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September 6, 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-2018-0026 Request for Comments Concerning Proposed Modification 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, functional food and other nutritional products (hereafter termed "nutritional products") industry, representing manufacturers of dietary ingredients and of national brand name and private label nutritional products, many of which are multinational and already actively exporting and selling ingredients, finished products and services globally. Many 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 US Trade Representative Executive Office of the President, in response to a Federal Register Notice (*Federal Register* / Vol. 83, No. 137 / Thursday, July 17, 2018 / Notices, pp 33608-33728[2]).

[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://federalregister.gov/documents/2018/07/17/2018-15090/request-for-comments-concerning-proposed-modification-of-action-pursuant-to-section-301-chinas-acts.

BACKGROUND

On June 20, 2018 (83 FR 28710), the US Trade Representative (USTR) provided notice of an initial action in the Section 301 investigation of the acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation.

The initial action was the imposition of an additional 25 percent *ad valorem* duty on products from China with an annual trade value of approximately $34 billion, effective July 6, 2018. The June 20 notice also sought public comment on another proposed action, in the form of an additional 25 percent *ad valorem* duty on products of China with an annual trade value of approximately $16 billion. The public comment process in connection with the proposed additional action is ongoing.

On July 6, 2018, China responded to the initial action by imposing increased duties on goods of the United States. In light of China's decision to respond to the investigation by imposing duties on US goods, USTR proposed a modification of the action taken in this investigation.

The proposed modification is to maintain the original $34 billion action and the proposed $16 billion action, and to take further action in the form of an additional 10 percent *ad valorem* duty on products of China with an annual trade value of approximately $200 billion. Further, the USTR published a statement on August 1, 2018 announcing that it would consider raising the level of the additional tariff to be imposed on the $200 billion in Chinese imports (i.e., the harmonized tariff schedule of the United States (HTSUS) codes from July 6, 2018, above) from 10% to 25 % *ad valorem* tariff[3].

The products subject to this proposed supplemental action are classified in the HTSUS subheadings set out in the Annex to this notice. USTR is seeking public comment and held a public hearing regarding this proposed modification of the action in the investigation.

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[3] Statement By U.S. Trade Representative Robert Lighthizer on Section 301 Action; https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/statement-us-trade-representative.

REMOVAL OF PARTICULAR PRODUCTS

CRN unequivocally states that the imposition of duties on a wide range of critical nutritional product raw materials/ingredients covered by the HTSUS codes "would cause disproportionate economic harm to US interests, including small- and medium-size businesses and consumers," as follows:

- Many key ingredients used in the manufacture of US nutritional products are constrained to the availability (geographic areas where they can only be grown or only produced in China), and there are 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 the 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.

- Recent survey data indicate that 76% of Americans use dietary supplement products and rely on supplements to support their overall health.[4] 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.

- Further, 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 dietary supplement industry generates $5.75 billion in state and local taxes and $9.2 billion in federal taxes[5].

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

- Finally, in response to the "Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation", it was stated that "During the notice and comment process, a number of interested persons asserted that specific products within a particular tariff subheading **only were available** from China, that imposition of additional duties on the specific products would cause severe economic harm to a US interest, and that the specific products **were not strategically important** or related to the 'Made in China 2025' program. In light of such concerns, and pursuant to sections 301(b), 301(c), 304(a), and 307(a) of the Trade Act of 1974 (19 U.S.C. 2411(b), 2411(c), 2414(a), and 2417(a)), the Trade Representative has determined that USTR will establish a process by which US stakeholders may request that particular products classified within an HTSUS subheading listed in Annex A **be excluded from these additional duties.**[6] CRN requests information on the product exclusion process, including procedures for submitting exclusion requests. [**Emphasis** added]

CRN notes the following specified HTSUS codes are problematic and would unfairly affect US interests. The following table lists raw materials/ingredients used in the manufacture of nutritional products for consumption in the United States as well as for value-added export to many countries. For many articles there are no non-Chinese alternatives or the alternatives that may be available are scarce or overly expensive.

