May 11, 2018

Docket Number: USTR-2018-0005

The Honorable Robert Lighthizer
U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th St. NW
Washington, DC 20508

Re: Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation: Written Submission

Dear Ambassador Lighthizer:

The Consumer Healthcare Products Association ("CHPA") is pleased to provide comments on behalf of our members in response to your April 6, 2018, notice in the Federal Register regarding the "acts, policies, and practices of China determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce." 83 Fed. Reg. 140906-14954 ("the 301 Notice"). For more than 137 years, the Consumer Healthcare Products Association (CHPA) has served as an effective and vital advocate for the consumer healthcare products industry. A member-based trade association, CHPA represents the leading manufacturers and marketers of over-the-counter (OTC) medicines and dietary supplements. CHPA members' products provide millions of Americans with safe, effective, and affordable therapies to treat and prevent many common ailments and diseases. OTCs and supplements are the trusted first line of treatment for 240 million Americans every year and recommended by healthcare providers to their patients for a range of health and wellness needs. These accessible, affordable, and trusted medicines empower individuals and families to meet their everyday healthcare needs.

Imposition of tariffs on OTC drugs and dietary supplements, or their ingredients would have a significant effect on healthcare spending. Tariffs on OTC medicines and ingredients would increase consumer out-of-pocket costs for these trusted, low cost, first line of defense for Americans as they battle colds, allergies, and other every day conditions. Today, every dollar spent on OTC medicines yields $6 to $7 in value to the American healthcare system.[1] It is in everyone's interest to maximize that value. In the allergy category alone, the introduction of more, lower cost OTC treatments helped to drive a decrease in the percentage of allergy sufferers visiting a healthcare provider for treatment from 31% to 28% of sufferers from 2010 to 2015.[2]

[1] "The Value of OTC Medicine to the United States," Booz & Co. for CHPA, January 2012.
[2] "Assessing Consumer Benefits of Allergy Rx-to-OTC Switches," Nielsen and CHPA, 2017.

As explained below, CHPA believes that all finished pharmaceuticals and dietary supplements, pharmaceutical and dietary supplement ingredients, and active pharmaceutical ingredients (API) should be removed from the Annex of products to be subject to additional duties published with the 301 Notice, because imposing an additional 25 percent tariff on such products will increase the cost of OTC drugs and dietary supplements for consumers in the United States, taxing their health and wellbeing.

A. All finished pharmaceutical products, dietary supplements, and active pharmaceutical ingredients (API) should be removed from the Annex.

CHPA opposes the proposed additional 25 percent duty on pharmaceutical products, dietary supplements, dietary supplement ingredients and API for medicines, because such additional duties would cause disproportionate economic harm to U.S. interests, including the interests of consumers, by increasing the cost of OTC medicines and dietary supplements. Due to the likely harm to patients in the United States, these products should be removed from the list of proposed tariff list. Specifically, we reference the medical products with HTS subheadings 29146200 through 30067000.

CHPA is concerned that the proposed additional 25 percent tariff will lead to increased costs of manufacturing OTCs and dietary supplements in the United States and thus higher prices and decreased access for patients in our country, as many of these products or their primary ingredients are sourced from China. For instance, for U.S. medicines, the U.S. Food and Drug Administration estimates 80 percent of active pharmaceutical ingredient manufacturers are outside the U.S.[3] China is a leader in this area.

Many countries have recognized that tariffs on pharmaceuticals are a barrier to access to medicines and lowering drug prices. More than 90 percent of countries apply tariff rates of less than 10 percent on medicines.[4] Moreover, since 1995, the United States and 21 of its trading partners have eliminated import duties on pharmaceuticals and API under the WTO Pharmaceutical Agreement, in order to lower the cost of drug prices for U.S. consumers.[5]

Given the relatively low margins for many widely-used OTCs and dietary supplements, any increase in their cost of production would likely be passed on to consumers in the form of higher drug prices.

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[3] FDA at https://www.fda.gov/downloads/AboutFDA/Transparency/Basics/UCM553532.pdf

[4] Müge Olcay & Richard Laing, *Pharmaceutical Tariffs: What is their effect on prices, protection of local industry and revenue generation?*, Commission on Intellectual Property Rights, Innovation and Public Health, World Health Organization (May 2005), http://www.who.int/intellectualproperty/studies/tariffs/en/.

[5] Nilanjan Banik & Philip Stevens, *Pharmaceutical Tariffs, Trade Flows and Emerging Economies*, Geneva Network (2015), https://geneva-network.com/article/medicine-tariffs-make-sense/.

B. Conclusion

CHPA's members provide important front-line medicines that improve the health of patients in the United States and save the healthcare industry millions of dollars annually by avoiding unnecessary and costly trips to a doctor's office. Imposing an additional 25 percent tariff on pharmaceutical products and dietary supplements would tax the health and wellbeing of patients, which would cause disproportionate economic harm for consumers. Therefore, these products and API should be eliminated from the Annex of goods of China that will be subject to the 25 percent additional tariff.

Sincerely,

Carolyn Herrmann
Deputy General Counsel