



Council for Responsible Nutrition

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February 11, 2020

VIA ELECTRONIC SUBMISSION

Office of the U.S. Trade Representative
Executive Office of the President
600 17th Street, NW
Washington, DC 20508
Docket USTR-2019-0003
www.regulations.gov

Attention: Megan Grimball, Assistant General Counsel; megan.grimball@trade.gov
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Re: Docket No. USTR–2019–0003] Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute; Review of Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute

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 the European Union, often due to agricultural and climatic specifics.

¹ The Council for Responsible Nutrition (CRN), founded in 1973, is a Washington, D.C.-based trade association representing 180 dietary supplement and functional food manufacturers, ingredient suppliers, and companies providing services to those manufacturers and suppliers. In addition to complying with a host of federal and state regulations governing dietary supplements and food in the areas of manufacturing, marketing, quality control and safety, our manufacturer and supplier members also agree to adhere to additional voluntary guidelines as well as to CRN's Code of Ethics. Visit www.crnusa.org. Follow us on Twitter [@CRN_Supplements](https://twitter.com/CRN_Supplements), [Facebook](https://www.facebook.com/CRNSupplements), and [LinkedIn](https://www.linkedin.com/company/crnusa).

CRN respectfully submits these comments to the Office of the U.S. Trade Representative (USTR), Executive Office of the President, in response to Federal Register Notices (*Federal Register* / Vol. 84, No. 196 / Wednesday, October 9, 2019 / Notices, pp. 54245-54264² and *Federal Register* / Vol. 84, No. 239 / Thursday, December 12, 2019 / Notices, pp. 67992-68007³).

BACKGROUND

On December 12, 2019, (84 FR 239, 67992), the U.S. Trade Representative (USTR) provided notice that the previously removed Section 301 Heading HTSUS (harmonized tariff schedule United States) codes 3301 (84 FR 196, 54245) were reinstated as part of a carousel retaliation tactic that shifted the targeted HTSUS codes back to the HTSUS 3301 category.

Previously, argument was made that the Section 301, Heading HTSUS 3301 goods were not requested as needing tariffs, as the imposition would severely affect U.S. exports and the U.S. economy, and were unlikely to persuade the EU to resolve the underlying WTO civil aircraft dispute.

Heading HTSUS 3301 covers the following goods, virtually all being used as raw materials for manufacturing finished dietary supplement and functional food products within the U.S.

²<https://www.govinfo.gov/content/pkg/FR-2019-10-09/pdf/2019-22056.pdf>.

³https://ustr.gov/sites/default/files/enforcement/301Investigations/Review_of_Action_Enforcement_of_U.S._WTO_Rights_in_Large_Civil_Aircraft_Dispute.pdf.

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|------------|--|
| 3301.12.00 | Essential oils of orange. |
| 3301.13.00 | Essential oils of lemon. |
| 3301.19.10 | Essential oils of grapefruit. |
| 3301.19.51 | Essential oils of citrus fruit, other, nesoi. |
| 3301.24.00 | Essential oils of peppermint (<i>Mentha piperita</i>). |
| 3301.25.00 | Essential oils of mints, other than peppermint. |
| 3301.29.10 | Essential oils of eucalyptus. |
| 3301.29.20 | Essential oils of orris. |
| 3301.29.51 | Essential oils other than those of citrus fruit, other, nesoi. |
| 3301.30.00 | Resinoids. |
| 3301.90.10 | Extracted oleoresins consisting essentially of nonvolatile components of the natural raw plant. |
| 3301.90.50 | Concentrates of essential oils; terpenic by-product of the deterpenation of essential oils; aqueous distillates & solutions of essential oils. |

REMOVAL OF HTSUS CODES APPLICABLE TO DIETARY SUPPLEMENTS / FUNCTIONAL FOODS

CRN and CRN members unequivocally state that the imposition of tariffs on the HTSUS codes in heading 3301 “would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.”

- Many key ingredients used in the manufacture of U.S. dietary supplement, functional food, and other natural products are constrained to the availability (geographic areas where only grown or only produced include the European Union), and there is very limited (or no) supplies and/or availability of these ingredients from alternative sources.
- 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 taxes⁴.

- Tariffs would cause 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.
- Tariffs would cause 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 77% of Americans use dietary supplement products and rely on supplements to support their overall health.⁵ Disruption of the supply chain for raw materials and key ingredients sourced from the EU 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.

CRN respectfully requests the removal of the HTSUS 3301 codes from the carousel retaliation tactics as these items are critically related to the manufacture of dietary supplements that rely upon their raw materials sourced from the EU. Previous submissions by CRN members, as well as the Fragrance Creators Association and others, demonstrate that the United States imports hundreds of millions of dollars of essential oils from Europe with the HTSUS heading 3301, which includes a category for 3301.29.5150 essential oils other than citrus and mint, i.e., a catch-all for virtually every essential oil. If a 100% tariff was imposed, that would make the cost of these raw materials, and hence the finished products manufactured in

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

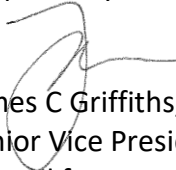
⁵ CRN 2019 Annual Survey on Dietary Supplements. A summary of the survey is available here: <https://www.crnusa.org/2019survey>.

the U.S. from these essential oils prohibitively more expensive with a concomitant loss of market. Consumers lose, as the price per bottle of many of the dietary supplements, which Americans have come to rely upon in their personal and proactive approach to health maintenance will need to increase significantly.

Dietary supplements are among the only categories that have the potential to be doubly affected by tariffs, i.e., (1) tariffs on incoming raw materials and (2) further retaliatory tariffs on outgoing exported finished products made in the U.S. from these raw materials. These products are in a category that, for all intents and purposes, should never have been caught up in the tariffs being contemplated. CRN insists that essential oil raw materials used in dietary supplement and functional food are not among the list of products that logically belong with consumer items targeted for retaliation, e.g., Protected Designation of Origin (PDO) cheeses and wines; luxury-goods; whiskies and scotch. The essential oils covered by HTSUS 3301 are the raw materials used in the U.S. for manufacturing finished products. In short, essential oils are not in the same category as finished products whose European origin is readily apparent to U.S. consumers and whose increased costs can be weighed prior to purchasing the European Union finished goods. As raw materials, these essential oils have no ability to apply pressure to the EU in the ongoing civil aircraft dispute.

CRN and CRN members thank the USTR for careful consideration of the points raised herein.

Respectfully submitted,



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