Ingredients used in the manufacture of nutritional products

HTSUS CODE	PRODUCT DESCRIPTION
0804.50.80	Guavas, mangoes, and mangosteens, dried.
0805.10.00	Oranges, fresh or dried.
0813.30.00	Apples, dried.
0813.40.10	Papayas, dried.
0813.40.20	Berries except barberries, dried.
0813.40.40	Peaches, dried.
1102.90.25	Rice flour.
1108.12.00	Corn (maize) starch.
1108.20.00	Inulin.
1201.90.00	Soybeans, whether or not broken, other than seed.
1208.10.00	Flours and meals of soybeans.
1212.92.00	Locust beans (carob).
1504.10.20	Cod-liver oil and its fractions.
1504.10.40	Fish-liver oils and their fractions, other than cod-liver oil and its fractions.
1504.20.60	Fats and oils and their fractions, of fish other than cod and herring, excluding liver oil.
2008.93.00	Cranberries.
2008.97.10	Mixtures of fruit or edible parts of plants, in airtight cont. excl. apricots, citrus, peaches or pears (incl. canned tropical fruit salad).

[6] https://federalregister.gov/d/2018-17709

2008.97.90	Mixtures of fruit or other edible parts of plants, otherwise prepared or preserved, nesoi (excluding tropical fruit salad).
2008.99.05	Apples, otherwise prepared or preserved, nesoi.
2008.99.30	Guavas, otherwise prepared or preserved, nesoi.
2008.99.61	Soybeans, otherwise prepared or preserved, nesoi.
2009.89.80	Juice of any single vegetable, other than tomato, concentrated or not concentrated.
2009.90.40	Mixtures of fruit juices, or mixtures of vegetable and fruit juices, concentrated or not concentrated.
2106.10.00	Protein concentrates and textured protein substances.
2508.10.00	Bentonite clay, whether or not calcined.
2519.90.50	Magnesium oxide, nesoi, whether or not pure.
2530.20.20	Epsom salts (natural magnesium sulfates).
2804.90.00	Selenium.
2806.10.00	Hydrogen chloride (Hydrochloric acid).
2820.10.00	Manganese dioxide.
2820.90.00	Manganese oxides, other than manganese dioxide.
2825.50.10	Cupric oxide.
2825.50.20	Cuprous oxide.
2827.20.00	Calcium chloride.
2827.31.00	Magnesium chloride.
2827.60.10	Iodide and iodide oxide of calcium or copper.
2827.60.20	Iodide and iodide oxide of potassium.
2833.25.00	Copper sulfate.
2833.27.00	Barium sulfate.
2833.29.10	Cobalt sulfate.
2833.29.20	Iron sulfate.
2833.29.30	Vanadium sulfate.
2833.29.40	Chromium sulfate.
2833.29.45	Zinc sulfate.
2836.50.00	Calcium carbonate.
2839.11.00	Sodium metasilicates.
2839.19.00	Sodium silicates except sodium metasilicates.
2905.49.30	Xylitol.
2905.49.40	Polyhydric alcohols derived from sugars, nesoi
2905.49.50	Polyhydric alcohols, nesoi
2906.11.00	L-Menthol
2906.13.10	Inositols.
2906.13.50	Sterols.
2907.22.50	Hydroquinone (Quinol) and its salts, other than photographic grade.
2907.29.90	Other polyphenols, nesoi.
2914.69.90	Quinones, NESOI
2915.21.00	Acetic acid.
2915.29.10	Cupric acetate monohydrate
2915.50.10	Propionic acid.
2915.50.20	Aromatic salts and esters of propionic acid.
2915.50.50	Nonaromatic salts and esters of propionic acid.
2915.70.01	Palmitic acid, stearic acid, their salts and esters.
2915.90.10	Fatty acids of animal or vegetable origin, nesoi.
2916.19.10	Potassium sorbate.
2916.19.20	Sorbic acid.
2916.39.06	Cinnamic acid.
2917.19.10	Ferrous fumarate.
2918.11.10	Lactic acid.
2918.11.51	Salts and esters of lactic acid.
2918.12.00	Tartaric acid.
2918.14.00	Citric acid.

