



May 10, 2018

VIA ELECTRONIC SUBMISSION

Office of the U.S. Trade Representative
Executive Office of the President
600 17th Street, NW
Washington, DC 20508
Docket USTR-2018-0005
www.regulations.gov

Re: Docket No. USTR-2018-0005 Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.

The Council for Responsible Nutrition (CRN)¹ is the leading trade association for the dietary supplement and nutritional products industry, representing manufacturers of dietary ingredients and of national brand name and private label dietary supplements, many of which are multinational and already actively exporting and selling ingredients, finished products and services globally. Several key raw materials and ingredients come from China, often due to agricultural and climatic specifics.

CRN respectfully submits these comments to the Office of the U.S. Trade Representative Executive Office of the President, in response to a Federal Register Notice (*Federal Register* / Vol. 83, No. 67 / Friday, April 6, 2018 / Notices, pp 14906-14954²).

¹ The Council for Responsible Nutrition (CRN), founded in 1973 and based in Washington, D.C., is the leading trade association representing dietary supplement and functional food manufacturers, marketers and ingredient suppliers. CRN companies produce a large portion of the functional food ingredients and dietary supplements marketed in the United States and globally. Our member companies manufacture popular national brands as well as the store brands marketed by major supermarkets, drug stores and discount chains. These products also include those marketed through natural food stores and mainstream direct selling companies. CRN represents more than 150 companies that manufacture dietary ingredients, dietary supplements and/or functional foods, or supply services to those suppliers and manufacturers. Our member companies are expected to comply with a host of federal and state regulations governing dietary supplements and food in the areas of manufacturing, marketing, quality control and safety. Our supplier and manufacturer member companies also agree to adhere to additional voluntary guidelines as well as to CRN's Code of Ethics. Learn more about us at www.crnusa.org.

² <https://ustr.gov/sites/default/files/files/Press/Releases/301FRN.pdf>

BACKGROUND

On April 3, the Trump Administration proposed a list of approximately 1,300 products originating from China that would bear an additional 25 percent *ad valorem* import tariff and requested public comments on the list, following the Administration's determination last month that China's technology transfer and intellectual property ("IP") policies are harming U.S. companies and competitiveness. In a swift response, China published a list of 106 imports from the U.S. that would be subject to an additional tariff of the same magnitude and sharply critiqued the proposed U.S. action as inconsistent with global trade rules.

The U.S. product list covers approximately 1,300 items, representing sectors including aerospace, information communication technology, machinery, medical instruments, and steel. The U.S. Administration had signaled on March 22 that this list would be forthcoming, when it found that China's forced transfer of U.S. technologies and IP theft have caused at least \$50 billion in harm to the U.S. economy per year, capping an investigation launched in August 2017 under Section 301 of the Trade Act of 1974 ("Section 301"). 40 percent of the listed products fall under Chapter 84 of the Harmonized Tariff Schedule of the U.S. ("HTSUS"), and include a wide variety of machinery, such as boilers, generators, engines, and equipment related to metal, textiles, oil and gas, food, printing, and plastic products. 18 percent are classified under Chapter 85, including electrical motors and machinery, batteries, data storage media, video monitors, and circuit assemblies. 12 percent fall under Chapter 90, including numerous types of optical, medical, and measuring equipment. 8 percent are covered by Chapter 72, including iron or non-alloy steel, stainless steel, and alloy steel products.

The Office of the U.S. Trade Representative ("USTR") explained that the list was developed through an inter-agency effort to identify products benefitting from China's technology transfer and IP policies while balancing the impacts of the tariff on the U.S. economy. USTR also clarified that the proposed products and 25 percent tariff do not relate to China's discriminatory technology licensing rules, which are the subject of a newly-filed challenge in the World Trade Organization ("WTO"), also announced on March 22.

The Administration plans to solicit public comments regarding the product list through both hearing testimony and written submissions. Requests to appear at the hearing and a summary of expected hearing testimony, along with optional pre-hearing written comments, must be submitted by April 23. May 11 is the deadline for written submissions. At the hearing to be held on May 15, participants will be able to testify and respond to questions from the Section 301 Committee. After these proceedings, USTR will publish the final product list in the Federal Register.

REMOVAL OF PARTICULAR PRODUCTS

CRN and CRN members unequivocally state that the imposition of duties on a wide range of harmonized tariff schedule (HTS) codes “would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.” Specifically as follows.

- Many key ingredients used in the manufacture of US dietary supplement, functional food, and other natural products are constrained to the availability (geographic areas where only grown or only produced include China), and there is very limited (or no) supplies and/or availability of these ingredients from alternative sources.
- There would be significant “economic harm and financial impact” to businesses, especially small and mid-size companies due to lack of a broad portfolio that could temper the cost spikes to their specific and possibly unique key ingredients.
- There would be significant “economic harm and financial impact” to consumers who would bear the brunt of the potentially increased costs for the products they trust and rely upon for their daily health regimen.
- Further, recent survey data indicate that 76% of Americans use dietary supplement products and rely on supplements to support their overall health.³ Disruption of the supply chain for raw materials and key ingredients sourced from China would result in decreased availability of these products or could cause consumers to forgo use due to rising costs, making the expected health benefits more difficult to obtain or unobtainable.
- Finally, the dietary supplement industry directly employs approximately 385,000 Americans in manufacturing, ingredient supply, wholesalers, direct selling and retailing jobs. These workers earned more than \$16 billion in wages and benefits. The dietary supplement industry is a major economic engine with \$122 billion in output or roughly 0.68 percent of Gross Domestic Product (GDP); and the

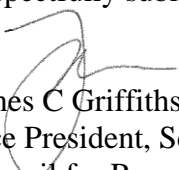
³ CRN 2017 Annual Survey on Dietary Supplements. A summary of the survey is available here: <https://www.crnusa.org/sites/default/files/images/CRN-2017-ConsumerSurvey-4-page-highlights.pdf>.

dietary supplement industry generates \$5.75 billion in state and local taxes and \$9.2 billion in federal taxes⁴.

CRN and CRN members respectfully request the removal of HTS codes related to dietary supplement, functional food, and natural product raw materials and ingredients that are sourced from China. It is our general opinion that these types of products are not among the list of products that logically belong with industrial materials in the aerospace, information communication technology, manufacturing machinery, medical instruments and steel industries, as dietary supplement, functional food, and natural product raw materials and ingredients have not been caught up in the dispute regarding technology transfer and intellectual property policies.

CRN and CRN members can provide more detailed justification as well as specific HTS codes as requested by USTR, and await a response to this letter.

Respectfully submitted,



James C Griffiths, Ph.D., DABT, FRSB, CFS
Vice President, Scientific & International Affairs
Council for Responsible Nutrition

⁴ Economic Impact of the Dietary Supplement Industry. Information available here: <https://www.crnusa.org/resources/economic-impact-dietary-supplement-industry>