer Benefits

European industrial consumers have long sought to purchase increased quantities of high quality U.S. natural soda ash. The importance of high quality, lower-priced soda ash to the EU's major glass industry cannot be overstated since roughly 60 percent of the raw material cost of producing container and flat glass in Europe is attributed to soda ash. The motivation of EU consumers for wanting natural American soda ash has been driven by the need for alternative sources of supply as a means of introducing enhanced competition in a highly concentrated EU market plagued by high prices. These consumers, principally EU glass, detergent and chemical industries, benefit from tariff elimination in the same way they benefited from the lifting of antidumping duties in 1990 and again in 1997. Not only would immediate tariff elimination increase these sectors' competitiveness in global markets, but also it would filter down to individual European consumers in the form of lower prices paid for products packaged in glass and sold at retail.

Glass production in the EU is principally located in Germany, France, Italy, Spain and the United Kingdom. As indicated in Chart #4, below, 73 percent of soda ash in Western Europe is consumed by Europe's glass producers, with soaps and detergents a distant second.

Chart #4: Western Europe
2012 Soda Ash Demand by End Use



2. **<u>Positive Environmental and Energy-Saving Benefits from Imported U.S. Soda Ash</u>**

Increased use of U.S. natural soda ash will also have positive benefits on the European environment. Over two decades ago, the European Commission noted that U.S. natural soda ash has environmental advantages over soda ash produced synthetically. The Commission observed that:

> Natural soda ash…is also purer, containing only 300 – 600 ppm of chloride, as against 3000 ppm for synthetic soda ash. Removing residual chloride (for example, in the course of glass manufacture) is expensive; and <u>if it is not removed it causes environmental pollution</u>. (emphasis added) (Transcript of Hearing in the antidumping investigation held May 4, 1990 (Case No. IV/33.016 – ANSAC) at 55)

3. **<u>Energy-Saving Advantages of Natural American Soda Ash</u>**

U.S. natural soda ash has significant energy-saving advantages over the use of synthetic soda ash. Soda ash producers in the EU use nearly 70 percent more energy than U.S. natural soda ash producers. The reduction in energy use by U.S. producers is attributed in part to technological advancements that have been made by the U.S. in improving its energy efficiency.

Even taking into account the energy required to transport U.S. soda ash to Europe from production sites in Western U.S., U.S. soda ash delivered to European consumers uses significantly less energy per ton versus synthetic methods.

4. **Elimination of the EU Soda Ash Tariff Will Rectify an Anomaly in the EU Tariff Structure which Makes Consuming Industries Less Globally Competitive**

Western Europe's major industrial consumers of soda ash are burdened by an "inverted tariff structure." For example, float glass manufacturers in Europe face a 5.5 percent tariff on soda ash but are protected by only 2 – 3 percent tariffs on their sales. As a result, their effective rate of protection on EU flat glass is actually negative. Overall, therefore, it appears that the EU is supporting the EU soda ash industry at the expense of downstream users such as the glass industry.

VI. SUMMARY

It is respectfully requested that U.S. negotiators seek an immediate elimination of the EU's 5.5 percent soda ash duty in the context of the TTIP negotiations.

The highly competitive, energy-efficient and environmentally-friendly U.S. soda ash industry is critically dependent upon exports. The 27-member European Union, which is the second largest consumer of soda ash in the world, only accounts for about 8 percent of total U.S. exports. The 5.5 percent EU tariff is a major impediment to increased U.S. exports.

Immediate tariff elimination will greatly benefit Europe's sizable glass industry (as well as detergents and other sectors) and enhance their ability to compete in world markets. Increased access to natural American soda ash will also have well-recognized environmental and energy conservation advantages for the EU.

Respectfully submitted on behalf of

The following U.S. producers of soda ash
FMC Corporation
OCI Chemical Corporation
Searles Valley Minerals
and
The following European Union consumers of soda ash
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