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July 27, 2018

The Honorable Robert E. Lighthizer  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20006

Via Electronic Submission

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"

Dear Mr. Lighthizer,

**Request to Testify at Public Hearing (August 20-23)**

The Natural Products Association (NPA) is submitting this letter to docket USTR-2018-0026, in response to the notice of 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.<sup>1</sup> On behalf of the over 1,100 member companies of NPA, we request the opportunity to testify at the public hearing scheduled for August 20-23. NPA appreciates the opportunity to submit comments to Docket No. USTR-2018-0026 regarding "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." In addition to making the request to testify at the public hearing, NPA is providing a summary of our expected testimony at the public hearing and a pre-hearing submission.

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<sup>1</sup> Section 301(b) of the Trade Act of 1974, as amended (Trade Act) provides that "the Trade Representative shall take all appropriate and feasible action authorized under [Section 301(c)] subject to the specific direction, if any, of the President regarding any such action ... to obtain the elimination of [the]act, policy, or practice" covered I the investigation. Section 307 of the Trade Act provides that "The Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under [Section 301] if ... such action is being taken under section 301(b) of this title and is no longer appropriate."

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NPA was founded in 1936 to promote and protect the unique values and shared interests of retailers and suppliers of natural nutritional foods and natural products. We are the oldest and largest trade association in the natural products industry representing over 1,100 members accounting for almost 10,000 retail, manufacturing, wholesale, and distribution locations of natural products, including foods, dietary supplements, and health/beauty aids. Furthermore, NPA is *the* leading trade association for the dietary supplement industry, which is an estimated \$45 billion dollar industry in the U.S. NPA is a non-profit 501(c) (6) association whose mission is to advocate for the rights of consumers to have access to products that will maintain and improve their health, and for the rights of retailers and suppliers to sell these products. NPA would like to make you aware of a number of tariff subheadings, included in the proposed supplemental action, which would leave an indelible wound to our member companies and the dietary supplement and personal care industries as a whole. While the tariffs were meant to normalize fair play across international trade, they will have the unintended effect of driving small and medium sized companies out of business. For some business, the only way to survive would be to move manufacturing operations to China. This result would be the polar opposite intended effect of the proposed tariffs.

Testimony on behalf of NPA will be presented at the August 20-23 public hearing:

Dr. Daniel Fabricant, CEO/President, Natural Products Association

Phone (202) 204-4721

[Daniel.Fabricant@npanational.org](mailto:Daniel.Fabricant@npanational.org)

The testimony will present NPA's views on and the potential impact of certain of the proposed tariffs on NPA member companies. We look forward to participating in the hearing and to outcomes that meet our Member companies' expectations.

**Summary of Proposed Testimony – Dr. Daniel Fabricant, CEO/President Natural Products Association**

The dietary supplement industry, which started out as a cottage industry many decades ago, is a vast growth industry in the United States. Our association represents a \$45 billion industry in the U.S. with a compound annual growth rate (CAGR) of between 9 and 12% annually. Today, more than three-quarters of the U.S. population takes a dietary supplement to enhance their healthy lifestyle. The

proposed supplemental action of duties placed on harmonized tariff schedule (HTS) codes for dietary ingredients contained in dietary supplements would cause disproportionate economic harm to U.S. interests, including small- or medium-sized businesses and consumers. Imposing additional tariffs on dietary ingredients used in dietary supplement products would be neither practicable nor effective to obtain the elimination of China's acts, policies, and practices for the following reasons:

- 1) Many dietary ingredients used in the domestic manufacture of dietary supplements are dependent upon sourcing in China because it is the only country which can handle ingredient sourcing supply on the scale demanded by finished product manufacturers of dietary supplements in the U.S.
- 2) Imposing these tariffs on dietary ingredients would result in significant economic harm and financial impact to U.S. companies. If small- and medium-sized companies were forced to obtain dietary ingredients from alternative sources domestically or abroad, most small- and some medium-sized companies would be out of business. Some medium- and large-sized companies would set up finished product manufacturing operations in China. While the road to hell was, as they say, paved with good intentions, this would not have the intended effect as originally planned. That is, to thwart China's acts, policies and practices and level the global trade playing field.
- 3) Imposing these tariffs on dietary ingredients would result in a significant financial burden for consumers who may bear the increased costs of products as well as reduced product choice as small- and medium-sized companies shutter their doors.
- 4) These proposed tariffs will predominantly affect small business, as defined by the Small Business Administration (SBA). The dietary supplement industry receives significant ingredient innovation from new, small business start-up companies. It is that ingredient innovation which drives future product sales for this industry. Any disruption of the raw material supply chain through tariffs on ingredients sourced from China will curtail innovation, decrease future sales, and flatten the expected CAGR for the dietary supplement and natural product industries. The 10% CAGR in the future global market over the next 10 years means that any proposed tariffs on dietary ingredients will lead to strong sales for the

rest of Europe, South America, and Asia, and a lack of growth for the U.S. for the first time.

It is an action which the U.S. dietary supplement industry may not be able to recover from.

### **NPA Urges Removal of the Following HTSUS Codes**

The following HTSUS codes would impose unintended consequences in the dietary supplement and natural products industries, leading to unfair trade burdens for small- and medium-sized U.S. companies.