2918.15.10	Sodium citrate.
2918.19.60	Malic acid.
2918.19.90	Nonaromatic carboxylic acids with alcohol function, without other oxygen function, and their derivatives, nesoi.
2918.30.90	Non-aromatic carboxylic acids w/aldehyde or ketone function but w/o other oxygen func. their anhydrides, halides, peroxides, etc derivatives
2921.19.61	N,N-Dialkyl (methyl, ethyl, N-Propyl or Isopropyl)-2-Chloroethylamines and their protonated salts; Acyclic monamines and their derivatives, nesoi.
2922.42.50	Glutamic acid and its salts, other than monosodium glutamate.
2922.49.10	m-Aminobenzoic acid, technical; and other specified aromatic amino-acids and their esters, except those with more than one oxygen function
2922.49.43	Glycine (aminoacetic acid).
2922.49.49	Nonaromatic amino-acids, other than those containing more than one kind of oxygen function, other than glycine
2922.49.60	s-Aminocrotonic acid,methy ester; and ®-alpha-amino-1,4-cyclohexadiene-1-acetic acid
2923.10.00	Choline and its salts.
2923.20.20	Lecithins and other phosphoaminolipids, nesoi.
2923.90.01	Quaternary ammonium salts and hydroxides, whether or not chemically defined, nesoi.
2924.19.11	Acyclic amides (including acyclic carbamates).
2924.19.80	Acyclic amide derivatives; salts thereof; nesoi
2924.29.10	Acetanilide; N-acetylsulfanilyl chloride; aspartame; and 2-methoxy-5-acetamino-N,N-bis(2-acetoxyethyl)aniline
2924.29.71	Aromatic cyclic amides and their derivatives of products described in additional U.S. note 3 to section VI, nesoi.
2925.29.90	Non-aromatic imines and their derivatives; salts thereof.
2930.40.00	Methionine.
2930.90.49	Nonaromatic organo-sulfur acids, nesoi
2930.90.91	Other non-aromatic organo-sulfur compounds
2932.14.00	Sucralose.
2932.99.90	Nonaromatic heterocyclic compounds with oxygen hetero-atom(s) only, nesoi
2933.29.90	Other compounds (excluding drugs, aromatic and modified aromatic compounds) containing an unfused imidazole ring (whether or n/hydrogenated)
2933.31.00	Pyridine and its salts.
2933.32.10	Piperidine.
2940.00.60	Other sugars, nesoi excluding d-arabinose
3104.20.00	Potassium chloride.
3203.00.10	Coloring matter of annatto, archil, cochineal, cudbear, litmus and marigold meal
3204.19.35	Beta-carotene and other carotenoid coloring matter.
3205.00.05	Carmine food coloring solutions, cont cochineal carmine lake and paprika oleoresins, not including any synthetic organic coloring matter.
3206.19.00	Pigments and preparations based on titanium dioxide, nesoi.
3307.49.00	Preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites, nesoi.
3824.99.28	Mixtures containing 5% or more by weight of one or more aromatic or modified aromatic substance, nesoi
3824.99.92	Chemical products and preparations and residual products of the chemical or allied industries, nesoi.
3912.31.00	Carboxymethylcellulose and its salts.
3913.90.20	Polysaccharides and their derivatives, nesoi, in primary form

CRN also notes, that many specific and unique packaging and presentation materials (boxes, bottles, bags, labels, etc.) covered by a number of HTSUS codes in the 3923, 4202, 4420, 4808, 4810, series are also severely impacted and have the propensity to disturb not only ready availability, but also the cost which may be problematic for consumers seeking these value-added natural products.

CRN respectfully requests the removal of HTSUS codes related to nutritional product ingredients and packaging materials that are sourced from China. These products sourced in China and imported into the United States that are covered by the above HTSUS provision **do not** benefit from the four categories of China's acts, policies, and practices that the USTR found to be unreasonable or discriminatory and burden or restrict US commerce, namely (1) aerospace, (2) automobiles, (3) information technology and (4) robotics[7,8]. In addition, these products **are not** within one of the ten strategic industries that the USTR concluded benefit from China's "Made in China 2025" industrial policy, i.e.,: (1) advanced information technology (IT); (2) robotics and automated machine tools; (3) aircraft and aircraft components; (4) maritime vessels and marine engineering equipment; (5) advanced rail equipment; (6) new energy vehicles; (7) electrical generation and transmission equipment; (8) agricultural machinery and equipment; (9) new materials; and (10) pharmaceuticals and advanced medical devices[9].

Therefore, it is our strong opinion that these types of nutritional product ingredients and packaging materials **are not** among the list of products that logically belong with these "Made in China 2025" industrial materials in areas such as aerospace, information communication technology, manufacturing machinery, medical instruments and steel industries, especially as nutritional product ingredients and packaging materials **have not** been caught up in the dispute regarding technology transfer, intellectual property and innovation policies.

The imposition of the proposed tariffs would also result in a financial burden on consumers and/or limit consumer access to nutritional products. As a case in point, a CRN member has applied the proposed tariffs to a number of their key ingredients, such as branched-chain amino acids (HTSUS code 2915.90.18), amino acids (2922.49.10; 2922.49.49), sweeteners (HTSUS codes 2924.29.10; 2925.11.00, 2932.14.00), thickeners/emulsifiers (HTSUS code 2923.20.20) and choline/salts (2923.10.00) and determined that the raw ingredient procurement costs would increase on the order of $2 million to $5

[7] U.S. and China Expand Trade War as Beijing Matches Trump's Tariffs; https://www.nytimes.com/2018/06/15/us/politics/us-china-tariffs-trade.html.

[8] Made in China 2025《中国制造 2025》; http://www.cittadellascienza.it/cina/wp-content/uploads/2017/02/IoT-ONE-Made-in-China-2025.pdf.

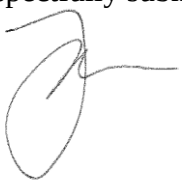
[9] OFFICE of the UNITED STATES TRADE REPRESENTATIVE EXECUTIVE OFFICE OF THE PRESIDENT FINDINGS OF THE INVESTIGATION INTO CHINA'S ACTS, POLICIES, AND PRACTICES RELATED TO TECHNOLOGY TRANSFER, INTELLECTUAL PROPERTY, AND INNOVATION UNDER SECTION 301 OF THE TRADE ACT OF 1974 Executive Summary; https://ustr.gov/sites/default/files/enforcement/301Investigations/301%20Draft%20Exec%20Summary%203.22.ustrfinal.pdf.

million per year, which would lead to significantly higher revenue loss in terms of being competitively priced in the marketplace. Additionally, if discrete raw materials that can only come from China are hit with a 25% duty, the price per bottle of many of the nutritional products that Americans have come to rely upon in their personal and proactive approach to health maintenance **will definitely** increase, jeopardizing the ability to live longer healthier lives. Persuasive research indicates that many diseases of old-age can be diminished with judicious use of key nutritional products [10,11].

Finally, nutritional products are an industry with huge growth potential in China, in particular for overseas companies such as the United States. The size of the market is likely to grow significantly over the foreseeable future due to a range of social and economic factors, with specific advantage to US finished product companies exporting to China[12]. Rising costs of the raw materials from China into the US to manufacture high-end, value-added, quality nutritional products for that export market will be affected by the rise in cost and potentially limited availability of the raw materials which could be exacerbated if the finished nutritional products exportable to China are also hit with an added tariff by China on those products. Therefore, US nutritional products could be potentially doubly affected with tariffs, i.e., (1) tariffs on incoming raw materials and (2) tariffs on outgoing exported finished products. And these are categories that, for all intents and purposes should never have been caught up in the concerns on "technology transfer, intellectual property, and innovation."

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

Respectfully submitted,



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[12] http://www.china-briefing.com/news/2016/01/28/chinahealthsupplementsindustry.html.