2915.29.10-- Creatine ethyl ester hcl

2915.70.01-- Palmitic acid, stearic acid, their salts and esters

2915.90.18-- Saturated acyclic monocarboxylic acids (ie. L-Alanine, L-Isoleucine, L-Leucine, L-Methionine, L-Asparagine, L-Cysteine, L-Glutamine, L-Serine, L-Threonine, L-Aspartic Acid, L-Glutamic Acid, L-Arginine, L-Lysine, L-Glycine, Gamma amino butric acid (GABA), stearic acid, palmitic acid, etc.)

2915.90.10-- Fatty acids of animal or vegetable origin

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

2918.13.20-- Potassium bitartrate

2918.13.30-- Potassium sodium tartrate

2918.14.00-- Citric acid

2918.15.10-- Sodium citrate

2918.15.50-- Salts and esters of citric acid

2918.19.60-- Malic acid

2922.42.50-- Glutamic acid and its salts, other than monosodium glutamate (L-Glutamate, L-Theanine, L-aspartate)

2922.49.10-- m-Aminobenzoic acid, technical; and other specified aromatic amino-acids and their esters, except those with more than one oxygen function (L-Phenylalanine, L-Tyrosine)

2922.49.26-- Aromatic amino-acids drugs and their esters, not containing more than one kind of oxygen function, nesoi

2922.49.30-- Aromatic amino-acids and their esters, excl. those with more than one oxygen function; salts; described in add. U.S. note 3 to sect VI

2922.49.37-- Aromatic amino-acids and their esters, not containing more than 1 kind of oxygen function (excluding goods in add U.S. note 3 to sec VI),

2922.49.43-- Glycine (aminoacetic acid) (ie. L-Glycine, N,N-Dimethyl glycine, L-alanine)

2922.49.49-- Nonaromatic amino-acids, other than those containing more than one kind of oxygen function, other than glycine (L-Leucine, L-Isoleucine, L-Valine, Beta-alanine)

2922.49.80-- Non-aromatic esters of amino-acids, other than those containing more than one kind of oxygen function; salts thereof

2923.10.00-- Choline and its salts  
2923.20.20-- Lecithins and other phosphoaminolipids  
2924.29.71-- Aromatic cyclic amides and their derivatives (i.e. L-Tyrosine, L-Phenylalanine)  
2925.29.90-- Non-aromatic imines and their derivatives; salts thereof (ie. L-arginine, L-creatine)  
2930.40.00-- Methionine  
2930.90.46-- dl(underscored)-Hydroxy analog of dl(underscored)-methionine  
2930.90.49-- Nonaromatic organo-sulfur acids (ie. Glutathione, L-cysteine, N-acetyl cysteine)  
2932.14.00-- Sucralose  
2932.99.90-- Nonaromatic heterocyclic compounds with oxygen hetero-atom(s) only (ie. Glucosamine)  
2933.31.00-- Pyridine and its salts  
2933.32.10-- Piperidine  
2940.00.60-- Other sugars, nesoi excluding d-arabinose (ie. too many to list)  
3203.00.10-- Coloring matter of annatto, archil, cochineal, cudbear, litmus and marigold meal  
3203.00.80-- Coloring matter of vegetable or animal origin, nesoi  
3204.19.50-- Beta-carotene and other carotenoid coloring matter  
3206.11.00-- Pigments & preparations based on titanium dioxide containing 80 percent or more by weight of titanium dioxide calculated on the dry weight  
3206.19.00-- Pigments and preparations based on titanium dioxide  
3301.13.00-- Essential oils of lemon  
33303.0020-- Perfumes and toilet waters, other than floral or flower waters, not containing alcohol  
3303.00.30-- Perfumes and toilet waters, containing alcohol  
3304.10.00-- Lip make-up preparations  
3304.20.00-- Eye make-up preparations  
3304.30.00-- Manicure or pedicure preparations  
3304.91.00-- Beauty or make-up powders, whether or not compressed  
3304.99.50-- Beauty or make-up preparations & preparations for the care of the skin, excl. medicaments but incl. sunscreen or sun tan preparations  
3305.10.00-- Shampoos  
3305.90.00-- Preparations for use on the hair  
3306.90.00-- Preparations for oral or dental hygiene  
3307.10.10-- Pre-shave, shaving or after-shave preparations, not containing alcohol  
3307.10.20-- Pre-shave, shaving or after-shave preparations, containing alcohol  
3307.20.00-- Personal deodorants and antiperspirants  
3912.31.00-- Carboxymethylcellulose and its salts

## Conclusion

NPA strongly urges USTR to remove the aforementioned HTS codes related to dietary ingredients and raw food ingredients used in the manufacture of dietary supplements and natural products. These are predominantly sourced from China. Sourcing these ingredients in the U.S. or other country, excluding China, would cause domestic manufacturers to fail in keeping up with production

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demand for products in the U.S. Keeping these codes in the list will create significant economic hardships that were not foreseen by the architects of their inclusion. As the formal exemption process for any company is taking longer than 90 days for USTR to respond and can take as long as 6 months, and the fact that these tariffs go into effect in October, companies must plan now as to where to source their ingredients and set up new purchasing agreements. If the tariffs do not go into effect, companies still lose because they may have had to sign new sourcing agreements that are not economically advantageous in the long run. The best solution here would be to exempt these HTS codes from the tariff action. NPA thanks USTR for the opportunity to comment on this important trade issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Fabricant". The signature is fluid and cursive, with the first name "Dan" and the last name "Fabricant" clearly distinguishable.

Daniel Fabricant, Ph.D.  
CEO & President  
Natural Products Association